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111TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
111–443

THE RECONCILIATION ACT OF 2010

REPORT

OF THE

COMMITTEE ON THE BUDGET
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 4872

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 202 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010

together with

MINORITY VIEWS

VOLUME II
DIVISION II–III

MARCH 17, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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DIVISION II

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, October 13, 2009.

Hon. JOHN M. SPRATT, Jr.,
Chairman, Committee on the Budget, Cannon House Office Building, Washington, DC.

DEAR CHAIRMAN SPRATT, With this correspondence and its attachment, I am transmitting the Health Care Reform portion of the recommendations of the Committee on Education and Labor to your Committee pursuant to Section 202 of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010.

Pursuant to Section 202(a)(3) of S. Con. Res. 13, on July 17, 2009, the Committee on Education and Labor voted 26–22 to, *inter alia,* authorize the Chairman to transmit H.R. 3200, America's Affordable Health Choices Act, with an amendment in the nature of a substitute, to the Committee on Budget in compliance with Section 310 of the Congressional Budget Act of 1974, as its recommendations related to the Health Care Reform portion of its instructions.

Accordingly, attached please find the Committee's report, containing the reported bill and other materials, for your use in preparing a reconciliation bill to be reported to the House pursuant to S. Con. Res. 13.

If you have any questions, please contact my Committee staff. Thank you for your attention.

Sincerely,

GEORGE MILLER,
Chairman.

111TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPT. 111–299 Part 3

AMERICA'S AFFORDABLE HEALTH CHOICES ACT OF 2009

OCTOBER 14, 2009.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY AND SUPPLEMENTAL VIEWS

[To accompany H.R. 3200]

The Committee on Education and Labor, to whom was referred the bill (H.R. 3200) to provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause (other than sections 161 through 163, 322, and 323 and title IV of division A, division B, section 2002 and titles I through IV of division C, and subtitles A, B, C, and E of title V of division C) and insert the following:

SECTION 1. SHORT TITLE; TABLE OF DIVISIONS, TITLES, AND SUBTITLES.

(a) TABLE OF DIVISIONS, TITLES, AND SUBTITLES.—This Act is divided into divisions, titles, and subtitles as follows:

DIVISION A—AFFORDABLE HEALTH CARE CHOICES

TITLE I—PROTECTIONS AND STANDARDS FOR QUALIFIED HEALTH BENEFITS PLANS
Subtitle A—General Standards
Subtitle B—Standards Guaranteeing Access to Affordable Coverage
Subtitle C—Standards Guaranteeing Access to Essential Benefits
Subtitle D—Additional Consumer Protections
Subtitle E—Governance
Subtitle F—Relation to other requirements; Miscellaneous
Subtitle G—Early Investments
TITLE II—HEALTH INSURANCE EXCHANGE AND RELATED PROVISIONS
Subtitle A—Health Insurance Exchange
Subtitle B—Public health insurance option
Subtitle C—Individual Affordability Credits
Subtitle D—State innovation
TITLE III—SHARED RESPONSIBILITY

Subtitle A—Individual responsibility
Subtitle B—Employer Responsibility

[FOR DIVISION B—SEE TEXT OF INTRODUCED BILL]

DIVISION C—PUBLIC HEALTH AND WORKFORCE DEVELOPMENT

[For titles I through IV of division C, see text of introduced bill.]
TITLE V—OTHER PROVISIONS
[For subtitles A , B, and C of title V, see text of introduced bill.]
Subtitle D—Grants for comprehensive programs to provide education to nurses and create a pipeline to nursing
[For subtitle E of title V, see text of introduced bill.]
Subtitle F—Standards for accessibility to medical equipment for individuals with disabilities.
Subtitle G—Other grant programs
Subtitle H—Long-term care and family caregiver support
Subtitle I—Online resources

(b) SHORT TITLE.—This Act may be cited as the "America's Affordable Health Choices Act of 2009".

DIVISION A—AFFORDABLE HEALTH CARE CHOICES

SEC. 100. PURPOSE; TABLE OF CONTENTS OF DIVISION; GENERAL DEFINITIONS.

(a) PURPOSE.—

(1) IN GENERAL.—The purpose of this division is to provide affordable, quality health care for all Americans and reduce the growth in health care spending.

(2) BUILDING ON CURRENT SYSTEM.—This division achieves this purpose by building on what works in today's health care system, while repairing the aspects that are broken.

(3) INSURANCE REFORMS.—This division—

(A) enacts strong insurance market reforms;

(B) creates a new Health Insurance Exchange, with a public health insurance option alongside private plans;

(C) includes sliding scale affordability credits; and

(D) initiates shared responsibility among workers, employers, and the government;

so that all Americans have coverage of essential health benefits.

(4) HEALTH DELIVERY REFORM.—This division institutes health delivery system reforms both to increase quality and to reduce growth in health spending so that health care becomes more affordable for businesses, families, and government.

(b) TABLE OF CONTENTS OF DIVISION.—The table of contents of this division is as follows:

Sec. 100. Purpose; table of contents of division; general definitions.

TITLE I—PROTECTIONS AND STANDARDS FOR QUALIFIED HEALTH BENEFITS PLANS

Subtitle A—General Standards

Sec. 101. Requirements reforming health insurance marketplace.
Sec. 102. Protecting the choice to keep current coverage.

Subtitle B—Standards Guaranteeing Access to Affordable Coverage

Sec. 111. Prohibiting pre-existing condition exclusions.
Sec. 112. Guaranteed issue and renewal for insured plans.
Sec. 113. Insurance rating rules.
Sec. 114. Nondiscrimination in benefits; parity in mental health and substance abuse disorder benefits.
Sec. 115. Ensuring adequacy of provider networks.
Sec. 116. Ensuring value and lower premiums.
Sec. 117. Consistency of costs and coverage under qualified health benefits plans during plan year.

Subtitle C—Standards Guaranteeing Access to Essential Benefits

Sec. 121. Coverage of essential benefits package.
Sec. 122. Essential benefits package defined.
Sec. 123. Health Benefits Advisory Committee.
Sec. 124. Process for adoption of recommendations; adoption of benefit standards.
Sec. 125. Prohibition of discrimination in health care services based on religious or spiritual content.

Subtitle D—Additional Consumer Protections

Sec. 131. Requiring fair marketing practices by health insurers.
Sec. 132. Requiring fair grievance and appeals mechanisms.
Sec. 133. Requiring information transparency and plan disclosure.
Sec. 134. Application to qualified health benefits plans not offered through the Health Insurance Exchange.
Sec. 135. Timely payment of claims.
Sec. 136. Standardized rules for coordination and subrogation of benefits.
Sec. 137. Application of administrative simplification.
Sec. 138. Records relative to prescription information.

Subtitle E—Governance

Sec. 141. Health Choices Administration; Health Choices Commissioner.
Sec. 142. Duties and authority of Commissioner.
Sec. 143. Consultation and coordination.
Sec. 144. Health Insurance Ombudsman.

Subtitle F—Relation to Other Requirements; Miscellaneous

Sec. 151. Relation to other requirements.
Sec. 152. Prohibiting discrimination in health care.
Sec. 153. Whistleblower protection.
Sec. 154. Construction regarding collective bargaining.
Sec. 155. Severability.
Sec. 156. Rule of construction regarding Hawaii Prepaid Health Care Act.
Sec. 157. Increasing meaningful use of electronic health records.
Sec. 158. Private right of contract with health care providers.

Subtitle G—Early Investments

[For sections 161-163. See text of introduced bill.]
Sec. 164. Reinsurance program for retirees.
Sec. 165. Prohibition against post-retirement reductions of retiree health benefits by group health plans.
Sec. 166. Limitations on preexisting condition exclusions in group health plans in advance of applicability of new prohibition of preexisting condition exclusions.
Sec. 167. Extension of COBRA continuation coverage.

TITLE II—HEALTH INSURANCE EXCHANGE AND RELATED PROVISIONS

Subtitle A—Health Insurance Exchange

Sec. 201. Establishment of Health Insurance Exchange; outline of duties; definitions.
Sec. 202. Exchange-eligible individuals and employers.
Sec. 203. Benefits package levels.
Sec. 204. Contracts for the offering of Exchange-participating health benefits plans.
Sec. 205. Outreach and enrollment of Exchange-eligible individuals and employers in Exchange-participating health benefits plan.
Sec. 206. Other functions.
Sec. 207. Health Insurance Exchange Trust Fund.
Sec. 208. Optional operation of State-based health insurance exchanges.
Sec. 209. Participation of small employer benefit arrangements.

Subtitle B—Public Health Insurance Option

Sec. 221. Establishment and administration of a public health insurance option as an Exchange-qualified health benefits plan.
Sec. 222. Premiums and financing.
Sec. 223. Payment rates for items and services.
Sec. 224. Modernized payment initiatives and delivery system reform.
Sec. 225. Provider participation.
Sec. 226. Application of fraud and abuse provisions.
Sec. 227. Sense of the House regarding enrollment of Members in the public option.

Subtitle C—Individual Affordability Credits

Sec. 241. Availability through Health Insurance Exchange.
Sec. 242. Affordable credit eligible individual.
Sec. 243. Affordable premium credit.
Sec. 244. Affordability cost-sharing credit.
Sec. 245. Income determinations.
Sec. 246. No Federal payment for undocumented aliens.

Subtitle D—State Innovation

Sec. 251. Waiver of ERISA limitation; application instead of state single payer system.
Sec. 252. Requirements.
Sec. 253. Definitions.

TITLE III—SHARED RESPONSIBILITY

Subtitle A—Individual Responsibility

Sec. 301. Individual responsibility.

Subtitle B—Employer Responsibility

PART 1—HEALTH COVERAGE PARTICIPATION REQUIREMENTS

Sec. 311. Health coverage participation requirements.
Sec. 312. Employer responsibility to contribute towards employee and dependent coverage.
Sec. 313. Employer contributions in lieu of coverage.
Sec. 314. Authority related to improper steering.

PART 2—SATISFACTION OF HEALTH COVERAGE PARTICIPATION REQUIREMENTS

Sec. 321. Satisfaction of health coverage participation requirements under the Employee Retirement Income Security Act of 1974.
Sec. 324. Additional rules relating to health coverage participation requirements.

[FOR TITLE IV, SEE TEXT OF INTRODUCED BILL.]

(c) GENERAL DEFINITIONS.—Except as otherwise provided, in this division:

(1) ACCEPTABLE COVERAGE.—The term "acceptable coverage" has the meaning given such term in section 202(d)(2).

(2) BASIC PLAN.—The term "basic plan" has the meaning given such term in section 203(c).

(3) COMMISSIONER.—The term "Commissioner" means the Health Choices Commissioner established under section 141.

(4) COST-SHARING.—The term "cost-sharing" includes deductibles, coinsurance, copayments, and similar charges but does not include premiums or any network payment differential for covered services or spending for non-covered services.

(5) DEPENDENT.—The term "dependent" has the meaning given such term by the Commissioner and includes a spouse.

(6) EMPLOYMENT-BASED HEALTH PLAN.—The term "employment-based health plan"—

(A) means a group health plan (as defined in section 733(a)(1) of the Employee Retirement Income Security Act of 1974);

(B) includes such a plan that is the following:

(i) FEDERAL, STATE, AND TRIBAL GOVERNMENTAL PLANS.—A governmental plan (as defined in section 3(32) of the Employee Retirement Income Security Act of 1974), including a health benefits plan offered under chapter 89 of title 5, United States Code; or

(ii) CHURCH PLANS.—A church plan (as defined in section 3(33) of the Employee Retirement Income Security Act of 1974); and

(C) excludes coverage described in section 202(d)(2)(E) (relating to TRICARE).

(7) ENHANCED PLAN.—The term "enhanced plan" has the meaning given such term in section 203(c).

(8) ESSENTIAL BENEFITS PACKAGE.—The term "essential benefits package" is defined in section 122(a).

(9) FAMILY.—The term "family" means an individual and includes the individual's dependents.

(10) FEDERAL POVERTY LEVEL; FPL.—The terms "Federal poverty level" and "FPL" have the meaning given the term "poverty line" in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

(11) HEALTH BENEFITS PLAN.—The terms "health benefits plan" means health insurance coverage and an employment-based health plan and includes the public health insurance option.

(12) HEALTH INSURANCE COVERAGE; HEALTH INSURANCE ISSUER.—The terms "health insurance coverage" and "health insurance issuer" have the meanings given such terms in section 2791 of the Public Health Service Act.

(13) HEALTH INSURANCE EXCHANGE.—The term "Health Insurance Exchange" means the Health Insurance Exchange established under section 201.

(14) MEDICAID.—The term "Medicaid" means a State plan under title XIX of the Social Security Act (whether or not the plan is operating under a waiver under section 1115 of such Act).

(15) MEDICARE.—The term "Medicare" means the health insurance programs under title XVIII of the Social Security Act.

(16) PLAN SPONSOR.—The term "plan sponsor" has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(17) PLAN YEAR.—The term "plan year" means—

(A) with respect to an employment-based health plan, a plan year as specified under such plan; or

(B) with respect to a health benefits plan other than an employment-based health plan, a 12-month period as specified by the Commissioner.

(18) PREMIUM PLAN; PREMIUM-PLUS PLAN.—The terms "premium plan" and "premium-plus plan" have the meanings given such terms in section 203(c).

(19) QHBP OFFERING ENTITY.—The terms "QHBP offering entity" means, with respect to a health benefits plan that is—

(A) a group health plan (as defined, subject to subsection (d), in section 733(a)(1) of the Employee Retirement Income Security Act of 1974), the plan sponsor in relation to such group health plan, except that, in the case of a plan maintained jointly by 1 or more employers and 1 or more employee organizations and with respect to which an employer is the primary source of financing, such term means such employer;

(B) health insurance coverage, the health insurance issuer offering the coverage;

(C) the public health insurance option, the Secretary of Health and Human Services;

(D) a non-Federal governmental plan (as defined in section 2791(d) of the Public Health Service Act), the State or political subdivision of a State (or agency or instrumentality of such State or subdivision) which establishes or maintains such plan; or

(E) a Federal governmental plan (as defined in section 2791(d) of the Public Health Service Act), the appropriate Federal official.

(20) QUALIFIED HEALTH BENEFITS PLAN.—The term "qualified health benefits plan" means a health benefits plan that meets the requirements for such a plan under title I and includes the public health insurance option.

(21) PUBLIC HEALTH INSURANCE OPTION.—The term "public health insurance option" means the public health insurance option as provided under subtitle B of title II.

(22) SERVICE AREA; PREMIUM RATING AREA.—The terms "service area" and "premium rating area" mean with respect to health insurance coverage—

(A) offered other than through the Health Insurance Exchange, such an area as established by the QHBP offering entity of such coverage in accordance with applicable State law; and

(B) offered through the Health Insurance Exchange, such an area as established by such entity in accordance with applicable State law and applicable rules of the Commissioner for Exchange-participating health benefits plans.

(23) STATE.—The term "State" means the 50 States and the District of Columbia.

(24) STATE MEDICAID AGENCY.—The term "State Medicaid agency" means, with respect to a Medicaid plan, the single State agency responsible for administering such plan under title XIX of the Social Security Act.

(25) Y1, Y2, ETC..—The terms "Y1" , "Y2", "Y3", "Y4", "Y5", and similar subsequently numbered terms, mean 2013 and subsequent years, respectively.

(26) EMPLOYEE PREMIUM.—The term "employee premium" does not include a collectively bargained premium in the case of a group health plan (as defined in section 733(a)(1) of the Employee Retirement Income Security Act of 1974) that is a multiemployer plan (as defined in section 3(37) of such Act).

TITLE I—PROTECTIONS AND STANDARDS FOR QUALIFIED HEALTH BENEFITS PLANS

Subtitle A—General Standards

SEC. 101. REQUIREMENTS REFORMING HEALTH INSURANCE MARKETPLACE.

(a) PURPOSE.—The purpose of this title is to establish standards to ensure that new health insurance coverage and employment-based health plans that are offered meet standards guaranteeing access to affordable coverage, essential benefits, and other consumer protections.

(b) REQUIREMENTS FOR QUALIFIED HEALTH BENEFITS PLANS.—On or after the first day of Y1, a health benefits plan shall not be a qualified health benefits plan under this division unless the plan meets the applicable requirements of the following subtitles for the type of plan and plan year involved:

(1) Subtitle B (relating to affordable coverage).

(2) Subtitle C (relating to essential benefits).

(3) Subtitle D (relating to consumer protection).

(c) TERMINOLOGY.—In this division:

(1) ENROLLMENT IN EMPLOYMENT-BASED HEALTH PLANS.—An individual shall be treated as being "enrolled" in an employment-based health plan if the individual is a participant or beneficiary (as such terms are defined in section 3(7) and 3(8), respectively, of the Employee Retirement Income Security Act of 1974) in such plan.

(2) INDIVIDUAL AND GROUP HEALTH INSURANCE COVERAGE.—The terms "individual health insurance coverage" and "group health insurance coverage" mean health insurance coverage offered in the individual market or large or small group market, respectively, as defined in section 2791 of the Public Health Service Act.

(d) SENSE OF CONGRESS ON HEALTH CARE NEEDS OF UNITED STATES TERRITORIES.—It is the sense of the Congress that the reforms made by H.R. 3200, as introduced, must be strengthened to meaningfully address the health care needs of residents of American Samoa, the Commonwealth of the Northern Mariana Islands,

Guam, Puerto Rico, and the United States Virgin Islands and Congress is committed to working with the representatives of these territories to ensure that residents of these territories have access to high-quality and affordable health care in such a way that best serves their unique needs.

SEC. 102. PROTECTING THE CHOICE TO KEEP CURRENT COVERAGE.

(a) GRANDFATHERED HEALTH INSURANCE COVERAGE DEFINED.—Subject to the succeeding provisions of this section, for purposes of establishing acceptable coverage under this division, the term "grandfathered health insurance coverage" means individual health insurance coverage that is offered and in force and effect before the first day of Y1 if the following conditions are met:

(1) LIMITATION ON NEW ENROLLMENT.—

(A) IN GENERAL.—Except as provided in this paragraph, the individual health insurance issuer offering such coverage does not enroll any individual in such coverage if the first effective date of coverage is on or after the first day of Y1.

(B) DEPENDENT COVERAGE PERMITTED.—Subparagraph (A) shall not affect the subsequent enrollment of a dependent of an individual who is covered as of such first day.

(2) LIMITATION ON CHANGES IN TERMS OR CONDITIONS.—Subject to paragraph (3) and except as required by law, the issuer does not change any of its terms or conditions, including benefits and cost-sharing, from those in effect as of the day before the first day of Y1.

(3) RESTRICTIONS ON PREMIUM INCREASES.—The issuer cannot vary the percentage increase in the premium for a risk group of enrollees in specific grandfathered health insurance coverage without changing the premium for all enrollees in the same risk group at the same rate, as specified by the Commissioner.

(b) GRACE PERIOD FOR CURRENT EMPLOYMENT-BASED HEALTH PLANS.—

(1) GRACE PERIOD.—

(A) IN GENERAL.—The Commissioner shall establish a grace period whereby, for plan years beginning after the end of the 5-year period beginning with Y1, an employment-based health plan in operation as of the day before the first day of Y1 must meet the same requirements as apply to a qualified health benefits plan under section 101, including the essential benefit package requirement under section 121.

(B) EXCEPTION FOR LIMITED BENEFITS PLANS.—Subparagraph (A) shall not apply to an employment-based health plan in which the coverage consists only of one or more of the following:

(i) Any coverage described in section 3001(a)(1)(B)(ii)(IV) of division B of the American Recovery and Reinvestment Act of 2009 (PL 111–5).

(ii) Excepted benefits (as defined in section 733(c) of the Employee Retirement Income Security Act of 1974), including coverage under a specified disease or illness policy described in paragraph (3)(A) of such section.

(iii) Such other limited benefits as the Commissioner may specify.

In no case shall an employment-based health plan in which the coverage consists only of one or more of the coverage or benefits described in clauses (i) through (iii) be treated as acceptable coverage under this division

(2) TRANSITIONAL TREATMENT AS ACCEPTABLE COVERAGE.—During the grace period specified in paragraph (1)(A), an employment-based health plan that is described in such paragraph shall be treated as acceptable coverage under this division.

(3) EXCEPTION FOR CONSUMER-DIRECTED HEALTH PLANS AND ARRANGEMENTS.—In the case of a group health plan which consists of a consumer-directed health plan or arrangement (including a high deductible health plan, within the meaning of section 223(c)(2) of the Internal Revenue Code of 1986), such group health plan shall be treated as acceptable coverage under a current group health plan for purposes of this division.

(c) LIMITATION ON INDIVIDUAL HEALTH INSURANCE COVERAGE.—

(1) IN GENERAL.—Individual health insurance coverage that is not grandfathered health insurance coverage under subsection (a) may only be offered on or after the first day of Y1 as an Exchange-participating health benefits plan.

(2) SEPARATE, EXCEPTED COVERAGE PERMITTED.—Excepted benefits (as defined in section 2791(c) of the Public Health Service Act) are not included within the definition of health insurance coverage. Nothing in paragraph (1) shall prevent the offering, other than through the Health Insurance Exchange, of excepted

benefits so long as it is offered and priced separately from health insurance coverage.

Subtitle B—Standards Guaranteeing Access to Affordable Coverage

SEC. 111. PROHIBITING PRE-EXISTING CONDITION EXCLUSIONS.

A qualified health benefits plan may not impose any pre-existing condition exclusion (as defined in section 2701(b)(1)(A) of the Public Health Service Act) or otherwise impose any limit or condition on the coverage under the plan with respect to an individual or dependent based on any health status-related factors (as defined in section 2791(d)(9) of the Public Health Service Act) in relation to the individual or dependent.

SEC. 112. GUARANTEED ISSUE AND RENEWAL FOR INSURED PLANS.

The requirements of sections 2711 (other than subsections (c) and (e)) and 2712 (other than paragraphs (3), and (6) of subsection (b) and subsection (e)) of the Public Health Service Act, relating to guaranteed availability and renewability of health insurance coverage, shall apply to individuals and employers in all individual and group health insurance coverage, whether offered to individuals or employers through the Health Insurance Exchange, through any employment-based health plan, or otherwise, in the same manner as such sections apply to employers and health insurance coverage offered in the small group market, except that such section 2712(b)(1) shall apply only if, before nonrenewal or discontinuation of coverage, the issuer has provided the enrollee with notice of non-payment of premiums and there is a grace period during which the enrollees has an opportunity to correct such nonpayment. Rescissions of such coverage shall be prohibited except in cases of fraud as defined in sections 2712(b)(2) of such Act.

SEC. 113. INSURANCE RATING RULES.

(a) IN GENERAL.—The premium rate charged for an insured qualified health benefits plan may not vary except as follows:

(1) LIMITED AGE VARIATION PERMITTED.—By age (within such age categories as the Commissioner shall specify) so long as the ratio of the highest such premium to the lowest such premium does not exceed the ratio of 2 to 1.

(2) BY AREA.—By premium rating area (as permitted by State insurance regulators or, in the case of Exchange-participating health benefits plans, as specified by the Commissioner in consultation with such regulators).

(3) BY FAMILY ENROLLMENT.—By family enrollment (such as variations within categories and compositions of families) so long as the ratio of the premium for family enrollment (or enrollments) to the premium for individual enrollment is uniform, as specified under State law and consistent with rules of the Commissioner.

(b) STUDY AND REPORTS.—

(1) STUDY.—The Commissioner, in coordination with the Secretary of Health and Human Services and the Secretary of Labor, shall conduct a study of the large group insured and self-insured employer health care markets. Such study shall examine the following:

(A) The types of employers by key characteristics, including size, that purchase insured products versus those that self-insure.

(B) The similarities and differences between typical insured and self-insured health plans.

(C) The financial solvency and capital reserve levels of employers that self-insure by employer size.

(D) The risk of self-insured employers not being able to pay obligations or otherwise becoming financially insolvent.

(E) The extent to which rating rules are likely to cause adverse selection in the large group market or to encourage small and mid size employers to self-insure

(2) REPORTS.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall submit to Congress and the applicable agencies a report on the study conducted under paragraph (1). Such report shall include any recommendations the Commissioner deems appropriate to ensure that the law does not provide incentives for small and mid-size employers to self-insure or create adverse selection in the risk pools of large group insurers and self-insured employers. Not later than 18 months after the first day of Y1, the

Commissioner shall submit to Congress and the applicable agencies an updated report on such study, including updates on such recommendations.

SEC. 114. NONDISCRIMINATION IN BENEFITS; PARITY IN MENTAL HEALTH AND SUBSTANCE ABUSE DISORDER BENEFITS.

(a) NONDISCRIMINATION IN BENEFITS.—A qualified health benefits plan shall comply with standards established by the Commissioner to prohibit discrimination in health benefits or benefit structures for qualified health benefits plans, building from sections 702 of Employee Retirement Income Security Act of 1974, 2702 of the Public Health Service Act, and section 9802 of the Internal Revenue Code of 1986.

(b) PARITY IN MENTAL HEALTH AND SUBSTANCE ABUSE DISORDER BENEFITS.—To the extent such provisions are not superceded by or inconsistent with subtitle C, the provisions of section 2705 (other than subsections (a)(1), (a)(2), and (c)) of section 2705 of the Public Health Service Act shall apply to a qualified health benefits plan, regardless of whether it is offered in the individual or group market, in the same manner as such provisions apply to health insurance coverage offered in the large group market.

SEC. 115. ENSURING ADEQUACY OF PROVIDER NETWORKS.

(a) IN GENERAL.—A qualified health benefits plan that uses a provider network for items and services shall meet such standards respecting provider networks as the Commissioner may establish to assure the adequacy of such networks in ensuring enrollee access to such items and services and transparency in the cost-sharing differentials between in-network coverage and out-of-network coverage.

(b) INTERNET ACCESS TO INFORMATION.—A qualified health benefits plan that uses a provider network shall provide a current listing of all providers in its network on its website and such data shall be available on the Health Insurance Exchange website as a 'click through' from the basic information on that plan. The Commissioner shall also establish an on-line system whereby an individual may select by name any medical provider (as defined by the Commissioner) and be informed of the plan or plans with which that provider is contracting.

(c) PROVIDER NETWORK DEFINED.—In this division, the term "provider network" means the providers with respect to which covered benefits, treatments, and services are available under a health benefits plan.

SEC. 116. ENSURING VALUE AND LOWER PREMIUMS.

The QHBP offering entity shall provide that for any plan year in which a qualified health benefits plan that the entity offers has a medical loss ratio (expressed as a percentage) that is less than a percentage (not less than 85 percent) specified by the Commissioner, the QHBP offering entity offering such plan shall provide for rebates to enrollees of payment sufficient to meet such loss ratio. The Commissioner shall establish a uniform definition of medical loss ratio and methodology for determining how to calculate the medical loss ratio. Such methodology shall be designed to take into account the special circumstances of smaller and newer plans.

SEC. 117. CONSISTENCY OF COSTS AND COVERAGE UNDER QUALIFIED HEALTH BENEFITS PLANS DURING PLAN YEAR.

In the case of health insurance coverage offered under a qualified health benefits plan, the coverage and cost of coverage may not be changed during the course of a plan year except to increase coverage to the enrollee or to lower costs to the enrollee.

Subtitle C—Standards Guaranteeing Access to Essential Benefits

SEC. 121. COVERAGE OF ESSENTIAL BENEFITS PACKAGE.

(a) IN GENERAL.—A qualified health benefits plan shall provide coverage that at least meets the benefit standards adopted under section 124 for the essential benefits package described in section 122 for the plan year involved.

(b) CHOICE OF COVERAGE.—

(1) NON-EXCHANGE-PARTICIPATING HEALTH BENEFITS PLANS.—In the case of a qualified health benefits plan that is not an Exchange-participating health benefits plan, such plan may offer such coverage in addition to the essential benefits package as the QHBP offering entity may specify.

(2) EXCHANGE-PARTICIPATING HEALTH BENEFITS PLANS.—In the case of an Exchange-participating health benefits plan, such plan is required under section 203 to provide specified levels of benefits and, in the case of a plan offering a premium-plus level of benefits, provide additional benefits.

(3) CONTINUATION OF OFFERING OF SEPARATE EXCEPTED BENEFITS COVERAGE.—Nothing in this division shall be construed as affecting the offering of health benefits in the form of excepted benefits (described in section 102(b)(1)(B)(ii)) if such benefits are offered under a separate policy, contract, or certificate of insurance.

(c) NO RESTRICTIONS ON COVERAGE UNRELATED TO CLINICAL APPROPRIATENESS.—A qualified health benefits plan may not impose any restriction (other than cost-sharing) unrelated to clinical appropriateness on the coverage of the health care items and services.

SEC. 122. ESSENTIAL BENEFITS PACKAGE DEFINED.

(a) IN GENERAL.—In this division, the term "essential benefits package" means health benefits coverage, consistent with standards adopted under section 124 to ensure the provision of quality health care and financial security, that—

(1) provides payment for the items and services described in subsection (b) in accordance with generally accepted standards of medical or other appropriate clinical or professional practice;

(2) limits cost-sharing for such covered health care items and services in accordance with such benefit standards, consistent with subsection (c);

(3) does not impose any annual or lifetime limit on the coverage of covered health care items and services;

(4) complies with section 115(a) (relating to network adequacy); and

(5) is equivalent, as certified by Office of the Actuary of the Centers for Medicare & Medicaid Services, to the average prevailing employer-sponsored coverage.

(b) MINIMUM SERVICES TO BE COVERED.—The items and services described in this subsection are the following:

(1) Hospitalization.

(2) Outpatient hospital and outpatient clinic services, including emergency department services.

(3) Professional services of physicians and other health professionals.

(4) Such services, equipment, and supplies incident to the services of a physician's or a health professional's delivery of care in institutional settings, physician offices, patients' homes or place of residence, or other settings, as appropriate.

(5) Prescription drugs.

(6) Rehabilitative and habilitative services.

(7) Mental health and substance use disorder services.

(8) Preventive services, including those services recommended with a grade of A or B by the Task Force on Clinical Preventive Services and including mental health and substance abuse services recommended by the Task Force on Clinical Preventive Services and those mental health and substance abuse services with compelling research or evidence, including Screening, Brief Intervention and Referral to Treatment (SBIRT), and those vaccines recommended for use by the Director of the Centers for Disease Control and Prevention.

(9) Maternity care.

(10) Well baby and well child care and early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r) of the Social Security Act) at least for children under 21 years of age.

(11) Durable medical equipment, prosthetics, orthotics and related supplies.

(c) REQUIREMENTS RELATING TO COST-SHARING AND MINIMUM ACTUARIAL VALUE.—

(1) NO COST-SHARING FOR PREVENTIVE SERVICES.—There shall be no cost-sharing under the essential benefits package for preventive items and services (as specified under the benefit standards), including well baby and well child care.

(2) ANNUAL LIMITATION.—

(A) ANNUAL LIMITATION.—The cost-sharing incurred under the essential benefits package with respect to an individual (or family) for a year does not exceed the applicable level specified in subparagraph (B).

(B) APPLICABLE LEVEL.—The applicable level specified in this subparagraph for Y1 is $5,000 for an individual and $10,000 for a family. Such levels shall be increased (rounded to the nearest $100) for each subsequent year by the annual percentage increase in the Consumer Price Index (United States city average) applicable to such year.

(C) USE OF COPAYMENTS.—In establishing cost-sharing levels for basic, enhanced, and premium plans under this subsection, the Secretary shall, to the maximum extent possible, use only copayments and not coinsurance.

(3) MINIMUM ACTUARIAL VALUE.—

(A) IN GENERAL.—The cost-sharing under the essential benefits package shall be designed to provide a level of coverage that is designed to provide benefits that are actuarially equivalent to approximately 70 percent of the full actuarial value of the benefits provided under the reference benefits package described in subparagraph (B).

(B) REFERENCE BENEFITS PACKAGE DESCRIBED.—The reference benefits package described in this subparagraph is the essential benefits package if there were no cost-sharing imposed.

SEC. 123. HEALTH BENEFITS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a private-public advisory committee which shall be a panel of medical and other experts to be known as the Health Benefits Advisory Committee to recommend covered benefits and essential, enhanced, and premium plans.

(2) CHAIR.—The Surgeon General shall be a member and the chair of the Health Benefits Advisory Committee.

(3) MEMBERSHIP.—The Health Benefits Advisory Committee shall be composed of the following members, in addition to the Surgeon General:

(A) 9 members who are not Federal employees or officers and who are appointed by the President.

(B) 9 members who are not Federal employees or officers and who are appointed by the Comptroller General of the United States in a manner similar to the manner in which the Comptroller General appoints members to the Medicare Payment Advisory Commission under section 1805(c) of the Social Security Act.

(C) Such even number of members (not to exceed 8) who are Federal employees and officers, as the President may appoint.

The membership of the Committee shall include one or more experts in scientific evidence and clinical practice of integrative health care services. Such initial appointments shall be made not later than 60 days after the date of the enactment of this Act.

(4) TERMS.—Each member of the Health Benefits Advisory Committee shall serve a 3-year term on the Committee, except that the terms of the initial members shall be adjusted in order to provide for a staggered term of appointment for all such members.

(5) PARTICIPATION.—The membership of the Health Benefits Advisory Committee shall at least reflect providers, employers, labor, health insurance issuers, experts in health care financing and delivery, experts in racial and ethnic disparities, experts in care for those with disabilities, representatives of relevant governmental agencies. and at least one practicing physician or other health professional and an expert on children's health and shall represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of such Committee. The membership of the Committee shall also include educated patients, consumer advocates, or both, who shall include persons who represent individuals affected by a specific disease or medical condition, are knowledgeable about the health care system, and have received training regarding health, medical, and scientific matters.

(b) DUTIES.—

(1) RECOMMENDATIONS ON BENEFIT STANDARDS.—The Health Benefits Advisory Committee shall recommend to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") benefit standards (as defined in paragraph (4)), and periodic updates to such standards. In developing such recommendations, the Committee shall—

(A) take into account innovation in health care,

(B) consider how such standards could reduce health disparities,

(C) take into account integrative health care services, and

(D) take into account typical multiemployer plan benefit structures and the impact of the essential benefit package on such plans.

(2) DEADLINE.—The Health Benefits Advisory Committee shall recommend initial benefit standards to the Secretary not later than 1 year after the date of the enactment of this Act.

(3) STATE INPUT.—The Health Benefits Advisory Committee shall examine the health coverage laws and benefits of each State in developing recommendations under this subsection and may incorporate such coverage and benefits as the Committee determines to be appropriate and consistent with this Act. The Health Benefits Advisory Committee shall also seek input from the States and

consider recommendations on how to ensure that the quality of health coverage does not decline in any State.

(4) PUBLIC INPUT.—The Health Benefits Advisory Committee shall allow for public input as a part of developing recommendations under this subsection.

(5) BENEFIT STANDARDS DEFINED.—In this subtitle, the term "benefit standards" means standards respecting—

(A) the essential benefits package described in section 122, including categories of covered treatments, items and services within benefit classes, and cost-sharing; and

(B) the cost-sharing levels for enhanced plans and premium plans (as provided under section 203(c)) consistent with paragraph (5).

(6) LEVELS OF COST-SHARING FOR ENHANCED AND PREMIUM PLANS.—

(A) ENHANCED PLAN.—The level of cost-sharing for enhanced plans shall be designed so that such plans have benefits that are actuarially equivalent to approximately 85 percent of the actuarial value of the benefits provided under the reference benefits package described in section 122(c)(3)(B).

(B) PREMIUM PLAN.—The level of cost-sharing for premium plans shall be designed so that such plans have benefits that are actuarially equivalent to approximately 95 percent of the actuarial value of the benefits provided under the reference benefits package described in section 122(c)(3)(B).

(7) RECOMMENDATIONS OF INTEGRATIVE HEALTH CARE SERVICES TASK FORCE.—

(A) INCLUSION IN COMMITTEE'S RECOMMENDATIONS.—The Health Benefits Advisory Committee shall include in its recommendations under paragraph (1) the recommendations made by the Integrative Health Care Services Task Force established under subparagraph (B).

(B) ESTABLISHMENT OF TASK FORCE.—The Health Benefits Advisory Committee shall establish an Integrative Health Care Services Task Force. Such Task Force shall consist of 5 experts with expertise in research in, and practice of, integrative health care. Such experts shall be appointed by the Committee from among experts nominated by the Secretary, in consultation with the National Center for Complementary and Alternative Medicine at the National Institutes of Health. The duty of the Task Force shall be to make recommendations to the Committee on evidence-based, clinically effective, and safe integrative care services.

(c) OPERATIONS.—

(1) PER DIEM PAY.—Each member of the Health Benefits Advisory Committee shall receive travel expenses, including per diem in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code, and shall otherwise serve without additional pay.

(2) MEMBERS NOT TREATED AS FEDERAL EMPLOYEES.—Members of the Health Benefits Advisory Committee shall not be considered employees of the Federal government solely by reason of any service on the Committee.

(3) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, shall apply to the Health Benefits Advisory Committee.

(d) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Department of Health and Human Services of all recommendations made by the Health Benefits Advisory Committee under this section.

SEC. 124. PROCESS FOR ADOPTION OF RECOMMENDATIONS; ADOPTION OF BENEFIT STANDARDS.

(a) PROCESS FOR ADOPTION OF RECOMMENDATIONS.—

(1) REVIEW OF RECOMMENDED STANDARDS.—Not later than 45 days after the date of receipt of benefit standards recommended under section 123 (including such standards as modified under paragraph (2)(B)), the Secretary shall review such standards and shall determine whether to propose adoption of such standards as a package.

(2) DETERMINATION TO ADOPT STANDARDS.—If the Secretary determines—

(A) to propose adoption of benefit standards so recommended as a package, the Secretary shall, by regulation under section 553 of title 5, United States Code, propose adoption such standards; or

(B) not to propose adoption of such standards as a package, the Secretary shall notify the Health Benefits Advisory Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation and provide the Committee with a further opportunity to modify its previous recommendations and submit new recommendations to the Secretary on a timely basis.

(3) CONTINGENCY.—If, because of the application of paragraph (2)(B), the Secretary would otherwise be unable to propose initial adoption of such recommended standards by the deadline specified in subsection (b)(1), the Secretary shall, by regulation under section 553 of title 5, United States Code, propose adoption of initial benefit standards by such deadline.

(4) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under this subsection.

(b) ADOPTION OF STANDARDS.—

(1) INITIAL STANDARDS.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall, through the rulemaking process consistent with subsection (a), adopt an initial set of benefit standards.

(2) PERIODIC UPDATING STANDARDS.—Under subsection (a), the Secretary shall provide for the periodic updating of the benefit standards previously adopted under this section.

(3) REQUIREMENT.—The Secretary may not adopt any benefit standards for an essential benefits package or for level of cost-sharing that are inconsistent with the requirements for such a package or level under sections 122 and 123(b)(5).

SEC. 125 PROHIBITION OF DISCRIMINATION IN HEALTH CARE SERVICES BASED ON RELIGIOUS OR SPIRITUAL CONTENT.

Neither the Commissioner nor any health insurance issuer offering health insurance coverage through the Exchange shall discriminate in approving or covering a health care service on the basis of its religious or spiritual content if expenditures for such a health care service are allowable as a deduction under 213(d) of the Internal Revenue Code of 1986, as in effect on January 1, 2009.

Subtitle D—Additional Consumer Protections

SEC. 131. REQUIRING FAIR MARKETING PRACTICES BY HEALTH INSURERS.

The Commissioner shall establish uniform marketing standards that all insured QHBP offering entities shall meet.

SEC. 132. REQUIRING FAIR GRIEVANCE AND APPEALS MECHANISMS.

(a) IN GENERAL.—A QHBP offering entity shall provide for timely grievance and appeals mechanisms that the Commissioner shall establish.

(b) INTERNAL CLAIMS AND APPEALS PROCESS.—Under a qualified health benefits plan the QHBP offering entity shall provide an internal claims and appeals process that initially incorporates the claims and appeals procedures (including urgent claims) set forth at section 2560.503–1 of title 29, Code of Federal Regulations, as published on November 21, 2000 (65 Fed. Reg. 70246) and shall update such process in accordance with any standards that the Commissioner may establish.

(c) EXTERNAL REVIEW PROCESS.—

(1) IN GENERAL.—The Commissioner shall establish an external review process (including procedures for expedited reviews of urgent claims) that provides for an impartial, independent, and de novo review of denied claims under this division.

(2) REQUIRING FAIR GRIEVANCE AND APPEALS MECHANISMS.—A determination made, with respect to a qualified health benefits plan offered by a QHBP offering entity, under the external review process established under this subsection shall be binding on the plan and the entity.

(d) CONSTRUCTION.—Nothing in this section shall be construed as affecting the availability of judicial review under State law for adverse decisions under subsection (b) or (c), subject to section 151.

SEC. 133. REQUIRING INFORMATION TRANSPARENCY AND PLAN DISCLOSURE.

(a) ACCURATE AND TIMELY DISCLOSURE.—

(1) IN GENERAL.—A qualified health benefits plan shall comply with standards established by the Commissioner for the accurate and timely disclosure of plan documents, plan terms and conditions, claims payment policies and practices, periodic financial disclosure, data on enrollment, data on disenrollment, data on the number of claims denials, data on rating practices, information on cost-sharing and payments with respect to any out-of-network coverage, and other information as determined appropriate by the Commissioner. The Commissioner shall require that such disclosure be provided in plain language.

(2) PLAIN LANGUAGE.—In this subsection, the term "plain language" means language that the intended audience, including individuals with limited English proficiency, can readily understand and use because that language is clean, concise, well-organized, and follows other best practices of plain language writing.

(3) GUIDANCE.—The Commissioner shall develop and issue guidance on best practices of plain language writing.

(b) CONTRACTING REIMBURSEMENT.—A qualified health benefits plan shall comply with standards established by the Commissioner to ensure transparency to each health care provider relating to reimbursement arrangements between such plan and such provider.

(c) ADVANCE NOTICE OF PLAN CHANGES.—A change in a qualified health benefits plan shall not be made without such reasonable and timely advance notice to enrollees of such change.

(d) IDENTIFICATION OF PROVIDERS TRAINED AND ACCREDITED IN INTEGRATIVE MEDICINE.—A qualified health benefit plan shall include in the disclosure required under subsection (a) identification to enrollees of any providers of services under the plan that are trained and accredited in integrative health medicine.

SEC. 134. APPLICATION TO QUALIFIED HEALTH BENEFITS PLANS NOT OFFERED THROUGH THE HEALTH INSURANCE EXCHANGE.

The requirements of the previous provisions of this subtitle shall apply to qualified health benefits plans that are not being offered through the Health Insurance Exchange only to the extent specified by the Commissioner.

SEC. 135. TIMELY PAYMENT OF CLAIMS.

A QHBP offering entity shall comply with the requirements of section 1857(f) of the Social Security Act with respect to a qualified health benefits plan it offers in the same manner an Medicare Advantage organization is required to comply with such requirements with respect to a Medicare Advantage plan it offers under part C of Medicare.

SEC. 136. STANDARDIZED RULES FOR COORDINATION AND SUBROGATION OF BENEFITS.

The Commissioner shall establish standards for the coordination and subrogation of benefits and reimbursement of payments in cases involving individuals and multiple plan coverage.

SEC. 137. APPLICATION OF ADMINISTRATIVE SIMPLIFICATION.

A QHBP offering entity is required to comply with standards for electronic financial and administrative transactions under section 1173A of the Social Security Act, added by section 163(a).

SEC. 138. RECORDS RELATIVE TO PRESCRIPTION INFORMATION.

(a) IN GENERAL.—A qualified health benefits plan shall ensure that its records relative to prescription information containing patient identifiable and prescriber-identifiable data are maintained in accordance with this section."

(b) REQUIREMENTS.—

(1) IN GENERAL.—Records described in subsection (a) may not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of—

(A) pharmacy reimbursement;

(B) formulary compliance;

(C) care management;

(D) utilization review by a health care provider, the patient's insurance provider or the agent of either;

(E) health care research; or

(F) as otherwise provided by law.

(2) COMMERCIAL PURPOSE.—For purposes of paragraph (1), the term "commercial purpose" includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force.

(c) CONSTRUCTION.—

(1) PERMITTED PRACTICES.—Nothing in this section shall prohibit—

(A) the dispensing of prescription medications to a patient or to the patient's authorized representative;

(B) the transmission of prescription information between an authorized prescriber and a licensed pharmacy;

(C) the transfer of prescription information between licensed pharmacies;

(D) the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred;

(E) care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy, or other information about the drug being dispensed, treatment options, or clinical trials.

(2) DE-IDENTIFIED DATA.—Nothing in this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-identified data by zip code, geographic region, or medical specialty for commercial purposes.

Subtitle E—Governance

SEC. 141. HEALTH CHOICES ADMINISTRATION; HEALTH CHOICES COMMISSIONER.

(a) IN GENERAL.—There is hereby established, as an independent agency in the executive branch of the Government, a Health Choices Administration (in this division referred to as the "Administration").

(b) COMMISSIONER.—

(1) IN GENERAL.—The Administration shall be headed by a Health Choices Commissioner (in this division referred to as the "Commissioner") who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION; ETC.—The provisions of paragraphs (2), (5) and (7) of subsection (a) (relating to compensation, terms, general powers, rulemaking, and delegation) of section 702 of the Social Security Act (42 U.S.C. 902) shall apply to the Commissioner and the Administration in the same manner as such provisions apply to the Commissioner of Social Security and the Social Security Administration.

SEC. 142. DUTIES AND AUTHORITY OF COMMISSIONER.

(a) DUTIES.—The Commissioner is responsible for carrying out the following functions under this division:

(1) QUALIFIED PLAN STANDARDS.—The establishment of qualified health benefits plan standards under this title, including the enforcement of such standards in coordination with State insurance regulators and the Secretaries of Labor and the Treasury.

(2) HEALTH INSURANCE EXCHANGE.—The establishment and operation of a Health Insurance Exchange under subtitle A of title II.

(3) INDIVIDUAL AFFORDABILITY CREDITS.—The administration of individual affordability credits under subtitle C of title II, including determination of eligibility for such credits.

(4) ADDITIONAL FUNCTIONS.—Such additional functions as may be specified in this division.

(b) PROMOTING ACCOUNTABILITY.—

(1) IN GENERAL.—The Commissioner shall undertake activities in accordance with this subtitle to promote accountability of QHBP offering entities in meeting Federal health insurance requirements, regardless of whether such accountability is with respect to qualified health benefits plans offered through the Health Insurance Exchange or outside of such Exchange.

(2) COMPLIANCE EXAMINATION AND AUDITS.—

(A) IN GENERAL.—The commissioner shall, in coordination with States, conduct audits of qualified health benefits plan compliance with Federal requirements. Such audits may include random compliance audits and targeted audits in response to complaints or other suspected non-compliance.

(B) RECOUPMENT OF COSTS IN CONNECTION WITH EXAMINATION AND AUDITS.—The Commissioner is authorized to recoup from qualified health benefits plans reimbursement for the costs of such examinations and audit of such QHBP offering entities.

(c) DATA COLLECTION.—The Commissioner shall collect data for purposes of carrying out the Commissioner's duties, including for purposes of promoting quality and value, protecting consumers, and addressing disparities in health and health care and may share such data with the Secretary of Health and Human Services.

(d) SANCTIONS AUTHORITY.—

(1) IN GENERAL.—In the case that the Commissioner determines that a QHBP offering entity violates a requirement of this title, the Commissioner may, in coordination with State insurance regulators and the Secretary of Labor, provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2).

(2) REMEDIES.—The remedies described in this paragraph, with respect to a qualified health benefits plan offered by a QHBP offering entity, are—

(A) civil money penalties of not more than the amount that would be applicable under similar circumstances for similar violations under section 1857(g) of the Social Security Act;

(B) suspension of enrollment of individuals under such plan after the date the Commissioner notifies the entity of a determination under paragraph (1) and until the Commissioner is satisfied that the basis for such determination has been corrected and is not likely to recur;

(C) in the case of an Exchange-participating health benefits plan, suspension of payment to the entity under the Health Insurance Exchange for individuals enrolled in such plan after the date the Commissioner notifies the entity of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur; or

(D) working with State insurance regulators to terminate plans for repeated failure by the offering entity to meet the requirements of this title.

(e) STANDARD DEFINITIONS OF INSURANCE AND MEDICAL TERMS.—The Commissioner shall provide for the development of standards for the definitions of terms used in health insurance coverage, including insurance-related terms.

(f) EFFICIENCY IN ADMINISTRATION.—The Commissioner shall issue regulations for the effective and efficient administration of the Health Insurance Exchange and affordability credits under subtitle C, including, with respect to the determination of eligibility for affordability credits, the use of personnel who are employed in accordance with the requirements of title 5, United States Code, to carry out the duties of the Commissioner or, in the case of sections 208 and 241(b)(2), the use of State personnel who are employed in accordance with standards prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728).

SEC. 143. CONSULTATION AND COORDINATION.

(a) CONSULTATION.—In carrying out the Commissioner's duties under this division, the Commissioner, as appropriate, shall consult with at least with the following:

(1) The National Association of Insurance Commissioners, State attorneys general, and State insurance regulators, including concerning the standards for insured qualified health benefits plans under this title and enforcement of such standards.

(2) Appropriate State agencies, specifically concerning the administration of individual affordability credits under subtitle C of title II and the offering of Exchange-participating health benefits plans, to Medicaid eligible individuals under subtitle A of such title.

(3) Other appropriate Federal agencies.

(4) Indian tribes and tribal organizations.

(5) The National Association of Insurance Commissioners for purposes of using model guidelines established by such association for purposes of subtitles B and D.

(b) COORDINATION.—

(1) IN GENERAL.—In carrying out the functions of the Commissioner, including with respect to the enforcement of the provisions of this division, the Commissioner shall work in coordination with existing Federal and State entities to the maximum extent feasible consistent with this division and in a manner that prevents conflicts of interest in duties and ensures effective enforcement.

(2) UNIFORM STANDARDS.—The Commissioner, in coordination with such entities, shall seek to achieve uniform standards that adequately protect consumers in a manner that does not unreasonably affect employers and insurers.

SEC. 144. HEALTH INSURANCE OMBUDSMAN.

(a) IN GENERAL.—The Commissioner shall appoint within the Health Choices Administration a Qualified Health Benefits Plan Ombudsman who shall have expertise and experience in the fields of health care and education of (and assistance to) individuals.

(b) DUTIES.—The Qualified Health Benefits Plan Ombudsman shall, in a linguistically appropriate manner—

(1) receive complaints, grievances, and requests for information submitted by individuals;

(2) provide assistance with respect to complaints, grievances, and requests referred to in paragraph (1), including—

(A) helping individuals determine the relevant information needed to seek an appeal of a decision or determination;

(B) assistance to such individuals with any problems arising from disenrollment from such a plan;

(C) assistance to such individuals in choosing a qualified health benefits plan in which to enroll; and

(D) assistance to such individuals in presenting information under subtitle C (relating to affordability credits);

(3) consult with educated patients and consumer advocates (described in section 123(a)(5)); and

(4) submit annual reports to Congress and the Commissioner that describe the activities of the Ombudsman and that include such recommendations for improvement in the administration of this division as the Ombudsman determines appropriate. The Ombudsman shall not serve as an advocate for any increases in payments or new coverage of services, but may identify issues and problems in payment or coverage policies.

Subtitle F—Relation to Other Requirements; Miscellaneous

SEC. 151. RELATION TO OTHER REQUIREMENTS.

(a) COVERAGE NOT OFFERED THROUGH EXCHANGE.—

(1) IN GENERAL.—In the case of health insurance coverage not offered through the Health Insurance Exchange (whether or not offered in connection with an employment-based health plan), and in the case of employment-based health plans, the requirements of this title do not supercede any requirements applicable under titles XXII and XXVII of the Public Health Service Act, parts 6 and 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or State law, except insofar as such requirements prevent the application of a requirement of this division, as determined by the Commissioner.

(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed as affecting the application of section 514 of the Employee Retirement Income Security Act of 1974.

(b) COVERAGE OFFERED THROUGH EXCHANGE.—

(1) IN GENERAL.—In the case of health insurance coverage offered through the Health Insurance Exchange—

(A) the requirements of this title do not supercede any requirements (including requirements relating to genetic information nondiscrimination and mental health) applicable under title XXVII of the Public Health Service Act or under State law, except insofar as such requirements prevent the application of a requirement of this division, as determined by the Commissioner; and

(B) individual rights and remedies under State laws shall apply.

(2) CONSTRUCTION.—In the case of coverage described in paragraph (1), nothing in such paragraph shall be construed as preventing the application of rights and remedies under State laws with respect to any requirement referred to in paragraph (1)(A).

SEC. 152. PROHIBITING DISCRIMINATION IN HEALTH CARE.

(a) IN GENERAL.—Except as otherwise explicitly permitted by this Act and by subsequent regulations consistent with this Act, all health care and related services (including insurance coverage and public health activities) covered by this Act shall be provided without regard to personal characteristics extraneous to the provision of high quality health care or related services.

(b) IMPLEMENTATION.—To implement the requirement set forth in subsection (a), the Secretary of Health and Human Services shall, not later than 18 months after the date of the enactment of this Act, promulgate such regulations as are necessary or appropriate to insure that all health care and related services (including insurance coverage and public health activities) covered by this Act are provided (whether directly or through contractual, licensing, or other arrangements) without regard to personal characteristics extraneous to the provision of high quality health care or related services.

SEC. 153. WHISTLEBLOWER PROTECTION.

(a) RETALIATION PROHIBITED.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or other privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any order, rule, or regulation promulgated under this Act;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act or any order, rule, or regulation promulgated under this Act.

(b) ENFORCEMENT ACTION.—An employee covered by this section who alleges discrimination by an employer in violation of subsection (a) may bring an action governed by the rules, procedures, legal burdens of proof, and remedies set forth in section 40(b) of the Consumer Product Safety Act (15 U.S.C. 2087(b)).

(c) EMPLOYER DEFINED.—As used in this section, the term "employer" means any person (including one or more individuals, partnerships, associations, corporations, trusts, professional membership organization including a certification, disciplinary, or other professional body, unincorporated organizations, nongovernmental organizations, or trustees) engaged in profit or nonprofit business or industry whose activities are governed by this Act, and any agent, contractor, subcontractor, grantee, or consultant of such person.

(d) RULE OF CONSTRUCTION.—The rule of construction set forth in section 20109(h) of title 49, United States Code, shall also apply to this section.

SEC. 154. CONSTRUCTION REGARDING COLLECTIVE BARGAINING.

Nothing in this division shall be construed to alter or supercede any statutory or other obligation to engage in collective bargaining over the terms and conditions of employment related to health care.

SEC. 155. SEVERABILITY.

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of the provisions of this Act and the application of the provision to any other person or circumstance shall not be affected.

SEC. 156. RULE OF CONSTRUCTION REGARDING HAWAII PREPAID HEALTH CARE ACT.

(a) IN GENERAL.—Subject to this section—

(1) nothing in this division (or an amendment made by this division) shall be construed to modify or limit the application of the exemption for the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)), and such exemption shall also apply with respect to the provisions of this division, and

(2) for purposes of this division (and the amendments made by this division), coverage provided pursuant to the Hawaii Prepaid Health Care Act shall be treated as a qualified health benefits plan providing acceptable coverage so long as the Secretary of Labor determines that such coverage for employees (taking into account the benefits and the cost to employees for such benefits) is substantially equivalent to or greater than the coverage provided for employees pursuant to the essential benefits package.

(b) COORDINATION WITH STATE LAW OF HAWAII.—The Commissioner shall, based on ongoing consultation with the appropriate officials of the State of Hawaii, make adjustments to rules and regulations of the Commissioner under this division as may be necessary, as determined by the Commissioner, to most effectively coordinate the provisions of this division with the provisions of the Hawaii Prepaid Health Care Act, taking into account any changes made from time to time to the Hawaii Prepaid Health Care Act and related laws of such State.

SEC. 157. INCREASING MEANINGFUL USE OF ELECTRONIC HEALTH RECORDS.

(a) STUDY.—The Commissioner shall conduct a study on methods that QHBP offering entities can use to encourage increased meaningful use of electronic health records by health care providers, including—

(1) qualified health benefits plans offering higher reimbursement rates for such meaningful use; and

(2) promoting the use by health care providers of low-cost available electronic health record software packages, such as software made available to health care providers by the Veterans Administration.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commissioner shall submit to the Congress a report containing—

(1) the results of the study under subsection (a); and

(2) recommendations concerning whether qualified health benefits plans should increase reimbursement rates to health care providers to increase meaningful use of electronic health records by such providers.

(c) REQUIREMENTS.—

(1) IN GENERAL.—Not later than one year after the date the report is submitted to the Congress under subsection (b), if, under subsection (b)(2), the Commissioner recommends increased reimbursement rates, the Commissioner shall require that qualified health benefits plans increase reimbursement rates for health care providers that show meaningful use of electronic health records.

(2) COST LIMITATION.—An increase in rates under paragraph (1) shall not result in any increase in affordability premium or cost-sharing credits under subtitle C of title II of this division.

SEC. 158. PRIVATE RIGHT OF CONTRACT WITH HEALTH CARE PROVIDERS.

Nothing in this Act shall be construed to preclude any participant or beneficiary in a group health plan from entering into any contract or arrangement for health care with any health care provider.

Subtitle G—Early Investments

SEC. 161-163. [*For sections 161 through 163, see the text of H.R.3200, as introduced.***]**

SEC. 164. REINSURANCE PROGRAM FOR RETIREES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish a temporary reinsurance program (in this section referred to as the "reinsurance program") to provide reimbursement to assist participating employment-based plans with the cost of providing health benefits to retirees and to eligible spouses, surviving spouses and dependents of such retirees.

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

(A) The term "eligible employment-based plan" means a group health benefits plan that—

(i) is maintained by one or more employers, former employers or employee associations, or a voluntary employees' beneficiary association, or a committee or board of individuals appointed to administer such plan, and

(ii) provides health benefits to retirees.

(B) The term "health benefits" means medical, surgical, hospital, prescription drug, and such other benefits as shall be determined by the Secretary, whether self-funded or delivered through the purchase of insurance or otherwise.

(C) The term "participating employment-based plan" means an eligible employment-based plan that is participating in the reinsurance program.

(D) The term "retiree" means, with respect to a participating employment-benefit plan, an individual who—

(i) is 55 years of age or older;

(ii) is not eligible for coverage under title XVIII of the Social Security Act; and

(iii) is not an active employee of an employer maintaining the plan or of any employer that makes or has made substantial contributions to fund such plan.

(E) The term "Secretary" means Secretary of Health and Human Services.

(b) PARTICIPATION.—To be eligible to participate in the reinsurance program, an eligible employment-based plan shall submit to the Secretary an application for participation in the program, at such time, in such manner, and containing such information as the Secretary shall require.

(c) PAYMENT.—

(1) SUBMISSION OF CLAIMS.—

(A) IN GENERAL.—Under the reinsurance program, a participating employment-based plan shall submit claims for reimbursement to the Secretary which shall contain documentation of the actual costs of the items and services for which each claim is being submitted.

(B) BASIS FOR CLAIMS.—Each claim submitted under subparagraph (A) shall be based on the actual amount expended by the participating employment-based plan involved within the plan year for the appropriate employment based health benefits provided to a retiree or to the spouse, surviving spouse, or dependent of a retiree. In determining the amount of any claim for purposes of this subsection, the participating employment-based plan shall take into account any negotiated price concessions (such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations) obtained by such plan with respect to such health benefits. For purposes of calculating the amount of any claim, the costs paid by the retiree or by the spouse, surviving spouse, or dependent of the retiree in the form of deductibles, co-payments, and co-insurance shall be included along with the amounts paid by the participating employment-based plan.

(2) PROGRAM PAYMENTS AND LIMIT.—If the Secretary determines that a participating employment-based plan has submitted a valid claim under paragraph (1), the Secretary shall reimburse such plan for 80 percent of that portion of the costs attributable to such claim that exceeds $15,000, but is less than $90,000. Such amounts shall be adjusted each year based on the percentage increase in the medical care component of the Consumer Price Index (rounded to the nearest multiple of $1,000) for the year involved.

(3) USE OF PAYMENTS.—Amounts paid to a participating employment-based plan under this subsection shall be used to lower the costs borne directly by the participants and beneficiaries for health benefits provided under such plan in the form of premiums, co-payments, deductibles, co-insurance, or other out-of-pocket costs. Such payments shall not be used to reduce the costs of an employer maintaining the participating employment-based plan. The Secretary shall develop a mechanism to monitor the appropriate use of such payments by such plans.

(4) APPEALS AND PROGRAM PROTECTIONS.—The Secretary shall establish—

(A) an appeals process to permit participating employment-based plans to appeal a determination of the Secretary with respect to claims submitted under this section; and

(B) procedures to protect against fraud, waste, and abuse under the program.

(5) AUDITS.—The Secretary shall conduct annual audits of claims data submitted by participating employment-based plans under this section to ensure that they are in compliance with the requirements of this section.

(d) RETIREE RESERVE TRUST FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Retiree Reserve Trust Fund" (referred to in this section as the "Trust Fund"), that shall consist of such amounts as may be appropriated or credited to the Trust Fund as provided for in this subsection to enable the Secretary to carry out the reinsurance program. Such amounts shall remain available until expended.

(B) FUNDING.—There are hereby appropriated to the Trust Fund, out of any moneys in the Treasury not otherwise appropriated, an amount requested by the Secretary as necessary to carry out this section, except that the total of all such amounts requested shall not exceed $10,000,000,000.

(C) APPROPRIATIONS FROM THE TRUST FUND.—

(i) IN GENERAL.—Amounts in the Trust Fund are appropriated to provide funding to carry out the reinsurance program and shall be used to carry out such program.

(ii) BUDGETARY IMPLICATIONS.—Amounts appropriated under clause (i), and outlays flowing from such appropriations, shall not be taken into account for purposes of any budget enforcement procedures including allocations under section 302(a) and (b) of the Balanced Budget and Emergency Deficit Control Act and budget resolutions for fiscal years during which appropriations are made from the Trust Fund.

(iii) LIMITATION TO AVAILABLE FUNDS.—The Secretary has the authority to stop taking applications for participation in the program or take such other steps in reducing expenditures under the reinsurance program in order to ensure that expenditures under the reinsurance program do not exceed the funds available under this subsection.

SEC. 165. PROHIBITION AGAINST POST-RETIREMENT REDUCTIONS OF RETIREE HEALTH BENEFITS BY GROUP HEALTH PLANS.

(a) IN GENERAL.—Part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by inserting after section 714 the following new section:

"SEC. 715. PROTECTION AGAINST POST-RETIREMENT REDUCTION OF RETIREE HEALTH BENEFITS.

"(a) IN GENERAL.—Every group health plan shall contain a provision which expressly bars the plan, or any fiduciary of the plan, from reducing the benefits provided under the plan to a retired participant, or beneficiary of such participant, if such reduction affects the benefits provided to the participant or beneficiary as of the date the participant retired for purposes of the plan and such reduction occurs after the participant's retirement unless such reduction is also made with respect to active participants.

"(b) NO REDUCTION.—Notwithstanding that a group health plan described in subsection (a) may contain a provision reserving the general power to amend or terminate the plan or a provision specifically authorizing the plan to make post-retirement reductions in retiree health benefits, it shall be prohibited for any group health plan, whether through amendment or otherwise, to reduce the benefits provided to a retired participant or his or her beneficiary under the terms of the plan if such reduction of benefits occurs after the date the participant retired for purposes of the plan and reduces benefits that were provided to the participant, or his or her beneficiary, as of the date the participant retired unless such reduction is also made with respect to active participants.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 714 the following new item:

"Sec. 715. Protection against post-retirement reduction of retiree health benefits.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 166. LIMITATIONS ON PREEXISTING CONDITION EXCLUSIONS IN GROUP HEALTH PLANS IN ADVANCE OF APPLICABILITY OF NEW PROHIBITION OF PREEXISTING CONDITION EXCLUSIONS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) REDUCTION IN LOOK-BACK PERIOD.—Section 701(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(a)(1)) is amended by striking "6-month period" and inserting "30-day period".

(2) REDUCTION IN PERMITTED PREEXISTING CONDITION LIMITATION PERIOD.—Section 701(a)(2) of such Act (29 U.S.C. 1181(a)(2)) is amended by striking "12 months" and inserting "3 months", and by striking "18 months" and inserting "9 months".

(3) INAPPLICABILITY OF INTERIM LIMITATIONS UPON APPLICABILITY OF TOTAL PROHIBITION OF EXCLUSION.—Section 701 of such Act shall cease to be effective in the case of any group health plan as of the date on which such plan becomes subject to the requirements of section 111 of this Act (relating to prohibiting preexisting condition exclusions).

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) of subsection (a) shall apply with respect to group health plans for plan years beginning after the end of the 6th calendar month following the date of the enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by paragraphs (1) and (2) of subsection (a) shall not apply to plan years beginning before the earlier of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) 3 years after the date of the enactment of this Act.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by the amendments made by paragraphs (1) and (2) of subsection (a) shall not be treated as a termination of such collective bargaining agreement.

SEC. 167. EXTENSION OF COBRA CONTINUATION COVERAGE.

(a) EXTENSION OF CURRENT PERIODS OF CONTINUATION COVERAGE.—

(1) IN GENERAL.—In the case of any individual who is, under a COBRA continuation coverage provision, covered under COBRA continuation coverage on or after the date of the enactment of this Act, the required period of any such coverage which has not subsequently terminated under the terms of such provision for any reason other than the expiration of a period of a specified number of months shall, notwithstanding such provision and subject to subsection (b), extend to the earlier of the date on which such individual becomes eligible for coverage under an employment-based health plan or the date on which such individual becomes eligible for health insurance coverage through the Health Insurance Exchange (or a State-based Health Insurance Exchange operating in a State or group of States).

(2) NOTICE.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in consultation with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules setting forth the form and manner in which prompt notice to individuals of the continued availability of COBRA continuation coverage to such individuals under paragraph (1).

(b) CONTINUED EFFECT OF OTHER TERMINATING EVENTS.—Notwithstanding subsection (a), any required period of COBRA continuation coverage which is extended under such subsection shall terminate upon the occurrence, prior to the date of termination otherwise provided in such subsection, of any terminating event specified in the applicable continuation coverage provision other than the expiration of a period of a specified number of months.

(c) ACCESS TO STATE HEALTH BENEFITS RISK POOLS.—This section shall supersede any provision of the law of a State or political subdivision thereof to the extent that such provision has the effect of limiting or precluding access by a qualified beneficiary whose COBRA continuation coverage has been extended under this section to a State health benefits risk pool recognized by the Commissioner for purposes of this section solely by reason of the extension of such coverage beyond the date on which such coverage otherwise would have expired.

(d) DEFINITIONS.—For purposes of this section—

(1) COBRA CONTINUATION COVERAGE.—The term "COBRA continuation coverage" means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or section 905a of title 5, United States Code, or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986.

(2) COBRA CONTINUATION PROVISION.—The term "COBRA continuation provision" means the provisions of law described in paragraph (1).

TITLE II—HEALTH INSURANCE EXCHANGE AND RELATED PROVISIONS

Subtitle A—Health Insurance Exchange

SEC. 201. ESTABLISHMENT OF HEALTH INSURANCE EXCHANGE; OUTLINE OF DUTIES; DEFINITIONS.

(a) ESTABLISHMENT.—There is established within the Health Choices Administration and under the direction of the Commissioner a Health Insurance Exchange in order to facilitate access of individuals and employers, through a transparent process, to a variety of choices of affordable, quality health insurance coverage, including a public health insurance option.

(b) OUTLINE OF DUTIES OF COMMISSIONER.—In accordance with this subtitle and in coordination with appropriate Federal and State officials as provided under section 143(b), the Commissioner shall—

(1) under section 204 establish standards for, accept bids from, and negotiate and enter into contracts with, QHBP offering entities for the offering of health

benefits plans through the Health Insurance Exchange, with different levels of benefits required under section 203, and including with respect to oversight and enforcement;

(2) under section 205 facilitate outreach and enrollment in such plans of Exchange-eligible individuals and employers described in section 202; and

(3) conduct such activities related to the Health Insurance Exchange as required, including establishment of a risk pooling mechanism under section 206 and consumer protections under subtitle D of title I.

(c) EXCHANGE-PARTICIPATING HEALTH BENEFITS PLAN DEFINED.—In this division, the term "Exchange-participating health benefits plan" means a qualified health benefits plan that is offered through the Health Insurance Exchange.

SEC. 202. EXCHANGE-ELIGIBLE INDIVIDUALS AND EMPLOYERS.

(a) ACCESS TO COVERAGE.—In accordance with this section, all individuals are eligible to obtain coverage through enrollment in an Exchange-participating health benefits plan offered through the Health Insurance Exchange unless such individuals are enrolled in another qualified health benefits plan or other acceptable coverage.

(b) DEFINITIONS.—In this division:

(1) EXCHANGE-ELIGIBLE INDIVIDUAL.—The term "Exchange-eligible individual" means an individual who is eligible under this section to be enrolled through the Health Insurance Exchange in an Exchange-participating health benefits plan and, with respect to family coverage, includes dependents of such individual.

(2) EXCHANGE-ELIGIBLE EMPLOYER.—The term "Exchange-eligible employer" means an employer that is eligible under this section to enroll through the Health Insurance Exchange employees of the employer (and their dependents) in Exchange-eligible health benefits plans.

(3) EMPLOYMENT-RELATED DEFINITIONS.—The terms "employer", "employee", "full-time employee", and "part-time employee" have the meanings given such terms by the Commissioner for purposes of this division.

(c) TRANSITION.—Individuals and employers shall only be eligible to enroll or participate in the Health Insurance Exchange in accordance with the following transition schedule:

(1) FIRST YEAR.—In Y1 (as defined in section 100(c))—

(A) individuals described in subsection (d)(1), including individuals described in paragraphs (3), (4), and (5) of subsection (d); and

(B) smallest employers described in subsection (e)(1).

(2) SECOND YEAR.—In Y2—

(A) individuals and employers described in paragraph (1); and

(B) smaller employers described in subsection (e)(2).

(3) THIRD YEAR.—In Y3—

(A) individuals and employers described in paragraph (2);

(B) larger employers described in subsection (e)(3); and

(C) largest employers as permitted by the Commissioner under subsection (e)(4).

(4) FOURTH AND SUBSEQUENT YEARS.—In Y4 and subsequent years—

(A) individuals and employers described in paragraph (3); and

(B) largest employers as permitted by the Commissioner under subsection (e)(4).

(d) INDIVIDUALS.—

(1) INDIVIDUAL DESCRIBED.—Subject to the succeeding provisions of this subsection, an individual described in this paragraph is an individual who—

(A) is not enrolled in coverage described in subparagraphs (C) through (F) of paragraph (2); and

(B) is not enrolled in coverage as a full-time employee (or as a dependent of such an employee) under a group health plan if the coverage and an employer contribution under the plan meet the requirements of section 312.

For purposes of subparagraph (B), in the case of an individual who is self-employed, who has at least 1 employee, and who meets the requirements of section 312, such individual shall be deemed a full-time employee described in such subparagraph.

(2) ACCEPTABLE COVERAGE.—For purposes of this division, the term "acceptable coverage" means any of the following:

(A) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—Coverage under a qualified health benefits plan.

(B) GRANDFATHERED HEALTH INSURANCE COVERAGE; COVERAGE UNDER CURRENT GROUP HEALTH PLAN.—Coverage under a grandfathered health in-

surance coverage (as defined in subsection (a) of section 102) or under a current group health plan (described in subsection (b) of such section).

(C) MEDICARE.—Coverage under part A of title XVIII of the Social Security Act.

(D) MEDICAID.—Coverage for medical assistance under title XIX of the Social Security Act, excluding such coverage that is only available because of the application of subsection (u), (z), or (aa) of section 1902 of such Act

(E) MEMBERS OF THE ARMED FORCES AND DEPENDENTS (INCLUDING TRICARE).—Coverage under chapter 55 of title 10, United States Code, including similar coverage furnished under section 1781 of title 38 of such Code.

(F) VA.—Coverage under the veteran's health care program under chapter 17 of title 38, United States Code, but only if the coverage for the individual involved is determined by the Commissioner in coordination with the Secretary of Treasury to be not less than a level specified by the Commissioner and Secretary of Veteran's Affairs, in coordination with the Secretary of Treasury, based on the individual's priority for services as provided under section 1705(a) of such title.

(G) OTHER COVERAGE.—Such other health benefits coverage, such as a State health benefits risk pool, as the Commissioner, in coordination with the Secretary of the Treasury, recognizes for purposes of this paragraph.

The Commissioner shall make determinations under this paragraph in coordination with the Secretary of the Treasury.

(3) TREATMENT OF CERTAIN NON-TRADITIONAL MEDICAID ELIGIBLE INDIVIDUALS.—An individual who is a non-traditional Medicaid eligible individual (as defined in section 205(e)(4)(C)) in a State may be an Exchange-eligible individual if the individual was enrolled in a qualified health benefits plan, grandfathered health insurance coverage, or current group health plan during the 6 months before the individual became a non-traditional Medicaid eligible individual. During the period in which such an individual has chosen to enroll in an Exchange-participating health benefits plan, the individual is not also eligible for medical assistance under Medicaid.

(4) CONTINUING ELIGIBILITY PERMITTED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), once an individual qualifies as an Exchange-eligible individual under this subsection (including as an employee or dependent of an employee of an Exchange-eligible employer) and enrolls under an Exchange-participating health benefits plan through the Health Insurance Exchange, the individual shall continue to be treated as an Exchange-eligible individual until the individual is no longer enrolled with an Exchange-participating health benefits plan.

(B) EXCEPTIONS.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to an individual once the individual becomes eligible for coverage—

(I) under part A of the Medicare program;

(II) under the Medicaid program as a Medicaid eligible individual, except as permitted under paragraph (3) or clause (ii); or

(III) in such other circumstances as the Commissioner may provide.

(ii) TRANSITION PERIOD.—In the case described in clause (i)(II), the Commissioner shall permit the individual to continue treatment under subparagraph (A) until such limited time as the Commissioner determines it is administratively feasible, consistent with minimizing disruption in the individual's access to health care.

(5) ADVERSELY AFFECTED RETIREE HEALTH BENEFITS GROUP PARTICIPANTS AND BENEFICIARIES.—

(A) IN GENERAL.—Beginning in Y1, an individual who is a participant or beneficiary in an adversely affected retiree health benefits group who does not have coverage described in paragraph (2)(C) is an Exchange eligible individual, whether or not such an individual has other acceptable coverage.

(B) ADVERAGE AFFECTED RETIREE HEALTH BENEFIT GROUP DEFINED.—In this paragraph, the term "adversely affected retiree health benefits group" means the retired participants and their beneficiaries of a group health plan that cancelled or substantially reduced the amount, type, level, or form of health benefit or option provided prior January 1, 2008.

(e) EMPLOYERS.—

(1) SMALLEST EMPLOYERS.—Subject to paragraph (5), smallest employers described in this paragraph are employers with 15 or fewer employees.

(2) SMALLER EMPLOYERS.—Subject to paragraph (5), smaller employers described in this paragraph are employers that are not smallest employers described in paragraph (1) and that have 25 or fewer employees.

(3) LARGER EMPLOYERS.—Subject to paragraph (5), larger employers described in this paragraph are employers that are not smallest employers described in paragraph (1) or smaller employers described in paragraph (2) and that have 50 or fewer employees.

(4) LARGEST EMPLOYERS.—

(A) IN GENERAL.—Beginning with Y3, the Commissioner may permit employers not described in paragraphs (1) (2), or (3) to be Exchange-eligible employers.

(B) PHASE-IN.—In applying subparagraph (A), the Commissioner may phase-in the application of such subparagraph based on the number of full-time employees of an employer and such other considerations as the Commissioner deems appropriate.

(5) CONTINUING ELIGIBILITY.—Once an employer is permitted to be an Exchange-eligible employer under this subsection and enrolls employees through the Health Insurance Exchange, the employer shall continue to be treated as an Exchange-eligible employer for each subsequent plan year regardless of the number of employees involved unless and until the employer meets the requirement of section 311(a) through paragraph (1) of such section by offering a group health plan and not through offering Exchange-participating health benefits plan.

(6) EMPLOYER PARTICIPATION AND CONTRIBUTIONS.—

(A) SATISFACTION OF EMPLOYER RESPONSIBILITY.—For any year in which an employer is an Exchange-eligible employer, such employer may meet the requirements of section 312 with respect to employees of such employer by offering such employees the option of enrolling with Exchange-participating health benefits plans through the Health Insurance Exchange consistent with the provisions of subtitle B of title III.

(B) EMPLOYEE CHOICE.—Any employee offered Exchange-participating health benefits plans by the employer of such employee under subparagraph (A) may choose coverage under any such plan. That choice includes, with respect to family coverage, coverage of the dependents of such employee.

(7) AFFILIATED GROUPS.—Any employer which is part of a group of employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated, for purposes of this subtitle, as a single employer.

(8) OTHER COUNTING RULES.—The Commissioner shall establish rules relating to how employees are counted for purposes of carrying out this subsection.

(9) TREATMENT OF MULTIEMPLOYER PLANS.—The plan sponsor of a group health plan (as defined in section 733(a) of the Employee Retirement Income Security Act of 1974) that is multiemployer plan (as defined in section 3(37) of such Act) may obtain health insurance coverage with respect to participants in the plan through the Exchange to the same extent as an employer not described in paragraph (1) or (2) is permitted by the Commissioner to obtain health insurance coverage through the Exchange as an Exchange-eligible employer

(f) SPECIAL SITUATION AUTHORITY.—The Commissioner shall have the authority to establish such rules as may be necessary to deal with special situations with regard to uninsured individuals and employers participating as Exchange-eligible individuals and employers, such as transition periods for individuals and employers who gain, or lose, Exchange-eligible participation status, and to establish grace periods for premium payment.

(g) SURVEYS OF INDIVIDUALS AND EMPLOYERS.—The Commissioner shall provide for periodic surveys of Exchange-eligible individuals and employers concerning satisfaction of such individuals and employers with the Health Insurance Exchange and Exchange-participating health benefits plans.

(h) EXCHANGE ACCESS STUDY.—

(1) IN GENERAL.—The Commissioner shall conduct a study of access to the Health Insurance Exchange for individuals and for employers, including individuals and employers who are not eligible and enrolled in Exchange-participating health benefits plans. The goal of the study is to determine if there are significant groups and types of individuals and employers who are not Exchange eligible individuals or employers, but who would have improved benefits and affordability if made eligible for coverage in the Exchange.

(2) ITEMS INCLUDED IN STUDY.—Such study also shall examine—

(A) the terms, conditions, and affordability of group health coverage offered by employers and QHBP offering entities outside of the Exchange compared to Exchange-participating health benefits plans; and

(B) the affordability-test standard for access of certain employed individuals to coverage in the Health Insurance Exchange.

(3) REPORT.—Not later than January 1 of Y3, in Y6, and thereafter, the Commissioner shall submit to Congress on the study conducted under this subsection and shall include in such report recommendations regarding changes in standards for Exchange eligibility for for individuals and employers.

SEC. 203. BENEFITS PACKAGE LEVELS.

(a) IN GENERAL.—The Commissioner shall specify the benefits to be made available under Exchange-participating health benefits plans during each plan year, consistent with subtitle C of title I and this section.

(b) LIMITATION ON HEALTH BENEFITS PLANS OFFERED BY OFFERING ENTITIES.—The Commissioner may not enter into a contract with a QHBP offering entity under section 204(c) for the offering of an Exchange-participating health benefits plan in a service area unless the following requirements are met:

(1) REQUIRED OFFERING OF BASIC PLAN.—The entity offers only one basic plan for such service area.

(2) OPTIONAL OFFERING OF ENHANCED PLAN.—If and only if the entity offers a basic plan for such service area, the entity may offer one enhanced plan for such area.

(3) OPTIONAL OFFERING OF PREMIUM PLAN.—If and only if the entity offers an enhanced plan for such service area, the entity may offer one premium plan for such area.

(4) OPTIONAL OFFERING OF PREMIUM-PLUS PLANS.—If and only if the entity offers a premium plan for such service area, the entity may offer one or more premium-plus plans for such area.

All such plans may be offered under a single contract with the Commissioner.

(c) SPECIFICATION OF BENEFIT LEVELS FOR PLANS.—

(1) IN GENERAL.—The Commissioner shall establish the following standards consistent with this subsection and title I:

(A) BASIC, ENHANCED, AND PREMIUM PLANS.—Standards for 3 levels of Exchange-participating health benefits plans: basic, enhanced, and premium (in this division referred to as a "basic plan", "enhanced plan", and "premium plan", respectively).

(B) PREMIUM-PLUS PLAN BENEFITS.—Standards for additional benefits that may be offered, consistent with this subsection and subtitle C of title I, under a premium plan (such a plan with additional benefits referred to in this division as a "premium-plus plan") .

(2) BASIC PLAN.—

(A) IN GENERAL.—A basic plan shall offer the essential benefits package required under title I for a qualified health benefits plan.

(B) TIERED COST-SHARING FOR AFFORDABLE CREDIT ELIGIBLE INDIVIDUALS.—In the case of an affordable credit eligible individual (as defined in section 242(a)(1)) enrolled in an Exchange-participating health benefits plan, the benefits under a basic plan are modified to provide for the reduced cost-sharing for the income tier applicable to the individual under section 244(c).

(3) ENHANCED PLAN.—A enhanced plan shall offer, in addition to the level of benefits under the basic plan, a lower level of cost-sharing as provided under title I consistent with section 123(b)(5)(A).

(4) PREMIUM PLAN.—A premium plan shall offer, in addition to the level of benefits under the basic plan, a lower level of cost-sharing as provided under title I consistent with section 123(b)(5)(B).

(5) PREMIUM-PLUS PLAN.—A premium-plus plan is a premium plan that also provides additional benefits, such as adult oral health and vision care, approved by the Commissioner. The portion of the premium that is attributable to such additional benefits shall be separately specified.

(6) RANGE OF PERMISSIBLE VARIATION IN COST-SHARING.—The Commissioner shall establish a permissible range of variation of cost-sharing for each basic, enhanced, and premium plan, except with respect to any benefit for which there is no cost-sharing permitted under the essential benefits package. Such variation shall permit a variation of not more than plus (or minus) 10 percent in cost-sharing with respect to each benefit category specified under section 122.

(d) TREATMENT OF STATE BENEFIT MANDATES.—Insofar as a State requires a health insurance issuer offering health insurance coverage to include benefits be-

yond the essential benefits package, such requirement shall continue to apply to an Exchange-participating health benefits plan, if the State has entered into an arrangement satisfactory to the Commissioner to reimburse the Commissioner for the amount of any net increase in affordability premium credits under subtitle C as a result of an increase in premium in basic plans as a result of application of such requirement.

SEC. 204. CONTRACTS FOR THE OFFERING OF EXCHANGE-PARTICIPATING HEALTH BENEFITS PLANS.

(a) CONTRACTING DUTIES.—In carrying out section 201(b)(1) and consistent with this subtitle:

(1) OFFERING ENTITY AND PLAN STANDARDS.—The Commissioner shall—

(A) establish standards necessary to implement the requirements of this title and title I for—

(i) QHBP offering entities for the offering of an Exchange-participating health benefits plan; and

(ii) for Exchange-participating health benefits plans; and

(B) certify QHBP offering entities and qualified health benefits plans as meeting such standards and requirements of this title and title I for purposes of this subtitle.

(2) SOLICITING AND NEGOTIATING BIDS; CONTRACTS.—The Commissioner shall—

(A) solicit bids from QHBP offering entities for the offering of Exchange-participating health benefits plans;

(B) based upon a review of such bids, negotiate with such entities for the offering of such plans; and

(C) enter into contracts with such entities for the offering of such plans through the Health Insurance Exchange under terms (consistent with this title) negotiated between the Commissioner and such entities.

(3) FAR NOT APPLICABLE.—The provisions of the Federal Acquisition Regulation shall not apply to contracts between the Commissioner and QHBP offering entities for the offering of Exchange-participating health benefits plans under this title.

(b) STANDARDS FOR QHBP OFFERING ENTITIES TO OFFER EXCHANGE-PARTICIPATING HEALTH BENEFITS PLANS.—The standards established under subsection (a)(1)(A) shall require that, in order for a QHBP offering entity to offer an Exchange-participating health benefits plan, the entity must meet the following requirements:

(1) LICENSED.—The entity shall be licensed to offer health insurance coverage under State law for each State in which it is offering such coverage.

(2) DATA REPORTING.—The entity shall provide for the reporting of such information as the Commissioner may specify, including information necessary to administer the risk pooling mechanism described in section 206(b) and information to address disparities in health and health care.

(3) IMPLEMENTING AFFORDABILITY CREDITS.—The entity shall provide for implementation of the affordability credits provided for enrollees under subtitle C, including the reduction in cost-sharing under section 244(c).

(4) ENROLLMENT.—The entity shall accept all enrollments under this subtitle, subject to such exceptions (such as capacity limitations) in accordance with the requirements under title I for a qualified health benefits plan. The entity shall notify the Commissioner if the entity projects or anticipates reaching such a capacity limitation that would result in a limitation in enrollment.

(5) RISK POOLING PARTICIPATION.—The entity shall participate in such risk pooling mechanism as the Commissioner establishes under section 206(b).

(6) ESSENTIAL COMMUNITY PROVIDERS.—With respect to the basic plan offered by the entity, the entity shall contract for outpatient services with covered entities (as defined in section 340B(a)(4) of the Public Health Service Act, as in effect as of July 1, 2009). The Commissioner shall specify the extent to which and manner in which the previous sentence shall apply in the case of a basic plan with respect to which the Commissioner determines provides substantially all benefits through a health maintenance organization, as defined in section 2791(b)(3) of the Public Health Service Act.

(7) CULTURALLY AND LINGUISTICALLY APPROPRIATE SERVICES AND COMMUNICATIONS.—The entity shall provide for culturally and linguistically appropriate communication and health services.

(8) ADDITIONAL REQUIREMENTS.—The entity shall comply with other applicable requirements of this title, as specified by the Commissioner, which shall include standards regarding billing and collection practices for premiums and re-

lated grace periods and which may include standards to ensure that the entity does not use coercive practices to force providers not to contract with other entities offering coverage through the Health Insurance Exchange.

(c) CONTRACTS.—

(1) BID APPLICATION.—To be eligible to enter into a contract under this section, a QHBP offering entity shall submit to the Commissioner a bid at such time, in such manner, and containing such information as the Commissioner may require.

(2) TERM.—Each contract with a QHBP offering entity under this section shall be for a term of not less than one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

(3) ENFORCEMENT OF NETWORK ADEQUACY.—In the case of a health benefits plan of a QHBP offering entity that uses a provider network, the contract under this section with the entity shall provide that if—

(A) the Commissioner determines that such provider network does not meet such standards as the Commissioner shall establish under section 115; and

(B) an individual enrolled in such plan receives an item or service from a provider that is not within such network;

then any cost-sharing for such item or service shall be equal to the amount of such cost-sharing that would be imposed if such item or service was furnished by a provider within such network.

(4) OVERSIGHT AND ENFORCEMENT RESPONSIBILITIES.—The Commissioner shall establish processes, in coordination with State insurance regulators, to oversee, monitor, and enforce applicable requirements of this title with respect to QHBP offering entities offering Exchange-participating health benefits plans and such plans, including the marketing of such plans. Such processes shall include the following:

(A) GRIEVANCE AND COMPLAINT MECHANISMS.—The Commissioner shall establish, in coordination with State insurance regulators, a process under which Exchange-eligible individuals and employers may file complaints concerning violations of such standards.

(B) ENFORCEMENT.—In carrying out authorities under this division relating to the Health Insurance Exchange, the Commissioner may impose one or more of the intermediate sanctions described in section 142(c).

(C) TERMINATION.—

(i) IN GENERAL.—The Commissioner may terminate a contract with a QHBP offering entity under this section for the offering of an Exchange-participating health benefits plan if such entity fails to comply with the applicable requirements of this title. Any determination by the Commissioner to terminate a contract shall be made in accordance with formal investigation and compliance procedures established by the Commissioner under which—

(I) the Commissioner provides the entity with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Commissioner's determination; and

(II) the Commissioner provides the entity with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the contract.

(ii) EXCEPTION FOR IMMINENT AND SERIOUS RISK TO HEALTH.—Clause (i) shall not apply if the Commissioner determines that a delay in termination, resulting from compliance with the procedures specified in such clause prior to termination, would pose an imminent and serious risk to the health of individuals enrolled under the qualified health benefits plan of the QHBP offering entity.

(D) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing the application of other sanctions under subtitle E of title I with respect to an entity for a violation of such a requirement.

SEC. 205. OUTREACH AND ENROLLMENT OF EXCHANGE-ELIGIBLE INDIVIDUALS AND EMPLOYERS IN EXCHANGE-PARTICIPATING HEALTH BENEFITS PLAN.

(a) IN GENERAL.—

(1) OUTREACH.—The Commissioner shall conduct outreach activities consistent with subsection (c), including through use of appropriate entities as described in paragraph (4) of such subsection, to inform and educate individuals and employers about the Health Insurance Exchange and Exchange-partici-

pating health benefits plan options. Such outreach shall include outreach specific to vulnerable populations, such as children, individuals with disabilities, individuals with mental illness, and individuals with other cognitive impairments.

(2) ELIGIBILITY.—The Commissioner shall make timely determinations of whether individuals and employers are Exchange-eligible individuals and employers (as defined in section 202).

(3) ENROLLMENT.—The Commissioner shall establish and carry out an enrollment process for Exchange-eligible individuals and employers, including at community locations, in accordance with subsection (b).

(b) ENROLLMENT PROCESS.—

(1) IN GENERAL.—The Commissioner shall establish a process consistent with this title for enrollments in Exchange-participating health benefits plans. Such process shall provide for enrollment through means such as the mail, by telephone, electronically, and in person.

(2) ENROLLMENT PERIODS.—

(A) OPEN ENROLLMENT PERIOD.—The Commissioner shall establish an annual open enrollment period during which an Exchange-eligible individual or employer may elect to enroll in an Exchange-participating health benefits plan for the following plan year and an enrollment period for affordability credits under subtitle C. Such periods shall be during September through November of each year, or such other time that would maximize timeliness of income verification for purposes of such subtitle. The open enrollment period shall not be less than 30 days.

(B) SPECIAL ENROLLMENT.—The Commissioner shall also provide for special enrollment periods to take into account special circumstances of individuals and employers, such as an individual who—

(i) loses acceptable coverage;

(ii) experiences a change in marital or other dependent status;

(iii) moves outside the service area of the Exchange-participating health benefits plan in which the individual is enrolled; or

(iv) experiences a significant change in income.

(C) ENROLLMENT INFORMATION.—The Commissioner shall provide for the broad dissemination of information to prospective enrollees on the enrollment process, including before each open enrollment period. In carrying out the previous sentence, the Commissioner may work with other appropriate entities to facilitate such provision of information.

(3) AUTOMATIC ENROLLMENT FOR NON-MEDICAID ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—The Commissioner shall provide for a process under which individuals who are Exchange-eligible individuals described in subparagraph (B) are automatically enrolled under an appropriate Exchange-participating health benefits plan. Such process may involve a random assignment or some other form of assignment that takes into account the health care providers used by the individual involved or such other relevant factors as the Commissioner may specify.

(B) SUBSIDIZED INDIVIDUALS DESCRIBED.—An individual described in this subparagraph is an Exchange-eligible individual who is either of the following:

(i) AFFORDABILITY CREDIT ELIGIBLE INDIVIDUALS.—The individual—

(I) has applied for, and been determined eligible for, affordability credits under subtitle C;

(II) has not opted out from receiving such affordability credit; and

(III) does not otherwise enroll in another Exchange-participating health benefits plan.

(ii) INDIVIDUALS ENROLLED IN A TERMINATED PLAN.—The individual is enrolled in an Exchange-participating health benefits plan that is terminated (during or at the end of a plan year) and who does not otherwise enroll in another Exchange-participating health benefits plan.

(4) DIRECT PAYMENT OF PREMIUMS TO PLANS.—Under the enrollment process, individuals enrolled in an Exchange-partcipating health benefits plan shall pay such plans directly, and not through the Commissioner or the Health Insurance Exchange.

(c) COVERAGE INFORMATION AND ASSISTANCE.—

(1) COVERAGE INFORMATION.—The Commissioner shall provide for the broad dissemination of information on Exchange-participating health benefits plans offered under this title. Such information shall be provided in a comparative man-

ner, and shall include information on benefits, premiums, cost-sharing, quality, provider networks, and consumer satisfaction.

(2) CONSUMER ASSISTANCE WITH CHOICE.—To provide assistance to Exchange-eligible individuals and employers, the Commissioner shall—

(A) provide for the operation of a toll-free telephone hotline to respond to requests for assistance and maintain an Internet website through which individuals may obtain information on coverage under Exchange-participating health benefits plans and file complaints;

(B) develop and disseminate information to Exchange-eligible enrollees on their rights and responsibilities;

(C) assist Exchange-eligible individuals in selecting Exchange-participating health benefits plans and obtaining benefits through such plans; and

(D) ensure that the Internet website described in subparagraph (A) and the information described in subparagraph (B) is developed using plain language (as defined in section 133(a)(2)).

(3) USE OF OTHER ENTITIES.—In carrying out this subsection, the Commissioner may work with other appropriate entities to facilitate the dissemination of information under this subsection and to provide assistance as described in paragraph (2).

(d) SPECIAL DUTIES RELATED TO MEDICAID AND CHIP.—

(1) COVERAGE FOR CERTAIN NEWBORNS.—

(A) IN GENERAL.—In the case of a child born in the United States who at the time of birth is not otherwise covered under acceptable coverage, for the period of time beginning on the date of birth and ending on the date the child otherwise is covered under acceptable coverage (or, if earlier, the end of the month in which the 60-day period, beginning on the date of birth, ends), the child shall be deemed—

(i) to be a non-traditional Medicaid eligible individual (as defined in subsection (e)(5)) for purposes of this division and Medicaid; and

(ii) to have elected to enroll in Medicaid through the application of paragraph (3).

(B) EXTENDED TREATMENT AS TRADITIONAL MEDICAID ELIGIBLE INDIVIDUAL.—In the case of a child described in subparagraph (A) who at the end of the period referred to in such subparagraph is not otherwise covered under acceptable coverage, the child shall be deemed (until such time as the child obtains such coverage or the State otherwise makes a determination of the child's eligibility for medical assistance under its Medicaid plan pursuant to section 1943(c)(1) of the Social Security Act) to be a traditional Medicaid eligible individual described in section 1902(l)(1)(B) of such Act.

(2) CHIP TRANSITION.—A child who, as of the day before the first day of Y1, is eligible for child health assistance under title XXI of the Social Security Act (including a child receiving coverage under an arrangement described in section 2101(a)(2) of such Act) is deemed as of such first day to be an Exchange-eligible individual unless the individual is a traditional Medicaid eligible individual as of such day.

(3) AUTOMATIC ENROLLMENT OF MEDICAID ELIGIBLE INDIVIDUALS INTO MEDICAID.—The Commissioner shall provide for a process under which an individual who is described in section 202(d)(3) and has not elected to enroll in an Exchange-participating health benefits plan is automatically enrolled under Medicaid.

(4) NOTIFICATIONS.—The Commissioner shall notify each State in Y1 and for purposes of section 1902(gg)(1) of the Social Security Act (as added by section 1703(a)) whether the Health Insurance Exchange can support enrollment of children described in paragraph (2) in such State in such year.

(e) MEDICAID COVERAGE FOR MEDICAID ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—

(A) CHOICE FOR LIMITED EXCHANGE-ELIGIBLE INDIVIDUALS.—As part of the enrollment process under subsection (b), the Commissioner shall provide the option, in the case of an Exchange-eligible individual described in section 202(d)(3), for the individual to elect to enroll under Medicaid instead of under an Exchange-participating health benefits plan. Such an individual may change such election during an enrollment period under subsection (b)(2).

(B) MEDICAID ENROLLMENT OBLIGATION.—An Exchange eligible individual may apply, in the manner described in section 241(b)(1), for a determination of whether the individual is a Medicaid-eligible individual. If the individual is determined to be so eligible, the Commissioner, through the Medicaid memorandum of understanding, shall provide for the enrollment of

the individual under the State Medicaid plan in accordance with the Medicaid memorandum of understanding under paragraph (4). In the case of such an enrollment, the State shall provide for the same periodic redetermination of eligibility under Medicaid as would otherwise apply if the individual had directly applied for medical assistance to the State Medicaid agency.

(2) NON-TRADITIONAL MEDICAID ELIGIBLE INDIVIDUALS.—In the case of a non-traditional Medicaid eligible individual described in section 202(d)(3) who elects to enroll under Medicaid under paragraph (1)(A), the Commissioner shall provide for the enrollment of the individual under the State Medicaid plan in accordance with the Medicaid memorandum of understanding under paragraph (4).

(3) COORDINATED ENROLLMENT WITH STATE THROUGH MEMORANDUM OF UNDERSTANDING.—The Commissioner, in consultation with the Secretary of Health and Human Services, shall enter into a memorandum of understanding with each State (each in this division referred to as a "Medicaid memorandum of understanding") with respect to coordinating enrollment of individuals in Exchange-participating health benefits plans and under the State's Medicaid program consistent with this section and to otherwise coordinate the implementation of the provisions of this division with respect to the Medicaid program. Such memorandum shall permit the exchange of information consistent with the limitations described in section 1902(a)(7) of the Social Security Act. Nothing in this section shall be construed as permitting such memorandum to modify or vitiate any requirement of a State Medicaid plan.

(4) MEDICAID ELIGIBLE INDIVIDUALS.—For purposes of this division:

(A) MEDICAID ELIGIBLE INDIVIDUAL.—The term "Medicaid eligible individual" means an individual who is eligible for medical assistance under Medicaid.

(B) TRADITIONAL MEDICAID ELIGIBLE INDIVIDUAL.—The term "traditional Medicaid eligible individual" means a Medicaid eligible individual other than an individual who is—

(i) a Medicaid eligible individual by reason of the application of subclause (VIII) of section 1902(a)(10)(A)(i) of the Social Security Act; or

(ii) a childless adult not described in section 1902(a)(10)(A) or (C) of such Act (as in effect as of the day before the date of the enactment of this Act).

(C) NON-TRADITIONAL MEDICAID ELIGIBLE INDIVIDUAL.—The term "non-traditional Medicaid eligible individual" means a Medicaid eligible individual who is not a traditional Medicaid eligible individual.

(f) EFFECTIVE CULTURALLY AND LINGUISTICALLY APPROPRIATE COMMUNICATION.—In carrying out this section, the Commissioner shall establish effective methods for communicating in plain language and a culturally and linguistically appropriate manner.

SEC. 206. OTHER FUNCTIONS.

(a) COORDINATION OF AFFORDABILITY CREDITS.—The Commissioner shall coordinate the distribution of affordability premium and cost-sharing credits under subtitle C to QHBP offering entities offering Exchange-participating health benefits plans.

(b) COORDINATION OF RISK POOLING.—The Commissioner shall establish a mechanism whereby there is an adjustment made of the premium amounts payable among QHBP offering entities offering Exchange-participating health benefits plans of premiums collected for such plans that takes into account (in a manner specified by the Commissioner) the differences in the risk characteristics of individuals and employers enrolled under the different Exchange-participating health benefits plans offered by such entities so as to minimize the impact of adverse selection of enrollees among the plans offered by such entities.

(c) SPECIAL INSPECTOR GENERAL FOR THE HEALTH INSURANCE EXCHANGE.—

(1) ESTABLISHMENT; APPOINTMENT.—There is hereby established the Office of the Special Inspector General for the Health Insurance Exchange, to be headed by a Special Inspector General for the Health Insurance Exchange (in this subsection referred to as the "Special Inspector General") to be appointed by the President, by and with the advice and consent of the Senate. The nomination of an individual as Special Inspector General shall be made as soon as practicable after the establishment of the program under this subtitle.

(2) DUTIES.—The Special Inspector General shall—

(A) conduct, supervise, and coordinate audits, evaluations and investigations of the Health Insurance Exchange to protect the integrity of the

Health Insurance Exchange, as well as the health and welfare of participants in the Exchange;

(B) report both to the Commissioner and to the Congress regarding program and management problems and recommendations to correct them;

(C) have other duties (described in paragraphs (2) and (3) of section 121 of division A of Public Law 110–343) in relation to the duties described in the previous subparagraphs; and

(D) have the authorities provided in section 6 of the Inspector General Act of 1978 in carrying out duties under this paragraph.

(3) APPLICATION OF OTHER SPECIAL INSPECTOR GENERAL PROVISIONS.—The provisions of subsections (b) (other than paragraphs (1) and (3)), (d) (other than paragraph (1)), and (e) of section 121 of division A of the Emergency Economic Stabilization Act of 2009 (Public Law 110–343) shall apply to the Special Inspector General under this subsection in the same manner as such provisions apply to the Special Inspector General under such section.

(4) REPORTS.—Not later than one year after the confirmation of the Special Inspector General, and annually thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the one year period ending on the date such report is submitted.

(5) TERMINATION.—The Office of the Special Inspector General shall terminate five years after the date of the enactment of this Act.

(d) ASSISTANCE FOR SMALL EMPLOYERS.—

(1) IN GENERAL.—The Commissioner, in consultation with the Small Business Administration, shall establish and carry out a program to provide to small employers counseling and technical assistance with respect to the provision of health insurance to employees of such employers through the Health Insurance Exchange.

(2) DUTIES.—The program established under paragraph (1) shall include the following services:

(A) Educational activities to increase awareness of the Health Insurance Exchange and available small employer health plan options.

(B) Distribution of information to small employers with respect to the enrollment and selection process for health plans available under the Health Insurance Exchange, including standardized comparative information on the health plans available under the Health Insurance Exchange.

(C) Distribution of information to small employers with respect to available affordability credits or other financial assistance.

(D) Referrals to appropriate entities of complaints and questions relating to the Health Insurance Exchange.

(E) Enrollment and plan selection assistance for employers with respect to the Health Insurance Exchange.

(F) Responses to questions relating to the Health Insurance Exchange and the program established under paragraph (1).

(3) AUTHORITY TO PROVIDE SERVICES DIRECTLY OR BY CONTRACT.—The Commissioner may provide services under paragraph (2) directly or by contract with nonprofit entities that the Commissioner determines capable of carrying out such services.

(4) SMALL EMPLOYER DEFINED.—In this subsection, the term "small employer" means an employer with less than 100 employees.

SEC. 207. HEALTH INSURANCE EXCHANGE TRUST FUND.

(a) ESTABLISHMENT OF HEALTH INSURANCE EXCHANGE TRUST FUND.—There is created within the Treasury of the United States a trust fund to be known as the "Health Insurance Exchange Trust Fund" (in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund under this section or any other provision of law.

(b) PAYMENTS FROM TRUST FUND.—The Commissioner shall pay from time to time from the Trust Fund such amounts as the Commissioner determines are necessary to make payments to operate the Health Insurance Exchange, including payments under subtitle C (relating to affordability credits).

(c) TRANSFERS TO TRUST FUND.—

(1) DEDICATED PAYMENTS.—There is hereby appropriated to the Trust Fund amounts equivalent to the following:

(A) TAXES ON INDIVIDUALS NOT OBTAINING ACCEPTABLE COVERAGE.—The amounts received in the Treasury under section 59B of the Internal Revenue Code of 1986 (relating to requirement of health insurance coverage for individuals).

(B) EMPLOYMENT TAXES ON EMPLOYERS NOT PROVIDING ACCEPTABLE COVERAGE.—The amounts received in the Treasury under section 3111(c) of the Internal Revenue Code of 1986 (relating to employers electing to not provide health benefits).

(C) EXCISE TAX ON FAILURES TO MEET CERTAIN HEALTH COVERAGE REQUIREMENTS.—The amounts received in the Treasury under section 4980H(b) (relating to excise tax with respect to failure to meet health coverage participation requirements).

(2) APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS.—There are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to the Trust Fund, an amount equivalent to the amount of payments made from the Trust Fund under subsection (b) plus such amounts as are necessary reduced by the amounts deposited under paragraph (1).

(d) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subchapter B of chapter 98 of the Internal Revenue Code of 1986 shall apply with respect to the Trust Fund.

SEC. 208. OPTIONAL OPERATION OF STATE-BASED HEALTH INSURANCE EXCHANGES.

(a) IN GENERAL.—If—

(1) a State (or group of States, subject to the approval of the Commissioner) applies to the Commissioner for approval of a State-based Health Insurance Exchange to operate in the State (or group of States); and

(2) the Commissioner approves such State-based Health Insurance Exchange, then, subject to subsections (c) and (d), the State-based Health Insurance Exchange shall operate, instead of the Health Insurance Exchange, with respect to such State (or group of States). The Commissioner shall approve a State-based Health Insurance Exchange if it meets the requirements for approval under subsection (b).

(b) REQUIREMENTS FOR APPROVAL.—The Commissioner may not approve a State-based Health Insurance Exchange under this section unless the following requirements are met:

(1) The State-based Health Insurance Exchange must demonstrate the capacity to and provide assurances satisfactory to the Commissioner that the State-based Health Insurance Exchange will carry out the functions specified for the Health Insurance Exchange in the State (or States) involved, including—

(A) negotiating and contracting with QHBP offering entities for the offering of Exchange-participating health benefits plan, which satisfy the standards and requirements of this title and title I;

(B) enrolling Exchange-eligible individuals and employers in such State in such plans;

(C) the establishment of sufficient local offices to meet the needs of Exchange-eligible individuals and employers;

(D) administering affordability credits under subtitle B using the same methodologies (and at least the same income verification methods) as would otherwise apply under such subtitle and at a cost to the Federal Government which does exceed the cost to the Federal Government if this section did not apply; and

(E) enforcement activities consistent with federal requirements.

(2) There is no more than one Health Insurance Exchange operating with respect to any one State.

(3) The State provides assurances satisfactory to the Commissioner that approval of such an Exchange will not result in any net increase in expenditures to the Federal Government.

(4) The State provides for reporting of such information as the Commissioner determines and assurances satisfactory to the Commissioner that it will vigorously enforce violations of applicable requirements.

(5) Such other requirements as the Commissioner may specify.

(c) CEASING OPERATION.—

(1) IN GENERAL.—A State-based Health Insurance Exchange may, at the option of each State involved, and only after providing timely and reasonable notice to the Commissioner, cease operation as such an Exchange, in which case the Health Insurance Exchange shall operate, instead of such State-based Health Insurance Exchange, with respect to such State (or States).

(2) TERMINATION; HEALTH INSURANCE EXCHANGE RESUMPTION OF FUNCTIONS.—The Commissioner may terminate the approval (for some or all functions) of a State-based Health Insurance Exchange under this section if the Commissioner determines that such Exchange no longer meets the requirements of subsection (b) or is no longer capable of carrying out such functions in accordance with the requirements of this subtitle. In lieu of terminating such

approval, the Commissioner may temporarily assume some or all functions of the State-based Health Insurance Exchange until such time as the Commissioner determines the State-based Health Insurance Exchange meets such requirements of subsection (b) and is capable of carrying out such functions in accordance with the requirements of this subtitle.

(3) EFFECTIVENESS.—The ceasing or termination of a State-based Health Insurance Exchange under this subsection shall be effective in such time and manner as the Commissioner shall specify.

(d) RETENTION OF AUTHORITY.—

(1) AUTHORITY RETAINED.—Enforcement authorities of the Commissioner shall be retained by the Commissioner.

(2) DISCRETION TO RETAIN ADDITIONAL AUTHORITY.—The Commissioner may specify functions of the Health Insurance Exchange that—

(A) may not be performed by a State-based Health Insurance Exchange under this section; or

(B) may be performed by the Commissioner and by such a State-based Health Insurance Exchange.

(e) REFERENCES.—In the case of a State-based Health Insurance Exchange, except as the Commissioner may otherwise specify under subsection (d), any references in this subtitle to the Health Insurance Exchange or to the Commissioner in the area in which the State-based Health Insurance Exchange operates shall be deemed a reference to the State-based Health Insurance Exchange and the head of such Exchange, respectively.

(f) FUNDING.—In the case of a State-based Health Insurance Exchange, there shall be assistance provided for the operation of such Exchange in the form of a matching grant with a State share of expenditures required.

SEC. 209. PARTICIPATION OF SMALL EMPLOYER BENEFIT ARRANGEMENTS.

(a) IN GENERAL.—The Commissioner may enter into contracts with small employer benefit arrangements to provide consumer information, outreach, and assistance in the enrollment of small employers (and their employees) who are members of such an arrangement under Exchange participating health benefits plans.

(b) SMALL EMPLOYER BENEFIT ARRANGEMENT DEFINED.—In this section, the term "small employer benefit arrangement" means a not-for-profit agricultural or other cooperative that—

(1) consists solely of its members and is operated for the primary purpose of providing affordable employee benefits to its members;

(2) only has as members small employers in the same industry or line of business;

(3) has no member that has more than a 5 percent voting interest in the cooperative; and

(4) is governed by a board of directors elected by its members.

Subtitle B—Public Health Insurance Option

SEC. 221. ESTABLISHMENT AND ADMINISTRATION OF A PUBLIC HEALTH INSURANCE OPTION AS AN EXCHANGE-QUALIFIED HEALTH BENEFITS PLAN.

(a) ESTABLISHMENT.—For years beginning with Y1, the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") shall provide for the offering of an Exchange-participating health benefits plan (in this division referred to as the "public health insurance option") that ensures choice, competition, and stability of affordable, high quality coverage throughout the United States in accordance with this subtitle. In designing the option, the Secretary's primary responsibility is to create a low-cost plan without comprimising quality or access to care.

(b) OFFERING AS AN EXCHANGE-PARTICIPATING HEALTH BENEFITS PLAN.—

(1) EXCLUSIVE TO THE EXCHANGE.—The public health insurance option shall only be made available through the Health Insurance Exchange.

(2) ENSURING A LEVEL PLAYING FIELD.—Consistent with this subtitle, the public health insurance option shall comply with requirements that are applicable under this title to an Exchange-participating health benefits plan, including requirements related to benefits, benefit levels, provider networks, notices, consumer protections, and cost sharing.

(3) PROVISION OF BENEFIT LEVELS.—The public health insurance option—

(A) shall offer basic, enhanced, and premium plans; and

(B) may offer premium-plus plans.

(c) ADMINISTRATIVE CONTRACTING.—The Secretary may enter into contracts for the purpose of performing administrative functions (including functions described in

subsection (a)(4) of section 1874A of the Social Security Act) with respect to the public health insurance option in the same manner as the Secretary may enter into contracts under subsection (a)(1) of such section. The Secretary has the same authority with respect to the public health insurance option as the Secretary has under subsections (a)(1) and (b) of section 1874A of the Social Security Act with respect to title XVIII of such Act. Contracts under this subsection shall not involve the transfer of insurance risk to such entity.

(d) OMBUDSMAN.—The Secretary shall establish an office of the ombudsman for the public health insurance option which shall have duties with respect to the public health insurance option similar to the duties of the Medicare Beneficiary Ombudsman under section 1808(c)(2) of the Social Security Act.

(e) DATA COLLECTION.—The Secretary shall collect such data as may be required to establish premiums and payment rates for the public health insurance option and for other purposes under this subtitle, including to improve quality and to reduce disparities in health and health care based on race, ethnicity, primary language, sex, sexual orientation, gender identity, disability, socioeconomic status, rural, urban, or other geographic setting, and any other population or subpopulation as determined appropriate by the Secretary, but only if the data collection is conducted on a voluntary basis and consistent with the standards, including privacy protections, established pursuant to section 1709 of the Public Health Service Act.

(f) TREATMENT OF PUBLIC HEALTH INSURANCE OPTION.—With respect to the public health insurance option, the Secretary shall be treated as a QHBP offering entity offering an Exchange-participating health benefits plan.

(g) ACCESS TO FEDERAL COURTS.—The provisions of Medicare (and related provisions of title II of the Social Security Act) relating to access of Medicare beneficiaries to Federal courts for the enforcement of rights under Medicare, including with respect to amounts in controversy, shall apply to the public health insurance option and individuals enrolled under such option under this title in the same manner as such provisions apply to Medicare and Medicare beneficiaries.

SEC. 222. PREMIUMS AND FINANCING.

(a) ESTABLISHMENT OF PREMIUMS.—

(1) IN GENERAL.—The Secretary shall establish geographically-adjusted premium rates for the public health insurance option in a manner—

(A) that complies with the premium rules established by the Commissioner under section 113 for Exchange-participating health benefit plans; and

(B) at a level sufficient to fully finance the costs of—

(i) health benefits provided by the public health insurance option; and

(ii) administrative costs related to operating the public health insurance option.

(2) CONTINGENCY MARGIN.—In establishing premium rates under paragraph (1), the Secretary shall include an appropriate amount for a contingency margin.

(b) ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States an Account for the receipts and disbursements attributable to the operation of the public health insurance option, including the start-up funding under paragraph (2). Section 1854(g) of the Social Security Act shall apply to receipts described in the previous sentence in the same manner as such section applies to payments or premiums described in such section.

(2) START-UP FUNDING.—

(A) IN GENERAL.—In order to provide for the establishment of the public health insurance option there is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, $2,000,000,000. In order to provide for initial claims reserves before the collection of premiums, there is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, such sums as necessary to cover 90 days worth of claims reserves based on projected enrollment.

(B) AMORTIZATION OF START-UP FUNDING.—The Secretary shall provide for the repayment of the startup funding provided under subparagraph (A) to the Treasury in an amortized manner over the 10-year period beginning with Y1.

(C) LIMITATION ON FUNDING.—Nothing in this section shall be construed as authorizing any additional appropriations to the Account, other than such amounts as are otherwise provided with respect to other Exchange-participating health benefits plans.

SEC. 223. PAYMENT RATES FOR ITEMS AND SERVICES.

(a) RATES ESTABLISHED BY SECRETARY.—

(1) IN GENERAL.—The Secretary shall establish payment rates for the public health insurance option for services and health care providers consistent with this section and may change such payment rates in accordance with section 224.

(2) INITIAL PAYMENT RULES.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (b)(1), during Y1, Y2, and Y3, the Secretary shall base the payment rates under this section for services and providers described in paragraph (1) on the payment rates for similar services and providers under parts A and B of Medicare.

(B) EXCEPTIONS.—

(i) PRACTITIONERS' SERVICES.—Payment rates for practitioners' services otherwise established under the fee schedule under section 1848 of the Social Security Act shall be applied without regard to the provisions under subsection (f) of such section and the update under subsection (d)(4) under such section for a year as applied under this paragraph shall be not less than 1 percent.

(ii) ADJUSTMENTS.—The Secretary may determine the extent to which Medicare adjustments applicable to base payment rates under parts A and B of Medicare shall apply under this subtitle.

(3) FOR NEW SERVICES.—The Secretary shall modify payment rates described in paragraph (2) in order to accommodate payments for services, such as well-child visits, that are not otherwise covered under Medicare.

(4) PRESCRIPTION DRUGS.—Payment rates under this section for prescription drugs that are not paid for under part A or part B of Medicare shall be at rates negotiated by the Secretary.

(b) INCENTIVES FOR PARTICIPATING PROVIDERS.—

(1) INITIAL INCENTIVE PERIOD.—

(A) IN GENERAL.—The Secretary shall provide, in the case of services described in subparagraph (B) furnished during Y1, Y2, and Y3, for payment rates that are 5 percent greater than the rates established under subsection (a).

(B) SERVICES DESCRIBED.—The services described in this subparagraph are items and professional services, under the public health insurance option by a physician or other health care practitioner who participates in both Medicare and the public health insurance option.

(C) SPECIAL RULES.—A pediatrician and any other health care practitioner who is a type of practitioner that does not typically participate in Medicare (as determined by the Secretary) shall also be eligible for the increased payment rates under subparagraph (A).

(2) SUBSEQUENT PERIODS.— Beginning with Y4 and for subsequent years, the Secretary shall continue to use an administrative process to set such rates in order to promote payment accuracy, to ensure adequate beneficiary access to providers, and to promote affordablility and the efficient delivery of medical care consistent with section 221(a). Such rates shall not be set at levels expected to increase overall medical costs under the option beyond what would be expected if the process under subsection (a)(2) and paragraph (1) of this subsection were continued.

(3) ESTABLISHMENT OF A PROVIDER NETWORK.—Health care providers participating under Medicare are participating providers in the public health insurance option unless they opt out in a process established by the Secretary.

(c) ADMINISTRATIVE PROCESS FOR SETTING RATES.—Chapter 5 of title 5, United States Code shall apply to the process for the initial establishment of payment rates under this section but not to the specific methodology for establishing such rates or the calculation of such rates.

(d) CONSTRUCTION.—Nothing in this subtitle shall be construed as limiting the Secretary's authority to correct for payments that are excessive or deficient, taking into account the provisions of section 221(a) and the amounts paid for similar health care providers and services under other Exchange-participating health benefits plans.

(e) CONSTRUCTION.—Nothing in this subtitle shall be construed as affecting the authority of the Secretary to establish payment rates, including payments to provide for the more efficient delivery of services, such as the initiatives provided for under section 224.

(f) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review of a payment rate or methodology established under this section or under section 224.

SEC. 224. MODERNIZED PAYMENT INITIATIVES AND DELIVERY SYSTEM REFORM.

(a) IN GENERAL.—For plan years beginning with Y1, the Secretary may utilize innovative payment mechanisms and policies to determine payments for items and services under the public health insurance option. The payment mechanisms and policies under this section may include patient-centered medical home and other care management payments, accountable care organizations, value-based purchasing, bundling of services, differential payment rates, performance or utilization based payments, partial capitation, and direct contracting with providers.

(b) REQUIREMENTS FOR INNOVATIVE PAYMENTS.—The Secretary shall design and implement the payment mechanisms and policies under this section in a manner that—

(1) seeks to—

(A) improve health outcomes;

(B) reduce health disparities (including racial, ethnic, and other disparities);

(C) provide efficent and affordable care;

(D) address geographic variation in the provision of health services; or

(E) prevent or manage chronic illness; and

(2) promotes care that is integrated, patient-centered, quality, and efficient.

(c) ENCOURAGING THE USE OF HIGH VALUE SERVICES.—To the extent allowed by the benefit standards applied to all Exchange-participating health benefits plans, the public health insurance option may modify cost sharing and payment rates to encourage the use of services that promote health and value.

(d) NON-UNIFORMITY PERMITTED.—Nothing in this subtitle shall prevent the Secretary from varying payments based on different payment structure models (such as accountable care organizations and medical homes) under the public health insurance option for different geographic areas.

SEC. 225. PROVIDER PARTICIPATION.

(a) IN GENERAL.—The Secretary shall establish conditions of participation for health care providers under the public health insurance option.

(b) LICENSURE OR CERTIFICATION.—The Secretary shall not allow a health care provider to participate in the public health insurance option unless such provider is appropriately licensed, certified, or otherwise permitted to practice under State law.

(c) PAYMENT TERMS FOR PROVIDERS.—

(1) PHYSICIANS.—The Secretary shall provide for the annual participation of physicians under the public health insurance option, for which payment may be made for services furnished during the year, in one of 2 classes:

(A) PREFERRED PHYSICIANS.—Those physicians who agree to accept the payment rate established under section 223 (without regard to cost-sharing) as the payment in full.

(B) PARTICIPATING, NON-PREFERRED PHYSICIANS.—Those physicians who agree not to impose charges (in relation to the payment rate described in section 223 for such physicians) that exceed the ratio permitted under section 1848(g)(2)(C) of the Social Security Act.

(2) OTHER PROVIDERS.—The Secretary shall provide for the participation (on an annual or other basis specified by the Secretary) of health care providers (other than physicians) under the public health insurance option under which payment shall only be available if the provider agrees to accept the payment rate established under section 223 (without regard to cost-sharing) as the payment in full.

(d) EXCLUSION OF CERTAIN PROVIDERS.—The Secretary shall exclude from participation under the public health insurance option a health care provider that is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act).

SEC. 226. APPLICATION OF FRAUD AND ABUSE PROVISIONS.

Provisions of law (other than criminal law provisions) identified by the Secretary by regulation, in consultation with the Inspector General of the Department of Health and Human Services, that impose sanctions with respect to waste, fraud, and abuse under Medicare, such as the False Claims Act (31 U.S.C. 3729 et seq.), shall also apply to the public health insurance option.

SEC. 227. SENSE OF THE HOUSE REGARDING ENROLLMENT OF MEMBERS IN THE PUBLIC OPTION.

It is the sense of the House of Representatives that Members who vote in favor of the establishment of a public, Federal Government run health insurance option, and senior members of the President's administration, are urged to forgo their right

to participate in the Federal Employees Health Benefits Program (FEHBP) and agree to enroll under that public option.

Subtitle C—Individual Affordability Credits

SEC. 241. AVAILABILITY THROUGH HEALTH INSURANCE EXCHANGE.

(a) IN GENERAL.—Subject to the succeeding provisions of this subtitle, in the case of an affordable credit eligible individual enrolled in an Exchange-participating health benefits plan—

(1) the individual shall be eligible for, in accordance with this subtitle, affordability credits consisting of—

(A) an affordability premium credit under section 243 to be applied against the premium for the Exchange-participating health benefits plan in which the individual is enrolled; and

(B) an affordability cost-sharing credit under section 244 to be applied as a reduction of the cost-sharing otherwise applicable to such plan; and

(2) the Commissioner shall pay the QHBP offering entity that offers such plan from the Health Insurance Exchange Trust Fund the aggregate amount of affordability credits for all affordable credit eligible individuals enrolled in such plan.

(b) APPLICATION.—

(1) IN GENERAL.—An Exchange eligible individual may apply to the Commissioner through the Health Insurance Exchange or through another entity under an arrangement made with the Commissioner, in a form and manner specified by the Commissioner. The Commissioner through the Health Insurance Exchange or through another public entity under an arrangement made with the Commissioner shall make a determination as to eligibility of an individual for affordability credits under this subtitle.The Commissioner shall establish a process whereby, on the basis of information otherwise available, individuals may be deemed to be affordable credit eligible individuals. In carrying this subtitle, the Commissioner shall establish effective methods that ensure that individuals with limited English proficiency are able to apply for affordability credits.

(2) USE OF STATE MEDICAID AGENCIES.—If the Commissioner determines that a State Medicaid agency has the capacity to make a determination of eligibility for affordability credits under this subtitle and under the same standards as used by the Commissioner, under the Medicaid memorandum of understanding (as defined in section 205(c)(4))—

(A) the State Medicaid agency is authorized to conduct such determinations for any Exchange-eligible individual who requests such a determination; and

(B) the Commissioner shall reimburse the State Medicaid agency for the costs of conducting such determinations.

(3) MEDICAID SCREEN AND ENROLL OBLIGATION.—In the case of an application made under paragraph (1), there shall be a determination of whether the individual is a Medicaid-eligible individual. If the individual is determined to be so eligible, the Commissioner, through the Medicaid memorandum of understanding, shall provide for the enrollment of the individual under the State Medicaid plan in accordance with the Medicaid memorandum of understanding. In the case of such an enrollment, the State shall provide for the same periodic redetermination of eligibility under Medicaid as would otherwise apply if the individual had directly applied for medical assistance to the State Medicaid agency.

(c) USE OF AFFORDABILITY CREDITS.—

(1) IN GENERAL.—In Y1 and Y2 an affordable credit eligible individual may use an affordability credit only with respect to a basic plan.

(2) FLEXIBILITY IN PLAN ENROLLMENT AUTHORIZED.—Beginning with Y3, the Commissioner shall establish a process to allow an affordability credit to be used for enrollees in enhanced or premium plans. In the case of an affordable credit eligible individual who enrolls in an enhanced or premium plan, the individual shall be responsible for any difference between the premium for such plan and the affordable credit amount otherwise applicable if the individual had enrolled in a basic plan.

(d) ACCESS TO DATA.—In carrying out this subtitle, the Commissioner shall request from the Secretary of the Treasury consistent with section 6103 of the Inter-

nal Revenue Code of 1986 such information as may be required to carry out this subtitle.

(e) NO CASH REBATES.—In no case shall an affordable credit eligible individual receive any cash payment as a result of the application of this subtitle.

SEC. 242. AFFORDABLE CREDIT ELIGIBLE INDIVIDUAL.

(a) DEFINITION.—

(1) IN GENERAL.—For purposes of this division, the term "affordable credit eligible individual" means, subject to subsection (b), an individual who is lawfully present in a State in the United States (other than as a nonimmigrant described in a subparagraph (excluding subparagraphs (K), (T), (U), and (V)) of section 101(a)(15) of the Immigration and Nationality Act)—

(A) who is enrolled under an Exchange-participating health benefits plan and is not enrolled under such plan as an employee (or dependent of an employee) through an employer qualified health benefits plan that meets the requirements of section 312;

(B) with family income below 400 percent of the Federal poverty level for a family of the size involved; and

(C) who is not a Medicaid eligible individual, other than an individual described in section 202(d)(3) or an individual during a transition period under section 202(d)(4)(B)(ii).

(2) TREATMENT OF FAMILY.—Except as the Commissioner may otherwise provide, members of the same family who are affordable credit eligible individuals shall be treated as a single affordable credit individual eligible for the applicable credit for such a family under this subtitle.

(b) LIMITATIONS ON EMPLOYEE AND DEPENDENT DISQUALIFICATION.—

(1) IN GENERAL.—Subject to paragraph (2), the term "affordable credit eligible individual" does not include a full-time employee of an employer if the employer offers the employee coverage (for the employee and dependents) as a full-time employee under a group health plan if the coverage and employer contribution under the plan meet the requirements of section 312.

(2) EXCEPTIONS.—

(A) FOR CERTAIN FAMILY CIRCUMSTANCES.—The Commissioner shall establish such exceptions and special rules in the case described in paragraph (1) as may be appropriate in the case of a divorced or separated individual or such a dependent of an employee who would otherwise be an affordable credit eligible individual.

(B) FOR UNAFFORDABLE EMPLOYER COVERAGE.—For years beginning with Y2, in the case of full-time employees for which the cost of the employee premium (plus, to the extent specified by the Commissioner, out-of-pocket cost-sharing for such year or the preceding year) for coverage under a group health plan would exceed 11 percent of current family income (determined by the Commissioner on the basis of verifiable documentation and without regard to section 245), paragraph (1) shall not apply.

(c) INCOME DEFINED.—

(1) IN GENERAL.—In this title, the term "income" means modified adjusted gross income (as defined in section 59B of the Internal Revenue Code of 1986).

(2) STUDY OF INCOME DISREGARDS.—The Commissioner shall conduct a study that examines the application of income disregards for purposes of this subtitle. Not later than the first day of Y2, the Commissioner shall submit to Congress a report on such study and shall include such recommendations as the Commissioner determines appropriate.

(d) CLARIFICATION OF TREATMENT OF AFFORDABILITY CREDITS.—Affordabilty credits under this subtitle shall not be treated, for purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to be a benefit provided under section 403 of such title.

SEC. 243. AFFORDABLE PREMIUM CREDIT.

(a) IN GENERAL.—The affordability premium credit under this section for an affordable credit eligible individual enrolled in an Exchange-participating health benefits plan is in an amount equal to the amount (if any) by which the premium for the plan (or, if less, the reference premium amount specified in subsection (c)), exceeds the affordable premium amount specified in subsection (b) for the individual.

(b) AFFORDABLE PREMIUM AMOUNT.—

(1) IN GENERAL.—The affordable premium amount specified in this subsection for an individual for monthly premium in a plan year shall be equal to 1/12 of the product of—

(A) the premium percentage limit specified in paragraph (2) for the individual based upon the individual's family income for the plan year; and

(B) the individual's family income for such plan year.

(2) PREMIUM PERCENTAGE LIMITS BASED ON TABLE.—The Commissioner shall establish premium percentage limits so that for individuals whose family income is within an income tier specified in the table in subsection (d) such percentage limits shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier.

(c) REFERENCE PREMIUM AMOUNT.—The reference premium amount specified in this subsection for a plan year for an individual in a premium rating area is equal to the average premium for the 3 basic plans in the area for the plan year with the lowest premium levels. In computing such amount the Commissioner may exclude plans with extremely limited enrollments.

(d) TABLE OF PREMIUM PERCENTAGE LIMITS AND ACTUARIAL VALUE PERCENTAGES BASED ON INCOME TIER.—

(1) IN GENERAL.—For purposes of this subtitle, the table specified in this subsection is as follows:

In the case of family income (expressed as a percent of FPL) within the following income tier:	The initial premium percentage is—	The final premium percentage is—	The actuarial value percentage is—
133% through 150%	1.5%	3%	97%
150% through 200%	3%	5%	93%
200% through 250%	5%	7%	85%
250% through 300%	7%	9%	78%
300% through 350%	9%	10%	72%
350% through 400%	10%	11%	70%

(2) SPECIAL RULES.—For purposes of applying the table under paragraph (1)—

(A) FOR LOWEST LEVEL OF INCOME.—In the case of an individual with income that does not exceed 133 percent of FPL, the individual shall be considered to have income that is 133% of FPL.

(B) APPLICATION OF HIGHER ACTUARIAL VALUE PERCENTAGE AT TIER TRANSITION POINTS.—If two actuarial value percentages may be determined with respect to an individual, the actuarial value percentage shall be the higher of such percentages.

SEC. 244. AFFORDABILITY COST-SHARING CREDIT.

(a) IN GENERAL.—The affordability cost-sharing credit under this section for an affordable credit eligible individual enrolled in an Exchange-participating health benefits plan is in the form of the cost-sharing reduction described in subsection (b) provided under this section for the income tier in which the individual is classified based on the individual's family income.

(b) COST-SHARING REDUCTIONS.—The Commissioner shall specify a reduction in cost-sharing amounts and the annual limitation on cost-sharing specified in section 122(c)(2)(B) under a basic plan for each income tier specified in the table under section 243(d), with respect to a year, in a manner so that, as estimated by the Commissioner, the actuarial value of the coverage with such reduced cost-sharing amounts (and the reduced annual cost-sharing limit) is equal to the actuarial value percentage (specified in the table under section 243(d) for the income tier involved) of the full actuarial value if there were no cost-sharing imposed under the plan.

(c) DETERMINATION AND PAYMENT OF COST-SHARING AFFORDABILITY CREDIT.—In the case of an affordable credit eligible individual in a tier enrolled in an Exchange-participating health benefits plan offered by a QHBP offering entity, the Commissioner shall provide for payment to the offering entity of an amount equivalent to the increased actuarial value of the benefits under the plan provided under section 203(c)(2)(B) resulting from the reduction in cost-sharing described in subsection (b).

SEC. 245. INCOME DETERMINATIONS.

(a) IN GENERAL.—In applying this subtitle for an affordability credit for an individual for a plan year, the individual's income shall be the income (as defined in section 242(c)) for the individual for the most recent taxable year (as determined in accordance with rules of the Commissioner). The Federal poverty level applied shall be such level in effect as of the date of the application.

(b) PROGRAM INTEGRITY; INCOME VERIFICATION PROCEDURES.—

(1) PROGRAM INTEGRITY.—The Commissioner shall take such steps as may be appropriate to ensure the accuracy of determinations and redeterminations under this subtitle.

(2) INCOME VERIFICATION.—

(A) IN GENERAL.—Upon an initial application of an individual for an affordability credit under this subtitle (or in applying section 242(b)) or upon an application for a change in the affordability credit based upon a significant change in family income described in subparagraph (A)—

(i) the Commissioner shall request from the Secretary of the Treasury the disclosure to the Commissioner of such information as may be permitted to verify the information contained in such application; and

(ii) the Commissioner shall use the information so disclosed to verify such information.

(B) ALTERNATIVE PROCEDURES.—The Commissioner shall establish procedures for the verification of income for purposes of this subtitle if no income tax return is available for the most recent completed tax year.

(c) SPECIAL RULES.—

(1) CHANGES IN INCOME AS A PERCENT OF FPL.—In the case that an individual's income (expressed as a percentage of the Federal poverty level for a family of the size involved) for a plan year is expected (in a manner specified by the Commissioner) to be significantly different from the income (as so expressed) used under subsection (a), the Commissioner shall establish rules requiring an individual to report, consistent with the mechanism established under paragraph (2), significant changes in such income (including a significant change in family composition) to the Commissioner and requiring the substitution of such income for the income otherwise applicable.

(2) REPORTING OF SIGNIFICANT CHANGES IN INCOME.—The Commissioner shall establish rules under which an individual determined to be an affordable credit eligible individual would be required to inform the Commissioner when there is a significant change in the family income of the individual (expressed as a percentage of the FPL for a family of the size involved) and of the information regarding such change. Such mechanism shall provide for guidelines that specify the circumstances that qualify as a significant change, the verifiable information required to document such a change, and the process for submission of such information. If the Commissioner receives new information from an individual regarding the family income of the individual,the Commissioner shall provide for a redetermination of the individual's eligibility to be an affordable credit eligible individual.

(3) TRANSITION FOR CHIP.—In the case of a child described in section 202(d)(2), the Commissioner shall establish rules under which the family income of the child is deemed to be no greater than the family income of the child as most recently determined before Y1 by the State under title XXI of the Social Security Act.

(4) STUDY OF GEOGRAPHIC VARIATION IN APPLICATION OF FPL.—The Commissioner shall examine the feasibility and implication of adjusting the application of the Federal poverty level under this subtitle for different geographic areas so as to reflect the variations in cost-of-living among different areas within the United States. If the Commissioner determines that an adjustment is feasible, the study should include a methodology to make such an adjustment. Not later than the first day of Y2, the Commissioner shall submit to Congress a report on such study and shall include such recommendations as the Commissioner determines appropriate.

(d) PENALTIES FOR MISREPRESENTATION.—In the case of an individual intentionally misrepresents family income or the individual fails (without regard to intent) to disclose to the Commissioner a significant change in family income under subsection (c) in a manner that results in the individual becoming an affordable credit eligible individual when the individual is not or in the amount of the affordability credit exceeding the correct amount—

(1) the individual is liable for repayment of the amount of the improper affordability credit; ;and

(2) in the case of such an intentional misrepresentation or other egregious circumstances specified by the Commissioner, the Commissioner may impose an additional penalty.

SEC. 246. NO FEDERAL PAYMENT FOR UNDOCUMENTED ALIENS.

Nothing in this subtitle shall allow Federal payments for affordability credits on behalf of individuals who are not lawfully present in the United States.

Subtitle D—State Innovation

SEC. 251. WAIVER OF ERISA LIMITATION; APPLICATION INSTEAD OF STATE SINGLE PAYER SYSTEM.

(a) IN GENERAL.—A State may request from the Secretary, and the Secretary must grant except under extraordinary circumstances, a waiver of application of section 514 of the Employee Retirement Income Security Act of 1974 with respect to a state single payer system enacted into law by such State that would be structured and operate in a manner consistent with this subtitle. The Secretary shall provide for the revocation of any waiver granted under this section upon a determination made by the Secretary that the requirements of the preceding sentence are no longer being met.

(b) EFFECT OF WAIVER.—During any period for which a waiver under subsection (a) is in effect—

(1) the provisions of section 514 of the Employee Retirement Income Security Act of 1974 shall not apply with respect to the State single payer system; and

(2) the State single payer system shall operate in the State instead of the public health insurance option or the National Health Exchange.

(c) CONSTRUCTION.—Nothing in this subtitle shall be construed to limit or otherwise affect the transfer and allocation under this Act of funds to States with single payer systems.

SEC. 252. REQUIREMENTS.

A State single payer system shall—

(1)) provide benefits that meet or exceed the standards of coverage and quality of care set forth in this Act; and

(2) ensure that the cost to the Federal Government resulting from the waiver granted under section 261 is neither substantially greater nor substantially less than would have been the case in the absence of such waiver, except that:

(A) the State may seek and benefit from planning and start-up funds with respect to the system; and

(B) nothing in this paragraph shall be construed to preclude allowance for normal variations in population demographics, health status, and other factors exogenous to the health care system that may affect differences in costs.

SEC. 253. DEFINITIONS.

(a) STATE SINGLE PAYER SYSTEM.—The term "State single payer system" means, in connection with a State, a non-profit program of the State for providing health care—

(1) in which a single agency of the State is responsible for financing health care benefits for all residents of the State and for the administration or supervision of the administration of the program;

(2) under which private insurance duplicating the benefits provided in the single payer program is prohibited;

(3) which provides comprehensive health benefits to all residents of the State, and provides measures to assure free choice of providers for covered services, to promote quality, and to help resolve complaints and disputes between consumers and providers; and

(4) under which participation by health maintenance organizations is limited to non-profit health maintenance organizations that own their own delivery facilities and employ physicians on salary, and funding is limited to services that the health maintenance organizations actually deliver; and

(5) which may be maintained by such State together one or more other States in a geographic region.

(b) SECRETARY.—The term "Secretary" means the Secretary of Labor, acting in consultation with the Secretary of Health and Human Services.

TITLE III—SHARED RESPONSIBILITY

Subtitle A—Individual Responsibility

SEC. 301. INDIVIDUAL RESPONSIBILITY.

For an individual's responsibility to obtain acceptable coverage, see section 59B of the Internal Revenue Code of 1986 (as added by section 401 of this Act).

Subtitle B—Employer Responsibility

PART 1—HEALTH COVERAGE PARTICIPATION REQUIREMENTS

SEC. 311. HEALTH COVERAGE PARTICIPATION REQUIREMENTS.

(a) IN GENERAL.—An employer meets the requirements of this section if such employer does all of the following:

(1) OFFER OF COVERAGE.—The employer offers each employee individual and family coverage under a qualified health benefits plan (or under a current employment-based health plan (within the meaning of section 102(b))) in accordance with section 312.

(2) CONTRIBUTION TOWARDS COVERAGE.—If an employee accepts such offer of coverage, the employer makes timely contributions towards such coverage in accordance with section 312.

(3) CONTRIBUTION IN LIEU OF COVERAGE.—Beginning with Y2, if an employee declines such offer but otherwise obtains coverage in an Exchange-participating health benefits plan (other than by reason of being covered by family coverage as a spouse or dependent of the primary insured), the employer shall make a timely contribution to the Health Insurance Exchange with respect to each such employee in accordance with section 313.

(b) HARDSHIP EXEMPTION.—Notwithstanding any other provision of this part, an employer may, in a form and manner which shall be prescribed by the Secretary, apply to the Secretary for a waiver from the health coverage participation requirements of this part for any 2-year period. The Secretary shall grant the waiver within 30 days after submission of the application if the application reasonably demonstrates to the Secretary that meeting the requirements of this part would result in job losses that would negatively impact the employer or the community in which the employer is located.

SEC. 312. EMPLOYER RESPONSIBILITY TO CONTRIBUTE TOWARDS EMPLOYEE AND DEPENDENT COVERAGE.

(a) IN GENERAL.—An employer meets the requirements of this section with respect to an employee if the following requirements are met:

(1) OFFERING OF COVERAGE.—The employer offers the coverage described in section 311(1) either through an Exchange-participating health benefits plan or other than through such a plan.

(2) EMPLOYER REQUIRED CONTRIBUTION.—The employer timely pays to the issuer of such coverage an amount not less than the employer required contribution specified in subsection (b) for such coverage.

(3) PROVISION OF INFORMATION.—The employer provides the Health Choices Commissioner, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury, as applicable, with such information as the Commissioner may require to ascertain compliance with the requirements of this section.

(4) AUTOENROLLMENT OF EMPLOYEES.—The employer provides for autoenrollment of the employee in accordance with subsection (c).

(b) REDUCTION OF EMPLOYEE PREMIUMS THROUGH MINIMUM EMPLOYER CONTRIBUTION.—

(1) FULL-TIME EMPLOYEES.—The minimum employer contribution described in this subsection for coverage of a full-time employee (and, if any, the employee's spouse and qualifying children (as defined in section 152(c) of the Internal Revenue Code of 1986) under a qualified health benefits plan (or current employment-based health plan) is equal to—

(A) in case of individual coverage, not less than 72.5 percent of the applicable premium (as defined in section 4980B(f)(4) of such Code, subject to paragraph (2)) of the lowest cost plan offered by the employer that is a qualified health benefits plan (or is such current employment-based health plan); and

(B) in the case of family coverage which includes coverage of such spouse and children, not less 65 percent of such applicable premium of such lowest cost plan.

(2) APPLICABLE PREMIUM FOR EXCHANGE COVERAGE.—In this subtitle, the amount of the applicable premium of the lowest cost plan with respect to coverage of an employee under an Exchange-participating health benefits plan is the reference premium amount under section 243(c) for individual coverage (or,

if elected, family coverage) for the premium rating area in which the individual or family resides.

(3) MINIMUM EMPLOYER CONTRIBUTION FOR EMPLOYEES OTHER THAN FULL-TIME EMPLOYEES.—In the case of coverage for an employee who is not a full-time employee, the amount of the minimum employer contribution under this subsection shall be a proportion (as determined in accordance with rules of the Health Choices Commissioner, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury, as applicable) of the minimum employer contribution under this subsection with respect to a full-time employee that reflects the proportion of—

(A) the average weekly hours of employment of the employee by the employer, to

(B) the minimum weekly hours specified by the Commissioner for an employee to be a full-time employee.

(4) SALARY REDUCTIONS NOT TREATED AS EMPLOYER CONTRIBUTIONS.—For purposes of this section, any contribution on behalf of an employee with respect to which there is a corresponding reduction in the compensation of the employee shall not be treated as an amount paid by the employer.

(c) AUTOMATIC ENROLLMENT FOR EMPLOYER SPONSORED HEALTH BENEFITS.—

(1) IN GENERAL.—The requirement of this subsection with respect to an employer and an employee is that the employer automatically enroll suchs employee into the employment-based health benefits plan for individual coverage under the plan option with the lowest applicable employee premium.

(2) OPT-OUT.—In no case may an employer automatically enroll an employee in a plan under paragraph (1) if such employee makes an affirmative election to opt out of such plan or to elect coverage under an employment-based health benefits plan offered by such employer. An employer shall provide an employee with a 30-day period to make such an affirmative election before the employer may automatically enroll the employee in such a plan.

(3) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—Each employer described in paragraph (1) who automatically enrolls an employee into a plan as described in such paragraph shall provide the employees, within a reasonable period before the beginning of each plan year (or, in the case of new employees, within a reasonable period before the end of the enrollment period for such a new employee), written notice of the employees' rights and obligations relating to the automatic enrollment requirement under such paragraph. Such notice must be comprehensive and understood by the average employee to whom the automatic enrollment requirement applies.

(B) INCLUSION OF SPECIFIC INFORMATION.—The written notice under subparagraph (A) must explain an employee's right to opt out of being automatically enrolled in a plan and in the case that more than one level of benefits or employee premium level is offered by the employer involved, the notice must explain which level of benefits and employee premium level the employee will be automatically enrolled in the absence of an affirmative election by the employee.

SEC. 313. EMPLOYER CONTRIBUTIONS IN LIEU OF COVERAGE.

(a) IN GENERAL.—A contribution is made in accordance with this section with respect to an employee if such contribution is equal to an amount equal to 8 percent of the average wages paid by the employer during the period of enrollment (determined by taking into account all employees of the employer and in such manner as the Commissioner provides, including rules providing for the appropriate aggregation of related employers). Any such contribution—

(1) shall be paid to the Health Choices Commissioner for deposit into the Health Insurance Exchange Trust Fund, and

(2) shall not be applied against the premium of the employee under the Exchange-participating health benefits plan in which the employee is enrolled.

(b) SPECIAL RULES FOR SMALL EMPLOYERS.—

(1) IN GENERAL.—In the case of any employer who is a small employer for any calendar year, subsection (a) shall be applied by substituting the applicable percentage determined in accordance with the following table for "8 percent":

If the annual payroll of such employer for the preceding calendar year:	The applicable percentage is:
Does not exceed $250,000	0 percent
Exceeds $250,000, but does not exceed $300,000	2 percent
Exceeds $300,000, but does not exceed $350,000	4 percent
Exceeds $350,000, but does not exceed $400,000	6 percent

(2) SMALL EMPLOYER.—For purposes of this subsection, the term "small employer" means any employer for any calendar year if the annual payroll of such employer for the preceding calendar year does not exceed $400,000.

(3) ANNUAL PAYROLL.—For purposes of this paragraph, the term "annual payroll" means, with respect to any employer for any calendar year, the aggregate wages paid by the employer during such calendar year.

(4) AGGREGATION RULES.—Related employers and predecessors shall be treated as a single employer for purposes of this subsection.

SEC. 314. AUTHORITY RELATED TO IMPROPER STEERING.

The Health Choices Commissioner (in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury) shall have authority to set standards for determining whether employers or insurers are undertaking any actions to affect the risk pool within the Health Insurance Exchange by inducing individuals to decline coverage under a qualified health benefits plan (or current employment-based health plan (within the meaning of section 102(b)) offered by the employer and instead to enroll in an Exchange-participating health benefits plan. An employer violating such standards shall be treated as not meeting the requirements of this section.

PART 2—SATISFACTION OF HEALTH COVERAGE PARTICIPATION REQUIREMENTS

SEC. 321. SATISFACTION OF HEALTH COVERAGE PARTICIPATION REQUIREMENTS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new part:

"PART 8—NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS

"SEC. 801. ELECTION OF EMPLOYER TO BE SUBJECT TO NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS.

"(a) IN GENERAL.—An employer may make an election with the Secretary to be subject to the health coverage participation requirements.

"(b) TIME AND MANNER.—An election under subsection (a) may be made at such time and in such form and manner as the Secretary may prescribe.

"SEC. 802. TREATMENT OF COVERAGE RESULTING FROM ELECTION.

"(a) IN GENERAL.—If an employer makes an election to the Secretary under section 801—

"(1) such election shall be treated as the establishment and maintenance of a group health plan (as defined in section 733(a)) for purposes of this title, subject to section 151 of the America's Affordable Health Choices Act of 2009, and

"(2) the health coverage participation requirements shall be deemed to be included as terms and conditions of such plan.

"(b) PERIODIC INVESTIGATIONS TO DISCOVER NONCOMPLIANCE.—The Secretary shall regularly audit a representative sampling of employers and group health plans and conduct investigations and other activities under section 504 with respect to such sampling of plans so as to discover noncompliance with the health coverage participation requirements in connection with such plans. The Secretary shall communicate findings of noncompliance made by the Secretary under this subsection to the Secretary of the Treasury and the Health Choices Commissioner. The Secretary shall take such timely enforcement action as appropriate to achieve compliance.

"(c) RECORDKEEPING.—To facilitate the audits described in subsection (b), the Secretary shall promulgate recordkeeping requirements for employers to account for both employees of the employer and individuals whom the employer has not treated as employees of the employer but with whom the employer, in the course of the trade or business in which the employer is engaged, has engaged for the performance of labor or services.

"SEC. 803. HEALTH COVERAGE PARTICIPATION REQUIREMENTS.

"For purposes of this part, the term 'health coverage participation requirements' means the requirements of part 1 of subtitle B of title III of division A of America's Affordable Health Choices Act of 2009 (as in effect on the date of the enactment of such Act).

"SEC. 804. RULES FOR APPLYING REQUIREMENTS.

"(a) AFFILIATED GROUPS.—In the case of any employer which is part of a group of employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986, the election under section 801 shall be made by such employer as the Secretary may provide. Any such election, once made, shall apply to all members of such group.

"(b) SEPARATE ELECTIONS.—Under regulations prescribed by the Secretary, separate elections may be made under section 801 with respect to—

"(1) separate lines of business, and

"(2) full-time employees and employees who are not full-time employees.

"SEC. 805. TERMINATION OF ELECTION IN CASES OF SUBSTANTIAL NONCOMPLIANCE.

"The Secretary may terminate the election of any employer under section 801 if the Secretary (in coordination with the Health Choices Commissioner) determines that such employer is in substantial noncompliance with the health coverage participation requirements and shall refer any such determination to the Secretary of the Treasury as appropriate.

"SEC. 806. REGULATIONS.

"The Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this part, in accordance with section 324(a) of the America's Affordable Health Choices Act of 2009. The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this part.".

(b) ENFORCEMENT OF HEALTH COVERAGE PARTICIPATION REQUIREMENTS.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6), by striking "paragraph" and all that follows through "subsection (c)" and inserting "paragraph (2), (4), (5), (6), (7), (8), (9), (10), or (11) of subsection (c)"; and

(2) in subsection (c), by redesignating the second paragraph (10) as paragraph (12) and by inserting after the first paragraph (10) the following new paragraph:

"(11) HEALTH COVERAGE PARTICIPATION REQUIREMENTS.—

"(A) CIVIL PENALTIES.—In the case of any employer who fails (during any period with respect to which an election under section 801(a) is in effect) to satisfy the health coverage participation requirements with respect to any employee, the Secretary may assess a civil penalty against the employer of $100 for each day in the period beginning on the date such failure first occurs and ending on the date such failure is corrected.

"(B) HEALTH COVERAGE PARTICIPATION REQUIREMENTS.—For purposes of this paragraph, the term 'health coverage participation requirements' has the meaning provided in section 803.

"(C) LIMITATIONS ON AMOUNT OF PENALTY.—

"(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be assessed under subparagraph (A) with respect to any failure during any period for which it is established to the satisfaction of the Secretary that the employer did not know, or exercising reasonable diligence would not have known, that such failure existed.

"(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No penalty shall be assessed under subparagraph (A) with respect to any failure if—

"(I) such failure was due to reasonable cause and not to willful neglect, and

"(II) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

"(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty assessed under subparagraph (A) for failures during any 1-year period shall not exceed the amount equal to the lesser of—

"(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding 1-year period for group health plans, or

"(II) $500,000.

"(D) ADVANCE NOTIFICATION OF FAILURE PRIOR TO ASSESSMENT.—Before a reasonable time prior to the assessment of any penalty under this paragraph with respect to any failure by an employer, the Secretary shall inform the employer in writing of such failure and shall provide the employer

information regarding efforts and procedures which may be undertaken by the employer to correct such failure.

"(E) COORDINATION WITH EXCISE TAX.—Under regulations prescribed in accordance with section 324 of the America's Affordable Health Choices Act of 2009, the Secretary and the Secretary of the Treasury shall coordinate the assessment of penalties under this section in connection with failures to satisfy health coverage participation requirements with the imposition of excise taxes on such failures under section 4980H(b) of the Internal Revenue Code of 1986 so as to avoid duplication of penalties with respect to such failures.

"(F) DEPOSIT OF PENALTY COLLECTED.—Any amount of penalty collected under this paragraph shall be deposited as miscellaneous receipts in the Treasury of the United States.".

(c) CLERICAL AMENDMENTS.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 734 the following new items:

"PART 8—NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS

"Sec. 801. Election of employer to be subject to national health coverage participation requirements.
"Sec. 802. Treatment of coverage resulting from election.
"Sec. 803. Health coverage participation requirements.
"Sec. 804. Rules for applying requirements.
"Sec. 805. Termination of election in cases of substantial noncompliance.
"Sec. 806. Regulations.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after December 31, 2012.

[For sections 322 and 323, see text of bill as introduced on June 14, 2009.]

SEC. 324. ADDITIONAL RULES RELATING TO HEALTH COVERAGE PARTICIPATION REQUIREMENTS.

(a) ASSURING COORDINATION.—The officers consisting of the Secretary of Labor, the Secretary of the Treasury, the Secretary of Health and Human Services, and the Health Choices Commissioner shall ensure, through the execution of an interagency memorandum of understanding among such officers, that—

(1) regulations, rulings, and interpretations issued by such officers relating to the same matter over which two or more of such officers have responsibility under subpart B of part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, section 4980H of the Internal Revenue Code of 1986, and section 2793 of the Public Health Service Act are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such officers in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

(b) MULTIEMPLOYER PLANS.—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), the regulations prescribed in accordance with subsection (a) by the officers referred to in subsection (a) shall provide for the application of the health coverage participation requirements to the plan sponsor and contributing sponsors of such plan.

DIVISION B—MEDICARE AND MEDICAID IMPROVEMENTS

[For division B, see text of bill as introduced on July 14, 2009.**]**

DIVISION C—PUBLIC HEALTH AND WORKFORCE DEVELOPMENT

SEC. 2001. TABLE OF CONTENTS; REFERENCES.

(a) TABLE OF CONTENTS.—The table of contents of this division is as follows:

Sec. 2001. Table of contents; references.
[For section 2002, see text of introduced bill.]

[FOR TEXT OF TITLES I THROUGH IV, SEE TEXT OF INTRODUCED BILL.]

TITLE V—OTHER PROVISIONS

[For Subtitles A, B, and C, See Text of Introduced Bill.]

Subtitle D—Grants for Comprehensive Programs to Provide Education to Nurses and Create a Pipeline to Nursing

[For Subtitle E, See Text of Introduced Bill.]

Sec. 2531. Establishment of grant program.

Subtitle F—Standards for Accessibility to Medical Equipment for Individuals With Disabilities.

Sec. 2541. Access for individuals with disabilities.

Subtitle G—Other Grant Programs

Sec. 2551. Reducing student-to-school nurse ratios.
Sec. 2552. Wellness program grants.
Sec. 2553. Health professions training for diversity programs.

Subtitle H—Long-term Care and Family Caregiver Support

Sec. 2561. Long-term care and family caregiver support.

Subtitle I—Online Resources

Sec. 2571. Web site on health care labor market and related educational and training opportunities.
Sec. 2572. Online health workforce training programs.

(b) REFERENCES.—Except as otherwise specified, whenever in this division an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

[For section 2002 and titles I through IV of division C, see text of bill as introduced on July 14, 2009.]

TITLE V—OTHER PROVISIONS

[For subtitles A through C of title V of division C, see text of bill as introduced on July 14, 2009.]

Subtitle D—Grants for Comprehensive Programs to Provide Education to Nurses and Create a Pipeline to Nursing

SEC. 2531. ESTABLISHMENT OF GRANT PROGRAM.

(a) PURPOSES.—It is the purpose of this section to authorize grants to—

(1) address the projected shortage of nurses by funding comprehensive programs to create a career ladder to nursing (including Certified Nurse Assistants, Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses) for incumbent ancillary health care workers;

(2) increase the capacity for educating nurses by increasing both nurse faculty and clinical opportunities through collaborative programs between staff nurse organizations, health care providers, and accredited schools of nursing; and

(3) provide training programs through education and training organizations jointly administered by health care providers and health care labor organizations or other organizations representing staff nurses and frontline health care workers, working in collaboration with accredited schools of nursing and academic institutions.

(b) GRANTS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Labor (referred to in this section as the "Secretary") shall establish a partnership grant program to award grants to eligible entities to carry out comprehensive programs to provide education to nurses and create a pipeline to nursing for incumbent ancillary health care workers who wish to advance their careers, and to otherwise carry out the purposes of this section.

(c) ELIGIBILITY.—To be eligible for a grant under this section, an entity shall be—

(1) a health care entity that is jointly administered by a health care employer and a labor union representing the health care employees of the employer and

that carries out activities using labor management training funds as provided for under section 302(c)(6) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(6));

(2) an entity that operates a training program that is jointly administered by—

(A) one or more health care providers or facilities, or a trade association of health care providers; and

(B) one or more organizations which represent the interests of direct care health care workers or staff nurses and in which the direct care health care workers or staff nurses have direct input as to the leadership of the organization;

(3) a State training partnership program that consists of nonprofit organizations that include equal participation from industry, including public or private employers, and labor organizations including joint labor-management training programs, and which may include representatives from local governments, worker investment agency one-stop career centers, community-based organizations, community colleges, and accredited schools of nursing; or

(4) a school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

(d) ADDITIONAL REQUIREMENTS FOR HEALTH CARE EMPLOYER DESCRIBED IN SUBSECTION (c).—To be eligible for a grant under this section, a health care employer described in subsection (c) shall demonstrate that it—

(1) has an established program within their facility to encourage the retention of existing nurses;

(2) provides wages and benefits to its nurses that are competitive for its market or that have been collectively bargained with a labor organization; and

(3) supports programs funded under this section through 1 or more of the following:

(A) The provision of paid leave time and continued health coverage to incumbent health care workers to allow their participation in nursing career ladder programs, including certified nurse assistants, licensed practical nurses, licensed vocational nurses, and registered nurses.

(B) Contributions to a joint labor-management training fund which administers the program involved.

(C) The provision of paid release time, incentive compensation, or continued health coverage to staff nurses who desire to work full- or part-time in a faculty position.

(D) The provision of paid release time for staff nurses to enable them to obtain a bachelor of science in nursing degree, other advanced nursing degrees, specialty training, or certification program.

(E) The payment of tuition assistance which is managed by a joint labor-management training fund or other jointly administered program.

(e) OTHER REQUIREMENTS.—

(1) MATCHING REQUIREMENT.—

(A) IN GENERAL.—The Secretary may not make a grant under this section unless the applicant involved agrees, with respect to the costs to be incurred by the applicant in carrying out the program under the grant, to make available non-Federal contributions (in cash or in kind under subparagraph (B)) toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities, or may be provided through the cash equivalent of paid release time provided to incumbent worker students.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal contributions required in subparagraph (A) may be in cash or in kind (including paid release time), fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(2) REQUIRED COLLABORATION.—Entities carrying out or overseeing programs carried out with assistance provided under this section shall demonstrate collaboration with accredited schools of nursing which may include community colleges and other academic institutions providing associate, bachelor's, or advanced nursing degree programs or specialty training or certification programs.

(f) USE OF FUNDS.—Amounts awarded to an entity under a grant under this section shall be used for the following:

(1) To carry out programs that provide education and training to establish nursing career ladders to educate incumbent health care workers to become nurses (including certified nurse assistants, licensed practical nurses, licensed vocational nurses, and registered nurses). Such programs shall include one or more of the following:

(A) Preparing incumbent workers to return to the classroom through English-as-a-second language education, GED education, pre-college counseling, college preparation classes, and support with entry level college classes that are a prerequisite to nursing.

(B) Providing tuition assistance with preference for dedicated cohort classes in community colleges, universities, accredited schools of nursing with supportive services including tutoring and counseling.

(C) Providing assistance in preparing for and meeting all nursing licensure tests and requirements.

(D) Carrying out orientation and mentorship programs that assist newly graduated nurses in adjusting to working at the bedside to ensure their retention postgraduation, and ongoing programs to support nurse retention.

(E) Providing stipends for release time and continued health care coverage to enable incumbent health care workers to participate in these programs.

(2) To carry out programs that assist nurses in obtaining advanced degrees and completing specialty training or certification programs and to establish incentives for nurses to assume nurse faculty positions on a part-time or full-time basis. Such programs shall include one or more of the following:

(A) Increasing the pool of nurses with advanced degrees who are interested in teaching by funding programs that enable incumbent nurses to return to school.

(B) Establishing incentives for advanced degree bedside nurses who wish to teach in nursing programs so they can obtain a leave from their bedside position to assume a full- or part-time position as adjunct or full-time faculty without the loss of salary or benefits.

(C) Collaboration with accredited schools of nursing which may include community colleges and other academic institutions providing associate, bachelor's, or advanced nursing degree programs, or specialty training or certification programs, for nurses to carry out innovative nursing programs which meet the needs of bedside nursing and health care providers.

(g) PREFERENCE.—In awarding grants under this section the Secretary shall give preference to programs that—

(1) provide for improving nurse retention;

(2) provide for improving the diversity of the new nurse graduates to reflect changes in the demographics of the patient population;

(3) provide for improving the quality of nursing education to improve patient care and safety;

(4) have demonstrated success in upgrading incumbent health care workers to become nurses or which have established effective programs or pilots to increase nurse faculty; or

(5) are modeled after or affiliated with such programs described in paragraph (4).

(h) EVALUATION.—

(1) PROGRAM EVALUATIONS.—An entity that receives a grant under this section shall annually evaluate, and submit to the Secretary a report on, the activities carried out under the grant and the outcomes of such activities. Such outcomes may include—

(A) an increased number of incumbent workers entering an accredited school of nursing and in the pipeline for nursing programs;

(B) an increasing number of graduating nurses and improved nurse graduation and licensure rates;

(C) improved nurse retention;

(D) an increase in the number of staff nurses at the health care facility involved;

(E) an increase in the number of nurses with advanced degrees in nursing;

(F) an increase in the number of nurse faculty;

(G) improved measures of patient quality (which may include staffing ratios of nurses, patient satisfaction rates, patient safety measures); and

(H) an increase in the diversity of new nurse graduates relative to the patient population.

(2) GENERAL REPORT.—Not later than 2 years after the date of the enactment of this Act, and annually thereafter, the Secretary of Labor shall, using data and information from the reports received under paragraph (1), submit to the Congress a report concerning the overall effectiveness of the grant program carried out under this section.

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

[For subtitle E of title V of division C, see text of bill as introduced on July 14, 2009.]

Subtitle F—Standards for Accessibility to Medical Equipment for Individuals With Disabilities.

SEC. 2541. ACCESS FOR INDIVIDUALS WITH DISABILITIES.

Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) is amended by adding at the end of the following:

"SEC. 510. STANDARDS FOR ACCESSIBILITY OF MEDICAL DIAGNOSTIC EQUIPMENT.

"(a) STANDARDS.—Not later than 9 months after the date of enactment of the America's Affordable Health Choices Act of 2009, the Architectural and Transportation Barriers Compliance Board shall issue guidelines setting forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physician's offices, clinics, emergency rooms, hospitals, and other medical settings. The guidelines shall ensure that such equipment is accessible to, and usable by, individuals with disabilities, including provisions to ensure independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.

"(b) MEDICAL DIAGNOSTIC EQUIPMENT COVERED.—The guidelines issued under subsection (a) for medical diagnostic equipment shall apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other equipment commonly used for diagnostic or examination purposes by health professionals.

"(c) INTERIM STANDARDS.—Until the date on which final regulations are issued under subsection (d), purchases of examination tables, weight scales, and mammography equipment and used in (or in conjunction with) medical settings described in subsection (a), shall adhere to the following interim accessibility requirements:

"(1) Examination tables shall be height-adjustable between a range of at least 18 inches to 37 inches.

"(2) Weight scales shall be capable of weighing individuals who remain seated in a wheelchair or other personal mobility aid.

"(3) Mammography machines and equipment shall be capable of being used by individuals in a standing, seated, or recumbent position, including individuals who remain seated in a wheelchair or other personal mobility aid.

"(d) REGULATIONS.—Not later than 6 months after the date of the issuance of the guidelines under subsection (a), each appropriate Federal agency authorized to promulgate regulations under this Act or under the Americans with Disabilities Act shall—

"(1) prescribe regulations in an accessible format as necessary to carry out the provisions of such Act and section 504 of this Act that include accessibility standards that are consistent with the guidelines issued under subsection (a); and

"(2) ensure that health care providers and health care plans covered by the America's Affordable Health Choices Act of 2009 meet the requirements of the Americans with Disabilities Act and section 504, including provisions ensuring that individuals with disabilities receive equal access to all aspects of the health care delivery system.

"(e) REVIEW AND AMEND.—The Architectural and Transportation Barriers Compliance Board shall periodically review and, as appropriate, amend the guidelines as prescribed under subsection (a). Not later than 6 months after the date of the issuance of such revised guidelines, revised regulations consistent with such guidelines shall be promulgated in an accessible format by the appropriate Federal agencies described in subsection (d).".

Subtitle G—Other Grant Programs

SEC. 2551. REDUCING STUDENT-TO-SCHOOL NURSE RATIOS.

(a) DEMONSTRATION GRANTS.—

(1) IN GENERAL.—The Secretary of Education, in consultation with the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention, may make demonstration grants to eligible local education agencies for the purpose of reducing the student-to-school nurse ratio in public elementary and secondary schools.

(2) SPECIAL CONSIDERATION.—In awarding grants under this section, the Secretary of Education shall give special consideration to applications submitted by high-need local educational agencies that demonstrate the greatest need for new or additional nursing services among children in the public elementary and secondary schools served by the agency, in part by providing information on current ratios of students to school nurses.

(3) MATCHING FUNDS.—The Secretary of Education may require recipients of grants under this subsection to provide matching funds from non-Federal sources, and shall permit the recipients to match funds in whole or in part with in-kind contributions.

(b) REPORT.—Not later than 24 months after the date on which assistance is first made available to local educational agencies under this section, the Secretary of Education shall submit to the Congress a report on the results of the demonstration grant program carried out under this section, including an evaluation of the effectiveness of the program in improving the student-to-school nurse ratios described in subsection (a) and an evaluation of the impact of any resulting enhanced health of students on learning.

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

(1) The terms "elementary school", "local educational agency", and "secondary school" have the meanings given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) The term "eligible local educational agency" means a local educational agency in which the student-to-school nurse ratio in the public elementary and secondary schools served by the agency is 750 or more students to every school nurse.

(3) The term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line.

(4) The term "nurse" means a licensed nurse, as defined under State law.

(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.

SEC. 2552. WELLNESS PROGRAM GRANTS.

(a) ALLOWANCE OF GRANT.—

(1) IN GENERAL.—For purposes of this section, the Secretary of Labor shall award wellness grants as determined under this section. Wellness program grants shall be awarded to qualified employers for any plan year in an amount equal to 50 percent of the costs paid or incurred by the employer in connection with a qualified wellness program during the plan year. For purposes of the preceding sentence, in the case of any qualified wellness program offered as part of an employment-based health plan, only costs attributable to the qualified wellness program and not to the health plan, or health insurance coverage offered in connection with such a plan, may be taken into account.

(2) LIMITATION.—The amount of the grant allowed under paragraph (1) for any plan year shall not exceed the sum of—

(A) the product of $200 and the number of employees of the employer not in excess of 200 employees; plus

(B) the product of $100 and the number of employees of the employer in excess of 200 employees.

The wellness grants awarded to an employer under this section shall be for up to 3 years and shall not exceed $50,000.

(b) QUALIFIED WELLNESS PROGRAM.—For purposes of this section:

(1) QUALIFIED WELLNESS PROGRAM.—The term "qualified wellness program" means a program that —

(A) includes any 3 wellness components described in subsection (c); and

(B) is be certified by the Secretary of Labor, in coordination with the Health Choices Commissioner and the Director of the Center for Disease Control and Prevention, as a qualified wellness program under this section.

(2) PROGRAMS MUST BE CONSISTENT WITH RESEARCH AND BEST PRACTICES.—

(A) IN GENERAL.—The Secretary of Labor shall not certify a program as a qualified wellness program unless the program—

(i) is newly established or in existence on the date of enactment of this Act but not yet meeting the requirements of this section;

(ii) is consistent with evidenced-based researched and best practices, as identified by persons with expertise in employer health promotion and wellness programs;

(iii) includes multiple, evidenced-based strategies which are based on the existing and emerging research and careful scientific reviews, including the Guide to Community Preventative Services, the Guide to Clinical Preventative Services, and the National Registry for Effective Programs, and

(iv) includes strategies which focus on prevention and support for employee populations at risk of poor health outcomes.

(B) PERIODIC UPDATING AND REVIEW.—The Secretary of Labor, in consultation with other appropriate agencies shall establish procedures for periodic review, evaluation, and update of the programs under this subsection.

(3) HEALTH LITERACY/ACCESSIBILITY.—The Secretary of Labor shall, as part of the certification process: —

(A) ensure that employers make the programs culturally competent. physically and programmatically accessible (including for individuals with disabilities), and appropriate to the health literacy needs of the employees covered by the programs;

(B) require a health literacy component to provide special assistance and materials to employees with low literacy skills, limited English and from under-served populations; and

(C) require the Secretary of Labor, in consultation with Secretary of Health and Human Services, to compile and disseminate to employer health plans info on model health literacy curricula, instructional programs, and effective intervention strategies.

(c) WELLNESS PROGRAM COMPONENTS.—For purposes of this section, the wellness program components described in this subsection are the following:

(1) HEALTH AWARENESS COMPONENT.—A health awareness component which provides for the following:

(A) HEALTH EDUCATION.—The dissemination of health information which addresses the specific needs and health risks of employees.

(B) HEALTH SCREENINGS.—The opportunity for periodic screenings for health problems and referrals for appropriate follow up measures.

(2) EMPLOYEE ENGAGEMENT COMPONENT.—An employee engagement component which provides for the active engagement of employees in worksite wellness programs through worksite assessments and program planning, onsite delivery, evaluation, and improvement efforts.

(3) BEHAVIORAL CHANGE COMPONENT.—A behavioral change component which provides for altering employee lifestyles to encourage healthy living through counseling, seminars, on-line programs, or self-help materials which provide technical assistance and problem solving skills. such component may include programs relating to—

(A) tobacco use;

(B) obesity;

(C) stress management;

(D) physical fitness;

(E) nutrition;

(F) substance abuse;

(G) depression; and

(H) mental health promotion (including anxiety).

(4) SUPPORTIVE ENVIRONMENT COMPONENT.—A supportive environment component which includes the following:

(A) ON-SITE POLICIES.—Policies and services at the worksite which promote a healthy lifestyle, including policies relating to—

(i) tobacco use at the worksite;

(ii) the nutrition of food available at the worksite through cafeterias and vending options;

(iii) minimizing stress and promoting positive mental health in the workplace; and

(iv) the encouragement of physical activity before, during, and after work hours.

(d) PARTICIPATION REQUIREMENT.—No grant shall be allowed under subsection (a) unless the Secretary of Labor in consultation with other appropriate agencies, certifies, as a part of any certification described in subsection (b), that each wellness program component of the qualified wellness program—

(1) shall be available to all employees of the employer;

(2) shall not mandate participation by employees; and

(3) shall not require participation by individual employees as a condition to obtain a premium discount, rebate, deductible reduction, or other financial reward.

(e) PRIVACY PROTECTIONS.—Any employee health information collected through participation in an employer wellness program shall be confidential and available only to appropriately trained health professions as defined by the Secretary of Labor. Employers or employees of the employer sponsoring a wellness program shall have no access to employee health data. All entities offering employer-sponsored wellness programs shall be considered "business associates" pursuant to the American Reinvestment and Recovery Act and must comply with privacy protections restricting the release of personal medical information.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1) QUALIFIED EMPLOYER.—The term "qualified employer" means an employer that offers a qualified health benefits plan to every employee (including each employee required to be offered coverage under a qualified health benefits plan under subtitle B of title III of division A), and meets the health coverage participation requirements as defined in section 312.

(2) CERTAIN COSTS NOT INCLUDED.—Costs paid or incurred by an employer for food or health insurance shall not be taken into account under subsection (a).

(g) OUTREACH.—

(1) IN GENERAL.—The Secretary of the Labor, in conjunction with other appropriate agencies and members of the business community, shall institute an outreach program to inform businesses about the availability of the wellness program grant as well as to educate businesses on how to develop programs according to recognized and promising practices and on how to measure the success of implemented programs.

(h) EFFECTIVE DATE.—This section shall take effect on January 1, 2013.

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

SEC. 2553. HEALTH PROFESSIONS TRAINING FOR DIVERSITY PROGRAMS.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2916) is amended by adding at the end the following:

"(f) HEALTH PROFESSIONS TRAINING FOR DIVERSITY PROGRAM.—

"(1) IN GENERAL.—The Secretary shall make available 20 grants of no more than $1,000,000 annually to nonprofit organizations for the purposes of providing workforce development training program for those who are currently employed in the health care workforce.

"(2) ELIGIBILITY.—For the purposes of providing assistance and services under the program established in this subsection, grants are to be awarded to Area Health Education Centers or similar nonprofit organizations involved in the development and implementation of health care workforce development programs and that—

"(A) have a formal affiliation with a hospital or community health center, and institution of higher education as defined by section 101 of the Higher Education Act of 1965;

"(B) have a history of providing program services to minority populations; and

"(C) provide workforce development programs to low-income persons, veterans, or urban and rural underserved communities.".

Subtitle H—Long-term Care and Family Caregiver Support

SEC. 2561. LONG-TERM CARE AND FAMILY CAREGIVER SUPPORT.

(a) AMENDMENTS TO THE OLDER AMERICANS ACT OF 1965.—

(1) PROMOTION OF DIRECT CARE WORKFORCE.—Section 202(b)(1) of the Older Americans Act of 1965 (42 U.S.C. 3012(b)(1)) is amended by inserting before the semicolon the following: ", and, in carrying out the purposes of this paragraph, shall make recommendations to other Federal entities regarding appropriate and effective means of identifying, promoting, and implementing investments in the direct care workforce necessary to meet the growing demand for long-term health services and supports and assisting States in developing a comprehensive state workforce development plans with respect to such workforce including efforts to systematically assess, track, and report on workforce adequacy and capacity".

(2) PERSONAL CARE ATTENDANT WORKFORCE ADVISORY PANEL.—Section 202 of such Act (42 U.S.C. 3012) is amended by adding at the end the following new subsection:

"(g)(1) The Assistant Secretary shall establish a Personal Care Attendant Workforce Advisory Panel and pilot program to improve working conditions and training for long term care workers, including home health aides, certified nurse aides, and personal care attendants.

"(2) The Panel shall include representatives from—

"(A) relevant health care agencies and facilities (including personal or home care agencies, home health care agencies, nursing homes and residential care facilities);

"(B) the disability community;

"(C) the nursing community;

"(D) direct care workers (which may include unions and national organizations);

"(E) older individuals and family caregivers;

"(F) State and federal health care entities; and

"(G) experts in workforce development and adult learning.

"(3) Within one year after the establishment of the Panel, the Panel shall submit a report to the Assistant Secretary articulating core competencies for eligible personal or home care aides necessary to successfully provide long-term services and supports to eligible consumers, as well as recommended training curricula and resources.

"(4) Within 180 days after receipt by the Assistant Secretary of the report under paragraph (3), the Assistant Secretary shall establish a 3-year demonstration program in 4 states to pilot and evaluate the effectiveness of the competencies articulated by the Panel and the training curricula and training methods recommended by the Panel.

"(5) Not later than 1 year after the completion of the demonstration program under paragraph (4), the Assistant Secretary shall submit to each House of the Congress a report containing the results of the evaluations by the Assistant Secretary pursuant to paragraph (4), together with such recommendations for legislation or administrative action as the Assistant Secretary determines appropriate.".

(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE FAMILY CAREGIVER SUPPORT PROGRAM UNDER THE OLDER AMERICANS ACT OF 1965.—Section 303(e)(2) of the Older Americans Act of 1965 (42 U.S.C. 3023(e)(2)) is amended by striking "$173,000,000" and all that follows through "2011", and inserting "and $250,000,000 for each of the fiscal years 2010, 2011, and 2012".

(c) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—There is authorized to be appropriated $10,000,000 for each of the fiscal years 2010, 2011, and 2012 for the operation of the National Clearinghouse for Long-Term Care Information established by the Secretary of Health and Human Services under section 6021(d) of Public Law 109-171.

Subtitle I—Online Resources

SEC. 2571. WEB SITE ON HEALTH CARE LABOR MARKET AND RELATED EDUCATIONAL AND TRAINING OPPORTUNITIES.

(a) IN GENERAL.—The Secretary of Labor, in consultation with the National Center for Health Workforce Analysis, shall establish and maintain a Web site to serve as a comprehensive source of information, searchable by workforce region, on the health care labor market and related educational and training opportunities.

(b) CONTENTS.—The Web site maintained under this section shall include the following:

(1) Information on the types of jobs that are currently or are projected to be in high demand in the health care field, including—

(A) salary information; and

(B) training requirements, such as requirements for educational credentials, licensure, or certification.

(2) Information on training and educational opportunities within each region for the type jobs described in paragraph (1), including by—

(A) type of provider or program (such as public, private nonprofit, or private for-profit);

(B) duration;

(C) cost (such as tuition, fees, books, laboratory expenses, and other mandatory costs);

(D) performance outcomes (such as graduation rates, job placement, average salary, job retention, and wage progression);

(E) Federal financial aid participation;

(F) average graduate loan debt;

(G) student loan default rates;

(H) average institutional grant aid provided;

(I) Federal and State accreditation information; and

(J) other information determined by the Secretary.

(3) A mechanism for searching and comparing training and educational options for specific health care occupations to facilitate informed career and education choices.

(4) Financial aid information, including with respect to loan forgiveness, loan cancellation, loan repayment, stipends, scholarships, and grants or other assistance authorized by this Act or other Federal or State programs.

(c) PUBLIC ACCESSIBILITY.—The Web site maintained under this section shall—

(1) be publicly accessible;

(2) be user friendly and convey information in a manner that is easily understandable; and

(3) be in English and the second most prevalent language spoken based on the latest Census information.

SEC. 2572. ONLINE HEALTH WORKFORCE TRAINING PROGRAMS.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2916) (as amended by section 2553) is further amended by adding at the end the following:

"(g) ONLINE HEALTH WORKFORCE TRAINING PROGRAM.—

"(1) GRANT PROGRAM.—

"(A) IN GENERAL.—The Secretary shall award National Health Workforce Online Training Grants on a competitive basis to eligible entities to enable such entities to carry out training for individuals to attain or advance in health care occupations. An entity may leverage such grant with other Federal, State, local, and private resources, in order to expand the participation of businesses, employees, and individuals in such training programs.

"(B) ELIGIBILITY.—In order to receive a grant under the program established under this paragraph—

"(i) an entity shall be an educational institution, community-based organization, non-profit organization, workforce investment board, or local or county government; and

"(ii) an entity shall provide online workforce training for individuals seeking to attain or advance in health care occupations, including nursing, nursing assistants, dentistry, pharmacy, health care management and administration, public health, health information systems analysis, medical assistants, and other health care practitioner and support occupations.

"(C) PRIORITY.—Priority in awarding grants under this paragraph shall be given to entities that—

"(i) have demonstrated experience in implementing and operating online worker skills training and education programs;

"(ii) have demonstrated experience coordinating activities, where appropriate, with the workforce investment system; and

"(iii) conduct training for occupations with national or local shortages.

"(D) DATA COLLECTION.—Grantees under this paragraph shall collect and report information on—

"(i) the number of participants;

"(ii) the services received by the participants;

"(iii) program completion rates;

"(iv) factors determined as significantly interfering with program participation or completion;

"(v) the rate of job placement; and

"(vi) other information as determined as needed by the Secretary.

"(E) OUTREACH.—Grantees under this paragraph shall conduct outreach activities to disseminate information about their program and results to workforce investment boards, local governments, educational institutions, and other workforce training organizations.

"(F) PERFORMANCE LEVELS.—The Secretary shall establish indicators of performance that will be used to evaluate the performance of grantees under this paragraph in carrying out the activities described in this paragraph. The Secretary shall negotiate and reach agreement with each grantee regarding the levels of performance expected to be achieved by the grantee on the indicators of performance.

"(G) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection $50,000,000 for fiscal years 2011 through 2020.

"(2) ONLINE HEALTH PROFESSIONS TRAINING PROGRAM CLEARINGHOUSE.—

"(A) DESCRIPTION OF GRANT.—The Secretary shall award one grant to an eligible postsecondary educational institution to provide the services described in this paragraph.

"(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph, a postsecondary educational institution shall—

"(i) have demonstrated the ability to disseminate research on best practices for implementing workforce investment programs; and

"(ii) be a national leader in producing cutting-edge research on technology related to workforce investment systems under subtitle B.

"(C) SERVICES.—The postsecondary educational institution that receives a grant under this paragraph shall use such grant—

"(i) to provide technical assistance to entities that receive grants under paragraph (1);

"(ii) to collect and nationally disseminate the data gathered by entities that receive grants under paragraph (1); and

"(iii) to disseminate the best practices identified by the National Health Workforce Online Training Grant Program to other workforce training organizations.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection $1,000,000 for fiscal years 2011 through 2020.".

I. PURPOSE

The U.S. health care system is on an unsustainable course. Between 1999 and 2008, health insurance premiums more than doubled as wages largely stagnated.[1] Over the past two decades, the cost of the average family health insurance policy has steadily drained larger and larger portions of families' income. In the United States, at least 47 million individuals are uninsured and millions more are underinsured.[2] Even having insurance does not guarantee health care security, as families are forced to fight insurance companies that regularly deny coverage or delay treatment. In more than half of the medical bankruptcies filed, the household was insured.[3] Rising health care costs have had a negative impact on business, especially small employers.[4] Over just the last 15 years, the percentage of small businesses offering health insurance

[1] Jacob Hacker, Testimony before the Committee on Education and Labor Committee, "The Tri-Committee Draft for Health Care Reform," (hereinafter Hacker)(Jun. 23, 2009) at 2.

[2] Alliance for Health Care Reform, "Health Care Coverage in America: Understanding the Issues and Proposed Solutions." (Mar. 2008).

[3] Id.

[4] U.S. Department of Health and Human Services, "Helping the Bottom Line: Health Reform and Small Business," Prepared by Meena Seshamani, Director of Policy Analysis, Office of Health Reform, available at: *http:www.healthreform.gov/reports/helpbottomline/helpbottomline.pdf.*

dropped from 61 percent to 38 percent.[5] The number of uninsured Americans is expected to hit 61 million by 2020.[6] In no uncertain terms, the U.S. health care system is in crisis and has been for some time. Reform is needed. Inaction is not an option.

H.R. 3200, America's Affordable Health Choices Act, adopts the health care reform principles outlined by President Barack Obama. Specifically, the bill preserves and strengthens the employer-based health care system, includes protections for small businesses, creates a health insurance marketplace where individuals can choose between private insurance and the public health insurance option, ensures low and middle income Americans have access to affordability credits to help offset the costs of insurance and saves over $500 billion in future health outlays of Medicare and Medicaid through reforms to the system.

Together, these critical reforms are fundamental to the long-term health and security of this country.

II. Committee Action Including Legislative History and Votes in Committee

LEGISLATIVE HISTORY

For more than 70 years, Congress and Presidents have attempted to reform the nation's health care system, most recently under President Clinton in 1993–94. The election of the Democratic majority in Congress in 2006 and President Obama in 2008 have led to renewed efforts toward national health care reform. The legislative history described in this report is limited to legislative action beginning in the 110th Congress.

110TH CONGRESS (2007—2008)

HEARINGS IN THE HOUSE OF REPRESENTATIVES

Committee on Education and Labor

On March 15, 2007, the Subcommittee on Health, Employment, Labor and Pensions of the Committee of Education and Labor held a hearing entitled "Examining Innovative Approaches to Covering the Uninsured Through Employer-Provided Health Benefits." The panel included: Joan Alker, Deputy Executive Director, Center for Children and Families; Brian England, Owner, British American Auto Repair Columbia; Andrew Webber, President and Chief Executive Officer, National Business Coalition on Health; and Linda Blumberg, Ph.D., Economist and Principal Research Associate, Urban Institute.

On May 22, 2007, the Subcommittee on Health, Employment, Labor and Pensions of the Committee of Education and Labor held a hearing entitled "Health Care Reform: Recommendations to Im-

[5] National Small Business Association, "2008 NSBA Small & Mid-Sized Business Survey," Table at 14, available at: *http:www.nsba.biz/docs/2008bizsurvey.pdf.*

[6] The Commonwealth Fund Commission on a High Performance Health System, "The Path to a High Performance U.S. Health System: A 2020 Vision and the Policies to Pave the Way," Exhibit ES–2: Trend in the Number of Uninsured, 2009–2020 Under Current Law and Path Proposal, February 2009, available at: *http:www.commonwealthfund.org//media/Files/Publications/Fund%20Report/2009/Feb/The%20Path%20to%20a%20High%20Performance%20US%20Health%20System/1237*__Commission__path__high__perform__US__hlt__sys__WEB__rev__03052009.pdf.

prove Coordination of Federal and State Initiatives." The panel included: Congressman John Tierney (D–MA); Congressman Tom Price (R–GA); Congresswoman Tammy Baldwin (D–WI); Mila Kofman, J.D., Associate Research Professor, Health Policy Institute, Georgetown University; John Colmers, Secretary, State of Maryland Department of Health and Mental Hygiene; Steven Goldman, Commissioner, New Jersey Department of Banking and Insurance; John Morrison, Auditor and Commissioner, Montana Insurance and Securities; Amy Moore, Partner, Covington & Burling, LLP; and Kevin Covert, Board Member, American Benefits Council.

On September 25, 2008, the Committee on Education and Labor held a hearing entitled "Safeguarding Retiree Health Benefits." The panel included: C. William Jones, Chairman, ProtectSeniors.org; Bill Kadereit, President, National Retiree Legislative Network; David Lillie, Retiree, Raytheon Missile Systems; Scott Macey, Senior Vice President and Director of Government Affairs, Aon Consulting, Inc; Norman Stein, Douglas Arant Professor of Law, University of Alabama; and Dale Yamanoto, President and Founder, Red Quill Consulting.

Committee on Energy & Commerce

On September 18, 2008, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "America's Need for Health Reform." The panel included: Ronald E. Bachman, F.S.A., M.A.A.A., Senior Fellow, Center for Health Transformation; Governor Jon S. Corzine, State of New Jersey; Karen Davis, President, The Commonwealth Fund; Elizabeth Edwards, Senior Fellow, Center for American Progress; William J. Fox, F.S.A., M.A.A.A., Principal and Consulting Actuary, Milliman Inc.; E.J. "Ned" Holland, Jr., Senior Vice President, Human Resources and Communication, EMBARQ; Patricia Owen, President/Founder, FACES DaySpa; Stephen T. Parente, Ph.D., Director, Medical Industry Leadership Institute, and Associate Professor of Finance, Carlson School of Management, University of Minnesota; and Karen Pollitz, M.P.P., Research Professor, Health Policy Institute, Georgetown University.

Committee on Ways and Means

On November 17, 2007, the Subcommittee on Income Security and Family Support in the Committee on Ways and Means held a hearing entitled "Impact of Gaps in Health Coverage on Income Security." The panel included: Sherena Johnson, former foster youth, Morrow, GA; Sara R. Collins, Ph.D., Assistant Vice President, Program on the Future of Health Insurance, Commonwealth Fund; Ron Pollack, Founding Executive Director, Families USA; Bruce Lesley, President, First Focus; and Brian J. Gottlob, Senior Fellow, Milton and Rose D. Friedman Foundation, Indianapolis, IN.

On April 15, 2008, the Subcommittee on Health in the Committee on Ways and Means held a two-panel hearing entitled "Instability of Health Coverage in America." The first panel included former Senator Dave Durenberger (R–MN). The second panel included: Diane Rowland, Sc.D., Executive Vice President, Kaiser Family Foundation; John Z. Ayanian, M.D., Professor of Medicine and Health Care Policy, Harvard Medical School; Michael O'Grady,

Senior Fellow, National Opinion Research Center, University of Chicago; Stan Brock, Founder and Volunteer Director of Operations, Remote Area Medical, Knoxville, TN; and Stephen Finan, Associate Director of Policy, American Cancer Society.

On May 14, 2008, the Subcommittee on Health in the Committee on Ways and Means held a hearing entitled "Health Savings Accounts and Consumer Driven Health Care: Cost Containment or Cost-Shift." The panel included: John F. Dicken, Health Care Director, U.S. Government Accountability Office (GAO); Michael E. Chernew, Ph.D., Professor of Health Care Policy, Harvard Medical School; Linda J. Blumberg, Ph.D., Principal Research Associate, Urban Institute; Judy Waxman, Vice President and Director of Health and Reproductive Rights, National Women's Law Center; and Wayne Sensor, CEO, Alegent Health.

On June 10, 2008, the Subcommittee on Health in the Committee on Ways and Means held a two-panel hearing entitled "Addressing Disparities in Health and Healthcare: Issues for Reform." The first panel included: Delegate Donna M. Christensen (D–USVI); former Congresswoman Hilda L. Solis (D–CA); Delegate Madeleine Z. Bordallo (D–GU); and Congressman Jerry Moran (R–KS). The second panel included: Marsha Little-Blanton, Dr.P.H., Senior Advisor on Race, Ethnicity and Healthcare, Kaiser Family Foundation; Mohammed Akhter, M.D., M.P.H., Executive Director, National Medical Association; Deena Jang, J.D., Policy Director, Asian and Pacific Islander American Health Forum; Anthony B. Iton, M.D., J.D., M.P.H., Director of Public Health and Health Officer, Alameda County, CA; Sally Satel, M.D., Resident Scholar, American Enterprise Institute; and Michael A. Rodriguez, M.D., M.P.H., Associate Professor and Vice Chair of Research, Department of Family Medicine, University of California, Los Angeles.

On September 11, 2008, the Subcommittee on Health in the Committee on Ways and Means held a hearing entitled "Reforming Medicare's Physician Payment System." The panel included: Bruce C. Vladeck, Ph.D., Senior Health Policy Advisor and Executive Director of Health Sciences, Ernst & Young, LLP; Gail Wilensky, Ph.D., Senior Fellow, Project Hope; Nancy H. Nielsen, M.D., Ph.D., President, American Medical Association; and Donald M. Crane, President and Chief Executive Officer, California Association of Physician Groups.

On September 23, 2008, the Subcommittee on Health in the Committee on Ways and Means held a hearing entitled the "Health of the Private Health Insurance Market." The panel included: Karen Davis, President, Commonwealth Fund; Bruce Bodaken, Chairman and Chief Executive Officer, Blue Shield of California; Roger Feldman, Ph.D., Blue Cross Professor of Health Insurance, University of Minnesota; and Mila Kofman, Superintendent of Insurance, Maine Bureau of Insurance.

HEARINGS IN THE SENATE

Committee on Health, Education, Labor and Pension

On January 10, 2007, the Senate Health, Education, Labor and Pensions (HELP) Committee held a hearing entitled "Health Care Coverage and Access." The panel included: Peter Meade, Executive

Vice President, Blue Cross Blue Shield of Massachusetts; John McDonough, Executive Director, Health Care for All; Karen Davis, President, Commonwealth Fund; Andy Stern, President, SEIU; Debra Ness, President, National Partnership for Women and Families; Larry Burton, Executive Vice President, Business Roundtable; Peter Harbage, New America Foundation; Joseph Antos, Wilson H. Taylor Scholar in Health Care and Retirement Policy, American Enterprise Institute; John Goodman, President, National Center for Policy Analysis; and Pat Vredevoogd Combs, National Association of Realtors, and owner, Coldwell-Banker-AJS Realty.

On February 12, 2008, the Senate HELP Committee held a hearing entitled "Addressing Healthcare Workforce Issues for the Future." The panel included: A. Bruce Steinwald, Director, Healthcare GAO; Kevin Grumbach, M.D., Director, Center for California Health Workforce Studies, University of California San Francisco, and Chair, Department of Family and Community Medicine; Roderick S. Hooker, Ph.D., P.A., Director of Research, Rheumatology Section, Medical Service Department of Veterans Affairs, Dallas VA Medical Center; Edward S. Salsberg, M.P.A., Director, Center for Workforce Studies, Association of American Medical Colleges; James Q. Swift, D.D.S., Board President, American Dental Education Association; Bruce Auerbach, M.D., President Elect, Massachusetts Medical Society, and Vice President and Chief of Emergency Medicine, Sturdy Memorial Hospital; Beth Landon, M.H.A., M.B.A., Director, Alaska Center for Rural Health, University of Alaska; Jennifer Laurent, M.S., FNP–BC, President, Vermont Nurse Practitioner Association; and John E. Maupin, Jr., D.D.S., M.B.A., President, Morehouse School of Medicine.

Committee on Finance

On March 14, 2007, the Senate Committee on Finance held a hearing entitled "Course for Health Care Reform: Moving Toward Universal Coverage." The panel included: James J. Mongan, M.D., President and Chief Executive Officer, Partners HealthCare; Stuart H. Altman, Ph.D., Dean, Sol C. Chaikin Professor of National Health Policy, The Heller School for Social Policy and Management, Brandeis University; John Sheils, Vice President, The Lewin Group; and Richard G. Frank, Ph.D., Vice Chair, Citizens' Health Care Working Group.

On May 6, 2008, the Senate Committee on Finance held a hearing entitled "Seizing the New Opportunity for Health Reform." The panel included the Honorable Tommy Thompson and the Honorable Donna Shalala, both former Secretaries of Health and Human Services.

On June 3, 2008, the Senate Committee on Finance held a hearing entitled "Rising Costs, Low Quality in Health Care: The Necessity for Reform." The panel included: Paul B. Ginsburg, Ph.D., President, Center for Studying Health System Change; Elizabeth McGlynn, Ph.D., Associate Director, RAND Health, and Distinguished Chair in Health Quality; Arlene Holt Baker, Executive Vice President, AFL–CIO; and Felicia Fields, Group Vice President, Human Resources and Corporate Services, Ford Motor Company.

On June 10, 2008, the Senate Committee on Finance held a hearing entitled "47 Million and Counting: Why the Health Care Mar-

ketplace is Broken." The panel included: Lisa Kelly, cancer patient; Raymond Arth, President and CEO, Phoenix Faucets; Ron Williams, Chairman and Chief Executive Officer, Aetna, Inc.; and Mark Hall, Professor of Law and Public Health, Wake Forest University School of Law and School of Medicine.

On September 9, 2008, the Senate Committee on Finance held a hearing entitled "Improving Health Care Quality: An Integral Step Toward Health Reform." The panel included: Peter V. Lee, J.D., Executive Director of National Health Policy, Pacific Business Group on Health; Samuel Nussbaum, M.D., Executive Vice President for Clinical Health Policy and Chief Medical Officer, WellPoint, Inc.; Gregory Schoen, M.D., Regional Medical Director, Fairview Northland Health Services; Kevin B. Weiss, M.D., President and CEO, American Board of Medical Specialties; and William L. Roper, M.D., M.P.H., Dean, School of Medicine, University of North Carolina (UNC), and Vice Chancellor for Medical Affairs and CEO, UNC Health Care System.

On September 23, 2008, the Senate Committee on Finance held a hearing entitled "Covering the Uninsured: Making Health Insurance Markets Work." The panel included: John Bertko, F.S.A., M.A.A.A., Adjunct Staff, The RAND Corporation, and Former Chief Actuary, Humana, Inc., Flagstaff, AZ; Andrew Dreyfuss, Executive Vice President, Health Care Services, Blue Cross Blue Shield of Massachusetts; Pam MacEwan, Executive Vice President, Public Affairs and Governance, Group Health Cooperative; and Kim Holland, State of Oklahoma Insurance Commissioner.

On November 19, 2008, the Senate Committee on Finance held a hearing entitled "Health Care Reform: An Economic Perspective." The panel included: Ivan G. Seidenberg, Chairman and Chief Executive Officer, Verizon Communications, Inc.; Andy Stern, President, SEIU; Uwe E. Reinhardt, Ph.D., James Madison Professor of Political Economy, Woodrow Wilson School of Public and International Affairs, Princeton University; and Amitabh Chandra, Ph.D., Assistant Professor of Public Policy, John F. Kennedy School of Government, Harvard University.

111TH CONGRESS (2009—2010)

HEARINGS IN THE HOUSE OF REPRESENTATIVES

Committee on Education and Labor

On March 10, 2009, the Subcommittee on Health, Employment, Labor and Pensions of the Committee of Education and Labor held a panel entitled "Strengthening Employer-Based Health Care." The panel included: Mark Derbyshire, Small Business Owner; Bruce Pyenson, Principal and Consulting Actuary, Milliman, Inc.; John Sheridan, CEO, Cooper University Hospital; Kenneth Thorpe, Chair of the Health Policy and Management Department, Emory University; E. Neil Trautwein, Vice President, Employee Benefits Counsel, National Retail Federation; and Jim Winkler, Health Management Practice Leader, Hewitt Associates.

On April 23, 2009, the Subcommittee on Health, Employment, Labor and Pensions of the Committee of Education and Labor held a panel entitled "Ways to Reduce the Cost of Health Insurance for Employers, Employees and their Families." The panel included:

Karen Davenport, Director of Health Policy, Center for American Progress; David Himmelstein, Associate Professor of Medicine, Harvard University; Michael Langan, Principal, Towers Perrin; William Oemichan, President and CEO, Cooperative Network; Ron Pollack, Executive Director, FamiliesUSA; Janet Trautwein, Executive Vice President and CEO, National Association of Health Underwriters; and William Vaughn, Senior Health Policy Analyst, Consumers Union.

On June 10, 2009, the Subcommittee on Health, Employment, Labor and Pensions of the Committee of Education and Labor held a hearing entitled "Examining the Single Payer Health Care Option." The panel included: Congressman John Conyers, Jr. (D–MI); Marcia Angell, M.D., Senior Lecturer in Social Medicine, Harvard Medical School; David Gratzer, Senior Fellow, Manhattan Institute; Geri Jenkins, R.N., Co-President, California Nurses Association/National Nurses Organizing Committee; and Walter Tsou M.D., M.P.H., National Board Advisor, Physicians for a National Health Program.

Committee on Energy & Commerce

On March 10, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "Making Health Care Work for American Families: Designing a High Performing Healthcare System." The panel included: Doug Elmendorf, Director, Congressional Budget Office; Glenn Hackbarth, Chairman, Medicare Payment Advisory Commission; Jack C. Ebeler, Vice Chair, Committee on Health Insurance Status and Its Consequences, Institute of Medicine; Alan Levine, Secretary, Louisiana Department of Health and Hospitals; Atul Gawande, M.D., Associate Professor of Surgery, Harvard Medical School, and Associate Professor, Department of Health Policy and Management, Harvard School of Public Health; and M. Todd Williamson, M.D., President, Medical Association of Georgia Policy Studies.

On March 17, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "Making Health Care Work for American Families: Ensuring Affordable Coverage." The panel included: Uwe E. Reinhardt, Ph.D., Professor of Political Economy, Economics and Public Affairs, Princeton University; Sally C. Pipes, B.A., President and Chief Executive Officer, Pacific Research Institute; Judy Feder, Ph.D., Senior Fellow, Center for American Progress Action Fund; Mila Kofman, J.D., Superintendent of Insurance, State of Maine Bureau of Insurance; Jon Kingsdale, Ph.D., Executive Director, Commonwealth Health Insurance Connector Authority, MA; Karen Pollitz, M.P.P., Research Professor, Health Policy Institute, Georgetown University; Katherine Baicker, Ph.D., Professor of Health Economics, Harvard School of Public Health; and Edmund F. Haislmaier, B.A., Senior Research Fellow, Center for Health, Heritage Foundation.

On March 24, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "Making Health Care Work for American Families: Improving Access to Care." The panel included: Brian D. Smedley, Ph.D., Vice President and Director, Health Policy Institute, Joint Center for Political and Economic Studies; Michael John Kitchell, M.D., President-Elect,

Iowa Medical Society, McFarland Clinic PC; Michael A. Sitorius, M.D., Professor and Chairman, Department of Family Medicine, University of Nebraska Medical Center; Risa Lavizzo-Mourey, M.D., M.B.A., President and CEO, Robert Wood Johnson Foundation; Fitzhugh Mullan, M.D., Murdock Head Professor of Medicine and Health Policy, Professor of Pediatrics, George Washington University; Jeffrey P. Harris, M.D., F.A.C.P., President, American College of Physicians; James R. Bean, M.D., President, American Association of Neurological Surgeons; and Diane Rowland, Sc.D., Executive Director, Kaiser Commission on Medicaid and the Uninsured.

On March 27, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "Making Health Care Work for American Families: The Role of Public Health." The panel included: E. Besser, M.D., Acting Director, CDC, and Acting Administrator, Agency for Toxic Substances and Disease Registry; Jonathan E. Fielding, M.D., M.P.H., Chair, Task Force on Community Preventive Services, and Director, L.A. County Department of Public Health and County Health Officer; Heather Howard, J.D., Commissioner, New Jersey Department of Health and Senior Services; David Satcher, M.D., Ph.D., Former U.S. Surgeon General, and Director, Satcher Health Leadership Institute, Morehouse School of Medicine; Barbara Spivak, M.D., President, Mt. Auburn Cambridge Independent Practice Association, Inc.; Devon Herrick, Ph.D., Senior Fellow, National Center for Policy Analysis; and Jeffrey Levi, Ph.D., Executive Director, Trust for Americas Health.

On April 2, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "Making Health Care Work for American Families: Saving Money, Saving Lives." The panel included: Jonathan Skinner, Ph.D., Professor of Economics, Dartmouth Institute for Health Policy and Clinical Practice; Christine K. Cassel, M.D., President and CEO, American Board of Internal Medicine and ABIM Foundation; John Goodman, Ph.D., President and CEO, National Center for Policy Analysis; Bruce Sigsbee, M.D., M.S., President Elect, American Academy of Neurology, and Medical Director, Pen Bay Physicians and Associates; Dennis Smith, M.P.A., Senior Research Fellow in Health Care Reform, Heritage Foundation; Jerry Avorn, M.D., Professor of Medicine, Harvard Medical School; Paul Ginsburg, Ph.D., President, Center for Studying Health System Change; Regina Herzlinger, Ph.D., Professor of Business Administration, Harvard Business School; Ronald Bachman, F.S.A., M.A.A.A., Senior Fellow, Center for Health Transformation; and Diane Archer, J.D., Director, Health Care Project, Institute for America's Future.

On June 16, 2009, the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce held a hearing entitled "Termination of Individual Health Policies by Insurance Companies." The panel included: Don Hamm, CEO, Assurant Health; Richard Collins, CEO, Golden Rule Insurance Company, UnitedHealth Group; Brian A. Sassi, President and CEO, Consumer Business, WellPoint, Inc.; Karen Pollitz, M.P.P., Research Professor, Health Policy Institute, Georgetown University; Robin Beaton, Policyholder; Wittney Horton, Policyholder; and Peggy Raddatz, Relative of Policyholder.

Committee on Ways & Means

On March 11, 2009, the Committee on Ways and Means held a hearing entitled "Expanding Coverage, Improving Quality and Controlling Costs." The panel included: John Z. Ayanian, M.D., M.P.P., on behalf of the Institute of Medicine Committee on Health Insurance Status and Its Consequences; Karen Davis, President, Commonwealth Fund; and John M. Pickering, Principal, Consulting Actuary, Milliman, Inc.

On March 17, 2009, the Subcommittee on Health in the Committee on Ways and Means held a hearing entitled "MedPAC's Annual March Report to the Congress on Medicare Payment Policy." The panel featured Glenn M. Hackbarth, Chairman, Medicare Payment Advisory Commission.

On April 1, 2009, the Committee of Ways and Means held a hearing entitled "Reforming the Health Care Delivery System." The hearing consisted of two panels. The first panel included: Glenn M. Hackbarth, Chairman, Medicare Payment Advisory Commission; Elliot S. Fisher, M.D., M.P.H., Director, Population Health and Policy, Dartmouth Institute for Health Policy and Clinical Practice, and Professor of Medicine and Community and Family Medicine, Dartmouth Medical School; and Robert A. Berenson, M.D., Senior Fellow, Urban Institute. The second panel included: Glenn D. Steele, Jr., M.D., Ph.D., President and CMO, Geisinger Health System; L. Allen Dobson, Jr., M.D., F.A.A.F.P., Vice President for Clinical Practice Development, Carolinas Health System; and Brent C. James, M.D., M.Stat., Chief Quality Officer and Chief Medical Officer, Institute for Health Care Delivery Research, Intermountain Healthcare.

On April 22, 2009, the Committee on Ways and Means held a hearing entitled "Insurance Market Reforms." The panel included: Uwe E. Reinhardt, Ph.D., James Madison Professor of Political Economy and Professor of Economics and Public Affairs, Princeton University; William Vaughn, Senior Policy Analyst, Consumers Union; William D. Hobson, Jr., M.S., President and CEO, Watts Healthcare Corporation; David Borris, Owner, Hel's Kitchen Catering, Northbrook, Ill.; Kenneth L. Sperling, Global Health Management Leader, Hewitt Associates, on behalf of National Coalition on Benefits; and Linda Blumberg, Ph.D., Principal Research Associate, Urban Institute.

On April 29, 2009, the Committee on Ways and Means held a hearing entitled "Employer Sponsored Insurance." The panel included: Elise Gould, Ph.D., M.P.Aff., Director of Health Policy Research, Economic Policy Institute; J. Randal MacDonald, Senior Vice President for Human Resources, IBM Corporation; Kelly Conklin, Owner, Foley-Waite Associates; Denny Dennis, Senior Research Fellow, NFIB Research Foundation; John Shells, Senior Vice President, Lewin Group; and Gerald Shea, Special Assistant to the President, AFL–CIO.

On May 6, 2009, the Committee on Ways and Means held a hearing on "Health Care Reform" with Kathleen Sebelius, the Secretary for Health and Human Services.

Committee on Health, Education, Labor and Pensions

On January 29, 2009, the Senate HELP Committee held a hearing entitled "Crossing the Quality Chasm in Health Reform." The panel included: Nancy Davenport-Ennis, CEO, National Patient Advocate Foundation; Karen Davis, President, Commonwealth Fund; Rhonda Robinson-Beale, M.D., Chief Medical Officer, Optum Health Behavioral Solutions, Golden Valley, MN; Elizabeth Teisberg, Ph.D., Associate Professor, University of Virginia's Darden School of Business; and Christine K. Cassel, M.D., President, American Board of Internal Medicine.

On February 23, 2009, the Senate HELP Committee held a hearing entitled "Principles of Integrative Health: A Path to Health Care Reform." The panel included: Cathy Baase, M.D., Global Director Health Services, Dow Chemical Company; Robert M. Duggan, M.A., M.Ac., President, Tai Sophia Institute; James S. Gordon, M.D., Founder and Director, Center for Mind-Body Medicine; Wayne B. Jonas, M.D., President, Samueli Institute; Sister Charlotte Rose Kerr, R.S.M., R.N., B.S.N., M.P.H., M.Ac., Practitioner and Professor Emeritus, Tai Sophia Institute; Mary Jo Kreitzer, Ph.D., R.N., Founder and Director, University of Minnesota Center for Spirituality & Healing; Herbert Benson, M.D., Director Emeritus, Benson-Henry Institute for Mind Body Medicine, Massachusetts General Hospital; Brian M. Berman, M.D., Director, Center for Integrative Medicine, University of Maryland School of Medicine; Susan Hartnoll Berman, Executive Director, Institute for Integrative Health; Ron Z. Goetzel, Ph.D., Research Professor and Director, Institute for Health and Productivity Studies, Rollins School of Public Health, Emory University; Kathi J. Kemper, M.D., M.P.H., F.A.A.P., Caryl J. Guth Chair for Complementary and Integrative Medicine, Division of Health Sciences, Wake Forest University; and Simon Mills, Project Lead, United Kingdom Department of Health project: Integrated Self Care in Family Practice.

On February 24, 2009, the Senate HELP Committee held a hearing entitled "Addressing Underinsurance in National Health Reform." The panel included: Cathy Schoen, M.S., Senior Vice President, Commonwealth Fund; Gail Shearer, M.S., Director of Health Policy Analysis, Consumers Union; Diane Rowland, D.Sc., Executive Vice President, Henry J. Kaiser Family Foundation, and Executive Director, Kaiser Commission on Medicaid and the Uninsured; and Grace-Marie Turner, President, Galen Institute.

On March 24, 2009, the Senate HELP Committee held a hearing entitled "Addressing Insurance Market Reform in National Health Reform." The panel included: Janet Trautwein, Executive Vice President and CEO, National Association of Health Underwriters; Ronald A. Williams, M.S., Chairman and Chief Executive Officer, Aetna, Inc.; Karen Pollitz, M.P.P., Research Professor, Health Policy Institute, Georgetown University; Karen Ignagni, M.B.A., President and CEO, America's Health Insurance Plans; Len Nichols, Ph.D., Director, Health Policy Program, New America Foundation; Katherine Baicker, Ph.D., Professor of Health Economics, Department of Health Policy and Management, Harvard School of Public

Health; and Sandy Praeger, Health Insurance Commissioner, State of Kansas.

On April 28, 2009, the Senate HELP Committee held a hearing entitled "Learning from the States: Individual State Experiences with Health Care Reform Coverage Initiatives in the Context of National Reform." The panel included: Jon Kingsdale, Ph.D., Executive Director, Commonwealth Health Insurance Connector Authority, MA; Susan Besio, Director, Office of Vermont Health Access, State of Vermont Human Services Agency; Harry Chen, M.D., Emergency Room Physician and Board Member, Vermont Program for Quality in Health Care; Brent James, Executive Director, IHC Institute for Health Care Delivery Research, Intermountain Health Care, Inc.; Honorable David Clark (R), Majority Leader, Utah House of Representatives; Ruth Liu, Senior Director for Health Policy, Legal and Government Relations, Kaiser Permanente; and Eileen McAnneny, Senior Vice-President of Government Affairs and Associate General Counsel, Associated Industries of Massachusetts.

On April 30, 2009, the Senate HELP Committee held a hearing entitled "Primary Health Care Access Reform: Community Health Centers and the National Health Service Corps." The panel included: Cynthia Bascetta, Director of Health Care, GAO; Dan Hawkins, Senior Vice President, National Association of Community Health Centers; Fitzhugh Mullan, M.D., Murdock Head Professor of Medicine and Health Policy, George Washington University School of Public Health; Caswell A. Evans, Jr., D.D.S, M.P.H., Associate Dean for Prevention and Public Health Sciences, University of Illinois at Chicago College of Dentistry; Yvonne Davis, Board Member, Community Health Center; John Matthew, M.D., Health Center, Plainfield, VT; and Lisa Nichols, Executive Director, Midtown Community Center, Ogden, UT.

On June 11, 2009, the Senate HELP Committee held a two-panel hearing entitled "Health Care Reform." The first panel included: Margaret Flowers, M.D., Maryland Co-Chair, Physicians for a National Health Program; Ron Williams, CEO, Aetna, Inc; Randel Johnson, Vice President for Labor, Immigration, and Employee Benefits, U.S. Chamber of Commerce; William Dennis, Senior Research Fellow, National Federation of Independent Business; Mary Andrus, Co-Chair of the Health Care Taskforce, Consortium for Citizens with Disabilities; Samantha Rosman, M.D., Board of Trustees, American Medical Association; Ray Scheppach, Ph.D., Executive Director, National Governors' Association; Gerald Shea, Special Assistant to the President, AFL–CIO; Dennis Rivera, Chair, SEIU Healthcare; Katherine Baicker, Ph.D., Professor of Health Economics, Harvard School of Public Health; Jonathan Gruber, Ph.D., Associate Head, MIT Department of Economics; Janet Trautwein, Executive Vice-President and CEO, National Association of Health Underwriters; Sandy Praeger, Kansas Insurance Commissioner; Scott Gottlieb, M.D., Resident Fellow, American Enterprise Institute; and Steve Burd, President and CEO, Safeway, Inc. The second panel included: Gary Raskob, Ph.D., Dean, University of Oklahoma College of Public Health; Jeffrey Levi, Ph.D., Executive Director, Trust for America's Health; Fay Raines, Ph.D., President, American Association of Colleges of Nursing; Wayne Jonas, M.D., President and CEO, Samueli Institute;

Delos Cosgrove, M.D., CEO, Cleveland Clinic; Brent James, M.D., M.Stat., Executive Director, Institute for Health Care Delivery Research, Intermountain Health Care, Inc.; Charles Kahn, M.P.H., President, Federation of American Hospitals; John Rother, J.D., Executive Vice President for Policy and Strategy, AARP; and Judith Palfrey, M.D., President-Elect, American Academy of Pediatric.

Committee on Finance

On February 25, 2009, the Senate Committee on Finance held a hearing entitled "Scoring Health Care Reform: CBO's Budget Options" with Douglas Elmendorf, Ph.D., Director of the Congressional Budget Office.

On March 12, 2009, the Senate Committee on Finance held a hearing entitled "Workforce Issues in Health Care Reform: Assessing the Present and Preparing for the Future." The panel included: David C. Goodman, M.D., M.S., Director of the Center for Health Policy Research, Dartmouth College; Allan H. Goroll, M.D., M.A.C.P., Professor of Medicine, Harvard Medical School; Fitzhugh Mullan, M.D., Murdock Head Professor of Medicine and Health Policy, George Washington University; and Steven A. Wartman, M.D., Ph.D., M.A.C.P., President and CEO, Association of Academic Health Centers.

On March 25, 2009, the Senate Committee on Finance held a hearing entitled "The Role of Long-Term Care in Health Reform." The panel included: Judy Feder, Ph.D., Senior Fellow, Center for American Progress Action Fund; Raymond C. Scheppach, Ph.D., Executive Director, National Governors Association; Dennis G. Smith, Senior Research Fellow in Health Care Reform, Heritage Foundation; and Joshua M. Wiener, Ph.D., Senior Fellow, RTI International.

On April 21, 2009, the Senate Committee on Finance held a hearing entitled "Reforming America's Health Care Delivery System." The panel included: Allan M. Korn, M.D., Senior Vice President, Chief Medical Officer, Office of Clinical Affairs, Blue Cross Blue Shield Association; Glenn M. Hackbarth, J.D., Chairman, Medicare Payment Advisory Commission; Peter V. Lee, J.D., Executive Director of National Health Policy, Pacific Business Group on Health; Mark B. McClellan, M.D., Director, Engelberg Center for Health Care Reform, Brookings Institute; Lewis Morris, J.D., Chief Counsel to the Inspector General, Office of Counsel to the Inspector General; Mary D. Naylor, Ph.D., F.A.A.N., R.N., Marian S. Ware Professor in Gerontology, University of Pennsylvania School of Nursing; Debra Ness, President, National Partnership for Women and Families; Frank G. Opelka, M.D., F.A.C.S., Vice Chancellor for Clinical Affairs and Professor of Surgery, Office of the Chancellor, Louisiana State University Health Science Center; Glenn Steele, Jr., M.D., Ph.D., President, Geisinger Health System; John Tooker, M.D., M.B.A., F.A.C.P., Executive Vice President and Chief Executive Officer, American College of Physicians; Richard J. Umbdenstock, F.A.C.H.E., President and CEO, American Hospital Association; Ron Williams, Chairman and CEO, Aetna, Inc.; and Paul J. Diaz, J.D., President and CEO, Kindred Healthcare, Inc.

On May 5, 2009, the Senate Committee on Finance held a hearing entitled "Expanding Health Care Coverage." The panel included: Stuart M. Butler, Ph.D., Vice President, Domestic and Economic Policy Studies, Heritage Foundation; John Castellani, President, Business Roundtable; Gary Claxton, Vice President and Director, Health Care Marketplace Project, Henry J. Kaiser Family Foundation; Donald A. Danner, President and CEO, National Federation of Independent Business; Jennie Chin Hansen, R.N., M.S., F.A.A.N., President, AARP; Karen Ignagni, President and CEO, America's Health Insurance Plan; R. Bruce Josten, Executive Vice President, Government Affairs, U.S. Chamber of Commerce; Len Nichols, Ph.D., Director, Health Policy Program, New America Foundation; Ron Pollack, J.D., Executive Director, Families USA; Sandy Praeger, Chair, Health Insurance and Managed Care Committee, National Association of Insurance Commissioners; Sara Rosenbaum, J.D., Chair, Department of Health Policy, George Washington School of Public Health and Health Services; Diane Rowland, Sc.D., Executive Vice President, Henry J. Kaiser Family Foundation; Raymond C. Scheppach, Ph.D., Executive Director, National Governors Association; Scott Serota, President and Chief Executive Officer, Blue Cross and Blue Shield Association; and Andy Stern, President, SEIU.

On May 12, 2009, the Senate Committee on Finance held a hearing entitled "Financing Comprehensive Health Care Reform." The panel included: Stuart H. Altman, Ph.D., Sol C. Chaikin Professor of National Health Policy, Heller School for Social Policy and Management, Brandeis University; Joseph R. Antos, Ph.D., Wilson H. Taylor Scholar in Health Care and Retirement Policy, American Enterprise Institute; Katherine Baicker, Ph.D., Professor of Health Economics, Harvard School of Public Health; Leonard Burman, Ph.D., Director, Tax Policy Center, Urban Institute; Robert Greenstein, Ph.D., Executive Director, Center on Budget and Policy Priorities; Jonathan Gruber, Ph.D., Professor of Economics, Massachusetts Institute of Technology; Michael F. Jacobson, Ph.D., Executive Director, Center for Science in the Public Interest; James A. Klein, President, American Benefits Council; Edward Kleinbard, Chief of Staff, Joint Committee on Taxation; Gerald M. Shea, Special Assistant to the President, AFL–CIO; John Sheils, Senior Vice President, Lewin Group; Gail Wilensky, Ph.D., Senior Fellow, Project HOPE; and Steven Wojcik, Vice President of Public Policy, National Business Group on Health.

INTRODUCTION AND CONSIDERATION OF AMERICA'S AFFORDABLE HEALTH CHOICES ACT, H.R. 3200

On June 19, 2009, Congressman George Miller (D-CA), along with Congressmen Henry Waxman (D–CA), Charles Rangel (D–NY) and John Dingell (D–MI) released the Tri-Committee draft proposal for health care reform.

Committee on Education & Labor Consideration of the Tri-Committee Draft Proposal for Health Care Reform

On June 23, 2009, the House Education and Labor Committee held a hearing to discuss the draft proposal for health care reform that was jointly developed by the House Ways and Means, Energy

and Commerce, and Education and Labor Committees. The draft was designed to achieve President Obama's goals of controlling health care cost, preserving health care choices, and ensuring quality, affordable health care for all Americans. The hearing entitled "The Tri-Committee Draft Proposal for Health Care Reform" consisted of three panels. The first panel included: Christina Romer, Ph.D., Chair, Council of Economic Advisers, Office of the President; Ron Pollack, Founding Executive Director, Families USA; Gerald Shea, Special Assistant to the President, AFL–CIO; Paul J. Speranza, Senior Vice President, General Counsel and Secretary, Wegmans Food Markets, Inc.; Jacob Hacker, Ph.D., Professor and Co-Director, Berkeley Center on Health, Economic, and Family Security, University of California Berkeley; Michael J. Stapley, President and Chief Executive Officer, Deseret Mutual; John Arensmeyer, Chief Executive Officer, Small Business Majority; and Fran Visco, President, National Breast Cancer Coalition. The second panel included: Karen Pollitz, Research Professor and Project Director, Health Policy Institute, Georgetown University; Celia Wcislo, Assistant Division Director, SEIU; James A. Klein, President, American Benefits Council; William Vaughan, Senior Health Policy Analyst, Consumers Union; Robert E. Moffit, Ph.D., Director, Center for Health Policy Studies, Heritage Foundation; ReShonda Young, Small Business Owner, Alpha Express, Inc. on behalf of the Main Street Alliance; and Fitzhugh Mullan, M.D., Murdock Head Professor of Medicine and Health Policy, George Washington University.

Committee on Energy & Commerce Consideration of the Tri-Committee Draft Proposal for Health Care Reform

On June 23, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a hearing entitled "Comprehensive Health Reform Discussion, Day 1." The panel included: Richard Kirsch, National Campaign Manager, Health Care for America Now; Ralph G. Neas, Chief Executive Officer, National Coalition on Health Care; Stephen T. Parente, Ph.D., Director, Medical Industry Leadership Institute; Marian Wright Edelman, President, Children's Defense Fund; Jennie Chin Hansen, President, AARP; David L. Shern, Ph.D., President and Chief Executive Officer, Mental Health America; Erik Novak, M.D., Orthopedic Surgeon, Patients United Now; Shona Robertson-Holmes, Patient at Mayo Clinic; Jeffrey Levi, Ph.D., Executive Director, Trust for America's Health; Brian D. Smedley, Ph.D., Vice President and Director, Health Policy Institute, Joint Center for Political and Economic Studies; and Mark Kestner, M.D., Chief Medical Officer, Alegent Health.

On June 24, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a three-panel hearing entitled "Comprehensive Health Reform Discussion, Day 2." The first panel on single-payer health care included: Sidney M. Wolfe, M.D., Director, Health Research Group at Public Citizen; Steffie Woolhandler, M.D., Associate Professor of Medicine, Harvard Medical School, and Co-Founder, Physicians for a National Health Program; and John C. Goodman, Ph.D., President and CEO, National Center for Policy Analysis. The second panel on state, local and tribal views included: the Honorable Michael O. Leavitt, Former Secretary, U.S.

Department of Health and Human Services; the Honorable Joseph Vitale (D), Chairman, Committee on Health, Human Services, and Senior Citizens, New Jersey State Senate; W. Ron Allen, Chairman, Jamestown S'Klallam Tribe; the Honorable Jay Webber (R), New Jersey State Assembly; Raymond C. Scheppach, Ph.D., Executive Director, National Governors Association; Robert S. Freeman, Deputy Executive Director, CenCal Health, California Association of Health Insuring Organizations; and Ron Pollack, Executive Director, Families USA. The third panel on drug and device manufacturer views included: Thomas Miller, CEO, Workflow and Solutions Division, Siemens Medical Solutions, USA; Kathleen Buto, Vice President for Health Policy, Johnson & Johnson; William Vaughan, Senior Health Policy Analyst, Consumers Union; Scott Gottlieb, M.D., Resident Fellow, American Enterprise Institute; and A. Kelly, Senior Vice President, Government Affairs and Public Policy, National Association of Chain Drug Stores.

On June 25, 2009, the Subcommittee on Health of the Committee on Energy and Commerce held a four-panel hearing entitled "Comprehensive Health Reform Discussion, Day 3." The first panel on Medicare payment included Glenn M. Hackbarth, Chair of the Medicare Payment Advisory Commission, and the Honorable Daniel R. Levinson, Inspector General of the U.S. Department of Health and Human Services. The second panel on doctor, nurse, hospital, and other provider views included: Ted D. Epperly, M.D., President, American Academy of Family Physicians; M. Todd Williamson, M.D., President, Medical Association of Georgia; Karl J. Ulrich, M.D., Clinic President and CEO, Marshfield Clinic; Janet Wright, M.D., Vice President, Science and Quality, American College of Cardiology; Kathleen M. White, Ph.D., Chair, Congress on Nursing Practice and Economics, American Nurses Association; Patricia Gabow, M.D., Chief Executive Officer, Denver Health and Hospital Authority, National Association of Public Hospitals; Dan Hawkins, Senior Vice President, Public Policy and Research, National Association of Community Health Centers; Bruce T. Roberts, R.Ph., Executive Vice President and CEO, National Community Pharmacists Association; Bruce Yarwood, President and CEO, American Health Care Association; and Alissa Fox, Senior Vice President, Office of Policy and Representation, Blue Cross Blue Shield Association. The third panel on employer and employee views included: Kelly Conklin, Owner, Foley-Waite Custom Woodworking, Main Street Alliance; John Arensmeyer, Founder and CEO, Small Business Majority; Gerald M. Shea, Special Assistant to the President, AFL–CIO; Dennis Rivera, Health Care Chair, SEIU; John Castellani, President, Business Roundtable Institute for Corporate Ethics; John Sheils, Senior Vice President, Lewin Group; and Martin Reiser, Manager of Government Policy, Xerox Corporation, National Coalition on Benefits. The fourth panel on insurers' views included: Howard A. Kahn, Chief Executive Officer, L.A. Care Health Plan; Karen Pollitz, M.P.P., Research Professor, Health Policy Institute, Georgetown University; Karen Ignagni, President and CEO, America's Health Insurance Plans; and Janet Trautwein, Executive Vice President and CEO, National Association of Health Underwriters.

Committee on Ways & Means Consideration of the Tri-Committee Draft Proposal for Health Care Reform

On June 24, 2009, the Committee on Ways and Means had a hearing entitled "Health Reform in the 21st Century: Proposals to Reform the Health System." The hearing consisted of three panels. The first panel included: Karen Pollitz, Policy Director, Health Policy Institute, Georgetown Public Policy Institute; John F. Holahan, Ph.D., Director, Health Policy Research Center, Urban Institute; and David Gratzer, M.D., Senior Fellow, Manhattan Institute for Policy Research. The second panel included: Richard Kirsch, National Campaign Manager, Health Care for America NOW; Mike Draper, Owner, SMASH; Peter V. Lee, Executive Director for National Health Policy, Pacific Business Group on Health; Gerald Shea, Special Assistant to the President, AFL-CIO; Jennie Chin Hansen, President, AARP; and Randel K. Johnson, Senior Vice President, Labor, Immigration and Employee Benefits, U.S. Chamber of Commerce. The third panel included: Dan Baxter, Medical Director, William F. Ryan Community Health Network, NY; Ted Epperly, M.D., President, American Academy of Family Physicians; Donna Policastro, Executive Director, Rhode Island State Nurses Association on behalf of the American Nurses Association; Chip Kahn, President, Federation of American Hospitals; Larry Minnix, President and CEO, American Association of Homes and Services for the Aging; Ronald Williams, Chairman and CEO, Aetna, Inc.; and Richard Warner, M.D., Member, Kansas Medical Society House of Delegates, AMA Alternate Delegate, and past President, Kansas Medical Society.

Introduction of America's Affordable Health Choices Act, H.R. 3200

On July 15, 2009, after taking into consideration comments on the discussion draft from a very wide range of voices, Chairmen George Miller, Henry Waxman, Charles Rangel, and Congressman John Dingell introduced America's Affordable Health Choices Act, H.R. 3200. The bill seeks to control rising health care costs, strengthen the employer-based health care system, and ensure that all Americans have access to quality and affordable health care coverage.

Committee on Education & Labor Mark-up of H.R. 3200

The Full Committee met on July 15–17, 2009 to mark up H.R. 3200. The Committee passed by voice vote an amendment in the nature of a substitute offered by Chairman George Miller (D–CA). There were 42 other amendments offered and debated. Of the amendments offered, 20 passed, 17 failed, 4 were withdrawn, and one was ruled not germane.

America's Affordable Health Choices Act of 2009

H.R. 3200 was reported favorably to the House with an amendment in the nature of a substitute. By a vote of 26–22, the Committee authorized the Chairman to transmit the bill, with an amendment in the nature of a substitute, to the Committee on the Budget in compliance with section 310 of the Congressional Budget Act of 1974 as the first part of the Committee's recommendations, pursuant to the reconciliation instruction in S. Con Res. 13.

The Miller amendment in the nature of a substitute contains the following modifications to H.R. 3200:

Recognizes the unique structures of multi-employer plans and how they interact with the Health Insurance Exchange (HIE). In Section 100(26), the health care contributions of multiemployer plans are to be treated as employer contributions. Section 123(b)(1)(D) directs the Health Benefits Advisory Committee to take into consideration the unique nature of the multiemployer plans in recommending the essential benefits package. Lastly, Section 202(e)(8) makes clear that multiemployer plans shall be treated as large employers in regard to joining the HIE.

The Miller substitute also creates a new subsection (b) in Section 115 that requires qualified health benefits plans to make provider information available to consumers by publishing current listings of all providers within a plan network on their website. Amends the bill in Section 116 to provide that the medical loss ratio for qualified health benefits plans must be at least 85 percent.

Creates Section 117 to prohibit insurance companies from changing the coverage or costs of a health plan mid-year except if the costs are lowered and/or the coverage is increased.

Specifically includes in the essential benefits package "durable medical equipment, prosthetics, orthotics, and supplies." (DMEPOS) The Committee is aware that Section 122 (4) related to coverage of "services, equipment, and supplies incident to the services of a physician's or a health professional's delivery of care in . . . patients' homes or places of residence" encompasses coverage of such devices and related services, but opted to clarify that these are considered essential benefits. By separately listing the category of DMEPOS as an essential benefit, the Committee intends to underscore the importance of coverage for these devices and related services.

Amends sections 122 and 133 to include three provisions related to integrative medicine: to require that the membership of the Health Benefits Advisory Committee include one or more integrative medicine providers; establish an Integrative Health Care Service Task Force that is to be comprised of five experts in integrative health care; and, ensure that HIE enrollees are provided with information to identify integrative medicine providers who are trained and accredited.

Establishes Section 138 to ban the sales of physician prescribing data to the pharmaceutical industry when the physician serves patients enrolled in a qualified health benefit plan.

Amends Section 202(d) to include that retirees who are participants or beneficiaries in an adversely affected health benefits group and are not enrolled in Medicare, are to be considered Exchange eligible individuals and may enter into the HIE in 2013, the first year of operation. Also limits post-retirement reductions of retiree health benefits by group health plans in Section 165.

Creates a new provision, Section 209, to allow small employer benefit arrangements, which are defined as not-for-profit agricultural or other industry cooperatives, to work with the Commissioner to assist in the enrollment of small employers and their employees in the HIE. The small employer benefit arrangements are to operate for the primary purpose of providing affordable employee

benefits to its members; that only consists of member employers that are in the same industry or line of business; ensure that no member has more than five percent voting interest in the cooperative, and are to be governed by a board of directors elected by its members.

Adds an additional condition for providers eligible to participate in the public health insurance option in Section 225(b) by permitting providers, such as Christian Science practitioners, who are "otherwise permitted to practice under state law" to also participate in the public health insurance option.

Amends the affordability standard for access to the HIE in Section 242(b)(2)(B) by giving the Commissioner the authority to permit individuals and families who have received an employer offer of health care coverage to qualify for the HIE in Y2 of operation if their premium and cost sharing is greater than 11 percent of family income.

Inserts language to protect against the misclassification of workers for purposes of the provisions within H.R. 3200. The language requires the Secretary of Labor to promulgate record-keeping requirements for both employees and certain individuals performing work for an employer but whom the employer has not treated as employees. The content and scope of these record-keeping requirements (both in terms of what data is needed and what non-employee individuals are covered) should be designed to assist the Secretary in the audits she performs to determine noncompliance with the bill's health coverage participation requirements.

Requires the development of standards for accessible equipment, and requires relevant agencies to ensure that all entities covered by the legislation meet the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The Committee recognizes that a critical component of providing health care to many individuals with disabilities is ensuring that diagnostic and treatment equipment is accessible to those with impairments which impede use of standard equipment. Inaccessible medical equipment often prevents people with disabilities from receiving the basic care others take for granted, such as getting weighed, preventative dental care, mammograms, pelvic exams, x-rays, physical examinations, colonoscopies, and vision screenings.

Subtitle F of Division C adds a new provision to reduce the student-to-school nurse ratio. Section 2551 makes available demonstration grants to eligible local education agencies with the purpose of reducing the student-to-school nurse ratio in public elementary and secondary schools with special consideration given to high-need local educational agencies who demonstrate the greatest need for new or additional nursing services by providing information on the current ratios of students to school nurses.

The last modification within the Miller substitute recognizes the importance of preventive approaches to health and wellness. Section 2552 authorizes the Secretary of Labor to offer incentives to employers who establish qualified wellness programs for their employees. The Committee believes these small grants will assist in improving the health of our nation's workforce and will reduce employer healthcare costs. Participating employers must offer the pro-

grams to all employees and cannot mandate participation nor use participation as a condition to receive any financial incentive.

AMENDMENTS CONSIDERED IN COMMITTEE

The amendment offered by Representative Courtney (D–CT) amends Section 111 of the Miller substitute. The amendment reduces the pre-existing condition "look-back" period from six months to 30 days and shortens the amount of time during which a provider can exclude coverage for pre-existing conditions, during the period prior to the bill's effective date for the total prohibition on pre-existing condition exclusions. The amendment was passed by voice vote.

The Representative Kline (R–MN) amendment would have struck Titles I and II of Division A which would include striking the protections and standards for qualified health benefits plans and also the HIE. The Kline amendment would have also struck Sections 311, 312, 313, 314, 321 and 324 which include striking employer mandate requirements and requirements for employer health coverage participation under ERISA. The amendment was defeated by a roll call vote of 19–29.

The amendment offered by Representative Titus (D–NV) would increase the size of small businesses that can choose to enter the HIE. It specifies that in 2013 (Y1), the size of businesses eligible for the HIE would increase from 10 to 15; in 2014 (Y2), the size of businesses eligible for the HIE would increase from 20 to 25; and, in 2015 (Y3), the Commissioner must allow additional small businesses to enter the HIE and would set the minimum size for an eligible small business as one with 50 employees or less. The amendment passed by a roll call vote of 29–19.

The amendment offered by Representative Scott (D–VA) would add early periodic screening, diagnosis, and treatment (EPSDT) benefits to children up to age 21 to be included in the essential benefits package (Section 122(b)(10)). The amendment passed by a roll call vote of 32–17.

The amendment offered by Representative Thompson (R–PA) would have struck Subtitle A of Title II of Division A, i.e., the HIE. The amendment was defeated by a roll call vote of 19–29.

The amendment offered by Representative Roe (R–TN) would have struck Subtitle B of Title II of Division A, i.e., the public health insurance option. The amendment was defeated by a roll call vote of 19–29.

The amendment offered by Representative Davis (D–CA) would instruct the Health Benefits Advisory Committee to examine current state laws and to seek input from the states as it forms its recommendations for the federal benefits standards by inserting the aforementioned after paragraph (2) in Section 123(b). The amendment was passed by voice vote.

The amendment offered by Representative Guthrie (R–KY) would have struck Sections 311, 312, 313, 314, 321 and 324, i.e., the employer mandate requirements and requirements for employer health coverage participation under ERISA. The amendment was defeated by a roll call vote of 19–28.

The second amendment offered by Representative Davis (D–CA) would end the current COBRA eligibility limit and allow those cur-

rently enrolled in COBRA to keep their insurance until they find another job offering coverage or until they become eligible to participate in the HIE. This amendment would be inserted after Subtitle G of Title I of Division A. The amendment was passed by voice vote.

The amendment offered by Representative Biggert (R–IL) and Representative Price (R–GA) would have struck Section 102(b) and inserted that any group health plan operating under ERISA would be treated as already meeting the requirements of a qualified health benefits plan as listed in Title I. The amendment was defeated by a roll call vote of 18–29.

The amendment offered by Representative Fudge (D–OH) and Representative Titus (D–NV) would help small employers select health plans. The amendment would require the Commissioner, in consultation with the Small Business Administration, to establish and carry out a program to provide health insurance counseling and technical assistance to small employers who provide their employees health care through the HIE. The amendment was passed by a roll call vote of 28–18.

The amendment offered by Representative Wilson (R–SC) would exclude TRICARE from the definition of employment-based health care. The amendment was passed by voice vote.

The amendment offered by Representative Hare (D–IL) would make a technical change in the Miller amendment regarding "small employer benefit associations." The amendment would strike "association(s)" and instead insert "arrangement(s)." The amendment was passed by voice vote.

The amendment offered by Representative Kline (R–MN) would have added to the end of Section 311 a provision to exempt employers from having to offer or maintain qualified health insurance coverage if an employer-initiated referendum calling for such an exemption was passed by a majority of employees. The amendment was defeated by a roll call vote of 18–28.

The amendment offered by Representative Hirono (D–HI) would maintain Hawaii's Prepaid Health Care Act exemption under ERISA, including with respect to the provisions of H.R. 3200, where such state statute ensures health care benefits equivalent to or greater than those benefits that would be guaranteed by H.R. 3200. The amendment was passed by voice vote.

The amendment offered by Representative Hoekstra (R–MI) would have suspended Sections 311, 312, 313, and 314, which pertain to H.R. 3200's employer mandate, in the event that the national unemployment rate as announced monthly by the Bureau of Labor Statistics at the Department of Labor equals or exceed eight percent for two consecutive months. The amendment was defeated by voice vote.

The amendment offered by Representative Kucinich (D–OH) would create an ERISA waiver to permit States to enact single payer laws. The Department of Labor would determine whether the State plan meets certain requirements to obtain the waiver. The amendment was passed by a roll call vote of 27–19 with one member passing on the vote.

The amendment offered by Representative Hunter (R–CA) would create a two-year employer hardship exemption that waives an em-

ployer's obligation to provide coverage or pay a penalty. The amendment was passed by voice vote.

The second amendment offered by Representative Kucinich (D–OH) would have limited the total compensation of insurance company executives to not exceed the compensation of the President of the United States. The amendment was withdrawn and no further action was taken on it.

The amendment offered by Mr. McClintock (R–CA) would have required that 30 days after H.R. 3200's enactment, the Director of the Office of Management and Budget submit a report to the House of Representatives determining whether Sections 311, 312, 313, 314, 321, and 324 are deficit neutral for the applicable period of ten fiscal years. The report would be annually conducted prior at the end of each fiscal year and if a section was found to not be deficit neutral, then it would be suspended for two years following that fiscal year. The amendment was defeated by a roll call vote of 19–28.

The en bloc amendment offered by Representative Holt (D–NJ), incorporating proposals by Representatives Loebsack, Wu, Courtney, Altmire, and Tonko, would add workforce development provisions for long-term care workers; add training for health care jobs for vulnerable populations; expand and clarify that mental health and substance abuse preventative services are covered in the essential benefits package; and create a health care labor market website and an online health professional training grant program. The amendment was passed by voice vote.

The amendment offered by Representative Biggert (R–IL) would have established an annual report on the average waiting period for minimum health services and if an increase of five percent or more was reported, then Sections 311, 312, 313, 314, 321, and 324 would not apply in the following year. The amendment was withdrawn and no further action was taken on it.

The amendment offered by Representative Polis (D–CO) would expand the characteristics outlined in Section 221(e) on data collection to include race, ethnicity, primary language, sex, sexual orientation, gender identity, disability, socioeconomic status, rural, urban, or other geographic setting, and any other population or subpopulation as determined appropriate by the Secretary. The amendment was passed by voice vote.

The amendment offered by Representative McMorris Rodgers (R–WA) would have prohibited any tax increases to families with an income of $250,000 or less. The amendment was ruled not germane as outside the jurisdiction of the Committee.

The amendment offered by Representative Sablan (NMI), Representative Pierluisi (PR), and Representative Clarke (D–NY) would add to H.R. 3200 a Sense of Congress stating that the final bill must meaningfully address the health care needs of the territories. The amendment was passed by voice vote.

The second amendment offered by Representative Kline (R–MN) would have prohibited any provision in H.R. 3200 from the application of state law remedies in connection to group health plans, maintaining that section 502 of ERISA will continue to supersede state law. The amendment was defeated by a roll call vote of 19–28.

The amendment offered by Representative Sestak (D–PA) would require the presence of patient representatives on the Health Benefits Advisory Committee. It is the intent of the Committee that such educated patients or consumer advocates be free of conflicts of interest with any provider, insurer, or other interest in the health sector. The amendment was passed by voice vote.

The amendment offered by Representative Price (R–GA) would have created a waiver that would exempt States from enacting Subtitle B in Title III if a State health plan was enacted into law by the legislature of that State. The amendment was defeated by a roll call vote of 19–28.

The amendment offered by Representative Wu (D–OR) and Representative Altmire (D–PA) would require the Health Choices Commissioner to study how to increase the meaningful use of electronic health records and then use the results of that study to potentially require higher reimbursement rates for providers that use health information technology. The amendment was passed by voice vote.

The amendment offered by Representative Souder (R–IN) would have prohibited any provision in H.R. 3200 from requiring a group health plan to provide coverage for abortion or access to an abortion. The amendment was defeated by roll call vote of 19–29.

The second amendment offered by Representative Souder (R–IN) would require that no funds appropriated under Titles I–III be used for abortion or to cover any part of the costs of any health benefits plan that includes coverage of abortion, except in the case where a woman suffers from a physical disorder, physical injury, or physical illness. The amendment was defeated by a roll call vote of 19–29.

The second amendment offered by Representative Biggert (R–IL) would prohibit the Commissioner or any health insurance issuer offering health insurance coverage through the HIE from discriminating against approving or covering health care services based on religious or spiritual content if expenditures for such a health care service are allowable under 213(d) of the Internal Revenue Code of 1986. The amendment was passed by voice vote.

The second amendment offered by Representative Price (R–GA) would prohibit any provision in H.R. 3200 to be construed to preclude any participant or beneficiary in a group health plan from entering into any contract or arrangement for health care with any health care provider. The amendment was passed by voice vote.

The second amendment offered by Representative Hoekstra (R–MI) would have designated a "health care sharing ministry" as an "employer" and the members of such a ministry would be designated as "employees." The amendment was withdrawn and no further action was taken on it.

The amendment offered by Representative Petri (R–WI) would permit group consumer directed health plans and arrangements (including a high deductible health plan with the meaning of section 223(c)(2) of the IRS Code) to be treated as acceptable coverage consistent with other employer group health plans subject to the grace period until Y5. The amendment was amended by unanimous consent to ensure that this exception was not permanent and passed by voice vote.

The amendment offered by Representative McKeon (R–CA) would have created a new title at the end of Division A titled Title IV—Small Business Health Fairness. This title would include rules governing association health plans; clarification of treatment of single employer arrangements; enforcement provisions related to association health plans; and other provisions related to association health plans. The amendment was defeated by a roll call vote of 21–27.

The amendment offered by Representative Castle (R–DE) would have allowed variation in cost-sharing and premiums charged by the qualified health benefits plans dependent upon participant participation in employer prevention and wellness programs. The amendment was withdrawn and no further action was taken on it.

The second amendment offered by Representative Wilson (R–SC) would add to H.R. 3200 a Sense of the House of Representatives that any members who vote in support of the public health insurance option are urged to forgo their right to participate in the FEHBP and enroll under the public option. The amendment was passed by voice vote.

The third amendment offered by Representative Price (R–GA) would have established provisions for defined contribution health plans. The amendment was defeated by a roll call vote of 19–29.

The fourth amendment offered by Representative Price (R–GA) would have struck the physician billing language in Section 225(c). The amendment was defeated by a roll call vote of 19–29.

The second amendment offered by Representative McMorris Rodgers (R–WA) would have exempted plans established and maintained by Indian tribal governments. The amendment was defeated by voice vote.

Committee on Ways & Means Mark-up of H.R. 3200

On July 16, 2009, the Committee on Ways and Means met to mark-up H.R. 3200, America's Affordable Health Choices Act and reported the bill as amended by a vote of 23–18.

Committee on Energy & Commerce Mark-up of H.R. 3200

Beginning on July 16, 2009, the Committee on Energy and Commerce met to mark-up H.R. 3200, America's Affordable Health Choices Act. In addition to July 16, 2009, the Committee considered H.R. 3200 on July 17, 20, 30 and 31. The Committee reported the bill as amended by a vote of 31–28.

SENATE CONSIDERATION OF THE AFFORDABLE HEALTH CHOICES ACT

Beginning on June 17, 2009 the HELP Committee met to mark-up the Affordable Health Choices Act. The Committee reported the bill as amended on July 15, 2009 by a vote of 13–10.

III. Summary of the Bill

America's Affordable Health Choices Act makes critical reforms to this nation's broken health care system. It will lower costs, preserve choice, and expand access to quality, affordable care. To protect families struggling with health care costs and inadequate coverage, the bill ensures that health insurance companies can no

longer compete based on risk selection. By prohibiting rate increases based on pre-existing conditions, gender and occupation, the bill requires that insurance companies instead compete based on quality and efficiency. In addition, H.R. 3200 will lower the cost of health care by eliminating co-pays and deductibles for preventive care, capping annual out-of-pocket expenses, prohibiting lifetime limits, and allowing the uninsured, part-time workers, and employees of some small businesses to obtain group rates by purchasing health care through the HIE.

H.R. 3200 will expand choice of health insurance, especially in many parts of the country where families have very limited choices because of the nature of the insurance market. The HIE will serve as an organized and transparent "marketplace for the purchase of health insurance"[7] where individuals and employees (phased-in over time) can shop and compare health insurance options. To participate in the HIE, insurers will be required to meet the insurance market reforms and consumer protections and offer the essential benefits package established by the new independent benefits advisory committee. Individuals and families under 400 percent of poverty who qualify for affordability credits will be able to use that money in the HIE to help offset the costs of their health care coverage.

One health insurance choice within the HIE will be the public health insurance option. The public option will be required to operate on the same level as private insurance companies, adhering to the same market reforms and consumer protections, and it will be required to be financed from its premiums. Rates will vary geographically just as private insurers do. The public plan option will be able to utilize payment rates similar to Medicare with provider rates at Medicare plus 5 percent. However, beginning in Y4 the Secretary will have the authority to use an administrative process to set rates (at levels that do not increase costs) in order to promote payment accuracy and the delivery of affordable and efficient care.

The inclusion of a public option in the HIE will help to rein in the costs of health insurance while preserving access. At all times, the Secretary retains the authority to utilize innovative payment mechanisms and policies to improve health outcomes, reduce health disparities, and promote quality and integrated care. Furthermore, the public option will represent choice in many communities where one insurer dominates the market. Consequently, the public health insurance option has the ability to increase competition and control costs. However, no one, including employers who put their employees into the HIE, can place or force anyone into the public option. The decision to enroll in a private plan or the public option is always left to individuals and families to decide for themselves.

H.R. 3200 is built upon the premise of shared responsibility among individuals, employers and the government, so that everyone contributes and has access to affordable, quality health care. America's Affordable Health Choices Act gives employers the choice

[7] Linda Blumberg and Karen Pollitz, Health Insurance Exchanges: Organizing Health Insurance Marketplaces to Promote Health Reform Goals, the Urban Institute & Robert Wood Johnson Foundation (April 2009).

to either offer health insurance or pay a percentage of payroll for their employees to go into the HIE.

Beginning in 2013, employers "playing" will be required to offer health coverage to all of their full-time employees and contribute 72.5 percent of the premium for an individual and 65 percent for a family premium. For part-time workers, employers will have the choice to either offer health coverage on a pro rata basis or pay the required penalty. There will be no minimum benefit requirement for existing employer-sponsored health plans until the end of 2018. At that time, employers who "play" will be required to offer coverage that is no less than the minimum benefit level within the Exchange and must include the insurance market reforms.

Employers may also choose to "pay" instead of play. A "pay" employer would be required to make a contribution equal to 8 percent of their payroll to the HIE. However, recognizing the difficulties small businesses face, the bill includes a number of provisions to help small employers. For example, H.R. 3200 exempts employers with payrolls of $250,000 or less from the pay or play requirements. For employers with payroll between $250,000 and $400,000 the contribution amount phases-up from 2 to 8 percent so that only employers with payrolls greater than $400,000 will pay the full 8 percent.

Whether obtaining coverage through an employer, a spouse or the HIE, H.R. 3200 requires that individuals either enroll in health care coverage or pay 2.5 percent of their adjusted gross income capped at the total cost of the average cost premium offered in the HIE. Recognizing that high health care costs prevent many Americans from securing health care coverage, H.R. 3200 provides for affordability credits to help eligible low- and middle-income individuals and families purchase coverage in the HIE. In addition, for those who can demonstrate that they are unable to afford health insurance, the Health Choices Commissioner (Commissioner) retains the authority to develop and grant hardship waivers.

The affordability credits provided for under the bill will be available to individuals and families with incomes between 133 to 400 percent of the federal poverty level. Medicaid will be expanded so that anyone below 133 percent of poverty will be Medicaid eligible and that expansion will be fully federally financed. Employees who are offered health insurance through an employer will be unable to go into the HIE and receive affordability credits unless that employer coverage is deemed unaffordable. An unaffordable employer offer is one where the employees' share of the premium and cost sharing are more than 11 percent of family income.

Finally, as millions of Americans gain coverage, investments in the health care workforce are critical to ensuring all Americans have access to needed care. H.R. 3200 includes significant investments to help train more primary care and public health physicians as well as nurses. It puts into place incentives to encourage more people to become doctors and nurses (particularly in rural areas). Some of the workforce provisions include: (1) increased funding for the National Health Service Corp.; (2) expanded scholarships and loans for health professionals who work in shortage professions and areas; (3) steps to increase physician training outside of the hospital and redistribute unfilled graduate medical edu-

cation residency slots so that more primary care physicians can be trained; and (4) grants through the Department of Labor to help train and retain nurses.

IV. Committee Views

The Committee on Education and Labor of the 111th Congress is committed to containing the cost of health care and ensuring that every American has access to affordable, quality health care coverage. H.R. 3200 includes critical reforms to the health care system that are needed to reduce surging premium and health care costs that families, businesses and governments are struggling to afford. The bill cuts over a half trillion dollars from the health care system, ensures that no one is ever one illness away from bankruptcy and creates a system where 97 percent of Americans will have health care coverage by 2015.

Overview

Health care reform is a critical issue in this country. There are 47 million people in the United States without health care coverage and almost nine million of them are children.[8] Meanwhile, health care costs are rising for nearly everyone. The United States spends over $2.4 trillion—more than 18 percent of GDP—on health care services and products—far more than other industrialized countries.[9] In addition, health care costs continue to grow faster than the economy as a whole, and individuals and families are burdened by the weight of these escalating expenses. Yet, for all this spending, the United States' scores are average or worse on many key indicators of health care quality. Health care reform is critical to restoring prosperity for our nation's families and H.R. 3200 will ensure that coverage is truly affordable and dependable for hard-working Americans.

The Uninsured

The number of uninsured persons in the United States continues to grow, from 44.8 million in 2005 to 47.0 million in 2006. The percentage of uninsured is also rising, from 15.3 percent of the total population in 2005 to 15.8 percent in 2006.[10]

More than two-thirds of the uninsured live in a household with one full-time worker. These increasing numbers can be attributed to the rising cost of health care, a decline in manufacturing jobs and an increase in workers employed in the service industries and small businesses, which are less likely to provide insurance.[11] Roughly two-thirds of Americans without health insurance have incomes 200 percent below the federal poverty level—or approximately $44,000 for a family of four.[12] Not surprisingly, those in households with annual incomes below $25,000 are even less likely

[8] Supra note 2.

[9] National Coalition on Health Care, "Facts on the Cost of Health Insurance and Health Care," (2007), available at: *http:www.nchc.org/facts/cost.shtml*

[10] U.S. Census Bureau, "Health Insurance Coverage: 2006—Highlights." (Aug. 27, 2007), available at: *http:www.census.gov/hhes/www/hlthins/hlthin06/hlth06asc.html*

[11] Robert Pear. "Without Health Benefits, a Good Life Turns Fragile," N.Y. Times (Mar. 5, 2007).

[12] Kaiser Family Foundation, "The Uninsured: A Primer," (Oct. 2008). *http:www.kff.org/uninsured/upload/7451–04.pdf.*

to be insured. In 2006, twenty-five percent of these Americans were uninsured in comparison to 16 percent of the total population.[13]

Approximately 162 million non-elderly workers and their dependents received health coverage through their employment-based health plans.[14] However, millions of other working Americans are unable to participate in an employer-sponsored plan, either because the employer does not offer coverage or the employee is not eligible under the plan. In 2005, 20 percent of "wage and salary" workers had an employer that did not offer any coverage to their workers. And 18 percent were not eligible for the health plan that was offered by their employer.[15] For example, some firms do not offer coverage to part-time employees and some do not offer coverage to workers who have been employed for less than a specific amount of time.

While employer-sponsored plans still remain the dominant source of health coverage for most Americans, the percentage of people obtaining health coverage through these plans has been steadily shrinking. For example, 60 percent of employers offered benefits in 2007, compared with 69 percent in 2000. Most of this decline can be attributed to the decline in small businesses (less than 200 workers) offering coverage.[16] Among firms with less than 10 workers, the offer rate dropped from 57 percent in 2000 to 45 percent in 2007.[17] For employers who have stopped offering coverage, almost three out of four say that premiums are too expensive.[18]

Unaffordable Health Care Coverage

Employers and workers alike are increasingly concerned about the rising costs of health care and insurance. Premiums for employer-sponsored health coverage are rising much faster than workers' earnings and inflation. Between spring 2006 and spring 2007, premiums for coverage offered by employers across the United States increased by 6.1 percent—more than twice the growth in the Consumer Price Index (CPI). The average annual cost of employer-sponsored health insurance was nearing $13,000 in 2008. In response to these steady premium hikes, many companies are asking their employees to cover some of the new costs. For instance, workers taking single coverage through an employer paid 12 percent more for their coverage in 2007 than in 2006. Premiums for a family of four paid by workers increased by 10 percent from 2006 to 2007.[19]

These increases are of great concern, and more and more workers believe that they may not be able to afford their share of the cost

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[13] Carmen DeNavas-Walt, Bernadette D. Proctor and Jessica Smith, "Income, Poverty, and Health Insurance Coverage in the United States: 2006" Current Population Reports (2006) at 60–233. See also, U.S. Department of Commerce, Economics and Statistics Administration, August 2007.

[14] Elise Gould, "The Erosion of Employer-Sponsored Health Insurance," Economic Policy Institute (Oct. 8, 2008).

[15] Supra note 9.

[16] Kaiser Commission on Medicaid and the Uninsured, "2007 Employer Health Benefits Survey—Summary of Findings," (Sept. 2007) at 29, available at: *http:www.kff.org/insurance/7672/index.cfm*

[17] Paul Fronstin. "Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2007 Current Population Survey." Employee Benefit Research Institute, October 2007.

[18] Kaiser Family Foundation/HRET, "Employer Health Benefits 2007 Annual Survey." (Sept. 2007).

[19] Id.

of coverage. In a recent poll by the Pew Research Center,[20] forty-four percent of workers surveyed say that affording health insurance is difficult or very difficult. In addition, almost three out of four uninsured workers who chose not to participate in their employer's health plan in 2002 said the plan was too costly. Workers also know that if they lose their job, they are likely to lose access to affordable health care coverage.

In addition, among those employers that offer benefits, a large percentage of firms report that in the next year not only are they very or somewhat likely to increase the amount workers contribute to premiums (45 percent), but they will also increase deductible amounts (37 percent), office visit cost sharing (42 percent) or the amount that employees have to pay for prescription drugs (41 percent).[21]

The problem of being "underinsured" has also become increasingly relevant. One recent study estimated that 29 percent of individuals who have insurance are "underinsured" and have coverage that is inadequate to secure them access to needed care or protect again catastrophic medical bills.[22]

The Commonwealth Fund found that 25 million adults who had health coverage in 2007 were underinsured[23]—a 60 percent increase from the 16 million Americans who were underinsured in 2003.[24] Another study found that while 16 percent of adults spent more than 10 percent of their family income on health care service in 1996. By 2003 the proportion of adults bearing these health-related "catastrophic financial burdens" had increased to 19 percent to about 49 million individuals.[25] Another study found that financial burdens had increased to the point that private health insurance coverage no longer provided adequate financial protection for low-income families.[26]

In addition, many families have little room within their family budgets for large or unexpected out-of-pocket health care expenses. In 2003, an estimated 77 million Americans—nearly two out of five adults—had difficulty paying medical bills.[27] Even working age adults who were continually insured had problems paying their medical bills and carried medical debt as a result. Nearly half of all bankruptcies in the United States are related, in part, to health care expenses. And of those facing medical bankruptcies, roughly

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[20] Pew Research Center for the People and the Press poll, conducted January 9–13, 2008, available at: *http:people-press.org/reports/dispaly.php3?ReportID=* 395.

[21] Supra note 16.

[22] Consumer Reports, "Health Insurance: CR Investigates Health Care," September 2007, available at: *http:www.consumerreports.org/cro/health-fitness/health-care/health-insurance–9–07/overview/0709_37 1783 _24 322 32 1483*

[23] According to the Commonwealth Fund study, families are identified as underinsured if they had out-of-pocket medical spending that absorbed at least 10 percent of family income, or for low-income adults (200 percent below the federal poverty level), medical spending consumed at least 5 percent of family income.

[24] Cathy Schoen et al, "How Many are Underinsured? Trends Among U.S. Adults, 2003 and 2007," Health Affairs 27 no. 4 (2008).

[25] J. Banthin and D. Bernard, "Changes in Financial Burdens for Health Care: National Estimates for the Population Younger than 65 Years, 1996 to 2003," JAMA (2006).

[26] J. Banthin, P. Cunningham and D. Bernard. "Financial Burdens of Health Care, 2001–2004," Health Affairs 27, no.1 (2008) at 188–195.

[27] Michelle M. Doty, Jennifer N. Edwards, and Alyssa L. Holmgren, "Seeing Red: Americans Driven into Debt by Medical Bills," The Commonwealth Fund (Aug. 2005).

three-quarters had health insurance at the onset of their bankrupting illness.[28]

The risk of being underinsured or experiencing financial problems due to health spending varies not only by family income, but also by health status. According to Judy Feder, Senior Fellow at the Center for American Progress, "health care affordability is particularly elusive for individuals with chronic illness and other conditions that require on-going, often costly, medical care."[29] Individuals who are older and have chronic conditions such as diabetes, heart disease, or arthritis, or have experienced a stroke, are more likely to spend a high proportion of their income on health expenses. If these individuals do not have an employer-sponsored health plan, or if they lose this coverage, their ability to purchase coverage in the non-group market is limited at best. The non-group market systematically denies coverage, limits benefits, and charges excessive premiums to individuals with pre-existing conditions or those who are perceived to be at high-risk. Ironically, the people who are more likely to become sick—the very population that insurance is supposed to protect—are also more likely to be underinsured and face grave financial problems.

The Consequences of being Uninsured or Underinsured

Being uninsured makes it more likely that a person will not receive adequate medical care. Individuals without insurance often go without or delay care, and the care they do receive is likely to be lower quality than the care received by insured individuals. An estimated 18,000 to 22,000 Americans die each year because they do not have health coverage.[30] The length of time a person goes without health insurance also makes a difference—people who are uninsured for at least a year report being in worse health than those uninsured for a shorter period of time.[31] Finally, lack of coverage and coverage stability is particularly burdensome on the seriously and chronically ill, whose care is often delayed or denied when they cannot pay.[32]

HEALTH CARE COSTS AND SPENDING: THE COST OF DOING NOTHING

H.R. 3200 ensures quality and affordable health care choices for all Americans while also controlling costs in a system in which costs have spiraled out of control. The United States spends over $2.4 trillion on health care each year.[33] As noted earlier, health care expenditures in the United States constitute approximately 18 percent of the current Gross Domestic Product (GDP).[34] If health care costs continue to grow at historical rates, the share of GDP

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[28] David Himmelstein, Elizabeth Warren, D. Thorne, and S. Woolhandler, "Illness and Injury as Contributors to Bankruptcy," Health Affairs (2005).

[29] Judy Feder, Testimony before the Committee on Energy and Commerce Committee (hereinafter Feder) (Mar. 17, 2009).

[30] "Insuring America's Health: Principles and Recommendations," Institute of Medicine (Jan. 14, 2004).

[31] Id.

[32] Institute of Medicine, "Care Without Coverage: Too Little, Too Late" (May 2002), available at: *http:www.iom.edu/Object.File/Master/4/160/Uninsured2FINAL.pdf*

[33] Supra note 9.

[34] Executive Office of the President, Council of Economic Advisors, "The Economic Case for Health Care Reform," available at *http:www.whitehouse.gov/administration/eop/cea/TheEconomicCaseforHealthCareReform/ (June 2009).*

devoted to health care in the United States is projected to reach 34 percent by 2040.[35]

International Comparisons

The United States devotes a far larger share of GDP to health care spending more than two times per person on health care than any other OECD (Organization for Economic Co-operation and Development) country.[36] While health care expenditures in the United States are about 18 percent of GDP[37] the OECD reports that the next highest country was Switzerland—with 11.3 percent—and in most other high-income countries, the share was less than 10 percent.[38]

Despite outpacing other countries with investments in health care, the U.S. fails to produce better health outcomes in fundamental ways. OECD data shows that life expectancy in the United States is lower than in any other high-income country, as well as in many middle-income countries.[39] Similarly, the infant mortality rate in the United States is substantially higher than that of other developed countries. While many factors other than health care expenditures may affect life expectancy and infant mortality rates—for example, demographics, lifestyle behaviors, income inequality, non-health disparities, and measurement differences across countries[40]—the Council of Economic Advisors (CEA) has concluded that "the fact that the United States lags behind lower spending countries is strongly suggestive of substantial inefficiency in our current system."[41] Indeed, according to estimates by the CEA based on the spending and outcomes in other countries, efficiency improvements in the U.S. health care system potentially could free up resources equal to 5 percent of U.S. GDP.[42]

Analyzing health care spending over time, the CEA also notes that while health care spending has increased in other countries as well, the spending by the U.S. has not yielded the same outcomes as other countries. In 1970, the United States devoted only a moderately higher fraction of GDP to health care than other high-income countries, whereas in 2009 the United States spends dramatically more.[43] Yet, during that same period, life expectancy has actually risen less in the United States than in other countries.[44] This data suggests that much of the increased U.S. spending is inefficient.[45]

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[35] Id.
[36] Marcia Angell Testimony before the Committee on Education and Labor Committee (hereinafter Angell) (Jun. 10, 2009).
[37] Supra note 34.
[38] Id.
[39] Id.
[40] Robert Wood Johnson Foundation, Commission to Build a Healthier America, "Beyond Health Care: New Directions to a Healthier America" (Apr. 2009).
[41] Supra note 34.
[42] Id.
[43] Id.
[44] Garber, Alan M., and J. Skinner, "Is American Health Care Uniquely Inefficient?" Journal of Economic Perspectives (2008) at 27–50.
[45] Supra note 34.

Cost of the Uninsured

While the U.S. health care system currently leaves 47 million Americans uninsured[46] and approximately 25 million underinsured,[47] the CEA projects that the number of uninsured could increase to 72 million by 2040.[48] Such increases in the numbers of uninsured people will create additional uncompensated care costs, which include costs incurred by hospitals and physicians for the charity care they provide to the uninsured as well as bad debt such as unpaid bills.[49] Both the federal government and state governments use tax revenues to pay health care providers for a portion of these costs through programs such as Disproportionate Share Hospital (DSH) payments and grants to Community Health Centers.[50] In 2008, total government spending to reimburse uncompensated care costs incurred by medical providers was approximately $42.9 billion.[51] The CEA projects that if the U.S. does not slow the real growth rate of health spending and a subsequent rise in the uninsured, the real annual tax burden of uncompensated care for an average family of four will rise from $627 in 2008 to $1,652 (in 2008 dollars) by 2030.[52]

Costs to Individuals and Families

As the cost of health care skyrockets, families and employers offering health insurance struggle to absorb the increased costs. In 2008, employer-based premiums increased by 5 percent. That growth was even greater for small firms. On average, they incurred a premium increase of 5.5 percent, and, for those with 24 or fewer workers, their respective increase was 6.8 percent.[53] Much of the increase in health care costs has been shifted onto workers. In 2008, the average annual premium for a family of four was $12,700, and workers contributed approximately $3,400 of that total which was 12 percent more than the year before. Workers are now paying $1,600 more for family coverage than they did 10 years ago.[54] Over the last decade, health care costs have risen on average four times faster than workers' earnings.[55]

These dramatic increases in health care costs have serious implications for American households. Some economists believe that, over the long run, workers pay for the rising cost of health insurance through lower wages.[56] To illustrate this relationship, the CEA has analyzed historical and projected average annual total compensation (measured in 2008 dollars), which includes wages as

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[46] National Coalition on Health Care, available at: *www.nchc.org/facts/cost.shtml (2009).*

[47] "How Many Are Underinsured? Trends Among U.S. Adults, 2003 and 2007," Commonwealth Fund (2008)

[48] Supra note 34.

[49] American Hospital Association, "Uncompensated Hospital Care Fact Sheet" (Nov. 2005), available at *http:www.aha.org/aha/content/2005/pdf/0511 UncompensatedCareFactSheet.pdf.*

[50] Hadley, Jack, J. Holahan, T. Coughlin, and D. Miller. "Covering the Uninsured in 2008: Current Costs, Sources of Payment, and Incremental Costs," Health Affairs (2008).

[51] Id.

[52] Supra note 34.

[53] The Henry J. Kaiser Family Foundation. Employee Health Benefits: 2008 Annual Survey, (Sept. 2008).

[54] Angell.

[55] See, National Coalition on Health Care, available at: *www.nchc.org/facts/cost.shtml* (2009).

[56] Pauly, Mark V., "Health Benefits at Work: An Economic and Political Analysis of Employment-Based Health Insurance" (1998).

well as non-wage benefits such as health insurance.[57] Their analysis indicates that health insurance premiums are growing more rapidly than total compensation in percentage terms, and as a result, an increasing share of total compensation that a worker receives goes to cover health insurance premiums.[58] Moreover, the CEA notes that households with employer-sponsored health insurance could also be affected by rapid cost growth as employers shift to less generous plans with higher annual deductibles.[59] It is important to note, however, that the wage stagnation experienced by workers over recent decades cannot be attributed solely to rising health care costs. For example, low-wage workers have experienced real wage declines in recent years despite few such workers having access to or participating in employment-based health insurance coverage.[60] More economic dynamics are at work in the wage squeeze on workers, but rising health costs contribute to the downward pressure.

H.R. 3200 Will Increase Standards of Living and Create New Jobs

By slowing the growth in health care costs, standards of living will improve and resources will be freed to improve and expand the health care system. The CEA projects that slowing growth by 1.5 percentage points per year will save a family $2,600 by 2020.[61] By 2030 that savings would be increased to nearly $10,000.[62]

Furthermore, the CEA estimates that the coverage expansions that will result from health reform will produce a net benefit of approximately $100 billion a year, or about two-thirds of a percent of GDP.[63] According to its analysis, health care reform will lower the unemployment rate in the United States and could add as many as 500,000 jobs on an annual basis.[64] By producing a more healthy and productive workforce, health care reform will improve standards of living and help strengthen the U.S. economy.

Shared Responsibility & Employment-Based Health Care Insurance

In order to control costs and expand access to quality affordable health care, everyone must be covered and employers, individuals and the government must share in this responsibility. Consistent with the minimum wage and overtime laws, H.R. 3200 creates a fundamental right to a minimum level of health care contribution and/or coverage through an employer. As noted earlier, two-thirds of Americans receive health coverage through an employer, and H.R. 3200 builds upon the current employer-based system by implementing a 'pay or play' requirement.

The employer responsibility to provide and/or contribute to the health care of its workers will stabilize the employer-based health care system. Because the Employee Retirement Income Security Act of 1974 (ERISA) currently contains no requirement that an em-

[57] Supra note 34 (relying on the 1996 to 2006 Medical Expenditure Panel Survey-Insurance Component).
[58] Id.
[59] Id.
[60] Economic Policy Institute, "Increasing Health Costs Can't Explain Earnings Dip for Low-Wage Workers," Economic Snapshot (April 12, 2006).
[61] Supra note 34.
[62] Id.
[63] Id.
[64] Id.

ployer offer employee benefits, employers who do not offer health insurance to their workers gain an unfair economic advantage relative to those employers who do provide coverage, and millions of hard-working Americans and their families are left without health insurance. It is a vicious cycle because these uninsured workers turn to emergency rooms for health care which in turn increases costs for employers and families with health insurance. It is estimated that in 2008 premiums were about 8 percent or $1,100 higher due to this hidden cost shift.[65]

Strengthening the Employer-Based System

Millions of employers voluntarily decide to offer health benefits because it is in their economic interest. Employers are not taxed on their contributions to employees' health care, and these costs are deductible as a business expense.[66] In addition, large employers can offer health care coverage at a much lower cost because they can negotiate with insurers and have a larger pool of employees to spread the risk. Furthermore, employers recognize that investments in health care can produce gains in employee health which means fewer missed days, higher productivity and better overall job satisfaction.

Despite the incentives to offer health coverage, skyrocketing health care costs make it difficult for employers, particularly small businesses, to offer comprehensive health insurance. As noted earlier, while approximately 63 percent of the under–65 population and their dependents have insurance through employment,[67] the number of employers offering health care coverage has been declining over the last decade. The number of people getting health coverage through an employer dropped by 3 million between 2000 and 2007,[68] largely due to increasing costs. In addition, the Center for American Progress projects that as a result of layoffs, approximately 14,000 Americans lose their employer-sponsored coverage each day.[69] Overall, since 1999 premiums have increased 120 percent and at a rate that is on average four times faster than workers' earnings.[70]

However, even without an employer shared responsibility requirement, 86 percent of employers surveyed report that they will continue offering health care despite increasing costs.[71] Many of these employers are large ones who use health care benefits as a means to recruit and retain employees. Health care benefits are "highly valued by employees, and risk-averse employers may be reluctant to take advantage of the option of dropping coverage" even though they can currently do so.[72]

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[65] Ben Furnas and Peter Harbage, "The Cost Shift from the Uninsured," The Center for American Progress (Mar. 2009).

[66] Paul Ginsburg, "Employment-Based Health Benefits Under Universal Coverage," Health Affairs (May/June 2008) at 675.

[67] Supra note 10.

[68] Id.

[69] Center for American Progress (Feb. 2009), available at: *http:www.americanprogressaction.org/issues/2009/03/health—losses.html.*

[70] National Coalition on Health Care, "Health Insurance Costs," (2009), available at: *www.nchc.org/facts/cost.shtml*

[71] Supra note 61.

[72] Hacker at 10.

H.R. 3200 generally will not change what many employers are already doing. Beginning in 2013, the bill requires employers already offering health insurance to make an offer to all full-time employees and contribute 72.5 percent of the cost toward an individual policy and 65 percent toward a family policy. Today, employers on average contribute 83 percent toward the coverage of individual premiums and 71 percent toward the coverage of family premiums.[73]

The second phase of requirements under H.R. 3200 for existing employer health plans does not take effect until the end of 2018. At that time, in addition to making the required contribution amount, every employer-sponsored health plan will have to, at a minimum meet the essential benefit standards defined by the benefits committee, as well as satisfy the insurance reform standards specified in the bill. Employer health insurance plans will be required to be equivalent to no less than 70 percent of the actuarial value minus the cost sharing components of the essential benefit package. The majority of employers already meet this standard. According to the Congressional Research Service, the typical employer-sponsored PPO has an estimated actuarial value between 80–84 percent, while the typical employer-sponsored health savings account (HSA) and a qualified high deductible health plan (HDHP) has an estimated actuarial value of 76 percent, excluding contributions by an employer.[74]

While many employer plans already meet the bill's requirements, there are some notable omissions. For example, 10 percent of employer plans do not offer mental health and substance use disorder benefits and many include caps on lifetime limits and out of pocket expenses. In these cases, employers will have over 8 years to modify their plans and meet the requirements. Finally, H.R. 3200 extends the same benefit and insurance reform standards in all new employer and HIE plans, so that individuals and families have access in either case to affordable quality health coverage.

Protecting Small Business

For small business, health reform "is their number one need." [75] Forty-percent report that high costs have a "negative effect on other parts of their business, such as high employee turnover or preventing business growth." [76] According to the Small Business Majority, a non-profit independent group representing 27 million small businesses, small businesses spend 18 percent more than large employers for health care coverage.[77] The result is that in 2008, the percent of firms offering health insurance with three to nine employees dropped from 57 percent to 49 percent.[78]

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[73] "Employee Benefits in the United States, March 2008," Bureau of Labor Statistics (Aug. 7, 2008).

[74] Chris Peterson, "Setting and Valuing Health Insurance Benefits," Congressional Research Service (May 29, 2009) at 3–4.

[75] John Arensmeyer, Testimony before the Committee on Education and Labor Committee, "The Tri-Committee Draft for Health Care Reform," (hereinafter Arensmeyer)(Jun. 23, 2009) at 1.

[76] Taking the Pulse on Main Street, "Small Businesses, Health Insurance and Priorities for Reform (Jan. 2009).

[77] Arensmeyer at 2.

[78] Id.

Small businesses have small purchasing pools and one of the biggest obstacles they face in securing affordable health coverage is the lack of bargaining power they have against the insurance companies. In addition, the administrative costs paid by small businesses can be up to 27 percent of premiums to pay for marketing and paperwork costs and underwriting.[79]

LaShonda Young, a small business owner, testified to the Committee about the problems she has had in seeking coverage for her forty employees. She received eight bids and each was from the same insurance company. She testified her experience isn't unique, as there are only one or two health insurers in her area.[80] She went on to testify that, "it's been years since we've been able to afford group health insurance . . . we got quotes from a couple of different places, [the] quotes came in at about 13 percent of payroll. [We're] willing to pay our fair share but we just couldn't afford 13 percent . . . "[81] Even if she was able to afford the coverage, she knew that it wouldn't cover the pre-existing conditions of her employees for up to 18 months and there was no guarantee the costs would remain stable.[82] As a result, small employers like Young are looking to other ways to help their employees find coverage on their own. Young testified that her company offers small stipends to employees to buy insurance on their own.

High health care costs also present an enormous obstacle for those trying to start or maintain a new business. While small businesses have traditionally played an essential role during prior economic recoveries, the high cost of health care is deterring entrepreneurs from starting a business in the first place. Louise Hardaway started her own business near Nashville, Tennessee. When attempting to get health care insurance she was quoted $12,800 a month to cover herself, her husband, business partner, and her business partner's spouse and child. Due to her inability to find affordable health care coverage Ms. Hardaway went out of business and went to work for another company where she could get health care.[83]

Recognizing the economic reality for many small businesses, in addition to driving down health care costs overall, H.R. 3200 contains numerous provisions such as tax credits and access to the HIE to help these employers provide coverage and alleviate their costs. In addition, the bill exempts employers from the pay or play requirement if they have payrolls of $250,000 or less. For employers with payrolls above $250,000 who choose not to offer coverage and would rather pay a penalty, that penalty is phased-up so that only employers with payrolls over $400,000 must pay the 8 percent penalty.

The Small Business Majority reports that small businesses, workers and the economy stand to save billions of dollars with the

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[79] "The Economic Impact of Healthcare Reform on Small Business," Small Business Majority (Jun. 11, 2009) .

[80] LaShonda Young, Testimony before the Committee on Education and Labor Committee, "The Tri-Committee Draft for Health Care Reform," (hereinafter Young)(Jun. 23, 2009) at 2.

[81] Young at 2.

[82] Id.

[83] Simona Covel, "Sick and Getting Sicker," Wall St. Journal (Jul. 23, 2009).

enactment of health care reform.[84] Absent health care reform small businesses will spend $2.4 trillion in health care costs over the next ten years. With health reform, small businesses will save 36 percent of those costs, as much as $855 billion. Without health reform, small businesses stand to lose $52.1 billion in profits due to high health care costs over the next ten years. Health reform will decrease these losses and save $29.2 billion. Reduced health care costs will allow employers to reinvest in their business and their workers. Without health reform, individuals working for small businesses could lose up to $834 billion in lost wages as employers pass increased health care costs onto their employees over the next ten years. Health reform could save workers over $300 billion over the next ten years.[85] Reduced health care costs will allow employers to reinvest in their business and their workers.

THE HEALTH INSURANCE EXCHANGE WILL HELP SMALL EMPLOYERS

H.R. 3200 creates a health insurance exchange (HIE) for the uninsured and employees of small businesses to purchase health insurance in the initial years after enactment. Due to the disadvantages small businesses face when trying to purchase health care coverage on their own, both proponents and opponents of the bill believe that a health insurance exchange is essential for small business: "a broad, well-functioning marketplace offering consistency, fairness and healthy competition will vastly improve the availability and affordability of coverage to small businesses and the self-employed."[86] Furthermore, it "can be a vehicle that facilitates and monitors the movement of the system toward achievements of many national health care reform goals." Eighty-percent of small business owners in a recent state survey stated they favor a health insurance pool that they can put their employees into to buy coverage.[87]

A health insurance exchange is an organized marketplace where individuals and some employers can go to purchase health insurance. The HIE is advantageous to those looking to purchase insurance because it provides transparency when individuals and families shop for their health insurance. Currently, insurers are regulated by a patchwork of state laws. Beyond licensing requirements to sell insurance, private health insurance companies and health maintenance organizations (HMO) operate with considerable autonomy. The result is that policies can vary greatly and many policies leave people underinsured.

The robust HIE will not only organize the marketplace but also include insurance reforms and consumer protections, administer affordability credits, and provide people with choice of plans. The HIE will require that insurers, both private and public, adhere to the same rules. To help consumers make educated decisions the Commissioner will conduct outreach and provide assistance to consumers. The Commissioner will ensure that information is readily available in plain language and is provided in a culturally and linguistically appropriate manner. Furthermore, qualified health ben-

[84] Supra note 76.
[85] Id.
[86] Arensmeyer at 4.
[87] Id.

efits plans (QHBP) including those participating in the HIE will be required to comply with transparency requirements established by the Commissioner, including the accurate and timely disclosure of plan documents, plan terms and conditions, as well as information on cost-sharing and payments with respect to out-of-network coverage, claims denials and other information to help educate consumers.

In addition to monitoring and streamlining the insurance industry, the HIE will play a significant role in containing health care costs. Health care costs are comprised of both the underlying costs of providing health care services as well as the administrative costs related to the provisions of coverage.[88] The HIE will require participating plans to offer standardized benefit packages which will increase the ability to compare plans and "reinforce incentives for insurers to price premiums as competitively as possible."[89] Lower cost plans in the HIE will help those employers who "play" by putting their employees into HIE because they will be responsible for a set contribution amount regardless of the plan an employee choose.[90] Furthermore, the affordability credits available to individuals in the HIE who do not enter the exchange with an employer contribution are tied to the average of the lowest three plans which will then incentivize individuals to choose low-cost plans. By the same token, insurers will be incentivized to offer low-cost plans in order to get more business.[91]

Access & Cost Containment Through A Public Health Insurance Option

The inclusion of a strong public health insurance option in the HIE will save over one hundred billion dollars and provide choice to millions of consumers who currently have little or no choice when looking for a health plan. Its inclusion in the HIE will promote value and innovation in the private health insurance industry by increasing competition. The result is that the public option will lower costs for consumers across the private market.

The public health insurance option will provide access to meaningful choice, something many Americans have never had when searching for a health plan. Many areas only have one or two dominant insurance options that control the market and thus have no downward pressure on costs.[92] Furthermore, "it is often in [these insurers'] interest to pay higher rates to key doctors and hospitals because they can pass on these costs to individuals and employers."[93] For insurers trying to enter a market, this practice makes it difficult for them to compete and reduce costs.

While the public option will be subject to the same standards as private plans, the public option can use administrative efficiencies to control costs. On average, private insurance overhead was about 11.7 percent of premiums which is significantly higher when com-

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[88] Linda Bloomberg and Karen Pollitz, "Health Insurance Exchanges: Organizing Health Insurance Marketplaces to Promote Health Reform Goals" (Apr. 2009).

[89] *Id.*

[90] However, an employer is always permitted to contribute an amount greater than the minimum should it choose.

[91] *Id.*

[92] Hacker at 5.

[93] *Id.*

pared to public insurers (Medicare is estimated at 3.6 percent and Medicaid at 6.8 percent).[94] In addition, because the public option is a health plan available nationwide it will have a broad reach and be able to obtain larger volume discounts and will not operate for profit.[95] Accordingly, the public option in H.R. 3200 will serve as a "benchmark for private plans, a backup to allow consumers access to a good plan with broad access to providers in all parts of the country, and to serve as a cost-control backstop."[96]

Ultimately, it will be up to consumers in the HIE to decide whether to enroll in the public option or a private plan. H.R. 3200 intends to create a level playing field for both to compete. Consumers will be able to compare what each plan offers—private plans or the public option—and decide which plan serves them and their families best.[97]

Ensuring Access to Health Care Through Insurance Market Reforms

Comprehensive insurance reforms are another critical element of health reform. Guaranteeing access to health care and protecting against medical debt largely depends on implementing comprehensive insurance reforms. About "20 percent of the population accounts for 80 percent of health spending;" the "sickest one-percent accounting for nearly one-quarter of health expenditures."[98] This uneven distribution of medical care creates incentives for insurance companies to avoid risk altogether rather than trying to spread it among the insured population.[99] As a result, health insurers—particularly in the individual market—have adopted discriminatory, but not illegal, practices to cherry-pick healthy people and to weed out those who are not as healthy.[100] These practices include: denying health coverage based on pre-existing conditions or medical history,[101] even minor ones; charging higher, and often unaffordable, rates based on one's health; excluding pre-existing medical conditions from coverage; charging different premiums based on gender;[102] and rescinding policies after claims are made based on an assertion that an insured's original application was incomplete.[103] In addition, while "state and federal laws give individuals the right

[94] John Holahan and Linda Blumberg, "Can a Public Insurance Plan Increase Competition and Lower the Costs of Health Reform," Urban Institute (2009).

[95] Hacker at 7.

[96] *Id.*

[97] *Id.*

[98] Karen Pollitz, testimony before the Committee on Energy and Commerce, Subcommittee on Health (hereinafter Pollitz) (Mar. 17, 2009).

[99] Linda Blumberg, testimony before the Committee on Ways And Means (April 22, 2009).

[100] Mila Kofman, testimony before the Committee on Energy and Commerce, Subcommittee on ealth (hereinafter Koffman)(Mar. 17, 2009); Blumberg, *supra* 94.

[101] *See* Fran Visco, testimony before the Committee on Education and Labor (June 22, 2009). Ms Visco testifying on behalf of the National Breast Coalition, stressed how no insurance or inadequate insurance has had a devastating effect on women diagnosed with breast cancer.

[102] A 2008 report by the National Women's Law Center examined individual insurance policies in 47 states and the District of Columbia and found that most of the states engage in a practice called "gender rating" where insurance companies arbitrarily charge women and men different rates for individual insurance premiums. Specifically, they found that women under 55 are charged more for health insurance than men (at age 25, 4% to 45% more; at age 40, 4 to 48% more). In addition, the report discovered that the vast majority of individual policies do not cover maternity leave, and in 9 states and the District of Columbia, insurers can reject survivors of domestic violence and those who have had C-sections. *See: Nowhere to Turn: How the Individual Insurance Market Fails Women*, National Women's Law Center (2008).

[103] *Id*, Pollitz, supra 98.

to renew their health insurance coverage, guaranteed renewability provides no protection against rate increases."[104]

Discrimination based on health, gender and other factors has severe economic consequences for those who have been unable to find affordable health coverage and for those who have coverage, but are under-insured.[105] As noted earlier, these practices have resulted in about 57 million Americans having debt because of medical bills,[106] and over 42 million of that number has some sort of medical coverage.[107] Medical debt is now the leading cause of personal bankruptcy.[108]

A key element to health reform is to prohibit risk selection practices and to support those factors based on quality and efficiency. Where states have prohibited these discriminatory practices, consumers have benefitted. For example, since 1993, Maine requires insurers to provide health insurance to individuals or small businesses on a "guarantee issue" basis. In addition, it also has an "adjusted community rating" so that prices for policies are set based on "the collective claims experience of anyone with a policy" and not on any one individual's medical history.[109]

H.R. 3200 includes insurance market reforms ending discriminatory practices conducted by insurance companies. These reforms will apply both inside and outside the HIE to end the discriminatory practices currently practiced by insurance companies. The bill requires that all policies be sold on a guaranteed issue basis; prohibits insurers from excluding coverage based on pre-existing conditions; and prohibits insurers from charging higher rates based on health status, gender, or other factors. It would allow premiums to vary based only on age (no more than 2:1),[110] geography and family size. In addition, the bill prohibits lifetime and annual limits on benefits so that families no longer face bankruptcy as a result of a serious medical illness.

STRENGTHENING THE HEALTH CARE WORKFORCE

As millions of new people gain access to health care coverage, H.R. 3200 recognizes that significant investments in the health care workforce are needed. There is mounting evidence that the nationwide healthcare workforce shortage is accelerating. The Health Resources and Services Administration, within the Department of Health and Human Services, reported in January of this year that twenty states were experiencing scarcities of physicians and

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[104] *Id.*

[105] *Id*; Pollitz, *supra* 98. While 47 million Americans have no health insurance at all, almost as many are underinsured.

[106] Pollitz, *supra* 98, testified that "when out-of-pocket spending for medical bills (not including premiums) exceeds just 2.5% of family income, patients become burdened by medical debt, face barriers to accessing care, and have problems paying other bills."

[107] Pollitz, *supra* 98.

[108] David U. Himmelstein, Deborah Thorne, Elizabeth Warren, Steffie Woolhandler, *Medical Bankruptcy in the United States, 2007*, The American Journal of Medicine (2009) at 3, finding that in 2007, 62.1% of all bankruptcies in the United States were medical, compared with 8 percent in 2001. *See also:* Pollitz, *supra* 98; Kofman, *supra* 100, both of whom testified that most medical bankruptcies are filed by insured people.

[109] Kofman, *supra* 100.

[110] Pollitz, *supra* 98, testified that age is "a strong proxy for health status."

nurses.[111] In particular, dramatic shortages in the health care workforce are seen in primary care and nursing.

Indeed, demand for primary care physicians outpaces supply more than in other specialty group.[112] Specifically, the Association of American Medical Colleges (AAMC) estimates that primary care accounts for 37 percent of the total projected shortage in 2025.[113] Primary care physicians are leaving the practice of medicine sooner than other physician specialties at the same time that fewer medical students and residents are choosing to make the practice of general internal medicine and primary care their central career goal.[114] For many students, the costs of medical education are so high that they feel compelled to specialize in more lucrative subspecialties in order to manage their debt.[115]

While registered nurses constitute the largest single healthcare profession in the United States, there is a worsening nursing shortage.[116] In 2000, the national supply of full time registered nurses was estimated at 1.89 million while the demand was estimated at 2 million, a shortage of 110,000 nurses.[117] Studies published in both *The New England Journal of Medicine* and *The Journal of the American Medical Association* confirms that the shortage of registered nurses is influencing the delivery of health care in the United States and negatively affecting patient outcomes.[118]

The current nursing shortage is a product of several trends including: a diminishing pipeline of new students to nursing, a decline in RN earnings relative to other career options, an aging nursing workforce, low job satisfaction and poor working conditions that contribute to high attrition rates.[119] Compounding these problems is the fact that nursing colleges and universities across the country are struggling to expand enrollment to meet the rising demand for nursing care. According to an American Association of Colleges of Nursing report, nursing schools turned away 49,948 qualified applicants from baccalaureate and graduate nursing programs in 2008 due to insufficient number of faculty, clinical sites, classroom space, clinical preceptors, and budget constraints.[120]

The shortage of health care workers in this country disproportionately impacts those Americans residing in rural areas. The National Health Service Corps (NHSC) was established in the Emergency Health Personnel Act of 1970 (P.L. 91–623) to improve the distribution of health workers in underserved rural areas by providing scholarship support to students in qualified medical professions in exchange for a period of service in a Health Professional Shortage Area (HPSA).

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[111] *See*, http:newsroom.hrsa.gov/insidehrsa/jan2009

[112] "The Complexities of Physician Supply and Demand: Projections Through 2025," Association of American Medical Colleges (AAMC) (Nov. 2008).

[113] *Id.*

[114] Lipner RS, Bylsma WH. Arnold GK, Fortna GS, Tooker J. Cassel CK. Who is maintaining certification in internal medicine-and why? A national survey 10 years after initial certification. Ann Intern Med. (2005)

[115] Pear, Robert. "Shortage of Doctors an Obstacle to Obama Goals." The NY Times (Apr. 26, 2009).

[116] *See*, Henry J. Kaiser Family Foundation, "Addressing the Nursing Shortage" (Jun. 2008).

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *See*, American Association of Colleges of Nursing, "Enrollment and Graduations in Baccalaureate and Graduate programs in Nursing (2008–2009), *available* at: www.acne.nche.edu/IDS.

Administered by the Health Resources and Services Administration, in 2008, 14,000 students applied to the program for financial assistance. However, the Agency was only budgeted to grant one of every seven requests.[121]

H.R. 3200 includes significant investments in the health care workforce to directly address the shortages outlined. The legislation provides resources to help train more primary care physicians as well as registered nurses. It puts into place incentives to encourage more people to become doctors and nurses, particularly in rural areas. Specifically, the bill increases funding for the National Health Service Corps in order to expand scholarships and loans for health professionals that work in shortage professions and areas. In addition, it creates an advisory committee on health workforce evaluation to assess the adequacy and appropriateness of the health workforce, and to make recommendations to the Secretary of Health and Human Services on federal workforce policies to ensure the health workforce is meeting the nation's needs.

V. SECTION-BY-SECTION SUMMARY [122]

Division I

Title I—Protections and Standards for Qualified Health Benefits Plans

Subtitle A—General Standards

Sec. 100. Purpose; Table of Contents of Division; General Definitions

Purpose

The purpose of this division is to provide affordable, quality health care for all Americans and reduce the growth in health care spending. In addition, this division achieves this purpose by building on what works in today's health care system, while repairing the aspects that are broken. Insurance reforms that this division encompasses are:

- Enacting insurance market reforms
- Creating a new Health Insurance Exchange, with a public health insurance option alongside private plans
- Including sliding scale affordability credits
- Initiating shared responsibility among workers, employers, and the government

This division institutes health delivery system reforms both to increase quality and to reduce growth in health spending so that health care becomes more affordable for businesses, families, and government.

General Definitions (Created within this Act)

- Acceptable Coverage—qualified health benefits plan coverage, coverage under a grandfathered health insurance coverage or current group health plan, Medicare Part A, Medicaid, Military Health

[121] *See*, http:newsroom.hrsa.gov/insidersa/jan2009.

[122] This section-by-section summary is based in part on a summary initially prepared by the Congressional Research Service elaborated upon to reflect the views of the Committee.

System, coverage under Veteran's Health Care Program (VA), and other coverage's the Secretary of HHS in coordination with the Health Choices Commissioner sees fit.

• Basic Plan—a plan that offers the essential benefits package's minimum requirements to be a qualified health benefits plan.

• Cost-sharing—includes deductibles, coinsurance, copayments, and similar charges but does not include premiums or any network payment differential for covered services or spending for non-covered services.

• Employment-Based Health Plan—the term given to group health plans (as defined in section 733(a)(1) of ERISA—(as an employee welfare benefit plan to the extent that plan provides medical care to employees or their dependents, either directly, through insurance or otherwise)), and is comprised of federal and state government plans, tribal plans and church plans. Following an amendment at Committee, this term was also defined as excluding TRICARE.

• Enhanced Plan—a plan that offers, in addition to the level of benefits under a basic plan, a lower level of cost-sharing equivalent to approximately 85 percent of the actuarial value of the benefits provided.

• Essential Benefits Package—health benefits coverage, consistent with the standards set forth by the Secretary no later than 18 months after enactment of this bill.

• Health Benefits Plan—health insurance coverage and a group health plan, including the public health insurance option.

• Health Insurance Exchange—created by this bill to facilitate access of individuals and employers, through a transparent process, to a variety of choices of affordable, quality health insurance coverage, including a public health insurance option.

• Premium Plan—a plan that offers, in addition to the level of benefits under a basic plan, a lower level of cost-sharing equivalent to approximately 95 percent of the actuarial value of the benefits provided.

• Premium Plus Plan—a premium plan that also offers additional benefits, such as oral health and vision care, all of which is approved by the Commissioner.

• Qualified Health Benefits Plan (QHBP)—a health benefits plan that meets the requirements set forth in Title I (by the Secretary) including the public health insurance option.

• QHBP Offering Entity—an entity can be any of the following: a health benefits plan (that is a group health plan) in which the employer is the main source of financing, health insurance coverage which the insurance issuer is offering the coverage, the public health insurance option, a non-federal government plan established by the State or political subdivision of a State, and a federal government plan.

• Public Health Insurance Option—a public plan (only available through the Health Insurance Exchange) with payment rates established by the Secretary. The public option would be required to offer basic, enhanced, and premium plans, and would be allowed to offer premium-plus plans. Payment rates for prescription drugs not covered by Medicare part A or B will be covered by the public option at prices negotiated by the Secretary.

• Service Area, Premium Rating Area—with respect to health insurance coverage: (1) if not within the Health Insurance Exchange, an area established by a QHBP offering entity of such coverage in accordance with applicable state law or (2) within the Health Insurance Exchange, an area established by such entity in accordance with state law and applicable rules set forth by the Commissioner for exchange-participating health benefits plans.
• "State"—given term for purposes of the Medicaid program, but only includes the 50 states and the District of Columbia.
• Y1, Y2, etc.—2013, 2014, etc.

Sec. 101. Requirements Reforming Health Insurance Marketplace

Current Law

Regulation of the private health insurance market is primarily done at the state level. State regulatory authority is broad in scope and includes requirements related to the issuance and renewal of coverage, benefits, rating, consumer protections, and other issues. Federal regulation of the private market is more narrow in scope and applicable mostly to employer-sponsored health insurance (i.e., through the Employee Retirement Income Security Act of 1974 (ERISA)).

Proposed Law

This provision would require "qualified health benefits plans" (QHBPs) to meet the new federal health insurance standards specified in Subtitles B (relating to affordable coverage), C (relating to essential benefits) and D (relating to consumer protection) of Title I. The section also provides terminology for the phrases "enrollment in employment-based health plans;" and "individual and group health insurance coverage."

This provision also includes a Sense of Congress that the final bill must meaningfully address the health care needs of the territories.

Sec. 102. Protecting the Choice to Keep Current Coverage

Current Law

See description under Sec. 101.

Proposed Law

"Grandfathered health insurance coverage" would be defined as individual health insurance coverage that is in effect before the first day of 2013, as long as the insurance carrier does not (1) enroll new individuals on or after the first day of 2013 (would not affect subsequent enrollment of a dependent); (2) change any terms or conditions of the individual coverage, except as required by law; and (3) vary the percentage increase in premiums for a risk group of enrollees without changing the premium for all enrollees in the same risk group at the same rate, as specified by the Commissioner. The Commissioner would establish a five-year grace period beginning in 2013 for existing group health plans to transition to the new federal health insurance standards applied to QHBPs. The grace period would not apply to limited benefits plans specified in

the provision, such as dental only, vision only, flexible spending arrangements, and others.

Individual health insurance coverage that is not grandfathered, may only be offered after the first day of 2013 as an Exchange-plan. Excepted benefits (e.g., accident or disability insurance) could be offered as long as they are offered and priced separately from health insurance coverage. New group health plans would have to comply with this Act on 2013.

For purposes of the individual mandate (established under title III of Division A), an individual would be required to have "acceptable coverage." In order for an individual health insurance policy to be considered acceptable coverage, the policy would be either grandfathered health insurance coverage or offered through the HIE (established under title II of Division A) or otherwise deemed or determined to be acceptable coverage under the bill. Group health coverage, including group health coverage consisting of a consumer-directed plan, provided during the grace period would be considered acceptable coverage.

Section 102(b)(3), providing an exception for treating consumer-directed health plans and arrangements as acceptable coverage, was added by an amendment which originally called for a "permanent" exception. The word "permanent" was dropped from the amendment by unanimous consent, as Members of the Committee agreed that such exception for treating consumer-directed health plans as acceptable coverage should only be effective during the five-year grace period, not permanently.

Subtitle B—Standards Guaranteeing Access to Affordable Coverage

Sec. 111. Prohibiting Pre-Existing Condition Exclusions

Current Law

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which amended ERISA, limits the duration that issuers in the group market may exclude coverage for pre-existing health conditions for "HIPAA eligible" individuals, among other provisions. Group plans may impose pre-existing condition exclusions for no longer than 12 months (18 months in the case of a late enrollee), and must decrease that exclusion period by the number of months an enrollee had prior "creditable coverage." HIPAA outright prohibits issuers in the individual market from excluding coverage for pre-existing conditions for HIPAA eligibles.

All states require health issuers to reduce the period of time when coverage for pre-existing health conditions may be excluded, in compliance with HIPAA. As of January 2009 in the small group market, 21 states had pre-existing condition exclusion rules that provided consumer protection above the federal standard. And as of December 2008 in the individual market, 42 states limit the period of time when coverage for pre-existing health conditions may be excluded for non-HIPAA eligible enrollees in that market.

Proposed Law

This provision would create a uniform minimum standard prohibiting a qualified health benefits plan from excluding coverage for pre-existing health conditions, or otherwise limiting or condi-

tioning such coverage with respect to an individual or dependent based on any health status-related factors. Such factors include health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence) and disability.

Sec. 112. Guaranteed Issue and Renewal for Insured Plans

Current Law

HIPAA requires that coverage sold to small groups (2–50 employees) must be sold on a guaranteed issue basis. That is, the issuer must accept every small employer that applies for coverage. (Guaranteed issue rules do not address premiums.) HIPAA also guarantees that each issuer in the individual market make at least two policies available ("guaranteed availability") to all HIPAA eligible individuals. In addition, HIPAA guarantees renewal or continuation of group coverage at the option of the plan sponsor (e.g., employer) and individual coverage at the option of the individual, with some exceptions. Insurers may not renew coverage under specified circumstances, such as nonpayment of premiums or fraud.

All states require issuers to offer policies to firms with 2–50 workers on a guaranteed issue basis, in compliance with HIPAA. As of January 2009 in the small group market, 13 states also require issuers to offer policies on a guaranteed issue basis to self-employed "groups of one." And as of December 2008 in the individual market, 15 states require issuers to offer some or all of their insurance products on a guaranteed issue basis to non-HIPAA eligible individuals.

Proposed Law

This provision would require issuers to offer all health insurance coverage on a guaranteed issue and renewal basis beginning in 2013, whether offered through the HIE (established under Subtitle A of Title II), through any employment-based health plan, or otherwise. Rescissions of coverage would be prohibited, except in cases of fraud.

Sec. 113. Insurance Rating Rules

Current Law

There are no federal rating rules applicable to the private health insurance market. Most states currently impose rating rules on insurance carriers in the small group and individual markets. Existing state rating rules restrict an insurer's ability to price insurance policies according to the risk of the person or group seeking coverage, and vary from state to state. Such restrictions may specify the case characteristics (or risk factors) that may or may not be considered when setting a premium, such as age. The spectrum of existing state rating limitations ranges from pure community rating, to adjusted (or modified) community rating, to rate bands, to no restrictions. Pure community rating means that premiums cannot vary based on any characteristic related to a person's or group's risk, including health. Adjusted community rating means that premiums cannot vary based on health, but may vary based on other

key risk factors, such as gender. Rate bands allow premium variation based on health, but such variation is limited according to a range specified by the state. Moreover, both adjusted community rating and rate bands allow premium variation based on any other permitted case characteristic, such as industry. And for each characteristic, the state typically specifies the amount of allowable variation. As of January 2009 in the small group market, one state has pure community rating rules, eleven have adjusted community rating rules, and 35 have rate bands. As of December 2008 in the individual market, two states have pure community rating rules, five have adjusted community rating rules, and eleven have rate bands.

There are no federally-established rating areas in the private health insurance market. However, some states have enacted rating rules in the individual and small group markets that include geographic location as a factor on which premiums may vary. In these cases, the state has established rating areas. Typically, states use counties or zip codes to define those areas.

Proposed Law

This provision would impose new federal rating rules on qualified health benefits plans. QHBP premiums would vary only by age (by no more than a 2:1 ratio within age categories specified by the Commissioner (established under Sec. 141)), premium rating area (as permitted by state regulators or, in the case of an Exchange plan, as specified by the Commissioner), and family enrollment (as specified under State law and consistent with Commissioner rules).

The Commissioner, in coordination with the Secretaries of Health and Human Services (HHS) and Labor, would conduct a study of the large group market to examine (1) characteristics of employers who purchase fully-insured health insurance products and employers who self-fund health benefits, including characteristics related to bearing risk and solvency, and (2) the extent to which rating rules cause adverse selection in the large group market or encourage small and mid-size employers to self-insure health benefits. The Commissioner would submit this report to Congress and the applicable agencies no later than 18 months after enactment, and include any recommendations to ensure that the law does not provide incentives for small and mid-size employers to self-insure or create adverse selection in the risk pools of large group insurers and self-insured employers.

Sec. 114. Nondiscrimination in Benefits

Current Law

HIPAA established federal rules regarding non-discrimination based on health status-related factors. It prohibits group issuers from establishing rules for eligibility and premium contributions based on health status-related factors. Those factors include health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence) and disability. In addition, the Genetic Information Nondiscrimination Act of 2008 prohibits issuers in the individual health insurance market from establishing

eligibility rules (including continued eligibility) based on an individual's genetic information, and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 establishes that if an employer provides mental health benefits there must be parity with physical health benefits.

Proposed Law

This provision would require QHBPs to comply with non-discrimination standards regarding health benefits or benefit structures established by the Commissioner, building on existing federal non-discrimination rules in ERISA, the Public Health Service Act (PHSA), and the Internal Revenue Code of 1986. Existing mental health parity rules, apply to QHBPs, regardless of whether coverage is offered in the individual or group market.

Sec. 115. Ensuring Adequacy of Provider Networks

Current Law

HIPAA established special rules for network plans. It allows small group issuers to (1) limit the employers that apply for coverage to those firms with eligible individuals who live or work in the network service area, and (2) deny coverage to small employers if the issuer demonstrates (if required) to the State that it has limited provider capacity due to obligations to existing enrollees and it is applying this decision uniformly without regard to claims experience or health status-related factors. HIPAA also prohibits a small group issuer that has denied coverage in any service area to offer small group coverage in that area for 180 days after the denial.

Proposed Law

This provision would require QHBPs that use provider networks to meet provider network standards that may be established by the Commissioner to ensure the adequacy of networks, and transparency in the cost-sharing differences between in- and out-of-network coverage. The term "provider network" means the providers with respect to covered benefits, treatments, and services available under a health benefit plan.

Sec. 116. Ensuring Value and Lower Premiums

Current Law

Medical loss ratio is the share of total premium revenue spent on medical claims. Medigap insurance policies are private supplemental health care policies that Medicare beneficiaries can purchase to help cover some items, services, and cost sharing not covered under Medicare. Medigap plans are required to have a minimum medical loss ratio of 65 percent for individual policies and 75 percent for group policies. In addition, most states impose medical loss ratios or related requirements on insurers in the individual and/or small group health insurance markets.

Proposed Law

This provision would require a QHBP to comply with a medical loss ratio standard to be determined by the Commissioner but not

less than 85 percent. For any QHBP that does not meet such a standard, it would be required to provide rebates to enrollees, in a manner specified by the Commissioner, in sufficient amounts to meet such a loss ratio. To establish the medical loss ratio standard, the Commissioner would build on the definition and methodology, developed by the HHS Secretary under Section 161, for determining how to calculate such a ratio. The methodology would set the highest ratio possible to ensure adequate QHBP participation, competition both in and out of the HIE, and value for consumers so that their premium contributions are used for medical claims.

Sec. 117. Consistency of costs and coverage under qualified health benefits plans during plan year

This provision would prohibit insurance companies from changing the coverage or costs of a health plan mid-year except if the costs are lowered and/or the coverage is increased.

Subtitle C—Standards Guaranteeing Access to Essential Benefits

Sec. 121. Coverage of Essential Benefits Package

Current Law

There are limited federal benefit mandates for health insurance. These standards were added to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and are described in the discussion of Section 122, below.

Proposed Law

This provision would require a "qualified health benefits plans (QHBP)" to cover at least an "essential benefit package." QHBPs could be offered in or outside of an Exchange. QHBPs offered outside of an Exchange would be allowed to offer additional benefits beyond those specified in the essential benefits package. For QHBPs offered through the Exchange, a plan offering a premium-plus level of benefits (established under Section 203) could provide additional benefits.

The requirements under Division A would not affect the offering of limited-purpose benefit plans, including policies covering dental or vision treatment, long-term care, Medicare supplement policies, workers' compensation, and other similar benefits, if such benefit plans are offered under a separate policy, contract, or certificate of insurance.

A QHBP would not be allowed to impose coverage restrictions (except cost sharing) unrelated to the clinical appropriateness of the health care items and services.

Sec. 122. Essential Benefit Package Defined

Current Law

Federally mandated benefits. Laws are found in the Employee Retirement Income Security Act (ERISA—covering employer-sponsored plans), the Public Health Service Act (PHSA—covering insurance plans and state and local government plans), and the Internal Revenue Code (IRC—covers Church plans in certain circumstances).

Those mandates include:

• The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 established that employers who offer mental health and substance use disorder benefits must offer them in an equal manner as physical health benefits are offered. The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) requires plans that offer maternity coverage to pay for at least a 48-hour hospital stay following childbirth (96–hour stay in the case of a cesarean section).

• The Women's Health and Cancer Rights Act of 1998 contains protections for patients who elect breast reconstruction in connection with a mastectomy. For plan participants and beneficiaries receiving benefits in connection with a mastectomy, plans offering coverage for a mastectomy must also cover reconstructive surgery and other benefits related to a mastectomy.

• The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits discrimination based on genetic information by health insurers and employers. GINA strengthens and clarifies existing HIPAA nondiscrimination and portability provisions. Broadly, GINA prohibits health insurers from engaging in three practices: (1) using genetic information about an individual to adjust a group plan's premiums, or, in the case of individual plans, to deny coverage, adjust premiums, or impose a preexisting condition exclusion; (2) requiring or requesting genetic testing; and (3) requesting, requiring, or purchasing genetic information for underwriting purposes.

• Michelle's Law ensures that dependent post secondary education students who take a medically necessary leave of absence do not lose health insurance coverage. The law provides that a group health plan may not terminate a college student's health coverage simply because the student takes a medically necessary leave of absence from school or changes to part-time status. The leave of absence must be medically necessary, begin while the student is suffering from a serious illness or injury and would otherwise result in a loss of coverage.

Similarly, the Advisory Committee on Immunization Practices (ACIP), administered by the Centers for Disease Control and Prevention (CDC), reviews scientific evidence and makes recommendations to the Secretary and the CDC Director for the routine administration of vaccines to children, adolescents, and adults in the U.S. civilian population. The ACIP is not explicitly authorized; rather, it is based in general authorities of the Secretary in Titles II and III of the PHSA.

Proposed Law

This provision would require the essential benefits package to cover specified items and services, limit cost sharing, prohibit annual and lifetime limits on covered services, ensure the adequacy of provider networks, and be equivalent (as certified by the Office of the Actuary of the Centers for Medicare and Medicaid Services) to the average prevailing employer-sponsored coverage.

The essential benefits package would be required to cover the following items and services:

• Hospitalization;

- Outpatient hospital and clinic services, including emergency department services;
- Services of physicians and other health professionals;
- Services, equipment, and supplies incident to the services of a physician or health professional in appropriate settings;
- Prescription drugs;
- Rehabilitative and "habilitative" services (i.e., services to maintain the physical, intellectual, emotional, and social functioning of developmentally delayed individuals);
- Mental health and substance use disorder services;
- Preventive services, include those graded "A" or "B" by the Task Force on Clinical and Preventive Services, as well as certain other substance abuse and mental health services, and those vaccines recommended by the Director of the CDC;
- Maternity care;
- Well baby and well child care and oral health, vision, and hearing services, equipment, and supplies, as defined under Section 1905(r) of the Social Security Act, for those under age 21; and
- Durable medical equipment, prosthetics, orthotics and related supplies.

The Committee recognizes that historically, insurers have not covered medical services addressing a range of women's health needs, resulting in high out-of-pocket costs for medical services, such as maternity care and preventive screenings. Women have a variety of essential health needs throughout their lifetimes. Therefore, the Committee intends that the bill require the basic benefits package include the full range of medical services for women's unique health needs, at all stages of life, including, but not limited to, maternity care, preventive screenings such as mammograms, annual gynecological exams, diagnostic, routine care, and recommended treatments.

The Committee believes that medically necessary evidence-based behavioral intervention services, including those provided to individuals with autism, are included within the ambit of section 122(b) of the bill.

The essential benefits package would be subject to various requirements concerning cost-sharing. The package would be required to provide preventive items and services without cost-sharing. The annual out-of-pocket limit in 2013 would be $5,000 for an individual and $10,000 for a family. These limits would be annually adjusted for inflation using the Consumer Price Index (CPI). To the extent possible, the Commissioner would establish cost-sharing levels using copayments (a flat dollar fee) and not coinsurance (a percentage fee). Cost-sharing would result in coverage equal to approximately 70 percent of the actuarial value of the benefits if there were no cost-sharing imposed.

Sec. 123. Health Benefits Advisory Committee

Current Law

None.

Proposed Law

A Health Benefits Advisory Committee (HBAC) would be established to recommend covered benefits and the essential, enhanced, and premium plans. The HBAC would be chaired by the Surgeon General. The HBAC membership would be comprised of

- Nine members, appointed by the President, who are neither federal employees nor officers;
- Nine members, appointed by the Comptroller General, who are neither federal employees nor officers; and
- An even number, up to eight members, appointed by the President, who are federal employees and officers.

The initial appointments would be made within 60 days of enactment. Each HBAC member would serve a three-year term, except the terms of the initial appointments would be adjusted to provide for staggered years of appointment. The members would reflect the interests of the many diverse groups of stakeholders so that no single interest would unduly influence the HBAC's recommendations. At a minimum, committee membership would reflect educated patients or consumer advocates, providers, employers, labor, health insurance issuers, experts in health care and delivery, experts in health disparities, and government agencies. In addition, at least one HBAC member would be a practicing physician or health professional, and another member would be an expert on children's health. At least one member must be an expert on the scientific evidence and clinical practice of integrative medicine.

The HBAC's recommendations to the Secretary on the essential benefits package (as defined in Section 122), cost-sharing levels for the enhanced plans and premium plans (as defined in Section 203), and periodic updates of the package would be required to incorporate innovation in health care. The HBAC members would also consider how the package would reduce health disparities, would take into account integrative medicine, and would allow for public input as part of developing its recommendations. The HBAC's initial benefit recommendations must be made to the Secretary within one year of enactment.

In developing standards for the enhanced and premium plans, the HBAC would be required to calculate cost-sharing such that the enhanced plan would have benefits that are actuarially equivalent to about 85 percent of the actuarial value of the benefits provided in the essential benefits package, and the premium plans would have benefits that are actuarially equivalent to about 95 percent of the actuarial value of the benefits provided in the essential benefits package.

The Committee intends that, in developing its recommendations regarding benefit standards, the Health Benefits Advisory Committee shall take into account the special characteristics of group health plans that are multiemployer plans as defined in section 3(37) of the Employee Retirement Income Security Act and the impact of the recommendations on such plans. Among the special characteristics to be considered is that these plans are funded, and their costs borne, by the workers who tradeoff wages for employer contributions, that a plan's income fluctuates with the availability of covered work, and that workers are equally represented on the

plans' boards of trustees who design the rules and benefit programs.

HBAC members would serve without pay, but would receive federal travel expenses, including per diem expenses. In addition, the HBAC would be subject to the Federal Advisory Committee Act although the members would not become Federal employees.

The Secretary would be required to publish all recommendations developed pursuant to this Section in the Federal Register and on the HHS website.

Following an amendment at Committee, this provision would also instruct the Health Benefits Advisory Committee to examine current state laws and to seek input from the states as it forms its recommendations for the federal benefits standards.

Sec. 124. Process for Adoption of Recommendations; Adoption of Benefit Standards

Current Law

None.

Proposed Law

This Section proposes a timeline by which the Secretary must choose whether to adopt the recommendations of the HBAC established under Section 123 of this bill. Within 45 days of receiving the HBAC's recommendations regarding the essential benefits package, the Secretary would be required either to adopt the benefit standards as written or not adopt the benefit standards, notify the HBAC of the reasons for this decision, and provide an opportunity for the HBAC to revise and resubmit its recommendations.

The Secretary would be required to adopt an initial set of benefit standards within 18 months of enactment either by adopting the recommendations (and any revisions) of the HBAC, or absent that, by proposing an initial set of benefit standards.

The Secretary would be required to publish all determinations under this Section in the Federal Register.

The Secretary would be required to periodically update the benefit standards. However, an essential benefits package that does not meet the essential benefits requirements specified in Section 122 could not be adopted.

Sec. 125. Prohibition of Discrimination in Health Care Services Based on Religious or Spiritual Content

This provision would prohibit the Commissioner or any health insurance issuer offering health insurance coverage through the HIE from discriminating against approving or covering health care services based on religious or spiritual content if expenditures for such a health care service are allowable under 213(d) of the Internal Revenue Code of 1986.

Subtitle D—Additional Consumer Protections

Sec. 131. Requiring Fair Marketing Practices by Health Insurers

Current Law

States have established varying marketing standards to prohibit insurers from marketing their insurance products only to healthy risks.

Proposed Law

This provision would require the Commissioner to establish uniform marketing standards for QHBPs.

Sec. 132. Requiring Fair Grievance and Appeals Mechanisms

Current Law

ERISA does mandate compliance to certain standards if an employer chooses to offer health benefits, such as procedures for appealing denied benefit claims. The Department of Labor has issued regulations for plan internal appeal processes but does not provide for external appeals other than through judicial review. In addition, as of February 2008, 44 states and the District of Columbia mandate the independent review of benefit denials by an entity outside of the health plan ("external review"). The Supreme Court has upheld the application of state external review laws to ERISA covered plans.

Proposed Law

This provision would require QHBPs to provide for a uniform timely grievance and appeals mechanisms as established by the Commissioner. QHBPs would provide an internal claims and appeals process that initially incorporates the claims and appeals procedures (including urgent claims) promulgated by the Labor Department and published in the Code of Federal Regulations on November 21, 2000 (65 Fed. Reg. 70246). Such a process would be updated in accordance with any relevant standards that may be established by the Commissioner. The Commissioner would establish standards for an external review process (including expedited review of urgent claims), and any determination made with respect to a QHBP under an external review process would be binding. Aggrieved individuals would have state law rights and remedies to appeal adverse QHBP decisions.

Sec. 133. Requiring Information Transparency and Plan Disclosure

Current Law

ERISA requires applicable health plans (as well as other "welfare benefit" plans) to disclose and report certain plan information to enrollees and regulators. For example, plan administrators must provide to enrollees a written summary plan description (SPD) which contains the terms of the plan and the benefits offered, including any material modifications, and the SPD must be written in a manner that can be understood by the average enrollee. Certain plans must file an annual report with the Department of

Labor, containing information about the operation, funding, assets, and investments of those plans.

Proposed Law

This provision would require QHBPs to comply with disclosure standards established by the Commissioner concerning plan terms and conditions, claims payment policies, plan finances, claims denials, and other information as determined appropriate by the Commissioner. One specified disclosure requirement would be a list of health care providers under the plan trained and accredited in integrative medicine. The Commissioner would require such disclosure to be provided in plain language. QHBPs would be required to comply with standards established by the Commissioner to ensure transparency regarding reimbursements between the plan and health care providers. A change in a QHBP could not be made without reasonable and timely advance notice to enrollees about the change.

Sec. 134. Application to Qualified Health Benefits Plans Not Offered Through the Health Insurance Exchange

Current Law

None.

Proposed Law

The Committee intends that the Commissioner may make any or all of the requirements of Subtitle D applicable to qualified health benefits plans outside of the HIE if the Commissioner determines that such an extension is necessary to accomplish the fundamental purposes of this Act. The Commissioner may make the requirements applicable to only health insurance issuers, and not to self-funded plans or to multiemployer plans based upon the Commissioner's determination that such plans satisfy the consumer protections provided for in this Act.

Sec. 135. Timely Payment of Claims

Current Law

Under Medicare Advantage (MA), private health plans are paid a per-person amount to provide all Medicare-covered benefits (except hospice) to beneficiaries who enroll in their plan. MA plans include health maintenance organizations and private fee-for-service (PFFS) plans. MA PFFS plans are required to pay 95 percent of "clean claims" within 30 days of receipt. The Centers for Medicare and Medicaid Services (CMS) defines a clean claim as a claim that has no defect or impropriety, and is submitted with all the required documentation. The 30–day rule also applies to claims submitted to any MA organization by a provider who does not have a written contract with the plan. MA organizations are required to pay interest on clean claims that are not paid within 30 days. All other claims from non-contracted providers must be paid within 60 days. MA organizations that do contract with providers (i.e., HMOs and PPOs) must include a prompt payment provision in their contracts.

Proposed Law

This provision would require QHBPs to comply with the prompt pay requirements applicable to Medicare Advantage plans.

Sec. 136. Standardized Rules for Coordination and Subrogation of Benefits

Current Law

While there are no federal statutes specifying primary and secondary payment rules for multiple insurers in the private market, the Medicare statutes can be cited as providing an example. Section 1862(b) of the Social Security Act authorizes the Medicare Secondary Payer (MSP) program, which identifies specific conditions under which another party pays first and Medicare is only responsible for qualified secondary payments. The statute authorizes several methods to identify cases when an insurer other than Medicare is the primary payer and to facilitate recoveries when incorrect Medicare payments have been made. Under certain conditions, the law makes Medicare the secondary payer to insurance plans and programs for beneficiaries covered through (1) a group health plan based on either their own or a spouse's current employment; (2) auto and other liability insurance; (3) no-fault liability insurance; and (4) workers' compensation situations, including the Black Lung program. The purpose of the MSP program is to shift costs from Medicare to private sources of payment, thus reducing Medicare expenditures. Additionally, the Medicare statutes exclude Medicare coverage for items and services paid for directly or indirectly by a government entity, subject to certain limitations. This includes the Department of Veterans Affairs, among others.

The states have long established rules on coordination of benefits and subrogation of claims but in recent years, health plans have challenged aspects of the traditional rules leading to confusion and uncertainty in this area.

Proposed Law

The Commissioner would establish standards for the coordination of benefits and reimbursement of payments in cases involving individual and multiple plan coverage.

Sec. 137. Application of Administrative Simplification

Current Law

To support the growth of electronic record keeping and claims processing, HIPAA's Administrative Simplification provisions instructed the Secretary to adopt electronic format and data standards for several routine administrative and financial transactions between health care providers and health plans/payers. The standards apply to health care providers (who transmit any health information in electronic form in connection with a HIPAA-specified transaction), health plans, and health care clearinghouses. Although providers have made significant progress in streamlining administrative processes, much work remains to achieve uniforms claims and billing processes.

Proposed Law

This provision would require QHBP offering entities (as defined in the bill) to comply with the new administrative simplification standards adopted under Sec. 163 (discussed below).

Sec. 138. Records Relative to Prescription Information

This provision would ban the sales of physician prescribing habits to the pharmaceutical industry when the physician serves patients enrolled in a qualified health benefit plan.

Subtitle E—Governance

Sec. 141. Health Choices Administration; Health Choices Commissioner

Current Law

No specific provision in federal law.

Proposed Law

This provision would establish an independent agency in the Executive Branch of the United States called the Health Choices Administration, "Administration." The Administration would be headed by a Health Choices Commissioner, "Commissioner," who would be appointed by the President, by advice and consent of the Senate. Section 702 of the Social Security Act (detailing compensation, terms, general powers, rule-making, and delegation as applied to the Commissioner of Social Security and the Social Security Administration) would apply to the Commissioner.

Sec. 142. Duties and Authority of Commissioner

Current Law

None.

Proposed Law

This provision would make the Commissioner responsible for carrying out the following functions:

- Qualified Plan Standards—Establishing qualified health benefits plan ("QHBP") standards, including the enforcement of such standards in coordination with State insurance regulators and the Secretaries of Labor and the Treasury.
- Health Insurance Exchange—Establishing and operating the Health Insurance Exchange.
- Individual Affordability Credits—Administering individual affordability credits, including the determination of eligibility for such credits.
- Promoting Accountability—Undertaking activities in accordance with this section to promote accountability of QHBP offering entities in meeting Federal health insurance requirements, regardless of whether such accountability is with respect to qualified health benefits plans offered through or outside the Health Insurance Exchange.
- Compliance Examination and Audits—coordinating with States to conduct audits of qualified health benefits plan compliance with Federal requirements. These audits would include random compli-

ance audits and targeted audits in response to complaints or other suspected non-compliance.

• Recoupment of Costs in Connection with Examination and Audits—authorizing to recoup from qualified health benefits plans reimbursement for costs of such examinations and audit of such QHBP offering entities.

• Data Collection—Collecting data for the purposes of carrying out the Commissioner's duties, including promoting quality, value, protecting consumers and addressing disparities in health care; the commissioner may share such data with Secretary of Health and Human Services. The Committee believes populations who experience disparities in health care include people with disabilities.

• Sanctions Authority—Providing any of the following remedies (in addition to any other authorized by law) in coordination with State insurance regulators and the Secretary of Labor if it is determined that a QHBP offering entity violates a requirement:

1. Civil money penalties of not more than the amount applicable under similar circumstances for similar violations under Medicare;

2. Suspension of plan enrollment of individuals under such plan after the date the Commissioner notifies the entity of a decision, until the Commissioner is satisfied with rectification;

3. In the case of an Exchange-participating health benefits plan, suspension of payment under the Health Insurance Exchange for individuals enrolled in the plan after the date the Commissioner notifies the entity of such decision and until the Commissioner is satisfied with corrective action; or

4. Work with State insurance regulators to terminate plans for repeated failure by the QHBP offering entity to meet this title's requirements.

Standard Definitions of Insurance and Medical Terms—providing the development of standards for defining terms used in health insurance coverage, including insurance-related terms.

Sec. 143. Consultation and Coordination

Current Law

None.

Proposed Law

The Commissioner, as appropriate, would be required to consult with, at a minimum, the National Association of Insurance Commissioners, State attorneys general, and State insurance regulators concerning the standards and enforcement for insured qualified health benefits plans described in this title. Concurrently, the Commissioner would be required to consult with, at a minimum, Indian tribes and tribal organizations, appropriate federal agencies, and appropriate State agencies concerning affordability credits and the offering of Exchange-participating health benefits plans (including Medicaid concerning standards for insured qualified health benefits plans).

Sec. 144. Health Insurance Ombudsman

Current Law

The Department of Health and Human Services receives various complaint handling and client-assistance ombudsmen including:

Long-term Care Ombudsman—mandated by Older Americans Act of 1965, consists of 1,000 paid and 14,000 volunteers who identify, investigate, and resolve complaints made by, or on the behalf, of residents. They have a blend of federal and state oversight.

Medicare Beneficiary Ombudsman—Created by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108–173), it is intended to ensure those eligible for Medicare have reliable and current information about their benefits, rights and protections under the Medicare program, and the procedures for getting problems and disputes resolved. The Ombudsman is to aid Medicare recipients in filing appeals if their insurance did not pay proper amounts for their medical services or those services were denied.

State Health Insurance Ombudsman—Several states (VT, MN, and IL to name a few) have created State health insurance ombudsmen, with the core responsibilities of rectifying concerns encompassing access to care, billing problems, and access to health insurance. The ombudsman provides information on state and federal programs that may be available, explains continuation rights under an existing health plan, provides help on how to shop for health insurance, and assists in appealing decisions made by their health insurance.

Proposed Law

The Commissioner would appoint within the Health Choices Administration a Qualified Health Benefits Ombudsman (with experience and expertise in the fields of health care and education). The Ombudsman would be required to perform the following duties:

• Receive and provide assistance with complaints, grievances, and requests for information submitted by individuals. The assistance would be provided more specifically in instances such as helping individuals determine relevant information for an appeal, assisting with any problems arising from disenrollment, choosing a qualified health benefits plan to enroll, and presenting information relevant to affordability credits.

• Submit annual reports to Congress and the Commissioner describing the activities of the Ombudsman, including recommendations for improvement in the Administration of this Division, as determined appropriate. The Ombudsman would not serve as an advocate for any increases in payments or new coverage of services, but would identify issues and problems in payment or coverage policies.

Subtitle F—Relation to Other Requirements; Miscellaneous

Sec. 151. Relation to Other Requirements

Current Law

None.

Proposed Law

• Coverage Not Offered Through the Exchange—The requirements of this provision would not supersede specified provisions of federal and state laws with respect to the health insurance coverage not offered through the Health Insurance Exchange (whether or not offered in connection with an employment-based health plan).

• Coverage Offered Through the Exchange—The requirements under this title would not supersede any requirements relating to genetic information non-discrimination and mental health for such health insurance coverage (as long as those related do not prevent the application of requirements detailed in this division; as determined by the Commissioner). Concurrently, individual rights and remedies under State laws would apply. Nothing in this paragraph would be construed as preventing the application of rights and remedies under State laws.

Sec. 152. Prohibiting Discrimination in Health Care

Current Law

HIPAA established federal rules regarding non-discrimination based on health status-related factors. It prohibits group issuers from establishing rules for eligibility and premium contributions based on health status-related factors. Those factors include health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence) and disability. In addition, the Genetic Information Nondiscrimination Act of 2008 (GINA, P.L. 110–233) prohibits issuers in the individual health insurance market from establishing eligibility rules (including continued eligibility) based on an individual's genetic information. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 establishes parity by requiring an employer offering mental health and substance use disorder benefits in an equal manner as physical health benefits are offered.

In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination by the recipients of federal funds, which includes many hospitals, clinics and social service agencies. However, the Civil Rights Act's link to the receipt of federal funds has insulated many insurance companies from any obligation to comply with non-discrimination protections.

Proposed Law

Unless explicitly permitted within this Act and subsequent related regulations, all health care and related services, (including insurance coverage and public health activities) covered by this Act would be provided regardless of personal characteristics extraneous to the provision of high quality health care or related services.

Within 18 months of enactment, the Secretary would be required to ensure that all health care and related services would be provided without regard for extraneous personal characteristics.

Sec. 153. Whistleblower Protection

Current Law

None.

Proposed Law

No employer may discharge any employee (or otherwise discriminate against) with respect to his compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee):

- Provides or causes to provide to the employer, Federal Government, the attorney general of a relevant State, information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision, order, rule, or regulation promulgated under this Act.
- Testifies or is about to testify in a proceeding concerning such violation.
- Assists, participates or about to assist and participate in such a proceeding.
- Objects to, or refused to participate in any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision, order, rule and regulation promulgated under this Act.

Enforcement Action—An employee covered by this section who alleges discrimination by an employer in violation may bring an action governed by the rules, procedures, legal burden of proof, and remedies detailed in section 40(b) of the Consumer Product Safety Act.

Employer Defined—The term employer in this section means any person (including one or more individuals, partnerships, associations, corporations, trusts, professional membership organization including a certification, disciplinary, or other professional body, unincorporated organizations, nongovernmental organizations, or trustees) engaged in profit or nonprofit business or industry whose activities are governed by this Act, and any agent, contractor, subcontractor, grantee, or consultant of such person.

Rule of Construction—The rule of construction set forth concerning employee protections in the United States Code would apply to this section.

Sec. 154. Construction Regarding Collective Bargaining

Current Law

None.

Proposed Law

Nothing in this division may be construed to alter or supersede any statutory or other obligation to engage in collective bargaining over the terms and conditions of employment related to health care. This rule of construction clarifies that long-standing principles of law continue to apply in the context of this health reform legislation. Where a new law sets mandatory minimum labor standards, the parties in a collective bargaining relationship must abide by such standards. Where, however, a new law leaves some

discretion to an employer with regard to how to achieve compliance, which this bill indeed does on many levels, an employer with collective bargaining obligations may not make unilateral changes to the terms and conditions of employment but must bargain with the employees' bargaining representative over those matters.[123]

Sec. 155. Severability

Current Law

None.

Proposed Law

If any provision of this Act, or the application thereof towards any person or circumstance, is held unconstitutional, the application of the remaining provisions would not be affected.

Sec. 156. Rule of Construction Regarding Hawaii Prepaid Health Care Act

Added with an amendment at Committee, this provision would maintain Hawaii's Prepaid Health Care Act exemption under ERISA, including with respect to the provisions of H.R. 3200, where such state statute ensures health care benefits equivalent to or greater than those benefits that would be guaranteed by H.R. 3200.

Sec. 157. Increasing Meaningful Use of Electronic Health Records

This provision would require the Health Choices Commissioner to study how to increase the meaningful use of electronic health records and then use the results of that study to potentially require higher reimbursement rates for providers that use health information technology.

Sec. 158. Private Right of Contract with Health Care Providers

This provision forbids any other provision in this bill from being construed to preclude any participant or beneficiary in a group health plan from entering into any contract or arrangement for health care with any health care provider.

Subtitle G—Early Investments

Sec. 161. Ensuring Value and Lower Premiums

The Committee did not exercise jurisdiction over this provision.

Sec. 162. Ending Health Insurance Rescission Abuse

The Committee did not exercise jurisdiction over this provision.

Sec. 163. Administrative Simplification

The Committee did not exercise jurisdiction over this provision.

[123] See, e.g., Murphy Oil USA, 286 N.L.R.B. 1039, 1042 (1987); Standard Candy Co., 147 N.L.R.B. 1070, 1073 (1964); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 20 (1987).

Sec. 164. Reinsurance Program for Retirees

Current Law

No current law.

Proposed Law

No later than 90 days after enactment, the Secretary would establish a temporary reinsurance program, to provide reimbursement to assist participating private or public sector employment-based plans with the cost of providing health benefits to eligible retirees who are 55 and older and their dependents, including eligible and surviving spouses. Such plans include voluntary employee benefit associations (VEBAs) and multi-employer plans covering retirees. Health benefits would be required to include medical, surgical, hospital, prescription drug, and other benefits determined by the Secretary. An eligible employment-based plan would submit an application to the Secretary, as required. A participating employment-based program would submit claims for reimbursement to the Secretary, documenting the actual cost of items and services for each claim. Each claim would be based on the actual amount expended by the participant. The participating employment-based plan would take into account any negotiated price concessions, such as discounts, subsidies, and rebates. The cost of deductibles and cost-sharing would be included in the cost of the claim, along with the amounts paid by the plan. For any valid claim, the Secretary would reimburse the plan for 80 percent of the portion of costs above $15,000 and below $90,000. This amount would be adjusted annually based on the percent increase in the medical care component of the Consumer Price Index, rounded to the nearest multiple of $1,000. Amounts paid to a participating employment-based plan would be used to lower cost directly to participants and beneficiaries in the form of premiums, co-payments, deductible, co-insurance, or other out-of-pocket costs, but would not be used to reduce the costs of an employer maintaining the employment-based plan. The Secretary would establish an appeals process for denied claims, procedures to protect against fraud, waste, and abuse, and would conduct annual audits of claims date.

The Retiree Reserve Trust Fund would be established, consisting of such amounts as appropriated or credited to the Fund to enable the Secretary to carry out the reinsurance program. The Secretary could request such sums as necessary to carry out this section, not to exceed $10 billion. Amounts appropriated and outlays from such appropriation would not be taken into account for purpose of any budget enforcement procedures, thus exempting the Fund from the framework of the budget resolution and the points of order which enforce that framework. The Secretary would have the authority to stop taking applications or take other steps to reduce expenditures to ensure that expenditures did not exceed available funds.

Sec. 165. Prohibition Against Post-Retirement Reductions of Retiree Health Benefits by Group Health Plans

This provision would prohibit group health plans from reducing retirees' health benefits after those retirees have retired, unless the reduction is also made to benefits for active participants.

Sec. 166. Limitations on Preexisting Condition Exclusions in Group Health Plans in Advance of Applicability of New Prohibition of Preexisting Condition Exclusions

This provision would require that the limit on pre-existing conditions exclusions in the insurance market start immediately at the bill's passage instead of 2013 as the introduced version of H.R. 3200 instructs. The permitted "look back" period is reduced from six months to 30 days, and the amount of time during which a provider can exclude coverage for pre-existing conditions is shortened.

Sec. 167. Extension of COBRA Continuation Coverage

This section was added by amendment at Committee. This provision would end the current COBRA eligibility limit and allow those currently enrolled in COBRA to keep their insurance until they find another job offering coverage or until they become eligible to participate in the HIE.

Title II—Health Insurance Exchange and Related Provisions

Subtitle A—Health Insurance Exchange

Current Law

No specific provision in federal law.

Proposed Law

Text.

Sec. 201. Establishment of Health Insurance Exchange; Outline of Duties; Definitions

A Health Insurance Exchange, "Exchange" would be established to facilitate access of individuals and employers to a variety of choices of affordable, quality health insurance coverage, including a public health insurance plan option. The HIE would exist within the Health Choices Administration under the direction of the Health Choices Commissioner (described above in Sections 141 and 142). As described in greater detail in the following sections, regarding the Exchange, the Commissioner would (1) establish standards for, accept bids from, and negotiate and enter into contracts with entities seeking to offer qualified health benefits plans (QHBPs) through the Exchange, (2) facilitate outreach and enrollment of Exchange-eligible individuals and employers, and (3) conduct appropriate activities related to the Exchange, including establishment of a risk pooling mechanism and consumer protections.

Sec. 202. Exchange-eligible Individuals and Employers

Beginning in 2013, all individuals generally would be eligible to obtain coverage through the Exchange, unless they were enrolled in the following (as determined by the Commissioner, in coordination with the Treasury Secretary):

- a group plan through a full-time employee (including a self-employed person with at least one employee) for which the employer makes an adequate contribution (described below in Section 312),
- Medicare,

- Medicaid (except in certain cases, discussed below), or
- military and VA coverage.

Except for the Medicaid exception, individuals would lose eligibility for Exchange coverage once they become eligible for Medicare Part A, Medicaid (although in this case, the Commissioner could permit continued Exchange eligibility for such limited time as the Commissioner determines it is administratively feasible and consistent with minimizing disruption in the individual's access to health care), and other circumstances as the Commissioner provides. Besides those cases, once individuals enroll in an Exchange plan, they would continue to be eligible until they are no longer enrolled.

Exchange-eligible employers could meet the requirements of the employer responsibility (Section 312) by offering and contributing adequately toward employees' enrollment through the Exchange. Those employees would be able to choose any of the available Exchange plans. Once employers are Exchange eligible and enroll their employees through the Exchange, they would continue to be Exchange eligible, unless they decided to then offer their own qualified health benefits plan(s).

In 2013, employers with 15 or fewer employees would be Exchange-eligible. In 2014, employers with 25 or fewer employees would be Exchange-eligible. Beginning in 2015, employers with 50 or fewer employees would be Exchange-eligible, however the Commissioner could permit employers larger than 50 to participate in the Exchange. These additional employers could be phased in or made eligible based on the number of full-time employees or other considerations the Commissioner deems appropriate. ("Employer" and other employment-related definitions would be defined by the Commissioner.)

The Committee intends that if and when the Commissioner permits "larger employers" to become Exchange-eligible employers, the Commissioner will also permit a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act) itself to become an Exchange-eligible employer on behalf of its contributing employers as if it were one employer.

The Commissioner would have the authority to establish rules to deal with special situations with regard to uninsured individuals participating as Exchange-eligible individuals and employers, such as transition periods for individuals and employers who gain, or lose, Exchange-eligible participation status, and to establish grace periods for premium payment.

The Commissioner would be required to provide for periodic surveys of Exchange-eligible individuals and employers concerning their satisfaction with the Exchange and its plans.

The Commissioner would conduct an Exchange Access Study—a study of access to the Health Insurance Exchange for individuals and for employers, including individuals and employers who are not eligible and enrolled in HIE plans. The goal of the study would be to determine if there are significant groups and types of individuals and employers who are not Exchange eligible but who would have improved benefits and affordability if made eligible. The study also would examine the terms, conditions, and affordability of group health coverage offered by employers and QHBP-offering in-

surers outside of the Exchange compared to Exchange-participating health benefits plans, as well as the affordability-test standard for access of certain employed individuals to coverage in the Health Insurance Exchange. The Commissioner would submit the study to Congress by January 1 of 2015, 2018, and thereafter, and would include in the report recommendations regarding changes in standards for Exchange eligibility for individuals and employers.

This provision would also give the Commissioner authority to define terms such as "employer" and "employee" for purposes of this division. The Commissioner should take care that such definitions minimize incentives to misclassify workers as non-employees. Moreover, the Commissioner should take into consideration any special employer or industry organizational structures such as "employers of record" in the home health industry and hour of service calculations for airline personnel in the airline industry in light of relevant federal rules and industry practices when defining these employment terms.

Sec. 203. Benefits Package Levels

The Commissioner would specify the benefits to be made available under HIE plans during each plan year, consistent with this section and Sections 121–134 above. The Commissioner could not enter into a contract with an entity wanting to offer coverage through the Exchange in a service area(s), unless the following requirements are met:

- The entity offers only one Basic plan in the service area.
- The entity may offer one Enhanced plan in the service area.
- If the entity offers an Enhanced plan in a service area, the entity may offer one Premium plan for the area.
- If the entity offers a Premium plan for a service area, the entity may offer one or more Premium-Plus plans for the area.

All such plans could be offered under a single contract with the Commissioner.

Consistent with the standards in Sections 101–164 above, the Commissioner would also establish the following standards for the three primary levels of Exchange plans—Basic, Enhanced, and Premium—and for additional benefits that may be offered in a Premium-Plus plan. Besides offering the essential benefits package (Section 122 above) for a QHBP, Basic plan benefit packages would be modified to provide for reduced cost-sharing for individuals eligible for the "affordability cost-sharing credit," described below in Section 244. Excluding the credit, the benefit package of a Basic plan would have an actuarial value representing payment for approximately 70 percent of all the covered items and services in the essential benefits package (Section 122 above). Enhanced plans would have lower cost-sharing than Basic plans, representing approximately 85 percent of the actuarial value of all the covered items and services in the essential benefits package. Premium plans would have lower cost-sharing than Enhanced plans, representing approximately 95 percent of the actuarial value of all the covered items and services in the essential benefits package. Premium-Plus plans would be Premium plans that also provide additional benefits, such as adult oral health and vision care, approved

by the Commissioner. The portion of the premium that is attributable to such additional benefits would be separately specified.

The Commissioner would establish a permissible range of variation of cost-sharing for the Basic, Enhanced and Premium plans. Such variation would permit variations up to 10 percent in cost-sharing with respect to several benefit categories (Section 122).

If a state requires health insurers to offer benefits beyond the essential benefits package, such requirements would continue to apply to Exchange plans, but only if the state has entered into an arrangement satisfactory to the Commissioner to reimburse the Commissioner for the amount of any resulting net increase in affordability premium credits (Section 243).

Sec. 204. Contracts for the Offering of Exchange-participating Health Benefits Plans

The Commissioner would establish standards, described below, for Exchange-participating entities and their health benefits plans. The Commissioner would certify entities and plans if the standards are met. The Commissioner would solicit and review bids from QHBP-offering entities for offering Exchange plans, negotiate with the entities, and enter into contracts with the entities for offering plans through the Exchange under terms negotiated between the Exchange and the entities.

The Federal Acquisition Regulation (the principal set of rules that govern the contracting process for the federal government) would not apply to contracts between the Commissioner and QHBP-offering entities for offering Exchange plans.

The standards for Exchange-participating entities would consist of the following requirements:

- The entity must be licensed or otherwise permitted to offer health insurance coverage under state law for each state in which it offers coverage.
- The entity must provide for reporting data/information specified by the Commissioner, including information necessary to administer the risk pooling mechanism in Section 206 and information to address disparities in health and health care.
- The entity must provide for implementation of the affordability credits provided for enrollees (described in Sections 241–246 below).
- The entity must accept all applicable enrollment via the Exchange, subject to such exceptions (such as capacity limitations) in accordance with the federal requirements for QHBPs (discussed under Title I), and would notify the Commissioner if it projects or anticipates reaching a capacity that would result in a limitation in enrollment.
- The entity must participate in the pooling mechanism as established by the Commissioner (described in Section 206 below).
- Regarding the Basic plan offered by the entity, the entity must contract for outpatient services with certain federally supported health care providers. The Commissioner would also specify how this requirement would apply to Health Maintenance Organizations (HMOs).
- The entity must provide culturally and linguistically appropriate communication and health services.

• The entity must comply with other applicable requirements of this title specified by the Commissioner, which would include standards regarding billing and collection practices for premiums and grace periods and which may include standards to ensure that the entity does not use coercive practices to force providers not to contract with other entities offering coverage through the Exchange.

For the contracting process, entities' bids would have to contain the information required by the Commissioner. Contracts would last at least one year, but could be automatically renewed in the absence of notice of termination by either party. The contract would provide that if the Commissioner determines that a plan's provider network is not adequate, then the cost-sharing charged to a person who received out-of-network care would be the same as if the care had been provided in-network.

In coordination with state insurance regulators, the Commissioner would establish processes to oversee, monitor, and enforce applicable requirements on Exchange-participating entities and QHBPs, including plan marketing. In conjunction with state insurance regulators, the Commissioner would establish a process for individuals and employers to file complaints concerning violations. The Commissioner could terminate a contract with an entity if it fails to comply with the requirements of this title; the Commissioner could also impose one or more intermediate sanctions.

Any determination by the Commissioner to terminate a contract would be made in accordance with formal investigation and compliance procedures established by the Commissioner under which (a) the Commissioner provides the entity with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Commissioner's determination; and (b) the Commissioner provides the entity with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the contract. However, these procedures need not apply if the Commissioner determined that a delay in termination would pose an imminent and serious risk to the health of individuals enrolled under the plan.

Sec. 205. Outreach and Enrollment of Exchange-eligible Individuals and Employers in Exchange-participating Health Benefits Plan

Outreach. The Commissioner would conduct outreach activities to inform and educate individuals and employers about the Exchange and its participating health plans. Such outreach would include outreach specific to vulnerable populations, such as children, individuals with disabilities, individuals with mental illness, and individuals with other cognitive impairments. The Commissioner's required outreach activities would include the following:

• broadly disseminate information on Exchange-participating plans, provided in a comparative manner and including information on benefits, premiums, cost-sharing, quality, provider networks, and consumer satisfaction;

• provide assistance to Exchange-eligible individuals and employers via a toll-free telephone hotline and an Internet website;

• develop and disseminate information to Exchange-eligible enrollees on their rights and responsibilities;

• assist Exchange-eligible individuals in selecting plans and obtaining benefits; and

• ensure the information is developed using plain language (described in Section 133 above).

Enrollment. The Commissioner would be required to make timely determinations of whether individuals and employers are eligible for Exchange coverage and to establish and carry out an enrollment process, including at community locations. Enrollment would be permitted by mail, telephone, electronically, or in person.

Open enrollment for individuals and employers to enroll in an Exchange plan and affordability credits (described in Sections 241–245 below) would be at least 30 days and would be during September through November of each year before benefits would begin, or such other time that would maximize the timeliness of income verification. However, the Commissioner would also provide for special enrollment periods to take into account special circumstances of individuals and employers, such as an individual who loses acceptable coverage, experiences a change in marital or other dependent status, moves outside the plan's service area, or experiences a significant change in income. The Commissioner, potentially with other appropriate entities, would be required to broadly disseminate information on the enrollment process, including before each enrollment period.

The Commissioner would establish a process to automatically enroll the following individuals into an appropriate Exchange plan (potentially involving a random assignment or some other form of assignment that takes into account the health care providers used by the individual, or such other relevant factors specified by the Commissioner):

• those who have applied for affordability credits, been determined eligible, have not opted out from receiving such credit, and do not enroll in another Exchange plan; and

• those enrolled in an Exchange plan that is terminated (during or at the end of a plan year) who do not enroll in another Exchange plan.

Under the enrollment process, individuals enrolled in an Exchange plan would pay such plans directly, not through the Commissioner or the Exchange.

Special provisions apply to newborns born in the United States without acceptable coverage at birth. Until other acceptable coverage begins, the child would be considered a non-traditional Medicaid-eligible individual (for whom the state would be paid 100 percent federal reimbursement) and would be deemed as having elected Medicaid coverage. This coverage would end no later than the end of the month 60 days after the child's birth; at the end of that period, if the child still does not have acceptable coverage, the child is deemed a traditional Medicaid-eligible individual, for whom the state receives the regular Medicaid federal matching rate.

As of the day before the first day of 2013, CHIP-eligible children, including targeted low-income children in a Medicaid-expansion CHIP program, would be deemed to be Exchange eligible. The Commissioner would notify each state in 2013 whether the Exchange could support enrollment of these children.

A "traditional Medicaid eligible individual" is a Medicaid-eligible individual *excluding* (1) those who are eligible because of the expansion of Medicaid in Section 1701 of this legislation to individuals up to 133⅓ percent FPL and (2) a childless adult who would not otherwise be classified as categorically needy (as per current Medicaid statute, Section 1902(a)(10)(A)) or medically needy (as per current Medicaid statute, Section 1902(a)(10)(C)) as in effect as of the day before the date of enactment of this Act. A "non-traditional Medicaid-eligible individual" is a Medicaid-eligible individual who is not a traditional Medicaid-eligible individual. Section 202 of the legislation includes provisions so that a non-traditional Medicaid eligible individual could be Exchange-eligible if the individual was enrolled in a qualified health benefits plan, grandfathered health insurance coverage, or current group health plan during the six months before the individual became a non-traditional Medicaid eligible individual. Under this section, the Commissioner would provide these individuals with the option to enroll in Medicaid rather than an Exchange plan and to change that election during open enrollment periods described earlier in this section. The Commissioner would provide for a process to automatically enroll these individuals into Medicaid if they have not elected to enroll in any Exchange plan.

An Exchange-eligible individual could apply for a Medicaid-eligibility determination. If the individual is determined to be eligible, the Commissioner would provide for the individual's enrollment under the state Medicaid plan in accordance with the Medicaid memorandum of understanding. In the case of such an enrollment, the state would provide for the same periodic redetermination of eligibility under Medicaid that would apply if the individual had directly applied to the state Medicaid agency. The legislation would require the Commissioner, in consultation with the HHS Secretary, to enter into a memorandum of understanding with each state with respect to coordinating enrollment of individuals in Exchange plans and under state Medicaid programs, and to otherwise coordinate the implementation of these provisions with respect to the Medicaid program. This memorandum would permit the exchange of information consistent with limitations specified in Medicaid statute with respect to providing safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the state Medicaid plan, and at state option, the exchange of information necessary to verify eligibility for other federal programs (e.g., for free and reduced price school lunches). None of these provisions could be construed as permitting such memorandum to modify or vitiate any requirement of a state Medicaid plan.

In carrying out this section, the Commissioner would establish effective methods for communicating in plain language and a culturally and linguistically appropriate manner.

Sec. 206. Other Functions

The Commissioner would be required to coordinate the distribution of affordability premium and cost-sharing credits (described below in Sections 243–244) to the Exchange plans. The Commissioner would also be required to establish a risk-pooling mecha-

nism, to adjust premium payments to Exchange plans to take into account (in a manner specified by the Commissioner) the differences in the risk characteristics of individuals and employers enrolled under the Exchange plans.

An Office of the Special Inspector General for the Exchange would be established, headed by a Special Inspector General appointed by the President and confirmed by the Senate. The Special Inspector General's nomination would be made as soon as practicable after the establishment of the Exchange.

The duties of the Special Inspector General would consist of the following:

- conduct, supervise, and coordinate audits, evaluations and investigations of the Health Insurance Exchange to protect the integrity of the Exchange as well as the health and welfare of participants in the Exchange;
- report both to the Commissioner and to the Congress regarding program and management problems and recommendations to correct them;
- related to the duties above, have other duties described as applying to the Special Inspector General of the Troubled Asset Relief Program (TARP), per paragraphs (2) and (3) of Section 121 of P.L. 110–343; and
- in carrying out these duties, have the authorities of inspectors general in Section 6 of the Inspector General Act of 1978.

Other provisions of the TARP Special Inspector General would also be applied, regarding the basis of the Special Inspector General's appointment, how s/he might be removed, his/her salary, and available personnel, facilities and other resources.

Not later than one year after the confirmation of the Special Inspector General, and annually thereafter, the Special Inspector General would submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the one year period ending on the date the report is submitted.

The Office of the Special Inspector General would terminate five years after the date of the enactment of this Act.

Following an amendment at Committee, this provision would also require the Commissioner, in consultation with the Small Business Administration, to establish and carry out a program to provide health insurance counseling and technical assistance to small employers who provide their employees health care through the HIE.

Sec. 207. Health Insurance Exchange Trust Fund

A "Health Insurance Exchange Trust Fund" would be created within the U.S. Treasury, consisting of such amounts as may be appropriated or credited to the fund. The Commissioner would pay from the Trust Fund amounts as determined necessary to make payments to operate the Exchange, including affordability credits.

Dedicated payments to the Trust Fund would include the following:

- tax on individuals not obtaining acceptable coverage (Section 401);

- tax on employers electing to not provide health benefits (Section 412); and
- tax on employers who fail to satisfy health coverage participation requirements (Section 411).

Such additional sums as necessary would be appropriated. General provisions in the Internal Revenue Code regarding federal government trust funds would apply.

Sec. 208. Optional Operation of State-based Health Insurance Exchanges

If a state (or group of states, subject to the Commissioner's approval) applied to the Commissioner for approval of a state-based Health Insurance Exchange, and if the Commissioner approves such state-based Exchange, then the state-based Exchange would operate instead of the federal Exchange in that state(s).

The Commissioner could not approve a state-based Exchange unless the following requirements were met (and would be required to approve it if the conditions were met):

- The state-based Exchange must demonstrate the capacity to and provide assurances satisfactory to the Commissioner that it could carry out the functions specified for the federal Exchange in the state(s) including:
  - negotiating and contracting with qualified plans;
  - enrolling Exchange-eligible individuals and employers in plans;
  - establishing sufficient local offices to meet the needs of Exchange-eligible individuals and employers;
  - administering premium and cost-sharing credits (described below in Sections 241–246) using the same methodologies, and at least the same income verification methods, as would otherwise apply and at a cost to the federal government that is not greater than what would otherwise apply; and
  - enforcement activities consistent with federal requirements.
- There is no more than one Exchange in operation in any one state.
- The state provides assurances satisfactory to the Commissioner that approval of such an Exchange would not result in any net increase in expenditures to the federal government.
- The State provides for reporting of such information as the Commissioner determines and assurances satisfactory to the Commissioner that it will vigorously enforce violations of applicable requirements.
- Such other requirements as the Commissioner may specify.

A state-based Exchange could, at the option of the state, and only after providing timely and reasonable notice to the Commissioner, cease operation. In this case, the federal Exchange would be operational in the state(s).

The Commissioner could terminate the approval (for some or all functions) of a state-based Exchange if the Commissioner determined that it no longer met the requirements listed above or was no longer capable of carrying out such functions. In lieu of terminating the state-based Exchange's approval, the Commissioner could temporarily assume some or all functions of the state-based

Exchange until the Commissioner determined that it met the applicable requirements and was capable of carrying out those functions. The ceasing or termination of a state-based Exchange would be effective in such time and manner as the Commissioner would specify.

Enforcement authorities of the Commissioner would be retained by the Commissioner. The Commissioner could specify functions of the federal Exchange that may not be performed by a state-based Exchange or that could be performed by both the Commissioner and the state-based Exchange.

In the case of a state-based Exchange, except as the Commissioner may otherwise specify, any references to the "Exchange" or to the "Commissioner" in the area in which the state-based Exchange operates would be deemed a reference to the state-based Exchange and the head of that Exchange.

In the case of a state-based Exchange, funding assistance would be provided for its operation in the form of a matching grant, with a state share of expenditures required.

Sec. 209. Participation of Small Employer Benefit Arrangements

This provision would allow the Commissioner to enter into contracts with small business co-ops operating a small business benefit arrangement to facilitate their participation in the HIE.

Subtitle B—Public Health Insurance Option

Sec. 221. Establishment and Administration of a Public Health Insurance Option As An Exchange-Qualified Health Benefits Plan

Current Law

Medicare is an example of a federal public health insurance program for the aged and disabled. Under Medicare, Congress and the Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) determine many parameters of the program including eligibility rules, financing (including determination of payroll taxes, and premiums), required benefits, payments to health care providers, and cost sharing amounts.

Proposed Law

The provision would require the Secretary of Health and Human Services (Secretary) to provide for the offering of a public health insurance option through the Exchange starting 2013. The Secretary would be required to ensure that the public option provided choice, competition and stability of affordable, high quality coverage throughout the United States. The Secretary's primary responsibility would be to create a low-cost plan without compromising quality or access to care.

The public option would only be available through the Health Insurance Exchange. The public option would be required to comply with requirements applicable to Exchange-participating health benefit plans, including requirements related to benefits, benefit levels, provider networks, notices, consumer protections, and cost sharing. The public option would be required to offer basic, enhanced, and premium plans, and would be allowed to offer premium-plus plans.

The Secretary would be allowed to enter into contracts for the administration of the public option in the same manner as the Secretary is allowed to enter into contracts for the administration of the Medicare program. These administrative functions include, subject to restrictions, determination of payment amounts, making payments, beneficiary education and assistance, provider consultative services, communication with providers, and provider education and technical assistance. The Secretary would have the same authority to enter into contracts for the public option, as the Secretary has with respect to the Medicare program. The provision would prohibit contracts that involve the transfer of insurance risk.

The Secretary would be required to establish an office of the ombudsman for the public health insurance option which would have duties similar to those of the Medicare Beneficiary Ombudsman.

The Secretary would be required to collect data necessary to establish premiums and payment rates and for other purposes, including improving quality and reducing disparities in health care based on race, ethnicity, primary language, sex, sexual orientation, gender identity, disability, socioeconomic status, rural, urban, or other geographic setting, and any other population or subpopulation as determined appropriate by the Secretary. Such data collection would be on a voluntary basis and consistent with certain privacy standards.

With respect to the public health insurance option, the Secretary would be treated as an entity offering a Quality Health Benefit Plan through the Exchange.

The provisions relating to access to Federal courts for enforcement of rights under Medicare would apply to the public option and individuals enrolled under the public option in the same manner that they apply to Medicare and Medicare beneficiaries.

Sec. 222. Premiums and Financing

Current Law

No current law.

Proposed Law

The Secretary would be required to establish geographically-adjusted premiums for the public option in a manner that complies with the premium rules established by the Commissioner for Exchange-participating health benefit plans and at a level sufficient to fully finance the cost of health benefits and administration for the public option. Premiums would be required to include an appropriate amount for a contingency margin.

The provision would establish an account in the Treasury for receipts and disbursements attributable to the public option, including start-up funding. The start-up funding would be equal to the sum of $2 billion for the establishment of the public option, and such sums as may be necessary to cover 90 days worth of reserves based on projected enrollment. These amounts would be authorized to be appropriated to the Secretary out of any funds in the Treasury not otherwise appropriated. The Secretary would be required to provide for repayment of the start-up funding in an amortized manner over a 10 year period starting in 2013. The provision speci-

fies that nothing in this section could be construed as authorizing any additional appropriations to the account, other than amounts otherwise provided with respect to other Exchange-participating plans. As under the Medicare Advantage program, states would be prohibited from imposing a premium tax or similar tax with respect to the public option.

Sec. 223. Payment Rates for Items and Services

Current Law

No current law.

Proposed Law

The Secretary would be required to establish payment rates for services and health care providers under the public option.

In general, during the first three years of the public option, the Secretary would be required to base payment rates on the rates for similar services and providers under Medicare. For services furnished in 2013, 2014 and 2015, physicians and other health care practitioners who participate in both Medicare and the public option would receive payment rates 5% greater than rates otherwise established by the Secretary for items and professional services. Pediatricians and other practitioners who do not typically participate in Medicare—as determined by the Secretary—would also be eligible for the increased payment rates. Beginning in 2016, the Secretary would be required to continue to use an administrative process to set payment rates to promote payment accuracy, to ensure adequate beneficiary access to providers, and to promote affordability and the efficient delivery of health care. The Secretary would be prohibited from setting rates at levels expected to increase overall medical costs for the public option beyond what would be expected if Medicare rates (plus the 5% addition) were to continue.

The provision specifies that nothing would prevent the use of innovative payment methodologies such as those described in Section 224 in connection with the negotiation of payment rates. As introduced and reported, H.R. 3200 would allow the Secretary discretion to establish a prescription drug formulary, and use other methods, including those used by private sector pharmacy benefit managers, to reduce prescription drug costs under the public health insurance option, and the Committee expects that the Secretary would implement such a formulary.

Health care providers participating in Medicare would be participating providers in the public health insurance option unless they opted out in a process established by the Secretary.

The provision would prohibit administrative or judicial review of a payment rate or methodology established under this section, or Section 224.

Sec. 224. Modernized Payment Initiatives and Delivery System Reform

Current Law

No current law.

Proposed Law

Beginning in the first year of the public option, the Secretary would be given the authority to use innovative payment mechanisms and policies to determine payments for items and services under the public option. The payment mechanisms and policies may include the following: patient-centered medical home, other care management payments, accountable care organizations, value-based purchasing, bundling of services, differential payment rates, performance or utilization based payments, partial capitation, and direct contracting with providers. The Secretary would be required to design and implement the payment mechanisms and policies in a way that promotes care that is integrated, patient-centered, efficient and of quality, and that seeks to either (a) improve health outcomes, (b) reduce health disparities, (c) address geographic variation in the provision of health services, (d) prevent or manage chronic illness, or (e) provide efficient and affordable care. To the extent allowed under the rules for Exchange-participating plans, the provision would allow cost sharing and payment rates under the public option to be modified to encourage the use of services that promote health and value. The provision specifies that nothing in the subtitle would prevent the Secretary from varying payments based on different payment structure models for different geographic areas.

Sec. 225. Provider Participation

Current Law

No current law

Proposed Law

The Secretary would be required to establish conditions of participation for health care providers under the public option. The Secretary would be prohibited from allowing a health care provider to participate unless appropriately licensed or certified under State law. A health care provider that was excluded from participation in a Federal health care program (as defined in Section 1128(f) of the Social Security Act), would be prohibited from participating under the public option.

Annually, the Secretary would be required to provide for physicians to participate in the public plan in one of two classes: (a) preferred physician, or (b) participating, non-preferred physician. A preferred physician would be one who agreed to accept the established rate as payment in full. A participating non-preferred physician would be one who could balance bill-impose charges that exceed the charges that may be imposed for such items and services (in relation to the payment rate for such items and services under Medicare). The participating non-preferred physician would agree not to impose charges that exceed 115 percent of the amount established under Sec. 223 (consisting of the Medicare rate and the 5 percent addition). The Secretary would be required to provide for the participation of non-physician providers. Non-physician providers would only be allowed to participate if they accepted the established rates as payment in full.

Sec. 226. Application of Fraud and Abuse Provisions

Current Law

Title XVIII of the SSA, the Medicare statutes, requires activities that prevent, detect, investigate and prosecute health care fraud and abuse. In general, initiatives designed to fight fraud, waste, and abuse are considered program integrity activities. Program integrity is considered a component of the effective and efficient administration of government programs, which are entrusted with ensuring that taxpayer dollars are spent wisely. Efforts to ensure Medicare program integrity encompass a wide range of activities and require coordination among multiple private and public entities. This includes processes directed at reducing payment errors to Medicare providers, as well as activities to prevent, detect, investigate, and ultimately prosecute health care fraud and abuse.

Proposed Law

The provisions of law (other than criminal law) identified by the Secretary by regulation, in consultation with the Inspector General, that impose sanctions with respect to waste, fraud, and abuse under Medicare would also apply to the public health insurance option.

Sec. 227. Sense of the House Regarding Enrollment of Members in the Public Option

This provision would create a Sense of the House of Representatives that any members who vote in support of the public health insurance option are urged to forgo their right to participate in the FEHBP and enroll under the public option.

Subtitle C—Individual Affordability Credits

Sec. 241. Availability Through Health Insurance Exchange

Current Law

None.

Proposed Law

This provision would provide premium and cost-sharing credits to "affordable credit eligible individuals" (defined in Section 242) for certain individuals enrolled in coverage through the Exchange. The Commissioner would pay each QHBP participating in the Exchange the aggregate amount of credits for all eligible individuals enrolled in that plan.

An Exchange-eligible individual could apply to the Commissioner, through the Exchange or another entity under an arrangement made with the Commissioner, in a form and manner specified by the Commissioner. The Commissioner, through the Health Insurance Exchange or through another public entity under an arrangement made with the Commissioner, would make a determination as to eligibility of an individual for affordability credits. The Commissioner would establish a process whereby, on the basis of information otherwise available, individuals may be deemed eligible for credits. The Commissioner would also establish effective

methods that ensure that individuals with limited English proficiency are able to apply for affordability credits.

If the Commissioner determines that a state Medicaid agency has the capacity to make a determination of eligibility for affordability credits under the same standards as used by the Commissioner, under the Medicaid memorandum of understanding (described above in Section 205), the state Medicaid agency is authorized to conduct such determinations for any Exchange-eligible individual who requests such a determination, and the Commissioner would reimburse the state Medicaid agency for the costs of conducting such determinations.

In addition, there would be a Medicaid screen-and-enroll obligation, that when individuals apply for affordability credits, a determination would be made as to whether they are eligible for Medicaid. If they are determined eligible for Medicaid, the Commissioner, through the Medicaid memorandum of understanding, would provide for their enrollment under the state Medicaid plan, and the state would provide for the same periodic redetermination of eligibility under Medicaid as would otherwise apply.

During the first two years of implementation, credits would be allowed for coverage under a Basic plan only. Beginning in the third year, credits would be allowed for coverage under Enhanced or Premium plans by a process established by the Commissioner. The individual would be responsible for any difference between the premium for an Enhanced or Premium plan and the credit amount based on a Basic plan applicable to that enrollee.

The Commissioner would be authorized to request from the Treasury Secretary information that may be required to carry out this subtitle (regarding individual affordability credits), consistent with existing rules regarding confidentiality and disclosure of tax return information. Individuals who are eligible to receive credits would not receive them in the form of cash payments.

Sec. 242. Affordable Credit Eligible Individual

Current Law

None.

Proposed Law

This provision would define an "affordable credit eligible individual" as an individual who (1) is lawfully present in a state in the United States (other than those lawfully present as non-immigrants, with some exceptions), (2) is enrolled in an Exchange plan and is not enrolled through an employer plan that meets the employer responsibility to contribute toward employee and dependent coverage (described below in Section 312), (3) has family income below 400 percent FPL, and (4) who is not a Medicaid-eligible individual (other than some exceptions described above in Section 202). Family members who are eligible for credits will be treated as a single affordable credit eligible individual.

Credits would not be available to full-time employees of an employer offering coverage consistent with the employer contribution rules described in Section 312. The Commissioner would make exceptions to this rule for divorced or separated individuals, or de-

pendents of employees who would otherwise be eligible for credits. Exceptions would also be made, beginning in 2014, for full-time employees whose premium and cost sharing costs under a group health plan exceed 11 percent of family income.

Income would be defined as "modified adjusted gross income" (MAGI), per the new 59B of the Internal Revenue Code, added in Sec. 401. The Commissioner would conduct a study to examine the application of income disregards for the purposes of the affordability credits. The Commissioner would submit a report to Congress of such a study, including recommendations as the Commissioner determines appropriate. Affordability credits would not be treated as a federal means-tested public benefit for eligibility purposes for qualified aliens under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Sec. 243. Affordable Premium Credit

Current Law

None.

Proposed Law

This section would establish the rules for determining the amount of the premium credit provided to eligible individuals enrolled in an Exchange plan. The "affordability premium credit" would be an amount equal to the lesser of (1) the amount by which the enrollee's premium exceeds a specified level that is considered affordable ("affordable premium amount"), or (2) the amount by which the "reference premium" (the average premium of the three least expensive Basic plans in the individual's premium rating area) exceeds the "affordable premium amount." In calculating the reference premium, the Commissioner may exclude plans with extremely limited enrollments.

The affordable premium credit amount would be calculated on a monthly basis, based on the following table, to limit individuals' premium payments to a percentage of family income (MAGI) relative to the poverty level, as specified in the table below.

Federal poverty level (FPL)	Premium payment limit, as a percent of income
133% or less	1.5%
150%	3%
200%	5%
250%	7%
300%	9%
350%	10%
400%	11%

The Commissioner would establish premium percentage limits so that for individuals whose family income is between the income tiers specified in the table, the percentage limits would increase on a linear sliding scale.

Sec. 244. Affordability Cost-Sharing Credit

Current Law

None.

Proposed Law

The affordability cost-sharing credit under this section would be available to those enrolled in an Exchange plan whose income is less than 400 percent FPL. The Commissioner would specify reductions in cost-sharing amounts and the annual limitation (out-of-pocket maximum) on cost-sharing under a Basic plan so that the average percentage of covered benefits paid by the plan (as estimated by the Commissioner) is equal to the percentages (actuarial values) in the table for each income tier.

Federal poverty level (FPL)	Actuarial value percentage
150% or less	97%
200%	93%
250%	85%
300%	78%
350%	72%
400%	70%

The Commissioner would provide payments to QHBP-offering entities in an amount equivalent to the increased actuarial value of benefits resulting from the cost-sharing reductions.

Sec. 245. Income Determinations

Current Law

None.

Proposed Law

This provision would use an individual's adjusted gross income in the most recent taxable year for determination of a credit under this Subtitle. The Commissioner would take steps as may be appropriate to ensure the accuracy of determinations and redeterminations under this subtitle. The Commissioner would request information from the Treasury Secretary as may be permitted to verify income information submitted in applications for credits. The Commissioner would establish procedures for verification of income if no tax return is available for the most recent completed tax year. The Commissioner would establish special rules for cases when an individual's income is expected (in a manner specified by the Commissioner) to be significantly different from the income submitted for application for and determination of a credit. The Commissioner would establish rules under which an individual would be required to inform the Commissioner when there is a significant change in income. Such mechanism would provide for guidelines that specify the circumstances that qualify as a significant change, the verifiable information required to document such a change, and the process for submission of such information. If the Commissioner receives new information from an individual regarding the family income of the individual, the Commissioner would provide for a redetermination of the individual's eligibility to be an affordable credit eligible individual.

For a CHIP-eligible child deemed to be eligible for coverage through the Exchange, during the first year of implementation the Commissioner would establish rules under which family income of the child is deemed to be no greater than the family income of that

child as most recently determined by the State under CHIP. The Commissioner would examine the feasibility and implication of adjusting the application of the federal poverty level in this Subtitle to take into account geographic differences, in order to reflect cost-of-living variations across the country. The Commissioner would submit a report to Congress, no later than the first day of the second year of implementation, on such a study and make recommendations as appropriate. An individual who intentionally misrepresents family income or fails to disclose to the Commissioner a significant change in family income would be liable for repayment of any improperly received credit and, in the case of intentional misrepresentation, may be required to pay an additional penalty as imposed by the Commissioner.

Sec. 246. No Federal Payment for Undocumented Aliens

Current Law

None

Proposed Law

No credits would be given to individuals who are not lawfully present in the country.

Subtitle D—State Innovation

Sec. 251. Waiver of ERISA Limitation; Application Instead of State Single Payer System

Added by an amendment at Committee, this provision would create an ERISA waiver to permit States to enact single payer laws. The Department of Labor would determine whether the State plan meets certain requirements to obtain the waiver. With such a waiver, a state single payer system would operate in lieu of the HIE in such state.

Title III—Shared Responsibility

Subtitle A—Individual Responsibility

Sec. 301. Individual Responsibility

The Committee did not exercise jurisdiction over this section.

Subtitle B—Employer Responsibility

Sec. 311. Health Coverage Participation Requirements,

Sec. 312. Employer Responsibility to Contribute Towards Employee and Dependent Coverage,

Sec. 313. Employer Contributions in Lieu of Coverage,

Sec. 314. Authority Related to Improper Steering,

Sec. 321. Satisfaction of Health Coverage Participation Requirements under the Employee Retirement Income Security Act of 1974,

Sec. 322. Satisfaction of Health Coverage Participation Requirements under the Internal Revenue Code of 1986,

Sec. 323. Satisfaction of Health Coverage Participation Requirements under the Public Health Service Act, and

Sec. 324. Additional rules relating to health coverage participation requirements

Current Law

There is no federal requirement that employers offer health insurance coverage to employees or their families. As with other compensation, the cost of employer-provided health coverage is a deductible business expense under section 162 of the Code. In addition, employer-provided health insurance coverage is generally not included in an employee's gross income.

ERISA[124] preempts state law relating to certain employer-sponsored health plans. While ERISA specifically provides that its preemption rule does not exempt or relieve any person from any State law which regulates insurance, ERISA also provides that an employee benefit plan is not deemed to be engaged in the business of insurance for purposes of any State law regulating insurance companies or insurance contracts. As a result of this ERISA preemption, the courts have held that self-insured employer-sponsored health plans cannot be regulated under State insurance law.

While ERISA does not require an employer to offer health benefits, it does require compliance with a few limited standards if an employer chooses to offer health benefits, mainly compliance with plan fiduciary standards, reporting and disclosure requirements, and procedures for appealing denied benefit claims. ERISA was amended (as well as the Public Health Service Act and the Internal Revenue Code) in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)[125] and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")[126], adding other Federal requirements for health plans, including rules for health care continuation coverage, limitations on exclusions from coverage based on preexisting conditions, and a few benefit requirements such as

[124] Pub. L. No. 93–406
[125] Pub. L. No. 99–272.
[126] Pub. L. No. 104–191.

minimum hospital stay requirements for mothers following the birth of a child.

Proposed Law

Section 311. Health Coverage Participation Requirements

Section 311 of the bill sets forth the basic requirement for an employer to offer individual and family health care coverage, to make timely contributions to such coverage when accepted by the employee, and to make contributions to the HIE in lieu of such coverage when the employee declines the coverage but obtains coverage from an HIE plan.

Additionally, employers that meet certain economic hardship qualifications could apply for a two-year employer hardship exemption that waives an employer's obligation to provide coverage required by this bill. The Secretary shall develop rules on the form and manner of such exemption applications and should take a robust approach to collecting information from an employer applicant and determining how significant and unavoidable such claimed hardship is. For example, employers should not be allowed to game or abuse this exemption through timed outlays, like executive bonuses, in order to create a balance sheet designed to demonstrate hardship when it comes to complying with health coverage requirements. The Committee expects the Secretary to require adequate documentation of the employer's financial circumstances to demonstrate whether it qualifies for this exemption.

Section 312. Employer Responsibility to Contribute towards Employee and Dependent Coverage

Section 312 specifies the minimum contribution amounts an employer must make to satisfy the coverage requirements for full-time and non-full-time employees. An employer may not satisfy the minimum contribution requirement through a salary reduction arrangement with the employee. This section also provides rules for the automatic enrollment of employees into employer plans and how employees may opt out of such automatic enrollment.

Employers offering health benefit plans would be required to offer individual and family coverage under a qualified health benefits plan (or certain grandfathered health insurance plans)[127] and to make contributions to help discharge the coverage costs of employees enrolled in the employer-provided plan. For full time employees, the employer would be required to contribute at least 72.5 percent of the lowest cost plan offered by the employer which meets the requirements of the essential benefits package[128] (65 percent for eligible employees electing family coverage). For part time employees, the contribution amount from the employer would be a fraction of the minimum contributions made for full time employees, with such fraction being equal to a ratio of the average weekly hours worked by the employee compared to the minimum weekly

[127] For a plan to be a "qualified health benefits plan" it would need to meet certain minimum coverage requirements, but it need not be offered through the Exchange.

[128] The essential benefits package would include certain specified limits on required cost sharing, would ban annual or lifetime limit on covered health care items or services and certain specified minimum services, and would impose certain requirements as to network adequacy as determined by the Health Choices Commissioner.

hours specified by the Health Choices Commissioner. Employers would be required to provide information to the Secretaries of Labor, Health and Human Services, and the Treasury, to assist the Secretaries with ascertaining compliance with the proposal's requirements.

Sec. 313. Employer Contributions in Lieu of Coverage

Employers that elect not to provide eligible health benefit plans to their employees would be subject to a contribution to the Health Insurance Exchange Trust Fund equal to 8 percent of wages (as defined in section 3121 for purposes of FICA). There is a special rule for an employer who is considered a small employer, defined as any employer with an annual payroll for the preceding calendar year which does not exceed $400,000.

Employers with payrolls that do not exceed $250,000 would be exempt. Employers with payrolls that exceed $250,000 but do not exceed $300,000 would be subject to a contribution equal to 2 percent of wages; employers with payrolls that exceed $300,000 but do not exceed $350,000 would be subject to a contribution of 4 percent of wages; and employers with an annual payroll that exceeds $350,000 but do not exceed $400,000 would be subject to a contribution of 6 percent of wages.

Related employers and predecessors would be treated as a single employer for purposes of determining whether an employer qualifies for the special rule for small employers.

Section 314. Authority related to improper steering

The Health Choices Commissioner (in coordination with the Secretaries of Labor, Health and Human Services, and the Treasury) would have the authority to set standards for determining whether employers were undertaking any actions to affect the risk pool within the Health Insurance exchange by inducing employees to enroll in Exchange-participating health plans rather than in employer-provided plans. An employer found to be violating these standards would be treated as not meeting the coverage requirements.

Section 321. Satisfaction of Health Coverage Participation Requirements under the Employee Retirement Income Security Act of 1974

Section 321 amends ERISA and sets forth the requirements for an employer to satisfy the health coverage participation requirements under the bill.

Elections

Under the proposal, employers would be required to make an affirmative election regarding whether to offer health benefit plans to employees. Those employers electing to offer health benefit plans would be required to have their plans meet certain minimum coverage requirements. Employers choosing not to offer health benefit plans, or that offered plans that did not meet the proposal's qualification requirements, would be subject to additional taxes or penalties. Employers with payrolls of $250,000 or less would be exempt from the pay or play requirements.

The Secretaries of Labor, Health and Human Services, and the Treasury, would prescribe coordinated rules for employer elections regarding coverage, including rules for the time, manner and form of elections, and the treatment of affiliated groups of employers, separate lines of business, and full versus part time employees.[129] Subject to Section 151, employers electing to offer health benefit plans would be treated as having established and maintained a group health plan for purposes of ERISA and the Public Health Service Act ("PHSA"),[130] and the proposal's health coverage participation requirements would be deemed to be part of the terms and conditions of the employer-provided plan.

Employers would be required to provide verification of their compliance with the proposal's health coverage participation requirement to the Health Choices Commissioner and to the Secretaries of Labor, Health and Human Services, and the Treasury.

Aggregation Rules

For affiliated groups of employers, the identity of the employer would generally be determined by applying the employer aggregation rules in section 414(b), (c), (m), and (o).[131] The same election would apply to all employers in the aggregated group. Employers would be able to make separate elections for employees in separate lines of business, or for full time employees and part time employees.

Noncompliance with Coverage Requirements

Employers who elected to provide coverage but whose health benefit plans failed to meet the proposal's minimum health coverage participation requirements would be subject to penalties of $100 per day for each employee to whom the failure applied.[132] The penalties would not apply to (1) periods during which an employer used reasonable diligence but did not discover any failures, and (2) failures that were corrected within 30 days of discovery (but only if such failures were due to reasonable cause and not willful neglect). Penalties imposed on employers for unintentional failures (i.e., due to reasonable cause and not to willful neglect) would be limited to the lesser of: 10 percent of the aggregate amount paid or incurred by the employer during the preceding taxable year for group health plans, or $500,000.

The Secretaries would also be able to terminate an employer's election (and thus subject them to the required contribution im-

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[129] The Commissioner and Secretaries would also be required to issue regulations applying the proposal's requirements to multiemployer plans (as defined in section 3(37) of ERISA).

[130] 42. U.S.C. 6A.

[131] Section 414(b) provides that, for specified employee benefit purposes, all employees of all corporations which are members of a controlled group of corporations are treated as employed by a single employer. There is a similar rule in section 414(c) under which all employees of trades or businesses (whether or not incorporated) which are under common control are treated under regulations as employed by a single employer, and, in section 414(m), under which employees of an affiliated service group (as defined in that section) are treated as employed by a single employer. Section 414(o) authorizes the Treasury to issue regulations to prevent avoidance of the certain requirements under section 414(m).

[132] The proposal would permit the penalties to be assessed through an excise tax or a civil penalty under ERISA or PHSA. Penalties for any particular failure would not be duplicated, however. The Secretary of Labor or Health and Human Services, as appropriate, would be required to give advance written notification of failure to employers prior to the assessment of a penalty. The Secretary of Health and Human Services would be able to bring civil actions in Federal court to collect civil penalties assessed under PHSA.

posed on employers that do not offer coverage) if it was determined that the employer was substantially noncompliant with health coverage participation requirements.

The Secretary of Labor would be required to conduct periodic audits of employers in order to discover noncompliance with health coverage participation requirements. The Secretary of the Treasury and the Health Choices Commissioner would be informed of audit results.

To facilitate such audits, especially with respect to the problem of employers misclassifying employees as independent contractors, the Secretary of Labor would be authorized to issue regulations that would require employers to keep records on both employees and certain claimed independent contractors. The Secretary should craft such recordkeeping requirements to assist in uncovering and remedying any misclassification of workers.

Sec. 322 Satisfaction of Health Coverage Participation Requirements under the Internal Revenue Code

The Committee did not exercise jurisdiction over this section.

Sec. 323. Satisfaction of Health Coverage Participation Requirements under the Public Health Service Act

The Committee did not exercise jurisdiction over this section.

Sec. 324. Additional Rules Relating to Health Coverage Participation Requirements

The Health Choices Commissioner and the Secretaries of Labor, Health and Human Services, and the Treasury would be required to execute an interagency memorandum of understanding to ensure coordination with respect to regulations, rulings, interpretations, and enforcement of the proposal.

TITLE IV—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

The Committee does not have jurisdiction over Title IV of Division A.

Division B—Medicare and Medicaid Improvements

The Committee does not have jurisdiction over Division B.

Division C—Public Health and Workforce Development

The Committee has jurisdiction over certain provisions in Division C, summarized below.

Sec. 2502. Establishment of Grant Program

Current Law

PHSA Section 831 establishes a Nurse Education, Practice, and Retention Grants program. Under this program, the Secretary may award grants or enter into contracts with a school of nursing, health care facility, or a partnership of the two, to respond to the nursing shortage and increase the number of registered nurses in specific priority areas, as described. Funds may be used to promote

career advancement for nurses. Appropriations authority for this grant program expired at the end of FY2007.

Proposed Law

This provision would establish a new partnership grant program, administered by the Secretary of Labor, to provide matching grants for nursing training programs that aim to increase the number and skill levels of nurses, and expand nurse training capacity, in order to address projected nursing shortages. The Secretary of Labor would be required to establish this partnership grant program within six months of enactment.

Eligible entities would be: (1) a health care entity that is jointly administered by a health care employer and a labor union representing that organization's health care employees, and that carries out activities using training funds as provided under Section 302(c)(6) of the Labor Management Relations Act (relating to funds paid by an employer to a trust fund established by a union to provide specified benefits or defray the costs of apprenticeship or training programs); (2) an entity that operates a training program jointly administered by one or more health care providers, facilities, or a trade association of health care providers; and by organizations that represent the interests of direct care health care workers or staff nurses, and include their leadership input; or (3) a State training partnership program that consists of non-profit organizations that have equal participation from industry (including both public and private employers) and labor organizations (including joint labor-management training programs), which may include representatives from local governments, worker investment agency one-stop career centers, community-based organizations, community colleges, and accredited schools of nursing. Eligible entities would be required to submit an appropriate application to the Secretary of Labor.

An eligible entity that is a health care employer would also be required to demonstrate that it: (1) has an established nursing retention program; (2) provides nursing wages and benefits that are competitive for its market or that have been collectively bargained with a labor organization; and (3) provides support for employees participating in the training program through one or more specified means, including paid leave time, or contributions to a training fund, among others.

The Secretary of Labor would be prohibited from awarding grants unless the applicant agrees to provide non-Federal matching funds that are equal to or no less than one dollar for each Federal dollar received. Matching funds could be secured from donations or provided through the cash equivalent of paid release time provided to incumbent worker students participating in educational programs. In addition, eligible entities would be required to demonstrate collaboration with accredited schools of nursing.

Awardees would be required to use funds to create training programs to allow incumbent health care workers to become nurses, to provide for the advanced training of nurses, or both. In each case, a number of specified program components would be required.

In making awards, the Secretary of Labor would be required to give preference to programs that improve nurse retention; that im-

prove the diversity of nursing graduates; that improve the quality of nursing education; that have demonstrated success for transitioning health care workers into nursing or have established pilot programs to increase nurse faculty; or that are modeled after or affiliated with established transitioning and pilot programs mentioned above.

Awardees would be required annually to submit an evaluation to the Secretary of Labor, which must include a description of the grantee's activities and an evaluation of program outcomes. Several outcomes that may be reported are specified.

The Secretary of Labor would be required, within two years of enactment and annually thereafter, to report to Congress on the overall effectiveness of the grant programs carried out under this provision. This provision would authorize to be appropriated such sums as may be necessary to carry out the partnership grant program.

Subtitle F—Standards for Accessibility to Medical Equipment for Individuals with Disabilities

Sec. 2541. Access for Individuals with Disabilities

This provision would require the development of standards for accessible equipment, and require relevant agencies to ensure that all entities covered by the legislation meet the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Subtitle G—Other Grant Programs

Sec. 2551. Reducing Student-to-School Nurse Ratios

This provision would make available demonstration grants to eligible local education agencies with the purpose to reduce the student-to-school nurse ratio in public elementary and secondary schools with special consideration given to high-need local educational agencies who demonstrate the greatest need for new or additional nursing services by providing information on the current ratios of students to school nurses.

Sec. 2552. Wellness Program Grants

This provision would authorize the Secretary of Labor to offer incentives to employers who establish qualified wellness programs for their employees. Participating employers must offer the programs to all employees and cannot mandate participation nor use participation as a condition to receive any financial incentive. The Committee recognizes the success of workplace wellness programs in promoting health and well-being and in reducing medical expenditures. The Committee urges the Secretary to promote both public and private workplace wellness programs.

Sec. 2553. Health Professions Training for Diversity Programs

This provision would authorize the Secretary of Labor to make grants to certain health care workforce development programs, particularly those focused on low-income persons, veterans, or rural or urban underserved populations.

Subtitle H—Long-Term Care and Family Caregiver Support

Sec. 2561. Long-Term Care and Family Caregiver Support

This provision would establish an advisory panel and a pilot program focused on improving the working conditions and training for the long-term care workforce.

Subtitle I—Online Resources

Sec. 2571. Web Site on Health Care Labor Market and Related Educational and Training Opportunities

This provision would require the Secretary of Labor to establish a web site that would serve as a clearinghouse of information on the health care labor market, including educational and training opportunities and financial aid information.

Sec. 2572. Online Health Workforce Training Programs

This provision would establish a grant program with the Secretary of Labor to award grants to qualifying entities providing health care workers with online training.

VI. Explanation of Amendments

The Amendment in the Nature of a Substitute and amendments thereof are explained in the body of this report.

VII. Application of Law to the Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. The Committee has determined that the bill would apply to the legislative branch and its employees in the same way it would apply to employers and employees in the private sector.

VIII. Regulatory Impact Statement

The Committee has determined that H.R. 3200 provides for a new Health Insurance Exchange, in which participation is voluntary, and that such Exchange will be governed by a new Health Choices Administration which will establish, among other things, standards for what constitutes a qualified health benefit plan. With several exceptions for other acceptable coverage, employers and individuals will be required to maintain coverage via a qualified health benefit plan or pay a fee for not doing so. This new health care policy infrastructure will have the impact of ensuring that 97% of Americans have meaningful health insurance coverage and reduce the cost of providing such coverage for both employers and individuals.

IX. Unfunded Mandate Statement

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee anticipates that this issue will be addressed in a CBO

cost estimate letter for the bill when it proceeds to consideration on the House floor, following the merger of the three versions of the bill reported by the three committees of jurisdiction.

X. Earmark Statement

H.R. 3200 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

XI. Roll Call

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 **BILL: H.R. 3200** **DATE: July 16, 2009**
AMENDMENT NUMBER: 3 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: KLINE / STRIKES TITLES I & II OF DIVISION A

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 2 **BILL: H.R. 3200** **DATE: 7/16/2009**
AMENDMENT NUMBER: 4 **ADOPTED: 29 AYES / 19 NOES**
SPONSOR/AMENDMENT: TITUS / INCREASE SIZE OF EMPLOYERS ELIGIBLE FOR THE EXCHANGE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT				X
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X			
Mr. TONKO	X			
Mr. PIERLUISI	X			
Mr. SABLAN	X			
Ms. TITUS	X			
Ms. CHU	X			
Mr. KLINE, Senior Republican Member		X		
Mr. PETRI		X		
Mr. McKEON		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. WILSON		X		
Mrs. McMORRIS RODGERS		X		
Mr. PRICE		X		
Mr. ROB BISHOP		X		
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	**29**	**19**		**1**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 **BILL: H.R. 3200** **DATE: 7/16/2009**
AMENDMENT NUMBER: 5 **ADOPTED: 32 AYES / 17 NOES**
SPONSOR/AMENDMENT: SCOTT / ADD EPSDT FOR KIDS TO 21 IN COVERED BENEFIT CATEGORIES

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X			
Mr. TONKO	X			
Mr. PIERLUISI	X			
Mr. SABLAN	X			
Ms. TITUS	X			
Ms. CHU	X			
Mr. KLINE, Senior Republican Member		X		
Mr. PETRI		X		
Mr. McKEON		X		
Mr. HOEKSTRA		X		
Mr. CASTLE	X			
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. WILSON		X		
Mrs. McMORRIS RODGERS		X		
Mr. PRICE		X		
Mr. ROB BISHOP		X		
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	**32**	**17**		

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 4 **BILL: H.R. 3200** **DATE: July 16, 2009**
AMENDMENT NUMBER: 6 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: THOMPSON / STRIKES NATIONAL HEALTH INSURANCE EXCHANGE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 5 **BILL: H.R. 3200** **DATE: July 16, 2009**
AMENDMENT NUMBER: 7 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: ROE / STRIKES GOVERNMENT-RUN HEALTH INSURANCE OPTION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 6 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 9 **DEFEATED: 19 AYES / 28 NOES**
SPONSOR/AMENDMENT: GUTHRIE / STRIKES EMPLOYER MANDATE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	28		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 7 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 11 **DEFEATED: 18 AYES / 29 NOES**
SPONSOR/AMENDMENT: BIGGERT/ GRANDFATHER EXISTING ERISA PLANS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	18	29		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 8 **BILL: H.R. 3200** **DATE: 7/17/2009**
AMENDMENT NUMBER: 12 **ADOPTED: 28 AYES / 18 NOES**
SPONSOR/AMENDMENT: FUDGE/TITUS / ASSISTANCE FOR SMALL EMPLOYERS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY				X
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X			
Mr. TONKO	X			
Mr. PIERLUISI				X
Mr. SABLAN	X			
Ms. TITUS	X			
Ms. CHU	X			
Mr. KLINE, Senior Republican Member		X		
Mr. PETRI		X		
Mr. McKEON		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. WILSON		X		
Mrs. McMORRIS RODGERS		X		
Mr. PRICE		X		
Mr. ROB BISHOP				X
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	**28**	**18**		**3**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 9 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 15 **DEFEATED: 18 AYES / 28 NOES**
SPONSOR/AMENDMENT: KLINE / CARD CHECK "KEEP WHAT YOU HAVE" PROVISION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER				X
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	18	28		3

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 10 BILL: H.R. 3200 DATE: 7/17/2009
AMENDMENT NUMBER: 18 ADOPTED: 27 AYES / 19 NOES/1 PASSING
SPONSOR/AMENDMENT: KUCINICH / ERISA WAIVER FOR STATE SINGLE PAYER OPTION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE	X			
Mr. ANDREWS		X		
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS		X		
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK	X			
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE	X			
Mr. COURTNEY		X		
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X	•		
Mr. TONKO	X			
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU **(voted as passing)**				
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	**27**	**19**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 11 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 21 **DEFEATED: 19 AYES / 28 NOES**
SPONSOR/AMENDMENT: MCCLINTOCK / TRIGGER / NO DIVISON A IF NOT DEFICIT NEUTRAL

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	28		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 12 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 27 **DEFEATED: 19 AYES / 28 NOES**
SPONSOR/AMENDMENT: KLINE / PRESERVE ERISA REMEDIES FOR ERISA PLANS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	28		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 13 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 29 **DEFEATED: 19 AYES / 28 NOES**
SPONSOR/AMENDMENT: PRICE / STATE WAIVER

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH	X			
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	28		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 14 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 31 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: SOUDER / NO MANDATED COVERAGE OF ABORTION SERVICES

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE		X		
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 15 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 32 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: SOUDER / NO FUNDS IN TITLE I, II, III SPENT FOR ABORTION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE		X		
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 16 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 37 **DEFEATED: 21 AYES / 27 NOES**
SPONSOR/AMENDMENT: MCKEON / ADD SMALL BUSINESS/ASSOCIATION HEALTH PLANS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS	X			
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	21	27		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 17 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 40 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: PRICE /DEFINED CONTRIBUTION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 18 **BILL: H.R. 3200** **DATE: July 17, 2009**
AMENDMENT NUMBER: 41 **DEFEATED: 19 AYES / 29 NOES**
SPONSOR/AMENDMENT: PRICE / BALANCED BILLING

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI				X
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	19	29		1

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 19 BILL: H.R. 3200 DATE: 7/17/2009
AMENDMENT NUMBER: ADOPTED: 26 AYES / 22 NOES
SPONSOR/AMENDMENT: ANDREWS / MOTION TO FAVORABLY REPORT THE BILL TO THE HOUSE WITH AN AMENDMENT IN THE NATURE OF A SUBSTITUTE, AND THAT THE COMMITTEE AUTHORIZE THE CHAIRMAN TO TRANSMIT THE BILL, WITH AN AMENDMENT IN THE NATURE OF A SUBSTITUTE, TO THE COMMITTEE ON BUDGET IN COMPLIANCE WITH SECTION 310 OF THE CONGRESSIONAL BUDGET ACT OF 1974 AS THE FIRST PART OF THIS COMMITTEE'S RECOMMENDATIONS, PURSUANT TO THE RECONCILIATION INSTRUCTION IN S. CON. RES. 13

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE		X		
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS		X		
Mr. TONKO	X			
Mr. PIERLUISI				X
Mr. SABLAN	X			
Ms. TITUS		X		
Ms. CHU	X			
Mr. KLINE, Senior Republican Member		X		
Mr. PETRI		X		
Mr. McKEON		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. WILSON		X		
Mrs. McMORRIS RODGERS		X		
Mr. PRICE		X		
Mr. ROB BISHOP		X		
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	**26**	**22**		**1**

XII. Statement of Oversight Findings and Recommendations of the Committee

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

XIII. New Budget Authority and CBO Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee anticipates that a CBO cost estimate letter on H.R. 3200 will address these issues when the bill proceeds to consideration on the House floor. CBO is unable to provide a cost estimate prior to the reconciliation of the versions of the bill as amended and reported by the three committees of jurisdiction.

XIV. Statement of General Performance Goals and Objectives

In accordance with clause 3(c) of House rule XIII, the goal of H.R. 3200 is to increase access to affordable quality health coverage and contain costs.

XV. Constitutional Authority Statement

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 3200. The amendments and new law made by this bill are within Congress' authority under Article I, Section 8, Clauses 1, 3, and 18 of the Constitution.

XVI. Committee Estimate

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3200.

The Committee anticipates that, as noted earlier, a CBO cost estimate will address these issues when the bill proceeds to consideration on the House floor.

XVII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

TABLE OF CONTENTS

* * * * * * *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

Subtitle B—Regulatory Provisions

* * * * * * *

PART 7—GROUP HEALTH PLAN REQUIREMENTS

* * * * * * *

Subpart B—Other Requirements

* * * * * * *

Sec. 715. Protection against post-retirement reduction of retiree health benefits.

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PART 8—NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS

Sec. 801. Election of employer to be subject to national health coverage participation requirements.
Sec. 802. Treatment of coverage resulting from election.
Sec. 803. Health coverage participation requirements.
Sec. 804. Rules for applying requirements.
Sec. 805. Termination of election in cases of substantial noncompliance.
Sec. 806. Regulations.

* * * * * * *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

SUBTITLE B—REGULATORY PROVISIONS

* * * * * * *

PART 5—ADMINISTRATION AND ENFORCEMENT

* * * * * * *

CIVIL ENFORCEMENT

SEC. 502. (a) A civil action may be brought—

(1) * * *

* * * * * * *

(6) by the Secretary to collect any civil penalty under **[**paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c)**]** *paragraph (2), (4), (5), (6), (7), (8), (9), (10), or (11) of subsection (c)* or under subsection (i) or (l);

* * * * * * *

(c)(1) * * *

* * * * * * *

(11) HEALTH COVERAGE PARTICIPATION REQUIREMENTS.—

(A) CIVIL PENALTIES.—In the case of any employer who fails (during any period with respect to which an election under section 801(a) is in effect) to satisfy the health coverage participation requirements with respect to any employee, the Secretary may assess a civil penalty against the employer of $100 for each day in the period beginning on the date such failure first occurs and ending on the date such failure is corrected.

(B) HEALTH COVERAGE PARTICIPATION REQUIREMENTS.—For purposes of this paragraph, the term "health coverage participation requirements" has the meaning provided in section 803.

(C) LIMITATIONS ON AMOUNT OF PENALTY.—

(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be assessed under subparagraph (A) with respect to any failure during any period for which it is established to the satisfaction of the Secretary that the employer did not know, or exercising reasonable diligence would not have known, that such failure existed.

(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No penalty shall be assessed under subparagraph (A) with respect to any failure if—

(I) such failure was due to reasonable cause and not to willful neglect, and

(II) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty assessed under subparagraph (A) for failures during any 1-year period shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding 1-year period for group health plans, or

(II) $500,000.

(D) ADVANCE NOTIFICATION OF FAILURE PRIOR TO ASSESSMENT.—Before a reasonable time prior to the assessment of any penalty under this paragraph with respect to any failure by an employer, the Secretary shall inform the employer in writing of such failure and shall provide the employer information regarding efforts and procedures which may be undertaken by the employer to correct such failure.

(E) COORDINATION WITH EXCISE TAX.—Under regulations prescribed in accordance with section 324 of the America's Affordable Health Choices Act of 2009, the Secretary and the Secretary of the Treasury shall coordinate the assessment of penalties under this section in connection with failures to satisfy health coverage participation requirements with the imposition of excise taxes on such failures under section 4980H(b) of the Internal Revenue Code of 1986 so as to avoid duplication of penalties with respect to such failures.

(F) DEPOSIT OF PENALTY COLLECTED.—Any amount of penalty collected under this paragraph shall be deposited as miscellaneous receipts in the Treasury of the United States.

[(10)] *(12)* The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1144(c)(8) of the Social Security Act.

* * * * * * *

PART 7—GROUP HEALTH PLAN REQUIREMENTS

SUBPART A—REQUIREMENTS RELATING TO PORTABILITY, ACCESS, AND RENEWABILITY

SEC. 701. INCREASED PORTABILITY THROUGH LIMITATION ON PREEXISTING CONDITION EXCLUSIONS.

(a) LIMITATION ON PREEXISTING CONDITION EXCLUSION PERIOD; CREDITING FOR PERIODS OF PREVIOUS COVERAGE.—Subject to subsection (d), a group health plan, and a health insurance issuer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if—

(1) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the [6-month period] *30-day period* ending on the enrollment date;

(2) such exclusion extends for a period of not more than [12 months] *3 months* (or [18 months] *9 months* in the case of a late enrollee) after the enrollment date; and

* * * * * * *

SUBPART B—OTHER REQUIREMENTS

* * * * * * *

SEC. 715. PROTECTION AGAINST POST-RETIREMENT REDUCTION OF RETIREE HEALTH BENEFITS.

(a) IN GENERAL.—Every group health plan shall contain a provision which expressly bars the plan, or any fiduciary of the plan, from reducing the benefits provided under the plan to a retired participant, or beneficiary of such participant, if such reduction affects the benefits provided to the participant or beneficiary as of the date the participant retired for purposes of the plan and such reduction occurs after the participant's retirement unless such reduction is also made with respect to active participants.

(b) NO REDUCTION.—Notwithstanding that a group health plan described in subsection (a) may contain a provision reserving the general power to amend or terminate the plan or a provision specifically authorizing the plan to make post-retirement reductions in retiree health benefits, it shall be prohibited for any group health plan, whether through amendment or otherwise, to reduce the benefits provided to a retired participant or his or her beneficiary under the terms of the plan if such reduction of benefits occurs after the

date the participant retired for purposes of the plan and reduces benefits that were provided to the participant, or his or her beneficiary, as of the date the participant retired unless such reduction is also made with respect to active participants.

* * * * * * *

PART 8—NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS

SEC. 801. ELECTION OF EMPLOYER TO BE SUBJECT TO NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS.

(a) IN GENERAL.—An employer may make an election with the Secretary to be subject to the health coverage participation requirements.

(b) TIME AND MANNER.—An election under subsection (a) may be made at such time and in such form and manner as the Secretary may prescribe.

SEC. 802. TREATMENT OF COVERAGE RESULTING FROM ELECTION.

(a) IN GENERAL.—If an employer makes an election to the Secretary under section 801—

(1) such election shall be treated as the establishment and maintenance of a group health plan (as defined in section 733(a)) for purposes of this title, subject to section 151 of the America's Affordable Health Choices Act of 2009, and

(2) the health coverage participation requirements shall be deemed to be included as terms and conditions of such plan.

(b) PERIODIC INVESTIGATIONS TO DISCOVER NONCOMPLIANCE.—The Secretary shall regularly audit a representative sampling of employers and group health plans and conduct investigations and other activities under section 504 with respect to such sampling of plans so as to discover noncompliance with the health coverage participation requirements in connection with such plans. The Secretary shall communicate findings of noncompliance made by the Secretary under this subsection to the Secretary of the Treasury and the Health Choices Commissioner. The Secretary shall take such timely enforcement action as appropriate to achieve compliance.

(c) RECORDKEEPING.—To facilitate the audits described in subsection (b), the Secretary shall promulgate recordkeeping requirements for employers to account for both employees of the employer and individuals whom the employer has not treated as employees of the employer but with whom the employer, in the course of the trade or business in which the employer is engaged, has engaged for the performance of labor or services.

SEC. 803. HEALTH COVERAGE PARTICIPATION REQUIREMENTS.

For purposes of this part, the term "health coverage participation requirements" means the requirements of part 1 of subtitle B of title III of division A of America's Affordable Health Choices Act of 2009 (as in effect on the date of the enactment of such Act).

SEC. 804. RULES FOR APPLYING REQUIREMENTS.

(a) AFFILIATED GROUPS.—In the case of any employer which is part of a group of employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal

Revenue Code of 1986, the election under section 801 shall be made by such employer as the Secretary may provide. Any such election, once made, shall apply to all members of such group.

(b) SEPARATE ELECTIONS.—Under regulations prescribed by the Secretary, separate elections may be made under section 801 with respect to—

(1) separate lines of business, and

(2) full-time employees and employees who are not full-time employees.

SEC. 805. TERMINATION OF ELECTION IN CASES OF SUBSTANTIAL NONCOMPLIANCE.

The Secretary may terminate the election of any employer under section 801 if the Secretary (in coordination with the Health Choices Commissioner) determines that such employer is in substantial noncompliance with the health coverage participation requirements and shall refer any such determination to the Secretary of the Treasury as appropriate.

SEC. 806. REGULATIONS.

The Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this part, in accordance with section 324(a) of the America's Affordable Health Choices Act of 2009. The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this part.

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REHABILITATION ACT OF 1973

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TITLE V—RIGHTS AND ADVOCACY

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SEC. 510. STANDARDS FOR ACCESSIBILITY OF MEDICAL DIAGNOSTIC EQUIPMENT.

(a) STANDARDS.—Not later than 9 months after the date of enactment of the America's Affordable Health Choices Act of 2009, the Architectural and Transportation Barriers Compliance Board shall issue guidelines setting forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physician's offices, clinics, emergency rooms, hospitals, and other medical settings. The guidelines shall ensure that such equipment is accessible to, and usable by, individuals with disabilities, including provisions to ensure independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.

(b) MEDICAL DIAGNOSTIC EQUIPMENT COVERED.—The guidelines issued under subsection (a) for medical diagnostic equipment shall apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other equipment commonly used for diagnostic or examination purposes by health professionals.

(c) INTERIM STANDARDS.—Until the date on which final regulations are issued under subsection (d), purchases of examination tables, weight scales, and mammography equipment and used in (or in conjunction with) medical settings described in subsection (a), shall adhere to the following interim accessibility requirements:

(1) Examination tables shall be height-adjustable between a range of at least 18 inches to 37 inches.

(2) Weight scales shall be capable of weighing individuals who remain seated in a wheelchair or other personal mobility aid.

(3) Mammography machines and equipment shall be capable of being used by individuals in a standing, seated, or recumbent position, including individuals who remain seated in a wheelchair or other personal mobility aid.

(d) REGULATIONS.—Not later than 6 months after the date of the issuance of the guidelines under subsection (a), each appropriate Federal agency authorized to promulgate regulations under this Act or under the Americans with Disabilities Act shall—

(1) prescribe regulations in an accessible format as necessary to carry out the provisions of such Act and section 504 of this Act that include accessibility standards that are consistent with the guidelines issued under subsection (a); and

(2) ensure that health care providers and health care plans covered by the America's Affordable Health Choices Act of 2009 meet the requirements of the Americans with Disabilities Act and section 504, including provisions ensuring that individuals with disabilities receive equal access to all aspects of the health care delivery system.

(e) REVIEW AND AMEND.—The Architectural and Transportation Barriers Compliance Board shall periodically review and, as appropriate, amend the guidelines as prescribed under subsection (a). Not later than 6 months after the date of the issuance of such revised guidelines, revised regulations consistent with such guidelines shall be promulgated in an accessible format by the appropriate Federal agencies described in subsection (d).

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WORKFORCE INVESTMENT ACT OF 1998

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TITLE I—WORKFORCE INVESTMENT SYSTEMS

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Subtitle D—National Programs

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SEC. 171. DEMONSTRATION, PILOT, MULTISERVICE, RESEARCH, AND MULTISTATE PROJECTS.

(a) * * *

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(f) HEALTH PROFESSIONS TRAINING FOR DIVERSITY PROGRAM.—

(1) IN GENERAL.—The Secretary shall make available 20 grants of no more than $1,000,000 annually to nonprofit organizations for the purposes of providing workforce development training program for those who are currently employed in the health care workforce.

(2) ELIGIBILITY.—For the purposes of providing assistance and services under the program established in this subsection, grants are to be awarded to Area Health Education Centers or similar nonprofit organizations involved in the development and implementation of health care workforce development programs and that—

(A) have a formal affiliation with a hospital or community health center, and institution of higher education as defined by section 101 of the Higher Education Act of 1965;

(B) have a history of providing program services to minority populations; and

(C) provide workforce development programs to low-income persons, veterans, or urban and rural underserved communities.

(g) ONLINE HEALTH WORKFORCE TRAINING PROGRAM.—

(1) GRANT PROGRAM.—

(A) IN GENERAL.—The Secretary shall award National Health Workforce Online Training Grants on a competitive basis to eligible entities to enable such entities to carry out training for individuals to attain or advance in health care occupations. An entity may leverage such grant with other Federal, State, local, and private resources, in order to expand the participation of businesses, employees, and individuals in such training programs.

(B) ELIGIBILITY.—In order to receive a grant under the program established under this paragraph—

(i) an entity shall be an educational institution, community-based organization, non-profit organization, workforce investment board, or local or county government; and

(ii) an entity shall provide online workforce training for individuals seeking to attain or advance in health care occupations, including nursing, nursing assistants, dentistry, pharmacy, health care management and administration, public health, health information systems analysis, medical assistants, and other health care practitioner and support occupations.

(C) PRIORITY.—Priority in awarding grants under this paragraph shall be given to entities that—

(i) have demonstrated experience in implementing and operating online worker skills training and education programs;

(ii) have demonstrated experience coordinating activities, where appropriate, with the workforce investment system; and

(iii) conduct training for occupations with national or local shortages.

(D) DATA COLLECTION.—Grantees under this paragraph shall collect and report information on—

(i) the number of participants;

(ii) the services received by the participants;

(iii) program completion rates;

(iv) factors determined as significantly interfering with program participation or completion;

(v) the rate of job placement; and

(vi) other information as determined as needed by the Secretary.

(E) OUTREACH.—Grantees under this paragraph shall conduct outreach activities to disseminate information about their program and results to workforce investment boards, local governments, educational institutions, and other workforce training organizations.

(F) PERFORMANCE LEVELS.—The Secretary shall establish indicators of performance that will be used to evaluate the performance of grantees under this paragraph in carrying out the activities described in this paragraph. The Secretary shall negotiate and reach agreement with each grantee regarding the levels of performance expected to be achieved by the grantee on the indicators of performance.

(G) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection $50,000,000 for fiscal years 2011 through 2020.

(2) ONLINE HEALTH PROFESSIONS TRAINING PROGRAM CLEARINGHOUSE.—

(A) DESCRIPTION OF GRANT.—The Secretary shall award one grant to an eligible postsecondary educational institution to provide the services described in this paragraph.

(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph, a postsecondary educational institution shall—

(i) have demonstrated the ability to disseminate research on best practices for implementing workforce investment programs; and

(ii) be a national leader in producing cutting-edge research on technology related to workforce investment systems under subtitle B.

(C) SERVICES.—The postsecondary educational institution that receives a grant under this paragraph shall use such grant—

(i) to provide technical assistance to entities that receive grants under paragraph (1);

(ii) to collect and nationally disseminate the data gathered by entities that receive grants under paragraph (1); and

(iii) to disseminate the best practices identified by the National Health Workforce Online Training Grant Program to other workforce training organizations.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection $1,000,000 for fiscal years 2011 through 2020.

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OLDER AMERICANS ACT OF 1965

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TITLE II—ADMINISTRATION ON AGING

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FUNCTIONS OF ASSISTANT SECRETARY

SEC. 202. (a) * * *

(b) To promote the development and implementation of comprehensive, coordinated systems at Federal, State, and local levels that enable older individuals to receive long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, the Assistant Secretary shall, consistent with the applicable provisions of this title—

(1) collaborate, coordinate, and consult with other Federal entities responsible for formulating and implementing programs, benefits, and services related to providing long-term care, and may make grants, contracts, and cooperative agreements with funds received from other Federal entities*, and, in carrying out the purposes of this paragraph, shall make recommendations to other Federal entities regarding appropriate and effective means of identifying, promoting, and implementing investments in the direct care workforce necessary to meet the growing demand for long-term health services and supports and assisting States in developing a comprehensive state workforce development plans with respect to such workforce including efforts to systematically assess, track, and report on workforce adequacy and capacity*;

* * * * * * *

(g)(1) The Assistant Secretary shall establish a Personal Care Attendant Workforce Advisory Panel and pilot program to improve working conditions and training for long term care workers, including home health aides, certified nurse aides, and personal care attendants.

(2) The Panel shall include representatives from—

(A) relevant health care agencies and facilities (including personal or home care agencies, home health care agencies, nursing homes and residential care facilities);

(B) the disability community;

(C) the nursing community;

(D) direct care workers (which may include unions and national organizations);

(E) older individuals and family caregivers;

(F) State and federal health care entities; and

(G) experts in workforce development and adult learning.

(3) Within one year after the establishment of the Panel, the Panel shall submit a report to the Assistant Secretary articulating core competencies for eligible personal or home care aides necessary to successfully provide long-term services and supports to eligible consumers, as well as recommended training curricula and resources.

(4) Within 180 days after receipt by the Assistant Secretary of the report under paragraph (3), the Assistant Secretary shall establish a 3-year demonstration program in 4 states to pilot and evaluate the effectiveness of the competencies articulated by the Panel and the training curricula and training methods recommended by the Panel.

(5) Not later than 1 year after the completion of the demonstration program under paragraph (4), the Assistant Secretary shall submit to each House of the Congress a report containing the results of the evaluations by the Assistant Secretary pursuant to paragraph (4), together with such recommendations for legislation or administrative action as the Assistant Secretary determines appropriate.

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TITLE III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

PART A—GENERAL PROVISIONS

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AUTHORIZATION OF APPROPRIATIONS; USES OF FUNDS

SEC. 303. (a) * * *

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(e)(1) * * *

(2) There are authorized to be appropriated to carry out part E (relating to family caregiver support) $166,500,000 for fiscal year 2008, **[**$173,000,000 for fiscal year 2009, $180,000,000 for fiscal year 2010, and $187,000,000 for fiscal year 2011**]** *and $250,000,000 for each of the fiscal years 2010, 2011, and 2012.*

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XVIII. COMMITTEE CORRESPONDENCE

None.

XIX. MINORITY VIEWS

MINORITY VIEWS

Introduction

Committee Republicans agree that health care reform legislation should make health care more affordable, improve quality, and reduce the number of uninsured Americans. As policymakers, we should be doing all that we can to make positive reforms to the health care system that would use private markets to lower the cost of health care insurance; improve affordability and accessibility for both employers and employees; give employers and employees the tools they need to encourage healthier behavior; change health care provider reimbursement structures to reward high-quality results; and address the long-term solvency of existing entitlement programs, like Medicare and Medicaid.

Considering that the majority of Americans obtain health insurance coverage through their employers, the employment-based system plays a central role in the delivery of health care. Recognizing the importance of employment-based health coverage, Committee Republicans have led efforts in recent years to lower the cost and increase the affordability of employment-based health coverage. Committee Republicans continue to support efforts to assist employers and employees in obtaining cost-effective, high quality coverage.

In assessing health care reform legislation, Committee Republicans bear in mind a number of important principles. Foremost, reform efforts should allow individuals who are satisfied with their current coverage to keep it, and give Americans the freedom to choose the health plans and medical providers that best fit their needs. Second, reforms should make quality health care coverage affordable and accessible for every American, regardless of pre-existing health conditions. Third, we must guard against a new government-run health care plan that would eliminate the health coverage that more than 100 million Americans currently receive through their job, or limit their choice of doctors and medical treatment options. Fourth, reform efforts must ensure that medical decisions are made by patients and doctors, not government bureaucrats. Finally, reforms must improve Americans' lives through effective prevention, wellness, and disease management programs, while developing new treatments and cures for life-threatening diseases.

Measured against these principles, H.R. 3200, as reported from the Committee on Education and Labor, wholly fails to meet the mark. For these reasons, and as set forth more fully below, Committee Republicans oppose the bill.

H.R. 3200, Procedural History

On the afternoon of Friday, June 19, 2009, House Democrats circulated the "TriCommittee Draft Proposal for Health Care Reform," an 852-page health care plan crafted behind closed doors by the Democrat Chairmen of three House committees with jurisdiction over health care issues. The draft proposal was not formally introduced or assigned a legislative bill number. There were vast shortcomings and gaps in the draft proposal, including the lack of a cost estimate and the absence of several key provisions, including specific financing mechanisms. House Republicans were denied the opportunity to provide meaningful input on the "draft proposal," and met for the first time with Committee Democrats only two days before the proposal was publicly circulated.

On Tuesday, June 23, 2009, the Committee on Education and Labor held a hearing on the draft proposal. Although Committee Republicans and invited witnesses provided valuable commentary, the short time frame for review and the significant gaps in the draft proposal hindered the ability to comprehensively analyze the Democrat health care reform plan prior to the hearing on June 23.

Thereafter, on July 14, 2009, House Democrat Leaders formally introduced their health care reform bill, H.R. 3200, the "America's Affordable Health Choices Act of 2009." The introduced bill totaled 1,017 pages (an increase of 165 pages) and contained numerous technical and substantive changes. No formal estimate of the cost of H.R. 3200 has been provided; rather, prior to the Committee's consideration of the bill a "preliminary," incomplete score of H.R. 3200 prepared by the Congressional Budget Office (CBO) was provided. This "preliminary" analysis was not based on H.R. 3200, but rather on "technical specifications" of the June 19 TriCommittee draft proposal that were provided to CBO by House Democrats.

On the afternoon of July 15, 2009, the full Committee on Education and Labor commenced its markup of H.R. 3200 with Member opening statements. Late on that same afternoon, Committee Republicans were provided with the Chairman's Amendment in the Nature of a Substitute, which totaled 1,040 pages (adding another 23 pages) and contained further substantive changes to H.R. 3200. Not one hearing was held on the Democrat-generated health care reform provisions of H.R. 3200, or on the Chairman's Amendment in the Nature of a Substitute. On the morning of July 17, 2009, after consideration of 42 amendments, the Committee completed its consideration of H.R. 3200, and the bill was ordered favorably reported to the House of Representatives by a vote of 26–22. Three Democrats joined with all Committee Republicans in opposing the bill.

General Concerns Regarding H.R. 3200

Committee Republicans are concerned about the inexplicable rush to legislate on this important issue. The changes contemplated by H.R. 3200 will significantly impact more than one-sixth of the American economy, yet House Democrats drafted the partisan bill behind closed doors and without any meaningful participation by Republicans and even many Democrats. Committee Republicans have not been provided with an adequate amount of time to fully analyze the complex provisions of H.R. 3200. Further, we expect

that the bill will change yet again following consideration by the three House Committees of jurisdiction, and prior to consideration by the full House, if it should occur. However, our review to date reveals numerous and significant policy concerns.

In general, Committee Republicans are concerned that H.R. 3200 fails to address the problems in the U.S. health care system, and in fact will only serve to exacerbate these problems through the adoption of misguided and historically ineffective policies. Moreover, the bill's true cost is unknown, but will likely be excessive. The cost will likely exceed $1.3 trillion over ten years, and the latest CBO estimate indicates that the bill will add more than $239 billion to the federal deficit over a ten-year period. More troubling is the fact that under H.R. 3200, the federal government starts collecting new taxes and revenues within a year or two of enactment, but implementation of many of the programs (i.e., the creation of a new federal bureaucracy and insurance coverage subsidies) is delayed, which artificially lowers the "cost" of the legislation under consideration by CBO. Further, in the later years of the CBO ten-year estimate, the costs of the program significantly outstrip new revenues, meaning the true costs of the Democrat legislation are much higher over the long term (i.e., beyond CBO's limited ten-year period). This is a cost the country cannot afford to bear.

The specific problems of the bill are numerous. For instance, Democrats attempt to pay for some of the cost through significantly higher taxes on individuals and businesses, with small business owners (those who create the majority of American jobs) appearing to shoulder a disproportionate share of the burden. It creates a massive new federal bureaucracy with unprecedented powers to determine "acceptable" health care coverage, and tax those who fail to comply with the bill's numerous legal mandates. The bill essentially eliminates current state-based private markets for health insurance. H.R. 3200 creates a "public health insurance option" (i.e., government-run health insurance plan) controlled by the new federal bureaucracy that is based on the flawed Medicare payment structure, and will undermine the private health insurance coverage currently enjoyed by millions of Americans. H.R. 3200 does little, if anything, to change the flawed health care delivery and payment structure, which is critical to control health care costs, increase affordability, and make coverage more accessible to Americans. The goal of H.R. 3200 appears to be nothing less than centralization of the country's health care sector in the federal government. It should be rejected.

Concerns Relating to ERISA Group Health Plans

The 1,040-page bill is divided into three separate Divisions: Division A, entitled "Affordable Health Care Choices"; Division B, "Medicare and Medicaid Improvements"; and Division C, "Public Health and Workforce Development". The Committee on Education and Labor maintains jurisdiction over much of Division A, and a portion of Division C. Considering this Committee's jurisdiction over the Employee Retirement Income and Security Act of 1974 (ERISA) and the provision of employer-sponsored group health coverage, this Committee's consideration of H.R. 3200 focused primarily on Division A.

Division A of H.R. 3200 contains several controversial Democrat proposals, including the establishment of a new federal bureaucracy which would be charged with defining "acceptable" health benefits, creating and regulating a new national health insurance exchange, distributing massive new federal subsidies for low and middle-income individuals to purchase "acceptable" health insurance through the exchange, and regulating the provision of insurance nationally. Also, Division A contains a provision creating a new government-run health insurance plan option, which would be a federally-created and administered government-run insurance plan based on Medicare, allegedly designed to "compete" with private insurance plans.

Democrats attempt to pay for this new bureaucracy through a number of new tax provisions that affect all Americans. For instance, H.R. 3200 institutes a new mandate on every individual to obtain "acceptable" coverage or pay a 2.5 percent tax. It creates a "pay or play" mandate on virtually all employers to provide "acceptable" insurance coverage or pay a new 8 percent payroll tax to the federal government. The introduced bill also provides some details left out of the June 19 Tri-Committee draft proposal, such as a provision exempting only the very smallest businesses, and new tax increases that are intended to pay for this massive new federal entitlement program. Many of the new taxes set forth in H.R. 3200 disproportionately impact small businesses and small business owners. Even so, Democrats' attempt to pay for the cost of this legislation falls far short as the bill's costs increase substantially over time and will likely result in at least a $239 billion increase in the federal deficit.[1] The overwhelming cost of the Democrat bill, and its bevy of new taxes, has raised significant concerns among many Americans. Committee Republicans believe that the bill creates a massive new federal bureaucracy and places significant new liabilities and tax burdens on all Americans and virtually all American employers, even those that are not profitable, which will likely have a negative impact on future economic growth.

Employer "Pay or Play" Mandate

Over 160 million people, or about 62 percent of the population under age 65, obtain health care insurance from their employers. Despite rising costs, this number has remained relatively consistent over the past decade, and most employees are happy with the coverage they receive from their employers. One of the primary reasons for the success of the employer-sponsored system is the ERISA-based regulatory structure that generally allows multi-state employers to voluntarily offer uniform health benefits to their employees, irrespective of location, by freeing the employer-sponsored plan from regulation by the states. Under the current ERISA structure, many employers gain administrative efficiencies and voluntarily design health plans tailored to the needs of their employees and families. This has permitted the private sector to develop inno-

[1] See, letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to the Honorable George Miller, Chairman, Committee on Education and Labor, dated July 17, 2009. The letter provides a preliminary analysis by the CBO and the Joint Committee on Taxation of H.R. 3200, as introduced on July 14, 2009, and does not reflect any modifications or amendments made after that date.

vative benefit designs and payment policies to control health care costs and improve quality.

As reported, H.R. 3200 imposes an unprecedented new tax on virtually all employers. Specifically, Title III, Subtitle B, "Employer Responsibility," mandates that all employers offer "acceptable" coverage under a "qualified health benefits plan" to each of their employees, or pay an 8 percent payroll tax to the federal government.[2] The "acceptable" coverage will be designed and determined by the new Health Benefits Advisory Committee and the Health Choices Commissioner. Section 312 provides that for full-time employees, employers have to contribute at least 72.5 percent of the applicable premium of the lowest cost plan for individuals, and 65 percent of the applicable premium of the lowest cost plan for family coverage. The mandate is also extended to part-time employees, but the bill fails to specify who is a part-time employee and leaves it to the federal government to define this term and create new employer contribution rules for such employees. In a provision only trial lawyers could like, the bill subjects ERISA group health plans to state court lawsuits. Finally, under Section 321, employers will be subjected to fines of up to $500,000 in the event they are found to be in noncompliance with the Act's onerous new mandates.

The new taxes on employers pose multiple problems, and have been the subject of much commentary from the representatives of those employers who will be directly impacted by the Democrats' new tax plan. For example, in a letter dated July 9, 2009 to Chairman Miller and Ranking Member Kline, Steve Pfister, the Senior Vice President of the National Retail Federation stated:

> Employer mandates of any kind amount to a tax on jobs. We can think of few more dangerous steps to take in the middle of a recession. We need to add new jobs, not exacerbate the near double-digit unemployment numbers. We cannot afford to have new and existing jobs priced out of our collective reach because of mandated health coverage.

In a July 15, 2009 general letter, Susan Eckerly, Senior Vice President of Public Policy for the National Federation of Independent Business (NFIB), stated that the NFIB, the nation's leading small business advocacy organization, opposed H.R. 3200 because of the inclusion of an employer mandate. Ms. Eckerly stated, in part:

> Research shows an employer mandate could cost 1.6 million jobs with more than 1 million of those jobs lost in the small business sector. The approach fails to increase affordability and, instead, devastates the economy—with the greatest impact being levied on the low-income community who will pay through depressed wages and lost jobs. . . . As if the mandate alone isn't destructive enough, the legis-

[2] The only exception to the mandate considered by the Committee was a sliding scale wage tax in Section 313, exempting only the very smallest employers with annual payrolls of less than $250,000, and limiting the payroll tax for companies with payroll of less than $400,000 annually. Under Section 313, employers with a payroll of less than $250,000 are not subject to any payroll tax. Companies with payrolls of $250,000 to less than $300,000 are subject to a 2 percent payroll tax; $300,000 to under $350,000 at 4 percent; and employers with payroll of $350,000 to less than $400,000 are taxed at 6 percent. Companies with payroll of more than $400,000 are taxed the full eight percent.

> lation uses perhaps the most egregious penalty of all—a payroll tax—as the penalty for those who cannot meet the obligations laid out in the bill. A payroll tax is particularly regressive because employers pay it regardless of whether or not their business is profitable. . . . The legislation even punishes employers who are currently providing insurance to their employees, but don't meet the premium contribution requirements in the bill (72.5% for individuals and 65% for family plans).

In a letter dated July 15, 2009 to Chairman Miller and Ranking Member Kline, R. Bruce Josten, Executive Vice President, Government Affairs for the United States Chamber of Commerce, expressed opposition to the employer mandate. Mr. Josten stated:

> the bill contains a job-killing employer mandate and accompanying 8 percent payroll tax. Attempts to carve out some small businesses will not prevent the adverse economic consequences of this provision.

The Majority claims that H.R. 3200 will save money and create new jobs. These assertions ignore the analysis of CBO which indicates that the pending legislation adds at least $239 billion to the federal deficit over ten years, with that number likely to grow substantially in the following decade. Further, CBO has not found that H.R. 3200 controls or reduces underlying systemic health care costs, which is essential to making care and coverage more affordable. Finally, as reflected in the comments above, the new taxes on all employers will slow economic growth and stunt new job creation, particularly among those employers who struggle to reach or maintain profitability.

Finally, some Committee and House Democrats have expressed serious reservations regarding the onerous requirements on employers. For example, in a letter dated July 9, 2009 from the fiscally conservative Blue Dog Coalition to Speaker Nancy Pelosi and Majority Leader Steny Hoyer, forty "Blue Dog" Democrats stated that "any additional requirements for employers must be carefully considered and done so within the context of what is currently offered. Small business owners and their employees lack coverage because of high and unstable costs—not because of an unwillingness to provide or purchase it. We cannot support a bill that further exacerbates the challenges faced by small businesses."[3]

Committee Republicans believe that the employer "pay or play" mandate is simply flawed policy that will destroy the voluntary, employer-sponsored ERISA health benefits structure, limit future flexibility to design affordable health plans, increase costs and cause significant job losses, and depress wage growth, especially for low-income Americans. This mandate would be especially hard on smaller or mid-sized firms that may not be eligible for an exemption, and who may struggle to reach and maintain profitability.

[3] See, letter from "Democratic Blue Dog Coalition" to The Honorable Nancy Pelosi, Speaker, and The Honorable Steny Hoyer, Majority Leader, dated July 9, 2009. The letter, signed by forty Democrat Members of Congress, stated their belief that the tri-committee health care reform proposal "lacks a number of elements essential to preserving what works and fixing what is broken" in the health care system, and that legislation must include provisions to ensure deficit neutrality, delivery system reform, small business protections, rural health equity, and bipartisanship.

Further, the proposed tax penalty percentage (eight percent for most employers) could increase in the future at the whim of Congress, especially if the federal government needs additional revenues to cover shortfalls in this massive new entitlement program, potentially increasing the burdens on employers.

In addition, numerous structural components of the proposed mandate are problematic for employers and the current ERISA structure. In the fifth year of the exchange, employers whose workers choose coverage through an exchange will be forced to pay the eight percent tax to finance their workers' exchange policy, even if they provide coverage to their employees. This will certainly place increasing pressure on employer group health plans in the form of adverse risk selection, since employees could leave the group health plan for the exchange and shrink the size of the group plan's pool of participants. Many employers may simply choose to drop coverage and pay the tax, rather than administer and pay for an increasingly inefficient group health plan.

Further, under the Democrat bill, there is no way of knowing whether the coverage currently enjoyed by tens of millions of employees and their families, including health savings accounts used in conjunction with high deductible health plans (HSA/HDHP), will meet the future "acceptable" benefit and employer contribution requirements. For example, an HSA/HDHP individual plan with an actuarial value of 69 percent will not meet the requirements of this bill. Employers would have to change this benefit to comply with the new mandates, or the individual employee could face the individual tax for non-compliance.[4] Also, employers who contribute less than the statutory amounts (72.5 percent and 65 percent for individual and family coverage, respectively) will have to change or be subjected to a new tax. This could cause some employers to drop coverage altogether.

Clearly, the employer "pay or play" provisions are designed to make it more difficult for employers to offer ERISA-based group health plan coverage, and direct more employees and their families to the new federal health insurance exchange and its government plan, Medicare-based, option. Contrary to Democrat political rhetoric, there is a substantial likelihood that employees who like their current coverage will not be able to keep it.

For these reasons, Committee Republicans object to the employer "pay or play" mandate in H.R. 3200.

Impact on ERISA Preemption and Remedies

Under current law, the ERISA regulatory structure preempts employers and group health plans from liability under state law. This has resulted in significant administrative savings and contributes to the ability of employers and group health plans to offer high quality, affordable health insurance coverage to more than 130 million Americans.

The Tri-Committee bill raises serious questions and concerns regarding the continued viability of the current ERISA regulatory structure, and whether H.R. 3200 exposes employers and group

[4] *See*, H.R. 3200, Sections 301, 401, July 14, 2009, regarding the new tax on individuals who fail to obtain acceptable insurance coverage.

health plans to new liabilities for claim decisions. Under current law, group health plans are required to comply with the requirements of ERISA, and any disputes are governed and resolved under its provisions. This ensures that employers, who may provide health insurance coverage for workers in all 50 states, must comply with the federal law only, which permits the delivery of uniform benefits and saves administrative costs. They cannot be sued in state courts, under different laws.

The bill appears to change this by creating two different penalty regimes inside the new insurance exchanges; for group health plans and their beneficiaries, there would be varied and unlimited penalties set forth under 50 different state laws. To the extent that group health plans are permitted to purchase through the insurance exchanges, they will be subjected to potentially expansive new state court liabilities.

At the same time that they are subjecting private plans to a patchwork of state laws, Democrats chose to apply a uniform federal scheme similar to Medicare to the government-run health insurance plan. This would provide an unfair financial advantage to the government-run health plan since, unlike ERISA group health plans, the government-run plan would not have to face lawsuits and comply with up to 50 different sets of state laws.

Two groups appear to benefit from this proposed structure: trial lawyers and the government bureaucrats running the government-run health plan. Further, ERISA group health plans would face significant new liabilities and costs which would likely cause them to drop coverage altogether, accelerating the movement from private, employer-sponsored health insurance to a government-run plan.

For these reasons, Committee Republicans object to new liabilities imposed on ERISA employers and group health plans in H.R. 3200.

The New Federal Bureaucracy and the Government-Run Health Plan

Committee Republicans are concerned that H.R. 3200 creates a massive new federal health insurance bureaucracy, the "Health Choices Administration," that would create a "one-size-fits-all" standard for health coverage and vest unprecedented control with one individual, the new "Health Choices Commissioner." This new Commissioner would be charged with governing the national exchange, enforcing insurance plan standards, distributing taxpayer subsidies, and fining non-compliant individuals, plans and employers. This structure would restrict the sale of insurance outside of the exchange, and ultimately would eviscerate private insurance markets over time.

Under H.R. 3200, the Department of Health and Human Services (HHS) will be charged with creating a public health insurance option that would only be available in a national health insurance exchange. Although the plan would have to comply with requirements on private, exchange-available plans, the exchange would have no power under the bill to reject, sanction or terminate the government option run by HHS. Further, the government plan would be subject to lawsuit only in federal courts; this differs substantially

from private plans, including employer-sponsored group health plans currently regulated under the federal ERISA law, which would be subject to state court lawsuits (raising the costs for private plans).

With respect to government-plan funding, "start-up" funds in the amount of $2 billion in taxpayer money would be provided from the Treasury. Although the plan's premium rates would be required to cover the cost of the benefits and administration, going forward there is no requirement that the government plan maintain a certain "reserve" level, similar to those required of state-based private insurance companies. This could give the government plan a potentially significant competitive advantage over private insurers.

Importantly, the government plan would be based on the failed Medicare payment structure. Specifically, the plan would pay Medicare rates for at least the first three years, with Medicare-participating physicians getting a five percent bonus for the first three years. The problems with this structure are numerous. First, Medicare pays on a fee-for-service basis, which rewards those providers that increase the volume of medical services, as opposed to those providers that limit utilization and provide high quality care. The Medicare reimbursement structure is historically inflexible when it comes to designing and implementing more innovative policies and reimbursement structures. Private innovations, like paying for health care provider performance, and the adoption of prevention and wellness programs, are exceedingly difficult to duplicate in the Medicare structure given that it is a government-administered program which is highly resistant to change.

Second, government health entitlement programs, like Medicare and Medicaid, routinely underpay health care providers, resulting in a cost-shift to private plans and private payers. This was confirmed in the testimony of a New Jersey hospital executive at a hearing before the Subcommittee on Health, Education, Labor and Pensions in March 2009. Reliance on existing Medicare payment rates, with minor adjustments, will, according to an estimate by The Lewin Group, an independent consulting company, significantly underpay health care providers, compensating them at rates 20–30 percent below what private plans pay for the same services. Even if adjustments are made to lower the underpayment rates, by design, the government-run plan will underpay providers to reduce premium costs, in order to increase enrollment and crowd-out private insurers. This inherent cost advantage built into the government plan created by H.R. 3200 will result in a government plan with artificially low premiums, which will likely have a negative impact on health care quality.

These concerns were expressed in a letter from 13 health care providers and associations, including the Mayo Clinic, in a letter dated July 16, 2009 to Representative Ron Kind (D–WI). Specifically, these groups expressed concern that:

> . . . a public plan option with rates based on Medicare rates will have a severe negative impact on our facilities. Today, many providers suffer great financial losses associated with treating Medicare patients. For example, several of the systems that have signed onto this letter lost hundreds of millions of dollars under Medicare last year.

> These rates are making it increasingly difficult for us to continue to treat Medicare patients. The implementation of a public plan with similar rates will create a financial result that will be unsustainable for even the nation's most efficient, high quality providers, eventually driving them out of the market. In addition, should a public plan with inadequate rates be enacted, we will be forced to shift additional costs to private payers, which will ultimately lead to increased costs for employers who maintain insurance for their employees. We believe all Americans must have guaranteed portable health insurance, but it is critical that we not lose sight of the need to ensure adequate and equitable reimbursement.

The results of a government-run health insurance plan are undeniable. Although Democrats argue the purpose of the government plan is to increase competition, it will have the exact opposite effect. Considering that the government plan will possess certain advantages (discussed above) it will not, by design, compete fairly with private insurance and group health plans. Studies of the effect of a government plan option indicate that there will be movement from private insurance coverage to a government-run plan which would concentrate control of health care with the government, which already controls almost half of the country's health care spending. For example, CBO analyses provided to the Committee on July 14 and July 17 indicate movement of individuals from private coverage to the government plan. In a June 2009 study, The Lewin Group found that a government plan open to all, and based on Medicare-level reimbursement rates, would result in almost 114 million Americans losing their current private insurance coverage because of movement toward an artificially cheaper, benefit-rich government plan.[5] Simply put, the availability of a government plan will create a cycle of increasing costs for those with private plans, forcing employers to drop coverage and pushing more workers into the government plan.

The new federal health care bureaucracy, with its myriad rules for private plans and government-run insurance option, will ultimately decrease the competitiveness of private insurance and group health plans, essentially resulting in a government takeover of the health care system. The government's track record on health care is not one to be duplicated; the Medicaid program does not pay for the full cost of medical care, is routinely underfunded, and places a substantial burden on states. The Democrat answer in H.R. 3200 is to increase Medicaid eligibility to 133 percent of the federal poverty level, which would exacerbate health care provider underpayments, create a new entitlement mentality, and substantially increase the federal government's Medicaid payments in perpetuity. Medicare underpays health care providers, is an outdated and inflexible benefit design, and has unfunded obligations totaling $37.8 trillion. The House Democrat answer is not to first fix Medicare but to create a new federal entitlement program for those under 65

[5] See, The Impact of the House Health Reform Legislation on Coverage and Provider Incomes, Testimony of John Sheils, Vice President, The Lewin Group, before the Energy and Commerce Committee, U.S. House of Representatives, June 25, 2009. *http://www.lewin.com/content/publications/June25TestimonyUpdateJul09.pdf*.

based on Medicare, spend more than $1.3 trillion, and raise taxes on Americans. These policies do nothing to control existing health care costs, and only serve to worsen the nation's long-term fiscal outlook while removing decisions from the hands of doctors and patients and placing them in the hands of Washington bureaucrats.

Clearly, if Americans like their current coverage and the quality of their health care, it will be in jeopardy under the Democrats' plan as set forth in H.R. 3200.

Republican Alternative

Committee Republicans agree that the health care system is in dire need of reform and stand ready to work with Committee Democrats to forge a truly bipartisan compromise. However, Committee Republicans believe the policies contained in H.R. 3200, which seek to expand health care insurance coverage at great cost without first addressing and controlling underlying health care costs and provider shortages, are doomed to fail.

Republicans agree with Democrats that the problem of the uninsured must be addressed. The Majority notes that 47 million individuals are uninsured; however, this population is not homogenous. According to a report released by the Congressional Research Service on September 14, 2009, approximately 20 percent of the uninsured are non-citizens. Further, approximately 10 million more individuals may already be eligible for existing government insurance programs, but are not enrolled, and many millions more are young or voluntarily choose to go without coverage. Rather than creating a massive new federal entitlement program, Republicans believe underlying costs must be addressed in order to make coverage more affordable and accessible, with implementation of targeted approaches to address the specific characteristics of the uninsured population.

The first step to lower health care costs is to address overspending in the current system.[6] To lower costs, Committee Republicans would consider: changes to the tax code to permit individuals to share some of the same advantages as those with employer-sponsored coverage; promote incentives to save for future health care costs; promote meaningful medical liability reforms to reduce costly and unnecessary defensive medicine practices; provide existing government programs with additional authority and resources to stop fraud and abuse; and permit small business to band together to offer health insurance at lower costs.

Republicans and Democrats agree that small businesses face unique and difficult challenges in securing affordable health insurance coverage. Yet the Democrat response to this challenge is to construct an elaborate new federal bureaucracy and entitlement program, with the imposition of massive new taxes, administrative requirements and penalties on all but the very smallest employers, Republicans have tirelessly advocated for targeted, less costly measures to address the specific problems confronting small businesses—small business, or association, health plans constitutes one such measure that can be enacted immediately and would permit

[6] In testimony before the Senate Health, Education, Labor and Pensions Committee on July 16, 2009, 030 Director Douglas Elmendorf stated that all of the Democrat proposals reviewed to date, including H.R. 3200, do little, if anything, to control health care costs.

small businesses to band together to pool their purchasing power and enjoy the same benefits as larger employers.

Additionally, Committee Republicans support policies that would provide employers with greater flexibility to promote prevention and wellness programs, and financially reward employees who seek to achieve or maintain a healthy weight, quit smoking, and better manage chronic diseases like diabetes. Changing payment structures to reward high quality care, rather than volume of medical services, and increasing care coordination, can also help control health care costs. Further, before creating another federal entitlement program and adding to the federal deficit, Committee Republicans believe it is necessary to address the long-term fiscal solvency of existing federal entitlement programs.

Committee Republicans would also seek to expand access by strengthening employer-sponsored coverage to millions of people who are already eligible, encourage states to create or modify programs to guarantee all Americans have access to affordable coverage regardless of pre-existing medical conditions, promote policies to increase portability of coverage regardless of employment status, and help employers offer coverage by reducing administrative costs through a small business tax credit.

In short, Committee Republicans support policies that promote individual behavior and responsibility for health care and coverage decisions, and maintain the doctor-patient relationship, while keeping the federal government out of the business of dictating health care coverage requirements or favoring a government-insurance model over private coverage. Committee Republicans remain willing to work with Democrats in developing a compromise bipartisan health care reform bill.

Republican Amendments

Committee Republicans offered twenty-six amendments during the Committee's consideration of H.R. 3200 on July 16 and 17. Republican amendments attempted to highlight significant concerns with H.R. 3200 and improve some of the more troubling provisions of the bill. In general, Committee Republicans offered solutions to the health care crisis, and expressed significant concerns regarding: the significant cost of H.R. 3200; the adverse impact on the economy, workers, families and small businesses; the government takeover of the health care system; the fact that under H.R. 3200 those who like their coverage won't be able to keep it; preservation of the doctor-patient relationship; and opposition to likely rationing of medical care under the Democrat proposal.

Specifically, Committee Republicans offered amendments intended to:

- Strike provisions creating the new "Health Choices Administration;"
- Strike provisions creating the national health insurance exchange;
- Strike the employer "pay or play" mandate;
- Strike the government-run insurance plan;
- Ensure that the coverage provided by ERISA group health plans, now and in the future, would be preserved under the plan;

- Ensure deficit neutrality;
- Suspend the bill where the national unemployment rate exceeded 8% in two consecutive months;
- Preserve the protective remedies of ERISA for ERISA-governed plans;
- Prevent mandated coverage of abortion services;
- Prohibit federal funding for abortion services under the bill;
- Prohibit any tax increase on American families with annual incomes under $250,000;
- Provide employers and employees with greater flexibility to promote prevention and wellness programs, which are proven to increase personal responsibility and lower health care costs;[7]
- Permit consumer-directed health plans to remain viable options;[8] and
- Permit small businesses to pool together to purchase health insurance through Association Health Plans.

Each of these amendments was rejected, by and large on a party-line basis.

Although some amendments were adopted in an attempt to improve the legislation,[9] many attempts to amend and improve a flawed bill were rejected. Committee Republicans are concerned that the bill remains fundamentally flawed; nevertheless, Committee Republicans continue to stand ready to work with Committee Democrats to draft and enact bipartisan health care reform legislation.

Conclusion

Committee Republicans support the voluntary, private health care system and meaningful reforms to that structure, while opposing measures that would serve to increase federal government control over the health care system. Committee Republicans are also committed to ensuring that the costs of health care reform efforts do not add to the federal deficit or result in higher taxes, which will have the effect of restricting American economic growth. The goal of controlling health care spending is not accomplished by adding more than $1.3 trillion in new spending to America's health care bill. While perhaps well-intentioned, H.R. 3200 is not an acceptable health care reform bill. For all of the foregoing reasons,

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[7] Specifically, Republicans offered an amendment to permit employers to vary employees' health insurance premiums by up to 50 percent to encourage participation in health promotion and disease prevention programs. Current law already permits variations up to 20 percent. Employer-based prevention and wellness programs have a proven-track record of improving employee health and lowering health care expenses and insurance coverage premiums. See, Paul Speranza, Jr., Testimony before the Committee on Education and Labor, "The Tri-Committee Draft for Health Care Reform" (June 23, 2009) at 3–4. This amendment was voluntarily withdrawn in the hope that the Majority would work with Republicans to adopt this common-sense provision; Republicans continue to urge that this provision be included in any reform legislation.

[8] During this Committee's consideration of H.R. 3200, Republicans introduced an amendment to permanently grandfather consumer-directed health plans and arrangements, so that millions of individuals could continue to save for future health care needs and benefit from this coverage. The Majority rejected this amendment, which highlights the fact that if you like your current coverage, you will not be able to keep it under H.R. 3200.

[9] A limited number of amendments were adopted. For example, the Committee accepted language to exclude TRICARE (the Department of Defense's civilian healthcare program for active and retired military personnel) from the provisions of the bill; to express the sense of Congress that Members who vote for the bill enroll in the new government-run plan; to ensure non-discrimination for spiritual care; and to maintain the private right to contract for medical services.

we respectfully oppose enactment of H.R. 3200 as reported from the Committee on Education and Labor.

JOHN KLINE.
CATHY MCMORRIS RODGERS.
THOMAS E. PETRI.
TOM PRICE.
HOWARD P. "BUCK" MCKEON.
ROB BISHOP (UT).
PETER HOEKSTRA.
BRETT GUTHRIE.
MICHAEL N. CASTLE.
BILL CASSIDY.
MARK E. SOUDER.
TOM MCCLINTOCK.
VERNON J. EHLERS.
DUNCAN D. HUNTER.
JUDY BIGGERT.
DAVID P. ROE.
TODD RUSSELL PLATTS.
GLENN THOMPSON.
JOE WILSON.

SUPPLEMENTAL VIEWS OF THE HONORABLE TOM PRICE

Over the course of nearly a quarter century as a physician, I cared for thousands of patients. And caring for each and every one of them was a privilege. So when I left the practice of medicine to shape public policy and the health care delivery system of this nation, I did so clinging to a steadfast aspiration to achieve full access to affordable, quality health care for all Americans, while preserving the patient-doctor relationship without governmental interference.

Relying on my experiences as a physician, I can attest to how current federal laws and incentives retard access to health care and often put a bureaucrat in between a patient, his family, and their doctor. The tax code institutes a third-party health care model making it difficult for those to gain coverage outside of an employer or government entity. And the federal health care programs that do exist dictate to patients which doctors they may see and how frequently, and which procedures or tests doctors may or may not order or provide.

H.R. 3200, America's Affordable Health Choices Act of 2009, marks the latest attempt to fundamentally alter our health care financing and delivery structure. This measure, however, is a transformational piece of legislation intended to erode personal and private decision-making while further institutionalizing the very errors of current federal health care laws and programs. The end result will be a system built on penalties, mandates, rationing, and bureaucracy—all of which are fundamental threats to quality care. For example:

- Sec. 102 of H.R. 3200 grandfathers out health insurance coverage on the individual market. Issuers of existing coverage may not enroll new individuals, alter benefits and cost-sharing, and increase premiums. These plans will no longer be available.
- Sec. 123 of H.R. 3200 creates the Health Benefits Advisory Committee, a new panel to recommend covered benefit standards, including treatments, items and services, and cost-sharing. The Committee is comprised primarily of either political appointees or federal bureaucrats, and these are the folks who will be making these critical decisions.
- Sec. 141 of H.R. 3200 creates the Health Choices Administration, a new federal agency charged with establishing the Health Insurance Exchange. The Administration is the final arbitrator of what is a qualified health benefits plan (i.e. "acceptable") under the exchange and is charged with enforcement.
- Sec. 301 and Sec. 401 of H.R. 3200 impose a "personal responsibility" on every American to obtain "acceptable" health insurance coverage or face a tax of 2.5 percent on gross income.
- Sec. 313 and Sec. 412 of H.R. 3200 impose a tax of eight percent of average wages paid on employers. Providing health care to

employees is no longer a voluntary benefit and only the smallest businesses are exempt.

• Sec. 221 of H.R. 3200 creates a public health insurance option, available through the Health Insurance Exchange, to "compete" against privately run health insurance coverage. Independent analysis by both the Congressional Budget Office and the Lewin Group has concluded that millions of Americans would lose their existing coverage as a result of this government-run plan.

Certainly, the status quo is unacceptable. Yet, a true health care reform package empowers patients first; it builds on what is working and fixes what is flawed without disrupting or destroying quality care; it does not ingrain what is broken and scraps what works.

Before consideration of H.R. 3200, a bipartisan, fundamental rethinking of this nation's health care delivery system could have been possible if reform focused on a patient-centered approach and championed personal ownership and coverage over government control. Further, any effort needed to embrace the same health care principles most Americans embrace: accessibility, affordability, choices, innovation, quality and responsiveness.

As the leader of a group of conservative Republicans in the House of Representatives faithfully committed to these principles and the implementation of reform, I introduced H.R. 3400, the Empowering Patients First Act. It represents the possibility of a new patient-centered era in American health care without putting the government in charge.

For starters, the measure ensures all Americans have access to affordable coverage through a series of tax credits, deductions, and tax equity. It makes it feasible for individuals to pick any health care plan, not just what is offered by the government or at work, meaning that no matter who is paying the bill, patients own and control their own health plan. This puts Americans in a position whereby insurance companies are responsive to them rather than a third-party.

There is portability to maintain coverage if someone changes jobs or moves across state lines. To establish a viable marketplace, barriers are knocked down so coverage can be purchased across state lines.

And since one cannot be serious about reform without addressing the medical liability crisis, the Empowering Patients First Act provides for the creation of specialized health care courts relying on the expertise of medical specialty societies to relieve upward pressure on medical costs.

This same commitment to principles and reform by dedicated Republicans inspired my personal efforts during the mark up of the America's Affordable Health Choices Act of 2009 before the Committee on Education and Labor. Yet every attempt to offer common sense amendments was defeated by Committee Democrats on near party line votes. For example:

> • An amendment to ensure current coverage provided by employer-sponsored group plans would be considered a qualified health benefits plan. Rejecting the amendment flies in the face of "If you like what you have, you can keep it," and restricts access to existing, affordable plans. (Amendment #11, defeated 18–29).

- An amendment to permit states a waiver out of Division A of the Act, which contains the new health care bureaucracies, the individual and employer mandates, and the public health insurance option. Various states have already taken innovative steps to adopt comprehensive health care reform. (Amendment #29, defeated 19–28)
- An amendment to enable employers to contribute to a worker's account and permit that worker to purchase insurance coverage of his choice. (Amendment #40, defeated 19–29)
- An amendment to eliminate the "tiered" payment structure for "preferred" and "non-preferred" physicians who participate in the public health insurance option. Without it, the existing provision forces health care providers to accept payments mandated by the federal government which are well below the actual cost and would likely result in the deterioration of quality care. (Amendment #41, defeated 19–29)

In the end, the America's Affordable Health Choices Act of 2009 rejects the health care principles most Americans embrace and embodies the go-it-alone attitude that House Democrats embarked on from the beginning. House Republicans were never consulted or brought into the process. In fact, more than 70 percent of amendments offered by Republicans for final consideration in the mark up of the Committee on Education and Labor were defeated on near party line votes.

It is why the end product is so terribly flawed and, if adopted, Congress will end up revisiting soon thereafter to correct many of its faults. It is with the sentiments outlined here that I oppose this legislation, and ask all House Republicans to do the same.

TOM PRICE.

DIVISION III

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, October 7, 2009.

Hon. JOHN M. SPRATT, Jr.,
Chairman, Committee on the Budget, Cannon House Office Building, Washington, DC.

DEAR CHAIRMAN SPRATT, With this correspondence and its attachment, I am transmitting the Investing in Education portion of the recommendations of the Committee on Education and Labor to your Committee pursuant to Section 202 of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010.

Pursuant to Section 202 (b) of S. Con. Res. 13, on July 21, 2009, the Committee on Education and Labor voted 30–17 to, *inter alia,* authorize the Chairman to transmit H.R. 3221, Student Aid and Fiscal Responsibility Act of 2009, with an amendment in the nature of a substitute, to the Committee on Budget in compliance with Section 310 of the Congressional Budget Act of 1974, as its recommendations related to the Investing in Education portion of its instructions.

Accordingly, attached please find the Committee's report, containing the reported bill and other materials, for your use in preparing a reconciliation bill to be reported to the House pursuant to S. Con. Res. 13.

If you have any questions, please contact my Committee staff. Thank you for your attention.

Sincerely,

GEORGE MILLER,
Chairman.

111TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 111–232

STUDENT AID AND FISCAL RESPONSIBILITY ACT OF 2009

JULY 27, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany H.R. 3221]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 3221) to amend the Higher Education Act of 1965, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Student Aid and Fiscal Responsibility Act of 2009".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.

TITLE I—INVESTING IN STUDENTS AND FAMILIES

Subtitle A—Increasing College Access and Completion

Sec. 101. Federal Pell Grants.
Sec. 102. College Access and Completion Innovation Fund.
Sec. 103. Investment in historically Black colleges and universities and other minority-serving institutions.
Sec. 104. Investment in cooperative education.
Sec. 105. Loan forgiveness for servicemembers activated for duty.
Sec. 106. Veterans Educational Equity Supplemental Grant Program.

Subtitle B—Student Financial Aid Form Simplification

Sec. 121. General effective date.

Sec. 122. Treatment of assets in need analysis.
Sec. 123. Changes to total income; aid eligibility.

TITLE II—STUDENT LOAN REFORM

Subtitle A—Stafford Loan Reform

Sec. 201. Federal Family Education Loan appropriations.
Sec. 202. Scope and duration of Federal loan insurance program.
Sec. 203. Applicable interest rates.
Sec. 204. Federal payments to reduce student interest costs.
Sec. 205. Federal PLUS Loans.
Sec. 206. Federal Consolidation Loan.
Sec. 207. Unsubsidized Stafford loans for middle-income borrowers.
Sec. 208. Loan repayment for civil legal assistance attorneys.
Sec. 209. Special allowances.
Sec. 210. Revised special allowance calculation.
Sec. 211. Origination of Direct Loans at institutions located outside the United States.
Sec. 212. Agreements with institutions.
Sec. 213. Terms and conditions of loans.
Sec. 214. Contracts.
Sec. 215. Interest rates.

Subtitle B—Perkins Loan Reform

Sec. 221. Federal Direct Perkins Loans terms and conditions.
Sec. 222. Authorization of appropriations.
Sec. 223. Allocation of funds.
Sec. 224. Federal Direct Perkins Loan allocation.
Sec. 225. Agreements with institutions of higher education.
Sec. 226. Student loan information by eligible institutions.
Sec. 227. Terms of loans.
Sec. 228. Distribution of assets from student loan funds.
Sec. 229. Implementation of non-title IV revenue requirement.
Sec. 230. Administrative expenses.

TITLE III—MODERNIZATION, RENOVATION, AND REPAIR

Subtitle A—Elementary and Secondary Education

Sec. 301. Definitions.

CHAPTER 1—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF PUBLIC SCHOOL FACILITIES

Sec. 311. Purpose.
Sec. 312. Allocation of funds.
Sec. 313. Allowable uses of funds.
Sec. 314. Priority projects.

CHAPTER 2—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

Sec. 321. Purpose.
Sec. 322. Allocation to local educational agencies.
Sec. 323. Allowable uses of funds.

CHAPTER 3—GENERAL PROVISIONS

Sec. 331. Impermissible uses of funds.
Sec. 332. Supplement, not supplant.
Sec. 333. Prohibition regarding State aid.
Sec. 334. Maintenance of effort.
Sec. 335. Special rule on contracting.
Sec. 336. Use of American iron, steel, and manufactured goods.
Sec. 337. Labor standards.
Sec. 338. Charter schools.
Sec. 339. Green schools.
Sec. 340. Reporting.
Sec. 341. Special rules.
Sec. 342. Promotion of employment experiences.
Sec. 343. Advisory Council on Green, High-Performing Public School Facilities.
Sec. 344. Education regarding projects.
Sec. 345. Availability of funds.

Subtitle B—Higher Education

Sec. 351. Federal assistance for community college modernization and construction.

TITLE IV—EARLY LEARNING CHALLENGE FUND

Sec. 401. Purpose.
Sec. 402. Programs authorized.
Sec. 403. Quality pathways grants.
Sec. 404. Development grants.
Sec. 405. Research and evaluation.
Sec. 406. Reporting requirements.
Sec. 407. Construction.
Sec. 408. Definitions.
Sec. 409. Availability of funds.

TITLE V—AMERICAN GRADUATION INITIATIVE

Sec. 501. Authorization and appropriation.
Sec. 502. Definitions; grant priority.

Sec. 503. Grants to eligible entities for community college reform.
Sec. 504. Grants to eligible States for community college programs.
Sec. 505. National activities.

SEC. 3. REFERENCES.

Except as otherwise expressly provided, whenever in this Act 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 Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

TITLE I—INVESTING IN STUDENTS AND FAMILIES

Subtitle A—Increasing College Access and Completion

SEC. 101. FEDERAL PELL GRANTS.

(a) AMOUNT OF GRANTS.—Section 401(b) (20 U.S.C. 1070a(b)) is amended—

(1) by amending paragraph (2)(A) to read as follows:

"(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

"(i) the maximum Federal Pell Grant, as specified in the last enacted appropriation Act applicable to that award year, plus

"(ii) the amount of the increase calculated under paragraph (8)(B) for that year, less

"(iii) an amount equal to the amount determined to be the expected family contribution with respect to that student for that year."; and

(2) by amending paragraph (8), as amended by the Higher Education Opportunity Act (Public Law 110–315), to read as follows:

"(8) ADDITIONAL FUNDS.—

"(A) IN GENERAL.—There are authorized to be appropriated, and there are appropriated, to carry out subparagraph (B) of this paragraph (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated) the following amounts—

"(i) $2,030,000,000 for fiscal year 2008;

"(ii) $2,733,000,000 for fiscal year 2009; and

"(iii) such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year to provide the amount of increase of the maximum Federal Pell Grant required by clauses (ii) and (iii) of subparagraph (B).

"(B) INCREASE IN FEDERAL PELL GRANTS.—The amounts made available pursuant to subparagraph (A) shall be used to increase the amount of the maximum Federal Pell Grant for which a student shall be eligible during an award year, as specified in the last enacted appropriation Act applicable to that award year, by—

"(i) $490 for each of the award years 2008–2009 and 2009–2010;

"(ii) $690 for the award year 2010–2011; and

"(iii) the amount determined under subparagraph (C) for each succeeding award year.

"(C) INFLATION-ADJUSTED AMOUNTS.—

"(i) AWARD YEAR 2011–2012.—For award year 2011–2012, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

"(I) $5,550 or the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), whichever is greater, increased by a percentage equal to the annual adjustment percentage for award year 2011–2012; reduced by

"(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

"(III) rounded to the nearest $5.

"(ii) SUBSEQUENT AWARD YEARS.—For award year 2012–2013 and each of the subsequent award years, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

"(I) the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), increased by a percentage equal to the annual adjustment percentage for the award year for which the amount under this subparagraph is being determined; reduced by

"(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

"(III) rounded to the nearest $5.

"(iii) LIMITATION ON DECREASES.—Notwithstanding clauses (i) and (ii), if the amount determined under clause (i) or (ii) for an award year is less than the amount determined under this paragraph for the preceding award year, the amount determined under such clause for such award year shall be the amount determined under this paragraph for the preceding award year.

"(iv) DEFINITIONS.—For purposes of this subparagraph—

"(I) the term 'annual adjustment percentage' as it applies to an award year is equal to the sum of—

"(aa) the estimated percentage change in the Consumer Price Index (as determined by the Secretary, using the definition in section 478(f)) for the most recent calendar year ending prior to the beginning of that award year; and

"(bb) one percentage point; and

"(II) the term 'total maximum Federal Pell Grant' as it applies to a preceding award year is equal to the sum of—

"(aa) the maximum Federal Pell Grant for which a student is eligible during an award year, as specified in the last enacted appropriation Act applicable to that preceding award year; and

"(bb) the amount of the increase in the maximum Federal Pell Grant required by this paragraph for that preceding award year.

"(D) PROGRAM REQUIREMENTS AND OPERATIONS OTHERWISE UNAFFECTED.—Except as provided in subparagraphs (B) and (C), nothing in this paragraph shall be construed to alter the requirements and operations of the Federal Pell Grant Program as authorized under this section, or to authorize the imposition of additional requirements or operations for the determination and allocation of Federal Pell Grants under this section.

"(E) AVAILABILITY OF FUNDS.—The amounts made available by subparagraph (A) for any fiscal year shall be available beginning on October 1 of that fiscal year, and shall remain available through September 30 of the succeeding fiscal year.".

(b) CONFORMING AMENDMENTS.—Title IV (20 U.S.C. 1070 et seq.) is further amended—

(1) in section 401(b)(6), as amended by the Higher Education Opportunity Act (Public Law 110–315), by striking "the grant level specified in the appropriate Appropriation Act for this subpart for such year" and inserting "the Federal Pell Grant amount, determined under paragraph (2)(A), for which a student is eligible during such award year";

(2) in section 402D(d)(1), by striking "exceed the maximum appropriated Pell Grant" and inserting "exceed the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student is eligible";

(3) in section 435(a)(5)(A)(i)(I), by striking "one-half the maximum Federal Pell Grant award for which a student would be eligible" and inserting "one-half the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student would be eligible";

(4) in section 483(e)(3)(ii), by striking "based on the maximum Federal Pell Grant award at the time of application" and inserting "based on the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student is eligible at the time of application";

(5) in section 485E(b)(1)(A), by striking "of such students' potential eligibility for a maximum Federal Pell Grant under subpart 1 of part A" and inserting "of such students' potential eligibility for the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which the student would be eligible"; and

(6) in section 894(f)(2)(C)(ii)(I), by striking "the maximum Federal Pell Grant for each award year" and inserting "the Federal Pell Grant amount, determined

under section 401(b)(2)(A), for which a student may be eligible for each award year".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) of this section shall take effect on July 1, 2010.

SEC. 102. COLLEGE ACCESS AND COMPLETION INNOVATION FUND.

(a) HEADER.—Part E of title VII (20 U.S.C. 1141 et seq.) is amended by striking the header of such part and inserting the following:

"PART E—COLLEGE ACCESS AND COMPLETION INNOVATION FUND".

(b) PURPOSE.—Part E of title VII (20 U.S.C. 1141 et seq.) is further amended by inserting before section 781 the following:

"SEC. 780. PURPOSES.

"The purposes of this part are—

"(1) to promote innovation in postsecondary education practices and policies by institutions of higher education, States, and nonprofit organizations to improve student success, completion, and post-completion employment, particularly for students from groups that are underrepresented in postsecondary education; and

"(2) to assist States in developing longitudinal data systems, common metrics, and reporting systems to enhance the quality and availability of information about student success, completion, and post-completion employment.".

(c) AUTHORIZATION AND APPROPRIATION.—Section 781(a) (20 U.S.C. 1141(a)) is amended to read as follows:

"(a) AUTHORIZATION AND APPROPRIATION.—

"(1) IN GENERAL.—There are authorized to be appropriated, and there are appropriated, to carry out this part (in addition to any other amounts appropriated to carry out this part and out of any money in the Treasury not otherwise appropriated), $600,000,000 for each of the fiscal years 2010 through 2014.

"(2) ALLOCATIONS.—Of the amount appropriated for any fiscal year under paragraph (1)—

"(A) 25 percent shall be made available to carry out section 781;

"(B) 50 percent shall be made available to carry out section 782;

"(C) 23 percent shall be made available to carry out section 783; and

"(D) 2 percent shall be made available to carry out section 784.".

(d) STATE GRANTS AND GRANTS TO ELIGIBLE ENTITIES.—Part E of title VII (20 U.S.C. 1141 et seq.) is further amended by adding at the end the following:

"SEC. 782. STATE INNOVATION COMPLETION GRANTS.

"(a) PROGRAM AUTHORIZATION.—From the amount appropriated under section 781(a)(2)(B) to carry out this section, the Secretary shall award grants to States on a competitive basis to promote student persistence in, and completion of, postsecondary education.

"(b) FEDERAL SHARE; NON-FEDERAL SHARE.—

"(1) FEDERAL SHARE.—The amount of the Federal share under this section for a fiscal year shall be equal to ⅔ of the costs of the activities and services described in subsection (d)(1) that are carried out under the grant.

"(2) NON-FEDERAL SHARE.—The amount of the non-Federal share under this section shall be equal to ⅓ of the costs of the activities and services described in subsection (d)(1). The non-Federal share may be in cash or in kind, and may be provided from State resources, contributions from private organizations, or both.

"(3) SUPPLEMENT, NOT SUPPLANT.—The Federal and non-Federal shares required by this paragraph shall be used to supplement, and not supplant, State and private resources that would otherwise be expended to carry out activities and services to promote student persistence in and completion of postsecondary education.

"(c) APPLICATION AND SELECTION.—

"(1) APPLICATION REQUIREMENTS.—For each fiscal year for which a State desires to receive a grant under this section, the State agency with jurisdiction over higher education, or another agency designated by the Governor or chief executive of the State to administer the grant program under this section, shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application shall include—

"(A) a description of the State's capacity to administer the grant under this section;

"(B) a description of the State's plans for using the grant funds for activities described in subsection (d)(1), including plans for how the State will make special efforts to provide benefits to students in the State who are from groups that are underrepresented in postsecondary education;

"(C) a description of how the State will provide for the non-Federal share from State resources, private contributions, or both;

"(D) a description of—

"(i) the administrative system that the State has in place to administer the activities and services described in subsection (d)(1); or

"(ii) the plan to develop such administrative system;

"(E) a description of the data system the State has or will have in place to measure the performance and progress toward the State's goals included in the Access and Completion Plan submitted, or that will be submitted, under paragraph (2)(A); and

"(F) the assurances under paragraph (2).

"(2) STATE ASSURANCES.—The assurances required in paragraph (1)(F) shall include an assurance of each of the following:

"(A) That the State will submit, not later than July 1, 2011, an Access and Completion Plan to increase the State's rate of persistence in and completion of postsecondary education. Such plan shall include—

"(i) the State's annual and long-term quantifiable goals with respect to—

"(I) the rates of postsecondary enrollment, persistence, and completion, disaggregated by income, race, ethnicity, sex, disability, and age of students;

"(II) closing gaps in enrollment, persistence, and completion rates for students from groups that are underrepresented in postsecondary education;

"(III) targeting education and training programs to address labor market needs in the State, as such needs are determined by the State, or the State in coordination with the State public employment service, the State workforce investment board, or industry or sector partnerships in the State; and

"(IV) improving coordination between two-year and four-year institutions of higher education in the State, including supporting comprehensive articulation agreements between such institutions; and

"(ii) the State's plan to develop an interoperable statewide longitudinal data system that—

"(I) can be linked to other data systems, as applicable, including elementary and secondary education and workforce data systems;

"(II) will collect, maintain, disaggregate (by institution, income, race, ethnicity, sex, disability, and age of students), and analyze postsecondary education and workforce information, including—

"(aa) postsecondary education enrollment, persistence, and completion information;

"(bb) post-completion employment outcomes of students who enrolled in postsecondary programs and training programs offered by eligible training providers under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

"(cc) postsecondary education and employment outcomes of students who move out of the State; and

"(dd) postsecondary instructional workforce information; and

"(III) makes the information described in subclause (I) available to the general public in a manner that is transparent and user-friendly.

"(B) That the State has a comprehensive planning or policy formulation process with respect to increasing postsecondary enrollment, persistence, and completion that—

"(i) encourages coordination between the State administration of grants under this section and similar State programs;

"(ii) encourages State policies that are designed to improve rates of enrollment and persistence in, and completion of, postsecondary education for all categories of institutions of higher education described in section 132(d) in the State;

"(iii) considers the postsecondary education needs of students from groups that are underrepresented in postsecondary education;

"(iv) considers the resources of public and private institutions of higher education, organizations, and agencies within the State that are capable of providing access to postsecondary education opportunities within the State; and

"(v) provides for direct, equitable, and active participation in the comprehensive planning or policy formulation process or processes, through membership on State planning commissions, State advisory councils, or other State entities established by the State and consistent with State law, by representatives of—

"(I) institutions of higher education, including at least one member from a junior or community college (as defined in section 312(f));

"(II) students;

"(III) other providers of postsecondary education services (including organizations providing access to such services);

"(IV) the general public in the State; and

"(V) postsecondary education faculty members, including at least one faculty member whose primary responsibilities are teaching and scholarship.

"(C) That the State will incorporate policies and practices that, through the activities funded under this section, are determined to be effective in improving rates of postsecondary education enrollment, persistence, and completion into the future postsecondary education policies and practices of the State to ensure that the benefits achieved through the activities funded under this section continue beyond the period of the grant.

"(D) That the State will participate in the evaluation required under section 784.

"(3) SUBGRANTS TO NONPROFIT ORGANIZATIONS.—A State receiving a payment under this section may elect to make a subgrant to one or more nonprofit organizations in the State, including agencies with agreements with the Secretary under subsections (b) and (c) of section 428 on the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009, or a partnership of such organizations, to carry out activities and services described in subsection (d)(1), if the nonprofit organization or partnership—

"(A) was in existence on the day before the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009; and

"(B) as of such day, was participating in activities and services related to promoting persistence in, and completion of, postsecondary education, such as the activities and services described in subsection (d)(1).

"(4) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to States that enter into a partnership with one of the following entities to carry out the activities and services described in subsection (d)(1):

"(A) A philanthropic organization, as such term is defined in section 781(i)(1).

"(B) An agency with an agreement with the Secretary under subsections (b) and (c) of section 428 on the date of the enactment of Student Aid and Fiscal Responsibility Act of 2009.

"(d) USES OF FUNDS.—

"(1) AUTHORIZED USES.—A State receiving a grant under this section shall use the grant funds to—

"(A) provide programs in such State that increase persistence in, and completion of, postsecondary education, which may include—

"(i) assisting institutions of higher education in providing financial literacy, education, and counseling to enrolled students;

"(ii) assisting students enrolled in an institution of higher education to reduce the amount of loan debt incurred by such students;

"(iii) providing grants to students described in section 415A(a)(1), in accordance with the terms of that section; and

"(iv) carrying out the activities described in section 415E(a); and

"(B) support the development and implementation of a statewide longitudinal data system, as described in subsection (c)(2)(A)(ii).

"(2) PROHIBITED USES.—Funds made available under this section shall not be used to promote any lender's loans.

"(3) RESTRICTIONS ON USE OF FUNDS.—A State—

"(A) shall use not less than ⅓ of the sum of the Federal and non-Federal share used for paragraph (1)(A) on activities that benefit students enrolled

in junior or community colleges (as defined in section 312(f)), two-year public institutions, or two-year programs of instruction at four-year public institutions;

"(B) may use not more than 10 percent of the sum of the Federal and non-Federal share under this section for activities described in paragraph (1)(B); and

"(C) may use not more than 6 percent of the sum of the Federal and non-Federal share under this section for administrative purposes relating to the grant under this section.

"(e) ANNUAL REPORT.—Each State receiving a grant under this section shall submit to the Secretary an annual report on—

"(1) the activities and services described in subsection (d)(1) that are carried out with such grant;

"(2) the effectiveness of such activities and services in increasing postsecondary persistence and completion, as determined by measurable progress in achieving the State's goals for persistence and completion described in the Access and Completion Plan submitted by the State under subsection (c)(2)(A), if such plan has been submitted; and

"(3) any other information or assessments the Secretary may require.

"(f) DEFINITIONS.—In this section:

"(1) INDUSTRY OR SECTOR PARTNERSHIP.—The term 'industry or sector partnership' means a workforce collaborative that organizes key stakeholders in a targeted industry cluster into a working group that focuses on the human capital needs of a targeted industry cluster and that includes, at the appropriate stage of development of the partnership—

"(A) representatives of multiple firms or employers (including workers) in a targeted industry cluster, including small- and medium-sized employers when practicable;

"(B) 1 or more representatives of State labor organizations, central labor coalitions, or other labor organizations;

"(C) 1 or more representatives of local workforce investment boards;

"(D) 1 or more representatives of postsecondary educational institutions or other training providers; and

"(E) 1 or more representatives of State workforce agencies or other entities providing employment services.

"(2) STATE PUBLIC EMPLOYMENT SERVICE.—The term 'State public employment service' has the meaning given such term in section 502(a)(9) of the Student Aid and Fiscal Responsibility Act of 2009.

"(3) STATE WORKFORCE INVESTMENT BOARD; LOCAL WORKFORCE INVESTMENT BOARD.—The terms 'State workforce investment board' and 'local workforce investment board' have the meanings given such terms in section 502(a)(10) of the Student Aid and Fiscal Responsibility Act of 2009.

"SEC. 783. INNOVATION IN COLLEGE ACCESS AND COMPLETION NATIONAL ACTIVITIES.

"(a) PROGRAMS AUTHORIZED.—From the amount appropriated under section 781(a)(2)(C) to carry out this section, the Secretary shall award grants, on a competitive basis, to eligible entities in accordance with this section to conduct innovative programs that advance knowledge about, and adoption of, policies and practices that increase the number of individuals with postsecondary degrees or certificates.

"(b) ELIGIBLE ENTITIES.—The Secretary is authorized to award grants under subsection (a) to—

"(1) institutions of higher education;

"(2) States;

"(3) nonprofit organizations with demonstrated experience in the operation of programs to increase postsecondary completion;

"(4) philanthropic organizations (as such term is defined in section 781(i)(1));

"(5) entities receiving a grant under chapter 1 of subpart 2 of part A of title IV; and

"(6) consortia of any of the entities described in paragraphs (1) through (5).

"(c) INNOVATION GRANTS.—

"(1) MINIMUM AWARD.—A grant awarded under subsection (a) shall be not less than $1,000,000.

"(2) GRANTS USES.—The Secretary's authority to award grants under subsection (a) includes—

"(A) the authority to award to an eligible entity a grant in an amount equal to all or part of the amount of funds received by such entity from philanthropic organizations (as such term is defined in section 781(i)(1)) to conduct innovative programs that advance knowledge about, and adoption

of, policies and practices that increase the number of individuals with postsecondary degrees or certificates; and

"(B) the authority to award an eligible entity a grant to develop 2-year programs that provide supplemental grant or loan benefits to students that—

"(i) are designed to improve student outcomes, including degree completion, graduation without student loan debt, and post-completion employment;

"(ii) are in addition to the student financial aid available under title IV of this Act; and

"(iii) do not result in the reduction of the amount of that aid or any other student financial aid for which a student is otherwise eligible under Federal law.

"(3) APPLICATION.—To be eligible to receive a grant under subsection (a), an eligible entity shall submit an application at such time, in such manner, and containing such information as the Secretary shall require.

"(4) PRIORITIES.—In awarding grants under subsection (a), the Secretary shall give priority to applications that—

"(A) are from an eligible entity with demonstrated experience in serving students from groups that are underrepresented in postsecondary education, including institutions of higher education that are eligible for assistance under title III or V, or are from a consortium that includes an eligible entity with such experience;

"(B) are from an eligible entity that is a public institution of higher education that does not predominantly provide an educational program for which it awards a bachelor's degree (or an equivalent degree), or from a consortium that includes at least one such institution;

"(C) include activities to increase degree or certificate completion in the fields of science, technology, engineering, and mathematics, including preparation for, or entry into, postbaccaluareate study, especially for women and other groups of students who are underrepresented in such fields;

"(D) are from an eligible entity that is a philanthropic organization with the primary purpose of providing scholarships and support services to students from groups that are underrepresented in postsecondary education, or are from a consortium that includes such an organization; or

"(E) are from an eligible entity that encourages partnerships between institutions of higher education with high degree-completion rates and institutions of higher education with low degree-completion rates from the same category of institutions described in section 132(d) to facilitate the sharing of information relating to, and the implementation of, best practices for increasing postsecondary completion.

"(5) TECHNICAL ASSISTANCE.—The Secretary may reserve up to $5,000,000 per year to award grants and contracts to provide technical assistance to eligible entities receiving a grant under subsection (a), including technical assistance on the evaluation conducted in accordance with section 784 and establishing networks of eligible entities receiving grants under such subsection.

"(d) REPORTS.—

"(1) ANNUAL REPORTS BY ENTITIES.—Each eligible entity receiving a grant under subsection (a) shall submit to the Secretary an annual report on—

"(A) the effectiveness of the program carried out with such grant in increasing postsecondary completion, as determined by measurable progress in achieving the goals of the program, as described in the application for such grant; and

"(B) any other information or assessments the Secretary may require.

"(2) ANNUAL REPORT TO CONGRESS.—The Secretary shall submit to the authorizing committees an annual report on grants awarded under subsection (a), including—

"(A) the amount awarded to each eligible entity receiving a grant under such subsection; and

"(B) a description of the activities conducted by each such eligible entity.

"SEC. 784. EVALUATION.

"From the amount appropriated under section 781(a)(2)(D), the Director of the Institute of Education Sciences shall evaluate the programs funded under this part. Not later than January 30, 2016, the Director shall issue a final report on such evaluation to the authorizing committees and the Secretary, and shall make such report available to the public.

"SEC. 785. VETERANS RESOURCE OFFICER GRANTS.

"(a) PROGRAM AUTHORIZED.—The Secretary shall award grants, on a competitive basis, to eligible institutions of higher education to hire a Veterans Resource Officer to increase the college completion rates for veterans enrolled at such institutions.

"(b) DEFINITIONS.—In this section:

"(1) ELIGIBLE INSTITUTION OF HIGHER EDUCATION.—The term 'eligible institution of higher education' means an institution of higher education that has an enrollment of at least 100 full-time equivalent students who are veterans.

"(2) FULL-TIME EQUIVALENT STUDENTS.—The term 'full-time equivalent students' has the meaning given such term in section 312(e).

"(3) VETERAN.—The term 'veteran' has the meaning give such term in section 480(c).

"(c) APPLICATION.—To be eligible to receive a grant under this section, an eligible institution of higher education shall submit an application at such time, in such manner, and containing such information as the Secretary shall require.

"(d) USES OF FUNDS.—

"(1) IN GENERAL.—An eligible institution of higher education receiving a grant under this section shall use such grant to hire 1 or 2 Veterans Resource Officers (in the case of an institution that has an enrollment of at least 200 full-time equivalent students who are veterans) to serve in the office of campus programs, or a similar office, at such institution and carry out the activities described in paragraph (2).

"(2) ACTIVITIES.—A Veterans Resource Officer shall carry out activities at an eligible institution of higher education to help increase the completion rates for veterans enrolled at such institution, which shall include the following activities:

"(A) Serving as a link between student veterans and the staff of the institution.

"(B) Serving as a link between student veterans and local facilities of the Department of Veterans Affairs.

"(C) Organizing and advising student veterans organization.

"(D) Organizing veterans oriented group functions and events.

"(E) Maintaining newsletters and listserves to distribute news and information to all student veterans.

"(F) Organizing new student veterans campus orientation.

"(G) Ensuring that the Department of Veterans Affairs certifying official at such institution is properly trained.

"(3) PRIORITY.—To the extent practicable, each institution described in paragraph (1) shall give priority to hiring a veteran to serve as a Veterans Resource Officer.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2010 and each succeeding fiscal year.".

SEC. 103. INVESTMENT IN HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY-SERVING INSTITUTIONS.

Section 371 (20 U.S.C. 1067q) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking "section 502" and inserting "section 502(a)";;

(B) in paragraph (3), by striking "section 316" and inserting "section 316(b)";

(C) in paragraph (5), by striking "in subsection (c)" and inserting "in section 318(b)";

(D) in paragraph (6), by striking "in subsection (c)" and inserting "in section 320(b)"; and

(E) in paragraph (7), by striking "in subsection (c)" and inserting "in section 319(b)";

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking "$255,000,000" and all that follows and inserting "$255,000,000 for each of the fiscal years 2008 through 2019."; and

(B) by amending paragraph (2)(B) to read as follows:

"(B) STEM AND ARTICULATION PROGRAMS.—From the amount made available for allocation under this subparagraph by subparagraph (A)(i) for any fiscal year—

"(i) 90 percent shall be available for Hispanic-serving institutions for activities described in sections 503 and 513, with a priority given to applications that propose—

"(I) to increase the number of Hispanic and other low-income students attaining degrees in the fields of science, technology, engineering, or mathematics; and

"(II) to develop model transfer and articulation agreements between 2-year Hispanic-serving institutions and 4-year institutions in such fields; and

"(ii) 10 percent shall be available for grants under section 355.";

(C) in paragraph (2)(C)(ii), by striking "and shall be available for a competitive" and all that follows and inserting "and shall be made available as grants under section 318 and allotted among such institutions under section 318(e), treating such amount, plus the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out section 318, as the amount appropriated to carry out section 318 for purposes of allotments under section 318(e)"; and

(D) in paragraph (2)(D)—

(i) in clause (iii), by striking "for activities described in section 311(c)" and inserting "and shall be made available as grants under section 320, treating such $5,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section and using such $5,000,000 for purposes described in subsection (c) of such section"; and

(ii) in clause (iv), by striking "described in subsection (a)(7)—" and all that follows and inserting "and shall be made available as grants under section 319, treating such $5,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section and using such $5,000,000 for purposes described in subsection (c) of such section"; and

(3) by striking subsection (c).

SEC. 104. INVESTMENT IN COOPERATIVE EDUCATION.

There are authorized to be appropriated, and there are appropriated, to carry out part N of title VIII of the Higher Education Act of 1965 (20 U.S.C. 1161n) (in addition to any other amounts appropriated to carry out such part and out of any money in the Treasury not otherwise appropriated), $10,000,000 for fiscal year 2010.

SEC. 105. LOAN FORGIVENESS FOR SERVICEMEMBERS ACTIVATED FOR DUTY.

(a) IN GENERAL.—Section 484B(b)(2) (20 U.S.C. 1091b(b)(2)) is amended by adding at the end the following:

"(F) TUITION RELIEF FOR STUDENTS CALLED TO MILITARY SERVICE.—

"(i) WAIVER OF REPAYMENT BY STUDENTS CALLED TO MILITARY SERVICE.—In addition to the waivers authorized by subparagraphs (D) and (E), the Secretary shall waive the amounts that students are required to return under this section if the withdrawals on which the returns are based are withdrawals necessitated by reason of service in the uniformed services.

"(ii) LOAN FORGIVENESS AUTHORIZED.—Whenever a student's withdrawal from an institution of higher education is necessitated by reason of service in the uniformed services, the Secretary shall, with respect to the payment period or period of enrollment for which such student did not receive academic credit as a result of such withdrawal, carry out a program—

"(I) through the holder of the loan, to assume the obligation to repay—

"(aa) the outstanding principle and accrued interest on any loan assistance awarded to the student under part B (including to a parent on behalf of the student under section 428B) for such payment period or period of enrollment; minus

"(bb) any amount of such loan assistance returned by the institution in accordance with paragraph (1) of this subsection for such payment period or period of enrollment; and

"(II) to cancel—

"(aa) the outstanding principle and accrued interest on the loan assistance awarded to the student under part D or E (including a Federal Direct PLUS loan awarded to a parent on behalf of the student) for such payment period or period of enrollment; minus

"(bb) any amount of such loan assistance returned by the institution in accordance with paragraph (1) of this subsection for such payment period or period of enrollment.

"(iii) REIMBURSEMENT FOR CANCELLATION OF PERKINS LOANS.—The Secretary shall pay to each institution for each fiscal year an amount equal to the aggregate of the amounts of Federal Perkins loans in such institutions's student loan fund which are cancelled pursuant to clause (iii)(II) for such fiscal year, minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468. None of the funds appropriated pursuant to section 461(b) shall be available for payments pursuant to this paragraph. To the extent feasible, the Secretary shall pay the amounts for which any institution qualifies under this paragraph not later than 3 months after the institution files an institutional application for campus-based funds.

"(iv) LOAN ELIGIBILITY AND LIMITS FOR STUDENTS.—Any amounts that are returned by an institution in accordance with paragraph (1), or forgiven or waived by the Secretary under this subparagraph, with respect to a payment period or period of enrollment for which a student did not receive academic credit as a result of withdrawal necessitated by reason of service in the uniformed services, shall not be included in the calculation of the student's annual or aggregate loan limits for assistance under this title, or otherwise affect the student's eligibility for grants or loans under this title.

"(v) DEFINITION.—In this subparagraph, the term 'service in the uniformed services' has the meaning given such term in section 484C(a).".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect for periods of service in the uniformed services beginning after the date of the enactment of this Act.

(2) DEFINITION.—In this paragraph, the term "period of service in the uniformed services" means the period beginning 30 days prior to the date a student is required to report to service in the uniformed services (as defined in section 484C(a) of the Higher Education Act of 1965 (20 U.S.C. 1091c(a)) and ending when such student returns from such service.

SEC. 106. VETERANS EDUCATIONAL EQUITY SUPPLEMENTAL GRANT PROGRAM.

(a) VETERANS EDUCATIONAL EQUITY SUPPLEMENTAL GRANT PROGRAM.—Subpart 1 of part A of title IV (20 U.S.C. 1070a et seq.) is amended by adding at the end the following:

"SEC. 401B. VETERANS EDUCATIONAL EQUITY SUPPLEMENTAL GRANT PROGRAM.

"(a) VETERANS EDUCATIONAL EQUITY SUPPLEMENTAL GRANTS AUTHORIZED.—The Secretary shall award a grant to each eligible student, in an amount determined in accordance with subsection (c), to assist such student with paying the cost of tuition incurred by the student for a program of education at an institution of higher education.

"(b) DEFINITIONS.—In this section—

"(1) ELIGIBLE STUDENT.—The term 'eligible student' means a student who—

"(A) is a covered individual, as such term is defined in section 3311(b) of title 38, United States Code;

"(B) is enrolled at an institution of higher education that—

"(i) is not a public institution of higher education; and

"(ii) is located in a State with a zero, or very low, maximum tuition charge per credit hour compared to the maximum tuition charge per credit hour in all other States, as determined by the Secretary of Veterans Affairs (based on the determinations of maximum tuition charged per credit hour in each State for the purposes of chapter 33 of title 38, United States Code); and

"(C) is eligible for educational assistance for an academic year, and will receive an amount of such assistance for such year for fees charged the individual that is less than the maximum amount of such assistance available for fees charged for such year in such State.

"(2) EDUCATIONAL ASSISTANCE.—The term 'educational assistance' means the amount of educational assistance from the Secretary of Veterans Affairs an eligible student receives or will receive under section 3313(c)(1)(A) of title 38, United States Code, or a similar amount of such assistance under paragraphs (2) through (7) of such section 3313(c).

"(c) GRANT AMOUNT.—A grant to an eligible student under this section be equal to an amount that is—

"(1) the maximum amount of educational assistance for fees charged that the eligible student would receive, in accordance with section 3313(c) of title 38, United States Code, if such student attended the public institution of higher education in the State in which the eligible student is enrolled that has the highest fees charged to an individual for a year in such State (as determined by the Secretary of Veterans Affairs for the purposes of chapter 33 of such title 38), less

"(2) the educational assistance the eligible student will receive, in accordance with such section, for fees charged to the student for such year at the institution of higher education at which the student is enrolled.

"(d) USES OF FUNDS.—An eligible student who receives a grant under this section shall use such grant to pay tuition incurred by the student for a program of education at an institution of higher education.

"(e) NOTIFICATION.—The Secretary, in coordination with Secretary of Veterans Affairs, shall establish a system of notification to ensure the timely delivery to each eligible student of—

"(1) educational assistance received by the student; and

"(2) grants awarded to the student under this section.

"(f) AUTHORIZATION AND APPROPRIATION.—There are authorized to be appropriated, and there are appropriated, such sums as may be necessary to carry out this section (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated).".

(b) CONFORMING AMENDMENT.—The header for subpart 1 of part A of title IV (20 U.S.C. 1070a et seq.) is amended by inserting "**; Veterans Educational Equity Supplemental Grants**" after "**Pell Grants**".

Subtitle B—Student Financial Aid Form Simplification

SEC. 121. GENERAL EFFECTIVE DATE.

Except as otherwise provided in this subtitle, amendments made by this subtitle shall be effective with respect to determinations of need for assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) for award years beginning on or after July 1, 2011.

SEC. 122. TREATMENT OF ASSETS IN NEED ANALYSIS.

(a) AMOUNT OF NEED.—Section 471 (20 U.S.C. 1087kk) is amended—

(1) by striking "Except" and inserting the following:

"(a) IN GENERAL.—Except";

(2) by inserting "and subject to subsection (b)" after "therein"; and

(3) by adding at the end the following:

"(b) ASSET CAP FOR NEED-BASED AID.—Notwithstanding any other provision of this title, a student shall not be eligible to receive a Federal Pell Grant, a Federal Direct Stafford Loan, or work assistance under this title if—

"(1) in the case of a dependent student, the combined net assets of the student and the student's parents are equal to an amount greater than $150,000 (or a successor amount prescribed by the Secretary under section 478(c)); or

"(2) in the case of an independent student, the net assets of the student (and the student's spouse, if applicable) are equal to an amount greater than $150,000 (or a successor amount prescribed by the Secretary under section 478(c)).".

(b) DATA ELEMENTS.—Section 474(b) (20 U.S.C. 1087nn(b)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively.

(c) DEPENDENT STUDENTS.—Section 475 (20 U.S.C. 1087oo) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "adjusted"; and

(ii) by inserting "and" after the semicolon;

(B) in paragraph (2), by striking "; and" and inserting a period; and

(C) by striking paragraph (3);

(2) in subsection (b)—

(A) in the header, by striking "ADJUSTED";

(B) in the matter preceding paragraph (1), by striking "adjusted";
(C) by striking paragraph (1);
(D) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;
(E) in paragraph (1) (as redesignated by subparagraph (D) of this paragraph), by striking "adjusted"; and
(F) in paragraph (2) (as redesignated by subparagraph (D) of this paragraph), by striking "paragraph (2)" and inserting "paragraph (1)";
(3) by repealing subsection (d);
(4) in subsection (e)—
(A) by striking "The adjusted available" and inserting "The available";
(B) by striking "to as 'AAI')" and inserting "to as 'AI')";
(C) by striking "From Adjusted Available Income (AAI)" and inserting "From Available Income (AI)"; and
(D) in the table—
(i) by striking "*If AAI*" and inserting "*If AI*"; and
(ii) by striking "of AAI" each place it appears and inserting "of AI";
(5) in subsection (f)—
(A) by striking "and assets" each place it appears;
(B) in paragraph (2)(B), by striking "or assets"; and
(C) in paragraph (3)—
(i) by striking "are taken into" and inserting "is taken into"; and
(ii) by striking "adjusted";
(6) in subsection (g)(6), by striking "exceeds the sum of" and all that follows and inserting "exceeds the parents' total income (as defined in section 480)";
(7) by repealing subsection (h); and
(8) in subsection (i), by striking "adjusted" each place it appears.

(d) FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE.—Section 476 (20 U.S.C. 1087pp) is amended—
(1) in subsection (a)—
(A) by striking paragraph (1);
(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;
(C) in paragraph (1) (as redesignated by subparagraph (B)), by striking "the sum resulting under paragraph (1)" and inserting "the family's contribution from available income (determined in accordance with subsection (b))"; and
(D) in paragraph (2)(A) (as redesignated by subparagraph (B)), by striking "paragraph (2)" and inserting "paragraph (1)";
(2) by repealing subsection (c); and
(3) in subsection (d)—
(A) by striking "and assets"; and
(B) by striking "or assets".

(e) FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE.—Section 477 (20 U.S.C. 1087qq) is amended—
(1) in subsection (a)—
(A) by striking paragraph (1);
(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;
(C) in paragraph (1) (as redesignated by subparagraph (B)), by striking "such adjusted available income" and inserting "the family's available income (determined in accordance with subsection (b))";
(D) in paragraph (2) (as redesignated by subparagraph (B)), by striking "paragraph (2)" and inserting "paragraph (1)"; and
(E) in paragraph (3)(A) (as redesignated by subparagraph (B)), by striking "paragraph (3)" and inserting "paragraph (2)";
(2) by repealing subsection (c); and
(3) in subsection (d)—
(A) by striking "The adjusted available" and inserting "The available";
(B) by striking "to as 'AAI')" and inserting "to as 'AI')";
(C) by striking "From Adjusted Available Income (AAI)" and inserting "From Available Income (AI)"; and
(D) in the table—
(i) by striking "*If AAI*" and inserting "*If AI*"; and
(ii) by striking "of AAI" each place it appears and inserting "of AI"; and
(E) in subsection (e)—
(i) by striking "and assets"; and

(ii) by striking "or assets".

(f) REGULATIONS; UPDATED TABLES.—Section 478 (20 U.S.C. 1087rr) is amended—

(1) in subsection (a), by inserting "or amounts, as the case may be," after "tables" each place the term appears;

(2) by amending subsection (c) to read as follows:

"(c) ASSET CAP FOR NEED-BASED AID.—For each award year after award year 2011–2012, the Secretary shall publish in the Federal Register a revised net asset cap for the purposes of section 471(b). Such revised cap shall be determined by increasing the dollar amount in such section by a percentage equal to the estimated percentage change in the Consumer Price Index (as determined by the Secretary) between December 2010 and the December preceding the beginning of such award year, and rounding the result to the nearest $5.";

(3) by repealing subsection (d); and

(4) in subsection (e), by striking "adjusted" both places it appears.

SEC. 123. CHANGES TO TOTAL INCOME; AID ELIGIBILITY.

(a) DEFINITION OF UNTAXED INCOME AND BENEFITS.—Section 480(b)(1) (20 U.S.C. 1087vv(b)(1)), as amended by the Higher Education Opportunity Act (Public Law 110–315), is amended—

(1) by striking subparagraphs (A), (B), (C), (E), (F), and (I);

(2) by redesignating subparagraphs (D), (G), and (H) as subparagraphs (A), (B), and (C), respectively;

(3) in subparagraph (B) (as redesignated by paragraph (2)), by inserting "and" after the semicolon; and

(4) in subparagraph (C) (as redesignated by paragraph (2)), by striking "; and" and inserting a period.

(b) DEFINITION OF ASSETS.—Section 480(f)(2) (20 U.S.C. 1087vv(f)(2)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(3) by adding at the end the following:

"(D) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))).".

(c) FINANCIAL ADMINISTRATOR DISCRETION.—Section 479A(b) (20 U.S.C. 1087tt) is amended in the subsection heading, by striking "TO ASSETS".

(d) SUSPENSION OF ELIGIBILITY FOR DRUG-RELATED OFFENSES.—Section 484(r)(1) (20 U.S.C. 1091(r)(1)) is amended to read as follows:

"(1) IN GENERAL.—A student who is convicted of any offense under any Federal or State law involving the sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following subparagraphs:

"(A) For a first offense, the period of ineligibility shall be 2 years.

"(B) For a second offense, the period of ineligibility shall be indefinite.".

TITLE II—STUDENT LOAN REFORM

Subtitle A—Stafford Loan Reform

SEC. 201. FEDERAL FAMILY EDUCATION LOAN APPROPRIATIONS.

Section 421 (20 U.S.C. 1071) is amended—

(1) in subsection (b), in the matter following paragraph (6), by inserting ", except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement would be made after such date" after "expended"; and

(2) by adding at the end the following new subsection:

"(d) TERMINATION OF AUTHORITY TO MAKE OR INSURE NEW LOANS.—Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—

"(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010; and

"(2) no funds are authorized to be appropriated, or may be expended, under this Act or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement would be made after June 30, 2010,

except as expressly authorized by an Act of Congress enacted after the date of enactment of Student Aid and Fiscal Responsibility Act of 2009.".

SEC. 202. SCOPE AND DURATION OF FEDERAL LOAN INSURANCE PROGRAM.

Section 424(a) (20 U.S.C. 1074(a)) is amended by striking "September 30, 1976," and all that follows and inserting "September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010.".

SEC. 203. APPLICABLE INTEREST RATES.

Section 427A(l) (20 U.S.C. 1077a(l)) is amended—

(1) in paragraph (1), by inserting "and before July 1, 2010," after "July 1, 2006,";

(2) in paragraph (2), by inserting "and before July 1, 2010," after "July 1, 2006,";

(3) in paragraph (3), by inserting "and that was disbursed before July 1, 2010," after "July 1, 2006,"; and

(4) in paragraph (4)—

(A) in the matter preceding subparagraph (A), by striking "July 1, 2012" and inserting "July 1, 2010"; and

(B) by repealing subparagraphs (D) and (E).

SEC. 204. FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.

(a) HIGHER EDUCATION ACT OF 1965.—Section 428 (20 U.S.C. 1078) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting "for which the first disbursement is made before July 1, 2010, and" after "eligible institution"; and

(B) in paragraph (5), by striking "September 30, 2014," and all that follows through the period and inserting "June 30, 2010.";

(2) in subsection (b)(1)—

(A) in subparagraph (G)(ii), by inserting "and before July 1, 2010," after "July 1, 2006,"; and

(B) in subparagraph (H)(ii), by inserting "and that are first disbursed before July 1, 2010," after "July 1, 2006,";

(3) in subsection (f)(1)(A)(ii)—

(A) by striking "during fiscal years beginning"; and

(B) by inserting "and first disbursed before July 1, 2010," after "October 1, 2003,"; and

(4) in subsection (j)(1), by inserting ", before July 1, 2010," after "section 435(d)(1)(D) of this Act shall".

(b) COLLEGE COST REDUCTION AND ACCESS ACT.—Section 303 of the College Cost Reduction and Access Act (Public Law 110–84) is repealed.

SEC. 205. FEDERAL PLUS LOANS.

Section 428B(a)(1) (20 U.S.C. 1078–2(a)(1)) is amended by striking "A graduate" and inserting "Prior to July 1, 2010, a graduate".

SEC. 206. FEDERAL CONSOLIDATION LOAN.

(a) AMENDMENTS.—Section 428C (20 U.S.C. 1078–3) is amended—

(1) in subsection (a)—

(A) by amending paragraph (3)(B)(i)(V) to read as follows:

"(V) an individual who has a consolidation loan under this section and does not have a consolidation loan under section 455(g) may obtain a subsequent consolidation loan under section 455(g).."; and

(B) in paragraph (4)(A), by inserting ", and first disbursed before July 1, 2010" after "under this part";

(2) in subsection (b)—

(A) in paragraph (1)(E), by inserting before the semicolon ", and before July 1, 2010" and

(B) in paragraph (5), by striking "In the event that" and inserting "If, before July 1, 2010,";

(3) in subsection (c)(1)—

(A) in subparagraph (A)(ii), by inserting "and that is disbursed before July 1, 2010," after "2006,"; and

(B) in subparagraph (C), by inserting "and first disbursed before July 1, 2010," after "1994,"; and

(4) in subsection (e), by striking "September 30, 2014." and inserting "June 30, 2010. No loan may be made under this section for which the first disbursement would be on or after July 1, 2010.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a)(1)(A) shall be effective at the close of June 30, 2010.

SEC. 207. UNSUBSIDIZED STAFFORD LOANS FOR MIDDLE-INCOME BORROWERS.

Section 428H (20 U.S.C. 1078–8) is amended—

(1) in subsection (a), by inserting "that are first disbursed before July 1, 2010," after "under this part";

(2) in subsection (b)—

(A) by striking "Any student" and inserting "Prior to July 1, 2010, any student"; and

(B) by inserting "for which the first disbursement is made before such date" after "unsubsidized Federal Stafford Loan"; and

(3) in subsection (h), by inserting "and that are first disbursed before July 1, 2010," after "July 1, 2006,".

SEC. 208. LOAN REPAYMENT FOR CIVIL LEGAL ASSISTANCE ATTORNEYS.

Section 428L(b)(2)(A) (20 U.S.C. 1078–12(b)(2)(A)) is amended—

(1) by amending clause (i) to read as follows:

"(i) subject to clause (ii)—

"(I) a loan made, insured, or guaranteed under this part, and that is first disbursed before July 1, 2010; or

"(II) a loan made under part D or part E; and"; and

(2) in clause (ii)—

(A) by striking "428C or 455(g)" and inserting "428C, that is disbursed before July 1, 2010, or section 455(g)"; and

(B) in subclause (II), by inserting "for which the first disbursement is made before July 1, 2010," after "or 428H".

SEC. 209. SPECIAL ALLOWANCES.

Section 438 (20 U.S.C. 1087–1) is amended—

(1) in subsection (b)(2)(I)—

(A) in the header, by inserting ", AND BEFORE JULY 1, 2010" after "2000";

(B) in clause (i), by inserting "and before July 1, 2010," after "2000,";

(C) in clause (ii)(II), by inserting "and before July 1, 2010," after "2006,";

(D) in clause (iii), by inserting "and before July 1, 2010," after "2000,";

(E) in clause (iv), by inserting "and that is disbursed before July 1, 2010," after "2000,";

(F) in clause (v)(I), by inserting "and before July 1, 2010," after "2006,"; and

(G) in clause (vi)—

(i) in the header, by inserting ", AND BEFORE JULY 1, 2010" after "2007"; and

(ii) in the matter preceding subclause (I), by inserting "and before July 1, 2010," after "2007,";

(2) in subsection (c)—

(A) in paragraph (2)(B)—

(i) in clause (iii), by inserting "and" after the semicolon;

(ii) in clause (iv), by striking "; and" and inserting a period; and

(iii) by striking clause (v); and

(B) in paragraph (6), by inserting "and first disbursed before July 1, 2010," after "1992,"; and

(3) in subsection (d)(2)(B), by inserting ", and before July 1, 2010" after "2007".

SEC. 210. REVISED SPECIAL ALLOWANCE CALCULATION.

(a) REVISED 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) REVISED CALCULATION RULE TO REFLECT FINANCIAL MARKET CONDITIONS.—

"(I) CALCULATION BASED ON LIBOR.—For the calendar quarter beginning on October 1, 2009, and each subsequent calendar quarter, in computing the special allowance paid pursuant to this subsection with respect to loans described in subclause (II), clause (i)(I) of this subparagraph shall be applied by substituting 'of the 1-month London Inter Bank Offered Rate (LIBOR) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association' for 'of the quotes of the 3-month commercial paper (financial) rates in effect

for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period'.

"(II) LOANS ELIGIBLE FOR LIBOR-BASED CALCULATION.—The special allowance paid pursuant to this subsection shall be calculated as described in subclause (I) with respect to special allowance payments for the 3-month period ending December 31, 2009, and each succeeding 3-month period, on loans for which the first disbursement is made—

"(aa) on or after the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009, and before July 1, 2010; and

"(bb) on or after January 1, 2000, and before the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009, if, not later than the last day of the second full fiscal quarter after the date of enactment of such Act, the holder of the loan affirmatively and permanently waives all contractual, statutory or other legal rights to a special allowance paid pursuant to this subsection that is calculated using the formula in effect at the time the loans were first disbursed.

"(III) TERMS OF WAIVER.—A waiver pursuant to subclause (II)(bb) shall—

"(aa) be applicable to all loans described in such subclause that are held under any lender identification number associated with the holder (pursuant to section 487B); and

"(bb) apply with respect to all future calculations of the special allowance on loans described in such subclause that are held on the date of such waiver or that are acquired by the holder after such date.

"(IV) PARTICIPANT'S YIELD.—For the calendar quarter beginning on October 1, 2009, and each subsequent calendar quarter, the Secretary's participant yield in any loan for which the first disbursement is made on or after January 1, 2000, and before October 1, 2009, and that is held by a lender that has sold any participation interest in such loan to the Secretary shall be determined by using the LIBOR-based rate described in subclause (I) as the substitute rate (for the commercial paper rate) referred to in the participation agreement between the Secretary and such lender.";

(b) CONFORMING AMENDMENT.—Section 438(b)(2)(I) (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)".

SEC. 211. ORIGINATION OF DIRECT LOANS AT INSTITUTIONS LOCATED OUTSIDE THE UNITED STATES.

(a) LOANS FOR STUDENTS ATTENDING INSTITUTIONS LOCATED OUTSIDE THE UNITED STATES.—Section 452 (20 U.S.C. 1087b) is amended by adding at the end the following:

"(d) INSTITUTIONS LOCATED OUTSIDE THE UNITED STATES.—Loan funds for students (and parents of students) attending institutions located outside the United States shall be disbursed through a financial institution located in the United States and designated by the Secretary to serve as the agent of such institutions with respect to the receipt of the disbursements of such loan funds and the transfer of such funds to such institutions. To be eligible to receive funds under this part, an otherwise eligible institution located outside the United States shall make arrangements, subject to regulations by the Secretary, with the agent designated by the Secretary under this subsection to receive funds under this part.".

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—Section 102 (20 U.S.C. 1002), as amended by section 102 of the Higher Education Opportunity Act (Public Law 110–315) and section 101 of Public Law 111–39, is amended—

(A) by striking "part B" each place it appears and inserting "part D";

(B) in subsection (a)(1)(C), by inserting ", consistent with the requirements of section 452(d)" before the period at the end; and

(C) in subsection (a)(2)(A)—

(i) in the matter preceding clause (i), by striking "made, insured, or guaranteed" and inserting "made"; and

(ii) in clause (iii)—

(I) in subclause (III), by striking "only Federal Stafford" and all that follows through "section 428B" and inserting "only Federal Direct Stafford Loans under section 455(a)(2)(A), Federal Direct Unsubsidized Stafford Loans under section 455(a)(2)(D), or Federal Direct PLUS Loans under section 455(a)(2)(B)"; and

(II) in subclause (V), by striking "a Federal Stafford" and all that follows through "section 428B" and inserting "a Federal Direct Stafford Loan under section 455(a)(2)(A), a Federal Direct Unsubsidized Stafford Loan under section 455(a)(2)(D), or a Federal Direct PLUS Loan under section 455(a)(2)(B)".

(2) EFFECTIVE DATE.—The amendments made by subparagraph (C) of paragraph (1) shall be effective on July 1, 2010, as if enacted as part of section 102(a)(1) of the Higher Education Opportunity Act (Public Law 110–315).

SEC. 212. AGREEMENTS WITH INSTITUTIONS.

Section 454 (20 U.S.C. 1087d) is amended—

(1) in subsection (a), by striking paragraph (4) and redesignating the succeeding paragraphs accordingly; and

(2) in subsection (b)(2), by striking "(5), (6), and (7)" and inserting "(5), and (6)".

SEC. 213. TERMS AND CONDITIONS OF LOANS.

(a) AMENDMENTS.—Section 455 (20 U.S.C. 1087e) is amended—

(1) in subsection (a)(1), by inserting ", and first disbursed on June 30, 2010," before "under sections 428"; and

(2) in subsection (g)—

(A) by inserting ", including any loan made under part B and first disbursed before July 1, 2010" after "section 428C(a)(4)"; and

(B) by striking the third sentence.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall apply with respect to loans first disbursed under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.) on or after July 1, 2010.

SEC. 214. CONTRACTS.

Section 456 (20 U.S.C. 1087f) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in the header, by striking "IN GENERAL" and inserting "AWARDING OF CONTRACTS";

(ii) by striking "The Secretary" and inserting the following:

"(A) IN GENERAL.—The Secretary"; and

(iii) by adding at the end the following:

"(B) AWARDING CONTRACTS FOR SERVICING LOANS.—The Secretary shall, if practicable, award multiple contracts, through a competitive bidding process, to entities, including eligible not-for-profit servicers, to service loans originated under this part. The competitive bidding process shall take into account price, servicing capacity, and capability, and may take into account the capacity and capability to provide default aversion activities and outreach services.

"(C) JOB RETENTION INCENTIVE PAYMENT.—(i) In a contract with an entity under subparagraph (B) for the servicing of loans, the Secretary shall provide a job retention incentive payment, in an amount and manner determined by the Secretary, if such entity agrees to give priority for hiring for positions created as a result of such a contract to those geographical locations at which the entity performed student loan origination or servicing activities under the Federal Family Education Loan Program as of the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009.

"(ii) In determining the allocation of loans to be serviced by an entity awarded such a contract, the Secretary shall consider the retention of highly qualified employees of such entity a positive factor in determining such allocation.";

(B) in paragraph (2)—

(i) in the first sentence, by inserting ", including eligible not-for-profit servicers," after "The entities";

(ii) by amending the third sentence to read as follows: "The entities with which the Secretary may enter into such contracts shall include,

where practicable, agencies with agreements with the Secretary under sections 428(b) and (c) on the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009, and eligible not-for-profit servicers, if such agencies or servicers meet the qualifications as determined by the Secretary under this subsection and if those agencies or servicers have such experience and demonstrated effectiveness."; and

(iii) by striking the last sentence and inserting the following: "In awarding contracts to such State agencies, and such eligible not-for-profit servicers, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies and such servicers with a history of high quality performance and demonstrated integrity in conducting operations with institutions of higher education and the Secretary.";

(C) by redesignating paragraph (3) as paragraph (4), and by inserting in such paragraph ", or of any eligible not-for-profit servicer to enter into an agreement for the purposes of this section as a member of a consortium of such entities" before the period at the end; and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) SERVICING BY ELIGIBLE NOT-FOR-PROFIT SERVICERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this section, in each State where one or more eligible not-for-profit servicer has its principal place of business, the Secretary shall contract with each such servicer to service loans originated under this part on behalf of borrowers attending institutions located within such State, provided that the servicer demonstrates that it meets the standards for servicing Federal assets and providing quality service and agrees to service the loans at a competitive market rate, as determined by the Secretary. In determining such a competitive market rate, the Secretary may take into account the volume of loans serviced by the servicer. Contracts awarded under this paragraph shall be subject to the same requirements for quality, performance, and accountability as contracts awarded under paragraph (2) for similar activities.

"(B) ALLOCATIONS.—(i) ONE SERVICER.—In the case of a State with only one eligible not-for-profit servicer with a contract described in subparagraph (A), the Secretary shall, at a minimum, allocate to such servicer, on an annual basis and subject to such contract, the servicing rights for the lesser of—

"(I) the loans of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer) attending institutions located within the State; or

"(II) the loans of all the borrowers attending institutions located within the State.

"(ii) MULTIPLE SERVICERS.—In the case of a State with more than one eligible not-for-profit servicer with a contract described in subparagraph (A), the Secretary shall, at a minimum, allocate to each such servicer, on an annual basis and subject to such contract, the servicing rights for the lesser of—

"(I) the loans of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer) attending institutions located within the State; or

"(II) an equal share of the loans of all borrowers attending institutions located within the State, except the Secretary shall adjust such shares as necessary to ensure that the loans of any single borrower remain with a single servicer.

"(iii) ADDITIONAL ALLOCATION.—The Secretary may allocate additional servicing rights to an eligible not-for-profit servicer based on the performance of such servicer, as determined by the Secretary, including performance in the areas of customer service and default aversion.

"(C) MULTIPLE LOANS.—Notwithstanding the allocations required by subparagraph (B), the Secretary may transfer loans among servicers who are awarded contracts to service loans pursuant to this section to ensure that the loans of any single borrower remain with a single servicer."; and

(2) by adding at the end the following:

"(c) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009, the Secretary shall prepare and submit to the authorizing committees, a report evaluating the performance of all eligible not-for-profit servicers awarded a contract under this section to service loans originated under this part. Such report shall give consideration to—

"(1) customer satisfaction of borrowers and institutions with respect to the loan servicing provided by the servicers;

"(2) compliance with applicable regulations by the servicers; and

"(3) the effectiveness of default aversion activities, and outreach services (if any), provided by the servicers.

"(d) DEFINITIONS.—In this section:

"(1) DEFAULT AVERSION ACTIVITIES.—The term 'default aversion activities' means activities that are directly related to providing collection assistance to the Secretary on a delinquent loan, prior to the loan being legally in a default status, including due diligence activities required pursuant to regulations.

"(2) ELIGIBLE NOT-FOR-PROFIT SERVICER.—

"(A) IN GENERAL.—The term 'eligible not-for-profit servicer' means an entity that, on the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009—

"(i) meets the definition of an eligible not-for-profit holder under section 435(p), except that such term does not include eligible lenders described in paragraph (1)(D) of such section;

"(ii) notwithstanding clause (i), is the sole beneficial owner of a loan for which the special allowance rate is calculated under section 438(b)(2)(I)(vi)(II) because the loan is held by an eligible lender trustee that is an eligible not-for-profit holder as defined under section 435(p)(1)(D); or

"(iii) is an affiliated entity of an eligible not-for-profit servicer described in clause (i) or (ii) that—

"(I) directly employs, or will directly employ (on or before the date the entity begins servicing loans under a contract awarded by the Secretary pursuant to subsection (a)(3)(A)), the majority of individuals who perform student loan servicing functions; and

"(II) on such date of enactment, was performing, or had entered into a contract with a third party servicer (as such term is defined in section 481(c)) who was performing, student loan servicing functions for loans made under part B of this title.

"(B) AFFILIATED ENTITY.—For the purposes of subparagraph (A), the term 'affiliated entity' means an entity contracted to perform services for an eligible not-for-profit servicer that—

"(i) is a nonprofit entity or is wholly owned by a nonprofit entity; and

"(ii) is not owned or controlled, in whole or in part, by—

"(I) a for-profit entity; or

"(II) an entity having its principal place of business in another State.

"(3) OUTREACH SERVICES.—The term 'outreach services' means programs offered to students and families, including programs delivered in coordination with institutions of higher education that—

"(A) encourage—

"(i) students to attend and complete a degree or certification program at an institution of higher education; and

"(ii) students and families to obtain financial aid, but minimize the borrowing of education loans; and

"(B) deliver financial literacy and counseling tools.".

SEC. 215. INTEREST RATES.

Section 455(b)(7) (20 U.S.C. 1087e(b)(7)) is amended by adding at the end the following new subparagraph:

"(E) REDUCED RATES FOR UNDERGRADUATE FDSL ON AND AFTER JULY 1, 2012.—Notwithstanding the preceding paragraphs of this subsection and subparagraph (A) of this paragraph, for Federal Direct Stafford Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2012, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(ii) 2.5 percent,

except that such rate shall not exceed 6.8 percent.".

Subtitle B—Perkins Loan Reform

SEC. 221. FEDERAL DIRECT PERKINS LOANS TERMS AND CONDITIONS.

Part D of title IV (20 U.S.C. 1087a et seq.) is amended by inserting after section 455 the following new section:

"SEC. 455A. FEDERAL DIRECT PERKINS LOANS.

"(a) DESIGNATION OF LOANS.—Loans made to borrowers under this section shall be known as 'Federal Direct Perkins Loans'.

"(b) IN GENERAL.—It is the purpose of this section to authorize loans to be awarded by institutions of higher education through agreements established under section 463(f). Unless otherwise specified in this section, all terms and conditions and other requirements applicable to Federal Direct Unsubsidized Stafford loans established under section 455(a)(2)(D) shall apply to loans made pursuant to this section.

"(c) ELIGIBLE BORROWERS.—Any student meeting the requirements for student eligibility under section 464(b) (including graduate and professional students as defined in regulations promulgated by the Secretary) shall be eligible to borrow a Federal Direct Perkins Loan, provided the student attends an eligible institution with an agreement with the Secretary under section 463(f), and the institution uses its authority under that agreement to award the student a loan.

"(d) LOAN LIMITS.—The annual and aggregate limits for loans under this section shall be the same as those established under section 464, and aggregate limits shall include loans made by institutions under agreements under section 463(a).

"(e) APPLICABLE RATES OF INTEREST.—Loans made pursuant to this section shall bear interest, on the unpaid balance of the loan, at the rate of 5 percent per year.".

SEC. 222. AUTHORIZATION OF APPROPRIATIONS.

Section 461 (20 U.S.C. 1087aa) is amended—

(1) in subsection (a), by inserting ", before July 1, 2010," after "The Secretary shall";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking "(1) For the purpose" and inserting "For the purpose"; and

(ii) by striking "and for each of the five succeeding fiscal years"; and

(B) by striking paragraph (2); and

(3) by striking subsection (c).

SEC. 223. ALLOCATION OF FUNDS.

Section 462 (20 U.S.C. 1087bb) is amended—

(1) in subsection (a)(1), by striking "From" and inserting "For any fiscal year before fiscal year 2010, from"; and

(2) in subsection (i)(1), by striking "for any fiscal year," and inserting "for any fiscal year before fiscal year 2010,".

SEC. 224. FEDERAL DIRECT PERKINS LOAN ALLOCATION.

Part E of title IV is further amended by inserting after section 462 (20 U.S.C. 1087bb) the following:

"SEC. 462A. FEDERAL DIRECT PERKINS LOAN ALLOCATION.

"(a) PURPOSES.—The purposes of this section are—

"(1) to allocate, among eligible and participating institutions (as such terms are defined in this section), the authority to make Federal Direct Perkins Loans under section 455A with a portion of the annual loan authority described in subsection (b); and

"(2) to make funds available, in accordance with section 452, to each participating institution from a portion of the annual loan authority described in subsection (b), in an amount not to exceed the sum of an institution's allocation of funds under subparagraphs (A), (B), and (C) of subsection (b)(1) to enable each such institution to make Federal Direct Perkins Loans to eligible students at the institution.

"(b) AVAILABLE DIRECT PERKINS ANNUAL LOAN AUTHORITY.—

"(1) AVAILABILITY AND ALLOCATIONS.—There are hereby made available, from funds made available for loans made under part D, not to exceed $6,000,000,000 of annual loan authority for award year 2010–2011 and each succeeding award year, to be allocated as follows:

"(A) The Secretary shall allocate not more than ½ of such funds for each award year by allocating to each participating institution an amount equal

to the adjusted self-help need amount of the institution, as determined in accordance with subsection (c) for such award year.

"(B) The Secretary shall allocate not more than ¼ of such funds for each award year by allocating to each participating institution an amount equal to the low tuition incentive amount of the institution, as determined in accordance with subsection (d).

"(C) The Secretary shall allocate not more than ¼ of such funds for each award year by allocating to each participating institution an amount which bears the same ratio to the funds allocated under this subparagraph as the ratio determined in accordance with subsection (e) for the calculation of the Federal Pell Grant and degree recipient amount of the institution.

"(2) NO FUNDS TO NON-PARTICIPATING INSTITUTIONS.—The Secretary shall not make funds available under this subsection to any eligible institution that is not a participating institution. The adjusted self-help need amount (determined in accordance with subsection (c)) of an eligible institution that is not a participating institution shall not be made available to any other institution.

"(c) ADJUSTED SELF-HELP NEED AMOUNT.—For the purposes of subsection (b)(1)(A), the Secretary shall calculate the adjusted self-help need amount of each eligible institution for an award year as follows:

"(1) USE OF BASE SELF-HELP NEED AMOUNTS.—

"(A) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), the adjusted self-help need amount of each eligible institution shall be the institution's base self-help need amount, which is the sum of—

"(i) the self-help need of the institution's eligible undergraduate students for such award year; and

"(ii) the self-help need of the institution's eligible graduate and professional students for such award year.

"(B) UNDERGRADUATE STUDENT SELF-HELP NEED.—To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall determine the sum of each eligible undergraduate student's average cost of attendance for the second preceding award year less each such student's expected family contribution (computed in accordance with part F) for the second preceding award year, except that, for each such eligible undergraduate student, the amount computed by such subtraction shall not be less than zero or more than the lesser of—

"(i) 25 percent of the average cost of attendance with respect to such eligible student; or

"(ii) $5,500.

"(C) GRADUATE AND PROFESSIONAL STUDENT SELF-HELP NEED.—To determine the self-help need of an institution's eligible graduate and professional students, the Secretary shall determine the sum of each eligible graduate and professional student's average cost of attendance for the second preceding award year less each such student's expected family contribution (computed in accordance with part F) for such second preceding award year, except that, for each such eligible graduate and professional student, the amount computed by such subtraction shall not be less than zero or more than $8,000.

"(2) RATABLE REDUCTION ADJUSTMENTS.—If the sum of the base self-help need amounts of all eligible institutions for an award year as determined under paragraph (1) exceeds ½ of the annual loan authority under subsection (b) for such award year, the Secretary shall ratably reduce the base self-help need amounts of all eligible institutions until the sum of such amounts is equal to the amount that is ½ of the annual loan authority under subsection (b).

"(3) REQUIRED MINIMUM AMOUNT.—Notwithstanding paragraph (2), the adjusted self-help need amount of each eligible institution shall not be less than the average of the institution's total principal amount of loans made under this part for each of the 5 most recent award years.

"(4) ADDITIONAL ADJUSTMENTS.—If the Secretary determines that a ratable reduction under paragraph (2) results in the adjusted self-help need amount of any eligible institution being reduced below the minimum amount required under paragraph (3), the Secretary shall—

"(A) for each institution for which the minimum amount under paragraph (3) is not satisfied, increase the adjusted self-help need amount to the amount of the required minimum under such subparagraph; and

"(B) ratably reduce the adjusted self-help need amounts of all eligible institutions not described in subparagraph (A) until the sum of the adjusted self-help need amounts of all eligible institutions is equal to the amount that is ½ of the annual loan authority under subsection (b).

"(d) LOW TUITION INCENTIVE AMOUNT.—

"(1) IN GENERAL.—For purposes of subsection (b)(1)(B), the Secretary shall determine the low tuition incentive amount for each participating institution for each award year, by calculating for each such institution the sum of—

"(A) the total amount, if any (but not less than zero), by which—

"(i) the average tuition and required fees for the institution's sector for the second preceding award year; exceeds

"(ii) the tuition and required fees for the second preceding award year for each undergraduate and graduate student attending the institution who had financial need (as determined under part F); plus

"(B) the total amount, if any (but not less than zero), by which—

"(i) the total amount for the second preceding award year of non-Federal grant aid provided to meet the financial need of all undergraduate students attending the institution (as determined without regard to financial aid not received under this title); exceeds

"(ii) the total amount for the second preceding award year, if any, by which—

"(I) the tuition and required fees of each such student with such financial need; exceeds

"(II) the average tuition and required fees for the institution's sector.

"(2) RATABLE REDUCTION.—If the sum of the low tuition incentive amounts of all participating institutions for an award year as determined under paragraph (1) exceeds ¼ of the annual loan authority under subsection (b) for such award year, the Secretary shall ratably reduce the low tuition incentive amounts of all participating institutions until the sum of such amounts is equal to the amount that is ¼ of the annual loan authority under subsection (b).

"(e) FEDERAL PELL GRANT AND DEGREE RECIPIENT AMOUNT.—For purposes of subsection (b)(1)(C), the Secretary shall determine the Federal Pell Grant and degree recipient amount for each participating institution for each award year, by calculating for each such institution the ratio of—

"(1) the number of students who, during the most recent year for which data are available, obtained an associate's degree or other postsecondary degree from such participating institution and, prior to obtaining such degree, received a Federal Pell Grant for attendance at any institution of higher education; to

"(2) the sum of the number of students who, during the most recent year for which data are available, obtained an associate's degree or other postsecondary degree from each participating institution and, prior to obtaining such degree, received a Federal Pell Grant for attendance at any institution of higher education.

"(f) DEFINITIONS.—As used in this section:

"(1) ANNUAL LOAN AUTHORITY.—The term 'annual loan authority' means the total original principal amount of loans that may be allocated and made available for an award year to make Federal Direct Perkins Loans under section 455A.

"(2) AVERAGE COST OF ATTENDANCE.—

"(A) IN GENERAL.—The term 'average cost of attendance' means the average of the attendance costs for undergraduate students and for graduate and professional students, respectively, for the second preceding award year which shall include—

"(i) tuition and required fees determined in accordance with subparagraph (B);

"(ii) standard living expenses determined in accordance with subparagraph (C); and

"(iii) books and supplies determined in accordance with subparagraph (D).

"(B) TUITION AND REQUIRED FEES.—The average undergraduate and graduate and professional tuition and required fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include—

"(i) total revenue received by the institution from undergraduate and graduate and professional students, respectively, for tuition and required fees for the second preceding award year; and

"(ii) the institution's full-time equivalent enrollment of undergraduate and graduate and professional students, respectively, for such second preceding award year.

"(C) STANDARD LIVING EXPENSES.—The standard living expense described in subparagraph (A)(ii) is equal to the allowance, determined by an institu-

tion, for room and board costs incurred by a student, as computed in accordance with part F for the second preceding award year.

"(D) BOOKS AND SUPPLIES.—The allowance for books and supplies described in subparagraph (A)(iii) is equal to the allowance, determined by an institution, for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, as computed in accordance with part F for the second preceding award year.

"(3) AVERAGE TUITION AND REQUIRED FEES FOR THE INSTITUTION'S SECTOR.—The term 'average tuition and required fees for the institution's sector' shall be determined by the Secretary for each of the categories described in section 132(d).

"(4) ELIGIBLE INSTITUTION.—The term 'eligible institution' means an institution of higher education that participates in the Federal Direct Stafford Loan Program.

"(5) PARTICIPATING INSTITUTION.—The term 'participating institution' means an institution of higher education that has an agreement under section 463(f).

"(6) SECTOR.—The term 'sector' means each of the categories described in section 132(d).".

SEC. 225. AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION.

(a) AMENDMENTS.—Section 463 (20 U.S.C. 1087cc) is amended—

(1) in subsection (a)—

(A) in the heading, by inserting "FOR LOANS MADE BEFORE JULY 1, 2010" after "AGREEMENTS";

(B) in paragraph (3)(A), by inserting "before July 1, 2010" after "students";

(C) in paragraph (4), by striking "thereon—" and all that follows and inserting "thereon, if the institution has failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may require the institution to assign such note or agreement to the Secretary, without recompense;"; and

(D) in paragraph (5), by striking "and the Secretary shall apportion" and all that follows through "in accordance with section 462" and inserting "and the Secretary shall return a portion of funds from loan repayments to the institution as specified in section 466(b)";

(2) by amending subsection (b) to read as follows:

"(b) ADMINISTRATIVE EXPENSES.—An institution that has entered into an agreement under subsection (a) shall be entitled, for each fiscal year during which it services student loans from a student loan fund established under such agreement, to a payment in lieu of reimbursement for its expenses in servicing student loans made before July 1, 2010. Such payment shall be equal to 0.50 percent of the outstanding principal and interest balance of such loans being serviced by the institution as of September 30 of each fiscal year."; and

(3) by adding at the end the following:

"(f) CONTENTS OF AGREEMENTS FOR LOANS MADE ON OR AFTER JULY 1, 2010.—An agreement with any institution of higher education that elects to participate in the Federal Direct Perkins Loan program under section 455A shall provide—

"(1) for the establishment and maintenance of a Direct Perkins Loan program at the institution under which the institution shall use loan authority allocated under section 462A to make loans to eligible students attending the institution;

"(2) that the institution, unless otherwise specified in this subsection, shall operate the program consistent with the requirements of agreements established under section 454;

"(3) that the institution will pay matching funds, quarterly, in an amount agreed to by the institution and the Secretary, to an escrow account approved by the Secretary, for the purpose of providing loan benefits to borrowers;

"(4) that if the institution fails to meet the requirements of paragraph (3), the Secretary shall suspend or terminate the institution's eligibility to make Federal Direct Perkins Loans under section 455A until such time as the Secretary determines, in accordance with section 498, that the institution has met the requirements of such paragraph; and

"(5) that if the institution ceases to be an eligible institution within the meaning of section 435(a) by reason of having a cohort default rate that exceeds the threshold percentage specified paragraph (2) of such section, the Secretary shall suspend or terminate the institution's eligibility to make Federal Direct Perkins

Loans under section 455A unless and until the institution would qualify for a resumption of eligible institution status under such section.".

(b) EFFECTIVE DATE.—The amendments made by paragraph (2) of subsection (a) shall take effect on October 1, 2010.

SEC. 226. STUDENT LOAN INFORMATION BY ELIGIBLE INSTITUTIONS.

Section 463A (20 U.S.C. 1087cc–1) is amended—

(1) in subsection (a), by striking "Each institution" and inserting "For loans made before July 1, 2010, each institution"; and

(2) in subsection (b), by striking "Each institution" and inserting "For loans made before July 1, 2010, each institution".

SEC. 227. TERMS OF LOANS.

(a) Section 464 (20 U.S.C. 1087dd) is amended—

(1) in subsection (a)(1), by striking "section 463" and inserting "section 463(a)";

(2) in subsection (b)(1), by inserting "made before July 1, 2010," after "A loan";

(3) in subsection (c)—

(A) in paragraph (1), by inserting "made before July 1, 2010," after "a loan";

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting "made before July 1, 2010," after "any loan"; and

(ii) in subparagraph (B), by inserting "made before July 1, 2010," after "any loan";

(C) in paragraph (3)(B), by inserting "for a loan made before July 1, 2010," after "during the repayment period";

(D) in paragraph (4), by inserting "before July 1, 2010," after "for a loan made";

(E) in paragraph (5), by striking "The institution" and inserting "For loans made before July 1, 2010, the institution"; and

(F) in paragraph (6), by inserting "made before July 1, 2010," after "of loans";

(4) in subsection (d), by inserting "made before July 1, 2010," before "from the student loan fund";

(5) in subsection (e), by inserting "with respect to loans made before July 1, 2010, and" before "as documented in accordance with paragraph (2),";

(6) by repealing subsection (f);

(7) in subsection (g)(1), by inserting "and before July 1, 2010," after "January 1, 1986,";

(8) in subsection (h)—

(A) in paragraph (1)(A) by inserting "before July 1, 2010," after "made under this part"; and

(B) in paragraph (2), by inserting "before July 1, 2010," after "under this part"; and

(9) in subsection (j)(1), by inserting "before July 1, 2010," after "under this part".

SEC. 228. DISTRIBUTION OF ASSETS FROM STUDENT LOAN FUNDS.

(a) Section 465 (20 U.S.C. 1087ee) is amended—

(1) in subsection (a), by inserting "and before July 1, 2010," after "June 30, 1972,"; and

(2) by amending subsection (b) to read as follows:

"(b) REIMBURSEMENT FOR CANCELLATIONS.—

"(1) ASSIGNED LOANS.—In the case of loans made under this part before July 1, 2010, and that are assigned to the Secretary, the Secretary shall, from amounts repaid each quarter on assigned Perkins Loans made before July 1, 2010, pay to each institution for each quarter an amount equal to—

"(A) the aggregate of the amounts of loans from its student loan fund that are canceled pursuant to this section for such quarter, minus

"(B) an amount equal to the aggregate of the amounts of any such loans so canceled that were made from Federal capital contributions to its student loan fund.

"(2) RETAINED LOANS.—In the case of loans made under this part before July 1, 2010, and that are retained by the institution for servicing, the institution shall deduct from loan repayments owed to the Secretary under section 466, an amount equal to—

"(A) the aggregate of the amounts of loans from its student loan fund that are canceled pursuant to this section for such quarter, minus

"(B) an amount equal to the aggregate of the amounts of any such loans so canceled that were made from Federal capital contributions to its student loan fund.".

(b) Section 466 (20 U.S.C. 1087ff) is amended to read as follows:

"SEC. 466. DISTRIBUTION OF ASSETS FROM STUDENT LOAN FUNDS.

"(a) CAPITAL DISTRIBUTION.—Beginning July 1, 2010, there shall be a capital distribution of the balance of the student loan fund established under this part by each institution of higher education as follows:

"(1) For the quarter beginning July 1, 2010, the Secretary shall first be paid, no later than September 30, 2010, an amount that bears the same ratio to the cash balance in such fund at the close of June 30, 2010, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to—

"(A) the sum of such Federal contributions and the institution's capital contributions to such fund, less

"(B) an amount equal to—

"(i) the institution's outstanding administrative costs as calculated under section 463(b),

"(ii) outstanding charges assessed under section 464(c)(1)(H), and

"(iii) outstanding loan cancellation costs incurred under section 465.

"(2) At the end of each quarter subsequent to the quarter ending September 30, 2010, the Secretary shall first be paid an amount that bears the same ratio to the cash balance in such fund at the close of the preceding quarter, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to—

"(A) the sum of such Federal contributions and the institution's capital contributions to such fund, less

"(B) an amount equal to—

"(i) the institution's administrative costs incurred for that quarter as calculated under section 463(b),

"(ii) charges assessed for that quarter under section 464(c)(1)(H), and

"(iii) loan cancellation costs incurred for that quarter under section 465.

"(3)(A) The Secretary shall calculate the amounts due to the Secretary under paragraph (1) (adjusted in accordance with subparagraph (B), as appropriate) and paragraph (2) and shall promptly inform the institution of such calculated amounts.

"(B) In the event that, prior to the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009, an institution made a short-term, interest-free loan to the institution's student loan fund established under this part in anticipation of collections or receipt of Federal capital contributions, and the institution demonstrates to the Secretary, on or before June 30, 2010, that such loan will still be outstanding after June 30, 2010, the Secretary shall subtract the amount of such outstanding loan from the cash balance of the institution's student loan fund that is used to calculate the amount due to the Secretary under paragraph (1). An adjustment of an amount due to the Secretary under this subparagraph shall be made by the Secretary on a case-by-case basis.

"(4) Any remaining balance at the end of a quarter after a payment under paragraph (1) or (2) shall be retained by the institution for use at its discretion. Any balance so retained shall be withdrawn from the student loan fund and shall not be counted in calculating amounts owed to the Secretary for subsequent quarters.

"(5) Each institution shall make the quarterly payments to the Secretary described in paragraph (2) until all outstanding Federal Perkins Loans at that institution have been assigned to the Secretary and there are no funds remaining in the institution's student loan fund.

"(6) In the event that the institution's administrative costs, charges, and cancellation costs described in paragraph (2) for a quarter exceed the amount owed to the Secretary under paragraphs (1) and (2) for that quarter, no payment shall be due to the Secretary from the institution for that quarter and the Secretary shall pay the institution, from funds realized from the collection of assigned Federal Perkins Loans made before July 1, 2010, an amount that, when combined with the amount retained by the institution under paragraphs (1) and (2), equals the full amount of such administrative costs, charges, and cancellation costs.

"(b) ASSIGNMENT OF OUTSTANDING LOANS.—Beginning July 1, 2010, an institution of higher education may assign all outstanding loans made under this part before July 1, 2010, to the Secretary, consistent with the requirements of section 463(a)(5). In collecting loans so assigned, the Secretary shall pay an institution an amount that constitutes the same fraction of such collections as the fraction of the cash balance that the institution retains under subsection (a)(2), but determining such fraction without regard to subparagraph (B)(i) of such subsection.".

SEC. 229. IMPLEMENTATION OF NON-TITLE IV REVENUE REQUIREMENT.

(a) AMENDMENTS.—Section 487(d) (20 U.S.C. 1094(d)) is amended—

(1) in paragraph (1)(E), by striking "July 1, 2011" and inserting "July 1, 2012";

(2) in paragraph (1)(F)—

(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

(B) by inserting after clause (ii) the following new clause:

"(iii) for the period beginning July 1, 2010, and ending July 1, 2012, the amount of funds the institution received from loans disbursed under section 455A,";.

(3) in paragraph (2)(A), by striking "two consecutive" and inserting "three consecutive"; and

(4) in paragraph (2)(B)—

(A) by striking "any institutional fiscal year" and inserting "two consecutive institutional fiscal years";

(B) by striking "the two institutional fiscal years after the institutional fiscal year" and inserting "the institutional fiscal year after the second consecutive institutional fiscal year"; and

(C) by striking "two consecutive" in clause (ii) of such paragraph and inserting "three consecutive".

(b) TEMPORARY EFFECT.—The amendments made by paragraphs (3) and (4) of subsection (a)—

(1) shall take effect on the date of enactment of this Act; and

(2) shall cease to be effective on July 1, 2012.

SEC. 230. ADMINISTRATIVE EXPENSES.

Section 489(a) (20 U.S.C. 1096(a)) is amended—

(1) in the second sentence, by striking "or under part E of this title"; and

(2) in the third sentence—

(A) by inserting "and" after "subpart 3 of part A,"; and

(B) by striking "compensation of students," and all that follows through the period and inserting "compensation of students.".

TITLE III—MODERNIZATION, RENOVATION, AND REPAIR

Subtitle A—Elementary and Secondary Education

SEC. 301. DEFINITIONS.

In this subtitle:

(1) The term "Bureau-funded school" has the meaning given 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 (20 U.S.C. 7221i).

(3) The term "CHPS Criteria" means the green building rating program developed by the Collaborative for High Performance Schools.

(4) The term "Energy Star" means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.

(5) The term "Green Globes" means the Green Building Initiative environmental design and rating system referred to as Green Globes.

(6) 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 LEED Green Building Rating System.

(7) The term "local educational agency"—

(A) has the meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801);

(B) includes any public charter school that constitutes a local educational agency under State law; and

(C) includes the Recovery School District of Louisiana.

(8) The term "outlying area"—

(A) means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(B) includes the Republic of Palau.

(9) The term "public school facilities" means existing public elementary or secondary school facilities, including public charter school facilities and other existing facilities planned for adaptive reuse as public charter school facilities.

(10) The term "Secretary" means the Secretary of Education.

(11) The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

CHAPTER 1—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF PUBLIC SCHOOL FACILITIES

SEC. 311. PURPOSE.

Grants under this chapter shall be for the purpose of modernizing, renovating, or repairing public school facilities (including early learning facilities, as appropriate), based on the need of the facilities for such improvements, to ensure that public school facilities are safe, healthy, high-performing, and technologically up-to-date.

SEC. 312. ALLOCATION OF FUNDS.

(a) RESERVATION.—

(1) IN GENERAL.—From the amount appropriated to carry out this chapter for each fiscal year pursuant to section 345(a), the Secretary shall reserve 2 percent of such amount, consistent with the purpose described in section 311—

(A) to provide assistance to the outlying areas; and

(B) for payments to the Secretary of the Interior to provide assistance to Bureau-funded schools.

(2) USE OF RESERVED FUNDS.—In each fiscal year, the amount reserved under paragraph (1) shall be divided between the uses described in subparagraphs (A) and (B) of such paragraph in the same proportion as the amount reserved under section 1121(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331(a)) is divided between the uses described in paragraphs (1) and (2) of such section 1121(a) in such fiscal year.

(3) DISTRESSED AREAS AND NATURAL DISASTERS.—From the amount appropriated to carry out this chapter for each fiscal year pursuant to section 345(a), the Secretary shall reserve 5 percent of such amount for grants to—

(A) local educational agencies serving geographic areas with significant economic distress, to be used consistent with the purpose described in section 311 and the allowable uses of funds described in section 313; and

(B) local educational agencies serving geographic areas recovering from a natural disaster, to be used consistent with the purpose described in section 321 and the allowable uses of funds described in section 323.

(b) ALLOCATION TO STATES.—

(1) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this chapter for each fiscal year pursuant to section 345(a), and not reserved under subsection (a), 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 (20 U.S.C. 6311 et seq.) for the previous fiscal year relative to the total amount received by all local educational agencies in every State under such part for such fiscal year.

(2) STATE ADMINISTRATION.—A State may reserve up to 1 percent of its allocation under paragraph (1) to carry out its responsibilities under this chapter, which include—

(A) providing technical assistance to local educational agencies;

(B) developing an online, publicly searchable database that includes an inventory of public school facilities in the State, including for each such facility, its design, condition, modernization, renovation and repair needs, utilization, energy use, and carbon footprint; and

(C) creating voluntary guidelines for high-performing school buildings, including guidelines concerning the following:

(i) Site location, storm water management, outdoor surfaces, outdoor lighting, and transportation, including public transit and pedestrian and bicycle accessability.

(ii) Outdoor water systems, landscaping to minimize water use, including elimination of irrigation systems for landscaping, and indoor water use reduction.

(iii) Energy efficiency (including minimum and superior standards, such as for heating, ventilation, and air conditioning systems), use of alternative energy sources, commissioning, and training.

(iv) Use of durable, sustainable materials and waste reduction.

(v) Indoor environmental quality, such as day lighting in classrooms, lighting quality, indoor air quality (including with reference to reducing the incidence and effects of asthma and other respiratory illnesses), acoustics, and thermal comfort.

(vi) Operations and management, such as use of energy-efficient equipment, indoor environmental management plan, maintenance plan, and pest management.

(3) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—From the amount allocated to a State under paragraph (1), each eligible local educational agency in the State shall receive an amount in proportion to the amount received by such local educational agency under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year 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 such part for such fiscal year shall receive a grant of less than $5,000 in any fiscal year under this chapter.

(4) SPECIAL RULE.—Section 1122(c)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6332(c)(3)) shall not apply to paragraph (1) or (3).

(c) SPECIAL RULES.—

(1) DISTRIBUTIONS BY SECRETARY.—The Secretary shall make and distribute the reservations and allocations described in subsections (a) and (b) not later than 120 days after an appropriation of funds for this chapter is made.

(2) DISTRIBUTIONS BY STATES.—A State shall make and distribute the allocations described in subsection (b)(3) within 90 days of receiving such funds from the Secretary.

SEC. 313. ALLOWABLE USES OF FUNDS.

A local educational agency receiving a grant under this chapter shall use the grant for modernization, renovation, or repair of public school facilities (including early learning facilities, as appropriate), including—

(1) repair, replacement, or installation of roofs, including extensive, intensive or semi-intensive green roofs, electrical wiring, water supply and plumbing systems, sewage systems, storm water runoff systems, lighting systems, building envelope, windows, ceilings, flooring, or doors, including security doors;

(2) repair, replacement, or installation of heating, ventilation, or air conditioning systems, including insulation, and conducting indoor air quality assessments;

(3) compliance with fire, health, seismic, and safety codes, including professional installation of fire and life safety alarms, and modernizations, renovations, and repairs that ensure that schools are prepared for emergencies, such as improving building infrastructure to accommodate security measures and installing or upgrading technology to ensure that schools are able to respond to emergencies such as acts of terrorism, campus violence, and natural disasters;

(4) retrofitting necessary to increase the energy efficiency and water efficiency of public school facilities;

(5) modifications necessary to make facilities accessible in compliance 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);

(6) abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, lead-based hazards, including lead-based paint hazards, or a proven carcinogen;

(7) measures designed to reduce or eliminate human exposure to classroom noise and environmental noise pollution;

(8) modernization, renovation, or repair necessary to reduce the consumption of coal, electricity, land, natural gas, oil, or water;

(9) installation or upgrading of educational technology infrastructure;

(10) modernization, renovation, or repair of science and engineering laboratories, libraries, and career and technical education facilities, and improvements to building infrastructure to accommodate bicycle and pedestrian access;

(11) installation or upgrading of renewable energy generation and heating systems, including solar, photovoltaic, wind, biomass (including wood pellet and

woody biomass), waste-to-energy, and solar-thermal and geothermal systems, and for energy audits;

(12) measures designed to reduce or eliminate human exposure to airborne particles such as dust, sand, and pollens;

(13) creating greenhouses, gardens (including trees), and other facilities for environmental, scientific, or other educational purposes, or to produce energy savings;

(14) modernizing, renovating, or repairing physical education facilities for students, including upgrading or installing recreational structures made from post-consumer recovered materials in accordance with the comprehensive procurement guidelines prepared by the Administrator of the Environmental Protection Agency under section 6002(e) of the Solid Waste Disposal Act (42 U.S.C. 6962(e));

(15) 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

(16) required environmental remediation related to modernization, renovation, or repair described in paragraphs (1) through (15).

SEC. 314. PRIORITY PROJECTS.

In selecting a project under section 313, a local educational agency may give priority to projects involving the abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, lead-based hazards, including lead-based paint hazards, or a proven carcinogen.

CHAPTER 2—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

SEC. 321. PURPOSE.

Grants under this chapter shall be for the purpose of modernizing, renovating, repairing, or constructing public school facilities, including, where applicable, early learning facilities, based on the need for such improvements or construction, to ensure that public school facilities are safe, healthy, high-performing, and technologically up-to-date.

SEC. 322. ALLOCATION TO LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—Of the amount appropriated to carry out this chapter for each fiscal year pursuant to section 345(b), the Secretary shall allocate to local educational agencies in Louisiana, Mississippi, and Alabama an amount equal to the infrastructure damage inflicted on public school facilities in each such district by Hurricane Katrina or Hurricane Rita in 2005 relative to the total of such infrastructure damage so inflicted in all such districts, combined.

(b) DISTRIBUTION BY SECRETARY.—The Secretary shall determine and distribute the allocations described in subsection (a) not later than 120 days after an appropriation of funds for this chapter is made.

SEC. 323. ALLOWABLE USES OF FUNDS.

A local educational agency receiving a grant under this chapter shall use the grant for one or more of the activities described in section 313, except that an agency receiving a grant under this chapter also may use the grant for the construction of new public school facilities.

CHAPTER 3—GENERAL PROVISIONS

SEC. 331. IMPERMISSIBLE USES OF FUNDS.

No funds received under this subtitle may be used for—

(1) payment of maintenance costs, including routine repairs classified as current expenditures under State or local law;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) improvement or construction of facilities the purpose of which is not the education of children, including central office administration or operations or logistical support facilities; or

(4) purchasing carbon offsets.

SEC. 332. SUPPLEMENT, NOT SUPPLANT.

A local educational agency receiving a grant under this subtitle 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, repair, and construction of public school facilities.

SEC. 333. PROHIBITION REGARDING STATE AID.

A State shall not take into consideration payments under this subtitle 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.

SEC. 334. MAINTENANCE OF EFFORT.

(a) IN GENERAL.—A local educational agency may receive a grant under this subtitle for any fiscal year only if either the combined fiscal effort per student or the aggregate expenditures of the agency and the State involved with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(b) REDUCTION IN CASE OF FAILURE TO MEET MAINTENANCE OF EFFORT REQUIREMENT.—

(1) IN GENERAL.—The State educational agency shall reduce the amount of a local educational agency's grant in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency).

(2) SPECIAL RULE.—No such lesser amount shall be used for computing the effort required under subsection (a) for subsequent years.

(c) WAIVER.—The Secretary shall waive the requirements of this section if the Secretary determines that a waiver would be equitable due to—

(1) exceptional or uncontrollable circumstances, such as a natural disaster; or

(2) a precipitous decline in the financial resources of the local educational agency.

SEC. 335. SPECIAL RULE ON CONTRACTING.

Each local educational agency receiving a grant under this subtitle shall ensure that, if the agency carries out modernization, renovation, repair, or construction 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.

SEC. 336. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS.

(a) IN GENERAL.—None of the funds appropriated or otherwise made available by this subtitle may be used for a project for the modernization, renovation, repair, or construction of a public school facility unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) EXCEPTIONS.—Subsection (a) shall not apply in any case or category of cases in which the Secretary finds that—

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

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

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

(c) PUBLICATION OF JUSTIFICATION.—If the Secretary determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the Secretary shall publish in the Federal Register a detailed written justification of the determination.

(d) CONSTRUCTION.—This section shall be applied in a manner consistent with United States obligations under international agreements.

SEC. 337. LABOR STANDARDS.

The grant programs under this subtitle are applicable programs (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).

SEC. 338. CHARTER SCHOOLS.

(a) IN GENERAL.—A local educational agency receiving an allocation under this subtitle shall reserve an amount of that allocation for charter schools within its jurisdiction for modernization, renovation, repair, and construction of charter school facilities.

(b) DETERMINATION OF RESERVED AMOUNT.—The amount to be reserved by a local educational agency under subsection (a) shall be determined based on the combined percentage of students counted under section 1113(a)(5) of the Elementary and Sec-

ondary Education Act of 1965 (20 U.S.C. 6313(a)(5)) in the schools of the agency who—

(1) are enrolled in charter schools; and

(2) the local educational agency, in consultation with the authorized public chartering agency, expects to be enrolled, during the year with respect to which the reservation is made, in charter schools that are scheduled to commence operation during such year.

(c) SCHOOL SHARE.—Individual charter schools shall receive a share of the amount reserved under subsection (a) based on the need of each school for modernization, renovation, repair, or construction, as determined by the local educational agency in consultation with charter school administrators.

(d) EXCESS FUNDS.—After the consultation described in subsection (c), if the local educational agency determines that the amount of funds reserved under subsection (a) exceeds the modernization, renovation, repair, and construction needs of charter schools within the local educational agency's jurisdiction, the agency may use the excess funds for other public school facility modernization, renovation, repair, or construction consistent with this subtitle and is not required to carry over such funds to the following fiscal year for use for charter schools.

SEC. 339. GREEN SCHOOLS.

(a) IN GENERAL.—Of the funds appropriated for a given fiscal year and made available to a local educational agency to carry out this subtitle, the local educational agency shall use not less than the applicable percentage (described in subsection (b)) of such funds for public school modernization, renovation, repair, or construction that are certified, verified, or consistent with any applicable provisions of—

(1) the LEED Green Building Rating System;

(2) Energy Star;

(3) the CHPS Criteria;

(4) Green Globes; or

(5) an equivalent program adopted by the State, or another jurisdiction with authority over the local educational agency, that includes a verifiable method to demonstrate compliance with such program.

(b) APPLICABLE PERCENTAGES.—The applicable percentage described in subsection (a) is—

(1) for funds appropriated in fiscal year 2010, 50 percent; and

(2) for funds appropriated in fiscal year 2011, 75 percent.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a local educational agency from using sustainable, domestic hardwood lumber as ascertained through the forest inventory and analysis program of the Forest Service of the Department of Agriculture under the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1641 et seq.) for public school modernization, renovation, repairs, or construction.

(d) 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 local educational agencies concerning the best practices in school modernization, renovation, repair, and construction, including those related to student academic achievement, student and staff health, energy efficiency, and environmental protection.

SEC. 340. REPORTING.

(a) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—Local educational agencies receiving a grant under this subtitle shall annually compile a report describing the projects for which such funds were used, including—

(1) the number and identity of public schools in the agency, including the number of charter schools, and for each school, the total number of students, and the number of students counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5));

(2) the total amount of funds received by the local educational agency under this subtitle, and for each public school in the agency, including each charter school, the amount of such funds expended, and the types of modernization, renovation, repair, or construction projects for which such funds were used;

(3) the number of students impacted by such projects, including the number of students so impacted who are counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5));

(4) 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 chapter 1 or chapter 2 of this subtitle that were used for projects at such schools;

(5) the number of public schools in the agency that are eligible for schoolwide programs under section 1114 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6314) and the percentage of funds received by the agency under chapter 1 or chapter 2 of this subtitle that were used for projects at such schools;

(6) for each project—

(A) the cost;

(B) the standard described in section 339(a) with which the use of the funds complied or, if the use of funds did not comply with a standard described in section 339(a), the reason such funds were not able to be used in compliance with such standards and the agency's efforts to use such funds in an environmentally sound manner; and

(C) any demonstrable or expected benefits as a result of the project (such as energy savings, improved indoor environmental quality, student and staff health, including the reduction of the incidence and effects of asthma and other respiratory illnesses, and improved climate for teaching and learning); and

(7) the total number and amount of contracts awarded, and the number and amount of contracts awarded to local, small, minority, women, and veteran-owned businesses.

(b) AVAILABILITY OF REPORTS.—A local educational agency shall—

(1) submit the report described in subsection (a) to the State educational agency, which shall compile such information and report it annually to the Secretary; and

(2) make the report described in subsection (a) publicly available, including on the agency's website.

(c) REPORTS BY SECRETARY.—Not later than March 31 of each fiscal year, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate, and make available on the Department of Education's website, a report on grants made under this subtitle, including the information from the reports described in subsection (b)(1).

SEC. 341. SPECIAL RULES.

Notwithstanding any other provision of this subtitle, none of the funds authorized by this subtitle may be—

(1) used to employ workers in violation of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a); or

(2) distributed to a local educational agency that does not have a policy that requires a criminal background check on all employees of the agency.

SEC. 342. PROMOTION OF EMPLOYMENT EXPERIENCES.

The Secretary of Education, in consultation with the Secretary of Labor, shall work with recipients of funds under this subtitle to promote appropriate opportunities to gain employment experience working on modernization, renovation, repair, and construction projects funded under this subtitle for—

(1) participants in a YouthBuild program (as defined in section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a));

(2) individuals enrolled in the Job Corps program carried out under subtitle C of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2881 et seq.);

(3) individuals enrolled in a junior or community college (as defined in section 312(f) of the Higher Education Act of 1965 (20 U.S.C. 1088(f))) certificate or degree program relating to projects described in section 339(a); and

(4) participants in preapprenticeship programs that have direct linkages with apprenticeship programs that are registered with the Department of Labor or a State Apprenticeship Agency under the National Apprenticeship Act of 1937 (29 U.S.C. 50 et seq.).

SEC. 343. ADVISORY COUNCIL ON GREEN, HIGH-PERFORMING PUBLIC SCHOOL FACILITIES.

(a) ESTABLISHMENT OF ADVISORY COUNCIL.—The Secretary shall establish an advisory council to be known as the "Advisory Council on Green, High-Performing Public School Facilities" (in this section referred to as the "Advisory Council") which shall be composed of—

(1) appropriate officials from the Department of Education;

(2) representatives of the academic, architectural, business, education, engineering, environmental, labor, and scientific communities; and

(3) such other representatives as the Secretary deems appropriate.

(b) DUTIES OF ADVISORY COUNCIL.—

(1) ADVISORY DUTIES.—The Advisory Council shall advise the Secretary on the impact of green, high-performing schools, on—

(A) teaching and learning;

(B) health;

(C) energy costs;

(D) environmental impact; and

(E) other areas that the Secretary and the Advisory Council deem appropriate.

(2) OTHER DUTIES.—The Advisory Council shall assist the Secretary in—

(A) making recommendations on Federal policies to increase the number of green, high-performing schools;

(B) identifying Federal policies that are barriers to helping States and local educational agencies make green, high-performing schools;

(C) providing technical assistance and outreach to States and local educational agencies under section 339(d); and

(D) providing the Secretary such other assistance as the Secretary deems appropriate.

(c) CONSULTATION.—In carrying out its duties under subsection (b), the Advisory Council shall consult with the Chair of the Council on Environmental Quality and the heads of appropriate Federal agencies, including the Secretary of Commerce, the Secretary of Energy, the Secretary of Health and Human Services, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and the Administrator of the General Services Administration (through the Office of Federal High-Performance Green Buildings).

SEC. 344. EDUCATION REGARDING PROJECTS.

A local educational agency receiving funds under this subtitle may encourage schools at which projects are undertaken with such funds to educate students about the project, including, as appropriate, the functioning of the project and its environmental, energy, sustainability, and other benefits.

SEC. 345. AVAILABILITY OF FUNDS.

(a) CHAPTER 1.—There are authorized to be appropriated, and there are appropriated, to carry out chapter 1 of this subtitle (in addition to any other amounts appropriated to carry out such chapter and out of any money in the Treasury not otherwise appropriated), $2,020,000,000 for each of fiscal years 2010 and 2011.

(b) CHAPTER 2.—There are authorized to be appropriated, and there are appropriated, to carry out chapter 2 of this subtitle (in addition to any other amounts appropriated to carry out such chapter and out of any money in the Treasury not otherwise appropriated), $30,000,000 for each of fiscal years 2010 and 2011.

(c) PROHIBITION ON EARMARKS.—None of the funds appropriated under this section may be used for a Congressional earmark as defined in clause 9(d) of rule XXI of the Rules of the House of Representatives.

Subtitle B—Higher Education

SEC. 351. FEDERAL ASSISTANCE FOR COMMUNITY COLLEGE MODERNIZATION AND CONSTRUCTION.

(a) IN GENERAL.—

(1) GRANT PROGRAM.—From the amounts made available under subsection (i), the Secretary shall award grants to States for the purposes of constructing new community college facilities and modernizing, renovating, and repairing existing community college facilities. Grants awarded under this section shall be used by a State for one or more of the following:

(A) To reduce financing costs of loans for new construction, modernization, renovation, or repair projects at community colleges (such as paying interest or points on such loans).

(B) To provide matching funds for a community college capital campaign to attract private donations of funds for new construction, modernization, renovation, or repair projects at the community college.

(C) To capitalize a revolving loan fund to finance new construction, modernization, renovation, and repair projects at community colleges.

(2) ALLOCATION.—

(A) DETERMINATION OF AVAILABLE AMOUNT.—The Secretary shall determine the amount available for allocation to each State by determining the amount equal to the total number of students in the State who are enrolled in community colleges and who are pursuing a degree or certificate that is

not a bachelor's, master's, professional, or other advanced degree, relative to the total number of such students in all States, combined.

(B) ALLOCATION.—The Secretary shall allocate to each State selected by the Secretary to receive a grant under this section an amount equal to the amount determined to be available for allocation to such State under subparagraph (A), less any portion of that amount that is subject to a limitation under paragraph (3).

(C) REALLOCATION.—Amounts not allocated under this section to a State because—

(i) the State did not submit an application under subsection (b);

(ii) the State submitted an application that the Secretary determined did not meet the requirements of such subsection; or

(iii) the State is subject to a limitation under paragraph (3) that prevents the State from using a portion of the allocation,

shall be proportionately reallocated under this paragraph to the States that are not described in clause (i), (ii), or (iii) of this subparagraph.

(3) GRANT AMOUNT LIMITATIONS.—A grant awarded to a State under this section—

(A) to reduce financing costs of loans for new construction, modernization, renovation, or repair projects at community colleges under paragraph (1)(A) shall be for an amount that is not more than 25 percent of the total principal amount of the loans for which financing costs are being reduced; and

(B) to provide matching funds for a community college capital campaign under paragraph (1)(B) shall be for an amount that is not more than 25 percent of the total amount of the private donations of funds raised through such campaign over the duration of such campaign, as such duration is determined by the State in the application submitted under subsection (b).

(4) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to construct new community college facilities or modernize, renovate, or repair existing community college facilities.

(b) APPLICATION.—A State that desires to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require. Such application shall include a certification by the State that the funds provided under this section for the construction of new community college facilities and the modernization, renovation, and repair of existing community college facilities will improve instruction at such colleges and will improve the ability of such colleges to educate and train students to meet the workforce needs of employers in the State.

(c) USE OF FUNDS BY COMMUNITY COLLEGES.—

(1) PERMISSIBLE USES OF FUNDS.—Funds made available to community colleges through a loan described in subsection (a)(1)(A), a capital campaign described in subsection (a)(1)(B), or a loan from a revolving loan fund described in subsection (a)(1)(C) shall be used only for the construction, modernization, renovation, or repair of community college facilities that are primarily used for instruction, research, or student housing, which may include any of the following:

(A) Repair, replacement, or installation of roofs, including extensive, intensive, or semi-intensive green roofs, electrical wiring, water supply and plumbing systems, sewage systems, storm water runoff systems, lighting systems, building envelope, windows, ceilings, flooring, or doors, including security doors.

(B) Repair, replacement, or installation of heating, ventilation, or air conditioning systems, including insulation, and conducting indoor air quality assessments.

(C) Compliance with fire, health, seismic, and safety codes, including professional installation of fire and life safety alarms, and modernizations, renovations, and repairs that ensure that the community college's facilities are prepared for emergencies, such as improving building infrastructure to accommodate security measures and installing or upgrading technology to ensure that the community college is able to respond to emergencies such as acts of terrorism, campus violence, and natural disasters.

(D) Retrofitting necessary to increase the energy efficiency of the community college's facilities.

(E) Modifications necessary to make facilities accessible in compliance 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).

(F) Abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards, including lead-based paint hazards from the community college's facilities.

(G) Modernization, renovation, or repair necessary to reduce the consumption of coal, electricity, land, natural gas, oil, or water.

(H) Modernization, renovation, and repair relating to improving science and engineering laboratories, libraries, or instructional facilities.

(I) Installation or upgrading of educational technology infrastructure.

(J) Installation or upgrading of renewable energy generation and heating systems, including solar, photovoltaic, wind, biomass (including wood pellet and woody biomass), waste-to-energy, solar-thermal and geothermal systems, and energy audits.

(K) Other modernization, renovation, or repair projects that are primarily for instruction, research, or student housing.

(L) Required environmental remediation related to modernization, renovation, or repair described in subparagraphs (A) through (K).

(2) GREEN SCHOOL REQUIREMENT.—A community college receiving assistance through a loan described in subsection (a)(1)(A), a capital campaign described in subsection (a)(1)(B), or a loan from a revolving loan fund described in subsection (a)(1)(C) shall use not less than 50 percent of such assistance to carry out projects for construction, 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, as applicable;

(D) Green Globes; or

(E) an equivalent program adopted by the State or the State higher education agency that includes a verifiable method to demonstrate compliance with such program.

(3) PROHIBITED USES OF FUNDS.—

(A) IN GENERAL.—No funds awarded under this section may be used for—

(i) payment of maintenance costs;

(ii) construction, 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; or

(iii) construction, 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.

(B) FOUR-YEAR INSTITUTIONS.—No funds awarded to a four-year public institution of higher education under this section may be used for any facility, service, or program of the institution that is not available to students who are pursuing a degree or certificate that is not a bachelor's, master's, professional, or other advanced degree.

(d) 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 Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b). The Secretary shall, notwithstanding section 437 of such Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, establish such program rules as may be necessary to implement such grant program by notice in the Federal Register.

(e) CONCURRENT FUNDING.—Funds made available under this section shall not be used to assist any community college that receives funding for the construction, modernization, renovation, and repair of facilities under any other program under this Act, the Higher Education Act of 1965, or the American Recovery and Reinvestment Act of 2009.

(f) REPORTS BY THE STATES.—Each State that receives a grant under this section shall, not later than September 30, 2012, and annually thereafter for each fiscal year in which the State expends funds received under this section, submit to the Secretary a report that includes—

(1) a description the projects for which the grant funding was, or will be, used;

(2) a list of the community colleges that have received, or will receive, assistance from the grant through a loan described in subsection (a)(1)(A), a capital campaign described in subsection (a)(1)(B), or a loan from a revolving loan fund described in subsection (a)(1)(C); and

(3) a description of the amount and nature of the assistance provided to each such college.

(g) REPORT BY THE SECRETARY.—The Secretary shall submit to the authorizing committees (as defined in section 103 of the Higher Education Act of 1965) an annual report on the grants made under this section, including the information described in subsection (f).

(h) DEFINITIONS.—

(1) COMMUNITY COLLEGE.—As used in this section, the term "community college" means—

(A) a junior or community college, as such term is defined in section 312(f) of the Higher Education Act of 1965 (20 U.S.C. 1085(f)); or

(B) a four-year public institution of higher education (as defined in section 101 of the Higher Education Act of 1965) that awards a significant number of degrees and certificates that are not—

(i) bachelor's degrees (or an equivalent); or

(ii) master's, professional, or other advanced degrees.

(2) CHPS CRITERIA.—The term "CHPS Criteria" means the green building rating program developed by the Collaborative for High Performance Schools.

(3) 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.

(4) GREEN GLOBES.—The term "Green Globes" means the Green Building Initiative environmental design and rating system referred to as Green Globes.

(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).

(i) AVAILABILITY OF FUNDS.—There are authorized to be appropriated, and there are appropriated, to carry out this section (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated), $2,500,000,000 for fiscal year 2011, which shall remain available until expended.

TITLE IV—EARLY LEARNING CHALLENGE FUND

SEC. 401. PURPOSE.

The purpose of this title is to provide grants on a competitive basis to States for the following:

(1) To promote standards reform of State early learning programs serving children from birth through age 5 in order to support the healthy development and improve the school readiness outcomes of young children.

(2) To establish a high standard of quality in early learning programs that integrates appropriate early learning and development standards across early learning settings.

(3) To fund and implement quality initiatives that improve the skills and effectiveness of early learning providers, and improve the quality of existing early learning programs, in order to increase the number of disadvantaged children who participate in comprehensive and high-quality early learning programs.

(4) To ensure that a greater number of disadvantaged children enter kindergarten with the cognitive, social, emotional, and physical skills and abilities needed to be successful in school.

(5) To increase parents' abilities to access comprehensive and high quality early learning programs across settings for their children.

SEC. 402. PROGRAMS AUTHORIZED.

(a) QUALITY PATHWAYS GRANTS.—The Secretary shall use funds made available to carry out this title for a fiscal year to award grants on a competitive basis to States in accordance with section 403.

(b) DEVELOPMENT GRANTS.—The Secretary shall use funds made available to carry out this title for a fiscal year to award grants in accordance with section 404 on a competitive basis to States that demonstrate a commitment to establishing a system of early learning that will include the components described in section 403(c)(3) but are not—

(1) eligible to be awarded a grant under subsection (a); or

(2) are not awarded such a grant after application.

(c) RESERVATIONS OF FEDERAL FUNDS.—

(1) RESEARCH, EVALUATION, AND ADMINISTRATION.—From the amount made available to carry out this title for a fiscal year, the Secretary—

(A) shall reserve up to 2 percent jointly to administer this title with the Secretary of Health and Human Services; and

(B) shall reserve up to 3 percent to carry out activities under section 405.

(2) TRIBAL SCHOOL READINESS PLANNING DEMONSTRATION.—After making the reservations under paragraph (1), the Secretary shall reserve 0.25 percent for a competitive grant program for Indian tribes to develop and implement school readiness plans that—

(A) are coordinated with local educational agencies serving children who are members of the tribe; and

(B) include American Indian and Alaska Native Head Start and Early Head Start programs, tribal child care programs, Indian Health Service programs, and other tribal programs serving children.

(3) QUALITY PATHWAYS GRANTS.—

(A) IN GENERAL.—From the amount made available to carry out this title for a fiscal year and not reserved under paragraph (1) or (2), the Secretary shall reserve a percent (which shall be not greater than 65 percent for fiscal years 2010 through 2012 and not greater than 85 percent for fiscal year 2013 and each succeeding fiscal year) determined under subparagraph (B) to carry out subsection (a).

(B) DETERMINATION OF AMOUNT.—In determining the amount to reserve under subparagraph (A), the Secretary, consistent with section 403(e), shall take into account the following:

(i) The total number of States determined by the Secretary to qualify for receipt of a grant under this title for the year.

(ii) The number of children under age 5 from low-income families in each State with an approved application under section 403 for the year.

(C) REALLOCATION.—For fiscal year 2013 and subsequent fiscal years, the Secretary may reallocate funds allocated for development grants under subsection (b) for the purpose of providing additional grants under subsection (a), if the Secretary determines that there is an insufficient number of applications that meet the requirements for a grant under subsection (b).

(d) STATE APPLICATIONS.—In applying for a grant under this title, a State—

(1) shall designate a State-level entity for administration of the grant;

(2) shall coordinate proposed activities with the State Advisory Council on Early Childhood Education and Care (established pursuant to section 642B(b)(1)(A) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A))) and shall incorporate plans and recommendations from such Council in the application, where applicable; and

(3) otherwise shall submit the application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(e) PRIORITY IN AWARDING GRANTS.—In awarding grants under this title, the Secretary shall give priority to States—

(1) whose applications contain assurances that the State will use, in part, funds reserved under section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) for activities described in section 403(f);

(2) that will commit to dedicating a significant increase, in comparison to recent fiscal years, in State expenditures on early learning programs and services; and

(3) that demonstrate efforts to build public-private partnerships designed to accomplish the purposes of this title.

(f) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—With respect to each period for which a State is awarded a grant under this title, the aggregate expenditures by the State and its political subdivisions on early learning programs and services shall be not less than the level of the expenditures for such programs and services by the State and its political subdivisions for fiscal year 2006.

(2) STATE EXPENDITURES.—For purposes of paragraph (1), expenditures by the State on early learning programs and services shall include, at a minimum, the following:

(A) State matching and maintenance of effort funds for the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

(B) State matching funds for the State Advisory Council on Early Childhood Education and Care (established pursuant to section 642B(b)(1)(A) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A))).

(C) State expenditures on public pre-kindergarten, Head Start (including Early Head Start), and other State early learning programs and services dedicated to children (including State expenditures under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.)).

(g) PROHIBITIONS ON USE OF FUNDS.—Funds under this title may not be used for any of the following:

(1) Assessments that provide rewards or sanctions for individual children or teachers.

(2) A single assessment used as the primary or sole method for assessing program effectiveness.

(3) Evaluating children other than for—

(A) improving instruction or classroom environment;

(B) targeting professional development;

(C) determining the need for health, mental health, disability, or family support services;

(D) informing the quality improvement process at the State level;

(E) program evaluation for the purposes of program improvement and parent information; or

(F) research conducted as part of the national evaluation required by section 405(2).

(h) FEDERAL ADMINISTRATION.—

(1) IN GENERAL.—With respect to this title, the Secretary shall bear responsibility for obligating and disbursing funds and ensuring compliance with applicable laws and administrative requirements, subject to paragraph (2).

(2) INTERAGENCY AGREEMENT.—The Secretary of Education and the Secretary of Health and Human Services shall jointly administer this title on such terms as such secretaries shall set forth in an interagency agreement.

SEC. 403. QUALITY PATHWAYS GRANTS.

(a) GRANT PERIOD.—Grants under section 402(a)—

(1) may be awarded for a period not to exceed 5 years; and

(2) may be renewed, subject to approval by the Secretary, and based on the State's progress in—

(A) increasing the percentage of disadvantaged children in each age group (infants, toddlers, and preschoolers) who participate in high-quality early learning programs;

(B) increasing the number of high-quality early learning programs in low-income communities;

(C) implementing an early learning system that includes the components described in subsection (c)(3); and

(D) incorporating the findings and recommendations reported by the commission established under section 405(1) into the State system of early learning.

(b) MATCHING REQUIREMENT.—

(1) IN GENERAL.—Subject to subsection (g), to be eligible to receive a grant under section 402(a), a State shall contribute to the activities assisted under the grant non-Federal matching funds in an amount equal to not less than the applicable percent of the amount of the grant.

(2) APPLICABLE PERCENT.—For purposes of paragraph (1), the applicable percent means—

(A) 10 percent in the first fiscal year of the grant;

(B) 10 percent in the second fiscal year of the grant;

(C) 15 percent in the third fiscal year of the grant; and

(D) 20 percent in the fourth fiscal year of the grant and subsequent fiscal years.

(3) NON-FEDERAL FUNDS.—A State may use the following to satisfy the requirement of paragraph (1):

(A) Cash.

(B) In-kind contributions for the acquisition, construction, or improvement of early learning program facilities serving disadvantaged children.

(C) Technical assistance related to subparagraph (B).

(4) PRIVATE CONTRIBUTIONS.—Private contributions made as part of public-private partnerships to increase the number of low-income children in high-quality early learning programs in a State may be used by the State to satisfy the requirement of paragraph (1).

(5) FINANCIAL HARDSHIP WAIVER.—The Secretary may waive or reduce the non-Federal share of a State that has submitted an application for a grant under section 402(a) if the State demonstrates a need for such waiver or reduction due to extreme financial hardship, as defined by the Secretary by regulation.

(c) STATE APPLICATIONS.—In order to be considered for a grant under section 402(a), a State's application under section 402(d) shall include the following:

(1) A description of how the State will use the grant to implement quality initiatives to improve early learning programs serving disadvantaged children from birth to age 5 to lead to a greater percentage of such children participating in higher quality early learning programs.

(2) A description of the goals and benchmarks the State will establish to lead to a greater percentage of disadvantaged children participating in higher quality early learning programs to improve school readiness outcomes, including an established baseline of the number of disadvantaged children in high-quality early learning programs.

(3) A description of how the State will implement a governance structure and a system of early learning programs and services that includes the following components:

(A) Not later than 12 months after receiving notice of an award of the grant, complete State early learning and development standards that include social and emotional, cognitive, and physical development domains, and approaches to learning that are developmentally appropriate (including culturally and linguistically appropriate) for all children.

(B) A process to ensure that State early learning and development standards are integrated into the instructional and programmatic practices of early learning programs and services, including services provided to children under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.).

(C) A program rating system that builds on licensing requirements, as appropriate, and other State regulatory standards and that—

(i) is designed to improve quality and effectiveness across different types of early learning settings;

(ii) integrates evidence-based program quality standards that reflect standard levels of quality and has progressively higher levels of program quality;

(iii) integrates the State's early learning and development standards for the purpose of improving instructional and programmatic practices;

(iv) addresses quality and effective inclusion of children with disabilities or developmental delays across different types of early learning settings;

(v) addresses staff qualifications and professional development;

(vi) provides financial incentives and other supports to help programs meet and sustain higher levels of quality;

(vii) includes mechanisms for evaluating how programs are meeting those standards and progressively higher levels of quality; and

(viii) includes a mechanism for public awareness and understanding of the program rating system, including rating levels of individual programs.

(D) A system of program review and monitoring that is designed to rate providers using the system described in subparagraph (C) and to assess and improve programmatic practices, instructional practices, and classroom environment.

(E) A process to support early learning programs integrating instructional and programmatic practices that—

(i) include developmentally appropriate (including culturally and linguistically appropriate), ongoing, classroom-based instructional assessments for each domain of child development and learning (including social and emotional, cognitive, and physical development domains and approaches to learning) to guide and improve instructional practice, professional development of staff, and services; and

(ii) are aligned with the curricula used in the early learning program and with the State early learning and development standards or the Head Start Child Outcomes Framework (as described in the Head Start Act), as applicable.

(F) Minimum preservice early childhood development and education training requirements for providers in early learning programs.

(G) A comprehensive plan for supporting the professional preparation and the ongoing professional development of an effective, well-compensated early learning workforce, which plan includes training and education that is sustained, intensive, and classroom-focused and leads toward a credential or degree and is tied to improved compensation.

(H) An outreach strategy to promote understanding by parents and families of—

(i) how to support their child's early development and learning;

(ii) the State's program rating system, as described in subparagraph (C); and

(iii) the rating of the program in which their child is enrolled.

(I) A coordinated system to facilitate screening, referral, and provision of services related to health, mental health, disability, and family support for children participating in early learning programs.

(J) A process for evaluating school readiness in children that reflects all of the major domains of development, and that is used to guide practice and improve early learning programs.

(K) A coordinated data infrastructure that facilitates—

(i) uniform data collection about the quality of early learning programs, essential information about the children and families that participate in such programs, and the qualifications and compensation of the early learning workforce in such programs; and

(ii) alignment and interoperability between the data system for early learning programs for children and data systems for elementary and secondary education.

(4) A description of how the funds provided under the grant will be targeted to prioritize increasing the number and percentage of low-income children in high-quality early learning programs, including children—

(A) in each age group (infants, toddlers, and preschoolers);

(B) with developmental delays and disabilities;

(C) with limited English proficiency; and

(D) living in rural areas.

(5) An assurance that the grant will be used to improve the quality of early learning programs across a range of types of settings and providers of such programs.

(6) A description of the steps the State will take to make progress toward including all center-based child care programs, family child care programs, State-funded prekindergarten, Head Start programs, and other early learning programs, such as those funded under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) or receiving funds under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.) in the State program rating system described in paragraph (3)(C).

(7) An assurance that the State, not later than 18 months after receiving notice of an award of the grant, will conduct an analysis of the alignment of the State's early learning and development standards with—

(A) appropriate academic content standards for grades kindergarten through 3; and

(B) elements of program quality standards for early learning programs.

(8) An assurance that the grant will be used only to supplement, and not to supplant, Federal, State, and local funds otherwise available to support existing early learning programs and services.

(9) A description of any disparity by age group (infants, toddlers, and preschoolers) of available high-quality early learning programs in low-income communities and the steps the State will take to decrease such disparity, if applicable.

(10) A description of how the State early learning and development standards will address the needs of children with limited English proficiency, including by incorporating benchmarks related to English language development.

(11) A description of how the State's professional development plan will prepare the early learning workforce to support the early learning needs of children with limited English proficiency.

(12) A description of how the State will improve interagency collaboration and coordinate the purposes of this title with the activities funded under—

(A) section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e);

(B) section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(C) title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

(D) State-funded pre-kindergarten programs (where applicable);

(E) Head Start programs; and

(F) other early childhood programs and services.

(13) A description of how the State's early learning policies, including child care policies, facilitate access to high-quality early learning programs for children from low-income families.

(14) An assurance that the State will continue to participate in part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.) for the duration of the grant.

(d) CRITERIA USED IN AWARDING GRANTS.—In awarding grants under section 402(a), the Secretary shall evaluate the applications, and award grants under such section on a competitive basis, based on—

(1) the quality of the application submitted pursuant to section 402(d);

(2) the priority factors described in section 402(e);

(3) evidence of significant progress in establishing a system of early learning for children that includes the components described in subsection (c)(3); and

(4) the State's capacity to fully complete implementation of such a system.

(e) CRITERION USED IN DETERMINING AMOUNT OF AWARD.—In determining the amount to award a State under section 402(a), the Secretary shall take into account—

(1) the proportion of children under age 5 from low-income families in the State relative to such proportion in other States; and

(2) the State plan and capacity to implement the criteria described in paragraphs (3) and (4) of subsection (d).

(f) STATE USES OF FUNDS.—

(1) IN GENERAL.—A State receiving a grant under section 402(a) shall use the grant as follows:

(A) Not less than 65 percent of the grant amount shall be used for two or more of the following activities to improve the quality of early learning programs serving disadvantaged children:

(i) Initiatives that improve the credentials of early learning providers and are tied to increased compensation.

(ii) Initiatives that help early learning programs meet and sustain higher program quality standards, such as—

(I) improving the ratio of early learning provider to children in early learning settings;

(II) reducing group size;

(III) improving the qualifications of early learning providers; and

(IV) supporting effective education and training for early learning providers.

(iii) Implementing classroom observation assessments and data-driven decisions (which may include implementation of a research-based prevention and intervention framework designed to build social competence and prevent challenging behaviors) tied to activities that improve instructional practices, programmatic practices, or classroom environment and promote school readiness.

(iv) Providing financial incentives to early learning programs—

(I) for undertaking quality improvements that promote healthy development and school readiness; and

(II) maintaining quality improvements that promote healthy development and school readiness.

(v) Integrating State early learning and development standards into instructional and programmatic practices in early learning programs.

(vi) Providing high-quality, sustained, intensive, and classroom-focused professional development that improves the knowledge and skills of early learning providers, including professional development related to meeting the needs of diverse populations.

(vii) Building the capacity of early learning programs and communities to promote the understanding of parents and families of the State's early learning system and the rating of the program in which their child is enrolled and to encourage the active involvement and engagement of parents and families in the learning and development of their children.

(viii) Building the capacity of early learning programs and communities to facilitate screening, referral, and provision of services related

to health, mental health, disability, and family support for children participating in early learning programs.

(ix) Other innovative activities, proposed by the State and approved in advance by the Secretary that are—

(I) based on successful practices;

(II) designed to improve the quality of early learning programs and services; and

(III) advance the system components described in subsection (c)(3).

(B) The remainder of the grant amount may be used for one or more of the following:

(i) Implementation or enhancement of the State's data system described in subsection (c)(3)(K), including interoperability across agencies serving children, and unique child and program identifiers.

(ii) Enhancement of the State's oversight system for early learning programs, including the implementation of a program rating system.

(iii) The development and implementation of measures of school readiness of children that reflect all of the major domains of child development and that inform the quality improvement process.

(2) PRIORITY.—A State receiving a grant under section 402(a) shall use the grant so as to prioritize improving the quality of early learning programs serving children from low-income families.

(g) SPECIAL RULE.—

(1) IN GENERAL.—Beginning with the second fiscal year of a grant under section 402(a), a State with respect to which the Secretary certifies that the State has made sufficient progress in implementing the requirements of the grant may apply to the Secretary to reserve up to 25 percent of the amount of the grant to expand access for children from low-income families to the highest quality early learning programs that offer full-day services, except that the State must agree to contribute for such purpose non-Federal matching funds in an amount equal to not less than 20 percent of the amount reserved under this subsection. One-half of such non-Federal matching funds may be provided by a private entity.

(2) NON-FEDERAL FUNDS.—A State may use the following to satisfy the matching requirement of paragraph (1):

(A) Cash.

(B) In-kind contributions for the acquisition, construction, or improvement of early learning program facilities serving disadvantaged children.

(C) Technical assistance related to subparagraph (B).

(3) FINANCIAL HARDSHIP WAIVER.—The Secretary may waive or reduce the non-Federal share of a State under paragraph (1) if the State demonstrates a need for such waiver or reduction due to extreme financial hardship, as defined by the Secretary by regulation.

(h) IMPROVEMENT PLAN.—If the Secretary determines that a State receiving a grant under section 402(a) is encountering barriers to reaching goals described in subsection (c)(2), the State shall develop a plan for improvement in consultation with, and subject to approval by, the Secretary.

SEC. 404. DEVELOPMENT GRANTS.

(a) GRANT PERIOD.—Grants under section 402(b) may be awarded for a period not to exceed 3 years, and may not be renewed.

(b) STATE USES OF FUNDS.—

(1) IN GENERAL.—A State receiving a grant under section 402(b) shall use the grant to undertake activities to develop the early learning system components described in section 403(c)(3) and that will allow a State to become eligible and competitive for a grant described in section 402(a).

(2) PRIORITY.—A State receiving a grant under section 402(b) shall use the grant so as to prioritize improving the quality of early learning programs serving low-income children.

(c) MATCHING REQUIREMENT.—

(1) IN GENERAL.—To be eligible to receive a grant under section 402(b), a State shall contribute to the activities assisted under the grant non-Federal matching funds in an amount equal to not less than the applicable percent of the amount of the grant.

(2) APPLICABLE PERCENT.—For purposes of paragraph (1), the applicable percent means—

(A) 20 percent in the first fiscal year of the grant;

(B) 25 percent in the second fiscal year of the grant; and

(C) 30 percent in the third fiscal year of the grant.

(3) NON-FEDERAL FUNDS.—A State may use the following to satisfy the requirement of paragraph (1):

(A) Cash.

(B) In-kind contributions for the acquisition, construction, or improvement of early learning program facilities serving disadvantaged children.

(C) Technical assistance related to subparagraph (B).

(4) PRIVATE CONTRIBUTIONS.—Private contributions made as part of public-private partnerships to increase the number of low-income children in high-quality early learning programs in a State may be used by the State to satisfy the requirement of paragraph (1).

(5) FINANCIAL HARDSHIP WAIVER.—The Secretary may waive or reduce the non-Federal share of a State that has submitted an application for a grant under section 402(b) if the State demonstrates a need for such waiver or reduction due to extreme financial hardship, as defined by the Secretary by regulation.

SEC. 405. RESEARCH AND EVALUATION.

From funds reserved under section 402(c)(1), the Secretary of Education and the Secretary of Health and Human Services, acting jointly, shall carry out the following activities:

(1) Establishing a national commission whose duties shall include—

(A) reviewing the status of State and Federal early learning program quality standards and early learning and development standards;

(B) recommending benchmarks for program quality standards and early learning and development standards, including taking into consideration the school readiness needs of children with limited English proficiency; and

(C) reporting to the Secretaries of Education and Health and Human Services not later than 2 years after the date of the enactment of this Act on the commission's findings and recommendations.

(2) Conducting a national evaluation of the grants made under this title through the Institute of Education Science in collaboration with the appropriate research divisions within the Department of Health and Human Services.

(3) Supporting a research collaborative among the Institute of Education Sciences, the National Institute of Child Health and Human Development, the Office of Planning, Research, and Evaluation within the Administration for Children and Families in the Department of Health and Human Services, and, as appropriate, other Federal entities to support research on early learning that can inform improved State and other standards and licensing requirements and improved child outcomes, which collaborative shall—

(A) biennially prepare and publish for public comment a detailed research plan;

(B) support early learning research activities that could include determining—

(i) the characteristics of early learning programs that produce positive developmental outcomes for children;

(ii) the effects of program quality standards on child outcomes;

(iii) the relationships between specific interventions and types of child and family outcomes;

(iv) the effectiveness of early learning provider training in raising program quality and improving child outcomes;

(v) the effectiveness of professional development strategies in raising program quality and improving child outcomes; and

(vi) how to improve the school readiness outcomes of children with limited English proficiency, special needs, and homeless children, including evaluation of professional development programs for working with such children; and

(C) disseminate relevant research findings and best practices.

(4) Evaluating barriers to improving the quality of early learning programs serving low-income children, including evaluating barriers to successful interagency collaboration and coordination, by conducting a review of the statewide strategic reports developed by the State Advisory Councils on Early Care and Education and other relevant reports, reporting the findings of such review to Congress, and disseminating relevant research findings and best practices.

SEC. 406. REPORTING REQUIREMENTS.

(a) REPORTS TO CONGRESS.—For each year in which funding is provided under this title, the Secretary shall submit an annual report to the Committee on Education and Labor of the House of Representatives and the Committee on Health,

Education, Labor and Pensions of the Senate on the activities carried out under this title, including, at a minimum, information on the following:

(1) The activities undertaken by States to increase the availability of high-quality early learning programs.

(2) The number of children in high-quality early learning programs, and the change from the prior year, disaggregated by State, age, and race.

(3) The number of early learning providers enrolled, with assistance from funds under this title, in a program to obtain a credential or degree in early childhood education and the settings in which such providers work.

(4) A summary of State progress in implementing a system of early learning with the components described in section 403(c)(3).

(5) A summary of the research activities being conducted under section 405 and the findings of such research.

(b) REPORTS TO SECRETARY.—Each State that receives a grant under this title shall submit to the Secretary an annual report that includes, at a minimum, information on the activities carried out by the State under this title, including the following:

(1) The progress on fully implementing and integrating into a system of early learning each of the components described in section 403(c)(3).

(2) The State's progress in meeting its goals for increasing the number of disadvantaged children participating in high-quality early learning programs, disaggregated by child age.

(3) The number and percentage of disadvantaged children participating in early learning programs at each level of quality, disaggregated by race, family income, child age, disability, and limited English proficiency status.

(4) The number of providers participating in the State quality rating system, disaggregated by setting, rating, and the number of high-quality providers available in low-income communities.

(5) Information on how the funds provided under this title were used to increase the availability of high-quality early learning programs for each age group, disaggregated by race and limited English proficient status, to the maximum extent practicable.

(6) Information on professional development and training expenditures, including—

(A) the number of early learning providers engaged in such activities; and

(B) the number of early learning providers enrolled in programs to obtain a credential or degree in early childhood education, disaggregated by the type of credential and degree.

(7) The change in the number and percentage of early learning providers with appropriate credentials or degrees in early childhood education, including the change in compensation given to such providers, in comparison to the prior fiscal year, disaggregated by early learning setting and the type of credential or degree.

(8) In the case of a State receiving a grant under section 402(a), the percentage of children receiving assistance under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) who participate in the highest quality early learning programs, disaggregated by program setting and child age.

(9) Barriers to expanding access to high-quality early learning programs for disadvantaged children.

SEC. 407. CONSTRUCTION.

Nothing in this title—

(1) shall be construed to require a child to participate in an early learning program; or

(2) shall be used to deny entry to kindergarten for any individual if the individual is legally eligible, as defined by State or local law.

SEC. 408. DEFINITIONS.

For purposes of this title:

(1) CHILD.—The term "child" refers to an individual from birth through the day the individual enters kindergarten.

(2) DISADVANTAGED.—The term "disadvantaged", when used with respect to a child, means a child whose family income is described in section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(4)(B)).

(3) INDIAN TRIBE.—The term "Indian tribe" has the meaning given such term in section 637 of the Head Start Act (42 U.S.C. 9832).

(4) LIMITED ENGLISH PROFICIENT.—The term "limited English proficient" has the meaning given such term in section 637 of the Head Start Act (42 U.S.C. 9832).

(5) SECRETARY.—The term "Secretary" means the Secretary of Education.

(6) STATE.—The term "State" has the meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

SEC. 409. AVAILABILITY OF FUNDS.

There are authorized to be appropriated, and there are appropriated, to carry out this title (in addition to any other amounts appropriated to carry out this title and out of any money in the Treasury not otherwise appropriated) $1,000,000,000 for each of fiscal years 2010 through 2017.

TITLE V—AMERICAN GRADUATION INITIATIVE

SEC. 501. AUTHORIZATION AND APPROPRIATION.

(a) AUTHORIZATION AND APPROPRIATION.—There are authorized to be appropriated, and there are appropriated, to carry out this title (in addition to any other amounts appropriated to carry out this title and out of any money in the Treasury not otherwise appropriated), $730,000,000 for each of the fiscal years 2010 through 2013, and $680,000,000 for each of the fiscal years 2014 through 2019.

(b) ALLOCATIONS.—Of the amount appropriated under subsection (a)—

(1) $630,000,000 shall be made available for each of the fiscal years 2010 through 2013 to carry out section 503;

(2) $630,000,000 shall be made available for each of the fiscal years 2014 through 2019 to carry out section 504;

(3) $50,000,000 shall be made available for each of the fiscal years 2010 through 2019 to carry out subsection (a) of section 505; and

(4) $50,000,000 shall be made available for each of the fiscal years 2010 through 2013 to carry out subsections (b) and (c) of section 505.

(c) RESPONSIBILITY.—

(1) IN GENERAL.—With respect to sections 503 and 504, the Secretary of Education shall bear the responsibility for obligating and disbursing funds under such sections and ensuring compliance with applicable law and administrative requirements, subject to paragraph (2).

(2) INTERAGENCY AGREEMENT.—The Secretary of Education and the Secretary of Labor shall jointly administer sections 503 and 504 on such terms as such Secretaries shall set forth in an interagency agreement.

SEC. 502. DEFINITIONS; GRANT PRIORITY.

(a) DEFINITIONS.—In this title:

(1) AREA CAREER AND TECHNICAL EDUCATION SCHOOL.—The term "area career and technical education school" has the meaning given such term in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302).

(2) COMMUNITY COLLEGE.—The term "community college" means a public institution of higher education at which the highest degree that is predominantly awarded to students is an associate's degree.

(3) ELIGIBLE ENTITY.—The term "eligible entity" means—

(A) a community college or community college district;

(B) an area career and technical education school;

(C) a public four-year institution of higher education that—

(i) offers two-year degrees;

(ii) will use funds provided under this section for activities at the certificate and associate degree levels; and

(iii) is not reasonably close, as determined by the Secretary, to a community college;

(D) a public four-year institution of higher education that is in partnership with an eligible entity described in subparagraph (A), (B), or (C);

(E) a State that—

(i) is in compliance with section 137 of the Higher Education Act of 1965 (20 U.S.C. 1015f);

(ii) has an articulation agreement pursuant to section 486A of such Act (20 U.S.C. 1093a); and

(iii) is in partnership with an eligible entity described in subparagraph (A), (B), (C), or (D); or

(F) a consortium of at least 2 entities described in subparagraphs (A) through (E).

(4) INDUSTRY OR SECTOR PARTNERSHIP.—The term "industry or sector partnership" has the meaning given such term in section 782(f) of the Higher Education Act of 1965.

(5) 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 (20 U.S.C. 1001).

(6) PHILANTHROPIC ORGANIZATION.—The term "philanthropic organization" has the meaning given such term in section 781(i) of the Higher Education Act of 1965 (20 U.S.C. 1141(i)).

(7) SECRETARY.—The term "Secretary" means the Secretary of Education.

(8) 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).

(9) STATE PUBLIC EMPLOYMENT SERVICE.—The term "State public employment service" refers to a State public employment service established under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(10) STATE WORKFORCE INVESTMENT BOARD; LOCAL WORKFORCE INVESTMENT BOARD.—The terms "State workforce investment board" and "local workforce investment board" refer to a State workforce investment board established under section 111 of the Workforce Investment Act (29 U.S.C. 2821) and a local workforce investment board established under section 117 of such Act (29 U.S.C. 2832), respectively.

(11) SUPPORTIVE SERVICES.—The term "supportive services" has the meaning given such term in section 101(46) of the Workforce Investment Act of 1998 (29 U.S.C. 2801(46)).

(b) GRANT PRIORITY.—In addition to any grant priorities established under any other provision of this title, the Secretary, in awarding grants under this title, shall give priority to applications focused on serving low-income, nontraditional students who do not have a bachelor's degree, and who have one or more of the following characteristics:

(1) Are the first generation in their family to attend college.

(2) Have delayed enrollment in college.

(3) Have dependents.

(4) Are independent students.

(5) Work at least 25 hours per week.

(6) Are out-of-school youth without a high school diploma.

SEC. 503. GRANTS TO ELIGIBLE ENTITIES FOR COMMUNITY COLLEGE REFORM.

(a) PROGRAM AUTHORIZATION.—

(1) GRANTS AUTHORIZED.—

(A) IN GENERAL.—Subject to paragraph (2), from the amount appropriated to carry out this section, the Secretary, in coordination with the Secretary of Labor, shall award grants to eligible entities, on a competitive basis, to establish and support programs described in subparagraph (B) at eligible entities described in subparagraphs (A) through (D) of section 502(a)(3).

(B) PROGRAMS.—The programs to be established and supported with grants under subparagraph (A) (and carried out through activities described in subsection (f)) shall be programs—

(i) that are—

(I) innovative programs; or

(II) programs of demonstrated effectiveness, based on the evaluations of similar programs funded by the Department of Education or the Department of Labor, or other research of similar programs; and

(ii) that lead to the completion of a postsecondary degree, certificate, or industry-recognized credential leading to a skilled occupation in a high-demand industry.

(2) LIMITATION.—For each fiscal year for which funds are appropriated to carry out this section, the aggregate amount of the grants awarded to eligible entities that are States, or consortia that include a State, shall be not more than 50 percent of the total amount appropriated under section 501(b)(1) for such fiscal year.

(3) PROHIBITION.—The Secretary shall not award a grant to an eligible entity for the same activities that are being supported by other Federal funds.

(b) GRANT DURATION AND AMOUNT.—

(1) DURATION.—A grant under this section shall be awarded to an eligible entity for a 4-year period, except that if the Secretary determines that the eligible

entity has not made demonstrable progress in achieving the benchmarks developed pursuant to subsection (g) by the end of the third year of such grant period, no further grant funds shall be made available to the entity after the date of such determination.

(2) AMOUNT.—The minimum amount of a total grant award under this section over the 4-year period of the award shall be $750,000.

(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities that—

(1) enter into partnerships with—

(A) philanthropic or research organizations with expertise in meeting the goals of this section;

(B) businesses or industry or sector partnerships that—

(i) design and implement programs described in subsection (a)(1)(B);

(ii) pay a portion of the costs of such programs; and

(iii) agree to collaborate with one or more eligible entities to hire individuals who have completed a particular postsecondary degree, certificate, or credential program; or

(C) labor organizations that provide technical expertise for occupationally specific education necessary for an industry-recognized credential leading to a skilled occupation in a high-demand industry; or

(2) are institutions of higher education eligible for assistance under title III or V of the Higher Education Act of 1965, or consortia that include such an institution.

(d) FEDERAL AND NON-FEDERAL SHARE; SUPPLEMENT, NOT SUPPLANT.—

(1) FEDERAL SHARE.—The amount of the Federal share under this section for a fiscal year shall be not greater than ½ of the costs of the programs, services, and policies described in subsection (f) that are carried out under the grant.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The amount of the non-Federal share under this section for a fiscal year shall be not less than ½ of the costs of the programs, services, and policies described in subsection (f) that are carried out under the grant. The non-Federal share may be in cash or in kind, and may be provided from State resources, local resources, contributions from private organizations, or a combination thereof.

(B) FINANCIAL HARDSHIP WAIVER.—The Secretary may waive or reduce the non-Federal share of an eligible entity that has submitted an application under this section if the entity demonstrates a need for such waiver or reduction due to extreme financial hardship, as defined by the Secretary by regulation.

(3) SUPPLEMENT, NOT SUPPLANT.—The Federal and non-Federal shares required by this section shall be used to supplement, and not supplant, State and private resources that would otherwise be expended to establish and support programs described in subsection (a)(1)(B) at eligible entities.

(e) APPLICATION.—An eligible entity seeking to receive a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. Such application shall describe the programs under subsection (a)(1)(B) that the eligible entity will carry out using the grant funds, (including the programs, services, and policies under subsection (f)), including—

(1) the goals of such programs, services, and policies;

(2) how the eligible entity will allocate grant funds for such programs, services, and policies;

(3) how such programs, services, and policies, and the resources of the eligible entity, will enable the eligible entity to meet the benchmarks developed pursuant to subsection (g), and how the eligible entity will track and report the entity's progress in reaching such benchmarks;

(4) how the eligible entity will use such programs, services, and policies to establish quantifiable targets for improving graduation rates and employment-related outcomes;

(5) how the eligible entity will serve high-need populations through such programs, services, and policies;

(6) how the eligible entity will partner with industry or sector partnerships in the State, the State public employment service, and State or local workforce investment boards in carrying out such programs, services, and policies;

(7) an assurance that the eligible entity will share information with the Learning and Earning Research Center established under section 505(b), once such Center is established;

(8) an assurance that the eligible entity will participate in the evaluation of such programs, services, and policies under subsection (i); and

(9) the potential for such programs, services, and policies to be replicated at other institutions of higher education.

(f) USES OF FUNDS.—An eligible entity receiving a grant under this section shall use the grant funds to carry out the programs described in subsection (a)(1)(B), which shall include at least 2 of the following activities:

(1) Developing and implementing policies and programs to expand opportunities for students at eligible entities described in subparagraphs (A) through (D) of section 502(a)(3) to earn bachelor's degrees by—

(A) facilitating the transfer of academic credits between institutions of higher education, including the transfer of academic credits for courses in the same field of study; and

(B) expanding articulation agreements and guaranteed transfer agreements between such institutions, including through common course numbering and general core curriculum.

(2) Expanding, enhancing, or creating academic programs or training programs, which shall be carried out with industry or sector partnerships or in partnership with employers and may include other relevant partners, that provide relevant job-skill training (including apprenticeships and worksite learning and training opportunities) for skilled occupations in high-demand industries.

(3) Providing student support services, including—

(A) intensive career and academic advising;

(B) labor market information and job counseling; and

(C) transitional job support, supportive services, or assistance in connecting students with community resources.

(4) Creating workforce programs that provide a sequence of education and occupational training that leads to industry-recognized credentials, including programs that—

(A) blend basic skills and occupational training that lead to industry-recognized credentials;

(B) integrate developmental education curricula and instruction with for-credit coursework toward degree or certificate pathways; or

(C) advance individuals on a career path toward high-wage occupations in high-demand industries.

(5) Building or enhancing linkages, including the development of dual enrollment programs and early college high schools, between—

(A) secondary education or adult education programs (including programs established under the Carl D. Perkins Career and Technical Education Act of 2006 and title II of the Workforce Investment Act of 1998 (29 U.S.C. 9201 et seq.)); and

(B) eligible entities described in subparagraphs (A) through (D) of section 502(a)(3).

(6) Implementing other innovative programs, services, and policies designed to—

(A) increase postsecondary degree, certificate, and industry-recognized credential completion rates, particularly with respect to groups underrepresented in higher education, at eligible entities described in subparagraphs (A) through (D) of section 502(a)(3); and

(B) increase the provision of training for students to enter skilled occupations in high-demand industries.

(7) Improving the timeliness of the process for creating degree, certificate, and industry-recognized credential programs at eligible entities described in subparagraphs (A) through (D) of section 502(a)(3) that—

(A) reflect and respond to regional labor market developments and trends;

(B) effectively address the workforce needs of employers in the State; and

(C) are designed in consultation with such employers.

(g) BENCHMARKS.—

(1) IN GENERAL.—Each eligible entity receiving a grant under this section shall develop quantifiable benchmarks on the following indicators (where applicable), to be approved by the Secretary:

(A) Closing gaps in enrollment and completion rates for—

(i) groups underrepresented in higher education; and

(ii) groups of students enrolled at the eligible entity (or at an institution of higher education under the jurisdiction of the eligible entity, in the case of an entity that is not an institution) who have the lowest enrollment and completion rates.

(B) Addressing local and regional workforce needs.

(C) Establishing articulation agreements between two-year and four-year public institutions of higher education within a State.

(D) Improving comprehensive employment and educational outcomes for postsecondary education and training programs, including—

(i) student persistence from one academic year to the following academic year;

(ii) the number of credits students earn toward a certificate or an associate's degree;

(iii) the number of students in developmental education courses who subsequently enroll in credit bearing coursework;

(iv) transfer of general education credits between institutions of higher education, as applicable;

(v) completion of industry-recognized credentials or associate's degrees to work in skilled occupations in high-demand industries;

(vi) transfers to four-year institutions of higher education; and

(vii) job placement related to skills training or associate's degree completion.

(2) REPORT.—The eligible entity receiving such a grant shall annually measure and report to the Secretary the progress of the entity in achieving the benchmarks developed pursuant to paragraph (1).

(h) PROVISION OF TRANSFER OF CREDIT INFORMATION IN COMMUNITY COLLEGE COURSE SCHEDULES.—To the maximum extent practicable, each community college receiving a grant under this section shall include in each electronic and printed publication of the college's course schedule, in a manner of the college's choosing, for each course listed in the college's course schedule, whether such course is transferable for credit toward the completion of a 4-year baccalaureate degree at a public institution of higher education in the State in which the college is located.

(i) EVALUATION.—The Secretary shall allocate not more than two percent of the funds appropriated under section 501(b)(1) to the Institute of Education Sciences to conduct evaluations, ending not later than January 30, 2014, that—

(1) assess the effectiveness of the grant programs carried out by each eligible entity receiving such a grant in—

(A) improving postsecondary education completion rates (disaggregated by age, race, ethnicity, sex, income, and disability);

(B) improving employment-related outcomes for students served by such programs;

(C) serving high-need populations; and

(D) building or enhancing working partnerships with the State public employment service or State or local workforce investment boards; and

(2) include any other information or assessments the Secretary may require.

(j) REPORT.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives an annual report on grants awarded under this section, including—

(1) the amount awarded to each eligible entity under this section;

(2) a description of the activities conducted by each eligible entity receiving a grant under this section; and

(3) a summary of the results of the evaluations submitted to the Secretary under subsection (i) and the progress each eligible entity made toward achieving the benchmarks developed under subsection (g).

SEC. 504. GRANTS TO ELIGIBLE STATES FOR COMMUNITY COLLEGE PROGRAMS.

(a) PROGRAM AUTHORIZATION.—From the amount appropriated to carry out this section, the Secretary, in coordination with the Secretary of Labor, shall award grants to eligible States, on a competitive basis, to implement the systematic reform of community colleges located in the State by carrying out programs, services, and policies that demonstrated effectiveness under the evaluation described in section 503(i).

(b) ELIGIBLE STATE.—In this section, the term "eligible State" means a State that demonstrates to the Secretary in the application submitted pursuant to subsection (e) that the State—

(1) has a plan under section 782 of the Higher Education Act of 1965 to increase the State's rate of persistence in and completion of postsecondary education that takes into consideration and involves community colleges located in such State;

(2) has a statewide longitudinal data system that includes data with respect to community colleges;

(3) has an articulation agreement pursuant to section 486A of the Higher Education Act of 1965 (20 U.S.C. 1093a);

(4) is in compliance with section 137 of such Act (20 U.S.C. 1015f); and

(5) meets any other requirements the Secretary may require.

(c) GRANT DURATION; RENEWAL.—A grant awarded under this section shall be awarded to an eligible State for a 6-year period, except that if the Secretary determines that the eligible State has not made demonstrable progress in achieving the benchmarks developed pursuant to subsection (g) by the end of the third year of the grant period, no further grant funds shall be made available to the entity after the date of such determination.

(d) FEDERAL AND NON-FEDERAL SHARE; SUPPLEMENT, NOT SUPPLANT.—

(1) FEDERAL SHARE.—The amount of the Federal share under this section for a fiscal year shall be not greater than ½ of the costs of the reform described in subsection (f) that is carried out with the grant.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The amount of the Non-Federal share under this section for a fiscal year shall be not less than ½ of the costs of the reform described in subsection (f) that is carried out with the grant. The non-Federal share may be in cash or in kind, and may be provided from State resources, local resources, contributions from private organizations, or a combination thereof.

(B) FINANCIAL HARDSHIP WAIVER.—The Secretary may waive or reduce the non-Federal share of an eligible State that has submitted an application under this section if the State demonstrates a need for such waiver or reduction due to extreme financial hardship, as defined by the Secretary by regulation.

(3) SUPPLEMENT, NOT SUPPLANT.—The Federal and non-Federal share required by this section shall be used to supplement, and not supplant, State and private resources that would otherwise be expended to carry out the systematic reform of community colleges in a State.

(e) APPLICATION.—An eligible State desiring to receive a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. Such application shall describe the programs, service, and policies to be used by the State to achieve the systematic reform described in subsection (f), including—

(1) the goals of such programs, services, and policies;

(2) how the State will allocate grant funds to carry out such programs, services, and policies, including identifying any State or private entity that will administer such programs, services, and policies;

(3) how such programs, services, and policies will enable the State to—

(A) meet the benchmarks developed pursuant to subsection (g), and how the State will track and report the State's progress in reaching such benchmarks; and

(B) benefit students attending all community colleges within the State;

(4) how the State will use such programs, services, and policies to establish quantifiable targets for improving graduation rates and employment-related outcomes;

(5) how the State will serve high-need populations through such programs, services, and policies;

(6) how the State will partner with the State public employment service and State or local workforce investment boards in carrying out such programs, services, and policies;

(7) how the State will evaluate such programs, services, and policies, which may include participation in national evaluations; and

(8) how the State will involve community colleges and community college faculty in the planning, implementation, and evaluation of such programs, services, and policies.

(f) USES OF FUNDS.—An eligible State receiving a grant under this section shall use the grant funds to implement the systematic reform of community colleges located in the State by carrying out programs, services, and policies that the Secretary has determined to have demonstrated effectiveness based on the results of the evaluation described in section 503(i). States shall allocate not less than 90 percent of such grant funds to community colleges within the State.

(g) BENCHMARKS.—

(1) IN GENERAL.—Each eligible State receiving a grant under this section shall, in consultation with the Secretary, develop quantifiable benchmarks on the indicators identified in section 503(f)(1).

(2) PROGRESS.—An eligible State receiving such a grant shall annually measure and report to the Secretary progress in achieving the benchmarks developed pursuant to paragraph (1).

(h) REPORT.—

(1) REPORTS TO THE SECRETARY.—Each eligible State receiving a grant under this section shall annually submit to the Secretary and the Secretary of Labor a report on such grant, including—

(A) a description of the systematic reform carried out by the State using such grant; and

(B) the outcome of such reform, including the State's progress in achieving the benchmarks developed under subsection (g).

(2) REPORTS TO CONGRESS.—Not later than 6 months after the end of the grant period, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a summary of the reports submitted under paragraph (1) with respect to such grant period.

(i) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) community colleges play an important role in preparing and training students seeking to enter the workforce;

(2) it is vital that all States have access to the resources and assistance needed to compete for grants authorized under this section; and

(3) in executing the grant program authorized under this section, the Secretary will make available any and all assistance, guidance, and support to States seeking to compete for grants authorized under this section and will work to ensure that such grants are distributed in a fair and equitable manner.

SEC. 505. NATIONAL ACTIVITIES.

(a) OPEN ONLINE EDUCATION.—From the amount appropriated to carry out this section, the Secretary is authorized to make competitive grants to, or enter into contracts with, institutions of higher education, philanthropic organizations, and other appropriate entities to develop, evaluate, and disseminate freely-available high-quality online training, high school courses, and postsecondary education courses. Entities receiving funds under this subsection shall ensure that electronic and information technology activities meet the access standards established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(b) LEARNING AND EARNING RESEARCH CENTER.—

(1) IN GENERAL.—From the amount appropriated to carry out this section, the Director of the Institute of Education Sciences is authorized to award a grant to, or enter into a contract with, an organization with demonstrated expertise in the research and evaluation of community colleges to establish and operate the Learning and Earning Research Center (in this section referred to as the "Center").

(2) GRANT TERM.—The grant or contract awarded under this section shall be awarded for a period of not more than 4 years.

(3) BOARD.—The Center shall have an independent advisory board of 9 individuals who—

(A) are appointed by the Secretary, based on recommendations from the organization receiving the grant or contract under this section; and

(B) who have demonstrated expertise in—

(i) data collection;

(ii) data analysis; and

(iii) econometrics, postsecondary education, and workforce development research.

(4) CENTER ACTIVITIES.—The Center shall—

(A) develop—

(i) peer-reviewed metrics to help consumers make sound education and training choices, and to help students, workers, schools, businesses, researchers, and policymakers assess the effectiveness of community colleges, and courses of study at such colleges, in meeting education and employment objectives and serving groups that are underrepresented in postsecondary education;

(ii) common metrics and data elements to measure the education and employment outcomes of students attending community colleges;

(B) coordinate with the Institute of Education Sciences and States receiving a grant under subsection (c) to develop—

(i) standardized data elements, definitions, and data-sharing protocols to make it possible for data systems related to postsecondary edu-

cation to be linked and interoperable, and for best practices to be shared among States;

(ii) standards and processes for facilitating sharing of data in a manner that safeguards student privacy; and

(C) develop and make widely available materials analyzing best practices and research on successful postsecondary education and training efforts;

(D) make the data and metrics developed pursuant to subparagraph (A) available to the public in a transparent, user-friendly format that is accessible to individuals with disabilities; and

(E) consult with representatives from States with respect to the activities of the Center.

(c) STATE SYSTEMS.—

(1) IN GENERAL.—From the amount appropriated to carry out this section, the Secretary is authorized to award grants to States or consortia of States to establish cooperative agreements to develop, implement, and expand interoperable statewide longitudinal data systems that—

(A) collect, maintain, disaggregate (by institution, income, race, ethnicity, sex, disability, and age), and analyze student data from community colleges, including data on the programs of study and education and employment outcomes for particular students, tracked over time; and

(B) can be linked to other data systems, as applicable, including elementary and secondary education and workforce data systems.

(2) SUPPLEMENT, NOT SUPPLANT.—Funds appropriated to carry out this subsection shall be used to supplement, and not supplant, other Federal and State resources that would otherwise be expended to carry out statewide longitudinal data systems, including funding appropriated for State Longitudinal Data Systems in the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115).

(3) PRIVACY AND ACCESS TO DATA.—

(A) IN GENERAL.—Each State or consortia that receives a grant under this subsection or any other provision of this Act shall implement measures to—

(i) ensure that the statewide longitudinal data system under this subsection and any other data system the State or consortia is operating for the purposes of this Act meet the requirements of section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly known as the "Family Educational Rights and Privacy Act of 1974");

(ii) limit the use of information in any such data system by governmental agencies in the State, including State agencies, State educational authorities, local educational agencies, community colleges, and institutions of higher education, to education and workforce related activities under this Act or education and workforce related activities otherwise permitted by Federal or State law;

(iii) prohibit the disclosure of personally identifiable information except as permitted under section 444 of the General Education Provisions Act and any additional limitations set forth in State law;

(iv) keep an accurate accounting of the date, nature, and purpose of each disclosure of personally identifiable information in any such data system, a description of the information disclosed, and the name and address of the person, agency, institution, or entity to whom the disclosure is made, which accounting shall be made available on request to parents of any student whose information has been disclosed;

(v) notwithstanding section 444 of the General Education Provisions Act, require any non-governmental party obtaining personally identifiable information to sign a data use agreement prior to disclosure that—

(I) prohibits the party from further disclosing the information;

(II) prohibits the party from using the information for any purpose other than the purpose specified in the agreement; and

(III) requires the party to destroy the information when the purpose for which the disclosure was made is accomplished;

(vi) maintain adequate security measures to ensure the confidentiality and integrity of any such data system, such as protecting a student record from identification by a unique identifier;

(vii) where rights are provided to parents under this clause, provide those rights to the student instead of the parent if the student has reached the age of 18 or is enrolled in a postsecondary educational institution; and

(viii) ensure adequate enforcement of the requirements of this paragraph.

(B) USE OF UNIQUE IDENTIFIERS.—It shall be unlawful for any Federal, State, or local governmental agency to—

(i) use the unique identifiers employed in such data systems for any purpose other than as authorized by Federal or State law; or

(ii) deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose the individual's unique identifier.

(d) REPORT.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives an annual report on the amounts awarded to entities receiving grants or contracts under this section, and the activities carried out by such entities under such grants and contracts.

I. PURPOSE

The purpose of H.R. 3221, the Student Aid and Fiscal Responsibility Act of 2009 is to reform the federal student loan program, provide for modernization, renovation and repair of public school facilities, enhance early learning, and strengthen community colleges.

II. COMMITTEE ACTION

110TH CONGRESS

Committee on Education and Labor Hearing: "Investing in Early Education: Paths To Improving Children's Success"

On January 23, 2008, the Committee on Education and Labor held a hearing in Washington, D.C., entitled "Investing in Early Education: Paths to Improving Children's Success." The hearing examined the need for expanding access to affordable high-quality early education opportunities through federal investments as part of improving student success in elementary school and beyond. Panelists testified to the science of early brain development and the experiences in the first five years of life that foster healthy development and academic success, the research on high quality prekindergarten, the state and local challenges to building a high quality early learning system, and the business community's interest in investing in early childhood education. The following witnesses testified before the Committee: Deborah Phillips, Ph.D., Professor of Psychology Georgetown University, Washington, D.C.; Kathleen Priestley, Early Education Coordinator for the City of Orange School District, Orange, NJ; Elisabeth Chun, Executive Director, Good Beginnings Alliance, Honolulu, Hawaii; Charles Kolb, President, Committee on Economic Development, Washington, D.C., Eric Karolak, Ph.D., Executive Director, Early Care and Education Consortium, Washington, D.C.; Ron Haskins, Ph.D., Senior Fellow, Economic Studies, Brookings Institution, Washington, D.C.

Full Committee hearing on "Modern Public School Facilities: Investing in the Future"

On Wednesday, February 13, 2008, the Committee on Education and Labor held a hearing in Washington, D.C., on "Modern Public School Facilities: Investing in the Future." The purpose of the hearing was to highlight the poor quality of public school buildings frequently found throughout the United States, particularly in low-income areas, and the importance of federal investment in public school buildings.

Introduction of the "21st Century High-Performing Public School Facilities Act"

On Thursday, July 12, 2007, Representatives Ben Chandler (D–KY), George Miller (D–CA), and Dale Kildee (D–MI) introduced H.R. 3021, the 21st Century High-Performing Public School Facilities Act, a bill to direct the Secretary of Education to make grants and low-interest loans to local educational agencies for the construction, modernization, or repair of public kindergarten, elementary, and secondary educational facilities, and for other purposes. The House of Representatives passed H.R. 3021 by a vote of 250–164 with all Democrats present and 27 Republicans voting in favor. The bill was referred to the Senate Committee on Health, Education, Labor and Pensions.

Related legislative action

On September 26, 2008, the House passed H.R. 7110, the Job Creation and Unemployment Relief Act of 2008, introduced by Representative David Obey (D-WI), Chairman of the Appropriations Committee. H.R. 7110 appropriated $3 billion for public school modernization, renovation and repair, essentially as described in Title I of H.R. 3021.

On January 28, 2009, at the beginning of the 111th Congress, the House passed H.R. 1, the American Recovery and Reinvestment Act, also introduced by Chairman Obey. H.R. 1 appropriated $14 billion for public school modernization, renovation and repair, again, essentially as described in Title I of H.R. 3021. On February 12, 2009, the House passed the Conference Report on H.R. 1, which did not include dedicated funds for public school modernization, renovation and repair. However, Title XIV of the Conference Report, the State Fiscal Stabilization Fund, included $48.6 billion for states and local educational agencies, of which public school modernization, renovation and repair (including modernization, renovation and repair that complies with a recognized green building standards) is an authorized use.

111TH CONGRESS

Committee on Education and Labor Hearing: "The Importance of Early Childhood Development."

On March 17, 2009, the Committee on Education and Labor held a hearing in Washington, D.C., entitled "The Importance of Early Childhood Development." The hearing examined the well-being of young children, the needs of children and families, and state efforts to undertake comprehensive birth to age five approaches to support early learning and development. Panelists testified regarding the high-cost of quality early education and that often the children who would benefit from these high-quality early childhood opportunities are the least likely to access such services. Panelists underscored state and local resources challenges to building high quality early learning systems, emphasizing the proven success seen in some localities when such infrastructures have been established and the important role private organizations and community interests play in the continued struggle to provide high-quality early childhood opportunities. The following witnesses testified before the Com-

mittee: Harriet Meyer, President, Ounce of Prevention Fund, Chicago, IL; Jessie Rasmussen, Vice President, Buffett Early Childhood Fund, Omaha, NE; James Redmon, Executive Director, Kansas Children's Cabinet and Trust Fund, Topeka, KS; Holly Robinson, Ph.D, Commissioner, Georgia Department of Early Care and Learning, Atlanta, GA; Don Soifer, Executive Vice President, Lexington Institute, Arlington, VA; Helene Stebbins, Project Coordinator, National Center on Children in Poverty, New York, NY.

Subcommittee on Early Childhood, Elementary, and Secondary Education hearing: "Improving Early Childhood Development Policies and Practices"

On March 19, 2009, the Subcommittee on Early Childhood, Elementary and Secondary Education held a hearing in Washington, D.C. entitled, "Improving Early Childhood Development Policies and Practices." The hearing discussed barriers families face in accessing quality early education and development programs, and state and other efforts to address such issues. The panelists discussed state and local efforts to improve birth to age five learning opportunities, such as state efforts to maintain quality control standards, efforts to reach the most at risk families and children, as well as programs to provide scholarship supports and wage supplements to improve the workforce of educators. Witnesses underscored the barriers states, local communities, and disadvantaged children and families face in developing and accessing such programs. The following witnesses testified before the Subcommittee: Harriet Dichter, Deputy Secretary, Office of Child Development and Early Learning, Harrisburg, PA; Sue Russell, President, Child Care Services Association, Chapel Hill, NC; Gina Adams, Senior Fellow, Urban Institute, Center on Labor, Human Services and Population, Washington, D.C.; Lillian Lowery, Ph.D., Secretary, Delaware Department of Education, Dover, DE.

The "21st Century Green High-Performing Public School Facilities Act"

On Thursday, April 30, 2009, Representatives Ben Chandler (D–KY), George Miller (D–CA), Dale Kildee (D–MI), and Dave Loebsack (D–IA) introduced H.R. 2187, the 21st Century Green High-Performing Public School Facilities Act. This bill, which is very similar to H.R. 3021, directs the Secretary of Education to make grants to local educational agencies for the modernization, renovation, or repair of public early learning, kindergarten, elementary, and secondary educational facilities, and for other purposes.[1] On Wednesday, May 6, 2009, the Committee considered H.R. 2187 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 31–14. The House of Representatives passed H.R. 2187 by a vote of 275–155 with 24 Republicans voting in favor. The bill was referred to the Senate Committee on Health, Education, Labor and Pensions.

[1] Other original cosponsors of the bill include: Representatives Robert E. Andrews, Joe Courtney, Raúl M. Grijalva, Phil Hare, Mazie K. Hirono, Rush Holt, Pedro R. Pierluisi, Jared Polis, Gregorio Sablan, John F. Tierney, Paul D. Tonko, Lynn C. Woolsey, and David Wu.

Full committee hearing on "The Obama Administration's Education Agenda"

On Wednesday, May 20, 2009, the Committee on Education and Labor held a hearing in Washington, D.C. on the Obama Administration's Education Agenda. Education Secretary, Arne Duncan, testified before the House Education and Labor Committee about President Obama's agenda for transforming American education. The purpose of the hearing was to highlight the President's budget proposal for early education, K–12 education, and higher education.

Full committee hearing on "Increasing Student Aid through Loan Reform"

On Thursday, May 21, 2009, the Committee on Education and Labor held a hearing entitled "Increasing Student Aid through Loan Reform." The purpose of the hearing was to discuss proposals to reform the student aid system to ensure that Federal student aid is efficient, reliable, and meaningful for our nation's students and families and to identify ways to use reform efforts to increase benefits to students, especially through increased grant aid. The following witnesses testified before the Committee: Robert Shireman, Deputy Under Secretary, U.S. Department of Education; Anna M. Griswold, Assistant Vice President for Undergraduate Education and Executive Director for Student Aid, The Pennsylvania State University; John (Jack) F. Remondi, Vice Chairman and Chief Financial Officer, Sallie Mae; Dr. Charles Reed, Chancellor, The California State University; and Rene Drouin, President and CEO, New Hampshire Higher Education Assistance Foundation (NHHEAF); Dr. Richard Vetter, Professor of Economics, Ohio University; and Christopher Chapman, President and Chief Executive Officer, Access Group.

Introduction of the Student Aid and Fiscal Responsibility Act

On Wednesday, July 15, 2009, Chairman George Miller, along with Representatives Robert E. Andrews (D–NJ), Bishop (D–NY), Courtney (D–CT), Davis (D–CA), Eshoo (D–CA), Fudge (D–OH), Grijalva (D–AZ), Hare (D–IL), Hinojosa (D–TX), Hirono (D–HI), Holt (D–NJ), Kildee (D–MI), Kucinich (D–OH), Loebsack (D–IA), Payne (D–NJ), Sablan (D–MP), Scott (D–VA), Sestak (D–PA), Shea-Porter (D–NH), Tierney (D–MA), Woolsey (D–CA), Wu (D–OR) introduced H.R. 3221, the Student Aid and Fiscal Responsibility Act of 2009, a bill to amend the Higher Education Act of 1965, and for other purposes.

Full committee markup of H.R. 3221

On Tuesday, July 21, 2009, the Committee on Education and Labor considered H.R. 3221 in legislative session, and reported the bill favorably, as amended, to the House of Representatives, by a vote of 30–17. Chairman Miller offered an amendment in the nature of a substitute.

The amendment in the nature of a substitute contained minor technical changes and the following changes to H.R. 3221:

- Strikes language in section 215, from the introduced bill that would have eliminated graduate student eligibility for the Subsidized Stafford loan program;

- Strikes section 123, which amended the Social Security Allowances in the federal needs analysis formula;
- Reduces funding for K–12 modernization, renovation, and repair from $5 billion over two years to $4.1 billion over two years (for chapter 1 of subtitle III there are authorized $2,020,000,000 for each of fiscal years 2010 and 2011 and for chapter 2 of subtitle III $30,000,000 for each of fiscal years 2010 and 2011);
- Changes the variable rate for Subsidized Stafford loans from the introduced bill level of the 91-day T-bill +2.3 percent to the 91-day T-bill plus 2.5 percent;
- Encourages the Secretary of Education, in consultation with the Secretary of Labor to work with recipients of K–12 modernization, renovation, and repair funds to promote appropriate pre-apprenticeship opportunities;
- In Title IV (Early Learning Challenge Fund)
  - Changes funding from $1 billion per year for 10 years to $1 billion per year for 8 years.
  - Changes the 2% set-aside for Federal administration to a cap.
  - Changes the 3% set-aside for Federal research activities to a cap.
  - Changes Maintenance of Effort requirements from FY 2009 to FY 2006.
  - Changes state match related to expanding access from 50% to 20%.
  - Includes provisions to ensure state plans adequately address the needs of children with limited English proficiency.
  - Allows in-kind contributions for facilities development, including technical assistance, to be counted toward state match.
- In Title V (American Graduation Initiative):
  - Directs the Secretary of Education, in consultation with the Secretary of Labor, to promote opportunities for participants in pre-apprenticeship programs to gain employment experience
  - Modifies the definition of eligible institutions to only include 4-year public institutions that offer two-year degrees, use funds for associate degree and certificate level activities, and that are not located near a community college, allowing for the participation of all public 4-year institutions to participate in partnership with community colleges;
  - Allows in-kind contributions for facilities development (including technical assistance) to be counted toward state match; and
- Adds a privacy provision that covers the bill, limiting the use of information in the state-wide data systems to use by governmental agencies in the state and for those education and workforce activities authorized by the bill, or otherwise permitted by federal or state law.

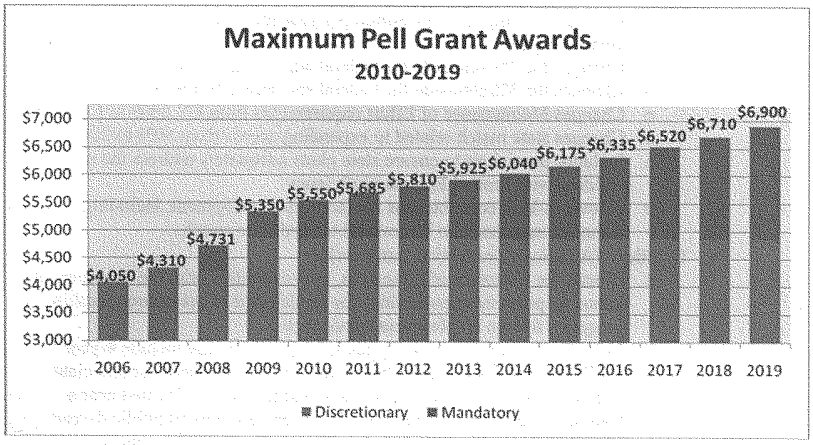
III. Summary of the Bill

PURPOSE

The purpose of H.R. 3221, the Student Aid and Fiscal Responsibility Act of 2009, is to provide for reconciliation pursuant to S. Con. Res. 13, the concurrent resolution on the budget for fiscal year 2010, to invest in students and families; increase college access and completion rates; invest in elementary and secondary school and community college modernization, renovation and repair projects; and invest early learning.

Increased funding for Pell grant scholarships

The Student Aid and Fiscal Responsibility Act of 2009 will provide mandatory funds to reach the President's goal of a maximum Pell Grant award of $5,550 in 2010. In future years, the maximum award would automatically increase by an amount equivalent to the Consumer Price Index (CPI) plus 1%. At this rate, the Pell maximum is estimated to increase to $6,900 by 2019. This legislation will build on the mandatory investment in Pell enacted as in the College Cost Reduction and Access Act of 2007 and set the maximum awards on an increasing trajectory.



Increasing College Access and Completion

In addition to increasing funding for Pell Grant scholarships, this legislation establishes the College Access & Completion Innovation Fund. The purpose of this fund is to: (a) continue college access activities that are currently funded through College Access Challenge Grant (or Section 781 of the Higher Education Act of 1965) and from student loan proceeds to state agencies and nonprofit organizations; (b) promote state higher education planning, innovation, and systems of data and accountability; (c) support innovation through national activities to expand college access and increase degrees and certificate completion rates; and (d) conduct rigorous evaluation of the funded programs.

Additionally, the Fund will provide competitive grants to States to establish programs that increase financial literacy and encourage college completion. Funding under this program can be used to develop state-wide access and completion plans and statewide data systems. Priority will be given to States partnering with philanthropic organizations or state and non-profit guaranty agencies to carry out grant activities. Additionally, 1/3 of the state funds must be used for activities that benefit students enrolled at junior or community colleges, two-year public institutions, or two-year programs of instruction at four-year public institutions.

The Access and Completion Innovation Fund would also provide funding directly from the Secretary to institutions and organizations working toward closing gaps in attainment and completion, as well as provide the opportunity to develop two-year programs providing supplemental financial aid in a way that would improve student outcomes while not reducing other available aid. Priorities for these grants will go towards entities or consortia with proven experience in serving populations traditionally underrepresented in higher education or those that have this goal as a primary purpose, to those public institutions that do not predominantly award bachelor's degrees, and to those that include activities aimed at increasing STEM degree or certificate production. Also, the Secretary shall give priority to partnerships between institutions with high-degree production rates and those with low-degree production rates, in order to facilitate the transfer of best practices for increasing completion.

Each entity receiving a grant under this section will be required to provide an annual report assessing their measurable progress in reaching the completion goals outlined in their initial grant plan submitted to the Secretary. The Secretary may also require additional evaluation standards as he determines are necessary. Furthermore, the Director of the Institute for Education Sciences will conduct a rigorous evaluation of all projects funded under this section in order to learn from these innovation projects in a tangible way that is useful for all entities engaged in this work.

Investing in Historically Black Colleges and Universities and Minority-Serving Institutions

H.R. 3221 invests in Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), Predominately Black Institutions (PBIs), Tribal Colleges and Universities (TCUs), Alaska Native and Native Hawaiian Institutions, institutions serving Asian American and Pacific Islanders and Native American non tribal serving institutions to ensure that students attending these institutions will not only enter college, but remain and graduate.

Student financial aid form simplification

This legislation further simplifies the Free Application for Federal Student Aid (FAFSA) by reducing the number of questions that a family must answer to determine a student's financial aid eligibility. H.R. 3221 builds on the important work of the Congress in the Higher Education Opportunity Act, Pub.L. No. 110–315, by taking FAFSA simplification to the next important step: eliminating from the needs analysis the financial data not available

from the applicant's tax form. The goal of FAFSA simplification is to make it possible to complete the financial aid application with nothing more than a copy of IRS Form 1040 or through importing data from the IRS. Under this legislation, the only applicants who would need to provide additional financial information are those who choose to do so to reduce their reported income in certain circumstances.

H.R. 3221 would allow the Department to replace the six current asset questions with a single "yes/no" question that most applicants will be able to answer easily. Additionally, H.R. 3221 eliminates several items that applicants are asked to add to their income, such as child support payments received, military and clergy living allowances, and untaxed disability support. The only items remaining that are not on the tax form are items that applicants are allowed to subtract from their incomes. These include combat pay, child support payments made, and scholarship aid that had been included as income on the tax form.

Stafford loan reform

This legislation will move all institutions of higher education in the country to the Direct Lending program by 2010, saving the federal government and taxpayers $87 billion dollars over the next 10 years. These savings will be used to reinvest in expanding educational opportunities for students and families and paying down the federal deficit. While the legislation directs the government to originate all student loans, it also ensures that there is a role for private industry in providing loan servicing. Moreover, it will ensure that State and local non-profit agencies, that meet quality and pricing standards, will participate in servicing through a minimum volume allocation of the loans of 100,000 borrowers. These reforms mean that student borrowers will have a reliable stream of funding to finance their college education, and can rely on quality loan servicing during repayment.

Student loan interest rates

This legislation will make interest rates on subsidized student loans for undergraduate borrowers variable with a cap of 6.8 percent, beginning in 2012. The variable interest rate will be based on the 91-day T-bill plus 2.5 percent. This change will continue Congress's investment in keeping interest rates low for needy students and families by ensuring that students and families benefit from low market interest rates and protecting them during periods of high market interest rates. At current CBO estimates for interest rates on the 91-day T-bill, the interest rate for federal subsidized Stafford loans would be 6.3 percent through 2015.

Revised special allowance calculation on existing federal loans

Under current law, the government pays private sector lenders a subsidy known as the Special Allowance Payment (SAP), which is calculated based on a lender's cost of borrowing money. The index used as a proxy for the lender's cost of money is the 90-Day Commercial Paper rate (CP), which Congress intended to serve as a market-based measure. Credit market dislocations and the Federal Reserve's intervention in the capital markets has had a signifi-

cant and unintended effect on CP rates. This title provides lenders the option of having their SAP payments calculated based on the 1-Month LIBOR rate, rather than the 90-Day Commercial Paper rate. Such a change will provide lenders with greater predictability in the underlying index, as well as ensure that the index reflects a market-based rate as Congress had intended.

Perkins reform

H.R. 3221 reforms the Perkins loan program by providing participating schools an allotment of lending authority to make Perkins loans to students on their campuses. The funding for loans will be provided through the Direct Loan program, rather than through revolving loan funds at each school. This legislation maintains key features of the current Perkins program, including the discretion afforded financial aid officers in targeting Perkins loans to financially-needy students. It will greatly increase the number of campuses participating in the program and ensure that students' loans will retain the current interest rate of 5 percent. Six billion dollars in lending authority will be allocated to schools that wish to participate in the new Perkins Program: half of the funds will be allocated to institutions based on the unmet financial need among an institution's students, while the other half will be allocated to institutions based on the extent to which institutions provide low tuition or high levels of non-Federal aid, as well as on the number of Pell grant recipients that graduate from the institution. As current Perkins Loan borrowers repay their loans, schools would remit the Federal share of those payments to the Department of Education. Schools would retain their own share of the revolving funds, as well as amounts sufficient to cover the costs of the various Perkins Loan forgiveness provisions.

Modernization, renovation, and repair of elementary and secondary education public school facilities

This legislation provides $4.1 billion to elementary and secondary schools over the next two fiscal years for modernization, renovation, and repair projects that create healthier, safer, and more energy-efficient teaching and learning climates. Title III, chapter 1 of H.R. 3221 appropriates $2.02 billion for fiscal years 2010 and 2011 for school facilities. The bill ensures that school districts around the country will receive funds for much needed public school modernization, renovation, and repair projects to improve the teaching and learning climate, student and staff health, and safety, energy efficiency, and the environment. The bill directs the Secretary to reserve two percent of funds appropriated for chapter 1 for each fiscal year for assistance to the outlying areas and for payments to the Secretary of the Interior for assistance to Bureau-funded schools. The bill further directs the Secretary to reserve five percent of funds appropriated for chapter 1 for each fiscal year for assistance to local educational agencies serving geographic areas with significant economic distress and those recovering from a natural disaster.

H.R. 3221 allocates to each State the same percentage of funds that the State receives under Title I, Part A of the Elementary and Secondary Education Act and allocates within States the same per-

centage to each school district that the school district receives under such part (except that no such school district will receive less than $5,000).

The bill allows States to reserve one percent of their chapter 1 allocation for technical assistance and to develop a plan to create an online, publicly searchable statewide database of public school facility design, condition, modernization, renovation and repair needs, usage, utilization, energy use, and carbon footprint, and create voluntary guidelines for high-performing public school buildings.

Funds under chapter 1 may be used for public school modernization, renovation, and repair, including repair to roofs, electrical, plumbing, sewage, stormwater runoff and lighting systems, heating, ventilation, and air-conditioning systems, windows, floors, ceilings, doors, including insulation and indoor air quality assessments. Funds may also be used to bring schools into compliance with fire, health, seismic and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies. Funds may be used to comply with the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973. Additional uses include abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, or mildew; reduction of human exposure to lead-based hazards; reduction of classroom noise and environmental noise pollution; modernization, renovation, or repair to reduce the consumption of coal, electricity, land, natural gas, oil, or water; upgrading or installing educational technology infrastructure; modernization, renovation, or repairs of laboratory facilities, libraries, and career and technical education facilities; renewable energy generation and energy audits; other modernizations, renovations, or repairs that improve the teaching and learning climate, ensure the health and safety of students and staff, or make schools more energy efficient; or reduce class size; and required environmental remediation related to modernizations, renovations, or repairs described above.

H.R. 3221 requires that funds be used for projects that meet one of four widely recognized green standards (Leadership in Energy and Environmental Design (LEED) Green Building Rating System, Energy Star, Collaborative for High Performance Schools, or Green Globes) or an equivalent State or local standard, which must include a verifiable method to demonstrate compliance. School districts must use the green requirement for a percentage of the funds (fifty percent in 2010 and seventy-five percent in 2011) for projects that meet one of the green standards described above.

In chapter 2, the bill provides $30 million for each of fiscal years 2010 and 2011 for public schools in the Gulf region in response to damages from Hurricane Katrina or Hurricane Rita. These funds are to be used for the same purposes as chapter 1 funds, but also may be used for new construction.

The bill includes provisions to require local educational agencies to ensure that the bid process for any projects carried out through a contract ensures the maximum number of qualified bidders, including local, small, minority, women- and veteran-owned businesses, through full and open competition. Also, Davis-Bacon labor law protections apply to all funds received under this subtitle.

The bill requires school districts to report publicly on educational, energy, and environmental benefits of projects, compliance with the green requirement, and the percentage of funds used for projects at low-income, charter and rural schools. States must compile these reports and submit them to the Secretary who shall, in turn, report to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions.

The legislation requires the Secretary of Education, in consultation with the Secretary of Energy and Administrator of the Environmental Protection Agency, to disseminate best practices in school modernization, renovation, repair and construction of school facilities and to provide technical assistance to States and school districts concerning such best practices.

The bill encourages the Secretary of Education, in consultation with the Secretary of Labor, to promote appropriate opportunities for participants in YouthBuild, Job Corps, junior or community college degree, or pre-apprenticeship programs.

H.R. 3221 establishes the Advisory Council on Green, High-Performing Public School Facilities to advise the Secretary on the impact of green, high-performing schools on teaching and learning, health, energy costs, environmental impact, and other areas. Finally, the bill allows local educational agencies to encourage schools where modernization, renovation, or repair projects are undertaken to educate students about the project, including, as appropriate, the functioning of the project and its environmental, energy, sustainability, and other benefits.

Community college modernization and construction

This legislation will authorize the Secretary to award grants to States to leverage and provide funds for the construction of new community college facilities, and the modernization, renovation, and repair of existing community college facilities necessary to improve instruction and better meet employer needs. Federal funds may be used to reduce the financing costs of construction projects (such as through the purchase of bond insurance or buying down interest rates on loans), providing matching funds to attract private donations of funds as part of a capital fundraising campaign, or capitalizing a revolving loan fund that a state could use, in turn, to make loans to community colleges to finance new construction or modernization projects. The legislation ensures that funding is used for facilities that are primarily used for instruction, research, or student housing and requires half of the funds be used for projects that meet green building standards.

Early Learning Challenge Fund

The purpose of Title IV of H.R. 3221 is to fund competitive grants to states that will leverage standards reform and fund quality initiatives that will increase the number of disadvantaged children in high quality early learning programs and ensure more children reach kindergarten with the skills they need to succeed in school and in life.

Funds are reserved for the joint administration of this title by the Secretary of Education and the Secretary of Health and Human Services. The Secretary of Education shall bear responsibility for

obligating and disbursing funds and ensuring compliance with applicable law and administrative requirements, subject to an interagency agreement set forth by the secretaries that shall make clear the specific nature of this joint administration.

This legislation provides $1 billion in each fiscal year from 2010 through 2017 for the Early Learning Challenge Fund. Up to 2 percent is reserved for Federal administration of the Fund and up to 3 percent is reserved for the national research activities described in section 405. One-quarter of one percent is reserved for a competitive grant program for Indian tribes to develop and implement school readiness plans. Of the remainder, the Secretary shall reserve up to 65% for Quality Pathway Grants in fiscal years 2010 through 2012, and the Secretary shall reserve up to 85 percent for Quality Pathway Grants in subsequent fiscal years. The remainder shall be allocated for Development Grants. For fiscal year 2013 and subsequent fiscal years, the Secretary has discretion to reallocate funds allocated for Development Grants to Quality Pathway Grants if needed based on the number and quality of applicants. Aggregate expenditures by the State and its political subdivisions on early learning programs and services may not be less than the level of expenditures for such programs and services for fiscal year 2006.

Quality Pathways Grants

In awarding grants, the Secretary shall give priority to States that will use some or all of the funds allocated to them under the quality set-aside of the Child Care and Development Block Grant for the activities described in this Title. Priority is also provided for States that will commit to dedicating significant increases in coming years in State expenditures on early learning programs and services and to states that demonstrate efforts to build public-private partnerships that are designed to accomplish the purposes of this title.

To be considered for a Quality Pathways Grant a State must submit an application to the Secretary that includes specific criteria. Among these criteria includes a description of the goals and benchmarks, including a baseline, the State will establish to lead to a greater percentage of disadvantaged children participating in higher quality early learning programs. In addition, States must include a description of how their system of early learning programs and services will include the following key components: not later than 12 months after receiving notice of an award of a grant, early learning and development standards that are developmentally appropriate for children birth through age 5, and include social, emotional, cognitive, and psychical development, and approaches to learning; a process to ensure State early learning and development standards are integrated into the instructional and programmatic practices of early learning programs and services; a program rating system; an oversight system for the program rating system; a process to support early learning programs integrating instructional and programmatic practices that include ongoing classroom based instructional assessments and are aligned with the curricula and early learning and development standards; a comprehensive plan for professional development of an effective and well-compensated early learning workforce; outreach strategy to parents and families;

a coordinated system to facilitate screening, referral, and provision of services related to health, mental health, disability, and family support; a process for evaluating school readiness in children used to guide practice and improve programs, and a coordinated data infrastructure.

The Secretary shall evaluate applications for Quality Pathways Grants based on the quality of the application, the priority factors, evidence of significant progress in establishing a system of early learning that includes the described key components, and the State's capacity to fully implement such a system.

States awarded a Quality Pathways Grant must use at least 65 percent of the grant for two or more of the following activities in order to improve the quality of early learning programs serving disadvantaged children: initiatives that improve the credentials and compensation of early learning providers; initiatives that help early learning programs meet and sustain higher program quality standards; implementing classroom observation assessments and data-driven decisions tied to activities that improve programmatic practices; financial incentives to early learning programs for undertaking and maintaining quality improvements; integrating State early learning and development standards into instructional and programmatic practices; providing high quality, sustained, intensive, and classroom-focused professional development; building the capacity of early learning programs and communities to promote the understanding by parents and families of their children's learning and development and of the State's early learning system; building the capacity of early learning programs and communities to facilitate screening, referral, and provision of services related to health, mental health, disability, and family support; and other innovative activities approved in advance by the Secretary. The remainder of the grant may be used for one or more of the following: implementation or enhancement of the state's data system; enhancement of the state's oversight system; and development and implementation of measures of school readiness that inform the quality improvement process. States must use the grant such that they prioritize improving the quality of early learning programs serving children from low-income families.

A State awarded a Quality Pathways Grants that has made sufficient progress implementing the requirements of the grant, may apply to the Secretary to reserve up to 25 percent of the grant to directly expand access for children from low-income families to the highest quality early learning programs that offer full-day services. States must contribute a 20 percent match for these funds, one half of which may be provided by a private entity. The Secretary may waive or reduce the State match if the State demonstrates a need due to extreme financial hardship.

States awarded a Quality Pathways Grant must contribute matching funds in the amount of 10 percent in each of the first two fiscal years, 15 percent in the third fiscal year, and 20 percent in subsequent fiscal years. Private contributions made as part of a public-private partnership designed to increase the number of low-income children in high-quality programs may be considered in meeting the state match. In addition, in-kind contributions for the acquisition, construction, or improvement of early learning program

facilities serving disadvantaged children may be used to satisfy the State match. The Secretary may waive or reduce the State match if the State demonstrates a need due to extreme financial hardship.

Development Grants

To be considered for a Development Grant, a State must submit an application that designates a State-level entity for administration of the grant, coordinate proposed activities with the State Advisory Council on Early Childhood Education and Care (created under the Head Start Act), and provide other information as required by the Secretary. Grants shall be awarded on a competitive basis to States that demonstrate a commitment to establishing a system of early learning that will include the key component described in the legislation. A State may receive a Development Grant for 3 years but the grant is not renewable.

The Secretary shall give priority to States who will use some or all of the funds allocated to them under the quality set-aside of the Child Care and Development Block Grant for the activities described in this Title. Priority is also given to states that will commit to dedicating significant increases in coming years in State expenditures on early learning programs and services and to states that demonstrate efforts to build public-private partnerships that are designed to accomplish the purposes of this title. States receiving a Development Grant shall use the award to undertake activities to develop the early learning system components described in the legislation and that will allow a State to become eligible and competitive for a Quality Pathways Grant. States must use the grant such that they prioritize improving the quality of early learning programs serving children from low-income families.

States awarded a Development Grant must contribute matching funds in the amount of 20 percent in the first fiscal year, 25 percent in the second fiscal year, and 30 percent in the third. Private contributions made as part of a public-private partnership designed to increase the number of low-income children in high-quality programs may be considered in meeting the state match. In addition, in-kind contributions for the acquisition, construction, or improvement of early learning program facilities serving disadvantaged children may be used to satisfy the State match. The Secretary may waive or reduce the State match if the State demonstrates a need due to extreme financial hardship.

Research and evaluation

The Secretary of Education and the Secretary of Health and Human Services are required to carry out four research and evaluation activities: (1) establish a national commission to review early learning program quality standards and early learning and development standards and recommend benchmarks within 2 years; (2) conduct a national evaluation of the grants made under this title; (3) support a research collaborative that supports research on early learning and informs improved child outcomes; and (4) review the strategic reports of the State Advisory Councils on Early Care and Education and report and disseminate on barriers to improving access to high quality early learning programs.

Reporting requirements

The legislation requires the Secretary to provide annual reports to the Committee on Education and Labor of the U.S. House of Representatives and the Health, Education, Labor, and Pensions Committee of the Senate regarding the activities carried out under this title. The legislation also requires States receiving grants under this Title to submit annual reports to the Secretary on the activities carried out by the State and includes a list of information that must be included in the reports.

Prohibitions and special rules

This legislation clarifies that all references to early learning programs in the Title reflect voluntary participation by a child in an early learning program. No provision may be construed to be requiring mandatory participation by a child in an early learning program. It additionally clarifies that no provision in this Title should be construed to deny entry to kindergarten for a child who is legally eligible as defined by State or local law. The legislation also includes rules regarding how funds provided under this Title may be used for assessment and evaluation.

Leading the world in graduation by 2020 through investing in community college education and workforce training

This legislation establishes the Community College Challenge Grant Program, which was recently proposed by President Obama. The legislation authorizes grants to support innovative pilot programs and policies that will increase the number of associate degree, certificate, and industry-recognized credentials, including activities that promote the transfer of credits from 2-year to 4-year institutions.

The first phase of the program will provide competitive grants to institutions and states proposing to implement comprehensive reforms within the community college system to promote job readiness, academic success and degree completion, and strengthen ties to employers. This will facilitate access to and enable success in community colleges, especially for adult learners seeking to build the skills needed to secure a good job in a high-growth sector of the economy.

The second phase of the program will look to states to draw on lessons learned from the first phase and to systematize and sustain the reforms in the community colleges in their states. In order to compete for these reform dollars, states must have an education plan to increase persistence and completion of postsecondary education as well as a statewide longitudinal data system that includes all segments of education, including community colleges.

Online courses provide flexibility important to students and workers who may juggle multiple commitments, including family and work or those who live in rural areas without access to traditional systems of higher education. This legislation provides competitive grants to develop high quality, rigorously evaluated, open web-based high school and college-level courses, which would be available for free, on an open-source basis, to students, teachers, schools, and companies to help students gain knowledge, skills, and credentials.

H.R. 3221 provides grants to States for the development of common data systems to help students, institutions, and states make well-informed decisions to achieve their educational and employment goals.

Privacy provision

This legislation includes a privacy provision that limits the use of information in the statewide data systems to use by governmental agencies in the state and for those education and workforce activities authorized by this bill or otherwise permitted by federal or state law.

IV. COMMITTEE VIEWS

The Committee believes that H.R. 3221, The Student Aid and Fiscal Responsibility Act represents a historic investment in higher education and expands high-quality educational opportunities to all Americans. This legislation will give the Congress the opportunity to create the kind of country and the kind of future that we all envision for our children.

In his first address to Congress on February 24, 2009, President Obama set a laudable goal for this nation, by saying:

> *. . . And so tonight, I ask every American to commit to at least one year or more of higher education or career training. This can be community college or a four-year school; vocational training or an apprenticeship. But whatever the training may be, every American will need to get more than a high school diploma. And dropping out of high school is no longer an option. It's not just quitting on yourself, it's quitting on your country—and this country needs and values the talents of every American. That is why we will provide the support necessary for you to complete college and meet a new goal: by 2020, America will once again have the highest proportion of college graduates in the world.* [2]

The Committee agrees, and H.R. 3221 will help us reach this goal by making college more affordable and accessible.

The Committee believes that this legislation makes critical investments in our nation's postsecondary education students. It will invest in the Pell Grant scholarship award, simplify the FAFSA form to make it easier to apply for federal student aid, and build on the Congress' efforts to make interest rates on loans affordable. Further, the legislation will provide more students with access to low-cost Perkins loans by expanding the program to many more campuses and strengthen minority-serving institutions and programs that will help retain and graduate students.

Further, the legislation makes an unprecedented $10 billion investment in our community colleges. The Committee believes that our nation's community colleges are essential to driving economic recovery and that they provide an important low-cost option for postsecondary education for many individuals. This legislation will

[2] http://www.whitehouse.gov/the__press__office/remarks-of-president-barack-obama-address-to-joint-session-of-congress/

address our nation's economic crisis by ensuring that there is adequate support and training to build a 21st century workforce by strengthening partnerships among community colleges, businesses and job training programs that will align community college curricula with the needs of high-wage, high-demand industries.

H.R. 3221 will also ensure that every student can learn in a safe, energy-efficient and modern environment by renovating and repairing our nation's schools—a measure that this Committee and the House have already supported.

The legislation provides important investments in our children by providing $1 billion per year to help ensure that the next generation of children can enter kindergarten with the skills they need to succeed in school. It will transform early learning programs and improve the school readiness outcomes of children by insisting upon real change in state standards and practices. And, it will support states that are ready to expect more from their early learning programs than just basic health and safety and are looking to undertake major reform and demand results. It will build an effective and well-compensated early childhood workforce, integrate key quality standards, improve instructional practices, and better support parents in the early education of their children.

The Committee believes that these important reforms should be paid for without increasing our nation's deficit. This legislation is completely paid for by making necessary changes to the federal student loan programs. The Committee strongly believes that the reforms in this legislation will result in a stronger, more reliable, and more efficient student loan system. H.R. 3221 proposes to convert all new federal student loans to the Direct Loan program starting in July 2010. Students will have access to the low-cost loans they need, in any economy. H.R. 3221 will also upgrade the customer service borrowers receive when repaying their loans. Rather than force private industry out of the system, the legislation will maintain jobs and a role for lenders and non-profits by allowing them to compete for contracts to service these loans. This simple change will save $87 billion over the next ten years.

Finally, as part of the Committee's efforts to secure a stronger future for our children and the country they will inherit, this legislation will direct $10 billion of these savings to pay down the country's deficit.

INVESTING IN STUDENTS AND FAMILIES

Significantly increasing the pell grant award

The Committee believes boosting the nation's investment in the Pell Grant program is essential to ensuring access and making college more affordable for students and families. Since its inception in 1972, the Pell Grant scholarship has opened the door to postsecondary education for millions of low- and moderate-income students. However, over the last several years, the purchasing power of the Pell Grant has declined. Today, the maximum Pell Grant covers only one third of the average price of attendance at a public four-year institution compared to more than two-thirds in 1980.

In the last three years, the Congress has renewed its commitment to the purchasing power of the Pell Grant award. Both this

Committee and the Committee on Appropriations have made significant investments in increasing the maximum award; increasing the award by 32 percent since 2006.

The Committee believes that a continued investment in the Pell program is paramount to ensuring that all students who choose to attend postsecondary education, regardless of income, are able to pursue their academic goals. This legislation builds on the recent investments by ensuring that the maximum Pell grant award continues to increase with the cost of living and setting increases in the maximum award to the Consumer Price Index plus 1 percentage point. Under this bill, the maximum award is estimated to rise from $5,350 in the 2010–2011 academic year to $6,900 in the 2019–2020 academic year.

This change will not only dramatically increase the maximum Pell award, but will put the Pell grant on a trajectory that students and families can count on. The Committee believes that Federal programs should ensure that students and families can begin to plan for college, including how to pay for college costs, years before entering into college. By indexing the maximum award to the cost of living, students and families will be able to project an estimated Pell grant award years prior to entering college- and important planning tool.

Finally, this investment will not only ensure that eligible students receive a higher grant award, but that more students will be eligible for the grant. Coupled with recent changes in the needs analysis formula passed by the Congress in the College Cost Reduction and Access Act and the Higher Education Opportunity Act, the increased award provided for in this legislation will ensure that more students will have access to postsecondary education.

Increasing postsecondary access and completion

The United States has long been a global leader in postsecondary education, but recently our advantage has slipped. According to the OECD, while the U.S. ranks 7th in terms of the percentage of 18-24 year olds enrolled in college, we rank 15th in terms of the number of certificates and degrees awarded. Further, only about half of all college students graduate within six years; for low-income students, the completion rate is closer to 25 percent. These facts are especially troubling considering the economic returns of having a college education have increased dramatically over the last 30 years. In 1973, a college graduate with no further schooling earned 46 percent more per hour than a high school graduate. In 2007, the differential was 77 percent. According to a recent report by the Council of Economic Advisors, the jobs of tomorrow will require at least some postsecondary training. The Committee believes that there is a great need to prepare, encourage, and support our nation's students in their pursuit of a higher education to ensure that they not only have the access to postsecondary education, but that they enroll in and complete their programs of study.

The Committee believes that states, institutions of higher education, non-profit philanthropic organizations, and other organizations with experience in college access and completion are critical partners in ensuring that students have access to high-quality and affordable higher education and that they succeed and complete

their education. This legislation actively engages these partners by encouraging innovative efforts at the state and local levels to ensure that President Obama's goal of greatly increasing our nation's college graduates is realized.

This legislation seeks to increase postsecondary access and success for all students, but especially for underserved populations. The Committee encourages States to focus efforts on students from groups that are underrepresented in higher education to address the inequities between groups of students and ensure that all Americans, regardless of race or income, have the opportunity to succeed. References in the legislation to "students from groups that are under-represented in postsecondary education" and "high-need populations" includes, but is not limited to, nontraditional students (as defined in the Higher Education Opportunity Act of 2008), students from groups defined as special populations under the Carl D. Perkins Career and Technical Education Act of 2006, and groups underrepresented both in postsecondary education overall and in certain degree, certificate or credential programs. All outcome reporting should be disaggregated by gender, race, ethnicity, age and special population category.

It is the intent of the Committee that the states receiving grants under the State Innovation and Completion Fund may distribute those funds to entities that work with borrowers to avoid delinquency and default, provide assistance with entrance and exit student loan counseling to borrowers and assistance to borrowers in selecting a loan repayment plan and in applying for any loan cancellation, forgiveness, deferment or forbearance to which the borrower may be eligible.

A number of states have already begun initiatives to implement new practices aimed at increasing degree and certificate production; this funding would further support such innovation, allowing states to capitalize on other funding in collaboration with federal funds. It is the intent of the Committee that states may not, however, use this funding to decrease or otherwise supplant other funding dedicated to postsecondary education.

The Committee encourages the Secretary of Education to prioritize under the Innovation in College Access and Completion National Activities program, program approaches that advance knowledge about, and adoption of, policies and practices that increase the number of students prepared to successfully pursue, enter and successfully complete postsecondary degrees or certificates as described in sections 801 and 403 of the Higher Education Act.

Continuing historic investments in Historically Black Colleges and Universities, and Hispanic-Serving Institutions, Tribal Colleges, Alaska Native and Native-Hawaiian serving institutions, Predominately Black Institutions, and Asian American and Pacific Islander serving intuitions, and Native American serving institutions

Historically Black Colleges and Universities, Hispanic-Serving Institutions, Tribal Colleges, Alaska and Hawaiian Native, Predominately Black Institutions, institutions serving Asian American and Pacific Islanders, and institutions serving Native Americans

are critical to the nation's economic and social well-being. As the growth in the nation's population increasingly reflects the diversity of the students at these institutions, the Committee believes that this mandatory funding is an investment in our future. By educating the nation's emerging majority populations, these institutions represent the vanguard of the country's potential and promise and should be appropriately supported.

This Committee first recognized the need for significant investment in these institutions with the passage of the College Cost Reduction and Access Act two years ago. This legislation continues this important investment for the next ten years; recognizing the continued critical role that these institutions have to serve.

The importance of these unique institutions is underscored by the fact that they provide postsecondary educational opportunities specifically tailored to students who traditionally have been denied access to adequately funded elementary and secondary schools, especially low-income, educationally disadvantaged students. Additionally, a high proportion of students attending these institutions are the first in their family to attend college.

FAFSA simplification

The Committee believes the current application for federal student aid is complicated and burdensome, asking students and their families to answer as many as 153 questions, many of which have little or no impact on the amount of financial aid that students receive. The length and difficulty of the application process can undermine efforts to increase college enrollment with student aid. The implications of this lengthy and difficult application process on current and potential students can be profound. One analysis by the American Council on Education found that there are 1.5 million enrolled students who are likely eligible for Pell grants (and other federal student aid) but fail to apply, due in part to the complicated aid application.

The Committee recognizes recent work by the Department of Education, the Internal Revenue Service, and others in the Administration. With the authority provided by Congress in the Higher Education and Opportunity Act, the Secretary Duncan has already announced some significant steps to improve the web-based application process for many students through improved use of skip-logic. In addition, the Education and Treasury Departments have announced that they will give those who apply during the relevant academic year to import data from their income tax filings from the IRS, further simplifying the process.

With these changes, every applicant will find the process substantially easier to navigate and complete, a small number will find their financial aid awards increased, and no one will see aid reductions The Committee encourages the Department of Education to make use of its authority to start the FAFSA process earlier, so that students can apply at the beginning of their senior year in high school. Having early, real information about financial aid can affect low income students' college plans. As it stands, students receive financial aid information after they apply to and are accepted to college, too late for many students and families to make changes to their enrollment plans. Earlier, more accurate information will

help students and families plan for affordable college options, helping to reduce student debt in the long term. This strategy is only effective if it starts no later than the fall of the senior year of high school.

STUDENT LOAN REFORM

Students and families have become increasingly reliant on the federal student loan programs to help finance their postsecondary education. As a result, the Committee is committed to ensuring that every eligible student and family can access these loans so critical toward helping pay today's college costs. The turmoil in the U.S. credit markets has shown, however, that the federally guaranteed student loan program is an unreliable source of funds for students and families. Over the past year, this program has become dependent not only on the Federal guarantee of borrower repayment and taxpayer subsidies paid to financial institutions, but also dependent on the Federal Government for the very loan capital provided to borrowers. On the other hand, despite the stresses in the credit markets, students and families continued to access Federal student loans under the Direct Loan Program with no interruptions. Moreover, costs to the taxpayers of the Direct Loan Program are significantly less than those of the federally guaranteed program. The Committee believes that prudence dictates the time has come to end the entitlements for financial institutions that lend to students and instead take full advantage of the Direct Loan Program's low-cost and stable source of capital so students are ensured access to loans. By relying on competitive, private-sector entities to service loans, students and families can be provided with high-quality services. This new approach, consistent with the President's vision, will save $87 billion over the next 10 years. In addition to this reform, the Committee believes it is also time to modernize and expand the Perkins Loan Program so that more colleges can participate and more students can receive access to greater aid.

Instability of the Federal Family Education Loan Program

The federally guaranteed loan program, known as the Federal Family Education Loan Program (FFELP), has become unstable and unreliable and can no longer be depended upon to ensure students' and families' access to Federal student loans. Over the past year, turmoil in the U.S. credit markets has made it impossible for many lenders, and difficult for others, to secure private capital with which to make student loans. As a result, many lenders that once participated in the FFELP have pulled out of the program and are no longer making loans.

In April 2008, the Committee passed the Ensuring Continued Access to Student Loans Act of 2008, which was enacted into law the following month (Public Law No: 110–227). The Act provided the Secretary of Education with the authority to help fund the Federal student loans made by financial institutions to students and families, or to buy Federal student loans from financial institutions, upon a determination that there was an inadequate availability of loan capital to meet the demand for loans. The Act further required that any purchase by the Secretary be revenue-neutral or beneficial to the Federal Government.

Throughout 2008 and 2009, the Department of Education established several support programs to provide FFELP lenders with capital, who in turn used the capital to make loans to students and families. The reliance by FFELP lenders on the Department's support programs has been startling. As of July 22, 2009, the Department has purchased over $14.6 billion in Federal student loans put up for sale by FFELP lenders. Moreover, the Department has funded an additional $31.2 billion of the loans made by FFELP lenders during the 2008–2009 school year.

Clearly, the FFELP has become dependent on taxpayer funds to make loans to students and families. Overall, the Department of Education has financed over 60 percent of the 2008–2009 FFELP loan volume to date. When combined with Direct Loans, Education has financed over 70 percent of all Federal student loans made during the 2008–2009 school year.

William D. Ford Direct Loan Program

Established in 1993, the Direct Loan Program provides loans directly to students, through the student's school, with loan capital secured from the U.S. Treasury. As a result, the Direct Loan Program has been insulated from the turmoil in the credit markets, and loans to students and families have flowed without interruptions or the need for any back-stop measures similar to what was required for the FFELP.

Over the course of the last year, the growth in the Direct Loan Program has increased significantly. The number of schools that have moved to the Direct Loan Program has increased by over 45 percent, from 1,186 in school year 2007–2008 to over 1,700 in 2008–2009. Over the same time period, the number of loans disbursed under the Direct Loan Program increased by 66 percent, from 3.2 million to 5.3 million; and the overall amount of loans made under the program increased by 60 percent, from $13.8 billion to over $22 billion.

To participate in the Direct Loan Program, all schools must first be eligible and certified by the Department of Education. Once eligible and certified for the Direct Loan Program, the school must send an e-mail request to the Department to actively participate in the Direct Loan Program. Once approved and in order to begin processing Direct Loans and transmit and receive Direct Loan data electronically, the school must set up an electronic email account to exchange information with the Department as well as a bank account with the Department to receive the federal funding that is used to provide Direct Loan proceeds to borrowers. To a large degree, many schools, in particular those that disburse Pell Grants to students, are already familiar with the Department's information technology systems that are used to provide Direct Loans to students. The Department's "Common Origination and Disbursement (COD)" system is used to deliver both Pell Grant funds and Direct Loan funds to schools.

Schools that have recently transitioned to the Direct Loan Program have reported high levels of satisfaction with the program. In a June 2009 survey of schools that recently transitioned, the National Association of Student Financial Aid Administrators found that 80 percent of the schools surveyed found making the switch

to the Direct Loan Program was easy. In addition, 84 percent of the schools reported that the Department of Education was helpful in providing assistance for the conversion. Moreover, 80 percent of the schools reported that they were able to convert to the Direct Loan Program within four months.

Providing for a stable, reliable, and efficient student loan program

Now more than ever, Americans need affordable, quality education opportunities to help make our economy strong and competitive again. The Committee believes this can be accomplished, in part, by implementing the President's proposal to move all schools in the country to the Direct Loan program by 2010, thereby saving the federal government and taxpayers $87 billion dollars over the next 10 years. While the legislation directs the Government to originate all student loans, it also ensures that there is a role for private industry in providing loan servicing. Moreover, it will ensure that state and local non-profit agencies, that meet quality and pricing standards, will participate in servicing student loans through a minimum volume allocation of the loans of 100,000 borrowers. These reforms mean that student borrowers will have a reliable stream of funding to finance their college education, and can rely on quality loan servicing during repayment. The legislation does not force private industry out of the system. Rather, the legislation will maintain the jobs of, and a role for, lenders and nonprofits by allowing them to compete for contracts that service student loans on an expanded basis. For example, the Department of Education has already let major contracts to four large FFELP industry participants to help service those loans that FFELP lenders found necessary to sell to the government as a result of the problems in the credit markets.

Reforming and reinvigorating the Perkins Loan Program

The Committee believes the Perkins Loan Program should be reformed so that more loans can be made available to students on more campuses across the country. Currently, Perkins loans are awarded to students by schools from institutional revolving funds, which are comprised of Federal capital contributions, institutional matching funds, and student repayments on outstanding loans. However, no new Federal capital contributions have been appropriated since 2004, leaving many schools and their students without access to low-interest loans. The legislation will modernize and expand the Perkins Loan program so more colleges can participate and more students can receive access to low-cost loans to help pay postsecondary expenses.

MODERNIZATION, RENOVATION, AND REPAIR

The Committee believes that Title III of H.R. 3221 addresses a number of important issues—the quality of our nation's public school facilities, student achievement, the state of the economy, and the state of the environment. The Committee believes that these issues are interrelated and that each represents a critical national concern.

President Obama and Congress have already endorsed these principles by making green school modernization, renovation and

repair part of an allowable use of funds under the state fiscal stabilization fund in H.R. 1, the American Recovery and Reinvestment Act. The Committee believes H.R. 3221 is a critical next step in this effort because it is important to provide funds specifically dedicated to this purpose. Prior to ARRA, and with the exception of funding through the Impact Aid program and through the Department of the Interior for Indian schools, direct federal support for school construction has been virtually non-existent since fiscal year 2001 when Congress appropriated $1.2 billion primarily for emergency school repair and renovation.

The demand for new and renovated public school facilities is unprecedented in our nation's history.[3] A briefing paper delivered at an Economic Policy Institute forum, Investing in U.S. Infrastructure, in April 2009, called for $140 billion in federal funds for capital outlays for low-income school districts and an ongoing federal role in such funding comparable to the current federal share of education operations funding (approximately 10 percent) in order to bring these districts up to parity with the highest income districts. The paper argued that such funding is necessary to ensure that "the nation's public schools are healthy, safe, environmentally sound, and built . . . to support a high-quality education."[4]

Need and disparity

The most recent comprehensive estimates of the national need for school construction and renovation were made in 1995 ($112 billion, U.S. General Accounting Office[5] (GAO)[6]), 2000 ($127 billion, National Center for Education Statistics[7] (NCES)), 2001 ($322 billion, National Education Association[8] (NEA)), and 2008 ($254.6 billion, American Federation of Teachers (AFT))[9].

Several studies highlight the inadequacy of school facilities. In 2009, the American Society of Civil Engineers, on its national infrastructure report card, gave America's public schools a D.[10] A 2005 survey of school principals by NCES found that fifty-two percent of schools had no science laboratories, thirty percent had no art rooms, nineteen percent had no music rooms, and seventeen percent had no gymnasium.[11] A 2004 NCES report found that one school in three had temporary buildings as the primary learning space for at least 160 students, and that in one in five schools,

[3] Testimony of Kathleen J. Moore, Director, School Facilities Planning Division, California Department of Education, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008-02-13-KathleenMoore.pdf).

[4] Good Buildings, Better Schools, Filardo, M., Economic Policy Institute Briefing Paper, April 29, 2008.

[5] Condition of America's Schools, Government Accounting Office, 1995 (GAO/HEHS–95–61).

[6] In 2004, the General Accounting Office was renamed the Government Accountability Office. The Committee will use "GAO" to refer to both.

[7] Condition of America's Public School Facilities: 1999, National Center for Education Statistics.

[8] Modernizing Our Schools: What Will It Cost?, National Education Association, 2000.

[9] Building Minds, Minding Buildings: School Infrastructure Funding Need, A state-by-state assessment and an analysis of recent court cases: 2008, American Federation of Teachers.

[10] *http://www.infrastructurereportcard.org/fact-sheet/schools*.

[11] Public School Principals Report on Their School Facilities: Fall 2005, Institute of Education Sciences, National Center for Education Statistics.

teachers routinely had to use a building's common areas for instructional purposes.[12]

Disparities in the condition of our schools are also well-documented. In 1996, GAO reported, in a follow-up to an earlier study, that on every measure—inadequate buildings or building features, unsatisfactory environmental conditions, etc.—the same subgroups—schools in central cities, western states, and schools serving higher percentages of minority or low-income students—reported having more significant problems.[13]

In 2006, a report by Building Educational Success Together (BEST) concluded that the GAO and NEA estimates "grossly underestimated" the need for school improvements, and concurred with the 1996 GAO finding that facilities in low-income and minority-serving areas tended to be in significantly worse condition. The report also concluded that despite significant State and local expenditures on school construction and renovation from 1996–2004, "there continue to be millions of students in substandard and crowded school conditions." [14]

It is the Committee's intent that funds authorized by this bill be used to ensure that all children have access to a high-quality public school facility. The Committee recognizes that facility quality disparity is most likely to occur in low-income areas. Accordingly, the Committee encourages local educational agencies to take care to ensure that the needs of low-income and rural schools are addressed by giving priority to schools where modernization, renovation, and repair will most benefit students, teachers, and other staff and ensuring that the schools are safe, healthy, conducive to teaching and learning, energy efficient, and environmentally sound.

Green Schools

A 2006 report concludes that a green school (1) uses one-third percent less energy than a conventional school; (2) reduces harmful carbon dioxide emissions by forty percent, which helps reduce global climate change; (3) uses thirty percent less water; (4) has better lighting and temperature controls, which promotes higher student achievement; and (5) has a more comfortable indoor environment, improved ventilation and indoor air quality, which result in short-term ($96,760 per year) and long-term savings as a result of green building.[15] The average national school construction cost is $150 per square foot; building green adds only $3 per square foot. According to the study, the long-term savings from green buildings are $70 per square foot.[16]

The Committee believes that green building can serve a number of purposes. Such building will directly benefit both the larger environment and the indoor environment. The Committee further believes that green building will improve the ability of teachers to

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[12] Characteristics of Schools, Districts, Teachers, Principals, and School Libraries in the United States 2003–2004, Schools and Staffing Survey, National Center for Education Statistics.

[13] America's Schools Report Differing Conditions, Government Accounting Office, 1996 (GAO/HEHS–96–103).

[14] Growth and Disparity: A Decade of U.S. Public School Construction, Building Educational Success Together, 2006.

[15] Greening America's Schools, Kats, G., 2006

[16] *Ibid.*

teach and students to learn as well as the health of students, teachers, and other school staff.

The Committee believes that a critical component of the success of this bill will be local educational agencies' knowledge of best practices in school construction, modernization, renovation, and repair as they relate to green building.

The bill directs States to develop state-level voluntary guidelines for high-performing school buildings. The Committee encourages States, in developing the energy efficiency components of such guidelines, to look for direction to the definition of such plans in H.R. 579, the School Building Enhancement Act, introduced by Representative Rush Holt. That bill defines such plans as including standards for school building design, construction, and renovation; and proposals for the systematic improvement (including benchmarks and timelines) of environmental conditions in and around schools throughout the State. H.R. 579 also encourages purchasing environmentally preferable products for instruction and maintenance, increasing the use of alternative energy fuels in school buses, and maximizing transportation choices for students, staff, and other members of the community.

In addition to the voluntary state guidelines for high-performing school buildings required in the bill, the Committee encourages states to establish voluntary guidelines concerning performance monitoring, use of Energy Star equipment, alternative fuels buses, anti-idling measures, and other measures the state believes will contribute to high-performing schools.

The Committee encourages the Secretary, in carrying out the Department's technical assistance responsibilities under H.R. 3221, as amended, to examine the *Illinois Resource Guide for Healthy, High-Performing School Buildings*. The recommendations and information in the guide are intended to provide school administrators, school boards and other community members with guidance to make informed decisions about health and energy efficiency issues important to schools. The guide's objective is to promote long-term thinking and to ensure that school buildings are compatible with the goals of improving learning environments, reducing operating costs, supporting health and safety, and protecting our natural environment.[17]

Impact on teaching and learning

The Committee believes that while equity alone justifies federal support for local educational agencies to ensure that every child has access to a high-quality public school facility, such support also is essential to closing the achievement gap. The Committee believes that the relationship between the quality of school facilities and student achievement and teacher performance and retention are positively intertwined.[18] Research demonstrates that better school

[17] For a discussion of a case study in building a modern, green school, *see*, Testimony of Mary Cullinane, Director, Innovation and Business Development Team, Microsoft Corporation, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008-02-13-MaryCullinane.pdf).

[18] *See, e.g.*, Testimony of Judi Caddick, Teacher, Memorial Junior High School, Illinois Education Association, Lansing, Illinois, Hearing, U.S. House of Representatives, Committee on

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facilities result in improved student achievement and teacher recruitment and retention. The physical condition of schools also affects student and teacher health.

According to a 2004 report by the 21st Century School Fund, inadequate school facilities can result in alienated students, low staff morale, high teacher attrition, the inability to provide specialized curricula, reduced learning time, distractions from learning, reduced ability to meet special needs, lack of technological proficiency, health problems for students and staff, safety hazards, and less supervision of student behavior.[19]

It is the Committee's intent that local educational agencies use funds provided under this subtitle for the installation or upgrading of educational technology infrastructure such as wiring and other projects, including energy efficient improvements, to bring school facilities technologically up-to-date.

In its 2005 survey, NCES noted that a key reason for school construction and renovation is student and teacher safety, but that building quality also affects the context for learning, such that lighting, noise reduction, air quality and other factors can affect student achievement and behavior. NCES further noted that building quality affects teacher retention—forty percent of teachers who transferred schools and thirty-nine percent who left teaching cited the need for significant school repairs as a source of their dissatisfaction.[20] NCES found that one-third of school principals cited at least one environmental factor[21] as interfering with their ability to deliver instruction.

The Committee encourages school districts that undertake projects to reduce or eliminate human exposure to classroom noise and environmental noise pollution, and the Secretary, in providing technical assistance concerning reducing background noise and reverberation in classrooms, to consider the American National Standards Institute (ANSI) approved Standard S12.60–2002, [Acoustical Performance Criteria, Design Requirements, and Guidelines for School].

Impact on health

A 2004 study mandated by the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act, and funded by the Department of Education found that "overall evidence suggests that poor environments in schools, due primarily to the effects of indoor pollutants, adversely affect the health, performance, and attendance of students." Specifically, the study found that indoor environmental quality can influence health outcomes, which may, in turn, influence student and teacher perform-

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Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008-02-13-JudiCaddick.pdf).

[19] For Generations to Come, 21st Century School Fund, 2004.

[20] Another study finding a relationship between facility quality and teacher retention is The Effects of School Facility Quality on Teacher Retention in Urban School Districts, Buckley, J., Schneider, M., and Shang, Y., 2004.

[21] Those factors include: air conditioning, size/configuration of rooms, acoustics or noise control, ventilation, heating, physical condition, indoor air quality, natural lighting, artificial lighting.

ance directly and indirectly.[22] The study cites the 1995 GAO finding that thirty percent of schools reported unsatisfactory ventilation.

The Centers for Disease Control advises that asthma accounts for more than fourteen million missed school days per year.[23] A 2006 report by the American Federation of Teachers concludes that "[p]oor air quality in schools contributes to students' asthma, absences due to illness, difficulty concentrating, and lower achievement."[24]

The Committee further recognizes that although lead solder with more than 0.2 percent lead and plumbing fixtures with more than eight percent lead were banned in 1987, such products remain in schools across the country. The Environmental Protection Agency and the Centers for Disease Control both have concluded that there is no safe level of exposure to lead. Exposure to lead early in life has been linked to cognitive deficits, attention deficits, and extremely aggressive behavior.

Impact on community

According to the 2006 BEST study, the difference between good and poor quality facilities also affects the communities in which they are located. School quality has a direct, positive impact on residential property values and can improve a community's ability to attract businesses and workers.[25] This point also is supported by Representative Bob Etheridge's testimony at the February 13, 2008, Committee hearing on this issue.[26]

The BEST study also concluded that investments in school facilities bring money into local economies through job creation and supply purchases and can help revitalize distressed neighborhoods. The Committee is persuaded by these findings and expects that this bill will produce positive results in our communities.

Impact on economy

Direct federal investment in school construction and renovation could provide an immediate boost to our economy and generate jobs. Federal funding for the modernization, renovation, or repair of school facilities could be spent quickly and efficiently to address the loss of 1.3 million jobs in the construction industry over the last year and a half.[27]

Hurricanes Katrina and Rita

H.R. 3221 provides additional support for Gulf Coast schools still recovering from damage caused by Hurricanes Katrina and Rita. The Gulf region, primarily New Orleans, has hundreds of millions of dollars in unmet school modernization, renovation, repair and

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[22] A Summary of Scientific Findings on Adverse Effects of Indoor Environments on Students' Health, Academic Performance and Attendance, U.S. Department of Education, Policy and Program Studies Service, 2004.

[23] http://www.cdc.gov/asthma/children.htm.

[24] Building Minds, Minding Buildings, American Federation of Teachers, 2006.

[25] Growth and Disparity: A Decade of U.S. Public School Construction, Building Educational Success Together, 2006.

[26] Testimony of Representative Bob Etheridge, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008-02-13-BobEtheridge.pdf.

[27] *See http://www.bls.gov/news.release/empsit.nr0.htm.*

construction need, including as a result of Hurricanes Katrina and Rita. Prior to Hurricanes Katrina and Rita, the Recovery School District of Louisiana (RSD) already had a deferred maintenance infrastructure deficit of approximately $1 billion. The hurricanes caused an additional $800 million in damage to the district's schools. The funding from this bill will help the district, and others in the Gulf region, meet these important and timely needs as they continue to recover from the hurricanes.[28]

Davis-Bacon

Under the bill, the construction, modernization, repair, and renovation projects paid for, in whole or in part, with the grants made available by this legislation are subject to Davis-Bacon prevailing wage requirements. Davis-Bacon prevailing wage rules ensure that taxpayer dollars are not used to undercut local wage rates. These rules require contractors to pay the local prevailing wage to their employees.

Davis-Bacon requirements will help control costs, ensure higher quality work, and improve safety. Studies have shown that, where prevailing wages are not required, contractors compete on the basis of labor costs, frequently resulting in poor construction quality as well as substantial cost and time overruns due to cheaper workers' lower levels of skill, productivity, and training.[29] Where prevailing wages are paid, higher rates of productivity, safety, and building quality more than offset the cost of higher wages. For example, one study by the Mechanical Electrical Sheet Metal Alliance, focusing on highway and bridge construction, found that workers who were paid more than double the wage of low-wage workers were able to build 74.4 more miles of highway and 32.8 more miles of bridges for $557 million less.

Davis-Bacon requirements help save federal, State, and local revenue. By creating family supporting jobs in local communities that do not drive workers' wages down, these requirements ease the burden on public programs and provide support for more economic activity. Studies have found that repeal of local prevailing wage laws results in lower incomes, loss of sales tax revenues, and a general loss of economic activity.[30] These are precisely the types of effects the Committee intends to avoid by providing federal assistance to local communities consistent with Davis-Bacon.

For the reasons stated above, the Committee believes passage of this bill will provide significant educational benefits for our nation's students, health benefits for students, teachers, and others who work in our schools, financial benefits for schools resulting from energy savings, economic benefits for hundreds of thousands of American workers and their families, and environmental benefits.

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[28] *See also* Testimony of Paul Vallas, Superintendent, Louisiana Recovery School District, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008-02-13-PaulVallas.pdf).

[29] *See generally*, Peter Philips, "Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices and Warehouses in Nine Southwestern and Intermountain States 1992–1994" Prepared for the Legislative Education Study Committee of the New Mexico State Legislature, September 6, 1996.

[30] Michael P. Kelsay *et al.*, "The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri," Council for Promoting American Business, January 2004.

EARLY LEARNING CHALLENGE FUND (TITLE IV)

Over the past several decades, research on the brain and on child development has established that learning begins at birth and that the first five years of life have a lasting effect on children's learning, health, and behavior. During the first three years of life alone, the brain goes through its most dramatic development: children learn to walk, speak, reason, talk, learn, trust, and to interact with others.[31] This developmental period is enormously consequential, laying the foundation for a child's cognitive, social, emotional, and physical development.[32] It can be a time when a child experiences supportive and consistent relationships with parents and other caregivers that fosters healthy development and teaches children to trust others and their own abilities, or it can be a time when children fail to receive the supportive relationships and early learning opportunities their growing brains need, setting a course that can take years to remediate.

As a result, the early years present an important opportunity for policymakers. By investing in programs that support families in their efforts to get their children off to a good start, we can prevent problems from developing that are more difficult and costly to address later in life. The Committee strongly believes that improving access to high-quality early learning programs is an integral component of comprehensive school reform and is essential to ensuring America can compete in the global economy in the decades to come. The Early Learning Challenge Fund capitalizes on the importance of these early years by creating an investment that will leverage standards reform and fund initiatives that together will increase the availability of high-quality early learning programs for disadvantaged children from birth through age 5 so that all children can fulfill their potential. The Committee appreciates President Obama's recognition of the importance of early childhood to lifelong success and looks forward to working with the President to ensure that all children receive the early learning opportunities they need to thrive.

Nearly 12 million children under age 5, including 6 million children under age 3 are regularly cared for by someone other than their parents.[33] Child care is usually a family's highest or second highest budget item. Many families struggle to find and afford high quality early learning programs for young children. Unfortunately, the quality of early learning settings varies greatly, and despite some progress, early learning programs are held to inconsistent standards among and within states. Large national evaluations of child care find the average quality to be mediocre.[34] and child care

[31] Submitted Testimony, Matthew Melmed, Submitted to the Committee on Education and Labor, U.S. House of Representatives Hearing "Investing in Early Education: Paths to Improving Children's Success," January 23, 2008.

[32] National Research Council and Institute of Medicine (2000). From Neurons to Neighborhoods: The Science of Early Child Development. Jack P. Shonkoff and Deborah A. Phillips, Eds. Washington, D.C.: National Academy Press.

[33] Iruka, I. U., and Carver, P. R. (2006). *Initial Results From the 2005 NHES Early Childhood Program Participation Survey* (NCES 2006–075). U.S. Department of Education. Washington, DC: National Center for Education Statistics.

[34] Cost, Quality, and Outcomes Study Team. (1995). Cost, quality, and child outcomes in child care centers: Key findings and recommendations. Young Children, 50, 40–44; Peisner-Feinberg, E. S., Burchinal, M. R., Clifford, R. M., Culkin, M.L., Howes, C., Kagan, S. L., Yazejian, N.,

Continued

costs are frequently a family's highest expense or second highest family expense after housing.[35] Center-based child care for one child costs between $3,000 and $13,000 per year, putting it out of reach for many working families.[36] Therefore, it can be very difficult for families to find the kind of high quality early learning programs that appropriately support their child's development or that have the standards needed to help close the achievement gap.[37] The Committee believes that without significant new public investment in the quality of early learning programs, many children will be unable to attain the benefit from early learning programs that would otherwise help them arrive at kindergarten ready to succeed.

The long-lasting benefits of high quality early learning programs are well documented, and these programs are of particular benefit to disadvantaged children. High quality programs improve academic achievement, reduce the need for special education, increase employment and earnings, lower rates of teen pregnancy, reduce crime and delinquency, and ultimately increase our global competitiveness.[38] Yet despite our understanding of the importance of quality early learning environments and the benefits that accrue when we provide children with high quality early learning opportunities, far too many of our children spend their time in settings that do not adequately support their development. The early childhood system has inconsistent standards among and within States, which often lack adequate resources to ensure that programs are of high quality and that children enter kindergarten ready to succeed. Fewer than half of States require centers to encourage parent involvement and thirteen State pre-kindergarten programs do not require any site visits to monitor compliance with standards. Additionally, twenty States do not require child care providers to have even a high school degree. Currently, no single State implements all the quality components of a model early learning system, though States and programs have made significant progress over the last twenty years in improving their early childhood systems.

The Committee contends that given the importance of the first five years of life, substantially more investment in early childhood is necessary for all of America's children to have the opportunity to succeed and if America is to compete in the global economy. The graph below reflects the striking mismatch between the importance

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Byler, P., Rustici, J., & Zelazo, J. (1999). *The children of the cost, quality, and outcomes study go to school: Executive summary.* Chapel Hill: University of North Carolina at Chapel Hill, Frank Porter Graham Child Development Center.

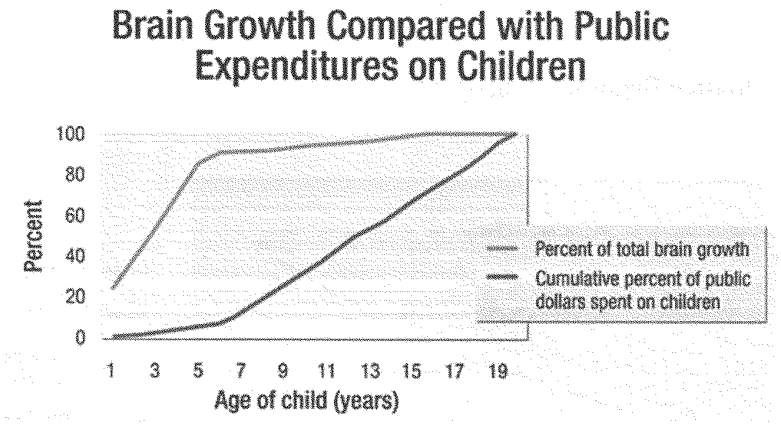
[35] Parents and the High Price of Care (2009). National Association of Child Care Resource and Referral Agencies. http://www.naccrra.org/docs/reports/price__report/Price__Report__2009__execsumm.pdf.

[36] Ibid.

[37] Cost, Quality, and Outcomes Study Team. (1995). Cost, quality, and child outcomes in child care centers: Key findings and recommendations. Young Children, 50, 40–44; Peisner-Feinberg, E. S., Burchinal, M. R., Clifford, R. M., Culkin, M.L., Howes, C., Kagan, S. L., Yazejian, N., Byler, P., Rustici, J., & Zelazo, J. (1999). *The children of the cost, quality, and outcomes study go to school: Executive summary.* Chapel Hill: University of North Carolina at Chapel Hill, Frank Porter Graham Child Development Center.

[38] E.g., Currie, J., & Thomas, D. (1995). Does Head Start Make a Difference? The American Economic Review, Vol. 85(3), 341–364. U.S. Department of Health & Human Services, Administration for Children & Families (2001). *Head Start FACES: Longitudinal Findings on Program Performance, Third Progress Report.* Washington, D.C.

of investing early and the level of public investment in early childhood.[39]



The Early Learning Challenge Fund is a bold and wise investment that recognizes the importance of quality and will support and advance State reforms that improve the quality of early learning programs across all settings for all children from birth through age 5, and particularly for low-income children. This landmark initiative will challenge States to develop effective, innovative models that promote high standards of quality. The Fund will also increase the transparency of what early learning programs are providing and how children are doing so that parents can hold states accountable for their choices and so parents can expect more for their children. High quality comprehensive early learning systems, starting at birth, will go a long way toward eliminating achievement gaps and providing children with the resources, skills, and tools they need to arrive at school ready for success. The years prior to kindergarten are about the most significant in shaping a child's foundation for learning and school success—and the Early Learning Challenge Fund will ensure that our investments reflect the importance of those early years.

The achievement gap

The achievement gap that exists in elementary school and beyond begins before children enter kindergarten.[40] [41] For example, the Early Childhood Longitudinal Study (ECLS) conducted by the National Center for Education Statistics found 4 year olds from families living below the poverty line are already 18 months behind

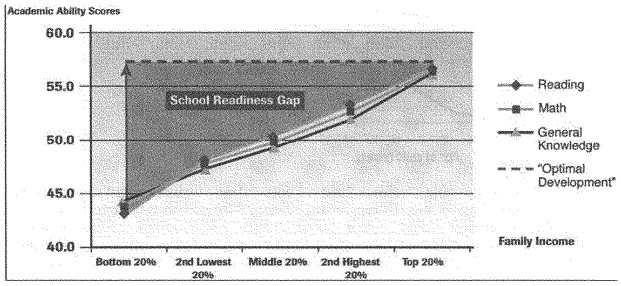
[39] Bruner, C., Goldberg, J., & Kot, V. (1999). *The ABC's of early childhood: Trends, information, and evidence for use in developing an early childhood system of care and education.*

[40] Lee, J., Grigg, W., and Dion, G. (2007). *The Nation's Report Card: Mathematics 2007.* National Assessment for Educational Progress. Can be accessed at: *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007494*; Lee, J., Grigg, W., and Donahue, P. (2007). *The Nation's Report Card: Reading 2007.* National Assessment for Educational Progress. Can be accessed at: *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007496*

[41] Lee, V.E., and Burkam, D.T. (2002). Inequality at the Starting Gate: Social Background Differences in Achievement as Children Begin School. Economic Policy Institute: Washington DC.

their peers.[42] Moreover, of 4 year old children from families in the lowest 20 percent of socioeconomic status, 40.1 percent were proficient in numbers and shapes, of children from families in the middle 60 percent of socioeconomic status, 65.3 percent were proficient in numbers and shapes, and of children from families in the highest 20 percent socioeconomic status group, 87.1 percent were proficient in numbers and shapes.[43] The achievement gap at kindergarten entry between students from more affluent families and those from middle and lower income families is also abundantly clear in this graph using additional data from the ECLS study.[44]

Achievement Gap as Children Begin Kindergarten



Unfortunately, children who enter kindergarten behind their peers have a difficult time catching up.[45] The Committee strongly believes that effective investments to minimize the achievement gap prior to school entry benefits children, schools, and our nation, and that high quality state-funded preschool has significant potential to help accomplish this goal.

Cost effectiveness of high quality early learning programs

The Committee believes that the cost-benefits of Title IV of H.R. 3221 make it a sound public investment. Acclaimed economists like Art Rolnick of the Minneapolis Federal Reserve and Nobel Laureate and University of Chicago professor James Heckman, conclude that early childhood interventions are among the best investments we can make for ensuring that all children become productive citizens and securing our long-term economic prosperity. "Ability gaps between disadvantaged and other children open up early and children who start ahead keep accelerating past their peers, widening the gap," wrote James Heckman and Dimitriy Masterov in *The Productivity Argument for Investing in Young Children.* "[Early learning] programs are likely to generate substantial savings to society and to promote higher economic growth by improving the skills of the workforce." Nobel Laureate James Heckman

[42] Klein, L.G., & Knitzer, J. (2007). *Promoting Effective Early Learning: What Every Policymaker and Educator Should Know. National Center on Children and Poverty. Columbia University.*

[43] Jacobson Chernoff, J., Flanagan, K. D., McPhee, C., and Park, J. (2007). *Preschool: First Findings From the Preschool Follow-up of the Early Childhood Longitudinal Study, Birth Cohort (ECLS–B)* (NCES 2008–025). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC.

[44] Source: U.S. Department of Education, National Center for Education Statistics, Early Childhood Longitudinal Study, Kindergarten Class of 1998-99, Fall 1998.

[45] Entwisle, D. R. (1995). The role of schools in sustaining benefits of early childhood programs. *The Future of Children*, 5, 133–144.

points out that "skill begets skill" and concludes the longer we wait to intervene in a child's life, the more difficult it is to be effective and the more costly it is for society.[46] By reducing the need for grade retention, reducing the need for special education services, increasing academic success, reducing juvenile crime, and creating a more qualified and competitive workforce, high quality early learning programs will ultimately save more in public funding than they cost to support.

The Early Learning Challenge Fund

The Early Learning Challenge Funds challenges Governors to develop new approaches to raising the bar across State early learning settings. It will promote standards reform of State early learning programs serving children from birth through age 5 in order to support healthy development and improve the school readiness outcomes of young children. By leveraging standards reform and funding quality initiatives, it will ensure more disadvantaged children participate in high-quality early learning programs that meet their developmental needs and help them arrive at kindergarten ready to succeed.

The Early Learning Challenge Fund creates an incentive for States to develop an early learning system that integrate 8 key components:

- Early Learning and Development Standards that lead to school readiness and are integrated with programmatic and instructional practices.
- Quality Rating System that is evidence-based and structured with progressive levels of quality that target funds and provide transparent goals for program improvement.
- Program review and oversight that is applied across all programs and settings and is focused on components of quality related to school readiness.
- Comprehensive professional development system that can prepare an effective and well-qualified workforce of early educators, including supporting appropriate levels of training, education, credentials, and compensation.
- Support to parents and families so they are engaged and supported in their child's early learning.
- Coordinated systems to facilitate screening and referrals for health, mental health, disability and family support.
- A coordinated data infrastructure to collect essential information on where young children spend their time and the quality of the programs that serve them.
- An age- and developmentally-appropriate curriculum and assessment system for early learning programs that is used to support best practices, improve school readiness.

Quality Pathways grants will be awarded to high-capacity States pursuing models of reform and excellence in early learning settings for children from birth through age 5. Innovative plans that already reflect significant progress toward establishing the core eight elements needed to improve quality and learning outcomes for chil-

[46] Heckman, J. (May 2006). Keynote speech at the National Summit on America's Children. U.S. House of Representatives, Washington, DC.

dren will be rewarded. States must develop data systems that will provide transparency on the number of children in high quality settings and require States to make progress increasing the number of children, in each age group, in The Committee emphasizes that state applications must demonstrate that improvements to the early learning system must address settings for infants, toddlers, and preschoolers. A state whose primary or sole focus is on improving the quality of early learning settings for 4-year-olds would not be meeting the expectations of this grant. Moreover, in reviewing applications, the Committee intends the Secretary to recognize that states need to strive to support high quality full-day early learning programs because of their importance in meeting the needs of working families as well as meeting the needs of children. In addition, though the allowable use of funds in the legislation

Development grants will be awarded to States that show promise for strengthening and expanding their early learning system but who need additional assistance to launch a comprehensive standards-based system. Development grants are not renewable because the Committee believes that if States implement them effectively, States will have positioned themselves to be competitive for a Quality Pathways Grant after three years.

The Committee believes the Early Learning Challenge Grants will transform early learning programs and practices and become an integral part of a larger effort to reform education in this country.

Early Learning and Development Standards

The Committee believes Early Learning and Development Standards reform is essential to the effort to improve early learning program quality and child outcomes. Accordingly, States receiving a Quality Pathway grant have 12 months to complete early learning and development standards that are developmentally, culturally, and linguistically appropriate for all children from until kindergarten entry. To adequately support child development and school readiness, these standards must address all domains of children's development and learning, including social, emotional, cognitive, and physical development and approaches to learning. States with standards that do not cover all these domains appropriate for infants, toddlers, and preschoolers must revise their standards accordingly. In addition, States receiving Quality Pathways grants have 18 months to conduct an analysis of alignment between their early learning and development standards with their program quality standards and with their kindergarten-grade 3 academic content standards. It is critical that this alignment reflect the development progression of how children learn and develop the requisite skills as they move forward through the early grades. It is important this analysis ensure the breadth (language, literacy, math, social, emotional, approaches to learning, science, creative arts, and physical development) and depth (emphasis within each standard). The Committee believes it is then critical for states to support the integration of these standards into early learning program practices.

Children with disabilities

Over the past decade, the number of identified children with disabilities and developmental delays under the age of five has grown substantially, represented by a 70 percent increase in infants and toddlers with disabilities and a 45 percent increase in preschool children with disabilities. Under the Individuals with Disabilities Education Act, young children with disabilities are to be supported in natural settings (the least restrictive environment), including provision of specialized services in childcare programs, Head Start Centers, preschools, pre-K classrooms and other early learning settings. The Department of Education reports that a majority of states are making progress in serving children with disabilities in inclusive programs, with 36 states and territories serving 50 percent or more of their preschoolers with disabilities in these general early learning programs.

The Early Learning Challenge Fund requires states to address the needs of young children with disabilities as part of their broader early learning system and quality improvement activities. The Committee intends for States to develop early learning and development standards appropriate for all children, including children with disabilities. The Committee encourages states to consider the principles of Universal Design for Learning in developing such standards in order to meet this requirement. States should also address, as part of their plans to improve the capacity of the early learning workforce, how professional development activities will prepare all teachers to work with young children with disabilities. The Committee notes the legislation intends to hold states accountable for including the needs of young children with disabilities in their comprehensive plans as well as in improving the school readiness outcomes of these children.

Children with limited English proficiency

Children with limited English proficiency account for a growing and significant share of children enrolled in schools and early learning programs. In some parts of the county, more than 50 percent of the preschool population comes from non-English speaking homes.[47] As a group, these students lag behind their peers in educational attainment and achievement. It is estimated that children with limited English proficiency entering kindergarten know 5,000 fewer words than their English speaking peers.[48] As these students progress through the elementary grades, challenges with English proficiency and these vocabulary gaps will impact their ability to master higher order literacy skills, such as reading comprehension and writing, and challenging academic content. Therefore, there is an urgent need to design and implement early learning programs that provide these children with experiences that prepare them to achieve at high levels and become fluent in English. The Committee contends these efforts must be driven by empirical findings rather than ideology and language politics. In the last decade, advances in research regarding how young children with limited

[47] Espinsoa, Linda, "Challenging Common Myths About Young English Language Learners," Foundation for Child Development, January 2008.

[48] Betty Hart and Todd R. Risley, *Meaningful Differences in the Everyday Experience of Young American Children* (Baltimore: Paul H. Brookes Co., Inc., 1995).

English proficiency acquire a second language provide useful guidance for policy development and the implementation of effective classroom practices for these children.[49]

The Early Learning Challenge Fund requires states to address the needs of young children with limited English proficiency as part of their broader quality improvement activities. States should address, as part of their plans to improve the capacity of the early learning teacher workforce, how professional development activities will prepare all teachers to work with young children with limited English proficiency. The Committee urges the research activities carried out under this Title to adequately examine how the school readiness outcomes of this population can be adequately addressed and improved. The Committee notes the legislation intends to hold states accountable for including the needs of young children with limited English proficiency in their comprehensive plans as well as in improving the school readiness outcomes of these children.

Voluntary participation in early learning programs

The Committee notes that nothing in this legislation requires a child to participate in an early learning program.

Facilities

The Committee notes that the supply of suitable spaces to house early childhood programs has not kept pace with the growth of the sector, and the shortage is especially severe in low-income communities—both urban and rural. For example, according to a 2007 report by the Advancement Project, California's Preschool Space Challenge, California currently lacks preschool-suitable spaces for approximately 117,000 or 21 percent of its four year olds, with most of the deficit occurring in low-income communities. Because the Committee acknowledges the need for high-quality early learning program facilities to support the ultimate goal of preparing children to be ready to learn when they enter kindergarten. The bill provides that in-kind contributions for facilities development, including technical assistance, may be counted toward the State match. In-kind contributions that could be used for this purpose include the provision of lien-free land, structures or leased space, no-interest loans, revolving lines of credit, construction materials, and labor, in accordance with the Department of Education regulations at 34 CFR 74.23.

Child care licensing

States cannot improve early childhood education for all ages without addressing basic health and safety requirements in child care programs. This should include minimum health and safety standards, pre-requisite training related to these health and safety standards and child development, and regular monitoring and inspections. The Committee expects to address these and other key licensing issues in the reauthorization of the Child Care and Development Block Grant so that states will receive further support and

[49] "Challenging Common Myths About Young English Language Learners," Foundation for Child Development, op.cit.

guidance to improve upon these areas and that children can be safe and healthy when out of their parents' care.

AMERICAN GRADUATION INITIATIVE

The Committee believes that community colleges are the backbone of our Nation's educational and workforce systems, providing post-secondary education and job training to millions of Americans and serving as the critical pipeline to postsecondary education, job training, and economic vitality.

Nearly 12 million students are enrolled at the more than 1,000 community colleges across the country. These include students who are taking for-credit classes as well as those pursuing apprenticeships, taking developmental courses or career-prep courses, or taking basic core vocational education or general education courses necessary to further their education and achieve their career goals. Community colleges are essential to strengthening the middle class and providing the skilled workers necessary to meet our nation's economic and social challenges. For future workers, community colleges will be vital—the Bureau of Labor Statistics projects that occupations requiring an associate's degree or postsecondary vocational credentials will experience faster growth than those requiring a bachelor's degree. For dislocated workers, community colleges are similarly critical—research indicates that displaced workers who attend a community college substantially increase their long-term earnings, particularly if the classes are related to high-growth industries. These successes are in part due to the flexible nature of community colleges. They are able to work with employers and the private sector to address workforce shortages and create tailored training, partnerships, and apprentice programs for specific occupations. Community colleges lead the way in preparing graduates in the fields of green technology, healthcare, teaching, information technology and clean energy technology—some of the fastest growing fields in America—and the world. Yet they are bursting at the seams, heavily under-resourced, and lack incentives to innovate.

The Committee believes that America's ability to remain true to our highest ideals—and to maintain our leadership in the global economy—depends on our ability to transform our higher education system to provide the relevant knowledge and skills necessary to compete in a new and changing world. Economic progress and educational achievement go hand in hand. And in today's economy, access to higher education institutions and success in post-secondary education is no longer just a pathway to opportunity—it is a prerequisite.

To address these and other overarching concerns, H.R. 3221 includes provisions to increase innovation at community colleges, encourage states to be active participants in systematic community college reform, develop and make available free high-quality online education and training courses, and ensure that educational and employment outcomes are measured and shared within and among states and with the public.

Further, it is the intent of the Committee that the states and entities receiving grants under the American Graduation Initiative should be encouraged to find innovative ways to address the needs

of students and workers. This can include, but is not limited to the following: adapting college offerings to the schedules and needs of working students, such as creating evening, weekend, modular, compressed, or distance learning formats; augmenting programs and services, including providing specialized assessments and learning tools, streamlined registration processes, and specialized job placement counseling, for vulnerable populations, including disabled veterans and ex-offenders; enrolling students in learning communities; and other relevant innovations. The Committee encourages the design and implementation of innovative ways to improve retention in and completion of developmental education courses, including but not limited to enrolling students in cohorts; accelerating course content; integrating remediation and college-level curricula and instruction; dual enrolling students in remediation and college-level courses; tutoring; providing counseling and other supportive services; and giving small, material incentives for attendance and performance.

Use of grants in this section are intended to prepare students for employment in skilled occupations in high-demand industries, and the Committee encourages entities to create programs that aim to close the gaps in enrollment for groups underrepresented in particular programs and occupations.

In establishing benchmarks and evaluating the use funds, Congress intends the Secretary to consider the employment of underrepresented populations in nontraditional occupations for their gender as defined in the Carl D. Perkins Career and Technical Education Act of 2006. The evaluation should consider earnings relative to economic self-sufficiency, a standard of economic independence calculated or commissioned by the state which considers the income needs of families by family size, the number and ages of children in the family and sub-state geographical considerations.

The Committee intends for entities developing, evaluating and disseminating high-quality online training, high school courses, and postsecondary education courses must ensure that these electronic materials are accessible to individuals with disabilities by meeting the access standards established by the U.S. Access Board.

V. Section-by-Section Analysis

Title I—Investing in Students and Families

SUBTITLE A—INCREASING COLLEGE ACCESS AND COMPLETION

Section 101. Federal Pell Grants

The Student Aid and Fiscal Responsibility Act of 2009 amends the Higher Education Act to include mandatory funding for the Pell Grant. This provides additional mandatory funding to augment funds appropriated to increase the federal maximum Pell Grant award by the change in the Consumer Price Index plus one percent.

The mandatory component of the funding is determined by inflating the previous year's total and subtracting the maximum award provided for in the appropriations act for the previous year or $4860, whichever is greater.

Section 102. College Access and Completion Innovation Fund

This section of the bill amends Part E of Title VII of the Higher Education Act to include two additional areas of grant activity for States, institutions of higher education, non-profit organizations and guaranty agencies designed to improve post-secondary student success, completion, and post-completion employment, particularly for students from underrepresented backgrounds.

The section authorizes and appropriates $600 million dollars for each fiscal year 2010 through 2014 for the three types of grants in Part E. Of the funds, 25% will be used for the College Access Challenge Grants under section 781, 50% will be used for State Innovation and Completion Grants under section 782, 23% will be used for Innovation in College Access and Completion National Activities Grants, and 2% will be used to evaluate the outcome of grants administered under Part E.

State Innovation and Completion Grants will be awarded annually on a competitive basis to States meeting the application requirements set forth in the bill. States are required to provide assurances that they will develop and submit a statewide Access and Completion Plan, engaging key education stakeholders in the state, to increase the State's rate of persistence in and completion of post-secondary education. The State is authorized to provide subgrants to non-profit organizations and guaranty agencies for assistance in carrying out the State grant. Priority is given to states who partner with philanthropic organizations or guaranty agencies. At least one-third of the State program (including both federal and non-federal shares) must be used for activities benefiting students at two-year institutions, no more than 10% of funds shall be used for development and implementation of statewide longitudinal data systems, and no more than 6% of funds can be used for administrative purposes relating to the grant.

Under the Innovation in College Access and Completion National Activities grants, higher education institutions, non-profit organizations, philanthropic organizations, guaranty agencies, and States are eligible to apply for grants awarded on a competitive basis for not less than $1,000,000. Grant funds may be used for innovative programs, policies, and services that increase the number of individuals with postsecondary degrees or certificates.

Section 103. Investment in historically black colleges and universities and other minority-serving institutions

This section amends section 371(b) of the higher Education Act by extending funding for programs under this section created under the College Cost Reduction Act for programs at historically black colleges and universities and other minority-serving institutions through 2014, including programs that help low-income students attain degrees in the fields of science, technology, engineering or mathematics by the following annual amounts: $100 million to Hispanic Serving Institutions including $10 million for community partnerships, $85 million to Historically Black Colleges and Universities, $15 million to Predominantly Black Institutions, $30 million to Tribal Colleges and Universities, $15 million to Alaska, Hawaiian Native Institutions, $5 million to Asian American and Pa-

cific Islander Institutions, and $5 million to Native American non-tribal serving institutions.

Section 104. Investment in cooperative education

This section provides $10 million for fiscal year 2010 for cooperative education programs pursuant to Part N of Title VIII of the Higher Education Act.

SUBTITLE B—STUDENT FINANCIAL AID FORM SIMPLIFICATION

Section 121. General effective date

This section specifies that changes to the federal needs analysis pursuant to this subtitle will take effect of the award year beginning on or after July 1, 2011.

Section 122. Treatment of assets in need analysis

This section amends section 471 of the Higher Education Act by excluding the consideration of parental and student assets in the federal needs analysis formula that determines student aid eligibility for families with incomes below $150,000. Creates an asset cap for need-based aid above which a student is ineligible for need-based grants, loans, or work assistance. The asset cap is indexed for inflation. The section also makes conforming changes.

Section 123. Changes to total income; aid eligibility

This section amends the definition of total income to streamline consideration of untaxed income and benefits to exclude: child support, workman's compensation, veteran's benefits, living allowances for military and clergy, non-parental cash support, and other untaxed income and benefits. The section also amends the suspension of eligibility for drug-related offenses related to exclude students convicted of possession of a controlled substance.

Title II—Student Loan Reform

SUBTITLE A—STAFFORD LOAN REFORM

Section 201. Federal Family Education Loan appropriations

This section terminates the authority to make or insure any additional loans in the Federal Family Education Loan program after June 30, 2010.

Section 202. Scope and duration of Federal loan insurance program

This section is a conforming amendment with regard to the termination of the FFEL program, limiting Federal insurance to those loans in the Federal Family Education Loan program for loans first disbursed prior to July 1, 2010.

Section 203. Applicable interest rates

This section makes a conforming amendment with regard to the termination of the FFEL program limiting interest rate applicability to Stafford, Consolidation, and PLUS loans to those loans made before July 1, 2010.

Section 204. Federal payments to reduce student interest costs

This section makes a conforming amendment with regard to the termination of the FFEL program by limiting subsidy payments to lenders for those loans for which the first disbursement is made before July 1, 2010.

Section 205. Federal PLUS loans

This section makes a conforming change with regard to the termination of the FFEL program for federal PLUS loans by prohibiting further FFEL origination of loans after July 1, 2010.

Section 206. Federal consolidation loans

This section makes conforming changes with regard to the termination of FFEL program for federal consolidation loans by allowing borrowers who have a consolidated FFEL loan to subsequently consolidate into the Direct Lending program.

Section 207. Unsubsidized Stafford loans for middle-income borrowers

This section makes conforming changes with regard to the termination of the FFEL program for Unsubsidized Stafford loans by prohibiting further FFEL origination of loans after July 1, 2010.

Section 208. Loan repayment for civil legal assistance attorneys

This section makes conforming changes with regard to the termination of the FFEL program for loans eligible for repayment for civil legal assistance attorneys, to FFEL loans first disbursed before July 1, 2010 and maintains eligibility for loan repayment in the Direct Lending program.

Section 209. Special allowances

This section makes conforming changes with regard to the termination of the FFEL program by limiting special allowance payments to lenders under the FFEL program to loans first disbursed before July 1, 2010.

Section 210. Revised special allowance calculation

This section changes the underlying index for the calculation of special allowance payments to lenders for loans first disbursed on or after January 1, 2000 and before July 1, 2010 under the FFEL program from commercial paper (CP) to the 1-month London Inter Bank Offered Rate (LIBOR).

Section 211. Origination of Direct Loans at institutions located outside of the United States

This section provides for the origination of federal Direct Loans at institutions located outside of the United States, through a financial institution designated by the Secretary.

Section 212. Agreements with institutions

This section makes conforming technical changes with regard to the termination of the FFEL program for Department of Education agreements with Direct Lending institutions.

Section 213. Terms and conditions of loans

This section makes conforming technical changes with regard to the termination of the FFEL program to clarify the terms and conditions of Direct Loans.

Section 214. Contracts

This section directs the Secretary to award contracts for servicing loans through a competitive bidding process to eligible non-profit servicers for federal Direct Loans. The section provides for a minimum allocation to eligible servicers of the lesser of 100,000 borrowers or the loans of all the borrowers in a State. In the case of multiple servicers, the Secretary shall allocate each servicer the lesser of the loans of 100,000 borrowers or equal shares of the loans of all borrowers in the state. The section also ensures that borrowers with multiple loans remain with a single servicer. Non-profit servicers must meet quality and pricing standards set by the Secretary.

Section 215. Interest rates

This section changes, beginning on July 1, 2012, the interest rate on Subsidized Stafford loans for undergraduates from a fixed rate to a variable rate with a cap of 6.8%. The variable rate is calculated on the basis of the 91-day Treasury bill plus 2.5%.

SUBTITLE B—PERKINS LOAN REFORM

Section 221. Federal Direct Perkins Loans terms and conditions

This section amends Part D of Title IV, adding in a new section 455A creating Federal Direct Perkins Loans. The section authorizes institutions to award Perkins loans to students pursuant to an agreement with the Secretary. The section aligns the Perkins loan program with the terms, conditions, and requirements of the federal Direct Unsubsidized Stafford loan, with the exception of a lower applicable interest rate of 5%.

Section 222. Authorization of appropriations

This section makes a conforming change to sunset the discretionary allocation of additional Perkins funds through the current Perkins loan program to loans made prior to July 1, 2010.

Section 223. Allocation of funds

This section makes a conforming change to the allocation of funds under section 462 of the current Perkins loan program to sunset the program by fiscal year 2010.

Section 224. Federal Direct Perkins Loan allocation

This section establishes an annual Direct Perkins loan authority for the annual issuance of up to $6 billion from funds under Part D beginning with the 2010–2011 award year. For each award year, 50% of funds are allocated to institutions on the basis of the adjusted self-help need amount of the institution. The adjusted self-help need amount is determined by each eligible undergraduate student's average cost of attendance less each undergraduate student's expected family contribution, plus each eligible graduate or

professional student's average cost of attendance less each graduate or professional student's expected family contribution. For undergraduate students the amount of self-help need cannot exceed 25% of the average cost of attendance or $5,500 and for graduate and professional students it cannot exceed $8,000.

Of the remaining 50% of funds: 25% of the funds are awarded on the basis of a low tuition incentive, and 25% of the funds are allocated to institutions based on the number of students that graduate who are federal Pell Grant recipients. The calculation of the low tuition incentive is based on the amount by which the institution's tuition and fees is below the average tuition and fees for its sector, plus the amount by which the non Federal grant aid provided by the institution to needy students drives them below the average tuition and fees for the institution's sector. The calculation of the Pell Grant incentive is determined by the ratio of Pell grant recipients to Pell grant recipients who complete a postsecondary degree.

If the institution's base self-help need amount exceeds 50% of the loan authority under this section, the base amounts of the eligible institutions is ratably reduced. There is also a corresponding ratable reduction that applies to the low tuition incentive and the Pell Grant incentive.

Participants of the current Perkins loan program are guaranteed to receive no less than the average of the institution's total principal amount of loans for each of the five most recent award years.

Section 225. Agreements with institutions of higher education

This section describes the nature of the agreement between the Secretary and the institution with regard to participation in the Federal Direct Perkins Loan program. Specific requirements include that the institution will: establish and maintain the program, operate the program consistent with their requirements under the Federal Direct Loan program, and pay an institutional match to be determined by the Secretary.

Section 226. Student loan information by eligible institution

This section makes conforming changes to limit the disclosure requirements of institutions participating in the current Perkins loan program to Perkins loans made before July 1, 2010.

Section 227. Terms of loans

This section makes conforming changes to sunset the terms and conditions of Perkins loans made before July 1, 2010.

Section 228. Distribution of assets from student loan funds

This section recalls the federal capital contribution to the Perkins loan revolving funds at participating institutions minus the cost of student loan cancellations pursuant to the terms of the current program and administrative costs. The institution's contribution is also paid back to the institution.

Section 229. Administrative expenses

This section makes conforming changes to sunset the administrative expense payments by the Secretary under Part E for the current Perkins loan program.

Title III—Modernization, Renovation, and Repair

SUBTITLE A—ELEMENTARY AND SECONDARY EDUCATION

Section 301. Definitions

Includes definitions of Bureau-funded school, charter school, CHPS Criteria, Energy Star, Green Globes, LEED Green Building Rating System, local educational agency, outlying area, public school facilities, Secretary, and State.

CHAPTER 1—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF PUBLIC SCHOOL FACILITIES

Section 311. Purpose

Indicates the purpose of grants under chapter 1 is for modernizing, renovating, or repairing public school facilities to ensure that public school facilities are safe, healthy, high-performing, and technologically up-to-date.

Section 312. Allocation of funds

Directs the Secretary to reserve two percent of funds appropriated for chapter 1 for each fiscal year for assistance to the outlying areas and for payments to the Secretary of the Interior for assistance to Bureau-funded schools and requires that such funds be distributed between the outlying areas and the Department of the Interior for schools in outlying areas and Bureau of Indian Education-funded schools in the same proportion as the amount reserved under section 1121(a) of the Elementary and Secondary Education Act. Directs the Secretary to reserve five percent of funds appropriated for chapter 1 for each fiscal year for assistance to local educational agencies serving geographic areas with significant economic distress and those recovering from a natural disaster. Allows each State to reserve up to one percent of funds appropriated for chapter 1 for each fiscal year to provide technical assistance, to develop a plan to create an online, publicly searchable statewide database of public school facility design, condition, modernization, renovation and repair needs, usage, utilization, energy use, and carbon footprint, and create voluntary guidelines for high-performing public school buildings.

Allocates to each State the same percentage of funds appropriated under Title I of this Act that the State receives under Title I, Part A of the Elementary and Secondary Education Act of 1965. Within each State, allocates to each local educational agency the same percentage of funds appropriated under Title I of this Act that the agency receives under Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires the Secretary, in determining State and local allocations, to take into account the hold-harmless provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires the Secretary to distribute funds to States within one hundred twenty days of the Department's appropriation and requires States to distribute funds to local educational agencies within ninety days of having received them from the Secretary.

Section 313. Allowable use of funds

Describes the types of public school modernizations, renovations, and repairs that are allowable uses of funds under chapter 1, including repair to roofs, electrical, plumbing, sewage, stormwater runoff, lighting systems, building envelope, heating, ventilation, and air-conditioning systems, windows, floors, ceilings, doors, including insulation and indoor air quality assessments. Funds may also be used to bring schools into compliance with fire, health, seismic and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies. Funds may be used for retrofitting that will increase the energy efficiency of public school facilities and for modifications necessary to comply with the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973. Additional uses contemplated by the bill include, abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, or mildew; reduction of human exposure to lead-based hazards or proven carcinogens; reduction of classroom noise and environmental noise pollution; modernization, renovation, or repair to reduce the consumption of coal, electricity, land, natural gas, oil, or water; upgrading or installing educational technology infrastructure; modernization, renovation, or repairs of laboratory facilities, libraries, career and technical education facilities, and improvements to building infrastructure to accommodate bicycle and pedestrian access; renewable energy generation, heating systems and energy audits; measures designed to reduce or eliminate human exposure to airborne particles; creating greenhouses, gardens, and other facilities for environmental scientific, or other educational purposes, or to produce energy savings; modernizing, renovating, or repairing physical education facilities and recreational structures for students, other modernizations, renovations, or repairs that improve the teaching and learning climate, ensure the health and safety of students and staff, or make schools more energy efficient; or reduce class size; and required environmental remediation related to modernizations, renovations, or repairs described above.

Section 314. Priority projects

Allows local educational agencies to give priority to projects involving the abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, lead-based hazards, including lead-based paint hazards, or a proven carcinogen.

CHAPTER 2—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

Section 321. Purpose

Indicates the purpose of grants under chapter 2 is for modernizing, renovating, repairing, or constructing public early learning, kindergarten, elementary, and secondary educational facilities to

address needs caused by damage resulting from Hurricane Katrina or Hurricane Rita.

Section 322. Allocation to local educational agencies

Directs the Secretary to allocate funds to local educational agencies in Louisiana, Mississippi, and Alabama based on the infrastructure damage caused as a result of Hurricane Katrina or Hurricane Rita.

Requires the Secretary to distribute funds to local educational agencies within one hundred twenty days of an appropriation of funds.

Section 323. Allowable use of funds

Includes the same list of allowable uses of funds as section 313, but also allows local educational agencies to use chapter 2 funds for construction of new facilities.

CHAPTER 3—GENERAL PROVISIONS

Section 331. Impermissible uses of funds

Prohibits funds received under this Act from being used for payment of maintenance costs and stadiums or similar facilities whose primary use is for athletic contests or exhibitions for which admission is charged to the general public. Also prohibits the improvement or construction of facilities whose purpose is not the education of students, such as administrative facilities and the purchase of carbon offsets.

Section 332. Supplement, not supplant

Requires local educational agencies receiving funds under this Act to use such funds to supplement, and not supplant, funds that otherwise would be used for the same purposes.

Section 333. Prohibition regarding State aid

Prohibits a State from taking payments under this Act into consideration when determining the eligibility, or amount of, State aid for any local educational agencies.

Section 334. Maintenance of effort

Allows only local educational agencies with at least a ninety percent maintenance of effort with respect to the provision of a free public education from the previous fiscal year to receive funds under this Act.

Section 335. Special rule on contracting

Requires a local educational agency that receives funds under this Act and that carries out projects through a contract to ensure that the bidding process consist of the maximum number of qualified bidders, including local, small, minority, women- and veteran-owned businesses, through full and open competition.

Section 336. Use of American iron, steel, and manufactured goods

Requires that all of the iron, steel, and manufactured goods used in projects under this Act are produced in the United States unless

the Secretary finds that the use of these products is inconsistent with the public interest, the products are not produced in sufficient quantities or of satisfactory quality, or the use of such products will increase the overall cost of the project by more than 25 percent. If the Secretary waives this provision due to a circumstance described above, the Secretary must public a detailed written justification of the determination in the Federal Register. This section must be applied in a manner that is consistent with international agreements.

Section 337. Labor standards

States that the Davis-Bacon labor law provisions apply to any funds received under this Act.

Section 338. Charter schools

Requires that charter schools receive a portion of a local educational agency's funds under this Act, based on the percentage of low income students in the local educational agency served by charter schools and that local educational agencies consult with charter schools to determine individual school's needs for renovation, modernization, and repair. Allows local educational agencies to use excess funds for other public school facility modernization, renovation, repair, or construction if, after consulting with charter school administrators, the local educational agency determines that the amount reserved exceeds the needs of charter schools within the agency.

Section 339. Green schools

Requires local educational agencies receiving funds under this subtitle to use at least half of such funds appropriated in fiscal year 2010 and seventy five percent of funds appropriated in fiscal year 2011 for public school modernizations, renovations, repairs, or construction that meet specified "green" standards, including equivalent standards adopted by the State or local authority with jurisdiction over the agency, which must include a verifiable method to demonstrate compliance.

Clarifies that nothing under Sec. 339 shall be construed to prohibit a local educational agency from using sustainable, domestic hardwood lumber for public school modernization, renovation, repairs, or construction.

Requires the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, to provide outreach and technical assistance to States and local educational agencies concerning best practices in school modernization, renovation, and repair, including those related to student academic achievement, student and staff health, energy efficiency, and environmental protection.

Section 340. Reporting

Describes the reporting requirements applicable to local educational agencies, States, and the Secretary, and requires local educational agencies to make their reports publicly available, including on their website.

Section 341. Special rules

Prohibits funds under this subtitle from being used to employ workers in violation of section 274A of the Immigration and Nationality Act and from being distributed to a local educational agency that does not have a policy that requires a criminal background check on all employees of the agency.

Section 342. Promotion of employment experiences

Directs the Secretary, in consultation with the Secretary of Labor, to promote appropriate opportunities for participants in the Youthbuild program, individuals enrolled in the Job Corps program, individuals enrolled in a junior or community college certificate or degree program related to sec 339(a), and participants in preapprenticeship programs that have direct linkages with apprenticeship programs that are registered with the Department of Labor or a State Apprenticeship Agency under the National Apprenticeship Act of 1937 to gain employment experience through projects under this subtitle.

Section 343. Advisory Council on Green, High-Performing Public School Facilities

Establishes the Advisory Council on Green, High-Performing Public School Facilities to advise the Secretary on the impact of green, high-performing schools on teaching and learning, health, energy costs, environmental impact, and other areas.

Section 344. Education regarding projects

Allows local educational agencies to encourage schools where modernization, renovation, or repair projects are undertaken to educate students about the project, including, as appropriate, the functioning of the project and its environmental, energy, sustainability, and other benefits.

Section 345. Availability of funds

Authorizes to be appropriated and appropriates for chapter 1 $2,020,000,000 for each of fiscal years 2010 and 2011. Authorizes to be appropriated and appropriates for chapter 2 $30,000,000 for each of fiscal years 2010 and 2011.

SUBTITLE B—HIGHER EDUCATION

Section 351. Federal assistance for community college modernization

This section establishes a federal grant program for community college modernization, repair, and construction. Grants are awarded to states for one of the following uses: to reduce financing costs of loans, to provide matching funds for capital campaigns, or to provide capital to a revolving loan fund, for new construction modernization, renovation, or repair projects at community colleges. Community colleges can use funds for the construction, modernization, renovation, or repair of community college facilities that are primarily used for instruction, research, or student housing including: heating and air conditioning systems, emergency preparedness, increasing energy efficiency, expanding accessibility of facilities for

Americans with Disabilities Act compliance, removal or abatement of asbestos or lead-based paint, technology upgrades, or renewable energy generation. Requires local educational agencies receiving funds under this subtitle to use at least half of such funds appropriated for community college modernizations, renovations, repairs, or construction that meet specified "green" standards, including equivalent standards adopted by the State or local authority with jurisdiction over the agency, which must include a verifiable method to demonstrate compliance.

Title IV—Early Learning Challenge Fund

Section 401. Purpose

Sets forth five purposes to the title.

Section 402. Programs authorized

Reserves up to 2 percent of funds for joint administration of the title by the Secretary of Education and up to 3 percent for research activities described in section 405. Authorizes .25 percent for a competitive grant program to Indian tribes to develop and implement school readiness plans. After these reservations, reserves up to 65 percent for fiscal years 2010 through 2012 and up to 85 percent for subsequent fiscal years for Quality Pathways Grants. The remainder is reserved for Development Grants. Lists priority criteria for awarding competitive grants and state maintenance of effort requirements. Describes the federal administration of the grant program and includes a list of a prohibition on the use of funds.

Section 403. Quality pathways grants

Describes the quality pathways grants, including the grant period, the Secretary's criteria for awarding grants and determining amount of the award, as well as criteria for renewal, and the state matching requirement. Explains the required contents of State applications and the allowable uses of funds. Includes special rule allowing 25% of funds from a Quality Pathways grant to be used to expand access under certain conditions. Includes an improvement plan for states encountering barriers to reaching their goals.

Section 404. Development grants

Describes the development grants, including the grant period, the use of funds, and the matching requirement.

Section 405. Research and evaluation

From funds reserved in section 402, requires the Secretary of education and the Secretary of Health and Human Services to act jointly to carry out 4 activities: (1) establish a national commission to review and provide recommendations regarding early learning program standards and early learning and development standards; (2) conduct a national evaluation of the grants made under the title; (3) support a research collaborative to support research that can inform improved child outcomes; (4) review strategic reports by the State Advisory Councils on Early Care and Education and disseminate best practices.

Section 406. Reporting requirements

Requires the Secretary of Education to submit an annual report to the Committee on Education and Labor of the U.S. House of Representatives and the Health, Education, Labor, and Pensions Committee of the U.S. Senate and describes the contents of such report. Requires States receiving grants under this title to submit annual reports to the Secretary of Education and describes the contents of such report.

Section 407. Construction

Includes two rules of construction regarding interpretation of the provisions of the title.

Section 408. Definitions

Includes definitions for the term 'child', 'disadvantaged', 'Indian tribe', 'Limited English Proficient', 'Secretary', and 'State'.

Sec. 409. Availability of Funds

Provides $1 billion for each of fiscal years 2010 through 2017.

Title V—American Graduation Initiative

Section 501. Authorization and appropriation

This section authorizes and appropriates $730 million for each fiscal year 2010 through 2013 and $680 million for each fiscal year 2014 through 2019 for the American Graduation Initiative. For fiscal years 2010 through 2013: $630 million is available for the Community College Challenge grant program, $50 million is available for open online education, and $50 million is available for the Learning and Earning Research Center and grants to states for data systems. For fiscal years 2014 through 2019: $630 million is available for grants to States for community college programs and $50 million is available for open online education.

Sections 503 and 504 will be jointly administered by the Secretary of Education and the Secretary of Labor pursuant to an interagency agreement, with the Secretary of Education having primary responsibility for obligating and disbursing funds and ensuring compliance with applicable law and administrative requirements.

Section 502. Definitions

This section defines eligible entities and the following terms: area career and technical education school, institution of higher education, community college, philanthropic organization, State, State Public Employment Service, State Workforce Investment Board, Local Workforce Investment Board, and supportive services. Eligible entities include: community colleges and community college districts; area and career technical education schools; public four-year institutions that offer two-year degrees, use funds for activities at the associate degree and certificate levels, and is not reasonably close to a community college; States and higher education institutions in partnership with one of the above four eligible entities; and consortia of at least two of the above entities.

Section 503. Grants to eligible entities for community college reform

This section authorizes the Secretary of Education, in coordination with the Secretary of Labor to award competitive grants to community colleges, area career and technical colleges, public four-year institutions offering two-year degrees, States or public four-year institutions partnering with community colleges, or consortia of the above entities.

Grants awarded are for innovative programs, or programs of demonstrated effectiveness, that lead to the completion of a post-secondary degree, certificate, or industry-recognized credential leading to a skilled occupation in a high-demand industry. Grants are awarded for a four-year period. The Secretary is authorized to terminate a grant in the third year if the eligible entity has not made demonstrable progress in achieving agreed upon benchmarks. If such a determination is made, no further grant funds will be awarded. The minimum grant award is $750,000. Priority is given to eligible entities partnering philanthropic organizations, businesses, and labor organizations for defined purposes. Eligible entities seeking a grant must submit a detailed application to the Secretary.

Requires a non-federal match for federal dollars to cover 50% of the cost of the programs, services, and policies under the grant. The non-federal portion of the match can be in cash or in kind, and can be provided from States, local resources, and/or private organizations. A hardship waiver may be granted by the Secretary pursuant to Department regulations.

Eligible entities receiving a grant must use grant funds to carry out two of the following activities: facilitating transfer of credit and articulation agreements; expanding, enhancing, or creating academic or training programs in partnership with employers; providing student and worker support services; creating workforce programs leading to industry-recognized credentials; building or enhancing linkages including the development of dual enrollment programs and early college high schools; and other innovative programs to increase completion and the provision of training for students to enter skilled occupations.

Requires eligible entities receiving a grant to develop and annually measure and report quantifiable benchmarks approved by the Secretary on the following indicators as applicable: closing gaps in enrollment and completion rates; addressing local and regional workforce needs; and improving educational and employment outcomes for education and training programs.

This section also authorizes the Secretary to allocate up to 2% of funds to direct the Institute of Education Sciences to conduct evaluations to determine the effectiveness of grant programs carried out by eligible entities receiving a grant. Evaluations must conclude prior to January 30, 2014.

The Secretary is required to annually submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and Labor and the Senate and the Committee on Education and Labor of the House of Representatives.

Section 504. Grants to eligible States for community college programs

This section authorizes the Secretary of Education, in coordination with the Secretary of Labor to award competitive grants to States to implement systematic reform of community colleges located in the State by carrying out programs, policies, and services that have demonstrated effectiveness resulting from the evaluation in section 503.

In order to be eligible for a grant under this section a State must: have an access and completion plan under section 782 of the Higher Education Act of 1965, have an interoperable statewide longitudinal data system including community college data, have an articulation agreement pursuant to section 486A of the Higher Education Act of 1965, and is in compliance with section 137 of the Higher Education Act of 1965. Eligible States seeking a grant must submit a detailed application to the Secretary.

Grants are awarded for a six-year period. The Secretary is authorized to terminate a grant in the third year if the eligible entity has not made demonstrable progress in achieving agreed upon benchmarks. If such a determination is made, no further grant funds will be awarded.

Requires a non-federal match for federal dollars to cover 50% of the cost of the programs, services, and policies under the grant. The non-federal portion of the match can be in cash or in kind, and can be provided from States, local resources, and/or private organizations. A hardship waiver may be granted by the Secretary pursuant to Department regulations.

Requires eligible entities receiving a grant to develop and annually measure and report quantifiable benchmarks approved by the Secretary on the following indicators as applicable: closing gapes in enrollment and completion rates; addressing local and regional workforce needs; and improving educational and employment outcomes for education and training programs.

States must submit an annual report to the Secretary of Education and the Secretary of Labor detailing the description and outcome of the systematic reform carried out under the grant.

The Secretary is required to submit a report not later than six months following the end of the grant period.

Section 505. National activities

This section authorizes the Secretary to make competitive grants or contract with institutions of higher education, philanthropic organizations, or other appropriate entities to develop, evaluate, and disseminate freely-available high-quality online training, high school courses, and postsecondary education courses.

This section also authorizes the Director of the Institute of Education Sciences to award a grant or contract with an organization with demonstrated expertise in research and evaluation of community colleges to establish and operate a Learning and Earning Center. The grant or contract is authorized for four years. Creates an advisory board appointed by the Secretary. Authorized activities for the center include: the development of common education and training metrics and creating standardized data elements and data-sharing protocol.

Authorizes the Secretary to award grant to States and consortia of States to establish cooperative agreements to develop, implement, and expand interoperable statewide longitudinal data systems.

Requires compliance with defined privacy and access to data provisions made applicable to the entire Act.

The Secretary is required to annually submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and Labor and the Senate and the Committee on Education and Labor of the House of Representatives detailing the amounts awarded to entities and activities carried out pursuant to such grants or contracts.

VI. Explanation of Amendments

The Committee considered and adopted the following amendments:

- Chairman Miller (D–CA) offered an amendment in the nature of a substitute which is explained in the body of this report.
- Representative Lynn Woolsey (D–CA) offered an amendment that requires the Secretary to give priority to grant applications for the Community College Initiative that focus on serving low-income, non-traditional students. The amendment was adopted by voice vote.
- Representative Susan Davis (D–CA) offered an amendment to provide loan forgiveness for loans incurred during the academic term in which a service member is activated. The amendment was adopted by voice vote.
- Representative Howard "Buck" McKeon (R–CA) offered an amendment that requires the Secretary, in coordination with the Secretary of Veterans Affairs, to provide supplemental grants to eligible veterans whose educational costs are not covered by the G.I. bill. The amendment was adopted by voice vote.
- Representative Rubén Hinojosa (D–TX) offered an amendment to extend mandatory funding to Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs) for programs to provide training in the areas of science, technology, engineering and mathematics through 2019. The amendment was adopted by voice vote.
- Representatives Dennis Kucinich (D–OH) and Phil Hare (D–IL) offered an amendment that requires States to report to the Secretary on barriers to expanding access to early learning programs to disadvantaged children. The amendment was adopted by voice vote.
- Representatives David Loebsack (D–IA) and Marcia Fudge (D–OH) offered an amendment to encourage greater connections among States, community colleges, and industry/sector partnerships to strengthen core industries, create jobs, and train the workforce to fulfill those jobs. The amendment was adopted by voice vote.
- Representative Mazie Hirono (D–HI) offered an amendment to require state applications for Quality Pathway grants to address quality and effective inclusion of children with disabilities in early learning settings in state program rating systems. The amendment was adopted by voice vote.

• Representative Hare offered an amendment to clarify that States may use Early Learning Challenge grants to implement prevention strategies designed to build social competence and prevent challenging behaviors as an allowable use of funds. The amendment was adopted by voice vote.

• Representative Joe Courtney (D–CT) offered an amendment that it is a sense of the Congress that State grantees in the American Graduation Initiative distribute resources for community colleges across the State. The amendment was adopted by voice vote.

• Representative Jared Polis (D–CO) offered an amendment to allow eligible community colleges to use American Graduation Initiative grants to redesign and create new programs that address emerging needs of the workplace. The amendment was adopted by voice vote.

• Representatives Polis and Paul Tonko (D–NY) offered an amendment to add grants designed to increase certificate completion in the STEM fields for women and other disadvantaged group as a priority for the Secretary in issuing Innovation Grants. The amendment was adopted by voice vote.

• Representatives Polis and Hirono offered an amendment to require the research collaborative established under title IV of the bill to evaluate barriers to improving the quality of early learning programs for disadvantaged children. The amendment was adopted by voice vote.

• Representative Tonko offered two amendments:

  • The first amendment adds water efficiency as an allowable use of funds for K–12 modernization, renovation, and repair, and provides that federal funding for community college modernization and construction supplement, and not supplant, other funding for those purposes.

  • The second amendment establishes a competitive grant program for eligible institutions of higher education to hire a Veterans Resource Officer to increase college completion rates for veterans.

Both amendments were adopted by voice vote.

• Representative Robert Andrews offered an amendment to amend the 90–10 rule to provide temporary relief to proprietary institutions by: extending the number of consecutive years an institution may fail to meet the 90–10 requirement from two to three, before becoming ineligible to participate in Title IV programs; extending the period of time during which an institution may count the increase in student loan limits as non-title IV revenue; and exempting Federal Direct Perkins Loans made between July 1, 2010 through July 1, 2010 from the 90–10 revenue calculation. The amendment was adopted by a vote of 42 to 5.

• Representatives Pedro Pierluisi (D–PR) and Gregorio Sablan (D–MP) offered an amendment to ensure that Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana, and the Freely Associated States are eligible, on the same terms as the states, for modernization and construction grants for community colleges under the American Graduation Initiative. The amendment was adopted by voice vote.

VII. Application of Law to the Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 3221, as amended, will reform the federal student loan program, provide for modernization, renovation and repair of public school facilities, enhance early learning, and strengthen community colleges. The bill does not prevent legislative branch employees' coverage under this legislation.

VIII. Unfunded Mandate Statement

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. H.R. 3221 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA).

IX. Earmark Statement

H.R. 3221 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.

X. Roll Call

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 **BILL: H.R. 3221** **DATE: July 21, 2009**
AMENDMENT NUMBER: 2 **DEFEATED: 16 AYES / 30 NOES**
SPONSOR/AMENDMENT: GUTHRIE / SUBSTITUTE AMENDMENT

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY				X
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK				X
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI		X		
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS		X		
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE				X
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	16	30		3

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 2 **BILL: H.R. 3221** **DATE: July 21, 2009**
AMENDMENT NUMBER: 4 **DEFEATED: 18 AYES / 29 NOES**
SPONSOR/AMENDMENT: PRICE / PROVISIONS CONTINGENT ON JOBS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY				X
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK				X
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI		X		
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	18	29		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 **BILL: H.R. 3221** **DATE: July 21, 2009**
AMENDMENT NUMBER: 8 **DEFEATED: 20 AYES / 27 NOES**
SPONSOR/AMENDMENT: SOUDER / PROHIBIT CONVICTED DRUG OFFENDERS FROM RECEIVING FEDERAL STUDENT AID

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY				X
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK				X
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE	X			
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS		X		
Ms. CHU		X		
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	20	27		2

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: #4 **BILL: H.R. 3221** **DATE: 7/21/2009**
AMENDMENT NUMBER: 24 **PASSED: 42 AYES / 5 NOES**
SPONSOR/AMENDMENT: ANDREWS / 90-10 CHANGES

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY				X
Mr. TIERNEY		X		
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK				X
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS				X
Mr. TONKO	X			
Mr. PIERLUISI	X			
Mr. SABLAN	X			
Ms. TITUS	X			
Ms. CHU	X			
Mr. KLINE, Senior Republican Member	X			
Mr. PETRI	X			
Mr. McKEON	X			
Mr. HOEKSTRA	X			
Mr. CASTLE		X		
Mr. SOUDER	X			
Mr. EHLERS		X		
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE	X			
Mr. ROB BISHOP	X			
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE	X			
Mr. THOMPSON	X			
TOTALS	**42**	**5**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: #5 BILL: H.R. 3221 DATE: 7/21/2009
AMENDMENT NUMBER: PASSED: 30 AYES / 17 NOES
SPONSOR/AMENDMENT: HINOJOSA / MOTION TO FAVORABLY REPORT THE BILL TO THE HOUSE WITH AN AMENDMENT IN THE NATURE OF A SUBSTITUTE, AND THAT THE COMMITTEE AUTHORIZE THE CHAIRMAN TO TRANSMIT THE BILL, WITH AN AMENDMENT IN THE NATURE OF A SUBSTITUTE, TO THE COMMITTEE ON BUDGET IN COMPLIANCE WITH SECTION 310 OF THE CONGRESSIONAL BUDGET ACT OF 1974 AS THE FIRST PART OF THIS COMMITTEE'S RECOMMENDATIONS, PURSUANT TO THE RECONCILIATION INSTRUCTION IN S. CON. RES. 13

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY				X
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK				X
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X			
Mr. TONKO	X			
Mr. PIERLUISI	X			
Mr. SABLAN	X			
Ms. TITUS	X			
Ms. CHU	X			
Mr. KLINE, Senior Republican Member		X		
Mr. PETRI	X			
Mr. McKEON		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. WILSON		X		
Mrs. McMORRIS RODGERS		X		
Mr. PRICE		X		
Mr. ROB BISHOP		X		
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	**30**	**17**		**2**

XI. Statement of Oversight Findings and Recommendations of the Committee

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

XII. New Budget Authority and CBO Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee expects to receive an estimate for H.R. 3221 from the Director of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office
Washington, DC, January 24, 2009.

Hon. George Miller,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3221, the Student Aid and Fiscal Responsibility Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Kalcevic and Justin Humphrey.

Sincerely,

Douglas W. Elmendorf, *Director.*

Enclosure.

H.R. 3221—Student Aid and Fiscal Responsibility Act of 2009

Summary: H.R. 3221 would amend the Higher Education Act of 1965, which authorizes most federal postsecondary education programs. It would prohibit new federally guaranteed loans from being made under the Federal Family Education Loan (FFEL) Program and would increase direct spending for the Federal Pell Grant Program and other programs.

The elimination of guaranteed student loans would lead to a comparable increase in direct lending by the government. The estimated subsidy cost shown in the budget is lower for the direct student loan program than for the FFEL program. Thus, enacting the bill would yield net budgetary savings for shifting new lending from the guaranteed loan program to the direct loan program.

On balance, CBO estimates that enacting H.R. 3221 would reduce direct spending by $13.3 billion over the 2009–2013 period and $7.8 billion over the 2009–2019 period. Assuming appropriation of the necessary amounts, implementing the bill would increase discretionary spending by at least $13.5 billion over the 2009–2019 period. (That estimate reflects the bulk of the likely discretionary costs under H.R. 3221; but CBO has not completed a

comprehensive estimate of all effects that would be subject to appropriation action.) Enacting H.R. 3221 would not affect revenues.

H.R. 3221 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated impact of H.R. 3221 on spending is shown in Table 1. The costs of this legislation fall within budget functions 500 (education, training, employment, and social services) and 700 (veterans benefits and services).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 3221, THE STUDENT AID AND FISCAL RESPONSIBILITY ACT OF 2009

	By fiscal year, in billions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009–2014	2009–2019
CHANGES IN DIRECT SPENDING													
Federal Student Loan Programs:[a]													
Estimated Budget Authority	−0.2	−6.1	−14.1	−12.2	−8.7	−8.4	−8.0	−7.9	−7.6	−7.8	−8.1	−49.8	−89.2
Estimated Outlays	−0.3	−3.8	−9.6	−11.3	−8.2	−7.5	−7.0	−6.8	−6.7	−6.7	−6.9	−40.7	−74.8
Federal Pell Grant Program:													
Estimated Budget Authority	0	0.1	1.9	0.8	6.7	3.6	4.0	5.2	6.4	8.1	9.9	13.0	46.7
Estimated Outlays	0	*	0.6	1.6	2.4	5.8	3.7	4.3	5.5	6.9	8.6	10.4	39.4
Other Programs:													
Estimated Budget Authority	0	4.7	7.3	2.8	2.8	2.7	2.1	2.1	2.2	1.2	1.2	20.3	29.0
Estimated Outlays	0	0.6	3.7	5.0	4.2	3.4	2.6	2.3	2.2	2.1	1.5	16.9	27.6
Total Changes:													
Estimated Budget Authority	−0.2	−1.3	−4.9	−8.7	0.7	−2.2	−1.8	−0.5	1.0	1.5	3.0	−16.5	−13.4
Estimated Outlays	−0.3	−3.1	−5.3	−4.6	−1.7	1.6	−0.7	−0.2	1.0	2.3	3.1	−13.3	−7.8
CHANGES IN SPENDING SUBJECT TO APPROPRIATION[b]													
Estimated Authorization Level	0	0.1	0.8	0.9	1.1	1.3	1.5	1.8	2.1	2.4	2.6	4.3	14.8
Estimated Outlays	0	0.1	0.4	0.9	1.0	1.2	1.5	1.7	2.0	2.2	2.5	3.6	13.5

[a] Including the Federal Perkins Loan Program.

[b] CBO has not completed an estimate of all discretionary spending under H.R. 3221; the estimates shown here represent the bulk of the bill's discretionary costs.

Notes: Components may not add to totals because of rounding; * = less than $50 million.

Basis of estimate: As required under the Federal Credit Reform Act of 1990 (FCRA), most of the costs of the federal student loan programs are estimated on a net-present-value basis. Under credit reform, the present value of all loan-related cash flows is calculated by discounting those expected cash flows to the year of disbursement, using the rates for comparable maturities on U.S. Treasury borrowing. (For example, the cash flow for a one-year loan is discounted using the Treasury rate for a one-year zero-coupon note.) The costs for the federal administration of student loans are estimated on a cash basis. For this estimate, CBO assumes the bill will be enacted by October 1, 2009, and that the necessary funds will be appropriated for all discretionary programs.

Direct spending

H.R. 3221 would amend the federal student loan programs (including the Federal Perkins Loan Program) and the Federal Pell Grant Program and would amend or create several other programs. Those changes would decrease net direct spending by $13.3 billion over the 2009–2014 period and $7.8 billion over the 2009–2019 period.

Federal Student Loan Programs. H.R. 3221 would make several changes to the federal student loan programs, including the Federal Perkins Loan Program. As shown in Table 2, CBO estimates that, on net, those changes would reduce federal costs by $40.7 billion over five years and $74.8 billion over 10 years. The major changes that affect direct spending include:

- Eliminating new guaranteed student loans under the FFEL program and thus shifting those loans to the William D. Ford Federal Direct Student Loan program—saving an estimated $86.8 billion over the 2010–2019 period;
- Reducing interest rates on subsidized student loans to undergraduate borrowers—at a cost of $3.2 billion over the 2012–2019 period;
- Interactions between the FFEL and direct loan program and various other program changes—resulting in a net cost of $7.5 billion over the 2009–2019 period; and
- Speeding up the phase-out of the current Perkins loan program and establishing a new Perkins loan program in its place—for a net cost of $1.3 billion over the 2010–2019 period.

TABLE 2.—SUMMARY OF CHANGES IN THE FEDERAL STUDENT LOAN PROGRAMS

	By fiscal year, in billions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009–2014	2009–2019
CHANGES IN DIRECT SPENDING													
Eliminate new lending in the FFEL Program:													
Estimated Budget Authority	0	−4.8	−13.3	−12.2	−11.2	−10.5	−10.2	−10.2	−10.1	−10.3	−10.7	−52.1	−103.5
Estimated Outlays	0	−2.6	−8.9	−11.0	−10.0	−9.4	−9.0	−8.9	−8.9	−9.0	−9.3	−41.8	−86.8
Reduce borrower interest rates:													
Estimated Budget Authority	0	0	0	*	0.5	0.5	0.5	0.5	0.6	0.6	0.6	1.1	3.9
Estimated Outlays	0	0	0	*	0.3	0.5	0.5	0.5	0.5	0.5	0.5	0.8	3.2
Interactions and other changes:													
Estimated Budget Authority	−0.2	*	*	0.6	1.2	1.2	1.2	1.2	1.3	1.3	1.4	2.7	9.1
Estimated Outlays	−0.3	*	*	0.4	0.8	1.0	1.0	1.1	1.1	1.1	1.2	2.0	7.5
Subtotal, FFEL and Direct Loans:													
Estimated Budget Authority	−0.2	−4.8	−13.3	−11.6	−9.5	−8.8	−8.5	−8.4	−8.3	−8.4	−8.7	−48.3	−90.6
Estimated Outlays	−0.3	−2.6	−8.9	−10.6	−8.9	−7.9	−7.5	−7.4	−7.3	−7.3	−7.6	−39.0	−76.1
Federal Perkins Loans:													
Estimated Budget Authority	0	−1.3	−0.8	−0.6	0.7	0.4	0.5	0.6	0.6	0.6	0.6	−1.6	1.4
Estimated Outlays	0	−1.2	−0.8	−0.7	0.7	0.3	0.5	0.5	0.6	0.6	0.6	−1.6	1.3
Total, All Federal Student Loans:													
Estimated Budget Authority	−0.2	−6.1	−14.1	−12.2	−8.7	−8.4	−8.0	−7.9	−7.6	−7.8	−8.1	−49.8	−89.2
Estimated Outlays	−0.3	−3.8	−9.6	−11.3	−8.2	−7.5	−7.0	−6.8	−6.7	−6.7	−6.9	−40.7	−74.8

Notes: Components may not add to totals because of rounding; * between −$50 million and $50 million.

Eliminate new lending in the FFEL Program. Under current law, the federal government provides federal loans to borrowers through two separate programs. In the FFEL Program (guaranteed loans), private lenders originate loans to postsecondary students and the federal government makes payments to these lenders, guarantees them against significant loss in the case of default, and provides funds to guaranty agencies to help administer those loans. In the direct loan program, the federal government serves as the lender.

Beginning in July 2010, the bill would prohibit new guaranteed loans under the FFEL Program; which under current law, CBO estimates will account for about $705 billion in loans—70 percent of all loan volume—over the next 10 years. Under the prohibition in the bill, CBO expects that volume would shift to the direct loan program. CBO estimates that the subsidy rates for direct loans are, on average, about 10 to 20 percentage points lower than for guaranteed loans. (The subsidy rate reflects the present value cost for each dollar the government loans or guarantees.) Because of that difference in subsidy rates, CBO estimates that prohibiting new guaranteed loans—with the replacement of those loans by direct student loans—would lower federal budget costs by $41.8 billion over 2010–2014 period and by $86.8 billion over the 2010–2019 period. Consistent with the accounting required under FCRA, most of those estimated savings represent the changes in present-value estimates for the switch from guarantees to direct loans for each year over that period.

About $7 billion of the projected savings over the 2010–2019 period reflect forgone administrative costs in the FFEL Program. The increased loan volume in the direct loan program would require additional funds for administering and servicing those loans, but those costs are classified as discretionary spending and discussed below under the heading "Spending Subject to Appropriation."

Reduce Borrower Interest Rates. The bill would change the interest rate on subsidized loans for undergraduate borrowers beginning in July 2012. Under current law, the borrower rate on those student loans is scheduled to increase from 3.4 percent to 6.8 percent on July 1, 2012. Under the bill, the borrower rate would switch to a variable-rate formula. The rate charged would be equal to the 91-day Treasury bill rate (calculated as if it were equivalent to a bond) plus 2.5 percentage points, and would be adjusted annually each July. Because the rate would be capped at 6.8 percent, borrowers would never pay an interest rate higher than the 6.8 percent they would pay under current law, but would have some probability of paying a lower interest rate, depending on future Treasury rates.

Taking into account the one-sided aspect of the new interest rate calculation and the historical volatility of rates on short-term Treasury borrowing, CBO estimates that changing the interest rate to a capped variable rate would cost $0.8 billion over the 2010–2014 period and $3.2 billion over the 2010–2019 period.

Interactions and Other Changes. Other changes to the student loan programs and interactions between different sections of the bill would reduce net savings by $7.5 billion over the 2009–2019 period. Those changes are detailed below:

- CBO estimated the effects of each section of the bill independently of all other sections and then calculated the inter-

action between provisions for the bill as a whole. For H.R. 3221, CBO estimates that the interactive effects would reduce net savings by $7.6 billion over the 2009–2019 period.

• Beginning July 1, 2010, borrowers who currently have a guaranteed consolidation loan but do not also have a direct consolidation loan would be able to refinance their guaranteed consolidation loan into a direct loan. Under current law, consolidation loans are not permitted to be refinanced. Because of the difference in subsidy rates, CBO estimates this change would lower direct spending by an estimated $250 million in 2009.

• Beginning in July 2011, the bill would:

1. Exclude the assets and most untaxed income of both students and parents currently included in calculating eligibility for need-based aid. CBO estimates this would cost $120 million over the 2011–2019 period; and

2. Allow student who have been convicted of possession of illegal drug while receiving financial aid to receive student aid. CBO estimates this would cost $24 million over the 2011–2019 period. Both of these provisions would also affect the Pell grant program, and those costs are discussed below.

• H.R. 3221 would forgive federal loans for members of the uniformed services who do not receive academic credit because they must withdraw from school for reasons of military service. CBO estimates this provision would increase direct spending by $21 million over the 2010–2019 period.

• In October 2009, for loans first originated in January 2000 and after, the bill would allow lenders to make a one-time, permanent choice to change the underlying rate on which the yields are based for both outstanding and new guaranteed student loans. Under current law, the yield rates are based on the bond equivalency rate of the three-month Commercial Paper rate with various add-ons depending on the type of loan and the loan status. The bill would allow lenders, within a specified period of time, to change that rate to the one-month London Interbank Offered Rate (LIBOR), calculated as if it were equivalent to a bond. CBO estimates that this change would have a negligible impact on spending.

Perkins Loan Program. H.R. 3221 also would amend the current Federal Perkins Loan Program, under which some 1,700 colleges and universities use revolving funds to make student loans. (Schools loan about $1 billion a year to students from those revolving funds.) Over 80 percent of the capital in those revolving funds came from the federal government. Under current law in October 2012, schools must begin returning the government's share of those funds to the Treasury. Under H.R. 3221, schools would begin the return of federal capital in July 2010. The bill would allow schools to retain amounts for administrative expenses and other fees, thus slightly reducing expected receipts.

The bill would establish a new Federal Perkins Loan Program in July 2010; the interest rate would be 5 percent and students would face the same terms and conditions as with unsubsidized direct loans under the direct loan program. (Borrowing limits would be similar to the existing Perkins Loan Program.) The new loans would be disbursed through school financial aid offices to borrowers

who met the new financial need requirements. A maximum of $6 billion in new loans could be made each year.

CBO estimates that, on net, these changes to the Perkins Loan Program would reduce direct spending by $1.6 billion over the 2010–2014 and increase direct spending by $1.3 billion over the 2010–2019 period.

Federal Pell Grant Program. H.R. 3221 also would amend the current structure of the Federal Pell Grant Program and formulas for determining eligibility under that program. As shown in Table 3, CBO estimates these changes would increase direct spending by $10.4 billion over the 2010–2014 period and by $39.4 billion over the 2010–2019 period. (Some of these changes also would affect discretionary spending in the Pell grant program. Those changes are discussed below under "Spending Subject to Appropriation.")

TABLE 3. ESTIMATED MANDATORY SPENDING FOR PELL GRANTS

	By fiscal year, in billions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009–2014	2009–2019
CHANGES IN DIRECT SPENDING													
Amend the Current Mandatory Award:													
Estimated Budget Authority	0	0.1	1.9	0.7	6.7	3.5	3.9	5.1	6.3	7.9	9.7	13.0	45.8
Estimated Outlays	0	*	0.6	1.6	2.4	5.8	3.6	4.2	5.4	6.7	8.4	10.3	38.7
Other Changes:													
Estimated Budget Authority	0	*	*	*	*	*	0.1	0.1	0.2	0.2	0.2	0.1	0.9
Estimated Outlays	0	*	*	*	*	*	0.1	0.1	0.1	0.2	0.2	*	0.7
Total Changes:													
Estimated Budget Authority	0	0.1	1.9	0.8	6.7	3.6	4.0	5.2	6.4	8.1	9.9	13.0	46.7
Estimated Outlays	0	*	0.6	1.6	2.4	5.8	3.7	4.3	5.5	6.9	8.6	10.4	39.4

Notes: Components may not add to totals because of rounding; * = between −$50 million and $50 million.

Mandatory Spending for Pell grants. Under current law, the Pell grant program is funded from both discretionary and mandatory sources. An annual appropriation sets the maximum award level for which students are eligible and a mandatory account provides additional funding to students eligible for the discretionary program. The amount of the additional mandatory award is determined by the amount of budget authority directly appropriated in the Higher Education Act. In 2009, CBO estimates that discretionary costs for the Pell grant program will be $22.8 billion with additional mandatory spending equal to $2.7 billion.

H.R. 3221 would permanently amend the calculation of mandatory funding for Pell grants beginning in fiscal year 2011. For each year, the bill would appropriate such sums as may be necessary to increase the mandatory award from the previous year. The increase in the mandatory award would be determined by inflating the previous year's total award level by the change in the Consumer Price Index plus one percentage point and then subtracting out the previous year's discretionary award level or $4,860 (whichever is greater). The base level of the award would continue to be set in an annual appropriations act. For 2010, the mandatory award level is set at $690.

As shown in Table 4, starting with the most recent appropriations act (for the 2009–2010 academic year) which specifies an award level of $4,860, CBO estimates the mandatory award would grow from $690 in 2010 to $2,040 in 2019. If an appropriations act were to set the discretionary maximum award at a level greater than $4,860, it would raise the amount of the mandatory award in each successive year, and increase overall costs.

TABLE 4. ESTIMATED MAXIMUM AWARD LEVELS FOR PELL GRANTS UNDER H.R. 3221

	By fiscal year, in dollars—										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
	MAXIMUM AWARD LEVEL										
Discretionary award level	4,860	4,860	4,860	4,860	4,860	4,860	4,860	4,860	4,860	4,860	4,860
Additional mandatory award level [a]	490	690	825	950	1,065	1,180	1,315	1,475	1,660	1,850	2,040
Total	5,350	5,550	5,865	5,810	5,925	6,040	6,175	6,335	6,520	6,710	6,900

[a] The mandatory add-on of $690 for fiscal year 2010 is stated in current law.

Other Changes to Pell grants. In addition, CBO estimates that changes to the eligibility and needs analysis formulas (described above) and to programs whose funding is tied to Pell grants would, on net, increase direct spending by $0.7 billion over the 2010–2019 period.

Other Federal Programs. H.R. 3221 would amend or create several mandatory grant programs that would provide education-related funding to a wide variety of entities. As shown in Table 5, CBO estimates that these programs would increase direct spending by $16.9 billion over the 2010–2014 period and by $27.6 billion over the 2010–2019 period. In particular:

• H.R. 3221 would appropriate $8.0 billion for the Early Learning Challenge Fund—$1.0 billion a year for 2010 through 2017. Based on the spending patterns of similar programs, CBO esti-

mates this provision would increase direct spending by $7.9 billion over the 2010–2019 period.

• For fiscal years 2010 through 2019, H.R. 3221 would appropriate a total of $7.0 billion for grants to states and institutions of higher education to undertake systemic reform of community colleges. CBO estimates this provision would increase direct spending by $6.1 billion over the next 10 years.

• The bill would appropriate $2.5 billion in 2011 to renovate and modernize facilities for community colleges. Based on the spending patterns of similar programs, CBO estimates this provision would increase direct spending by $2.5 billion over the 2011–2019 period.

• The bill would appropriate $2.1 billion in 2010 and 2011 to renovate and modernize facilities for elementary and secondary schools (K–12). Based on the spending patterns of similar programs, CBO estimates this provision would increase direct spending by $4.1 billion over the 2101–2019 period.

• The bill would appropriate $3.0 billion for the College Access and Completion Innovation Fund. Based on the spending patterns of similar programs, CBO estimates these provisions would increase direct spending by $3.0 billion over the 2010–2019 period.

• H.R. 3221 would extend through 2019 the current direct appropriation of $255 million per year for grants to Historically Black Colleges and Universities and Minority Serving Institutions that expires in 2009 under current law. CBO estimates this provision would increase direct spending by $2.2 billion over the next 10 years.

In addition, the bill would amend an existing program for providing education benefits to veterans (as described below).

TABLE 5. OTHER MANDATORY SPENDING PROGRAMS UNDER H.R. 3221

	By fiscal year, in billions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009–2014	2009–2019
CHANGES IN DIRECT SPENDING													
Early Childhood Education:													
Budget Authority	0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0	0	5.0	8.0
Estimated Outlays	0	0.1	0.7	0.9	1.0	1.0	1.0	1.0	1.0	1.0	0.3	3.7	7.9
Community College Reform:													
Budget Authority	0	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	3.6	7.0
Estimated Outlays	0	*	0.5	0.6	0.7	0.7	0.7	0.7	0.7	0.7	0.7	2.6	6.1
Community College Grants:													
Budget Authority	0	0	2.5	0	0	0	0	0	0	0	0	2.5	2.5
Estimated Outlays	0	0	0.6	1.0	0.5	0.4	0	0	0	0	0	2.5	2.5
Modernization and Renovation (K–12):													
Budget Authority	0	2.1	2.1	0	0	0	0	0	0	0	0	4.1	4.1
Estimated Outlays	0	0.3	1.1	1.5	0.9	0.2	*	0	0	0	0	4.1	4.1
College Access Completion: Innovation Fund													
Budget Authority	0	0.6	0.6	0.6	0.6	0.6	0	0	0	0	0	3.0	3.0
Estimated Outlays	0	0.1	0.5	0.6	0.6	0.6	0.5	0.1	*	*	0	2.4	3.0
HBCU and MSI Funding:													
Budget Authority	0	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	1.3	2.6
Estimated Outlays	0	*	0.1	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.9	2.2
Supplemental Education Grants for Veterans [a]:													
Estimated Budget Authority	0	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.8	1.9
Estimated Outlays	0	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.8	1.9
Cooperative Education:													
Estimated Budget Authority	0	*	0	0	0	0	0	0	0	0	0	*	*
Estimated Outlays	0	*	*	*	*	0	0	0	0	0	0	*	*
Total:													
Estimated Budget Authority	0	4.7	7.3	2.8	2.8	2.7	2.1	2.1	2.2	1.2	1.2	20.3	29.0
Estimated Outlays	0	0.6	3.7	5.0	4.2	3.4	2.6	2.3	2.2	2.1	1.5	16.9	27.6

[a] Funding for Supplemental Education Grants for Veterans affects direct spending at both the Departments of Education and Veterans Affairs. The effects on outlays for each department is as follows:

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009–2014	2009–2019
Department of Education	0	0.1	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.4	1.2	2.9
Department of Veterans Affairs	0	*	−0.1	−0.1	−0.1	−0.1	−0.1	−0.1	−0.1	−0.1	−0.1	−0.4	−1.1

Notes: Components may not add to totals because of rounding; * = less than $50 million; HBCU = Historically Black Colleges and Universities; MSI = Minority Serving Institutions.

Supplemental Education Grants for Veterans. Section 106 would require the Department of Education to create a supplemental grant program for certain veterans who are eligible for education benefits under the Post–9/11 GI Bill. Under the new GI Bill, the highest amount of in-state tuition charged at a public institution in a given state constitutes the maximum tuition benefit that the Department of Veterans Affairs (VA) can pay in that state. In addition, VA will pay for student fees up to the highest amount charged in that state. Under the proposed grant program, supplemental funding would be available to veterans attending private colleges and universities in states where the benefit amount for tuition is low compared to other states. The dollar amount of each grant would equal the difference between the highest fees charged at a public institution in the state where the individual is attending school and the fees charged at the private institution the individual is attending.

Based on information from VA, CBO estimates that approximately 25,000 veterans would be eligible for those grants each year and that the average value of the grants would grow from about $9,000 in 2010 to $14,000 in 2019. Thus, CBO estimates that the grant program would increase direct spending by the Department of Education by $2.9 billion over the 2010–2019 period.

That increase in spending would be partially offset by reduced spending by VA. Under the Post-9/11 GI Bill, veterans attending schools participating in the Yellow Ribbon Program are eligible to receive an additional contribution from VA (which is matched by the school) to help cover the cost of tuition and fees at more expensive schools. The grant program in the bill would cover much of the cost of high tuition and fees for eligible veterans at private institutions, decreasing the amount that VA would pay as a matching contribution for the Yellow Ribbon Program. Under the bill, CBO estimates that direct spending by VA would decrease by $1.1 billion over the 2010–2019 period. On net, CBO estimates that this proposal would increase direct spending for veterans education benefits by $1.9 billion over the 2010–2019 period.

Spending subject to appropriation

H.R. 3221 also would make several changes to discretionary spending. CBO has not completed an estimate of all the effects on discretionary spending under the bill, but we have estimated the bulk of such costs. The biggest increases in discretionary spending would stem from changes to the direct loan and Pell grant programs.

Administration of Direct Loans. As mentioned above, most of the costs for administering loans in the FFEL Program are mandatory, while administrative costs in the direct loan program are mostly discretionary. Based on information about contracts for administering the FFEL program and consistent with projected loan volume, CBO estimates that eliminating new lending in the FFEL program and shifting the projected volume to the direct loan program would increase discretionary spending for administrative costs by $7.2 billion over the 2010–2019 period.

Federal Pell Grant Program. In 2009, CBO estimates that the discretionary costs for Pell grants will total about $22.8 billion.

CBO estimates that implementing H.R. 3221 would increase discretionary spending for the Pell grants by $6.3 billion over the 2010–2019 period, subject to appropriation of the necessary amounts. Those increased costs stem mostly from changes made to the needs analysis formulas and eligibility calculations, which are described in greater detail under the subheading "Federal Student Loan Programs" in the "Direct Spending" section.

Intergovernmental and private-sector impact: H.R. 3221 contains no intergovernmental or private-sector mandates as defined in UMRA. Institutions of higher education and public school systems would benefit from grants authorized under the bill. Any costs or requirements associated with those grant programs would be incurred voluntarily as conditions of federal assistance.

Estimate prepared by: Federal Costs: Federal Student Loan and Grant Programs: Deborah Kalcevic and Justin Humphrey; Veterans Education Programs: Camille Woodland; Impact on State, Local, and Tribal Governments: Burke Doherty; Impact on the Private Sector: Nabeel Alsalam.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

XIII. Statement of General Performance Goals and Objectives

In accordance with clause 3(c) of rule XIII of the House of Representatives, the goal of H.R. 3221 is to reform the federal student loan program, provide for modernization, renovation and repair of public school facilities, enhance early learning, and strengthen community colleges. The Committee expects the Secretary of Education to comply with H.R. 3221 and implement the changes to the law in accordance with these stated goals.

XIV. Constitutional Authority Statement

Under clause 3(d)(1) of rule XIII of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 3221. The Committee believes that the amendments made by this bill are within Congress' authority under Article I, section 8, clause 1 of the U.S. Constitution.

XV. Committee Estimate

Clause 3(d)(2) of rule XIII of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3221. The Committee expects to file, in the appropriate place, the cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act upon receipt.

XVI. Changes in Existing Law Made by the Bill, as Reproted

In compliance with clause 3(e) of rule XIII of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is en-

closed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE I—GENERAL PROVISIONS

PART A—DEFINITIONS

* * * * * * *

SEC. 102. DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.—

(1) INCLUSION OF ADDITIONAL INSTITUTIONS.—Subject to paragraphs (2) through (4) of this subsection, the term "institution of higher education" for purposes of title IV includes, in addition to the institutions covered by the definition in section 101—

(A) * * *

* * * * * * *

(C) only for the purposes of [part B] *part D* of title IV, an institution outside the United States that is comparable to an institution of higher education as defined in section 101 and that has been approved by the Secretary for the purpose of [part B] *part D* of title IV*, consistent with the requirements of section 452(d)*.

[Note: Paragraph (2) reflects amendments made by this bill to such clause as amended by the Higher Education Opportunity Act, effective on July 1, 2012.]

(2) INSTITUTIONS OUTSIDE THE UNITED STATES.—

(A) IN GENERAL.—For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 101 (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 101(a)(4)). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans [made, insured, or guaranteed] *made* under [part B] *part D* of title IV unless—

(i) except as provided in subparagraph (B)(iii)(IV), in the case of a graduate medical school located outside the United States—

(I)(aa) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 484(a)(5) in

the year preceding the year for which a student is seeking a loan under [part B] *part D* of title IV; and

(bb) at least 75 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under [part B] *part D* of title IV; or

* * * * * * *

(iii) in the case of a nursing school located outside of the United States—

(I) * * *

* * * * * * *

(III) the nursing school certifies [only Federal Stafford Loans under section 428, unsubsidized Federal Stafford Loans under section 428H, or Federal PLUS loans under section 428B] *only Federal Direct Stafford Loans under section 455(a)(2)(A), Federal Direct Unsubsidized Stafford Loans under section 455(a)(2)(D), or Federal Direct PLUS Loans under section 455(a)(2)(B)* for students attending the institution;

* * * * * * *

(V) not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying [a Federal Stafford Loan under section 428, an unsubsidized Federal Stafford Loan under section 428H, or a Federal PLUS loan under section 428B] *a Federal Direct Stafford Loan under section 455(a)(2)(A), a Federal Direct Unsubsidized Stafford Loan under section 455(a)(2)(D), or a Federal Direct PLUS Loan under section 455(a)(2)(B)*, received a passing score on such examination.

(B) ADVISORY PANEL.—

(i) * * *

* * * * * * *

(iii) REPORT.—

(I) IN GENERAL.—Not later than 1 year after the date of enactment of the Higher Education Opportunity Act, the advisory panel described in clause (i) shall submit a report to the Secretary and to the authorizing committees recommending eligibility criteria for participation in the loan pro-

grams under [part B] *part D* of title IV for graduate medical schools that—

(aa) * * *

* * * * * * *

(III) MINIMUM ELIGIBILITY REQUIREMENT.—In the recommendations described in subclause (II), the criteria described in subparagraph (A)(i)(I)(bb), as amended by section 102(b) of the Higher Education Opportunity Act, shall be a minimum eligibility requirement for a graduate medical school described in subclause (I) to participate in the loan programs under [part B] *part D* of title IV.

(IV) AUTHORITY.—The Secretary may—

(aa) not earlier than 180 days after the submission of the report described in subclause (I), issue proposed regulations establishing criteria for the eligibility of graduate medical schools described in such subclause to participate in the loan programs under [part B] *part D* of title IV based on the recommendations of such report; and

* * * * * * *

(C) FAILURE TO RELEASE INFORMATION.—The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of [part B] *part D* of title IV.

(D) SPECIAL RULE.—If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under title IV, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under [part B] *part D* of title IV while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

* * * * * * *

TITLE III—INSTITUTIONAL AID

* * * * * * *

PART F—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY-SERVING INSTITUTIONS

SEC. 371. INVESTMENT IN HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY-SERVING INSTITUTIONS.

(a) ELIGIBLE INSTITUTION.—An institution of higher education is eligible to receive funds from the amounts made available under this section if such institution is—

(1) * * *

(2) a Hispanic-serving institution (as defined in [section 502] *section 502(a)* (20 U.S.C. 1101a));

(3) a Tribal College or University (as defined in [section 316] *section 316(b)* (20 U.S.C. 1059c));

* * * * * * *

(5) a Predominantly Black Institution (as defined [in subsection (c)] *in section 318(b)*);

(6) an Asian American and Native American Pacific Islander-serving institution (as defined [in subsection (c)] *in section 320(b)*); or

(7) a Native American-serving nontribal institution (as defined [in subsection (c)] *in section 319(b)*).

(b) NEW INVESTMENT OF FUNDS.—

(1) IN GENERAL.—

(A) PROVISION OF FUNDS.—There shall be available to the Secretary to carry out this section, from funds in the Treasury not otherwise appropriated, [$255,000,000 for each of the fiscal years 2008 and 2009. The authority to award grants under this section shall expire at the end of fiscal year 2009.] *$255,000,000 for each of the fiscal years 2008 through 2019.*

* * * * * * *

(2) ALLOCATION AND ALLOTMENT.—

(A) * * *

[(B) HSI STEM AND ARTICULATION PROGRAMS.—The amount made available for allocation under this subparagraph by subparagraph (A)(i) for any fiscal year shall be available for Hispanic-serving Institutions for activities described in section 503, with a priority given to applications that propose—

[(i) to increase the number of Hispanic and other low income students attaining degrees in the fields of science, technology, engineering, or mathematics; and

[(ii) to develop model transfer and articulation agreements between 2-year Hispanic-serving institutions and 4-year institutions in such fields.]

(B) STEM AND ARTICULATION PROGRAMS.—From the amount made available for allocation under this subparagraph by subparagraph (A)(i) for any fiscal year—

(i) 90 percent shall be available for Hispanic-serving institutions for activities described in sections 503 and

513, with a priority given to applications that propose—

(I) to increase the number of Hispanic and other low-income students attaining degrees in the fields of science, technology, engineering, or mathematics; and

(II) to develop model transfer and articulation agreements between 2-year Hispanic-serving institutions and 4-year institutions in such fields; and

(ii) 10 percent shall be available for grants under section 355.

(C) ALLOCATION AND ALLOTMENT HBCUS AND PBIS.—From the amount made available for allocation under this subparagraph by subparagraph (A)(ii) for any fiscal year—

(i) * * *

(ii) 15 percent shall be available to eligible institutions described in subsection (a)(5) [and shall be available for a competitive grant program to award 25 grants of $600,000 annually for programs in any of the following areas:

[(I) science, technology, engineering, or mathematics (STEM);

[(II) health education;

[(III) internationalization or globalization;

[(IV) teacher preparation; or

[(V) improving educational outcomes of African American males.] *and shall be made available as grants under section 318 and allotted among such institutions under section 318(e), treating such amount, plus the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out section 318, as the amount appropriated to carry out section 318 for purposes of allotments under section 318(e)*

(D) ALLOCATION AND ALLOTMENT TO OTHER MINORITY-SERVING INSTITUTIONS.—From the amount made available for allocation under this subparagraph by subparagraph (A)(iii) for any fiscal year—

(i) * * *

* * * * * * *

(iii) $5,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(6) [for activities described in section 311(c)] *and shall be made available as grants under section 320, treating such $5,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section and using such $5,000,000 for purposes described in subsection (c) of such section*; and

(iv) $5,000,000 for such fiscal year shall be available to eligible institutions [described in subsection (a)(7)—

[(I) to plan, develop, undertake, and carry out activities to improve and expand such institutions'

capacity to serve Native Americans, which may include—

[(aa) the purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

[(bb) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

[(cc) support of faculty exchanges, faculty development, and faculty fellowships to assist faculty in attaining advanced degrees in the faculty's field of instruction;

[(dd) curriculum development and academic instruction;

[(ee) the purchase of library books, periodicals, microfilm, and other educational materials;

[(ff) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

[(gg) the joint use of facilities such as laboratories and libraries; and

[(hh) academic tutoring and counseling programs and student support services; and

[(II) to which the Secretary, to the extent possible and consistent with a competitive process under which such grants are awarded, allocates funds under this clause to ensure maximum and equitable distribution among all such eligible institutions.] *and shall be made available as grants under section 319, treating such $5,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section and using such $5,000,000 for purposes described in subsection (c) of such section*

[(c) DEFINITIONS.—

[(1) ASIAN AMERICAN.—The term "Asian American" has the meaning given the term "Asian" in the Office of Management and Budget's Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity as published on October 30, 1997 (62 Fed. Reg. 58789).

[(2) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-SERVING INSTITUTION.—The term "Asian American and Native American Pacific Islander-serving institution" means an institution of higher education that—

[(A) is an eligible institution under section 312(b); and

[(B) at the time of application, has an enrollment of undergraduate students that is at least 10 percent Asian American and Native American Pacific Islander students.

[(3) ENROLLMENT OF NEEDY STUDENTS.—The term "enrollment of needy students" means the enrollment at an institution of higher education with respect to which not less than 50

percent of the undergraduate students enrolled in an academic program leading to a degree—

[(A) in the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

[(B) come from families that receive benefits under a means-tested Federal benefit program (as defined in paragraph (5));

[(C) attended a public or nonprofit private secondary school—

[(i) that is in the school district of a local educational agency that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 for any year during which the student attended such secondary school; and

[(ii) which for the purpose of this paragraph and for that year was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of such Act exceeds 30 percent of the total enrollment of such school; or

[(D) are first-generation college students (as that term is defined in section 402A(h)), and a majority of such first-generation college students are low-income individuals.

[(4) LOW-INCOME INDIVIDUAL.—The term "low-income individual" has the meaning given such term in section 402A(h).

[(5) MEANS-TESTED FEDERAL BENEFIT PROGRAM.—The term "means-tested Federal benefit program" means a program of the Federal Government, other than a program under title IV, in which eligibility for the programs' benefits or the amount of such benefits are determined on the basis of income or resources of the individual or family seeking the benefit.

[(6) NATIVE AMERICAN.—The term "Native American" means an individual who is of a tribe, people, or culture that is indigenous to the United States.

[(7) NATIVE AMERICAN PACIFIC ISLANDER.—The term "Native American Pacific Islander" means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

[(8) NATIVE AMERICAN-SERVING NONTRIBAL INSTITUTION.—The term "Native American-serving nontribal institution" means an institution of higher education that—

[(A) at the time of application—

[(i) has an enrollment of undergraduate students that is not less than 10 percent Native American students; and

[(ii) is not a Tribal College or University (as defined in section 316); and

[(B) submits to the Secretary such enrollment data as may be necessary to demonstrate that the institution is described in subparagraph (A), along with such other infor-

mation and data as the Secretary may by regulation require.

[(9) PREDOMINANTLY BLACK INSTITUTION.—The term "Predominantly Black institution" means an institution of higher education that—

[(A) has an enrollment of needy students as defined by paragraph (3);

[(B) has an average educational and general expenditure which is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 392(b) to this subparagraph in the same manner as the Secretary applies the waiver requirements to section 312(b)(1)(B);

[(C) has an enrollment of undergraduate students—

[(i) that is at least 40 percent Black American students;

[(ii) that is at least 1,000 undergraduate students;

[(iii) of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals or first-generation college students (as that term is defined in section 402A(h)); and

[(iv) of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

[(D) is legally authorized to provide, and provides within the State, an educational program for which the institution of higher education awards a bachelor's degree, or in the case of a junior or community college, an associate's degree;

[(E) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and

[(F) is not receiving assistance under—

[(i) part B;

[(ii) part A of title V; or

[(iii) an annual authorization of appropriations under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123).]

* * * * * * *

TITLE IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

* * * * * * *

Subpart 1—Federal Pell Grants*; Veterans Educational Equity Supplemental Grants*

SEC. 401. FEDERAL PELL GRANTS: AMOUNT AND DETERMINATIONS; APPLICATIONS.

(a) * * *

(b) PURPOSE AND AMOUNT OF GRANTS.—(1) * * *

(2)**[**(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

[(i) $6,000 for academic year 2009–2010;

[(ii) $6,400 for academic year 2010–2011;

[(iii) $6,800 for academic year 2011–2012;

[(iv) $7,200 for academic year 2012–2013;

[(v) $7,600 for academic year 2013–2014; and

[(vi) $8,000 for academic year 2014–2015,

less an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.**]**

(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

(i) the maximum Federal Pell Grant, as specified in the last enacted appropriation Act applicable to that award year, plus

(ii) the amount of the increase calculated under paragraph (8)(B) for that year, less

(iii) an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.

* * * * * * *

(6) Notwithstanding any other provision of this subpart, the Secretary shall allow the amount of the Federal Pell Grant to be exceeded for students participating in a program of study abroad approved for credit by the institution at which the student is enrolled when the reasonable costs of such program are greater than the cost of attendance at the student's home institution, except that the amount of such Federal Pell Grant in any fiscal year shall not exceed **[**the grant level specified in the appropriate Appropriation Act for this subpart for such year**]** *the Federal Pell Grant amount, determined under paragraph (2)(A), for which a student is eligible during such award year*. If the preceding sentence applies, the financial aid administrator at the home institution may use the cost of the study abroad program, rather than the home institution's cost, to determine the cost of attendance of the student.

* * * * * * *

[(8) ADDITIONAL FUNDS.—

[(A) IN GENERAL.—There are authorized to be appropriated, and there are appropriated, to carry out subparagraph (B) of this paragraph (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated) the following amounts—

[(i) $2,030,000,000 for fiscal year 2008;

[(ii) $2,090,000,000 for fiscal year 2009;

[(iii) $3,030,000,000 for fiscal year 2010;

[(iv) $3,090,000,000 for fiscal year 2011;

[(v) $5,050,000,000 for fiscal year 2012;

[(vi) $105,000,000 for fiscal year 2013;

[(vii) $4,305,000,000 for fiscal year 2014;

[(viii) $4,400,000,000 for fiscal year 2015;

[(ix) $4,600,000,000 for fiscal year 2016; and

[(x) $4,900,000,000 for fiscal year 2017.

[(B) INCREASE IN FEDERAL PELL GRANTS.—The amounts made available pursuant to subparagraph (A) of this paragraph shall be used to increase the amount of the maximum Federal Pell Grant for which a student shall be eligible during an award year, as specified in the last enacted appropriation Act applicable to that award year, by—

[(i) $490 for each of the award years 2008–2009 and 2009–2010;

[(ii) $690 for each of the award years 2010–2011 and 2011–2012; and

[(iii) $1,090 for award year 2012–2013.

[(C) ELIGIBILITY.—The Secretary shall only award an increased amount of a Federal Pell Grant under this section for any award year pursuant to the provisions of this paragraph to students who qualify for a Federal Pell Grant award under the maximum grant award enacted in the annual appropriation Act for such award year without regard to the provisions of this paragraph.

[(D) PROGRAM REQUIREMENTS AND OPERATIONS OTHERWISE UNAFFECTED.—Except as provided in subparagraphs (B) and (C), nothing in this paragraph shall be construed to alter the requirements and operations of the Federal Pell Grant Program as authorized under this section, or authorize the imposition of additional requirements or operations for the determination and allocation of Federal Pell Grants under this section.

[(E) RATABLE INCREASES AND DECREASES.—The amounts specified in subparagraph (B) shall be ratably increased or decreased to the extent that funds available under subparagraph (A) exceed or are less than (respectively) the amount required to provide the amounts specified in subparagraph (B).

[(F) AVAILABILITY OF FUNDS.—The amounts made available by subparagraph (A) for any fiscal year shall be available beginning on October 1 of that fiscal year, and shall remain available through September 30 of the succeeding fiscal year.]

(8) ADDITIONAL FUNDS.—

(A) IN GENERAL.—There are authorized to be appropriated, and there are appropriated, to carry out subparagraph (B) of this paragraph (in addition to any other amounts appropriated

to carry out this section and out of any money in the Treasury not otherwise appropriated) the following amounts—

(i) $2,030,000,000 for fiscal year 2008;

(ii) $2,733,000,000 for fiscal year 2009; and

(iii) such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year to provide the amount of increase of the maximum Federal Pell Grant required by clauses (ii) and (iii) of subparagraph (B).

(B) INCREASE IN FEDERAL PELL GRANTS.—The amounts made available pursuant to subparagraph (A) shall be used to increase the amount of the maximum Federal Pell Grant for which a student shall be eligible during an award year, as specified in the last enacted appropriation Act applicable to that award year, by—

(i) $490 for each of the award years 2008–2009 and 2009–2010;

(ii) $690 for the award year 2010–2011; and

(iii) the amount determined under subparagraph (C) for each succeeding award year.

(C) INFLATION-ADJUSTED AMOUNTS.—

(i) AWARD YEAR 2011–2012.—For award year 2011–2012, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

(I) $5,550 or the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), whichever is greater, increased by a percentage equal to the annual adjustment percentage for award year 2011–2012; reduced by

(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

(III) rounded to the nearest $5.

(ii) SUBSEQUENT AWARD YEARS.—For award year 2012–2013 and each of the subsequent award years, the amount determined under this subparagraph for purposes of subparagraph (B)(iii) shall be equal to—

(I) the total maximum Federal Pell Grant for the preceding award year (as determined under clause (iv)(II)), increased by a percentage equal to the annual adjustment percentage for the award year for which the amount under this subparagraph is being determined; reduced by

(II) $4,860 or the maximum Federal Pell Grant for which a student was eligible for the preceding award year, as specified in the last enacted appropriation Act applicable to that year, whichever is greater; and

(III) rounded to the nearest $5.

(iii) LIMITATION ON DECREASES.—Notwithstanding clauses (i) and (ii), if the amount determined under clause (i) or (ii) for an award year is less than the amount determined under this paragraph for the preceding award year, the amount determined under such clause for such award

year shall be the amount determined under this paragraph for the preceding award year.

(iv) DEFINITIONS.—For purposes of this subparagraph—

(I) the term "annual adjustment percentage" as it applies to an award year is equal to the sum of—

(aa) the estimated percentage change in the Consumer Price Index (as determined by the Secretary, using the definition in section 478(f)) for the most recent calendar year ending prior to the beginning of that award year; and

(bb) one percentage point; and

(II) the term "total maximum Federal Pell Grant" as it applies to a preceding award year is equal to the sum of—

(aa) the maximum Federal Pell Grant for which a student is eligible during an award year, as specified in the last enacted appropriation Act applicable to that preceding award year; and

(bb) the amount of the increase in the maximum Federal Pell Grant required by this paragraph for that preceding award year.

(D) PROGRAM REQUIREMENTS AND OPERATIONS OTHERWISE UNAFFECTED.—Except as provided in subparagraphs (B) and (C), nothing in this paragraph shall be construed to alter the requirements and operations of the Federal Pell Grant Program as authorized under this section, or to authorize the imposition of additional requirements or operations for the determination and allocation of Federal Pell Grants under this section.

(E) AVAILABILITY OF FUNDS.—The amounts made available by subparagraph (A) for any fiscal year shall be available beginning on October 1 of that fiscal year, and shall remain available through September 30 of the succeeding fiscal year.

* * * * * * *

SEC. 401B. VETERANS EDUCATIONAL EQUITY SUPPLEMENTAL GRANT PROGRAM.

(a) VETERANS EDUCATIONAL EQUITY SUPPLEMENTAL GRANTS AUTHORIZED.—The Secretary shall award a grant to each eligible student, in an amount determined in accordance with subsection (c), to assist such student with paying the cost of tuition incurred by the student for a program of education at an institution of higher education.

(b) DEFINITIONS.—In this section—

(1) ELIGIBLE STUDENT.—The term "eligible student" means a student who—

(A) is a covered individual, as such term is defined in section 3311(b) of title 38, United States Code;

(B) is enrolled at an institution of higher education that—

(i) is not a public institution of higher education; and

(ii) is located in a State with a zero, or very low, maximum tuition charge per credit hour compared to the maximum tuition charge per credit hour in all

other States, as determined by the Secretary of Veterans Affairs (based on the determinations of maximum tuition charged per credit hour in each State for the purposes of chapter 33 of title 38, United States Code); and

(C) is eligible for educational assistance for an academic year, and will receive an amount of such assistance for such year for fees charged the individual that is less than the maximum amount of such assistance available for fees charged for such year in such State.

(2) EDUCATIONAL ASSISTANCE.—The term "educational assistance" means the amount of educational assistance from the Secretary of Veterans Affairs an eligible student receives or will receive under section 3313(c)(1)(A) of title 38, United States Code, or a similar amount of such assistance under paragraphs (2) through (7) of such section 3313(c).

(c) GRANT AMOUNT.—A grant to an eligible student under this section be equal to an amount that is—

(1) the maximum amount of educational assistance for fees charged that the eligible student would receive, in accordance with section 3313(c) of title 38, United States Code, if such student attended the public institution of higher education in the State in which the eligible student is enrolled that has the highest fees charged to an individual for a year in such State (as determined by the Secretary of Veterans Affairs for the purposes of chapter 33 of such title 38), less

(2) the educational assistance the eligible student will receive, in accordance with such section, for fees charged to the student for such year at the institution of higher education at which the student is enrolled.

(d) USES OF FUNDS.—An eligible student who receives a grant under this section shall use such grant to pay tuition incurred by the student for a program of education at an institution of higher education.

(e) NOTIFICATION.—The Secretary, in coordination with Secretary of Veterans Affairs, shall establish a system of notification to ensure the timely delivery to each eligible student of—

(1) educational assistance received by the student; and

(2) grants awarded to the student under this section.

(f) AUTHORIZATION AND APPROPRIATION.—There are authorized to be appropriated, and there are appropriated, such sums as may be necessary to carry out this section (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated).

Subpart 2—Federal Early Outreach and Student Services Programs

CHAPTER 1—FEDERAL TRIO PROGRAMS

* * * * * * *

SEC. 402D. STUDENT SUPPORT SERVICES.

(a) * * *

* * * * * * *

(d) SPECIAL RULE.—

(1) USE FOR STUDENT AID.—A recipient of a grant that undertakes any of the permissible services identified in subsection (c) may, in addition, use such funds to provide grant aid to students. A grant provided under this paragraph shall not [exceed the maximum appropriated Pell Grant] *exceed the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student is eligible* or, be less than the minimum appropriated Pell Grant, for the current academic year. In making grants to students under this subsection, an institution shall ensure that adequate consultation takes place between the student support service program office and the institution's financial aid office.

* * * * * * *

PART B—FEDERAL FAMILY EDUCATION LOAN PROGRAM

SEC. 421. STATEMENT OF PURPOSE; NONDISCRIMINATION; AND APPROPRIATIONS AUTHORIZED.

(a) * * *

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part—

(1) * * *

* * * * * * *

Sums appropriated under paragraphs (1), (2), (4), and (5) of this subsection shall remain available until expended*, except that no sums may be expended after June 30, 2010, with respect to loans under this part for which the first disbursement would be made after such date*. No additional sums are authorized to be appropriated under paragraph (3) or (4) of this subsection by reason of the reenactment of such paragraphs by the Higher Education Amendments of 1986.

* * * * * * *

(d) TERMINATION OF AUTHORITY TO MAKE OR INSURE NEW LOANS.—Notwithstanding paragraphs (1) through (6) of subsection (b) or any other provision of law—

(1) no new loans (including consolidation loans) may be made or insured under this part after June 30, 2010; and

(2) no funds are authorized to be appropriated, or may be expended, under this Act or any other Act to make or insure loans under this part (including consolidation loans) for which the first disbursement would be made after June 30, 2010,

except as expressly authorized by an Act of Congress enacted after the date of enactment of Student Aid and Fiscal Responsibility Act of 2009.

* * * * * * *

SEC. 424. SCOPE AND DURATION OF FEDERAL LOAN INSURANCE PROGRAM.

(a) LIMITATIONS ON AMOUNTS OF LOANS COVERED BY FEDERAL INSURANCE.—The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 435) to students covered by Federal loan insurance under this part shall not exceed $2,000,000,000 for the period from July 1, 1976, to [September 30, 1976, and for each of the succeeding fiscal years ending prior to October 1, 2014. Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this part, to continue or complete their educational program; but no insurance may be granted for any loan made or installment paid after September 30, 2018.] *September 30, 1976, for each of the succeeding fiscal years ending prior to October 1, 2009, and for the period from October 1, 2009, to June 30, 2010, for loans first disbursed on or before June 30, 2010.*

* * * * * * *

SEC. 427A. APPLICABLE INTEREST RATES.

(a) * * *

* * * * * * *

(l) INTEREST RATES FOR NEW LOANS ON OR AFTER JULY 1, 2006.—

(1) IN GENERAL.—Notwithstanding subsection (h), with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after July 1, 2006, *and before July 1, 2010,* the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

(2) PLUS LOANS.—Notwithstanding subsection (h), with respect to any loan under section 428B for which the first disbursement is made on or after July 1, 2006, *and before July 1, 2010,* the applicable rate of interest shall be 8.5 percent on the unpaid principal balance of the loan.

(3) CONSOLIDATION LOANS.—With respect to any consolidation loan under section 428C for which the application is received by an eligible lender on or after July 1, 2006, *and that was disbursed before July 1, 2010,* the applicable rate of interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(A) * * *

* * * * * * *

(4) REDUCED RATES FOR UNDERGRADUATE SUBSIDIZED LOANS.—Notwithstanding subsection (h) and paragraph (1) of this subsection, with respect to any loan to an undergraduate student made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B, 428C, or 428H) for which the first disbursement is made on or after July 1, 2006, and before July 1, [2012] *2010*, the applicable rate of interest shall be as follows:

(A) * * *

* * * * * * *

[(D) For a loan for which the first disbursement is made on or after July 1, 2010, and before July 1, 2011, 4.5 percent on the unpaid principal balance of the loan.

[(E) For a loan for which the first disbursement is made on or after July 1, 2011, and before July 1, 2012, 3.4 percent on the unpaid principal balance of the loan.]

* * * * * * *

SEC. 428. FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.

(a) FEDERAL INTEREST SUBSIDIES.—

(1) TYPES OF LOANS THAT QUALIFY.—Each student who has received a loan for study at an eligible institution *for which the first disbursement is made before July 1, 2010, and—*

(A) * * *

* * * * * * *

(5) DURATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS.—The period referred to in subparagraph (B) of paragraph (1) of this subsection shall begin on the date of enactment of this Act and end at the close of [September 30, 2014, except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his or her education program, such period shall end at the close of September 30, 2018.] *June 30, 2010.*

* * * * * * *

(b) INSURANCE PROGRAM AGREEMENTS TO QUALIFY LOANS FOR INTEREST SUBSIDIES.—

(1) REQUIREMENTS OF INSURANCE PROGRAM.—Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) if the Secretary determines that the student loan insurance program—

(A) * * *

* * * * * * *

(G) insures 98 percent of the unpaid principal of loans insured under the program, except that—

(i) * * *

(ii) for any loan for which the first disbursement of principal is made on or after July 1, 2006, *and before July 1, 2010,* the preceding provisions of this subparagraph shall be applied by substituting "97 percent" for "98 percent"; and

* * * * * * *

(H) provides—

(i) * * *

(ii) for loans for which the date of guarantee of principal is on or after July 1, 2006, *and that are first disbursed before July 1, 2010,* for the collection, and the deposit into the Federal Student Loan Reserve Fund under section 422A of a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders;

* * * * * * *

(f) PAYMENTS OF CERTAIN COSTS.—

(1) PAYMENT FOR CERTAIN ACTIVITIES.—

(A) IN GENERAL.—The Secretary—

(i) * * *

(ii) for loans originated ⟦during fiscal years beginning⟧ on or after October 1, 2003, *and first disbursed before July 1, 2010,* and in accordance with the provisions of this paragraph, shall, except as provided in subparagraph (C), pay to each guaranty agency, a loan processing and issuance fee equal to 0.40 percent of the total principal amount of the loans on which insurance was issued under this part during such fiscal year by such agency.

* * * * * * *

(j) LENDERS-OF-LAST-RESORT.—

(1) GENERAL REQUIREMENT.—In each State, the guaranty agency or an eligible lender in the State described in section 435(d)(1)(D) of this Act shall*, before July 1, 2010,* make loans directly, or through an agreement with an eligible lender or lenders, to eligible students and parents who are otherwise unable to obtain loans under this part (except for consolidation loans under section 428C) or who attend an institution of higher education in the State that is designated under paragraph (4). Loans made under this subsection shall not exceed the amount of the need of the borrower, as determined under subsection (a)(2)(B), nor be less than $200. No loan under section 428, 428B, or 428H that is made pursuant to this subsection shall be made with interest rates, origination or default fees, or other terms and conditions that are more favorable to the borrower than the maximum interest rates, origination or default fees, or other terms and conditions applicable to that type of loan under this part. The guaranty agency shall consider the request of any eligible lender, as defined under section 435(d)(1)(A) of this Act, to serve as the lender-of-last-resort pursuant to this subsection.

* * * * * * *

SEC. 428B. FEDERAL PLUS LOANS.

(a) AUTHORITY TO BORROW.—

(1) AUTHORITY AND ELIGIBILITY.—⟦A graduate⟧ *Prior to July 1, 2010, a graduate* or professional student or the parents of

a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b), if—

(A) * * *

* * * * * * *

SEC. 428C. FEDERAL CONSOLIDATION LOANS.

(a) AGREEMENTS WITH ELIGIBLE LENDERS.—

(1) * * *

* * * * * * *

(3) DEFINITION OF ELIGIBLE BORROWER.—(A) * * *

(B)(i) An individual's status as an eligible borrower under this section or under section 455(g) terminates under both sections upon receipt of a consolidation loan under this section or under section 455(g), except that—

(I) * * *

* * * * * * *

[(V) an individual may obtain a subsequent consolidation loan under section 455(g) only—

[(aa) for the purposes of obtaining income contingent repayment or income-based repayment, and only if the loan has been submitted to the guaranty agency for default aversion or if the loan is already in default;

[(bb) for the purposes of using the public service loan forgiveness program under section 455(m); or

[(cc) for the purpose of using the no accrual of interest for active duty service members benefit offered under section 455(o).**]**

(V) an individual who has a consolidation loan under this section and does not have a consolidation loan under section 455(g) may obtain a subsequent consolidation loan under section 455(g).

(4) DEFINITION OF ELIGIBLE STUDENT LOANS.—For the purpose of paragraph (1), the term "eligible student loans" means loans—

(A) made, insured, or guaranteed under this part*, and first disbursed before July 1, 2010*, including loans on which the borrower has defaulted (but has made arrangements to repay the obligation on the defaulted loans satisfactory to the Secretary or guaranty agency, whichever insured the loans);

* * * * * * *

(b) CONTENTS OF AGREEMENTS, CERTIFICATES OF INSURANCE, AND LOAN NOTES.—

(1) AGREEMENTS WITH LENDERS.—Any lender described in subparagraph (A), (B), or (C) of subsection (a)(1) who wishes to make consolidation loans under this section shall enter into an agreement with the Secretary or a guaranty agency which provides—

(A) * * *

* * * * * * *

(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance

with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994*, and before July 1, 2010*;

* * * * * * *

(5) DIRECT LOANS.—**[**In the event that**]** *If, before July 1, 2010,* a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms or income-based repayment terms acceptable to the borrower from such a lender, or chooses to obtain a consolidation loan for the purposes of using the public service loan forgiveness program offered under section 455(m), the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. In addition, in the event that a borrower chooses to obtain a consolidation loan for the purposes of using the no accrual of interest for active duty service members program offered under section 455(o), the Secretary shall offer a Federal Direct Consolidation loan to any such borrower who applies for participation in such program. A direct consolidation loan offered under this paragraph shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part D of this title, pursuant to income-based repayment under section 493C, or pursuant to any other repayment provision under this section, except that if a borrower intends to be eligible to use the public service loan forgiveness program under section 455(m), such loan shall be repaid using one of the repayment options described in section 455(m)(1)(A). The Secretary shall not offer such loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans.

* * * * * * *

(c) PAYMENT OF PRINCIPAL AND INTEREST.—

(1) INTEREST RATE.—(A) Notwithstanding subparagraphs (B) and (C), with respect to any loan made under this section for which the application is received by an eligible lender—

(i) * * *

(ii) on or after July 1, 2006, *and that is disbursed before July 1, 2010,* the applicable interest rate shall be determined under section 427A(l)(3).

* * * * * * *

(C) A consolidation loan made on or after July 1, 1994, *and first disbursed before July 1, 2010,* shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

* * * * * * *

(e) TERMINATION OF AUTHORITY.—The authority to make loans under this section expires at the close of **[**September 30, 2014.**]** *June 30, 2010. No loan may be made under this section for which the first disbursement would be on or after July 1, 2010.* Nothing in this section shall be construed to authorize the Secretary to pro-

mulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b). Loans made under this section which are insured by the Secretary shall be considered to be new loans made to students for the purpose of section 424(a).

* * * * * * *

SEC. 428H. UNSUBSIDIZED STAFFORD LOANS FOR MIDDLE-INCOME BORROWERS.

(a) IN GENERAL.—It is the purpose of this section to authorize insured loans under this part *that are first disbursed before July 1, 2010,* for borrowers who do not qualify for Federal interest subsidy payments under section 428 of this Act. Except as provided in this section, all terms and conditions for Federal Stafford loans established under section 428 shall apply to loans made pursuant to this section.

(b) ELIGIBLE BORROWERS.—**[**Any student**]** *Prior to July 1, 2010, any student* meeting the requirements for student eligibility under section 484 (including graduate and professional students as defined in regulations promulgated by the Secretary) shall be entitled to borrow an unsubsidized Federal Stafford Loan *for which the first disbursement is made before such date* if the eligible institution at which the student has been accepted for enrollment, or at which the student is in attendance, has—

(1) * * *

* * * * * * *

(h) INSURANCE PREMIUM.—Each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) may charge a borrower under this section an insurance premium equal to not more than 1.0 percent of the principal amount of the loan, if such premium will not be used for incentive payments to lenders. Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, *and that are first disbursed before July 1, 2010,* in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) shall collect and deposit into the Federal Student Loan Reserve Fund under section 422A, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources. The Federal default fee shall not be used for incentive payments to lenders.

* * * * * * *

SEC. 428L. LOAN REPAYMENT FOR CIVIL LEGAL ASSISTANCE ATTORNEYS.

(a) * * *

(b) DEFINITIONS.—In this section:

(1) * * *

(2) STUDENT LOAN.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "student loan" means—

[(i) subject to clause (ii), a loan made, insured, or guaranteed under this part, part D, or part E; and]

(i) subject to clause (ii)—

(I) a loan made, insured, or guaranteed under this part, and that is first disbursed before July 1, 2010; or

(II) a loan made under part D or part E; and

(ii) a loan made under section [428C or 455(g)] *428C, that is disbursed before July 1, 2010, or section 455(g)*, to the extent that such loan was used to repay—

(I) * * *

(II) a loan made under section 428, 428B, or 428H *for which the first disbursement is made before July 1, 2010,*; or

* * * * * * *

SEC. 435. DEFINITIONS FOR STUDENT LOAN INSURANCE PROGRAM.

As used in this part:

(a) ELIGIBLE INSTITUTION.—

(1) * * *

* * * * * * *

(5) DEFINITION OF MITIGATING CIRCUMSTANCES.—(A) For purposes of this subsection, an institution of higher education shall be treated as having exceptional mitigating circumstances that make application of paragraph (2) inequitable, and that provide for regulatory relief under paragraph (3), if such institution, in the opinion of an independent auditor, meets the following criteria:

(i) For a 12-month period that ended during the 6 months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's cohort default rate is determined, at least two-thirds of the students enrolled on at least a half-time basis at the institution—

(I) are eligible to receive a Federal Pell Grant award that is at least equal to [one-half the maximum Federal Pell Grant award for which a student would be eligible] *one-half the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student would be eligible* based on the student's enrollment status; or

* * * * * * *

SEC. 438. SPECIAL ALLOWANCES.

(a) * * *

(b) COMPUTATION AND PAYMENT.—

(1) * * *

(2) RATE OF SPECIAL ALLOWANCE.—(A) * * *

* * * * * * *

(I) LOANS DISBURSED ON OR AFTER JANUARY 1, 2000*, AND BEFORE JULY 1, 2010*.—

(i) IN GENERAL.—Notwithstanding subparagraphs (G) and (H), but subject to paragraph (4) and the following clauses of this subparagraph, and except as provided in subparagraph (B), the special allowance paid pursuant to this subsection on loans for which the first disbursement is made on or after January 1, 2000, *and before July 1, 2010,* shall be computed—

(I) * * *

(II) by subtracting the applicable interest rates on such loans from [such average bond equivalent rate] *the rate determined under subclause (I)*;

* * * * * * *

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan—

(I) * * *

(II) for which the first disbursement is made on or after July 1, 2006, *and before July 1, 2010,* and for which the applicable rate of interest is described in section section 427A(l)(1) or (l)(4), but only with respect to (aa) periods prior to the beginning of the repayment period of the loan; or (bb) during the periods in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 427(a)(2)(C) or 428(b)(1)(M);

clause (i)(III) of this subparagraph shall be applied by substituting "1.74 percent" for "2.34 percent".

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, *and before July 1, 2010,* and for which the applicable rate of interest is described in section 427A(k)(3) or (l)(2), clause (i)(III) of this subparagraph shall be applied by substituting "2.64 percent" for "2.34 percent".

(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after January 1, 2000, *and that is disbursed before July 1, 2010,* and for which the applicable interest rate is determined under section 427A(k)(4) or (l)(3), clause (i)(III) of this subparagraph shall be applied by substituting "2.64 percent" for "2.34 percent".

(v) RECAPTURE OF EXCESS INTEREST.—

(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under subsection (k) or (l) of section 427A and for which the first disbursement of principal is made on or after April 1, 2006, *and before July 1, 2010,* if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

* * * * * * *

(III) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term "special allowance support level" means, for any loan, a number expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (III) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), [(iv), and (vi)] *(iv), (vi), and (vii)* in determining such sum.

(vi) REDUCTION FOR LOANS DISBURSED ON OR AFTER OCTOBER 1, 2007, *AND BEFORE JULY 1, 2010*.—With respect to a loan on which the applicable interest rate is determined under section 427A(l) and for which the first disbursement of principal is made on or after October 1, 2007, *and before July 1, 2010,* the special allowance payment computed pursuant to this subparagraph shall be computed—

(I) * * *

* * * * * * *

(vii) REVISED CALCULATION RULE TO REFLECT FINANCIAL MARKET CONDITIONS.—

(I) CALCULATION BASED ON LIBOR.—For the calendar quarter beginning on October 1, 2009, and each subsequent calendar quarter, in computing the special allowance paid pursuant to this subsection with respect to loans described in subclause (II), clause (i)(I) of this subparagraph shall be applied by substituting "of the 1-month London Inter Bank Offered Rate (LIBOR) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association" for "of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period".

(II) LOANS ELIGIBLE FOR LIBOR-BASED CALCULATION.—The special allowance paid pursuant to this subsection shall be calculated as described in subclause (I) with respect to special allowance payments for the 3-month period ending December 31, 2009, and each succeeding 3-month period, on loans for which the first disbursement is made—

(aa) on or after the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009, and before July 1, 2010; and

(bb) on or after January 1, 2000, and before the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009, if, not later than the last day of the second full fiscal quarter after the date of enactment of such Act, the holder of the loan affirmatively and permanently waives all contractual, statutory or other legal rights to a special allowance paid pursuant to this subsection that is calculated using the formula in effect at the time the loans were first disbursed.

(III) TERMS OF WAIVER.—A waiver pursuant to subclause (II)(bb) shall—

(aa) be applicable to all loans described in such subclause that are held under any lender identification number associated with the holder (pursuant to section 487B); and

(bb) apply with respect to all future calculations of the special allowance on loans described in such subclause that are held on the date of such waiver or that are acquired by the holder after such date.

(IV) PARTICIPANT'S YIELD.—For the calendar quarter beginning on October 1, 2009, and each subsequent calendar quarter, the Secretary's participant yield in any loan for which the first disbursement is made on or after January 1, 2000, and before October 1, 2009, and that is held by a lender that has sold any participation interest in such loan to the Secretary shall be determined by using the LIBOR-based rate described in subclause (I) as the substitute rate (for the commercial paper rate) referred to in the participation agreement between the Secretary and such lender.

* * * * * * *

(c) ORIGINATION FEES FROM STUDENTS.—

(1) * * *

(2) AMOUNT OF ORIGINATION FEES.—

(A) * * *

(B) SUBSEQUENT REDUCTIONS.—Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 428C and 439(o))—

(i) * * *

* * * * * * *

(iii) by substituting "1.0 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009; *and*

(iv) by substituting "0.5 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010**[**; and**]**.

[(v) by substituting "0.0 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.**]**

* * * * * * *

(6) SLS AND PLUS LOANS.—With respect to any loans made under section 428A or 428B on or after October 1, 1992, *and first disbursed before July 1, 2010,* each eligible lender under this part shall charge the borrower an origination fee of 3.0 percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payments to the borrower.

* * * * * * *

(d) LOAN FEES FROM LENDERS.—

(1) * * *

(2) AMOUNT OF LOAN FEES.—The amount of the loan fee which shall be deducted under paragraph (1), but which may not be collected from the borrower, shall be equal to—

(A) * * *

(B) 1.0 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 2007*, and before July 1, 2010*.

* * * * * * *

PART D—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

* * * * * * *

SEC. 452. FUNDS FOR ORIGINATION OF DIRECT STUDENT LOANS.

(a) * * *

* * * * * * *

(d) INSTITUTIONS LOCATED OUTSIDE THE UNITED STATES.—Loan funds for students (and parents of students) attending institutions located outside the United States shall be disbursed through a financial institution located in the United States and designated by the Secretary to serve as the agent of such institutions with respect to the receipt of the disbursements of such loan funds and the transfer of such funds to such institutions. To be eligible to receive funds under this part, an otherwise eligible institution located outside the United States shall make arrangements, subject to regulations by the Secretary, with the agent designated by the Secretary under this subsection to receive funds under this part.

* * * * * * *

SEC. 454. AGREEMENTS WITH INSTITUTIONS.

(a) PARTICIPATION AGREEMENTS.—An agreement with any institution of higher education for participation in the direct student loan program under this part shall—

(1) * * *

* * * * * * *

[(4) provide that students at the institution and their parents (with respect to such students) will be eligible to participate in the programs under part B of this title at the discretion of the Secretary for the period during which such institution participates in the direct student loan program under this part, except that a student or parent may not receive loans under both this part and part B for the same period of enrollment;**]**

[(5)**]** *(4)* provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives;

[(6)**]** *(5)* provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information

necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

[(7)] *(6)* include such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.

(b) ORIGINATION.—An agreement with any institution of higher education, or consortia thereof, for the origination of loans under this part shall—

(1) * * *

(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), [(5), (6), and (7)] *(5), and (6)* of subsection (a), as modified to relate to the origination of loans by the institution or consortium;

* * * * * * *

SEC. 455. TERMS AND CONDITIONS OF LOANS.

(a) IN GENERAL.—

(1) PARALLEL TERMS, CONDITIONS, BENEFITS, AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers*, and first disbursed on June 30, 2010,* under sections 428, 428B, 428C, and 428H of this title.

* * * * * * *

(b) INTEREST RATE.—

(1) * * *

* * * * * * *

(7) INTEREST RATE PROVISION FOR NEW LOANS ON OR AFTER JULY 1, 2006.—

(A) * * *

* * * * * * *

(E) REDUCED RATES FOR UNDERGRADUATE FDSL ON AND AFTER JULY 1, 2012.—Notwithstanding the preceding paragraphs of this subsection and subparagraph (A) of this paragraph, for Federal Direct Stafford Loans made to undergraduate students for which the first disbursement is made on or after July 1, 2012, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.5 percent,

except that such rate shall not exceed 6.8 percent.

* * * * * * *

(g) FEDERAL DIRECT CONSOLIDATION LOANS.—A borrower of a loan made under this part may consolidate such loan with the loans described in section 428C(a)(4)*, including any loan made under part B and first disbursed before July 1, 2010*. To be eligible for a consolidation loan under this part, a borrower shall meet the

eligibility criteria set forth in section 428C(a)(3). ⟦The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 428C(b)(1)(G).⟧

* * * * * * *

SEC. 455A. FEDERAL DIRECT PERKINS LOANS.

(a) DESIGNATION OF LOANS.—Loans made to borrowers under this section shall be known as "Federal Direct Perkins Loans".

(b) IN GENERAL.—It is the purpose of this section to authorize loans to be awarded by institutions of higher education through agreements established under section 463(f). Unless otherwise specified in this section, all terms and conditions and other requirements applicable to Federal Direct Unsubsidized Stafford loans established under section 455(a)(2)(D) shall apply to loans made pursuant to this section.

(c) ELIGIBLE BORROWERS.—Any student meeting the requirements for student eligibility under section 464(b) (including graduate and professional students as defined in regulations promulgated by the Secretary) shall be eligible to borrow a Federal Direct Perkins Loan, provided the student attends an eligible institution with an agreement with the Secretary under section 463(f), and the institution uses its authority under that agreement to award the student a loan.

(d) LOAN LIMITS.—The annual and aggregate limits for loans under this section shall be the same as those established under section 464, and aggregate limits shall include loans made by institutions under agreements under section 463(a).

(e) APPLICABLE RATES OF INTEREST.—Loans made pursuant to this section shall bear interest, on the unpaid balance of the loan, at the rate of 5 percent per year.

SEC. 456. CONTRACTS.

(a) CONTRACTS FOR SUPPLIES AND SERVICES.—

(1) ⟦IN GENERAL.—The Secretary⟧ *AWARDING OF CONTRACTS.—*

(A) IN GENERAL.—The Secretary shall, to the extent practicable, award contracts for origination, servicing, and collection described in subsection (b). In awarding such contracts, the Secretary shall ensure that such services and supplies are provided at competitive prices.

(B) AWARDING CONTRACTS FOR SERVICING LOANS.—The Secretary shall, if practicable, award multiple contracts, through a competitive bidding process, to entities, including eligible not-for-profit servicers, to service loans originated under this part. The competitive bidding process shall take into account price, servicing capacity, and capability, and may take into account the capacity and capability to provide default aversion activities and outreach services.

(C) JOB RETENTION INCENTIVE PAYMENT.—(i) In a contract with an entity under subparagraph (B) for the servicing of loans, the Secretary shall provide a job retention incentive payment, in an amount and manner determined by the Secretary, if such entity agrees to give priority for hiring for positions created as a result of such a contract to those geographical locations at which the entity per-

formed student loan origination or servicing activities under the Federal Family Education Loan Program as of the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009.

(ii) In determining the allocation of loans to be serviced by an entity awarded such a contract, the Secretary shall consider the retention of highly qualified employees of such entity a positive factor in determining such allocation.

(2) ENTITIES.—The entities*, including eligible not-for-profit servicers,* with which the Secretary may enter into contracts shall include only entities which the Secretary determines are qualified to provide such services and supplies and will comply with the procedures applicable to the award of such contracts. In the case of awarding contracts for the origination, servicing, and collection of loans under this part, the Secretary shall enter into contracts only with entities that have extensive and relevant experience and demonstrated effectiveness. **[**The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 428(b) and (c), if such agencies meet the qualifications as determined by the Secretary under this subsection and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.**]** *The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 428(b) and (c) on the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009, and eligible not-for-profit servicers, if such agencies or servicers meet the qualifications as determined by the Secretary under this subsection and if those agencies or servicers have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, and such eligible not-for-profit servicers, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies and such servicers with a history of high quality performance and demonstrated integrity in conducting operations with institutions of higher education and the Secretary.*

(3) SERVICING BY ELIGIBLE NOT-FOR-PROFIT SERVICERS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, in each State where one or more eligible not-for-profit servicer has its principal place of business, the Secretary shall contract with each such servicer to service loans originated under this part on behalf of borrowers attending institutions located within such State, provided that the servicer demonstrates that it meets the standards for servicing Federal assets and providing quality service and agrees to service the loans at a competitive market rate, as determined by the Secretary. In determining such a competitive market rate, the Secretary may take into ac-

count the volume of loans serviced by the servicer. Contracts awarded under this paragraph shall be subject to the same requirements for quality, performance, and accountability as contracts awarded under paragraph (2) for similar activities.

(B) ALLOCATIONS.—(i) ONE SERVICER.—In the case of a State with only one eligible not-for-profit servicer with a contract described in subparagraph (A), the Secretary shall, at a minimum, allocate to such servicer, on an annual basis and subject to such contract, the servicing rights for the lesser of—

(I) the loans of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer) attending institutions located within the State; or

(II) the loans of all the borrowers attending institutions located within the State.

(ii) MULTIPLE SERVICERS.—In the case of a State with more than one eligible not-for-profit servicer with a contract described in subparagraph (A), the Secretary shall, at a minimum, allocate to each such servicer, on an annual basis and subject to such contract, the servicing rights for the lesser of—

(I) the loans of 100,000 borrowers (including borrowers who borrowed loans in a prior year that were serviced by the servicer) attending institutions located within the State; or

(II) an equal share of the loans of all borrowers attending institutions located within the State, except the Secretary shall adjust such shares as necessary to ensure that the loans of any single borrower remain with a single servicer.

(iii) ADDITIONAL ALLOCATION.—The Secretary may allocate additional servicing rights to an eligible not-for-profit servicer based on the performance of such servicer, as determined by the Secretary, including performance in the areas of customer service and default aversion.

(C) MULTIPLE LOANS.—Notwithstanding the allocations required by subparagraph (B), the Secretary may transfer loans among servicers who are awarded contracts to service loans pursuant to this section to ensure that the loans of any single borrower remain with a single servicer.

[(3)] *(4)* RULE OF CONSTRUCTION.—Nothing in this section shall be construed as a limitation of the authority of any State agency to enter into an agreement for the purposes of this section as a member of a consortium of State agencies*, or of any eligible not-for-profit servicer to enter into an agreement for the purposes of this section as a member of a consortium of such entities*.

* * * * * * *

(c) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009, the Secretary shall prepare and submit to the authorizing committees, a report evaluating the performance of all eligible not-

for-profit servicers awarded a contract under this section to service loans originated under this part. Such report shall give consideration to—

(1) customer satisfaction of borrowers and institutions with respect to the loan servicing provided by the servicers;

(2) compliance with applicable regulations by the servicers; and

(3) the effectiveness of default aversion activities, and outreach services (if any), provided by the servicers.

(d) DEFINITIONS.—In this section:

(1) DEFAULT AVERSION ACTIVITIES.—The term "default aversion activities" means activities that are directly related to providing collection assistance to the Secretary on a delinquent loan, prior to the loan being legally in a default status, including due diligence activities required pursuant to regulations.

(2) ELIGIBLE NOT-FOR-PROFIT SERVICER.—

(A) IN GENERAL.—The term "eligible not-for-profit servicer" means an entity that, on the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009—

(i) meets the definition of an eligible not-for-profit holder under section 435(p), except that such term does not include eligible lenders described in paragraph (1)(D) of such section;

(ii) notwithstanding clause (i), is the sole beneficial owner of a loan for which the special allowance rate is calculated under section 438(b)(2)(I)(vi)(II) because the loan is held by an eligible lender trustee that is an eligible not-for-profit holder as defined under section 435(p)(1)(D); or

(iii) is an affiliated entity of an eligible not-for-profit servicer described in clause (i) or (ii) that—

(I) directly employs, or will directly employ (on or before the date the entity begins servicing loans under a contract awarded by the Secretary pursuant to subsection (a)(3)(A)), the majority of individuals who perform student loan servicing functions; and

(II) on such date of enactment, was performing, or had entered into a contract with a third party servicer (as such term is defined in section 481(c)) who was performing, student loan servicing functions for loans made under part B of this title.

(B) AFFILIATED ENTITY.—For the purposes of subparagraph (A), the term "affiliated entity" means an entity contracted to perform services for an eligible not-for-profit servicer that—

(i) is a nonprofit entity or is wholly owned by a nonprofit entity; and

(ii) is not owned or controlled, in whole or in part, by—

(I) a for-profit entity; or

(II) an entity having its principal place of business in another State.

(3) OUTREACH SERVICES.—The term "outreach services" means programs offered to students and families, including programs delivered in coordination with institutions of higher education that—

(A) encourage—

(i) students to attend and complete a degree or certification program at an institution of higher education; and

(ii) students and families to obtain financial aid, but minimize the borrowing of education loans; and

(B) deliver financial literacy and counseling tools.

* * * * * * *

PART E—FEDERAL PERKINS LOANS

SEC. 461. APPROPRIATIONS AUTHORIZED.

(a) PROGRAM AUTHORITY.—The Secretary shall*, before July 1, 2010,* carry out a program of stimulating and assisting in the establishment and maintenance of funds at institutions of higher education for the making of low-interest loans to students in need thereof to pursue their courses of study in such institutions or while engaged in programs of study abroad approved for credit by such institutions. Loans made under this part shall be known as "Federal Perkins Loans".

(b) AUTHORIZATION OF APPROPRIATIONS.—**[**(1) For the purpose**]** *For the purpose* of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $300,000,000 for fiscal year 2009 **[**and for each of the five succeeding fiscal years**]**.

[(2) In addition to the funds authorized under paragraph (1), there are hereby authorized to be appropriated such sums for fiscal year 2015 and each of the 5 succeeding fiscal years as may be necessary to enable students who have received loans for academic years ending prior to October 1, 2015, to continue or complete courses of study.

[(c) USE OF APPROPRIATIONS.—Any sums appropriated pursuant to subsection (b) for any fiscal year shall be available for apportionment pursuant to section 462 and for payments of Federal capital contributions therefrom to institutions of higher education which have agreements with the Secretary under section 463. Such Federal capital contributions and all contributions from such institutions shall be used for the establishment, expansion, and maintenance of student loan funds.**]**

SEC. 462. ALLOCATION OF FUNDS.

(a) ALLOCATION BASED ON PREVIOUS ALLOCATION.—(1) **[**From**]** *For any fiscal year before fiscal year 2010, from* the amount appropriated pursuant to section 461(b) for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to—

(A) * * *

* * * * * * *

(i) REALLOCATION OF EXCESS ALLOCATIONS.—

(1) IN GENERAL.—(A) If an institution of higher education returns to the Secretary any portion of the sums allocated to such institution under this section [for any fiscal year,] *for any fiscal year before fiscal year 2010,* the Secretary shall reallocate 80 percent of such returned portions to participating institutions in an amount not to exceed such participating institution's excess eligible amounts as determined under paragraph (2).

* * * * * * *

SEC. 462A. FEDERAL DIRECT PERKINS LOAN ALLOCATION.

(a) PURPOSES.—The purposes of this section are—

(1) to allocate, among eligible and participating institutions (as such terms are defined in this section), the authority to make Federal Direct Perkins Loans under section 455A with a portion of the annual loan authority described in subsection (b); and

(2) to make funds available, in accordance with section 452, to each participating institution from a portion of the annual loan authority described in subsection (b), in an amount not to exceed the sum of an institution's allocation of funds under subparagraphs (A), (B), and (C) of subsection (b)(1) to enable each such institution to make Federal Direct Perkins Loans to eligible students at the institution.

(b) AVAILABLE DIRECT PERKINS ANNUAL LOAN AUTHORITY.—

(1) AVAILABILITY AND ALLOCATIONS.—There are hereby made available, from funds made available for loans made under part D, not to exceed $6,000,000,000 of annual loan authority for award year 2010–2011 and each succeeding award year, to be allocated as follows:

(A) The Secretary shall allocate not more than 1/2 of such funds for each award year by allocating to each participating institution an amount equal to the adjusted self-help need amount of the institution, as determined in accordance with subsection (c) for such award year.

(B) The Secretary shall allocate not more than 1/4 of such funds for each award year by allocating to each participating institution an amount equal to the low tuition incentive amount of the institution, as determined in accordance with subsection (d).

(C) The Secretary shall allocate not more than 1/4 of such funds for each award year by allocating to each participating institution an amount which bears the same ratio to the funds allocated under this subparagraph as the ratio determined in accordance with subsection (e) for the calculation of the Federal Pell Grant and degree recipient amount of the institution.

(2) NO FUNDS TO NON-PARTICIPATING INSTITUTIONS.—The Secretary shall not make funds available under this subsection to any eligible institution that is not a participating institution. The adjusted self-help need amount (determined in accordance with subsection (c)) of an eligible institution that is not a participating institution shall not be made available to any other institution.

(c) ADJUSTED SELF-HELP NEED AMOUNT.—For the purposes of subsection (b)(1)(A), the Secretary shall calculate the adjusted self-help need amount of each eligible institution for an award year as follows:

(1) USE OF BASE SELF-HELP NEED AMOUNTS.—

(A) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), the adjusted self-help need amount of each eligible institution shall be the institution's base self-help need amount, which is the sum of—

(i) the self-help need of the institution's eligible undergraduate students for such award year; and

(ii) the self-help need of the institution's eligible graduate and professional students for such award year.

(B) UNDERGRADUATE STUDENT SELF-HELP NEED.—To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall determine the sum of each eligible undergraduate student's average cost of attendance for the second preceding award year less each such student's expected family contribution (computed in accordance with part F) for the second preceding award year, except that, for each such eligible undergraduate student, the amount computed by such subtraction shall not be less than zero or more than the lesser of—

(i) 25 percent of the average cost of attendance with respect to such eligible student; or

(ii) $5,500.

(C) GRADUATE AND PROFESSIONAL STUDENT SELF-HELP NEED.—To determine the self-help need of an institution's eligible graduate and professional students, the Secretary shall determine the sum of each eligible graduate and professional student's average cost of attendance for the second preceding award year less each such student's expected family contribution (computed in accordance with part F) for such second preceding award year, except that, for each such eligible graduate and professional student, the amount computed by such subtraction shall not be less than zero or more than $8,000.

(2) RATABLE REDUCTION ADJUSTMENTS.—If the sum of the base self-help need amounts of all eligible institutions for an award year as determined under paragraph (1) exceeds ½ of the annual loan authority under subsection (b) for such award year, the Secretary shall ratably reduce the base self-help need amounts of all eligible institutions until the sum of such amounts is equal to the amount that is ½ of the annual loan authority under subsection (b).

(3) REQUIRED MINIMUM AMOUNT.—Notwithstanding paragraph (2), the adjusted self-help need amount of each eligible institution shall not be less than the average of the institution's total principal amount of loans made under this part for each of the 5 most recent award years.

(4) ADDITIONAL ADJUSTMENTS.—If the Secretary determines that a ratable reduction under paragraph (2) results in the adjusted self-help need amount of any eligible institution being re-

duced below the minimum amount required under paragraph (3), the Secretary shall—

(A) for each institution for which the minimum amount under paragraph (3) is not satisfied, increase the adjusted self-help need amount to the amount of the required minimum under such subparagraph; and

(B) ratably reduce the adjusted self-help need amounts of all eligible institutions not described in subparagraph (A) until the sum of the adjusted self-help need amounts of all eligible institutions is equal to the amount that is ½ of the annual loan authority under subsection (b).

(d) LOW TUITION INCENTIVE AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (b)(1)(B), the Secretary shall determine the low tuition incentive amount for each participating institution for each award year, by calculating for each such institution the sum of—

(A) the total amount, if any (but not less than zero), by which—

(i) the average tuition and required fees for the institution's sector for the second preceding award year; exceeds

(ii) the tuition and required fees for the second preceding award year for each undergraduate and graduate student attending the institution who had financial need (as determined under part F); plus

(B) the total amount, if any (but not less than zero), by which—

(i) the total amount for the second preceding award year of non-Federal grant aid provided to meet the financial need of all undergraduate students attending the institution (as determined without regard to financial aid not received under this title); exceeds

(ii) the total amount for the second preceding award year, if any, by which—

(I) the tuition and required fees of each such student with such financial need; exceeds

(II) the average tuition and required fees for the institution's sector.

(2) RATABLE REDUCTION.—If the sum of the low tuition incentive amounts of all participating institutions for an award year as determined under paragraph (1) exceeds ¼ of the annual loan authority under subsection (b) for such award year, the Secretary shall ratably reduce the low tuition incentive amounts of all participating institutions until the sum of such amounts is equal to the amount that is ¼ of the annual loan authority under subsection (b).

(e) FEDERAL PELL GRANT AND DEGREE RECIPIENT AMOUNT.—For purposes of subsection (b)(1)(C), the Secretary shall determine the Federal Pell Grant and degree recipient amount for each participating institution for each award year, by calculating for each such institution the ratio of—

(1) the number of students who, during the most recent year for which data are available, obtained an associate's degree or other postsecondary degree from such participating institution

and, prior to obtaining such degree, received a Federal Pell Grant for attendance at any institution of higher education; to

(2) the sum of the number of students who, during the most recent year for which data are available, obtained an associate's degree or other postsecondary degree from each participating institution and, prior to obtaining such degree, received a Federal Pell Grant for attendance at any institution of higher education.

(f) DEFINITIONS.—As used in this section:

(1) ANNUAL LOAN AUTHORITY.—The term "annual loan authority" means the total original principal amount of loans that may be allocated and made available for an award year to make Federal Direct Perkins Loans under section 455A.

(2) AVERAGE COST OF ATTENDANCE.—

(A) IN GENERAL.—The term "average cost of attendance" means the average of the attendance costs for undergraduate students and for graduate and professional students, respectively, for the second preceding award year which shall include—

(i) tuition and required fees determined in accordance with subparagraph (B);

(ii) standard living expenses determined in accordance with subparagraph (C); and

(iii) books and supplies determined in accordance with subparagraph (D).

(B) TUITION AND REQUIRED FEES.—The average undergraduate and graduate and professional tuition and required fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include—

(i) total revenue received by the institution from undergraduate and graduate and professional students, respectively, for tuition and required fees for the second preceding award year; and

(ii) the institution's full-time equivalent enrollment of undergraduate and graduate and professional students, respectively, for such second preceding award year.

(C) STANDARD LIVING EXPENSES.—The standard living expense described in subparagraph (A)(ii) is equal to the allowance, determined by an institution, for room and board costs incurred by a student, as computed in accordance with part F for the second preceding award year.

(D) BOOKS AND SUPPLIES.—The allowance for books and supplies described in subparagraph (A)(iii) is equal to the allowance, determined by an institution, for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, as computed in accordance with part F for the second preceding award year.

(3) AVERAGE TUITION AND REQUIRED FEES FOR THE INSTITUTION'S SECTOR.—The term "average tuition and required fees for the institution's sector" shall be determined by the Secretary for each of the categories described in section 132(d).

(4) ELIGIBLE INSTITUTION.—The term "eligible institution" means an institution of higher education that participates in the Federal Direct Stafford Loan Program.

(5) PARTICIPATING INSTITUTION.—The term "participating institution" means an institution of higher education that has an agreement under section 463(f).

(6) SECTOR.—The term "sector" means each of the categories described in section 132(d).

SEC. 463. AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION.

(a) CONTENTS OF AGREEMENTS *FOR LOANS MADE BEFORE JULY 1, 2010*.—An agreement with any institution of higher education for the payment of Federal capital contributions under this part shall—

(1) * * *

* * * * * * *

(3) provide that such student loan fund shall be used only for—

(A) loans to students *before July 1, 2010*, in accordance with the provisions of this part;

* * * * * * *

(4) provide that where a note or written agreement evidencing a loan has been in default despite due diligence on the part of the institution in attempting collection [thereon—

[(A) if the institution has knowingly failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may—

[(i) require the institution to assign such note or agreement to the Secretary, without recompense; and

[(ii) apportion any sums collected on such a loan, less an amount not to exceed 30 percent of any sums collected to cover the Secretary's collection costs, among other institutions in accordance with section 462; or

[(B) if the institution is not one described in subparagraph (A), the Secretary may allow such institution to refer such note or agreement to the Secretary, without recompense, except that, once every six months, any sums collected on such a loan (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary's collection costs) shall be repaid to such institution and treated as an additional capital contribution under section 462;] *thereon, if the institution has failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may require the institution to assign such note or agreement to the Secretary, without recompense;*

(5) provide that, if an institution of higher education determines not to service and collect student loans made available from funds under this part, the institution will assign, at the beginning of the repayment period, notes or evidence of obligations of student loans made from such funds to the Secretary

[and the Secretary shall apportion any sums collected on such notes or obligations (less an amount not to exceed 30 percent of any such sums collected to cover that Secretary's collection costs) among other institutions in accordance with section 462] *and the Secretary shall return a portion of funds from loan repayments to the institution as specified in section 466(b)*;

* * * * * * *

[(b) ADMINISTRATIVE EXPENSES.—An institution which has entered into an agreement under subsection (a) shall be entitled, for each fiscal year during which it makes student loans from a student loan fund established under such agreement, to a payment in lieu of reimbursement for its expenses in administering its student loan program under this part during such year. Such payment shall be made in accordance with section 489.]

(b) ADMINISTRATIVE EXPENSES.—An institution that has entered into an agreement under subsection (a) shall be entitled, for each fiscal year during which it services student loans from a student loan fund established under such agreement, to a payment in lieu of reimbursement for its expenses in servicing student loans made before July 1, 2010. Such payment shall be equal to 0.50 percent of the outstanding principal and interest balance of such loans being serviced by the institution as of September 30 of each fiscal year.

* * * * * * *

(f) CONTENTS OF AGREEMENTS FOR LOANS MADE ON OR AFTER JULY 1, 2010.—An agreement with any institution of higher education that elects to participate in the Federal Direct Perkins Loan program under section 455A shall provide—

(1) for the establishment and maintenance of a Direct Perkins Loan program at the institution under which the institution shall use loan authority allocated under section 462A to make loans to eligible students attending the institution;

(2) that the institution, unless otherwise specified in this subsection, shall operate the program consistent with the requirements of agreements established under section 454;

(3) that the institution will pay matching funds, quarterly, in an amount agreed to by the institution and the Secretary, to an escrow account approved by the Secretary, for the purpose of providing loan benefits to borrowers;

(4) that if the institution fails to meet the requirements of paragraph (3), the Secretary shall suspend or terminate the institution's eligibility to make Federal Direct Perkins Loans under section 455A until such time as the Secretary determines, in accordance with section 498, that the institution has met the requirements of such paragraph; and

(5) that if the institution ceases to be an eligible institution within the meaning of section 435(a) by reason of having a cohort default rate that exceeds the threshold percentage specified paragraph (2) of such section, the Secretary shall suspend or terminate the institution's eligibility to make Federal Direct Perkins Loans under section 455A unless and until the institution would qualify for a resumption of eligible institution status under such section.

SEC. 463A. STUDENT LOAN INFORMATION BY ELIGIBLE INSTITUTIONS.

(a) DISCLOSURE REQUIRED PRIOR TO DISBURSEMENT.—[Each institution] *For loans made before July 1, 2010, each institution* of higher education, in order to carry out the provisions of section 463(a)(8), shall, at or prior to the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on such loan to the student borrower. Any disclosure required by this subsection may be made by an institution of higher education as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosures shall include—

(1) * * *

* * * * * * *

(b) DISCLOSURE REQUIRED PRIOR TO REPAYMENT.—[Each institution] *For loans made before July 1, 2010, each institution* of higher education shall enter into an agreement with the Secretary under which the institution will, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower the information required under this subsection. Any disclosure required by this subsection may be made by an institution of higher education either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower. The disclosures shall include—

(1) * * *

* * * * * * *

SEC. 464. TERMS OF LOANS.

(a) TERMS AND CONDITIONS.—(1) Loans from any student loan fund established pursuant to an agreement under section 463*(a)* to any student by any institution shall, subject to such conditions, limitations, and requirements as the Secretary shall prescribe by regulation, be made on such terms and conditions as the institution may determine.

* * * * * * *

(b) DEMONSTRATION OF NEED AND ELIGIBILITY REQUIRED.—(1) A loan *made before July 1, 2010,* from a student loan fund assisted under this part may be made only to a student who demonstrates financial need in accordance with part F of this title, who meets the requirements of section 484, and who provides the institution with the student's drivers license number, if any, at the time of application for the loan. A student who is in default on a loan under this part shall not be eligible for an additional loan under this part unless such loan meets one of the conditions for exclusion under section 462(g)(1)(E).

* * * * * * *

(c) CONTENTS OF LOAN AGREEMENT.—(1) Any agreement between an institution and a student for a loan *made before July 1, 2010,* from a student loan fund assisted under this part—

(A) * * *

* * * * * * *

(2)(A) No repayment of principal of, or interest on, any loan *made before July 1, 2010,* from a student loan fund assisted under this part shall be required during any period—

(i) * * *

* * * * * * *

(B) No repayment of principal of, or interest on, any loan *made before July 1, 2010,* for any period described in subparagraph (A) shall begin until 6 months after the completion of such period.

* * * * * * *

(3)(A) * * *

(B) Pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who during the repayment period *for a loan made before July 1, 2010,* is a low-income individual may be extended for a period not to exceed 10 years and the repayment schedule may be adjusted to reflect the income of that individual.

(4) The repayment period for a loan made *before July 1, 2010,* under this part shall begin on the day immediately following the expiration of the period, specified in paragraph (1)(A), after the student ceases to carry the required academic workload, unless the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier point in time, and shall exclude any period of authorized deferment, forbearance, or cancellation.

(5) ❙The institution❙ *For loans made before July 1, 2010, the institution* may elect—

(A) * * *

* * * * * * *

(6) Requests for deferment of repayment of loans *made before July 1, 2010,* under this part by students engaged in graduate or post-graduate fellowship-supported study (such as pursuant to a Fulbright grant) outside the United States shall be approved until completion of the period of the fellowship.

* * * * * * *

(d) AVAILABILITY OF LOAN FUND TO ALL ELIGIBLE STUDENTS.—An agreement under this part for payment of Federal capital contributions shall include provisions designed to make loans *made before July 1, 2010,* from the student loan fund established pursuant to such agreement reasonably available (to the extent of the available funds in such fund) to all eligible students in such institutions in need thereof.

(e) FORBEARANCE.—(1) The Secretary shall ensure that, *with respect to loans made before July 1, 2010, and* as documented in accordance with paragraph (2), an institution of higher education shall grant a borrower forbearance of principal and interest or principal only, renewable at 12-month intervals for a period not to exceed 3 years, on such terms as are otherwise consistent with the regulations issued by the Secretary and agreed upon in writing by the parties to the loan, if—

(A) * * *

* * * * * * *

[(f) SPECIAL REPAYMENT RULE AUTHORITY.—(1) Subject to such restrictions as the Secretary may prescribe to protect the interest of the United States, in order to encourage repayment of loans made under this part which are in default, the Secretary may, in the agreement entered into under this part, authorize an institution of higher education to compromise on the repayment of such defaulted loans in accordance with paragraph (2). The Federal share of the compromise repayment shall bear the same relation to the institution's share of such compromise repayment as the Federal capital contribution to the institution's loan fund under this part bears to the institution's capital contribution to such fund.

[(2) No compromise repayment of a defaulted loan as authorized by paragraph (1) may be made unless the student borrower pays—

[(A) 90 percent of the loan under this part;

[(B) the interest due on such loan; and

[(C) any collection fees due on such loan;

in a lump sum payment.]

(g) DISCHARGE.—

(1) IN GENERAL.—If a student borrower who received a loan made under this part on or after January 1, 1986, *and before July 1, 2010,* is unable to complete the program in which such student is enrolled due to the closure of the institution, then the Secretary shall discharge the borrower's liability on the loan (including the interest and collection fees) and shall subsequently pursue any claim available to such borrower against the institution and the institution's affiliates and principals, or settle the loan obligation pursuant to the financial responsibility standards described in section 498(c).

* * * * * * *

(h) REHABILITATION OF LOANS.—

(1) REHABILITATION.—

(A) IN GENERAL.—If the borrower of a loan made under this part *before July 1, 2010,* who has defaulted on the loan makes 9 on-time, consecutive, monthly payments of amounts owed on the loan, as determined by the institution, or by the Secretary in the case of a loan held by the Secretary, the loan shall be considered rehabilitated, and the institution that made that loan (or the Secretary, in the case of a loan held by the Secretary) shall request that any consumer reporting agency to which the default was reported remove the default from the borrower's credit history.

* * * * * * *

(2) RESTORATION OF ELIGIBILITY.—If the borrower of a loan made under this part *before July 1, 2010,* who has defaulted on that loan makes 6 ontime, consecutive, monthly payments of amounts owed on such loan, the borrower's eligibility for grant, loan, or work assistance under this title shall be restored to the extent that the borrower is otherwise eligible. A borrower only once may obtain the benefit of this paragraph with respect to restored eligibility.

* * * * * * *

(j) ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—

(1) AUTHORITY.—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, for the payment of interest on a loan made under this part *before July 1, 2010,* to a member of the Armed Forces, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.

* * * * * * *

SEC. 465. CANCELLATION OF LOANS FOR CERTAIN PUBLIC SERVICE.

(a) CANCELLATION OF PERCENTAGE OF DEBT BASED ON YEARS OF QUALIFYING SERVICE.—(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, *and before July 1, 2010,* from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

* * * * * * *

[(b) REIMBURSEMENT FOR CANCELLATION.—The Secretary shall pay to each institution for each fiscal year an amount equal to the aggregate of the amounts of loans from its student loan fund which are canceled pursuant to this section for such year, minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468. None of the funds appropriated pursuant to section 461(b) shall be available for payments pursuant to this subsection. To the extent feasible, the Secretary shall pay the amounts for which any institution qualifies under this subsection not later than 3 months after the institution files an institutional application for campus-based funds.]

(b) REIMBURSEMENT FOR CANCELLATIONS.—

(1) ASSIGNED LOANS.—In the case of loans made under this part before July 1, 2010, and that are assigned to the Secretary, the Secretary shall, from amounts repaid each quarter on assigned Perkins Loans made before July 1, 2010, pay to each institution for each quarter an amount equal to—

(A) the aggregate of the amounts of loans from its student loan fund that are canceled pursuant to this section for such quarter, minus

(B) an amount equal to the aggregate of the amounts of any such loans so canceled that were made from Federal capital contributions to its student loan fund.

(2) RETAINED LOANS.—In the case of loans made under this part before July 1, 2010, and that are retained by the institution for servicing, the institution shall deduct from loan repayments owed to the Secretary under section 466, an amount equal to—

(A) the aggregate of the amounts of loans from its student loan fund that are canceled pursuant to this section for such quarter, minus

(B) an amount equal to the aggregate of the amounts of any such loans so canceled that were made from Federal capital contributions to its student loan fund.

* * * * * * *

[SEC. 466. DISTRIBUTION OF ASSETS FROM STUDENT LOAN FUNDS.

[(a) IN GENERAL.—After September 30, 2003, and not later than March 31, 2004, there shall be a capital distribution of the balance of the student loan fund established under this part by each institution of higher education as follows:

[(1) The Secretary shall first be paid an amount which bears the same ratio to the balance in such fund at the close of September 30, 2003, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to the sum of such Federal contributions and the institution's capital contributions to such fund.

[(2) The remainder of such balance shall be paid to the institution.

[(b) DISTRIBUTION OF LATE COLLECTIONS.—After October 1, 2012, each institution with which the Secretary has made an agreement under this part, shall pay to the Secretary the same proportionate share of amounts received by this institution after September 30, 2003, in payment of principal and interest on student loans made from the student loan fund established pursuant to such agreement (which amount shall be determined after deduction of any costs of litigation incurred in collection of the principal or interest on loans from the fund and not already reimbursed from the fund or from such payments of principal or interest), as was determined for the Secretary under subsection (a).

[(c) DISTRIBUTION OF EXCESS CAPITAL.—(1) Upon a finding by the institution or the Secretary prior to October 1, 2004, that the liquid assets of a student loan fund established pursuant to an agreement under this part exceed the amount required for loans or otherwise in the foreseeable future, and upon notice to such institution or to the Secretary, as the case may be, there shall be, subject to such limitations as may be included in regulations of the Secretary or in such agreement, a capital distribution from such fund. Such capital distribution shall be made as follows:

[(A) The Secretary shall first be paid an amount which bears the same ratio to the total to be distributed as the Federal capital contributions by the Secretary to the student loan fund prior to such distribution bear to the sum of such Federal capital contributions and the capital contributions to the fund made by the institution.

[(B) The remainder of the capital distribution shall be paid to the institution.

[(2) No finding that the liquid assets of a student loan fund established under this part exceed the amount required under paragraph (1) may be made prior to a date which is 2 years after the date on which the institution of higher education received the funds from such institution's allocation under section 462.]

SEC. 466. DISTRIBUTION OF ASSETS FROM STUDENT LOAN FUNDS.

(a) CAPITAL DISTRIBUTION.—Beginning July 1, 2010, there shall be a capital distribution of the balance of the student loan fund es-

tablished under this part by each institution of higher education as follows:

(1) For the quarter beginning July 1, 2010, the Secretary shall first be paid, no later than September 30, 2010, an amount that bears the same ratio to the cash balance in such fund at the close of June 30, 2010, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to—

(A) the sum of such Federal contributions and the institution's capital contributions to such fund, less

(B) an amount equal to—

(i) the institution's outstanding administrative costs as calculated under section 463(b),

(ii) outstanding charges assessed under section 464(c)(1)(H), and

(iii) outstanding loan cancellation costs incurred under section 465.

(2) At the end of each quarter subsequent to the quarter ending September 30, 2010, the Secretary shall first be paid an amount that bears the same ratio to the cash balance in such fund at the close of the preceding quarter, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to—

(A) the sum of such Federal contributions and the institution's capital contributions to such fund, less

(B) an amount equal to—

(i) the institution's administrative costs incurred for that quarter as calculated under section 463(b),

(ii) charges assessed for that quarter under section 464(c)(1)(H), and

(iii) loan cancellation costs incurred for that quarter under section 465.

(3)(A) The Secretary shall calculate the amounts due to the Secretary under paragraph (1) (adjusted in accordance with subparagraph (B), as appropriate) and paragraph (2) and shall promptly inform the institution of such calculated amounts.

(B) In the event that, prior to the date of enactment of the Student Aid and Fiscal Responsibility Act of 2009, an institution made a short-term, interest-free loan to the institution's student loan fund established under this part in anticipation of collections or receipt of Federal capital contributions, and the institution demonstrates to the Secretary, on or before June 30, 2010, that such loan will still be outstanding after June 30, 2010, the Secretary shall subtract the amount of such outstanding loan from the cash balance of the institution's student loan fund that is used to calculate the amount due to the Secretary under paragraph (1). An adjustment of an amount due to the Secretary under this subparagraph shall be made by the Secretary on a case-by-case basis.

(4) Any remaining balance at the end of a quarter after a payment under paragraph (1) or (2) shall be retained by the institution for use at its discretion. Any balance so retained shall be withdrawn from the student loan fund and shall not be

counted in calculating amounts owed to the Secretary for subsequent quarters.

(5) Each institution shall make the quarterly payments to the Secretary described in paragraph (2) until all outstanding Federal Perkins Loans at that institution have been assigned to the Secretary and there are no funds remaining in the institution's student loan fund.

(6) In the event that the institution's administrative costs, charges, and cancellation costs described in paragraph (2) for a quarter exceed the amount owed to the Secretary under paragraphs (1) and (2) for that quarter, no payment shall be due to the Secretary from the institution for that quarter and the Secretary shall pay the institution, from funds realized from the collection of assigned Federal Perkins Loans made before July 1, 2010, an amount that, when combined with the amount retained by the institution under paragraphs (1) and (2), equals the full amount of such administrative costs, charges, and cancellation costs.

(b) ASSIGNMENT OF OUTSTANDING LOANS.—Beginning July 1, 2010, an institution of higher education may assign all outstanding loans made under this part before July 1, 2010, to the Secretary, consistent with the requirements of section 463(a)(5). In collecting loans so assigned, the Secretary shall pay an institution an amount that constitutes the same fraction of such collections as the fraction of the cash balance that the institution retains under subsection (a)(2), but determining such fraction without regard to subparagraph (B)(i) of such subsection.

* * * * * * *

PART F—NEED ANALYSIS

SEC. 471. AMOUNT OF NEED.

[Except] *(a) IN GENERAL.—Except* as otherwise provided therein *and subject to subsection (b)*, the amount of need of any student for financial assistance under this title (except subparts 1 or 2 of part A) is equal to—

(1) * * *

* * * * * * *

(b) ASSET CAP FOR NEED-BASED AID.—Notwithstanding any other provision of this title, a student shall not be eligible to receive a Federal Pell Grant, a Federal Direct Stafford Loan, or work assistance under this title if—

(1) in the case of a dependent student, the combined net assets of the student and the student's parents are equal to an amount greater than $150,000 (or a successor amount prescribed by the Secretary under section 478(c)); or

(2) in the case of an independent student, the net assets of the student (and the student's spouse, if applicable) are equal to an amount greater than $150,000 (or a successor amount prescribed by the Secretary under section 478(c)).

* * * * * * *

SEC. 474. DETERMINATION OF EXPECTED FAMILY CONTRIBUTION; DATA ELEMENTS.

(a) * * *

(b) DATA ELEMENTS.—The following data elements are considered in determining the expected family contribution:

(1) * * *

* * * * * * *

[(4) the net assets of (A) the student and the student's spouse, and (B) the student and the student's parents, in the case of a dependent student;]

[(5)] *(4)* the marital status of the student;

[(6)] *(5)* the age of the older parent, in the case of a dependent student, and the student; and

[(7)] *(6)* the additional expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when the student is married and the student's spouse is employed, or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

SEC. 475. FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS.

(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each dependent student, the expected family contribution is equal to the sum of—

(1) the parents' contribution from [adjusted] available income (determined in accordance with subsection (b)); *and*

(2) the student contribution from available income (determined in accordance with subsection (g))[; and].

[(3) the student contribution from assets (determined in accordance with subsection (h)).]

(b) PARENTS' CONTRIBUTION FROM [ADJUSTED] AVAILABLE INCOME.—The parents' contribution from [adjusted] available income is equal to the amount determined by—

[(1) computing adjusted available income by adding—

[(A) the parents' available income (determined in accordance with subsection (c)); and

[(B) the parents' contribution from assets (determined in accordance with subsection (d));]

[(2)] *(1)* assessing such [adjusted] available income in accordance with the assessment schedule set forth in subsection (e); and

[(3)] *(2)* dividing the assessment resulting under paragraph [(2] *(1))* by the number of the family members, excluding the student's parents, who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 487 during the award period for which assistance under this title is requested;

* * * * * * *

[(d) PARENTS' CONTRIBUTION FROM ASSETS.—

[(1) IN GENERAL.—The parents' contribution from assets is equal to—

[(A) the parental net worth (determined in accordance with paragraph (2)); minus

[(B) the education savings and asset protection allowance (determined in accordance with paragraph (3)); multiplied by

[(C) the asset conversion rate (determined in accordance with paragraph (4)), except that the result shall not be less than zero.

[(2) PARENTAL NET WORTH.—The parental net worth is calculated by adding—

[(A) the current balance of checking and savings accounts and cash on hand;

[(B) the net value of investments and real estate, excluding the net value of the principal place of residence; and

[(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter in this subsection referred to as "NW"), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 478), except as provided under section 480(f):

[Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0
$1–$75,000	40 percent of NW
$75,001–$225,000	$30,000 plus 50 percent of NW over $75,000
$225,001–$375,000	$105,000 plus 60 percent of NW over $225,000
$375,001 or more	$195,000 plus 100 percent of NW over $375,000

[(3) EDUCATION SAVINGS AND ASSET PROTECTION ALLOWANCE.—The education savings and asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 478):

[Education Savings and Asset Protection Allowances for Families and Students

If the age of the oldest parent is—	And there are	
	two parents	one parent
then the allowance is—		
25 or less	$ 0	$0
26	2,200	1,600
27	4,300	3,200
28	6,500	4,700
29	8,600	6,300
30	10,800	7,900
31	13,000	9,500

[Education Savings and Asset Protection Allowances for Families and Students—Continued

If the age of the oldest parent is—	And there are	
	two parents	one parent
32	15,100	11,100
33	17,300	12,600
34	19,400	14,200
35	21,600	15,800
36	23,800	17,400
37	25,900	19,000
38	28,100	20,500
39	30,200	22,100
40	32,400	23,700
41	33,300	24,100
42	34,100	24,700
43	35,000	25,200
44	35,700	25,800
45	36,600	26,300
46	37,600	26,900
47	38,800	27,600
48	39,800	28,200
49	40,800	28,800
50	41,800	29,500
51	43,200	30,200
52	44,300	31,100
53	45,700	31,800
54	47,100	32,600
55	48,300	33,400
56	49,800	34,400
57	51,300	35,200
58	52,900	36,200
59	54,800	37,200
60	56,500	38,100
61	58,500	39,200
62	60,300	40,300
63	62,400	41,500
64	64,600	42,800
65 or more	66,800	44,000

[(4) ASSET CONVERSION RATE.—The asset conversion rate is 12 percent.]

(e) ASSESSMENT SCHEDULE.—The [adjusted] available income (as determined under subsection (b)(1) and hereafter in this subsection referred to as ["AAI"] *"AI"*) is assessed according to the following table (or a successor table prescribed by the Secretary under section 478):

Parents' Assessment [From Adjusted Available Income (AAI)] *From Available Income (AI)*

If [AAI] *AI* is—	Then the assessment is—
Less than −$3,409	−$750
−$3,409 to $9,400	22% of [AAI] *AI*
$9,401 to $11,800	$2,068 + 25% of [AAI] *AI* over $9,400
$11,801 to $14,200	$2,668 + 29% of [AAI] *AI* over $11,800
$14,201 to $16,600	$3,364 + 34% of [AAI] *AI* over $14,200
$16,601 to $19,000	$4,180 + 40% of [AAI] *AI* over $16,600

Parents' Assessment [From Adjusted Available Income (AAI)] *From Available Income (AI)*—Continued

If [AAI] *AI* is—	Then the assessment is—
$19,001 or more	$5,140 + 47% of [AAI] *AI* over $19,000

(f) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, REMARRIAGE, OR DEATH.—

(1) DIVORCED OR SEPARATED PARENTS.—Parental income [and assets] for a student whose parents are divorced or separated is determined under the following procedures:

(A) Include only the income [and assets] of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

(B) If the preceding criterion does not apply, include only the income [and assets] of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(C) If neither of the preceding criteria apply, include only the income [and assets] of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

(2) DEATH OF A PARENT.—Parental income [and assets] in the case of the death of any parent is determined as follows:

(A) If either of the parents has died, the student shall include only the income [and assets] of the surviving parent.

(B) If both parents have died, the student shall not report any parental income [or assets].

(3) REMARRIED PARENTS.—If a parent whose income [and assets are] *is* taken into account under paragraph (1) of this subsection, or if a parent who is a widow or widower and whose income is taken into account under paragraph (2) of this subsection, has remarried, the income of that parent's spouse shall be included in determining the parent's [adjusted] available income only if—

(A) * * *

* * * * * * *

(g) STUDENT CONTRIBUTION FROM AVAILABLE INCOME.—

(1) * * *.—

* * * * * * *

(6) ALLOWANCE FOR PARENTS' NEGATIVE AVAILABLE INCOME.—The allowance for parents' negative available income is the amount, if any, by which the sum of the amounts deducted under subparagraphs (A) through (F) of subsection (c)(1) [exceeds the sum of the parents' total income (as defined in section 480) and the parents' contribution from assets (as determined in accordance with subsection (d)).] *exceeds the parents' total income (as defined in section 480)*

* * * * * * *

[(h) STUDENT CONTRIBUTION FROM ASSETS.—The student contribution from assets is determined by calculating the net assets of

the student and multiplying such amount by 20 percent, except that the result shall not be less than zero.]

(i) ADJUSTMENTS TO PARENTS' CONTRIBUTION FOR ENROLLMENT PERIODS OTHER THAN 9 MONTHS FOR PURPOSES OTHER THAN SUBPART 2 OF PART A OF THIS TITLE.—For periods of enrollment other than 9 months, the parents' contribution from [adjusted] available income (as determined under subsection (b)) is determined as follows for purposes other than subpart 2 of part A of this title:

(1) For periods of enrollment less than 9 months, the parents' contribution from [adjusted] available income is divided by 9 and the result multiplied by the number of months enrolled.

(2) For periods of enrollment greater than 9 months—

(A) the parents' [adjusted] available income (determined in accordance with subsection (b)(1)) is increased by the difference between the income protection allowance (determined in accordance with subsection (c)(4)) for a family of four and a family of five, each with one child in college;

(B) the resulting revised parents' [adjusted] available income is assessed according to subsection (e) and [adjusted] according to subsection (b)(3) to determine a revised parents' contribution from [adjusted] available income;

(C) the original parents' contribution from [adjusted] available income is subtracted from the revised parents' contribution from [adjusted] available income, and the result is divided by 12 to determine the monthly adjustment amount; and

(D) the original parents' contribution from [adjusted] available income is increased by the product of the monthly adjustment amount multiplied by the number of months greater than 9 for which the student will be enrolled.

* * * * * * *

SEC. 476. FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE.

(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each independent student without dependents other than a spouse, the expected family contribution is determined by—

[(1) adding—

[(A) the family's contribution from available income (determined in accordance with subsection (b)); and

[(B) the family's contribution from assets (determined in accordance with subsection (c));]

[(2)] *(1)* dividing [the sum resulting under paragraph (1)] *the family's contribution from available income (determined in accordance with subsection (b))* by the number of students who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 487 during the award period for which assistance under this title is requested; and

[(3)] *(2)* for periods of enrollment of less than 9 months, for purposes other than subpart 2 of part A—

(A) dividing the quotient resulting under paragraph [(2)] *(1)* by 9; and

* * * * * * *

[(c) FAMILY CONTRIBUTION FROM ASSETS.—

[(1) IN GENERAL.—The family's contribution from assets is equal to—

[(A) the family's net worth (determined in accordance with paragraph (2)); minus

[(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

[(C) the asset conversion rate (determined in accordance with paragraph (4));

except that the family's contribution from assets shall not be less than zero.

[(2) FAMILY'S NET WORTH.—The family's net worth is calculated by adding—

[(A) the current balance of checking and savings accounts and cash on hand;

[(B) the net value of investments and real estate, excluding the net value in the principal place of residence; and

[(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as "NW"), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 478), except as provided under section 480(f):

[Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$75,000	40 percent of NW
$75,001–$225,000	$30,000 plus 50 percent of NW over $75,000
$225,001–$375,000	$105,000 plus 60 percent of NW over $225,000
$375,001 or more	$195,000 plus 100 percent of NW over $375,000

[(3) ASSET PROTECTION ALLOWANCE.—The asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 478):

[Asset Protection Allowances for Families and Students

If the age of the student is—	And the student is	
	married	single
then the allowance is—		
25 or less	$ 0	$0

[Asset Protection Allowances for Families and Students—Continued

If the age of the student is—	And the student is	
	married	single
26	2,200	1,600
27	4,300	3,200
28	6,500	4,700
29	8,600	6,300
30	10,800	7,900
31	13,000	9,500
32	15,100	11,100
33	17,300	12,600
34	19,400	14,200
35	21,600	15,800
36	23,800	17,400
37	25,900	19,000
38	28,100	20,500
39	30,200	22,100
40	32,400	23,700
41	33,300	24,100
42	34,100	24,700
43	35,000	25,200
44	35,700	25,800
45	36,600	26,300
46	37,600	26,900
47	38,800	27,600
48	39,800	28,200
49	40,800	28,800
50	41,800	29,500
51	43,200	30,200
52	44,300	31,100
53	45,700	31,800
54	47,100	32,600
55	48,300	33,400
56	49,800	34,400
57	51,300	35,200
58	52,900	36,200
59	54,800	37,200
60	56,500	38,100
61	58,500	39,200
62	60,300	40,300
63	62,400	41,500
64	64,600	42,800
65 or more	66,800	44,000

[(4) ASSET CONVERSION RATE.—The asset conversion rate is 20 percent.]

(d) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, OR DEATH.—In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income [and assets] shall not be considered in determining the family's contribution from income [or assets].

SEC. 477. FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE.

(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each independent student with dependents other than a spouse,

the expected family contribution is equal to the amount determined by—

[(1) computing adjusted available income by adding—

[(A) the family's available income (determined in accordance with subsection (b)); and

[(B) the family's contribution from assets (determined in accordance with subsection (c));]

[(2)] *(1)* assessing [such adjusted available income] *the family's available income (determined in accordance with subsection (b))* in accordance with an assessment schedule set forth in subsection (d);

[(3)] *(2)* dividing the assessment resulting under paragraph [(2)] *(1)* by the number of family members who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 487 during the award period for which assistance under this title is requested; and

[(4)] *(3)* for periods of enrollment of less than 9 months, for purposes other than subpart 2 of part A—

(A) dividing the quotient resulting under paragraph [(3)] *(2)* by 9; and

* * * * * * *

[(c) FAMILY'S CONTRIBUTION FROM ASSETS.—

[(1) IN GENERAL.—The family's contribution from assets is equal to—

[(A) the family net worth (determined in accordance with paragraph (2)); minus

[(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

[(C) the asset conversion rate (determined in accordance with paragraph (4)), except that the result shall not be less than zero.

[(2) FAMILY NET WORTH.—The family net worth is calculated by adding—

[(A) the current balance of checking and savings accounts and cash on hand;

[(B) the net value of investments and real estate, excluding the net value in the principal place of residence; and

[(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as "NW"), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 478), except as provided under section 480(f):

[Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$75,000	40 percent of NW

[Adjusted Net Worth of a Business or Farm—Continued

If the net worth of a business or farm is—	Then the adjusted net worth is—
$75,001–$225,000	$30,000 plus 50 percent of NW over $75,000
$225,001–$375,000	$105,000 plus 60 percent of NW over $225,000
$375,001 or more	$195,000 plus 100 percent of NW over $375,000

[(3) ASSET PROTECTION ALLOWANCE.—The asset protection allowance is calculated according to the following table (or a successor table prescribed by the Secretary under section 478):

[Asset Protection Allowances for Families and Students

If the age of the student is—	And the student is	
	married	single
then the allowance is—		
25 or less	$ 0	$0
26	2,200	1,600
27	4,300	3,200
28	6,500	4,700
29	8,600	6,300
30	10,800	7,900
31	13,000	9,500
32	15,100	11,100
33	17,300	12,600
34	19,400	14,200
35	21,600	15,800
36	23,800	17,400
37	25,900	19,000
38	28,100	20,500
39	30,200	22,100
40	32,400	23,700
41	33,300	24,100
42	34,100	24,700
43	35,000	25,200
44	35,700	25,800
45	36,600	26,300
46	37,600	26,900
47	38,800	27,600
48	39,800	28,200
49	40,800	28,800
50	41,800	29,500
51	43,200	30,200
52	44,300	31,100
53	45,700	31,800
54	47,100	32,600
55	48,300	33,400
56	49,800	34,400
57	51,300	35,200
58	52,900	36,200
59	54,800	37,200
60	56,500	38,100
61	58,500	39,200

[Asset Protection Allowances for Families and Students—Continued

If the age of the student is—	And the student is	
	married	single
62	60,300	40,300
63	62,400	41,500
64	64,600	42,800
65 or more	66,800	44,000

[(4) ASSET CONVERSION RATE.—The asset conversion rate is 7 percent.]

(d) ASSESSMENT SCHEDULE.—The [adjusted] available income (as determined under subsection (a)(1) and hereafter referred to as ["AAI"] *"AI"*) is assessed according to the following table (or a successor table prescribed by the Secretary under section 478):

Assessment [From Adjusted Available Income (AAI)] *From Available Income (AI)*

If [AAI] *AI* is—	Then the assessment is—
Less than −$3,409	−$750
−$3,409 to $9,400	22% of [AAI] *AI*
$9,401 to $11,800	$2,068 + 25% of [AAI] *AI* over $9,400
$11,801 to $14,200	$2,668 + 29% of [AAI] *AI* over $11,800
$14,201 to $16,600	$3,364 + 34% of [AAI] *AI* over $14,200
$16,601 to $19,000	$4,180 + 40% of [AAI] *AI* over $16,600
$19,001 or more	$5,140 + 47% of [AAI] *AI* over $19,000

(e) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, OR DEATH.—In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income [and assets] shall not be considered in determining the family's available income [or assets].

SEC. 478. REGULATIONS; UPDATED TABLES.

(a) AUTHORITY TO PRESCRIBE REGULATIONS RESTRICTED.—(1) Notwithstanding any other provision of law, the Secretary shall not have the authority to prescribe regulations to carry out this part except—

(A) to prescribe updated tables *or amounts, as the case may be,* in accordance with subsections (b) through (h) of this section; or

(B) to propose modifications in the need analysis methodology required by this part.

(2) Any regulation proposed by the Secretary that (A) updates tables *or amounts, as the case may be,* in a manner that does not comply with subsections (b) through (h) of this section, or (B) that proposes modifications under paragraph (1)(B) of this subsection, shall not be effective unless approved by joint resolution of the Congress by May 1 following the date such regulations are published in the Federal Register in accordance with section 482. If the Congress fails to approve such regulations by such May 1, the Secretary shall publish in the Federal Register in accordance with section 482 updated tables *or amounts, as the case may be,* for the ap-

plicable award year that are prescribed in accordance with subsections (b) through (h) of this section.

* * * * * * *

[(c) ADJUSTED NET WORTH OF A FARM OR BUSINESS.—For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of adjusted net worth of a farm or business for purposes of sections 475(d)(2)(C), 476(c)(2)(C), and 477(c)(2)(C). Such revised table shall be developed—

[(1) by increasing each dollar amount that refers to net worth of a farm or business by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such award year, and rounding the result to the nearest $5,000; and

[(2) by adjusting the dollar amounts "$30,000", "$105,000", and "$195,000" to reflect the changes made pursuant to paragraph (1).

[(d) EDUCATION SAVINGS AND ASSET PROTECTION ALLOWANCE.—For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of allowances for the purpose of sections 475(d)(3), 476(c)(3), and 477(c)(3). Such revised table shall be developed by determining the present value cost, rounded to the nearest $100, of an annuity that would provide, for each age cohort of 40 and above, a supplemental income at age 65 (adjusted for inflation) equal to the difference between the moderate family income (as most recently determined by the Bureau of Labor Statistics), and the current average social security retirement benefits. For each age cohort below 40, the allowance shall be computed by decreasing the allowance for age 40, as updated, by one-fifteenth for each year of age below age 40 and rounding the result to the nearest $100. In making such determinations—

[(1) inflation shall be presumed to be 6 percent per year;

[(2) the rate of return of an annuity shall be presumed to be 8 percent; and

[(3) the sales commission on an annuity shall be presumed to be 6 percent.]

(c) ASSET CAP FOR NEED-BASED AID.—For each award year after award year 2011–2012, the Secretary shall publish in the Federal Register a revised net asset cap for the purposes of section 471(b). Such revised cap shall be determined by increasing the dollar amount in such section by a percentage equal to the estimated percentage change in the Consumer Price Index (as determined by the Secretary) between December 2010 and the December preceding the beginning of such award year, and rounding the result to the nearest $5.

(e) ASSESSMENT SCHEDULES AND RATES.—For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of assessments from [adjusted] available income for the purpose of sections 475(e) and 477(d). Such revised table shall be developed—

(1) by increasing each dollar amount that refers to [adjusted] available income by a percentage equal to the esti-

mated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

(2) by adjusting the other dollar amounts to reflect the changes made pursuant to paragraph (1).

* * * * * * *

SEC. 479A. DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS.

(a) * * *

(b) ADJUSTMENTS [TO ASSETS] TAKEN INTO ACCOUNT.—A student financial aid administrator shall be considered to be making a necessary adjustment in accordance with subsection (a) if—

(1) * * *

* * * * * * *

SEC. 480. DEFINITIONS.

As used in this part:

(a) * * *

[Note: Paragraph (1) of subsection (b) reflects amendments made by this bill to such paragraph as amended by the Higher Education Opportunity Act, effective on July 1, 2010.]

(b) UNTAXED INCOME AND BENEFITS.—

(1) The term "untaxed income and benefits" means—

[(A) child support received;

[(B) workman's compensation;

[(C) veteran's benefits such as death pension, dependency, and indemnity compensation, but excluding veterans' education benefits as defined in subsection (c);]

[(D)] *(A)* interest on tax-free bonds;

[(E) housing, food, and other allowances (excluding rent subsidies for low-income housing) for military, clergy, and others (including cash payments and cash value of benefits), except that the value of on-base military housing or the value of basic allowance for housing determined under section 403(b) of title 37, United States Code, received by the parents, in the case of a dependent student, or the student or student's spouse, in the case of an independent student, shall be excluded;

[(F) cash support or any money paid on the student's behalf, except, for dependent students, funds provided by the student's parents;]

[(G)] *(B)* untaxed portion of pensions; *and*

[(H)] *(C)* payments to individual retirement accounts and Keogh accounts excluded from income for Federal income tax purposes[; and].

[(I) any other untaxed income and benefits, such as Black Lung Benefits, Refugee Assistance, or railroad retirement benefits, or benefits received through participation in employment and training activities under title I of

the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).]

* * * * * * *

(f) ASSETS.—(1) * * *

(2) With respect to determinations of need under this title, other than for subpart 4 of part A, the term "assets" shall not include the net value of—

(A) * * *

(B) a family farm on which the family resides; [or]

(C) a small business with not more than 100 full-time or full-time equivalent employees (or any part of such a small business) that is owned and controlled by the family[.]*; or*

(D) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))).

* * * * * * *

PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

SEC. 483. FORMS AND REGULATIONS.

(a) * * *.—

* * * * * * *

(e) EARLY APPLICATION AND ESTIMATED AWARD DEMONSTRATION PROGRAM.—

(1) * * *

* * * * * * *

(3) EARLY APPLICATION AND ESTIMATED AWARD.—For all dependent students selected for participation in the demonstration program who submit a completed FAFSA, or, as appropriate, an EZ FAFSA, two years prior to the year such students plan to enroll in an institution of higher education, the Secretary shall, not later than one year prior to the year of such planned enrollment—

(A) provide each student who completes an early application with an estimated determination of such student's—

(i) * * *

(ii) Federal Pell Grant award for the first such year, based on the maximum Federal Pell Grant award at the time of application; and

* * * * * * *

SEC. 484. STUDENT ELIGIBILITY. .

(a) * * *

* * * * * * *

(r) SUSPENSION OF ELIGIBILITY FOR DRUG-RELATED OFFENSES.—

[(1) IN GENERAL.—A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this

title from the date of that conviction for the period of time specified in the following table:

[If convicted of an offense involving:

The possession of a controlled substance:	Ineligibility period is:
First offense	1 year
Second offense	2 years
Third offense	Indefinite.
The sale of a controlled substance:	Ineligibility period is:
First offense	2 years
Second offense	Indefinite.]

(1) IN GENERAL.—A student who is convicted of any offense under any Federal or State law involving the sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following subparagraphs:

(A) For a first offense, the period of ineligibility shall be 2 years.

(B) For a second offense, the period of ineligibility shall be indefinite.

* * * * * * *

SEC. 484B. INSTITUTIONAL REFUNDS.

(a) * * *

(b) RETURN OF TITLE IV PROGRAM FUNDS.—

(1) * * *

(2) RESPONSIBILITY OF THE STUDENT.—

(A) * * *

* * * * * * *

(F) TUITION RELIEF FOR STUDENTS CALLED TO MILITARY SERVICE.—

(i) WAIVER OF REPAYMENT BY STUDENTS CALLED TO MILITARY SERVICE.—In addition to the waivers authorized by subparagraphs (D) and (E), the Secretary shall waive the amounts that students are required to return under this section if the withdrawals on which the returns are based are withdrawals necessitated by reason of service in the uniformed services.

(ii) LOAN FORGIVENESS AUTHORIZED.—Whenever a student's withdrawal from an institution of higher education is necessitated by reason of service in the uniformed services, the Secretary shall, with respect to the payment period or period of enrollment for which such student did not receive academic credit as a result of such withdrawal, carry out a program—

(I) through the holder of the loan, to assume the obligation to repay—

(aa) the outstanding principle and accrued interest on any loan assistance awarded to the student under part B (including to a parent on behalf of the student under section 428B) for

such payment period or period of enrollment; minus

(bb) any amount of such loan assistance returned by the institution in accordance with paragraph (1) of this subsection for such payment period or period of enrollment; and

(II) to cancel—

(aa) the outstanding principle and accrued interest on the loan assistance awarded to the student under part D or E (including a Federal Direct PLUS loan awarded to a parent on behalf of the student) for such payment period or period of enrollment; minus

(bb) any amount of such loan assistance returned by the institution in accordance with paragraph (1) of this subsection for such payment period or period of enrollment.

(iii) REIMBURSEMENT FOR CANCELLATION OF PERKINS LOANS.—The Secretary shall pay to each institution for each fiscal year an amount equal to the aggregate of the amounts of Federal Perkins loans in such institutions's student loan fund which are cancelled pursuant to clause (iii)(II) for such fiscal year, minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468. None of the funds appropriated pursuant to section 461(b) shall be available for payments pursuant to this paragraph. To the extent feasible, the Secretary shall pay the amounts for which any institution qualifies under this paragraph not later than 3 months after the institution files an institutional application for campus-based funds.

(iv) LOAN ELIGIBILITY AND LIMITS FOR STUDENTS.—Any amounts that are returned by an institution in accordance with paragraph (1), or forgiven or waived by the Secretary under this subparagraph, with respect to a payment period or period of enrollment for which a student did not receive academic credit as a result of withdrawal necessitated by reason of service in the uniformed services, shall not be included in the calculation of the student's annual or aggregate loan limits for assistance under this title, or otherwise affect the student's eligibility for grants or loans under this title.

(v) DEFINITION.—In this subparagraph, the term "service in the uniformed services" has the meaning given such term in section 484C(a).

* * * * * * *

SEC. 485E. EARLY AWARENESS OF FINANCIAL AID ELIGIBILITY.

(a) * * *

(b) COMMUNICATION OF AVAILABILITY OF AID AND AID ELIGIBILITY.—

(1) STUDENTS WHO RECEIVE BENEFITS.—The Secretary shall—

(A) make special efforts to notify students who receive or are eligible to receive benefits under a Federal means-tested benefit program (including the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.)), or another such benefit program as determined by the Secretary, [of such students' potential eligibility for a maximum Federal Pell Grant under subpart 1 of part A] *of such students' potential eligibility for the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which the student would be eligible*; and

* * * * * * *

SEC. 487. PROGRAM PARTICIPATION AGREEMENTS.

(a) * * *

* * * * * * *

(d) IMPLEMENTATION OF NON-TITLE IV REVENUE REQUIREMENT.—

(1) CALCULATION.—In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

(A) * * *

* * * * * * *

(E) in the case of each student who receives a loan on or after July 1, 2008, and prior to [July 1, 2011] *July 1, 2012*, that is authorized under section 428H or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this title, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before the date of enactment of the Ensuring Continued Access to Student Loans Act of 2008; and

(F) exclude from revenues—

(i) * * *

* * * * * * *

(iii) for the period beginning July 1, 2010, and ending July 1, 2012, the amount of funds the institution received from loans disbursed under section 455A;

[(iii)] *(iv)* the amount of funds provided by the institution as matching funds for a program under this title;

[(iv)] *(v)* the amount of funds provided by the institution for a program under this title that are required to be refunded or returned; and

[(v)] *(vi)* the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) SANCTIONS.—

(A) INELIGIBILITY.—A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for [two consecutive] *three consecutive* institutional

fiscal years shall be ineligible to participate in the programs authorized by this title for a period of not less than two institutional fiscal years. To regain eligibility to participate in the programs authorized by this title, a proprietary institution of higher education shall demonstrate compliance with all eligibility and certification requirements under section 498 for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

(B) ADDITIONAL ENFORCEMENT.—In addition to such other means of enforcing the requirements of this title as may be available to the Secretary, if a proprietary institution of higher education fails to meet a requirement of subsection (a)(24) for [any institutional fiscal year] *two consecutive institutional fiscal years*, then the institution's eligibility to participate in the programs authorized by this title becomes provisional for [the two institutional fiscal years after the institutional fiscal year] *the institutional fiscal year after the second consecutive institutional fiscal year* in which the institution failed to meet the requirement of subsection (a)(24), except that such provisional eligibility shall terminate—

(i) * * *

(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for [two consecutive] *three consecutive* institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

* * * * * * *

SEC. 489. ADMINISTRATIVE EXPENSES.

(a) AMOUNT OF PAYMENTS.—From the sums appropriated for any fiscal year for the purpose of the program authorized under subpart 1 of part A, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 487, an amount equal to $5 for each student at that institution who receives assistance under subpart 1 of part A. In addition, an institution which has entered into an agreement with the Secretary under subpart 3 of part A or part C, of this title [or under part E of this title] shall be entitled for each fiscal year which such institution disburses funds to eligible students under any such part to a payment for the purpose set forth in subsection (b). The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 percent of the institution's first $2,750,000 of expenditures plus 4 percent of the institution's expenditures greater than $2,750,000 and less than $5,500,000, plus 3 percent of the institution's expenditures in excess of $5,500,000 during the fiscal year from the sum of its grants to students under subpart 3 of part A, *and* its expenditures during such fiscal year under part C for [compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part E, excluding the principal amount of

any such loans which the institution has referred under section 463(a)(4)(B).] *compensation of students.* In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 484(g).

* * * * * * *

TITLE VII—GRADUATE AND POSTSECONDARY IMPROVEMENT PROGRAMS

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[PART E—COLLEGE ACCESS CHALLENGE GRANT PROGRAM]

PART E—COLLEGE ACCESS AND COMPLETION INNOVATION FUND

SEC. 780. PURPOSES.

The purposes of this part are—

(1) to promote innovation in postsecondary education practices and policies by institutions of higher education, States, and nonprofit organizations to improve student success, completion, and post-completion employment, particularly for students from groups that are underrepresented in postsecondary education; and

(2) to assist States in developing longitudinal data systems, common metrics, and reporting systems to enhance the quality and availability of information about student success, completion, and post-completion employment.

SEC. 781. COLLEGE ACCESS CHALLENGE GRANT PROGRAM.

[(a) AUTHORIZATION AND APPROPRIATION.—There are authorized to be appropriated, and there are appropriated, to carry out this section $66,000,000 for each of the fiscal years 2008 and 2009. In addition to the amount authorized and appropriated under the preceding sentence, there are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.]

(a) AUTHORIZATION AND APPROPRIATION.—

(1) IN GENERAL.—There are authorized to be appropriated, and there are appropriated, to carry out this part (in addition to any other amounts appropriated to carry out this part and out of any money in the Treasury not otherwise appropriated), $600,000,000 for each of the fiscal years 2010 through 2014.

(2) ALLOCATIONS.—Of the amount appropriated for any fiscal year under paragraph (1)—

(A) 25 percent shall be made available to carry out section 781;

(B) 50 percent shall be made available to carry out section 782;

(C) 23 percent shall be made available to carry out section 783; and

(D) 2 percent shall be made available to carry out section 784.

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SEC. 782. STATE INNOVATION COMPLETION GRANTS.

(a) PROGRAM AUTHORIZATION.—From the amount appropriated under section 781(a)(2)(B) to carry out this section, the Secretary shall award grants to States on a competitive basis to promote student persistence in, and completion of, postsecondary education.

(b) FEDERAL SHARE; NON-FEDERAL SHARE.—

(1) FEDERAL SHARE.—The amount of the Federal share under this section for a fiscal year shall be equal to ⅔ of the costs of the activities and services described in subsection (d)(1) that are carried out under the grant.

(2) NON-FEDERAL SHARE.—The amount of the non-Federal share under this section shall be equal to ⅓ of the costs of the activities and services described in subsection (d)(1). The non-Federal share may be in cash or in kind, and may be provided from State resources, contributions from private organizations, or both.

(3) SUPPLEMENT, NOT SUPPLANT.—The Federal and non-Federal shares required by this paragraph shall be used to supplement, and not supplant, State and private resources that would otherwise be expended to carry out activities and services to promote student persistence in and completion of postsecondary education.

(c) APPLICATION AND SELECTION.—

(1) APPLICATION REQUIREMENTS.—For each fiscal year for which a State desires to receive a grant under this section, the State agency with jurisdiction over higher education, or another agency designated by the Governor or chief executive of the State to administer the grant program under this section, shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application shall include—

(A) a description of the State's capacity to administer the grant under this section;

(B) a description of the State's plans for using the grant funds for activities described in subsection (d)(1), including plans for how the State will make special efforts to provide benefits to students in the State who are from groups that are underrepresented in postsecondary education;

(C) a description of how the State will provide for the non-Federal share from State resources, private contributions, or both;

(D) a description of—

(i) the administrative system that the State has in place to administer the activities and services described in subsection (d)(1); or

(ii) the plan to develop such administrative system;

(E) a description of the data system the State has or will have in place to measure the performance and progress to-

ward the State's goals included in the Access and Completion Plan submitted, or that will be submitted, under paragraph (2)(A); and

(F) the assurances under paragraph (2).

(2) STATE ASSURANCES.—The assurances required in paragraph (1)(F) shall include an assurance of each of the following:

(A) That the State will submit, not later than July 1, 2011, an Access and Completion Plan to increase the State's rate of persistence in and completion of postsecondary education. Such plan shall include—

(i) the State's annual and long-term quantifiable goals with respect to—

(I) the rates of postsecondary enrollment, persistence, and completion, disaggregated by income, race, ethnicity, sex, disability, and age of students;

(II) closing gaps in enrollment, persistence, and completion rates for students from groups that are underrepresented in postsecondary education;

(III) targeting education and training programs to address labor market needs in the State, as such needs are determined by the State, or the State in coordination with the State public employment service, the State workforce investment board, or industry or sector partnerships in the State; and

(IV) improving coordination between two-year and four-year institutions of higher education in the State, including supporting comprehensive articulation agreements between such institutions; and

(ii) the State's plan to develop an interoperable statewide longitudinal data system that—

(I) can be linked to other data systems, as applicable, including elementary and secondary education and workforce data systems;

(II) will collect, maintain, disaggregate (by institution, income, race, ethnicity, sex, disability, and age of students), and analyze postsecondary education and workforce information, including—

(aa) postsecondary education enrollment, persistence, and completion information;

(bb) post-completion employment outcomes of students who enrolled in postsecondary programs and training programs offered by eligible training providers under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(cc) postsecondary education and employment outcomes of students who move out of the State; and

(dd) postsecondary instructional workforce information; and

(III) makes the information described in subclause (I) available to the general public in a manner that is transparent and user-friendly.

(B) That the State has a comprehensive planning or policy formulation process with respect to increasing postsecondary enrollment, persistence, and completion that—

(i) encourages coordination between the State administration of grants under this section and similar State programs;

(ii) encourages State policies that are designed to improve rates of enrollment and persistence in, and completion of, postsecondary education for all categories of institutions of higher education described in section 132(d) in the State;

(iii) considers the postsecondary education needs of students from groups that are underrepresented in postsecondary education;

(iv) considers the resources of public and private institutions of higher education, organizations, and agencies within the State that are capable of providing access to postsecondary education opportunities within the State; and

(v) provides for direct, equitable, and active participation in the comprehensive planning or policy formulation process or processes, through membership on State planning commissions, State advisory councils, or other State entities established by the State and consistent with State law, by representatives of—

(I) institutions of higher education, including at least one member from a junior or community college (as defined in section 312(f));

(II) students;

(III) other providers of postsecondary education services (including organizations providing access to such services);

(IV) the general public in the State; and

(V) postsecondary education faculty members, including at least one faculty member whose primary responsibilities are teaching and scholarship.

(C) That the State will incorporate policies and practices that, through the activities funded under this section, are determined to be effective in improving rates of postsecondary education enrollment, persistence, and completion into the future postsecondary education policies and practices of the State to ensure that the benefits achieved through the activities funded under this section continue beyond the period of the grant.

(D) That the State will participate in the evaluation required under section 784.

(3) SUBGRANTS TO NONPROFIT ORGANIZATIONS.—A State receiving a payment under this section may elect to make a subgrant to one or more nonprofit organizations in the State, including agencies with agreements with the Secretary under subsections (b) and (c) of section 428 on the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009, or a partnership of such organizations, to carry out activities

and services described in subsection (d)(1), if the nonprofit organization or partnership—

(A) was in existence on the day before the date of the enactment of the Student Aid and Fiscal Responsibility Act of 2009; and

(B) as of such day, was participating in activities and services related to promoting persistence in, and completion of, postsecondary education, such as the activities and services described in subsection (d)(1).

(4) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to States that enter into a partnership with one of the following entities to carry out the activities and services described in subsection (d)(1):

(A) A philanthropic organization, as such term is defined in section 781(i)(1).

(B) An agency with an agreement with the Secretary under subsections (b) and (c) of section 428 on the date of the enactment of Student Aid and Fiscal Responsibility Act of 2009.

(d) USES OF FUNDS.—

(1) AUTHORIZED USES.—A State receiving a grant under this section shall use the grant funds to—

(A) provide programs in such State that increase persistence in, and completion of, postsecondary education, which may include—

(i) assisting institutions of higher education in providing financial literacy, education, and counseling to enrolled students;

(ii) assisting students enrolled in an institution of higher education to reduce the amount of loan debt incurred by such students;

(iii) providing grants to students described in section 415A(a)(1), in accordance with the terms of that section; and

(iv) carrying out the activities described in section 415E(a); and

(B) support the development and implementation of a statewide longitudinal data system, as described in subsection (c)(2)(A)(ii).

(2) PROHIBITED USES.—Funds made available under this section shall not be used to promote any lender's loans.

(3) RESTRICTIONS ON USE OF FUNDS.—A State—

(A) shall use not less than 1/3 of the sum of the Federal and non-Federal share used for paragraph (1)(A) on activities that benefit students enrolled in junior or community colleges (as defined in section 312(f)), two-year public institutions, or two-year programs of instruction at four-year public institutions;

(B) may use not more than 10 percent of the sum of the Federal and non-Federal share under this section for activities described in paragraph (1)(B); and

(C) may use not more than 6 percent of the sum of the Federal and non-Federal share under this section for ad-

ministrative purposes relating to the grant under this section.

(e) ANNUAL REPORT.—Each State receiving a grant under this section shall submit to the Secretary an annual report on—

(1) the activities and services described in subsection (d)(1) that are carried out with such grant;

(2) the effectiveness of such activities and services in increasing postsecondary persistence and completion, as determined by measurable progress in achieving the State's goals for persistence and completion described in the Access and Completion Plan submitted by the State under subsection (c)(2)(A), if such plan has been submitted; and

(3) any other information or assessments the Secretary may require.

(f) DEFINITIONS.—In this section:

(1) INDUSTRY OR SECTOR PARTNERSHIP.—The term "industry or sector partnership" means a workforce collaborative that organizes key stakeholders in a targeted industry cluster into a working group that focuses on the human capital needs of a targeted industry cluster and that includes, at the appropriate stage of development of the partnership—

(A) representatives of multiple firms or employers (including workers) in a targeted industry cluster, including small- and medium-sized employers when practicable;

(B) 1 or more representatives of State labor organizations, central labor coalitions, or other labor organizations;

(C) 1 or more representatives of local workforce investment boards;

(D) 1 or more representatives of postsecondary educational institutions or other training providers; and

(E) 1 or more representatives of State workforce agencies or other entities providing employment services.

(2) STATE PUBLIC EMPLOYMENT SERVICE.—The term "State public employment service" has the meaning given such term in section 502(a)(9) of the Student Aid and Fiscal Responsibility Act of 2009.

(3) STATE WORKFORCE INVESTMENT BOARD; LOCAL WORKFORCE INVESTMENT BOARD.—The terms "State workforce investment board" and "local workforce investment board" have the meanings given such terms in section 502(a)(10) of the Student Aid and Fiscal Responsibility Act of 2009.

SEC. 783. INNOVATION IN COLLEGE ACCESS AND COMPLETION NATIONAL ACTIVITIES.

(a) PROGRAMS AUTHORIZED.—From the amount appropriated under section 781(a)(2)(C) to carry out this section, the Secretary shall award grants, on a competitive basis, to eligible entities in accordance with this section to conduct innovative programs that advance knowledge about, and adoption of, policies and practices that increase the number of individuals with postsecondary degrees or certificates.

(b) ELIGIBLE ENTITIES.—The Secretary is authorized to award grants under subsection (a) to—

(1) institutions of higher education;

(2) States;

(3) nonprofit organizations with demonstrated experience in the operation of programs to increase postsecondary completion;

(4) philanthropic organizations (as such term is defined in section 781(i)(1));

(5) entities receiving a grant under chapter 1 of subpart 2 of part A of title IV; and

(6) consortia of any of the entities described in paragraphs (1) through (5).

(c) INNOVATION GRANTS.—

(1) MINIMUM AWARD.—A grant awarded under subsection (a) shall be not less than $1,000,000.

(2) GRANTS USES.—The Secretary's authority to award grants under subsection (a) includes—

(A) the authority to award to an eligible entity a grant in an amount equal to all or part of the amount of funds received by such entity from philanthropic organizations (as such term is defined in section 781(i)(1)) to conduct innovative programs that advance knowledge about, and adoption of, policies and practices that increase the number of individuals with postsecondary degrees or certificates; and

(B) the authority to award an eligible entity a grant to develop 2-year programs that provide supplemental grant or loan benefits to students that—

(i) are designed to improve student outcomes, including degree completion, graduation without student loan debt, and post-completion employment;

(ii) are in addition to the student financial aid available under title IV of this Act; and

(iii) do not result in the reduction of the amount of that aid or any other student financial aid for which a student is otherwise eligible under Federal law.

(3) APPLICATION.—To be eligible to receive a grant under subsection (a), an eligible entity shall submit an application at such time, in such manner, and containing such information as the Secretary shall require.

(4) PRIORITIES.—In awarding grants under subsection (a), the Secretary shall give priority to applications that—

(A) are from an eligible entity with demonstrated experience in serving students from groups that are underrepresented in postsecondary education, including institutions of higher education that are eligible for assistance under title III or V, or are from a consortium that includes an eligible entity with such experience;

(B) are from an eligible entity that is a public institution of higher education that does not predominantly provide an educational program for which it awards a bachelor's degree (or an equivalent degree), or from a consortium that includes at least one such institution;

(C) include activities to increase degree or certificate completion in the fields of science, technology, engineering, and mathematics, including preparation for, or entry into, postbaccaluareate study, especially for women and other groups of students who are underrepresented in such fields;

(D) are from an eligible entity that is a philanthropic organization with the primary purpose of providing scholarships and support services to students from groups that are underrepresented in postsecondary education, or are from a consortium that includes such an organization; or

(E) are from an eligible entity that encourages partnerships between institutions of higher education with high degree-completion rates and institutions of higher education with low degree-completion rates from the same category of institutions described in section 132(d) to facilitate the sharing of information relating to, and the implementation of, best practices for increasing postsecondary completion.

(5) TECHNICAL ASSISTANCE.—The Secretary may reserve up to $5,000,000 per year to award grants and contracts to provide technical assistance to eligible entities receiving a grant under subsection (a), including technical assistance on the evaluation conducted in accordance with section 784 and establishing networks of eligible entities receiving grants under such subsection.

(d) REPORTS.—

(1) ANNUAL REPORTS BY ENTITIES.—Each eligible entity receiving a grant under subsection (a) shall submit to the Secretary an annual report on—

(A) the effectiveness of the program carried out with such grant in increasing postsecondary completion, as determined by measurable progress in achieving the goals of the program, as described in the application for such grant; and

(B) any other information or assessments the Secretary may require.

(2) ANNUAL REPORT TO CONGRESS.—The Secretary shall submit to the authorizing committees an annual report on grants awarded under subsection (a), including—

(A) the amount awarded to each eligible entity receiving a grant under such subsection; and

(B) a description of the activities conducted by each such eligible entity.

SEC. 784. EVALUATION.

From the amount appropriated under section 781(a)(2)(D), the Director of the Institute of Education Sciences shall evaluate the programs funded under this part. Not later than January 30, 2016, the Director shall issue a final report on such evaluation to the authorizing committees and the Secretary, and shall make such report available to the public.

SEC. 785. VETERANS RESOURCE OFFICER GRANTS.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants, on a competitive basis, to eligible institutions of higher education to hire a Veterans Resource Officer to increase the college completion rates for veterans enrolled at such institutions.

(b) DEFINITIONS.—In this section:

(1) ELIGIBLE INSTITUTION OF HIGHER EDUCATION.—The term "eligible institution of higher education" means an institution of higher education that has an enrollment of at least 100 full-time equivalent students who are veterans.

(2) FULL-TIME EQUIVALENT STUDENTS.—The term "full-time equivalent students" has the meaning given such term in section 312(e).

(3) VETERAN.—The term "veteran" has the meaning give such term in section 480(c).

(c) APPLICATION.—To be eligible to receive a grant under this section, an eligible institution of higher education shall submit an application at such time, in such manner, and containing such information as the Secretary shall require.

(d) USES OF FUNDS.—

(1) IN GENERAL.—An eligible institution of higher education receiving a grant under this section shall use such grant to hire 1 or 2 Veterans Resource Officers (in the case of an institution that has an enrollment of at least 200 full-time equivalent students who are veterans) to serve in the office of campus programs, or a similar office, at such institution and carry out the activities described in paragraph (2).

(2) ACTIVITIES.—A Veterans Resource Officer shall carry out activities at an eligible institution of higher education to help increase the completion rates for veterans enrolled at such institution, which shall include the following activities:

(A) Serving as a link between student veterans and the staff of the institution.

(B) Serving as a link between student veterans and local facilities of the Department of Veterans Affairs.

(C) Organizing and advising student veterans organization.

(D) Organizing veterans oriented group functions and events.

(E) Maintaining newsletters and listserves to distribute news and information to all student veterans.

(F) Organizing new student veterans campus orientation.

(G) Ensuring that the Department of Veterans Affairs certifying official at such institution is properly trained.

(3) PRIORITY.—To the extent practicable, each institution described in paragraph (1) shall give priority to hiring a veteran to serve as a Veterans Resource Officer.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2010 and each succeeding fiscal year.

TITLE VIII—ADDITIONAL PROGRAMS

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PART Y—EARLY FEDERAL PELL GRANT COMMITMENT DEMONSTRATION PROGRAM

SEC. 894. EARLY FEDERAL PELL GRANT COMMITMENT DEMONSTRATION PROGRAM.

(a) * * *

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(f) TARGETED INFORMATION CAMPAIGN.—

(1) * * *

(2) PLAN.—Each State educational agency receiving a grant under this section shall include in the application submitted under subsection (c) a written plan for the State educational agency proposed targeted information campaign. The plan shall include the following:

(A) * * *

* * * * * * *

(C) INFORMATION.—The annual provision by the State educational agency to all students and families participating in the demonstration project of information regarding—

(i) * * *

(ii) Federal Pell Grants, including—

(I) [the maximum Federal Pell Grant for each award year] *the Federal Pell Grant amount, determined under section 401(b)(2)(A), for which a student may be eligible for each award year*;

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COLLEGE COST REDUCTION AND ACCESS ACT

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TITLE III—FEDERAL FAMILY EDUCATION LOAN PROGRAM

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[SEC. 303. REDUCTION OF LENDER INSURANCE PERCENTAGE.

[(a) AMENDMENT.—Subparagraph (G) of section 428(b)(1) (20 U.S.C. 1078(b)(1)(G)) is amended to read as follows:

[“(G) insures 95 percent of the unpaid principal of loans insured under the program, except that—

[“(i) such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to section 428(j) or 439(q); and

[“(ii) notwithstanding the preceding provisions of this subparagraph, such program shall insure 100 percent of the unpaid principal amount of exempt claims as defined in subsection (c)(1)(G);’.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective on October 1, 2012, and shall apply with respect to loans made on or after such date.]

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XVII. COMMITTEE CORRESPONDENCE

None.

XVIII. Minority and Supplemental Views

SUPPLEMENTAL VIEWS OF REPRESENTATIVES PHIL HARE AND DAVID LOEBSACK

We support the majority views. In particular, we agree that our nation's community colleges are essential to driving economic recovery. We write separately to ensure this legislation provides the necessary support to all our nation's colleges, especially those located in remote areas of the country, in order to fully address the economic crisis. We believe the focus of the competitive grant programs authorized in Title V for community college reform should be to prepare individuals for skilled occupations that are in high-demand in their local area or region. Therefore, we would like to clarify that the Committee intends for "high-demand industries" to be defined and determined in accordance with the workforce needs of local and regional economies, which may differ within the state or between states. In order to slow down and eventually stop the brain drain prevalent in rural America and many other areas of the country, the objective is to train and educate individuals for skilled professions of need within their communities, rather than provide educational opportunities for individuals to then seek jobs elsewhere.

We also agree that the focus of the grant programs should be on moving individuals into skilled occupations with family-supporting wages. However, the definition of "high-wage" also varies between regions and we do not want to inadvertently restrict the colleges located in areas with low to moderate industry from accessing this grant funding. With one-quarter of all Americans living in rural communities, rural America presents the most promising area of economic growth in the country.

In addition, we recognize that individuals with lower skills may need additional time to achieve skilled or "high-wage" jobs. To address this we believe that when considering high-wage or skilled occupations, the Secretary and the states must also look at occupations that may be reasonably expected to lead to such high-wages or skilled occupations.

Finally, in order to better ensure that the community colleges located in more remote areas of the country have the same access to federal funds as schools in urban centers, it is important that we have the data to understand where the money is being spent. Therefore, it is the Committee's intention for the Institute of Education Sciences (IES) in its evaluation of all the grantees who receive monies for community college reform to indicate whether the grantee is located in either a rural or urban area. The data collected from this evaluation would be invaluable to understanding where the grant money is going, what geographic regions are im-

pacted and how we can better distribute resources or structure programs in the future to ensure that all our nation's students have access to the same educational and workforce opportunities.

PHIL HARE.
DAVE LOEBSACK.

MINORITY VIEWS

Committee Republicans are committed to maintaining the successful and robust public-private partnership that has provided low-cost and easily accessible college loans to students well for over 40 years. We have been, and remain, supportive of efforts to increase the maximum Pell Grant award and simplify the Free Application for Federal Student Aid (FAFSA). However, we believe this bill takes the wrong approach to accomplish these goals. H.R. 3221, the so-called Student Aid and Fiscal Responsibility Act of 2009, turns sharply in the wrong direction by eliminating the Federal Family Education Loan (FFEL) program, spending less than half of the purported "savings" on increases to Pell Grants, and raiding student aid to fund pet projects like school construction, early childhood programs, and new initiatives for community colleges.

ANOTHER TAKEOVER BY THE FEDERAL GOVERNMENT

Committee Republicans believe H.R. 3221 represents another attempt by President Obama and Congressional Democrats to orchestrate a federal government takeover of a private industry. The federal government has already succeeded in taking ownership of the automobile industry and controlling the actions of the financial industry. With this bill, the Department of Education, an agency intended to ensure that every child has the opportunity to learn, will now become one of the country's largest banks—originating more than $100 billion in federal student loans in the next few years.

In justifying this latest government takeover, Democrats claim the FFEL program is on "life support" and therefore must be eliminated. However, it cannot be ignored that Democrats have been trying to eliminate this program since 1993, when President Clinton put into place the Direct Loan program. What Committee Democrats refuse to acknowledge is that the FFEL program has been a stable source of private capital for more than 40 years. Private capital has temporarily dried up in the FFEL program, much like it has in the rest of the financial services sector. Yet student lending is the only sector of the financial services industry being targeted for a permanent government takeover.

Last Congress, the Committee worked in a *bipartisan* manner to pass H.R. 5715, the Ensuring Continued Access to Student Loans Act (ECASLA). This is one of the only economic stabilization bills that is working and *is proven to save the federal government money.* In fact, according to the President's fiscal year 2010 budget, this program will save the federal government $6.7 billion in fiscal year 2010 alone. Under ECASLA, the FFEL program successfully originated approximately $70 billion in loans and every student who needed a loan received one during the 2008–2009 academic year. Congress has passed other bills to provide liquidity to the financial marketplace or help stimulate the economy. Those bills, however,

are not proving to be as successful as ECASLA and, in most cases have simply driven the country deeper into debt.

Committee Democrats also fail to mention that the Direct Loan program was once on "life support." In 1997, the program collapsed and was unable to make consolidation loans to borrowers. At that time, Congress did not seek to end the program. Rather, Committee Republicans led the effort to pass emergency legislation to bail out the Direct Loan program to ensure that borrowers could receive consolidation loans.

Committee Democrats also claim the private sector is dying because most student loans being originated in the FFEL program today are being made with federal capital using the authority provided to the Secretary of Education in ECASLA. At the same time, Committee Democrats claim their plan will maintain the program's public-private partnership by permitting limited participation of certain private sector entities. However, both of these claims are false when the facts are examined. Despite the global credit crunch, there continues to be robust participation by the private sector under the FFEL program. There are still more than 1,500 active lenders willing to make student loans, including local lenders like the Navy Federal Credit Union, University Federal Credit Union, and Banc First, and approximately 40 percent of total FFEL loan volume is still being made using private capital.

There are also another 50 private and nonprofit loan servicers and more than 30 guaranty agencies that provide valuable services in their respective states and employ more than 30,000 private sector workers. By comparison, the U.S. Department of Education currently uses one servicer for the entire nation. While the Department recently announced that it would expand this contract to four servicers—a 400% increase from the monopoly that it was employing until recently—this move is a poor representation of the public-private enterprise that has been effective for both students and institutions. Even the few private sector participants that are able to maintain a limited role in student lending will not be able to use the creative, personalized approaches available today. They will simply be administering a one-size-fits-all approach dictated by the federal government where market competition and effective customer service is all but eliminated.

FFEL IS BETTER FOR STUDENTS AND INSTITUTIONS

Committee Republicans believe H.R. 3221 ignores the voices of the federal student loan consumers—the students who use the loans and the institutions that must administer the programs. Institutions have made their opinions known. When President Clinton first created the Direct Loan program in 1993, the federal government paid institutions a $10 fee for each loan, something that is classified as an "illegal inducement" under the FFEL program, and regularly pressured college presidents to join the DL program. Despite all of this pressure, the Direct Loan program only captured a total of 34 percent of loan volume at its peak in 1998. Since that time, loan volume has been around 20 percent. There has been a slight uptick in volume recently due to the global economic crisis that has affected every financial industry, including the student loan industry. However, even with the crisis and increased pres-

sure from the Administration and Democrats in Congress, 4,400 schools, or 72 percent, remain in the FFEL program.

These schools will be forced out of FFEL under the Democrats' plan, regardless of their wishes or ability to make such a conversion. In fact, the Committee heard from institutions as recently as the day before the mark up when a group of 15 financial aid advisors released their ideas for an alternative proposal which focused on institutional choice of loan delivery system, customized default prevention and financial literacy programs, and uninterrupted loan access for students and parents while still avoiding significant administrative and financial burdens for institutions.[1] When it comes to health care, Democrats like to promise that, ". . . if you like your plan, you can keep it." It's too bad they don't feel the same way about student loan programs.

The demands of students and institutions within the FFEL program have sparked fierce competition among loan providers and servicers. The competition has led to lower prices for students and institutions and innovation in loan delivery, processing, and servicing. The competition and innovation in the current FFEL program has also led to repayment incentives, interest rate reductions, fee reductions, loan forgiveness, and other financial benefits for students. Loan providers also offer broader benefits, such as college planning services, financial literacy education, default aversion, and FAFSA assistance, among other value-added services. The innovations generated by competition cannot be overlooked, even by the Department of Education, which has followed the private sector's lead and put in place many of these innovations to improve the Direct Loan program.

Committee Republicans have heard from colleges and universities that the Direct Loan program puts additional administrative burdens on schools. Switching from the FFEL program to the DL program is *not* as easy as flipping a switch. Schools must ensure that their basic software can work with the DL system. Many schools have "homegrown" software that has been specifically developed to run the schools" programs. These institutions will have to overhaul their software systems since that work will not be done by a software vendor. Institutions will also have to notify parents and students that they will have to sign new loan agreements and will have to answer questions about the new loan products. Some institutions, such as graduate schools, do not have access to the C.O.D. system that is used for loan origination, so that system will need to be added and staff will need to be trained. Finally, websites and all financial aid materials will need to be updated. This does not even take into account the number of staff from different departments that may need to stop their current tasks to help with the implementation or the projects currently underway at the institution that will have to be placed on hold to undergo the systems update necessary for the implementation of the Direct Loan program.

In talking to institutions that have been in and out of the Direct Loan program, Committee Republicans have heard that it could take anywhere between four and nine months for a large institu-

[1] "Reforming Federal Student Aid Programs: Focused on the Students We Serve"

tion, with plenty of staff, to be ready to issue its first loan. In addition, we have heard that the cost to institutions of switching programs was $240,000 at one institution and $400,000 at another institution. Dr. Harris Pastides, the President of University of South Carolina, provided more specific details in a letter he sent. He stated,

> Because of the type of software developed specifically for our current computer system, our transition process is not simply a matter of purchasing and rapidly installing an 'off the shelf' program. *Transition to direct lending would require an investment of well over a million dollars and a timeline for implementation exceeding one year. . . .* To add the cost of converting our system to direct lending without any help would be tantamount to another budget reduction for us at this time. Ironically, this would increase costs and negate much of the positive impact of potential increases to financial aid generated by proposed policy improvements. (Emphasis added).[2]

Gaining eligibility for the Direct Loan program and being ready to operate the program on an institution-wide basis are two very different issues that have been ignored by Congressional Democrats in their zeal to nationalize the student loan industry.

FFEL IS BETTER FOR TAXPAYERS

Not only is the FFEL program the program of choice for students and institutions, it is good for taxpayers, too. Industry participants provide the capital up front and then share some of the risk in case the borrower defaults. Democrats may scoff that FFEL providers shoulder only three percent of the risk, but this figure represents billions of dollars that the taxpayer is not on the hook for this year. It's also a substantial amount when you realize that, under the Direct Loan program, the taxpayer is on the hook for the entire amount if a student does not repay his or her loan. The FFEL program also leverages about $70 billion in private capital each year when the financial markets are working properly. Committee Democrats want to borrow that $70 billion directly from China and our other creditors. Driving up the national debt has long-term consequences, whether it is reducing our nation's credit rating, inadvertently driving up costs, or putting us at the mercy of emerging super-powers on the other side of the globe.

Committee Democrats claim that the FFEL program simply provides profits to banks and that the Direct Loan program saves the government money. However, the facts show that the federal government has been receiving subsidies from lenders for the past several years. Since April 2006, lenders have paid $3.2 billion to the federal government. Additionally, while there are a number of factors that lead to the scoring differences between the two federal student loan programs. One undeniable factor is that a significant percentage of the "savings" in the Direct Loan program are due to the difference between the government's low cost of borrowing funds and the borrower interest rate. Committee Republicans have

[2] Letter to The Honorable Joe Wilson, May 26, 2009.

concerns about the federal government serving as a profit-making bank at the expense of low- and middle-income students.

Committee Democrats also claim they are making good on their promise to lower interest rates for students in H.R. 3221, but the facts show otherwise. At the beginning of the 110th Congress, Democrats rushed H.R. 5, the College Student Relief Act, through the House. That legislation would have reduced interest rates on student loans by half, from 6.8 percent to 3.4 percent, for all students. Immediately after the bill was introduced, Committee Democrats started to dilute their promise by scaling back interest rates from 6.8 percent to 3.4 percent over five years, but then allowing the interest rate to jump back up to 6.8 percent in 2012. At the time, The Chronicle of Higher Education reported that Democrats intended to make the 3.4 percent interest rate permanent in the future.[3] Additionally, Inside Higher Ed reported that, "Democratic staffers explained that budget rules and fiscal realities required that compromise. They also aid that they fully expected to find money in the intervening years to make the cut permanent."[4] The bill was never considered in the Senate.

Through the budget reconciliation process that year, Democrats were able to pass H.R. 2669, the College Cost Reduction and Access Act—legislation to, among other things, reduce student loan interest rates. But it was an even more diluted version of their original plan and only scaled back interest rates from 6.8 percent to 3.4 percent over four years for undergraduate students receiving subsidized loans. The legislation retained the 2012 cliff, resulting in the overall bill representing a negligible benefit for most students.

H.R. 3221 officially breaks any promises that Committee Democrats made to students when they committed to permanently lower interest rates; moreover, it ensures the federal government continues to make a profit off of the unnecessarily high level of interest being paid by students in the Direct Loan program. The bill changes the interest rate in 2012 to a variable interest rate, capped at 6.8 percent. Under this formula, it is projected that students will see an increase in their interest rates in 2012 (5.21 percent) and 2013 (6.26 percent) and will be right back up at the 6.8 percent cap in 2014.

MASSIVE ENTITLEMENT SPENDING

Committee Democrats are not only forcing students to spend more under their bill, but the American taxpayers will also bear the brunt of almost $80 billion in entitlement spending at a time when the national debt is more than $11 trillion and the deficit is estimated to reach $1.8 trillion this year alone. Historically, entitlement programs such as Social Security, Medicare, Medicaid, or programs under the Child Nutrition Act were created to provide income benefits to individual citizens. Instead of recognizing this important policy, this bill spends billions of dollars in mandatory, en-

[3] Burd, Stephen. "Democrats" Plan to Slash the Interest Rate for Student Loans Draws Criticism," *The Chronicle of Higher Education,* January 5, 2007. The article stated, "House Democrats briefly considered making the interest-rate cut for only one year. Then they hoped to make the cut permanent as part of legislation to renew the Higher Education Act, the law governing most federal student-aid programs, which they hope to consider later this year."

[4] Lederman, Doug. "Political Maneuvering on Student Loans," *Inside Higher Education,* January 17, 2007

titlement funding on the Committee Democrats' favored political and policy causes.

While millions of families are struggling to pay their monthly bills and are thinking about which of their expenses to trim, Democrats in Congress are on a huge spending spree that will saddle our children and grandchildren with billions of debt. This bill, which Committee Democrats have portrayed as legislation to improve college access, actually contains: $6.6 billion for school construction—both at the elementary and secondary and higher education levels; $8 billion for an "early learning" initiative from birth to age 5; and $7 billion for community colleges, which may undermine our current job training system. There are major flaws with what the Democrats are proposing on school construction, early childhood education, and community colleges, but the larger issue is *how* they are pushing these proposals. Committee Democrats are putting forward a proposal to raid student aid funds and spend those entitlement dollars to bolster the funding of programs which should be within the control of the House and Senate Appropriations Committees in Congress.

CONCLUSION

Committee Republicans are concerned that Democrats are rushing through a risky scheme to take over the private student loan industry, regardless of the negative consequences for students and institutions. We are also very concerned that the proposed bill takes the "savings" that will result from eliminating the FFEL program and uses those funds to create a number of new programs that are not targeted toward individuals but rather toward favored political constituencies and causes. It is for these many reasons that Committee Republicans strongly oppose H.R. 3221 and urge Members of Congress to defeat this bill.

JOHN KLINE.
BUCK MCKEON.
PETE HOEKSTRA.
MARK SOUDER.
JOE WILSON.
CATHY MCMORRIS RODGERS.
ROB BISHOP.
BRETT GUTHRIE.
BILL CASSIDY.
TOM MCCLINTOCK.
DUNCAN HUNTER.
DAVID P. ROE.
GLENN G.T. THOMPSON.

MISCELLANEOUS HOUSE REPORT REQUIREMENTS

STATEMENT ON COMMITTEE OVERSIGHT FINDINGS

Clause 3(c)(1) of rule XIII of the Rules of the House of Representatives requires the report of a committee on a measure that has been approved by the committee to contain oversight findings and recommendations required pursuant to clause (2)(b)(1) of rule X. The Committee on the Budget has examined its activities over the past year and has determined that there are no specific oversight findings on the text of the reported bill.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE ESTIMATE

Clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308 and 402 of the Congressional Budget Act require the report of a committee on a measure approved by the committee to include a timely submitted cost estimate by the Congressional Budget Office [CBO]. Statements regarding the CBO estimates of the legislative recommendations submitted by each of the authorizing committees are included under the appropriate titles.

STATEMENT ON GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause (3)(c)(4)of rule XIII of the Rules of the House of Representatives requires the report of a committee on a measure that has been approved by the committee to include a statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding. This measure is intended to reduce the deficit, and is reported pursuant to section 202 of S. Con. Res. 13, the concurrent resolution on the budget for fiscal year 2010.

CONSTITUTIONAL AUTHORITY STATEMENT

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires each report of a committee on a public bill or public joint resolution contain a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution. The Committee on the Budget states that its action in reporting this bill is derived from Article I of the Constitution, Section 5 ('Each House may determine the Rules of its Proceedings') and Section 8 ('The Congress shall have the power to make all Laws which shall be necessary and proper * * *').

CHANGES IN EXISTING LAW

Clause 3 of rule XIII of the Rules of the House of Representatives requires each report of a committee on a public bill or public joint resolution contain the text of statutes that are proposed to be repealed and a comparative print of that part of the bill proposed to be amended whenever the bill repeals or amends any statute. The required matter is included in the report language for each title of the legislative recommendations submitted by the appropriate authorization committees and reported to the House by the Committee on the Budget.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act of 1974 requires a statement of whether the provisions of the reported bill include unfunded mandates. Statements regarding unfunded mandates for the legislative recommendations submitted by each of the authorizing committees are included under appropriate titles.

EARMARK IDENTIFICATION

The Committee on Budget did not receive any requests for congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI. Statements regarding earmark requests that may have been submitted to the authorizing committees that responded to the reconciliation instructions are included under the appropriate titles of this report.

VOTES OF THE COMMITTEE

House rule XIII, clause 3(b), requires that each committee report include the total number of votes cast for and against, and the names of members voting for and against, each recorded vote on a motion to report a measure or matter of a public nature and any amendment offered to the measure or matter.

On March 15, 2010, the Committee met in open session with a quorum present and ordered reported the Reconciliation Act of 2010 without recommendation. Following is a summary of the meeting and the roll call votes taken by the Committee.

After calling the Committee to order, Chairman Spratt stated that under section 310 of the Congressional Budget Act of 1974, and pursuant to section 202 of Senate Concurrent Resolution 13, the concurrent resolution on the budget for fiscal year 2010, the Committee would consider reporting the reconciliation Act of 2010 to the House of Representatives without substantive revision.

1. Vice Chair Schwartz moved that the Committee order reported to the House without recommendation the Reconciliation Act of 2010. The motion was agreed to by a roll call vote of 21 ayes and 16 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)	X			RYAN (WI) (Ranking)		X	

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SCHWARTZ (PA)	X			HENSARLING (TX)			
KAPTUR (OH)	X			GARRETT (NJ)		X	
BECERRA (CA)	X			DIAZ–BALART (FL)		X	
DOGGETT (TX)	X			SIMPSON (ID)		X	
BLUMENAUER (OR)	X			McHENRY (NC)		X	
BERRY (AR)	X			MACK (FL)		X	
BOYD (FL)		X		CAMPBELL (CA)		X	
McGOVERN (MA)	X			JORDAN (OH)		X	
TSONGAS (MA)	X			LUMMIS (WY)		X	
ETHERIDGE (NC)	X			AUSTRIA (OH)		X	
McCOLLUM (MN)	X			ADERHOLT (AL)		X	
YARMUTH (KY)	X			NUNES (CA)		X	
ANDREWS (NJ)	X			HARPER (MS)		X	
DeLAURO (CT)	X			LATTA (OH)		X	
EDWARDS (TX)		X					
SCOTT (VA)	X						
LANGEVIN (RI)	X						
LARSEN (WA)	X						
BISHOP (NY)	X						
MOORE, GWEN (WI)	X						
CONNOLLY (VA)	X						
SCHRADER (OR)							
MOORE, DENNIS (KS)	X						

2. A motion was offered by Representative Mack directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to prohibit the use of comparative effectiveness research or other measures to restrict medical professionals from providing and/or prescribing the care they believe to be medically necessary.

The motion was not agreed to by a roll call vote of 14 ayes and 23 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)			

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)		X					
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

3. A motion was offered by Representative Schwartz directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to ban health insurance discrimination against Americans with pre-existing conditions.

The motion was agreed to by voice vote.

4. A motion was offered by Representative Campbell directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to delay the implementation of the health reform legislation until Congress has enacted legislation to put the federal budget and United States economy on a sustainable fiscal path.

The motion was not agreed to by a roll call vote of 14 ayes and 23 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)			
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)		X					
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

5. A motion was offered by Representative Etheridge directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to close the coverage gap ("doughnut hole ") in Medicare Part D and ensure expanded access to preventive care for Medicare beneficiaries.

The motion was agreed to by a roll call vote of 23 ayes and 15 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)	X			RYAN (WI) (Ranking)		X	

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SCHWARTZ (PA)	X			HENSARLING (TX)		X	
KAPTUR (OH)	X			GARRETT (NJ)		X	
BECERRA (CA)	X			DIAZ–BALART (FL)		X	
DOGGETT (TX)	X			SIMPSON (ID)		X	
BLUMENAUER (OR)	X			McHENRY (NC)		X	
BERRY (AR)	X			MACK (FL)		X	
BOYD (FL)	X			CAMPBELL (CA)		X	
McGOVERN (MA)	X			JORDAN (OH)		X	
TSONGAS (MA)	X			LUMMIS (WY)		X	
ETHERIDGE (NC)	X			AUSTRIA (OH)		X	
McCOLLUM (MN)	X			ADERHOLT (AL)		X	
YARMUTH (KY)	X			NUNES (CA)		X	
ANDREWS (NJ)	X			HARPER (MS)		X	
DeLAURO (CT)	X			LATTA (OH)		X	
EDWARDS (TX)	X						
SCOTT (VA)	X						
LANGEVIN (RI)	X						
LARSEN (WA)	X						
BISHOP (NY)	X						
MOORE, GWEN (WI)	X						
CONNOLLY (VA)	X						
SCHRADER (OR)							
MOORE, DENNIS (KS)	X						

6. A motion was offered by Representative Ryan directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to prevent Medicare cuts from being used to offset or fund a new entitlement program, reduce new government spending in such legislation by that amount, and direct all Medicare savings to the Medicare program to make that program fiscally sustainable.

The motion was not agreed to by a roll call vote of 17 ayes and 21 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)	X			CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)	X						
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

7. A motion was offered by Representative McCollum directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to add new health insurance protections prohibiting annual and lifetime limits on the amount of care insurance covers.

The motion was agreed to by a roll call vote of 25 ayes and 11 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)	X			RYAN (WI) (Ranking)		X	
SCHWARTZ (PA)	X			HENSARLING (TX)		X	

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
KAPTUR (OH)	X			GARRETT (NJ)		X	
BECERRA (CA)				DIAZ–BALART (FL)	X		
DOGGETT (TX)	X			SIMPSON (ID)	X		
BLUMENAUER (OR)	X			McHENRY (NC)		X	
BERRY (AR)	X			MACK (FL)		X	
BOYD (FL)	X			CAMPBELL (CA)		X	
McGOVERN (MA)	X			JORDAN (OH)		X	
TSONGAS (MA)	X			LUMMIS (WY)		X	
ETHERIDGE (NC)	X			AUSTRIA (OH)		X	
McCOLLUM (MN)	X			ADERHOLT (AL)		X	
YARMUTH (KY)	X			NUNES (CA)			
ANDREWS (NJ)	X			HARPER (MS)	X		
DeLAURO (CT)	X			LATTA (OH)		X	
EDWARDS (TX)	X						
SCOTT (VA)	X						
LANGEVIN (RI)	X						
LARSEN (WA)	X						
BISHOP (NY)	X						
MOORE, GWEN (WI)	X						
CONNOLLY (VA)	X						
SCHRADER (OR)							
MOORE, DENNIS (KS)	X						

8. A motion was offered by Representative Lummis directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to prohibit the government from controlling health plan choices and restricting competition among health plans and delete any provision, including section 124 of H.R. 3590, that gives the Secretary of the Department of Health and Human Services and a new Health Benefits Advisory Committee unprecedented power to create and change requirements for "acceptable coverage."

The motion was not agreed to by a roll call vote of 15 ayes and 20 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)				DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)		X					
SCOTT (VA)		X					
LANGEVIN (RI)							
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)							

9. A motion was offered by Representative DeLauro directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to create a Health Insurance Rate Authority to provide needed oversight of health insurance rates.

The motion was agreed to by a roll call vote of 21 ayes and 15 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)	X			RYAN (WI) (Ranking)		X	
SCHWARTZ (PA)	X			HENSARLING (TX)		X	

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
KAPTUR (OH)	X			GARRETT (NJ)		X	
BECERRA (CA)				DIAZ–BALART (FL)		X	
DOGGETT (TX)	X			SIMPSON (ID)		X	
BLUMENAUER (OR)	X			McHENRY (NC)		X	
BERRY (AR)	X			MACK (FL)		X	
BOYD (FL)	X			CAMPBELL (CA)		X	
McGOVERN (MA)	X			JORDAN (OH)		X	
TSONGAS (MA)	X			LUMMIS (WY)		X	
ETHERIDGE (NC)	X			AUSTRIA (OH)		X	
McCOLLUM (MN)	X			ADERHOLT (AL)		X	
YARMUTH (KY)	X			NUNES (CA)		X	
ANDREWS (NJ)	X			HARPER (MS)		X	
DeLAURO (CT)	X			LATTA (OH)		X	
EDWARDS (TX)	X						
SCOTT (VA)	X						
LANGEVIN (RI)							
LARSEN (WA)	X						
BISHOP (NY)	X						
MOORE, GWEN (WI)	X						
CONNOLLY (VA)	X						
SCHRADER (OR)							
MOORE, DENNIS (KS)	X						

10. A motion was offered by Representative Jordan directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to add the language of the amendment offered by Representative Bart Stupak on November 11, 2009 and numbered House Amendment 509 to H. R. 3962, the Affordable Health Care for America Act, to prohibit federal funding of abortions.

The motion was not agreed to by a roll call vote of 17 ayes and 19 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
KAPTUR (OH)	X			GARRETT (NJ)			
BECERRA (CA)				DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)	X			MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)		X					
SCOTT (VA)		X					
LANGEVIN (RI)	X						
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

11. A motion was offered by Representative Connolly directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to ensure that comprehensive health reform reduces the deficit by more than $100 billion in the next ten years and up to one trillion dollars in the decade after 2019.

The motion was agreed to by a voice vote.

12. A motion was offered by Representative Garrett directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment that protects American jobs and families by striking tax increases and mandates that would hinder job creation and reduce workers' and families' income during a period of high unemployment and economic weakness.

The motion was not agreed to by a roll call vote of 14 ayes and 21 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)			
YARMUTH (KY)		X		NUNES (CA)			
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)	X						
SCOTT (VA)		X					
LANGEVIN (RI)							
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

13. A motion was offered by Representative Boyd directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to replace the relevant sections on student loan reform with the terms of the Student Loan Community Proposal that would not require the transfer of the nation's universities to the Direct Loan program but would continue to permit new loans to be originated for a fee by designated private lenders thereby preserving the jobs and infrastructure throughout the country that are currently involved in this enterprise.

The motion was not agreed to by a roll call vote of 4 ayes and 32 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)		X	
SCHWARTZ (PA)		X		HENSARLING (TX)		X	
KAPTUR (OH)		X		GARRETT (NJ)		X	
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)		X	
BLUMENAUER (OR)		X		McHENRY (NC)		X	
BERRY (AR)		X		MACK (FL)		X	
BOYD (FL)	X			CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)		X	
TSONGAS (MA)		X		LUMMIS (WY)		X	
ETHERIDGE (NC)		X		AUSTRIA (OH)		X	
McCOLLUM (MN)		X		ADERHOLT (AL)			
YARMUTH (KY)		X		NUNES (CA)			
ANDREWS (NJ)		X		HARPER (MS)		X	
DeLAURO (CT)		X		LATTA (OH)		X	
EDWARDS (TX)	X						
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

14. A motion was offered by Representative Garrett directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to make provisions of the health reform legislation contingent upon the issuance of a report by the Centers on Medicare and Medicaid Services Office of the Actuary stating that such legislation will not increase national health care expenditures or the federal commitment to health care and will succeed in bending the "health care cost curve" downward by lowering the projection of such expenditures.

The motion was not agreed to by a roll call vote of 13 ayes and 23 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)			
YARMUTH (KY)		X		NUNES (CA)			
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)		X					
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

15. A motion was offered by Representative Bishop directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to ensure that vital financial assistance is provided to more than 8 million college students through increases in the maximum Pell grant without adding to the federal budget deficit.

The motion was agreed to by a roll call vote of 22 ayes and 15 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)	X			RYAN (WI) (Ranking)		X	

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SCHWARTZ (PA)	X			HENSARLING (TX)		X	
KAPTUR (OH)	X			GARRETT (NJ)		X	
BECERRA (CA)	X			DIAZ–BALART (FL)		X	
DOGGETT (TX)	X			SIMPSON (ID)		X	
BLUMENAUER (OR)	X			McHENRY (NC)		X	
BERRY (AR)	X			MACK (FL)		X	
BOYD (FL)		X		CAMPBELL (CA)		X	
McGOVERN (MA)	X			JORDAN (OH)		X	
TSONGAS (MA)	X			LUMMIS (WY)		X	
ETHERIDGE (NC)	X			AUSTRIA (OH)		X	
McCOLLUM (MN)	X			ADERHOLT (AL)		X	
YARMUTH (KY)	X			NUNES (CA)			
ANDREWS (NJ)	X			HARPER (MS)		X	
DeLAURO (CT)	X			LATTA (OH)		X	
EDWARDS (TX)	X						
SCOTT (VA)	X						
LANGEVIN (RI)	X						
LARSEN (WA)	X						
BISHOP (NY)	X						
MOORE, GWEN (WI)	X						
CONNOLLY (VA)	X						
SCHRADER (OR)							
MOORE, DENNIS (KS)	X						

16. A motion was offered by Representative Simpson directing the Chairman to request that the Rules Committee not make in order the Reconciliation Act of 2010 or H. R. 3590, the Senate-passed health care bill, until a Congressional Budget Office estimate of the measures relative to its March 2010 baseline, including estimates of the budget impact of authorization of appropriations in such measures, and the text of such reconciliation legislation are made available to Members and the public at least 72 hours before being considered on the House floor and that there be separate votes on each measure.

The motion was not agreed to by a roll call vote of 16 ayes and 21 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)	X						
SCOTT (VA)		X					
LANGEVIN (RI)							
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

17. A motion was offered by Representative Moore (WI) directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to ensure small businesses are provided with tax credits to support coverage for their workers, increase affordability tax credits to families, and reduce cost sharing for families with modest income.

The motion was agreed to by a roll call vote of 21 ayes and 14 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)	X			RYAN (WI) (Ranking)		X	

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SCHWARTZ (PA)	X			HENSARLING (TX)		X	
KAPTUR (OH)	X			GARRETT (NJ)			
BECERRA (CA)	X			DIAZ–BALART (FL)		X	
DOGGETT (TX)	X			SIMPSON (ID)		X	
BLUMENAUER (OR)	X			McHENRY (NC)		X	
BERRY (AR)				MACK (FL)		X	
BOYD (FL)	X			CAMPBELL (CA)		X	
McGOVERN (MA)	X			JORDAN (OH)		X	
TSONGAS (MA)	X			LUMMIS (WY)		X	
ETHERIDGE (NC)	X			AUSTRIA (OH)		X	
McCOLLUM (MN)	X			ADERHOLT (AL)		X	
YARMUTH (KY)	X			NUNES (CA)		X	
ANDREWS (NJ)	X			HARPER (MS)		X	
DeLAURO (CT)	X			LATTA (OH)		X	
EDWARDS (TX)	X						
SCOTT (VA)	X						
LANGEVIN (RI)							
LARSEN (WA)	X						
BISHOP (NY)	X						
MOORE, GWEN (WI)	X						
CONNOLLY (VA)	X						
SCHRADER (OR)							
MOORE, DENNIS (KS)	X						

18. A motion was offered by Representative McHenry directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to ensure that the federal mandates do not cause an increase in projected health care insurance premiums.

The motion was not agreed to by a roll call vote of 16 ayes and 22 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)	X						
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

19. A motion was offered by Representative Tsongas directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to ensure women are not denied full health insurance coverage or maternity coverage due to domestic violence, caesarian section, or pregnancy.

The motion was agreed to by voice vote.

20. A motion was offered by Representative Latta directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to eliminate the creation or expansion of government bureaucracies in the health reform legislation.

The motion was not agreed to by a roll call vote of 15 ayes and 23 nays.

Name & State	Aye	No	Answer Present	Name & State	Aye	No	Answer Present
SPRATT (SC) (Chairman)		X		RYAN (WI) (Ranking)	X		
SCHWARTZ (PA)		X		HENSARLING (TX)	X		
KAPTUR (OH)		X		GARRETT (NJ)	X		
BECERRA (CA)		X		DIAZ–BALART (FL)	X		
DOGGETT (TX)		X		SIMPSON (ID)	X		
BLUMENAUER (OR)		X		McHENRY (NC)	X		
BERRY (AR)		X		MACK (FL)	X		
BOYD (FL)		X		CAMPBELL (CA)	X		
McGOVERN (MA)		X		JORDAN (OH)	X		
TSONGAS (MA)		X		LUMMIS (WY)	X		
ETHERIDGE (NC)		X		AUSTRIA (OH)	X		
McCOLLUM (MN)		X		ADERHOLT (AL)	X		
YARMUTH (KY)		X		NUNES (CA)	X		
ANDREWS (NJ)		X		HARPER (MS)	X		
DeLAURO (CT)		X		LATTA (OH)	X		
EDWARDS (TX)		X					
SCOTT (VA)		X					
LANGEVIN (RI)		X					
LARSEN (WA)		X					
BISHOP (NY)		X					
MOORE, GWEN (WI)		X					
CONNOLLY (VA)		X					
SCHRADER (OR)							
MOORE, DENNIS (KS)		X					

21. A motion was offered by Representative Scott directing the Chairman to request that the rule for consideration of the Reconciliation Act of 2010 make in order an amendment to prohibit the privatization or conversion into vouchers of federal benefits provided by Medicare, Medicaid, the Children's Health Insurance Program, TRICARE, and veterans health care.

The motion was agreed to by voice vote.

Chairman Spratt adjourned the Committee.

VIEWS OF THE MEMBERS OF COMMITTEES SUBMITTING RECONCILIATION RECOMMENDATIONS

Clause 2(c) of rule XIII of the Rules of the House of Representatives requires each report by a committee on a public matter to include any additional, minority, supplemental or dissenting views submitted pursuant to clause 2(l) of rule XI by one or more members of the committee. In addition, this report includes such views from members of committees submitting reconciliation recommendations pursuant to S. Con. Res. 13.

MINORITY VIEWS
HEALTH CARE RECONCILIATION: A BROKEN PROCESS WITH COSTLY CONSEQUENCES

INTRODUCTION

Through this grossly distorted process, the Democratic Majority will attempt to force onto the American public a sweeping government takeover of health care without a shred of bipartisan support, and in spite of *opposition* by a majority of the people Congress has been elected to serve. They will do so by twisting budgetary and legislative procedures to win a political victory at any cost, by any means – because they cannot do it any other way. The arrogance, the paternalism, the condescension of this action are breathtaking.

The key factors in this extraordinary step are the following:

- *A Flawed Health Care Bill.* The legislation being driven through Congress will lead to further government intrusion in the doctor-patient relationship. It will cause costs to rise and quality to deteriorate, and inevitably lead to rationing of health care, one of Americans' most valued and personal services.

- *Worsening a Fiscal Crisis.* Making all this worse, these contorted procedures are being used to expand Federal entitlements when the government already faces a potentially disastrous fiscal path – one that threatens to overwhelm the budget and smother the economy – from programs that already exist.

- *Extraordinary Abuse of Procedure.* The Majority is doing all this by distorting budget reconciliation in unprecedented ways. The process has *never* been used to force through a government expansion of this magnitude – leveraged on a token savings amount, in the face of trillion-dollar deficits, and on a deliberate party-line vote.

- *Starting Over.* There is broad agreement on the need to reform health care. But what is needed is a different vision of how to meet the problems in health care, one that truly addresses the central problem of cost while maintaining a sturdy safety net for those who need it. Such approaches have been available, and still are – and they could lead to a truly bipartisan consensus on reforms that would address the most important and widely acknowledged problems.

A FLAWED HEALTH CARE BILL

Ideology, Not Health Care

From the beginning, the Democratic Majority envisioned a centralized, controlling government role in the provision and financing of health care. They failed to focus sufficiently on the underlying problem – unconstrained growth in health costs, which puts health insurance out of reach for many. In the end, their ideology leads to an inevitable chain of additional government mandates, spending, and taxes. The result is that even without the so-called "public option," their health care bill is an outright government takeover of health care. Some examples:

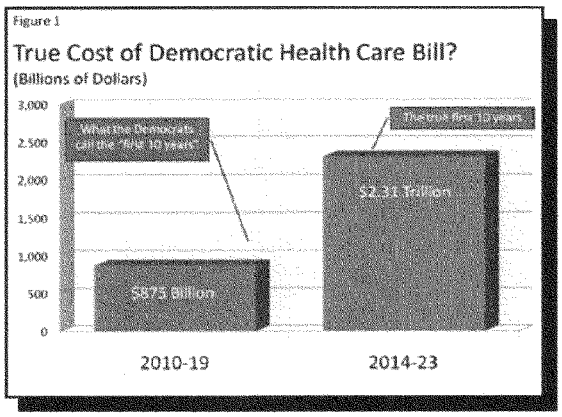
- The measure creates a Health Insurance Rate Authority, a Washington-controlled price-setting board. This will usurp State governments' role in regulating insurance and premiums, and will further smother the normal market forces that would otherwise encourage innovation and cost-saving efficiencies. It also ignores the real cost drivers in health care: the third-party payment system, which promotes overconsumption; the rising costs of health care services; and the payment mechanisms that encourage doctors to provide more services, not necessarily better outcomes.
- It lets Washington decide what kind of health insurance will be available. The proposal gives the Secretary of Health and Human Services [HHS], and a new Health Benefits Advisory Committee – an unelected group of Federal bureaucrats – unprecedented Washington-centered power to create and change the requirements for "acceptable coverage." This will in turn restrict competition, stifle innovation, and limit the kinds of coverage that will be available to Americans.
- It gives the U.S. Preventive Services Task Force (the group that recently made the controversial recommendations regarding mammograms) new powers to further limit patient choice, allowing the Secretary of Health and Human Services to unilaterally deny payment for prevention services contrary to Task Force recommendations.
- It empowers a "comparative effectiveness board," created by last year's "stimulus" bill, that will restrict providers' decisions about what treatments are best for their patients.

Gaming the Budget Estimates

The Senate bill is the base legislation for the Majority's health care strategy. It does not control costs. It does not reduce deficits. It adds a new health care entitlement at a time when Congress and the President have no idea how to finance the entitlements that already exist.

The Majority claims the legislation reduces deficits by $118 billion over 10 years, as scored by the Congressional Budget Office [CBO]. But CBO can only score the legislative language presented to it – and in this case the language was contorted to produce a misleading outcome. the Democrats have hidden the true costs of their bill behind a wall of heavy blue smoke and a maze of mirrors. Some examples:

- The bill imposes 10 years of taxes and 10 years of Medicare cuts to offset just 6 years of spending. If the taxes and Medicare reductions were matched year for year with the spending, the real cost of the bill would be $2.3 trillion.[1]



- The Medicare reductions, totaling nearly a half trillion dollars over 10 years, are not used to enhance the program's solvency, but instead to finance an entirely new entitlement. The administration's chief Medicare actuary has said up to 20 percent of Medicare providers may go bankrupt or stop taking Medicare patients as a result. Millions of seniors who have chosen Medicare Advantage will lose the coverage they now enjoy.[2]

- It claims $53 billion in "savings" from increased Social Security payroll taxes. But these revenues already are committed to future Social Security beneficiaries – so either they are being double-counted, or the authors of the bill do not intend to pay the benefits.[3]

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[1] Senate Budget Committee, *Budget Perspective: The Real Deficit Effect of the Health Bill*, 22 December 2009.

[2] Memorandum from the Office of the Chief Actuary, Centers for Medicare and Medicaid Services, 8 January 2010.

[3] Senate Budget Committee Republican Staff, op. cit.

- It takes $70 billion intended as premiums for the long-term care insurance provisions – the Community Living Assistance Services and Supports [CLASS] Act – and counts those as offsets too.[4] The Senate Budget Committee Chairman called this "a ponzi scheme that would make Bernie Madoff proud."[5]

- It authorizes approximately $70 billion in new discretionary spending, according to the Congressional Budget Office – an amount not considered in the estimated cost of the bill.

When the gimmicks and double-counting are stripped away, the health care legislation increases the deficit by $460 billion over the first 10 years and $1.4 trillion over the second 10 years.[6] But that does not count rescinding the effects of the sustainable growth rate formula – the so-called "doc fix" – which is estimated to add $371 billion to the health care overhaul, according to the administration's Office of Management and Budget.[7] The Majority decided simply to remove this provision and deal with it in a stand-alone bill.

But the most damning assessment – again from Medicare's chief actuary – is that the legislation fails in what should have been its most important task: to slow the growth of health care spending. Instead, it bends the cost curve *upward*, increasing national health spending by $222 billion above current estimates.[8]

Student Loans

Further abusing the reconciliation process, the Majority has added to this vehicle a government takeover of all Federal college loans, using the projected savings – assuming they materialize – to expand government now.

The legislation, titled the Student Aid and Financial Responsibility Act [SAFRA] abolishes the 40-year-old Federal Family Education Loan Program [FFELP] as of 1 July 2010. FFELP is a guaranteed lending program, and the largest source of student aid, that has leveraged hundreds of billions of dollars in *private* capital to help students go to college. Under SAFRA, the program will be replaced by 100-percent

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[4] Ibid.

[5] "Proposed Long-Term Insurance Program Raises Questions," *The Washington Post*, 27 October 2009.

[6] Senate Budget Committee Republican Staff, op. cit.

[7] Office of Management and Budget, *Budget of the U.S. Government – Fiscal Year 2011*, Table S-7.

[8] CMS Actuary, op. cit.

government-run lending. The Direct Loan [DL] program will issue and profit from all new loans, which will be financed with Treasury borrowing. The bill then spends about half of its estimated savings toward increasing Pell Grant vouchers, and uses the remaining amounts to create a number of new entitlement programs that do not directly benefit students and will require future spending by the Federal and State governments.

Proponents claim SAFRA will reduce the deficit, but this is an illusion created through the use of budget gimmicks.

First, under the original cost estimate, SAFRA claims to save $87 billion, and then spends slightly more than $79 billion, yielding ostensible deficit reduction of $7.8 billion.[9] But this does not take into account the $13.5 billion worth of increased administrative costs (for both the Direct Loan and Pell Grant programs) that the bill shifts to the discretionary category, where the CBO cannot count them as direct spending. When this gimmick is removed, the bill *increases* the deficit by at least $5.7 billion.

Second, SAFRA's claimed savings are highly uncertain. Recently, CBO released an updated estimate that reduced SAFRA's savings by $20 billion, from $87 billion to $67 billion,[10] and increased the estimated cost of the Pell Grant add-on by $16 billion.[11] It is unclear whether these updated estimates will be applied to the legislation brought to the House floor.

But even more disconcerting is the way CBO was required to calculate SAFRA's savings in the first place. Unless otherwise directed by Congress, CBO must calculate loan savings under the Federal Credit Reform Act of 1990, which requires "scoring" government loans using a simple net present value calculation based on a discount rate. This does not take into account "market risk" – the risk that the value of the loan will decrease due to changes in market factors.

Incorporating market risk to cost estimates more accurately reflects how much a loan program will generate. That is why Congress started including the effect in recent legislation dealing with Federal loans, such as the Troubled Asset Relief Program, among others. SAFRA's authors did not direct CBO to account for market risk when obtaining an official score for the legislation. Nevertheless, CBO noted in a letter to

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[9] Congressional Budget Office, cost estimate for H.R. 3221, The Student Aid and Fiscal Responsibility Act of 2009, 24 July 2009.

[10] CBO Memorandum, *March 2010 Baseline Projections for the Student Loan and Pell Grant Programs*, 5 March 2010.

[11] CBO Preliminary Estimate, *Comparison of the Pell Grant Mandatory Add-On in H.R. 3211 Under March 2009 and March 2010 Baselines*, 8 March 2010.

Senator Gregg that if market risk were applied to SAFRA, it would reduce claimed savings by $22 billion over 10 years.[12]

In an April 2009 letter to the House and Senate Budget Committees, a former Office of Management and Budget director, a bipartisan group of former Budget Committee Members, and a former staff director for the Senate Budget Committee rightly warned: "Using the reconciliation process to spend tens of billions in the next few years under the assumption that future offsetting savings will materialize seems fiscally irresponsible due to the limitation of budget-scoring in this area, and the inherent unpredictability of the projections."[13]

Beyond adding to deficits and debt, there are additional concerns with SAFRA. First, eliminating the current guaranteed lending program will result in the loss of tens of thousands of private-sector jobs associated with the industry, during a period of high unemployment. Meanwhile, many schools have expressed concern that they will be unable to transition in time to meet SAFRA's 1 July 2010, deadline, which is likely to deprive some students of financial support.

Further, because the Federal Government will have to borrow the money to supply the new volume of Direct Loans, the shift will cause a dramatic increase in debt at a time when the country is already taking on dangerous levels of debt to pay for historic levels of spending. If loan origination volumes rise as expected to $100 billion per year, Federal borrowing could grow to over $1 *trillion* over 10 years.

The advantage of the FFELP federally guaranteed student loan option is that, except for extreme circumstances, it uses *private* capital. It also provides students with choice and ever improving service, a feature some complain is lacking with the Direct Loan program.

WORSENING A FISCAL CRISIS

The new $1-trillion entitlement in the health care legislation is being heaped onto a potentially disastrous fiscal path already facing the Federal Government – one that threatens to overwhelm the budget and smother the economy. To summarize:

- *The Current Fiscal Path is Unsustainable.* Federal deficits are projected to reach unprecedented levels, and if reforms are not made soon, the Federal debt will rise uncontrollably, with painful economic consequences. Untenable tax rates will be needed to service a huge and ever-growing debt, and high interest rates will be required to attract new borrowing.

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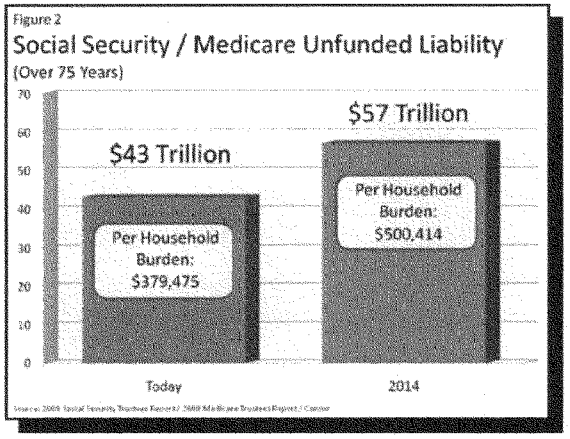
[12] CBO letter to Senator Gregg, 15 March 2010.

[13] Letter from former Budget Committee Ranking Member Frenzel et. al., 24 April 2009.

- *Entitlement Programs are the Root of the Problem.* Over the next 75 years, Medicare and Social Security are promising benefits equal to $43 trillion (in 2009 dollars) more than they can finance as currently structured – a gap often called the programs' "unfunded liabilities." Medicare is responsible for 88 percent (or $38.1 trillion) of the unfunded entitlement costs, versus about 12 percent (or $5 trillion) for Social Security. In the next 5 years, the combined unfunded liabilities for these two programs will increase by an estimated $14 trillion, to $57 trillion. Medicaid is projected to grow by 23 percent this year (partly due to "stimulus" funding), and 11 percent next year, suffocating State budgets.



- *This Course Threatens Both the Budget and the Economy.* Due to their drain on economic resources, the spending and debt levels now unfolding will dry up the prosperity of future generations and lead to declining standards of living.[14] This will further deprive the government of resources needed to support its commitments.

- *The President's Budget Worsens the Problem.* The vast spending ambitions in the President's budget add to the problem, doubling the debt over the next 5 years, and tripling it over the next 10 years, compared with 2008 levels. By the end of the decade, the debt as a share of the economy approaches levels of the 1940s, reaching 90 percent of gross domestic product [GDP]. This approaches the 1046 high-water mark of 108.7 percent of GDP. Interest payments become one of the largest spending categories in the budget, more than quadrupling over the next decade – from $209 billion this year to $916 billion in 2020.

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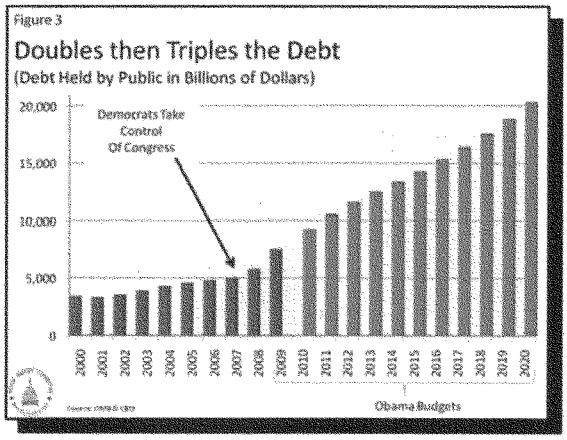
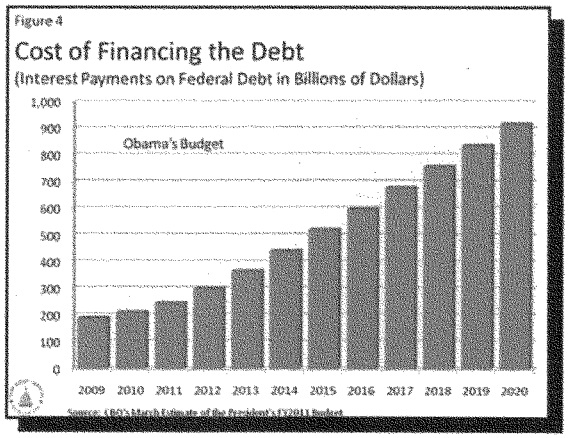
[14] CBO has concluded in several publications that skyrocketing debt levels resulting under current policies will have devastating economic consequences. See pages 16 through 18 of CBO's *The Long-Term Budget Outlook*, June 2009.

The President's answer is to hand off the problem to a "Fiscal Commission," which may or may not agree on solutions to recommend. But before the commission reports in December, the President and Democratic Majority are seeking to add their new trillion-dollar health care entitlement.





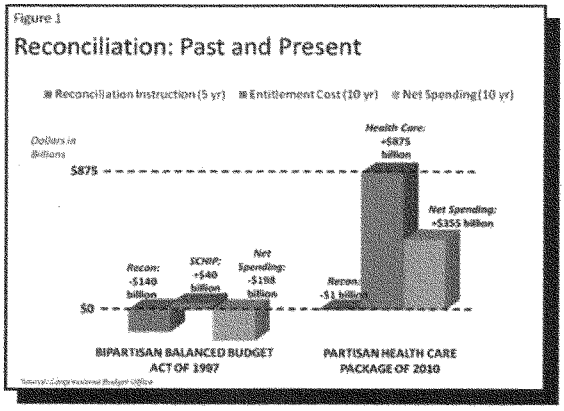
AN EXTRAORDINARY ABUSE

With all the fiscal and economic hazards this legislation invites, the method of pushing it forward is equally troubling. While budget and legislative process are complicated, it is critical to understand the nature and magnitude of the abuse taking place.

Proponents have tried to portray this undertaking a simple and not uncommon use of the budget reconciliation process. It is nothing of the kind. This is an extraordinary contortion, employed to force through sweeping changes in health care delivery and financing that lack adequate support in either the public or the Congress.

- *Nothing Typical.* Reconciliation originally was intended to expedite changes in spending and tax laws to make them align – to *reconcile* them – with levels in the budget resolution. Over time, it came to be used mainly to reduce budget deficits or, more broadly, to limit the growth of government.

  The process has never been used to push through a $1-trillion expansion of government, to seize control of one-sixth of the U.S. economy, and to reshape the way all Americans receive and pay for their health care. Nor has it ever leveraged such a vast social change based on a token $1 billion in savings over 5 years[15] in the face of a $1.5-trillion budget deficit this year alone – and doing so on a deliberate party-line vote, when the only bipartisanship lies *in opposition* to the legislation in question.



  Proponents have tried to defend their actions by citing previous instances in which reconciliation bills have contained substantive policy changes. But the comparisons weaken upon examination. For example, the Welfare Reform legislation of 1996 was bipartisan and reduced spending by $54 billion over 6

[15] Section 202(a) of the budget resolution for fiscal year 2010 (S.Con.Res. 13) instructed the Committees on Ways and Means, Energy and Commerce, and Education and Labor to report legislation by 15 October 2009 reducing the deficit by $1 billion for fiscal year 2009-14, ostensibly for health care reform. Under section 202(b), the Education and Labor Committee was instructed to achieve $1 billion in deficit reduction for fiscal year 2009-14, ostensibly for education. The same instructions were given to the Senate Committee on Finance and the Committee on Health, Education, Labor, and Pensions.

years. The 1997 creation of the State Children's Health Insurance Program was part of the bipartisan Balanced Budget Act, which reduced Federal spending by $198 billion over 5 years.

With respect to taxes, the first reconciliation bill reduced taxes by $6 billion (at a time when total spending was $332 billion, total revenue was $279 billion, and total gross domestic product was $1.6 trillion).[16] Nor was either of the recent tax relief bills, in 2001 and 2003, used for such a vast expansion of government.

But even if one agreed that these prior cases were improper, none of them matched the scope and magnitude of this abuse. Further, as Senator Byrd has said: "Whatever abuses of the budget reconciliation process which have occurred in the past, or however many times the process has been twisted to achieve partisan ends does not justify the egregious violation done to the Senate's Constitutional purpose."[17] Nor would it justify expanding on such abuses to this unprecedented degree.

- *Mocking the Committee System.* Never before has the House committee process been reduced to such a charade.

  In response to their reconciliation instructions, two committees – Ways and Means, and Education and Labor – submitted thousands of pages of health care legislation to the Budget Committee, to be packaged and reported, as the process requires. (The Energy and Commerce Committee did not submit.)

  Immediately after the Budget Committee's markup, however, all the health care provisions were to be stripped out and replaced with an entirely new bill, written by a handful of people under the cover of the Rules Committee. The new text will not consist of health care legislation, but will instead contain modifications to the Senate-passed health care bill, applicable after that measure is passed by the House. In other words, the health care portion of the bill that reaches the floor as a result of this process will bear no resemblance to the provisions reported by the committees of jurisdiction. It will not have gone through the reconciliation process per se; it will be reconciliation in form only. The Democratic Majority needs to do this because they cannot pass the Senate bill without securing votes through the back-room deal that this vehicle will carry.

  It is common practice for the Committee on Rules to amend legislation before it reaches the floor. But this is a wholesale substitution. It renders the work of the committees of jurisdiction, and the Budget Committee, irrelevant.

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[16] Frumin, Alan S., *Riddick's Senate Procedure*, 1992, pages 622-3.

[17] Statement of Senator Byrd, 29 April 2009.

- *Not a Small Adjustment*. This is not just a simple "fixer" bill, or "sidecar," either.[18] It is the *keystone* on which the entire policy depends. If this process fails, the whole health care house of cards collapses.

- *An Equally Convoluted Rule*. Just as bizarre is the rule being contemplated for consideration of this legislation. The potential rule – fashioned by Rules Committee Chairwoman Slaughter – would "deem" passage of the Senate health care bill. At the same time, it will make in order consideration of the legislative language that will be substituted into this reconciliation vehicle, replacing the language the Budget Committee has reported.

  There are several motivations for this. First is plausible deniability: the rule allows a kind of hands-off passage of the Senate bill with all its shortcomings – the "Louisiana Purchase," the "Cornhusker Kickback," and so on – while Members brand it merely a *procedural* vote, not a substantive one. The strategy will fail, of course: anyone who votes for the rule votes for the Senate bill – there is no getting around it. Further, it stands in direct contradiction to the Majority's ostensible aim of seeking "a simple, up-or-down vote" on health care.

  Second, tying the Senate bill together in a rule with the substitute "reconciliation" language is aimed at allowing Members to claim they passed the first only on the condition that it *will* be modified by the second. This too will fail, because it still provides no guarantee that the Senate will ever take up the reconciliation measure. Expecting Senators to be bound by a House rule is laughable, and would violate a critical constitutional principle: that each House determines its own rules.[19]

  All this assumes that the "deeming" gambit is even a legitimate way to make a law. According to Article I, Section 7 of the Constitution, for a bill to become law it "shall have passed the House of Representatives and the Senate" and be "presented to the President of the United States" for signature or veto. There is no provision for legislation that is "deemed" to have passed by an indirect vote.[20]

The bottom line is this: the House cannot pass the Senate bill on a straight up-or-down vote, and the Senate can no longer pass its own bill again; hence the House Majority has fashioned this extraordinary, unprecedented, and remarkably arrogant

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[18] This is the claim Senator Conrad used – in *The Washington Post* on 6 March 2010 – to justify his change of heart about the use of reconciliation in this context.

[19] Article I, Section 5.

[20] See "The House Health-Care Vote and the Constitution," *The Wall Street Journal*, 15 March 2010. Judge McConnell is now a professor and director of the Constitutional Law Center at Stanford Law School and a senior fellow at the Hoover Institutoin.

set of tactics to circumvent the regular order, and to win a political victory at any cost, by any means necessary.

AN IMPERIOUS MAJORITY

The Reason for Rules

It is also crucial to understand that the design of Congress's legislative procedures – including Senate rules that exist for good reason. They are intended to prevent an overzealous Majority from suppressing a Minority – and to protect the public from national laws and policies arrived at through haste.

Whatever its advantages as a budgetary tool, reconciliation's fast-track procedures[21] clash with the Senate's constitutional role as a forum for thorough and thoughtful deliberation – a place intentionally designed to slow the creation of laws that will affect all Americans.[22]

The Framers were well aware of the hazards of what Tocqueville termed the "tyranny of the majority," and could trace the problem back to America's classical foundations. "If a majority be united by a common interest, the rights of the minority will be insecure," Madison wrote.[23] Ironically, in this case it is not a majority of the people – most of whom now oppose this huge and sweeping government intrusion in their health care – but only the Majority in Congress, who are acting *despite* the people's will.

It demonstrates another of Madison's warnings: "A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."[24] Indeed, the very existence of a bicameral legislature is designed to protect the governed, and Madison's commentary on this point was prescient:

> It is a misfortune incident to republican government, though to a less degree than to other governments, that those who administer it may forget their obligations to their constituents to their constituents and prove unfaithful to

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[21] Reconciliation limits Senate debate to 20 hours; prohibits non-budgetary, or "extraneous" matters from the legislation; and imposes strict germaneness rules on amendments. Because a Legislation taken up under reconciliation can be passed by a simple majority of 51 Senators. Thus, in today's Senate, a reconciliation bill can pass even if all the Republicans and nine Democrats oppose it, with the Vice President breaking the tie vote.

[22] See Senator Byrd's statement, 29 April 2009; and Senator Orrin G. Hatch, "A Health Care Reform Tactic That Degrades Democracy," *The Washington Post*, 2 March 2010.

[23] *Federalist* No. 51.

[24] Ibid.

> their important trust. In this point of view a senate, as a second branch of the legislative assembly distinct from and dividing the power with a first, must be in all cases a salutary check on the government. It doubles the security to the people by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient.[25]

This is why Senators are elected statewide (and presumably why, until 1913, they were chosen by State legislatures), and why each State has two: "No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then of a majority of the States."[26]

All these are reasons why the violation of the reconciliation process – and the regular order of legislative procedures – is an alarming development, undertaken by a clearly desperate Majority. It is even worse considering the stakes: promoting a government takeover of health care – one of the most valued and personal services Americans have – and creating a new trillion-dollar entitlement that will accelerate the Nation's march toward fiscal and economic decline.

Major Social Change by a Paper-Thin Margin

One of the strongest and most respected proponents of bipartisanship was the late Senator Daniel Patrick Moynihan; but his views were not simplistic: he understood partisan debate had an appropriate place: "For the most part, I think you want the clash of ideas – you get the best from both that way."[27] But major social legislation, Senator Moynihan believed, required broad consensus in both Congress and the public. David R. Gergen, writing a day after the Blair House health care "summit," recently described the Senator's views as they would apply to the current debate.

> Moynihan, a Democrat, told me that there were two essential pre-requisites to passing major social reform in this country. The first, he said, was that landmark social legislation should be passed with significant, bipartisan support from both sides of the aisle – otherwise, there would always be trouble with it. He sent me the vote tallies to show how at least a half dozen or more Senators from the opposition party voted for big social initiatives stretching back to the New Deal – from Social Security in the 1930s, the civil rights bills of the mid-1960s, and Medicare and Medicaid bundled together in 1965.

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[25] *The Federalist*, No. 62.

[26] Ibid.

[27] Speaking at a forum at The Center on Congress at Indiana University, aired on C-SPAN 16 February 2001.

> Secondly, he said, landmark social legislation should enjoy solid support from the public before it is passed.[28]

The current health care legislation, Mr. Gergen noted, passes neither test. Only one Republican supported the House bill, and he has since changed his mind. No Republicans voted for the Senate measure – not even the moderates who wanted to move it forward. Over the past year, public support has declined, to the point where most Americans oppose the legislation being pursued.

Mr. Gergen concludes: "I wish Pat Moynihan were at Blair House to whisper in the President's ear."[29]

If this convoluted process succeeds, it will be unfortunate in two ways: first, by allowing this huge change in policy to be enacted; and second, by creating a perverse temptation for future Congresses, Republican or Democratic, to use it as a precedent for future legislation, including reconciliation.

STARTING OVER

There is broad agreement on the need to reform health care. Skyrocketing health care costs are driving families, businesses, and governments to the brink of bankruptcy – and leaving millions without adequate coverage. There is a need to address pre-existing conditions, to realign the incentives of insurance companies with patients and doctors, and to root out waste, fraud, and abuse.

But what is also needed is a different vision of how to meet the problems in health care, one that truly addresses the central problem of cost while maintaining a sturdy safety net for those who need it. Alternative approaches have been available, and still are – and they could lead to a truly bipartisan consensus on reforms that would address the most important and widely acknowledged problems.

When the House Majority brought its health care bill to the floor in November, the Republican Minority offered a substitute – a plan that would lower health care premiums; establish universal access to coverage for persons with pre-existing conditions; prevent insurers from unjustly cancelling policies; encourage small-business coverage; promote innovative State health plans; allow Americans to buy health insurance across State lines; enhance Health Savings Accounts; and reform malpractice law to prevent costly, frivolous lawsuits.[30]

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[28] Gergen on the Anderson Cooper 360 blog, 24 February 2010.

[29] Ibid.

[30] For a summary see:
http://gopleader.gov/UploadedFiles/Summary_of_Republican_Alternative_Health_Care_plan_Updated_11-04-09.pdf

There have been numerous other proposals introduced by individual Members of the Minority during the past year, bringing their own perspectives to the issue. These have included the following (listed by the date of introduction):

- The Patients' Choice Act of 2009, introduced by Representative Ryan of Wisconsin on 20 May 2009.
- The Small Business Health Fairness Act of 2009, by Representative Johnson of Texas on 21 May 2009.
- The Help Efficient, Accessible, Low-Cost, Timely Healthcare [HEALTH] Act, a medical liability reform bill introduced by Representative Gingrey of Georgia on 6 June 2009.
- The Medical Rights and Reform Act, introduced on behalf of the Tuesday Group, by Representatives Kirk of Illinois and Dent of Pennsylvania, 16 June 2009.
- The Improving Health Care for All Americans Act, introduced by Representative Shadegg of Arizona, 14 July 2009.
- The Empowering Patients First Act, introduced by the Republican Study Committee on 30 July 2009.
- The Promoting Health and Preventing Chronic Disease Through Prevention and Wellness Programs for Employees, Communities, and Individuals Act of 2009, introduced by Representative Castle of Delaware, 31 July 2009.
- The Improved Employee Access to Health Insurance Act of 2009, an auto-enrollment bill introduced by Representative Deal of Georgia, 15 October 2009.
- The Health Insurance Access for Young Workers and College Students Act of 2009, a measure to improve coverage of dependents, introduced by Representative Blunt of Missouri, 21 October 2009.

None of these pretends to offer the perfect and complete solution to every problem. But all represent alternative approaches that should be considered – especially when the quality and affordability of Americans' health care is at stake.

Other elements worthy of consideration are the following:

- *Reforming the Tax Treatment of Health Care.* Addressing the discriminatory tax treatment of health insurance would lower health costs. Currently, coverage is linked to employment by the tax exclusion for employer-sponsored health insurance. This tax treatment effectively discriminates against workers and families who do not have job-based coverage. Linking the tax benefit to the individual would help put American families and their doctors back in control of their health care needs.

- *Greater Opportunity for Small-Business Coverage.* The proposal would create an alternative for small businesses to offer health benefits. Currently, unless a business can afford to offer a full-scale health insurance plan, its options are limited. The refundable tax credit model allows employees to take responsibility for purchasing their own health care with the credit, but also allows small businesses to make defined contributions to accounts – such as Health Savings Accounts [HSAs] – to help fund their employees' health care expenses.

- *High-Risk Pools.* State health insurance high-risk pools would offer affordable coverage to individuals who would otherwise be denied coverage due to pre-existing medical conditions. This would make coverage affordable for those currently deemed "uninsurable."

- *One-Stop Marketplace for Health Insurance.* Each individual would have an opportunity to choose the plan that best meets his or her needs through a State-based Exchange.

- *Simple Auto-Enrollment.* An Exchange would make it easy for individuals to obtain health insurance by providing new and automatic opportunities for enrollment through places of employment, emergency rooms, the Division of Motor Vehicles, and the like. If individuals did not want health insurance, they would not be forced to have it. Research has shown that auto-enrollment mechanisms have achieved near universal levels of coverage. An auto-enrollment mechanism has also been demonstrated to increase the percentage of employee-participation in employer provided 401(k) plans by 70 percent – from 20 percent of new employees enrolled after 3 months under self-employment, to 90 percent of new employees participating under auto-enrollment.

- *Interstate Purchasing.* Another reform worthy of consideration is interstate purchasing. Individuals could be allowed to use the refundable tax credit toward the purchase of health insurance in *any* State. This would greatly expand the choices of coverage available to the consumer, and also would encourage broader competition and diversity among insurers, who would be able to sell their policies to individuals and families in every State, as other companies do in other sectors of the economy.[31]

- *Medical Liability Reform.* Medical lawsuits and excessive verdicts increase health care costs and result in reduced access to care. Indefensible mistakes do happen, and when they do patients have a right to fair legal representation and fair compensation. But the current tort litigation system often serves the interests of lawyers while driving up costs and delaying justice. One solution to limit

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[31] Government Accountability Office, *Federal Employee Health Benefits Program: Competition and Other Factors Linked to Wide Variation in Health Care Prices*, August 2005.

lawsuit abuse without limiting legal justice by implementing a cap on non-economic damages, and assisting States in establishing solutions to medical tort litigation. By enabling each State to tailor a solution to its own needs, the plan ensures the accessibility of health care for everyone by stopping the unreasonable costs for medical malpractice litigation.

Again, these proposed reforms should not be taken as a perfect and complete solution. Further, they could be pursued incrementally – doing what can be done, step by step, to control costs and expand access to quality health coverage. But they can point the way to real answers that can gain bipartisan support in Congress, backed by a broad consensus of the American public.

CONCLUSION

The United States stands at a precipice, where entitlements are pushing Federal spending to levels that will overwhelm the budget and smother the economy. The deepening deficits and debt will drain the U.S. economy of resources needed for growth and rising standards of living.

In the face of this fiscal challenge, the Democratic Majority is proposing to enact sweeping legislation creating a new $1-trillion entitlement, seizing control of one-sixth of the U.S. economy, and fundamentally altering the way Americans receive and finance their health care.

The Majority intends to enact this legislation through a convoluted process that involves abuse of House rules and the Budget Act's reconciliation process. Despite growing opposition to their plan – increasingly expressed over the past year, and culminating in January's Massachusetts Senate election – the Majority will exercise their raw political power to enact this bill, which will increase health care costs, diminish health care quality, impose taxes during the worst recession since the Great Depression, and increase spending, deficits, and debt.

This partisan debacle has been a tragic missed opportunity for true, patient-centered reform. Republicans will continue to pursue reforms that promote the central role of patients and doctors in health care.

PAUL RYAN, *Ranking Member.*
JEB HENSARLING, *Vice Ranking Member.*
SCOTT GARRETT.
MARIO DIAZ-BALART.
MIKE SIMPSON.
PATRICK MCHENRY.
CONNIE MACK.
JOHN CAMPBELL.
JIM JORDAN.
CYNTHIA LUMMIS.
STEVE AUSTRIA.
ROBERT B. ADERHOLT.
DEVIN NUNES.
GREGG HARPER
BOB LATTA.

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