H. R. 505

To repeal sequester while achieving balance in deficit reduction between revenue and cuts, and between non-defense cuts and defense cuts, to invest in job creation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2013

Mr. Ellison (for himself, Mr. Grijalva, Mr. Conyers, Mr. McDermott, Ms. Clarke, Mr. Nadler, Ms. Lee of California, Mr. Markey, Ms. Schakowsky, Ms. Chu, Mr. Cohen, Mr. Clay, Ms. Eddie Bernice Johnson of Texas, Mr. Grayson, and Mr. Gutierrez) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Budget, Oversight and Government Reform, Armed Services, Education and the Workforce, Transportation and Infrastructure, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To repeal sequester while achieving balance in deficit reduction between revenue and cuts, and between non-defense cuts and defense cuts, to invest in job creation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Balancing Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—REPEAL SEQUESTER

Sec. 101. Repeal of section 251A sequestration to enforce budget goal.

TITLE II—CLOSE TAX LOOPHOLES TO ACHIEVE BALANCE

Subtitle A—28 Percent Limitation on Certain Deductions and Exclusions

Sec. 201. 28 percent limitation on certain deductions and exclusions.

Subtitle B—Tax Carried Interest in Investment Partnerships as Ordinary Income

Sec. 211. Partnership interests transferred in connection with performance of services.
Sec. 212. Special rules for partners providing investment management services to partnerships.

Subtitle C—Dual Capacity Taxpayers

Sec. 221. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.
Sec. 222. Separate basket treatment taxes paid on foreign oil and gas income.

Subtitle D—Close Exclusion of Foreign-Earned Income Loophole

Sec. 231. Repeal of foreign earned income exclusion.

Subtitle E—Close S Corporation Loophole

Sec. 241. Employment tax treatment of professional service businesses.

Subtitle F—Limitation on Mortgage Interest Deduction With Respect to Boats

Sec. 251. Mortgage interest deduction allowed with respect to boats only if boat is used as the principal residence of the taxpayer.

TITLE III—ENDING CORPORATE SUBSIDIES

Subtitle A—End Fossil Fuel Subsidies

Sec. 301. Termination of various tax expenditures relating to fossil fuels.
Sec. 302. Termination of alternative fuel vehicle refueling property credit with respect to fossil fuels.
Sec. 303. Uniform seven-year amortization for geological and geophysical expenditures.
Sec. 304. Repeal of domestic manufacturing deduction for hard mineral mining.
Sec. 305. Limitation on deduction for income attributable to domestic production of oil, natural gas, or primary products thereof.
Sec. 306. Termination of last-in, first-out method of inventory for oil, natural gas, and coal companies.
Sec. 307. Repeal of percentage depletion for coal and hard mineral fossil fuels.
Sec. 308. Termination of capital gains treatment for royalties from coal.
Sec. 309. Increase in oil spill liability trust fund financing rate.
Sec. 310. Denial of deduction for removal costs and damages for certain oil spills.
Sec. 311. Tax on crude oil and natural gas produced from the outer Continental Shelf in the Gulf of Mexico.

Subtitle B—Ending Excessive Corporate Tax Deductions for Stock Options
Sec. 331. Consistent treatment of stock options by corporations.
Sec. 332. Application of executive pay deduction limit.

Subtitle C—Reduce Deduction of Corporate Meals and Entertainment
Sec. 341. Reduction in business meals and entertainment tax deduction.

TITLE IV—CLOSE INTERNATIONAL TAX SYSTEM LOOPHOLES
Subtitle A—Reformation of U.S. International Tax System
Sec. 401. Allocation of expenses and taxes on basis of repatriation of foreign income.
Sec. 402. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
Sec. 403. Limitations on income shifting through intangible property transfers.
Sec. 404. Limitation on earnings stripping by expatriated entities.
Sec. 405. Prevention of avoidance of tax through reinsurance with non-taxed affiliates.

Subtitle B—Reinsurance
Sec. 411. Prevention of avoidance of tax through reinsurance with non-taxed affiliates.

Subtitle C—Close Loophole for Corporate Jet Depreciation
Sec. 421. General aviation aircraft treated as 7-year property.

TITLE V—CLOSE ESTATE TAX LOOPHOLES
Sec. 501. Valuation rules for certain transfers of nonbusiness assets; limitation on minority discounts.
Sec. 502. Consistent basis reporting between estate and person acquiring property from decedent.
Sec. 503. Required minimum 10-year term, etc., for grantor retained annuity trusts.
Sec. 504. Limitation on GST exemption of perpetual dynasty trusts.

TITLE VI—CUT PENTAGON WASTE TO ACHIEVE BALANCE
Subtitle A—Smarter Approach to Nuclear Expenditures
Sec. 601. Short title.
Sec. 602. Findings.
Sec. 603. Reduction in nuclear forces.
Sec. 604. Reports required.

Subtitle B—Limiting Excessive Contractor Compensation

Sec. 611. Limitation on allowable compensation costs.

Subtitle C—Relocate Troops From Europe to the United States

Sec. 615. Relocation to United States military installations of members of the United States Armed Forces assigned to permanent duty in Europe.

Subtitle D—Additional Reduction in Armed Forces End Strength Levels

Sec. 621. Additional Army and Marine Corps end strength reductions through retirement and separation.

Subtitle E—Procurement of Certain Submarines, Carriers, and Aircraft

Sec. 631. Limitation on procurement of Virginia class submarines.
Sec. 632. Limitation on procurement of one Ford class aircraft carrier.
Sec. 633. Authority for procurement of F/A–18E and F/A–18F aircraft.
Sec. 634. Prohibition on procurement of V–22 Osprey aircraft.

Subtitle F—Limit Military Bands

Sec. 641. Limitation on expenditures for military musical units.

Subtitle G—Reduction in Number of General and Flag Officers

Sec. 651. Return of maximum number of general and flag officers to Cold War levels.

Subtitle H—Audit the Pentagon

Sec. 661. Purposes.
Sec. 662. Findings.
Sec. 663. Spending reductions for agencies without clean audits.
Sec. 664. Report on Department of Defense reporting requirements.
Sec. 665. Sense of Congress in implementation of defense budget reductions.

TITLE VII—INVEST IN JOB CREATION

Subtitle A—Making Work Pay Extension

Sec. 701. One-year extension of making work pay credit.

Subtitle B—Support for Teachers and School Modernization

PART I—PREVENTING TEACHER LAYOFFS AND SUPPORTING THE CREATION OF ADDITIONAL JOBS IN PUBLIC EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

Sec. 711. Purpose.
Sec. 712. Grants for the outlying areas and the Secretary of the Interior; availability of funds.
Sec. 713. State allocation.
Sec. 714. State application.
Sec. 715. State reservation and responsibilities.
Sec. 716. Local educational agencies.
Sec. 717. Early learning.
Sec. 718. Maintenance of effort.
Sec. 719. Reporting.
Sec. 720. Definitions.
Sec. 721. Authorization of appropriations.

PART II—ELEMENTARY AND SECONDARY SCHOOLS

Sec. 731. Purpose.
Sec. 732. Authorization of appropriations.
Sec. 733. Allocation of funds.
Sec. 734. State use of funds.
Sec. 735. State and local applications.
Sec. 736. Use of funds.
Sec. 737. Private schools.
Sec. 738. Additional provisions.

PART III—COMMUNITY COLLEGE MODERNIZATION

Sec. 739. Federal assistance for community college modernization.

PART IV—GENERAL PROVISIONS

Sec. 740. Definitions.
Sec. 741. Buy American.

Subtitle C—Transportation Infrastructure Investments

PART I—IMMEDIATE TRANSPORTATION INFRASTRUCTURE INVESTMENTS

Sec. 751. Immediate transportation infrastructure investments.

PART II—BUILDING AND UPGRAADING INFRASTRUCTURE FOR LONG-TERM DEVELOPMENT

SUBPART A—IMMEDIATE TRANSPORTATION INFRASTRUCTURE INVESTMENTS

Sec. 761. Short title.
Sec. 762. Findings and purpose.
Sec. 763. Definitions.

SUBPART B—AMERICAN INFRASTRUCTURE FINANCING AUTHORITY

Sec. 765. Establishment and general authority of AIFA.
Sec. 766. Voting members of the Board of Directors.
Sec. 767. Chief executive officer of AIFA.
Sec. 768. Powers and duties of the Board of Directors.
Sec. 769. Senior management.
Sec. 770. Special Inspector General for AIFA.
Sec. 771. Other personnel.
Sec. 772. Compliance.

SUBPART C—TERMS AND LIMITATIONS ON DIRECT LOANS AND LOAN GUARANTEES

Sec. 773. Eligibility criteria for assistance from AIFA and terms and limitations of loans.
Sec. 774. Loan terms and repayment.
Sec. 775. Compliance and enforcement.
Sec. 776. Audits; reports to the President and Congress.

SUBPART D—FUNDING OF AIFA

Sec. 777. Administrative fees.
Sec. 778. Efficiency of AIFA.
Sec. 779. Funding.

SUBPART E—EXTENSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX TREATMENT FOR CERTAIN TAX-EXEMPT BONDS

Sec. 780. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.

TITLE I—REPEAL SEQUESTER

SEC. 101. REPEAL OF SECTION 251A SEQUESTRATION TO ENFORCE BUDGET GOAL.

Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 is repealed.

TITLE II—CLOSE TAX LOOPHOLES TO ACHIEVE BALANCE

Subtitle A—28 Percent Limitation on Certain Deductions and Exclusions

SEC. 201. 28 PERCENT LIMITATION ON CERTAIN DEDUCTIONS AND EXCLUSIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 69. LIMITATION ON CERTAIN DEDUCTIONS AND EXCLUSIONS.

“(a) IN GENERAL.—In the case of an individual for any taxable year, if—
“(1) the taxpayer’s adjusted gross income is above—

“(A) $250,000 in the case of a joint return within the meaning of section 6013,

“(B) $225,000 in the case of a head of household return,

“(C) $125,000 in the case of a married filing separately return, or

“(D) $200,000 in all other cases; and

“(2) the taxpayer’s adjusted taxable income for such taxable year exceeds the minimum marginal rate amount, then the tax imposed under section 1 with respect to such taxpayer for such taxable year shall be increased by the amount determined under subsection (b). If the taxpayer is subject to tax under section 55, then in lieu of an increase in tax under section 1, the tax imposed under section 55 with respect to such taxpayer for such taxable year shall be increased by the amount determined under subsection (c).

“(b) ADDITIONAL AMOUNT.—The amount determined under this subsection with respect to any taxpayer for any taxable year is the excess (if any) of—

“(1) the tax which would be imposed under section 1 with respect to such taxpayer for such taxable
year if ‘adjusted taxable income’ were substituted for ‘taxable income’ each place it appears therein, over

“(2) the sum of—

“(A) the tax which would be imposed under such section with respect to such taxpayer for such taxable year on the greater of—

“(i) taxable income, or

“(ii) the minimum marginal rate amount, plus

“(B) 28 percent of the excess (if any) of the taxpayer’s adjusted taxable income over the greater of—

“(i) the taxpayer’s taxable income, or

“(ii) the minimum marginal rate amount.

“(c) ADDITIONAL AMT AMOUNT.—

“(1) The amount determined under this subsection with respect to any taxpayer for any taxable year is the additional amount computed under subsection (b) multiplied by the ratio that—

“(A) the result of—

“(i) all itemized deductions (before the application of section 68), plus
“(ii) the specified above-the-line deductions and specified exclusions, minus

“(iii) the amount of deductions disallowed under section 56(b)(1)(A) and (B), minus

“(iv) the non-preference disallowed deductions, bears to—

“(B) the sum of—

“(i) the total of itemized deductions (after the application of section 68), plus

“(ii) the specified above-the-line deductions and specified exclusions.

“(2) If the top of the AMT exemption phase-out range for the taxpayer exceeds the minimum marginal rate amount for the taxpayer and if the taxpayer’s alternative minimum taxable income does not exceed the top of the AMT exemption phase-out range, the taxpayer must increase its additional AMT amount by 7 percent of the excess of—

“(A) the lesser of—

“(i) the top of the AMT exemption phase-out range, or

“(ii) the taxpayer’s alternative minimum taxable income, computed—
“(I) without regard to any itemized deduction or any specified above-the-line deduction, and

“(II) by including the amount of any specified exclusion; over

“(B) the greater of—

“(i) the taxpayer’s alternative minimum taxable income, or

“(ii) the minimum marginal rate amount.

“(d) MINIMUM MARGINAL RATE AMOUNT.—For purposes of this section, the term ‘minimum marginal rate amount’ means, with respect to any taxpayer for any taxable year, the highest amount of the taxpayer’s taxable income which would be subject to a marginal rate of tax under section 1 that is less than 36 percent with respect to such taxable year.

“(e) ADJUSTED TAXABLE INCOME.—For purposes of this section—

“(1) IN GENERAL.—The term ‘adjusted taxable income’ means taxable income computed—

“(A) without regard to any itemized deduction or any specified above-the-line deduction, and
“(B) by including in gross income any specified exclusion.

“(2) Specified above-the-line deduction.—The term 'specified above-the-line deduction' means—

“(A) the deduction provided under section 162(l) (relating to special rules for health insurance costs of self-employed individuals),

“(B) the deduction provided under section 199 (relating to income attributable to domestic production activities), and

“(C) the deductions provided under the following paragraphs of section 62(a):

“(i) Paragraph (2) (relating to certain trade and business deductions of employees), other than subparagraph (A) thereof.

“(ii) Paragraph (15) (relating to moving expenses).

“(iii) Paragraph (16) (relating to Archer MSAs).

“(iv) Paragraph (17) (relating to interest on education loans).

“(v) Paragraph (18) (relating to higher education expenses).
“(vi) Paragraph (19) (relating to health savings accounts).

“(3) SPECIFIED EXCLUSION.—The term ‘specified exclusion’ means—

“(A) any interest excluded under section 103,

“(B) any exclusion with respect to the cost described in section 6051(a)(14) (without regard to subparagraph (B) thereof), and

“(C) any foreign earned income excluded under section 911.

“(f) NON-PREFERENCE DISALLOWED DEDUCTIONS.—For purposes of this section, the term ‘AMT-disallowed deductions’ means all itemized deductions disallowed by section 68 multiplied by the ratio that—

“(1) a taxpayer’s itemized deductions for the taxable year that are subject to section 68 (that is, not including those excluded under section 68(c)) and that are not limited under section 56(b)(1)(A) or (B), bears to

“(2) the taxpayer’s itemized deductions for the taxable year that are subject to section 68 (that is, not including those excluded under section 68(c)).

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this
section, including regulations which provide appropriate adjustments to the additional AMT amount.”.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

Subtitle B—Tax Carried Interest in Investment Partnerships as Ordinary Income

SEC. 211. PARTNERSHIP INTERESTS TRANSFERRED IN CONNECTION WITH PERFORMANCE OF SERVICES.

(a) Modification to Election to Include Partnership Interest in Gross Income in Year of Transfer.—Subsection (e) of section 83 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) Partnership interests.—Except as provided by the Secretary—

“(A) In general.—In the case of any transfer of an interest in a partnership in connection with the provision of services to (or for the benefit of) such partnership—

“(i) the fair market value of such interest shall be treated for purposes of this
section as being equal to the amount of the
distribution which the partner would re-
ceive if the partnership sold (at the time of
the transfer) all of its assets at fair market
value and distributed the proceeds of such
sale (reduced by the liabilities of the part-
nership) to its partners in liquidation of
the partnership, and
“(ii) the person receiving such interest
shall be treated as having made the elec-
tion under subsection (b)(1) unless such
person makes an election under this para-
graph to have such subsection not apply.
“(B) ELECTION.—The election under sub-
paragraph (A)(ii) shall be made under rules
similar to the rules of subsection (b)(2).”.

(b) EFFECTIVE DATE.—The amendments made by
this section shall apply to interests in partnerships trans-
ferred after December 31, 2012.

SEC. 212. SPECIAL RULES FOR PARTNERS PROVIDING IN-
VESTMENT MANAGEMENT SERVICES TO
PARTNERSHIPS.

(a) IN GENERAL.—Part I of subchapter K of chapter
1 of the Internal Revenue Code of 1986 is amended by
adding at the end the following new section:
“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIPS.

“(a) TREATMENT OF DISTRIBUTIVE SHARE OF PARTNERSHIP ITEMS.—For purposes of this title, in the case of an investment services partnership interest—

“(1) IN GENERAL.—Notwithstanding section 702(b)—

“(A) an amount equal to the net capital gain with respect to such interest for any partnership taxable year shall be treated as ordinary income, and

“(B) subject to the limitation of paragraph (2), an amount equal to the net capital loss with respect to such interest for any partnership taxable year shall be treated as an ordinary loss.

“(2) RECHARACTERIZATION OF LOSSES LIMITED TO RECHARACTERIZED GAINS.—The amount treated as ordinary loss under paragraph (1)(B) for any taxable year shall not exceed the excess (if any) of—

“(A) the aggregate amount treated as ordinary income under paragraph (1)(A) with respect to the investment services partnership in-
terest for all preceding partnership taxable years to which this section applies, over

“(B) the aggregate amount treated as ordinary loss under paragraph (1)(B) with respect to such interest for all preceding partnership taxable years to which this section applies.

“(3) ALLOCATION TO ITEMS OF GAIN AND LOSS.—

“(A) NET CAPITAL GAIN.—The amount treated as ordinary income under paragraph (1)(A) shall be allocated ratably among the items of long-term capital gain taken into account in determining such net capital gain.

“(B) NET CAPITAL LOSS.—The amount treated as ordinary loss under paragraph (1)(B) shall be allocated ratably among the items of long-term capital loss and short-term capital loss taken into account in determining such net capital loss.

“(4) TERMS RELATING TO CAPITAL GAINS AND LOSSES.—For purposes of this section—

“(A) IN GENERAL.—Net capital gain, long-term capital gain, and long-term capital loss, with respect to any investment services partnership interest for any taxable year, shall be de-
terminated under section 1222, except that such section shall be applied—

“(i) without regard to the recharacterization of any item as ordinary income or ordinary loss under this section,

“(ii) by only taking into account items of gain and loss taken into account by the holder of such interest under section 702 with respect to such interest for such taxable year,

“(iii) by treating property which is taken into account in determining gains and losses to which section 1231 applies as capital assets held for more than 1 year, and

“(iv) without regard to section 1202.

“(B) Net capital loss.—The term ‘net capital loss’ means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges. Rules similar to the rules of clauses (i) through (iv) of subparagraph (A) shall apply for purposes of the preceding sentence.

“(5) Special rules for dividends.—
“(A) INDIVIDUALS.—Any dividend allocated to any investment services partnership interest shall not be treated as qualified dividend income for purposes of section 1(h).

“(B) CORPORATIONS.—No deduction shall be allowed under section 243 or 245 with respect to any dividend allocated to any investment services partnership interest.

“(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

“(1) GAIN.—

“(A) IN GENERAL.—Any gain on the disposition of an investment services partnership interest shall be—

“(i) treated as ordinary income, and

“(ii) recognized notwithstanding any other provision of this subtitle.

“(B) EXCEPTIONS; CERTAIN TRANSFERS TO CHARITIES AND RELATED PERSONS.—Subparagraph (A) shall not apply to—

“(i) a disposition by gift,

“(ii) a transfer at death, or

“(iii) other disposition identified by the Secretary as a disposition with respect to which it would be inconsistent with the purposes of this section to apply subpara-
graph (A), if such gift, transfer, or other disposition is to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)) or a person with respect to whom the transferred interest is an investment services partnership interest.

“(2) Loss.—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—

“(A) the aggregate amount treated as ordinary income under subsection (a) with respect to such interest for all partnership taxable years to which this section applies, over

“(B) the aggregate amount treated as ordinary loss under subsection (a) with respect to such interest for all partnership taxable years to which this section applies.

“(3) Election with respect to certain exchanges.—Paragraph (1)(A)(ii) shall not apply to the contribution of an investment services partnership interest to a partnership in exchange for an interest in such partnership if—
“(A) the taxpayer makes an irrevocable election to treat the partnership interest received in the exchange as an investment services partnership interest, and

“(B) the taxpayer agrees to comply with such reporting and recordkeeping requirements as the Secretary may prescribe.

“(4) DISTRIBUTIONS OF PARTNERSHIP PROPERTY.—

“(A) IN GENERAL.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner, the partner receiving such property shall recognize gain equal to the excess (if any) of—

“(i) the fair market value of such property at the time of such distribution, over

“(ii) the adjusted basis of such property in the hands of such partner (determined without regard to subparagraph (C)).

“(B) TREATMENT OF GAIN AS ORDINARY INCOME.—Any gain recognized by such partner under subparagraph (A) shall be treated as or-
ordinary income to the same extent and in the same manner as the increase in such partner's distributive share of the taxable income of the partnership would be treated under subsection (a) if, immediately prior to the distribution, the partnership had sold the distributed property at fair market value and all of the gain from such disposition were allocated to such partner. For purposes of applying paragraphs (2) and (3) of subsection (a), any gain treated as ordinary income under this subparagraph shall be treated as an amount treated as ordinary income under subsection (a)(1)(A).

“(C) ADJUSTMENT OF BASIS.—In the case a distribution to which subparagraph (A) applies, the basis of the distributed property in the hands of the distributee partner shall be the fair market value of such property.

“(D) SPECIAL RULES WITH RESPECT TO MERGERS, DIVISIONS, AND TECHNICAL TERMINATIONS.—In the case of a taxpayer which satisfies requirements similar to the requirements of subparagraphs (A) and (B) of paragraph (3), this paragraph and paragraph (1)(A)(ii) shall not apply to the distribution of a partnership
interest if such distribution is in connection
with a contribution (or deemed contribution) of
any property of the partnership to which sec-
tion 721 applies pursuant to a transaction de-
scribed in paragraph (1)(B) or (2) of section
708(b).

“(c) INVESTMENT SERVICES PARTNERSHIP INTER-
EST.—For purposes of this section—

“(1) IN GENERAL.—The term ‘investment serv-
ices partnership interest’ means any interest in an
investment partnership acquired or held by any per-
son in connection with the conduct of a trade or
business described in paragraph (2) by such person
(or any person related to such person). An interest
in an investment partnership held by any person—

“(A) shall not be treated as an investment
services partnership interest for any period be-
fore the first date on which it is so held in con-
nection with such a trade or business,

“(B) shall not cease to be an investment
services partnership interest merely because
such person holds such interest other than in
connection with such a trade or business, and

“(C) shall be treated as an investment
services partnership interest if acquired from a
related person in whose hands such interest was
an investment services partnership interest.

“(2) Businesses to which this section applies.—A trade or business is described in this
paragraph if such trade or business primarily in-
volves the performance of any of the following serv-
ices with respect to assets held (directly or indi-
rectly) by the investment partnership referred to in
paragraph (1):

“(A) Advising as to the advisability of in-
vesting in, purchasing, or selling any specified
asset.

“(B) Managing, acquiring, or disposing of
any specified asset.

“(C) Arranging financing with respect to
acquiring specified assets.

“(D) Any activity in support of any service
described in subparagraphs (A) through (C).

“(3) Investment Partnership.—

“(A) In General.—The term ‘investment
partnership’ means any partnership if, at the
end of any calendar quarter ending after De-
cember 31, 2012—

“(i) substantially all of the assets of
the partnership are specified assets (deter-
mined without regard to any section 197 intangible within the meaning of section 197(d)), and "(ii) more than half of the contributed capital of the partnership is attributable to contributions of property by one or more persons in exchange for interests in the partnership which (in the hands of such persons) constitute property held for the production of income.

"(B) Special rules for determining if property held for the production of income.—Except as otherwise provided by the Secretary, for purposes of determining whether any interest in a partnership constitutes property held for the production of income under subparagraph (A)(ii)—

"(i) any election under subsection (e) or (f) of section 475 shall be disregarded, and

"(ii) paragraph (5)(B) shall not apply.

"(C) Antiabuse rules.—The Secretary may issue regulations or other guidance which prevent the avoidance of the purposes of subparagraph (A), including regulations or other
guidance which treat convertible and contingent
debt (and other debt having the attributes of
equity) as a capital interest in the partnership.

“(D) CONTROLLED GROUPS OF ENTITIES.—

“(i) IN GENERAL.—In the case of a controlled group of entities, if an interest in the partnership received in exchange for a contribution to the capital of the partnership by any member of such controlled group would (in the hands of such member) constitute property not held for the production of income, then any interest in such partnership held by any member of such group shall be treated for purposes of subparagraph (A) as constituting (in the hands of such member) property not held for the production of income.

“(ii) CONTROLLED GROUP OF ENTITIES.—For purposes of clause (i), the term ‘controlled group of entities’ means a controlled group of corporations as defined in section 1563(a)(1), applied without regard to subsections (a)(4) and (b)(2) of section 1563. A partnership or any other entity
(other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(4) SPECIFIED ASSET.—The term ‘specified asset’ means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), real estate held for rental or investment, interests in partnerships, commodities (as defined in section 475(e)(2)), cash or cash equivalents, or options or derivative contracts with respect to any of the foregoing.

“(5) RELATED PERSONS.—

“(A) IN GENERAL.—A person shall be treated as related to another person if the relationship between such persons is described in section 267(b) or 707(b).

“(B) ATTRIBUTION OF PARTNER SERVICES.—Any service described in paragraph (2) which is provided by a partner of a partnership shall be treated as also provided by such partnership.
“(d) Exception for Certain Capital Interests.—

“(1) In General.—In the case of any portion of an investment services partnership interest which is a qualified capital interest, all items of gain and loss (and any dividends) which are allocated to such qualified capital interest shall not be taken into account under subsection (a) if—

“(A) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by partners who do not provide any services described in subsection (c)(2) and who are not related to the partner holding the qualified capital interest, and

“(B) the allocations made to such other interests are significant compared to the allocations made to such qualified capital interest.

“(2) Authority to Provide Exceptions to Allocation Requirements.—To the extent provided by the Secretary in regulations or other guidance—

“(A) Allocations to Portion of Qualified Capital Interest.—Paragraph (1) may
be applied separately with respect to a portion
of a qualified capital interest.

“(B) NO OR INSIGNIFICANT ALLOCATIONS
to nonservice providers.—In any case in
which the requirements of paragraph (1)(B) are
not satisfied, items of gain and loss (and any
dividends) shall not be taken into account under
subsection (a) to the extent that such items are
properly allocable under such regulations or
other guidance to qualified capital interests.

“(C) ALLOCATIONS TO SERVICE PROVIDERS’ QUALIFIED CAPITAL INTERESTS WHICH ARE LESS THAN OTHER ALLOCATIONS.—Allocations shall not be treated as failing to meet the
requirement of paragraph (1)(A) merely because the allocations to the qualified capital interest represent a lower return than the allocations made to the other qualified capital interests referred to in such paragraph.

“(3) SPECIAL RULE FOR CHANGES IN SERVICES
AND CAPITAL CONTRIBUTIONS.—In the case of an
interest in a partnership which was not an investment services partnership interest and which, by
reason of a change in the services with respect to assets held (directly or indirectly) by the partnership
or by reason of a change in the capital contributions
to such partnership, becomes an investment services
partnership interest, the qualified capital interest of
the holder of such partnership interest immediately
after such change shall not, for purposes of this sub-
section, be less than the fair market value of such
interest (determined immediately before such
change).

“(4) SPECIAL RULE FOR TIERED PARTNER-
SHIPS.—Except as otherwise provided by the Sec-
retary, in the case of tiered partnerships, all items
which are allocated in a manner which meets the re-
quirements of paragraph (1) to qualified capital in-
terests in a lower-tier partnership shall retain such
character to the extent allocated on the basis of
qualified capital interests in any upper-tier part-
nership.

“(5) EXCEPTION FOR NO-SELF-CHARGED
CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
cept as otherwise provided by the Secretary, an in-
terest shall not fail to be treated as satisfying the
requirement of paragraph (1)A) merely because the
allocations made by the partnership to such interest
do not reflect the cost of services described in sub-
section (e)(2) which are provided (directly or indi-
rectly) to the partnership by the holder of such in-

terest (or a related person).

“(6) SPECIAL RULE FOR DISPOSITIONS.—In the
case of any investment services partnership interest
any portion of which is a qualified capital interest,
subsection (b) shall not apply to so much of any
gain or loss as bears the same proportion to the en-
tire amount of such gain or loss as—

“(A) the distributive share of gain or loss

that would have been allocated to the qualified
capital interest (consistent with the require-
ments of paragraph (1)) if the partnership had
sold all of its assets at fair market value imme-
diately before the disposition, bears to

“(B) the distributive share of gain or loss

that would have been so allocated to the invest-
ment services partnership interest of which such
qualified capital interest is a part.

“(7) QUALIFIED CAPITAL INTEREST.—For pur-
poses of this subsection—

“(A) IN GENERAL.—The term ‘qualified
capital interest’ means so much of a partner’s
interest in the capital of the partnership as is
attributable to—
“(i) the fair market value of any money or other property contributed to the partnership in exchange for such interest (determined without regard to section 752(a)),

“(ii) any amounts which have been included in gross income under section 83 with respect to the transfer of such interest, and

“(iii) the excess (if any) of—

“(I) any items of income and gain taken into account under section 702 with respect to such interest, over

“(II) any items of deduction and loss so taken into account.

“(B) Adjustment to Qualified Capital Interest.—

“(i) Distributions and losses.—

The qualified capital interest shall be reduced by distributions from the partnership with respect to such interest and by the excess (if any) of the amount described in subparagraph (A)(iii)(II) over the amount described in subparagraph (A)(iii)(I).
“(ii) Special rule for contributions of property.—In the case of any contribution of property described in subparagraph (A)(i) with respect to which the fair market value of such property is not equal to the adjusted basis of such property immediately before such contribution, proper adjustments shall be made to the qualified capital interest to take into account such difference consistent with such regulations or other guidance as the Secretary may provide.

“(C) Technical terminations, etc., disregarded.—No increase or decrease in the qualified capital interest of any partner shall result from a termination, merger, consolidation, or division described in section 708, or any similar transaction.

“(8) Treatment of certain loans.—

“(A) Proceeds of partnership loans not treated as qualified capital interest of service providing partners.—For purposes of this subsection, an investment services partnership interest shall not be treated as a qualified capital interest to the extent that
such interest is acquired in connection with the proceeds of any loan or other advance made or guaranteed, directly or indirectly, by any other partner or the partnership (or any person related to any such other partner or the partnership). The preceding sentence shall not apply to the extent the loan or other advance is repaid before January 1, 2013 unless such repayment is made with the proceeds of a loan or other advance described in the preceding sentence.

“(B) Reduction in allocations to qualified capital interests for loans from nonservice-providing partners to the partnership.—For purposes of this subsection, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services described in subsection (c)(2) to the partnership (or any person related to such partner) shall be taken into account in determining the qualified capital interests of the partners in the partnership.

“(e) Other income and gain in connection with investment management services.—

“(1) In general.—If—
“(A) a person performs (directly or indirectly) investment management services for any investment entity,

“(B) such person holds (directly or indirectly) a disqualified interest with respect to such entity, and

“(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed, any income or gain with respect to such interest shall be treated as ordinary income. Rules similar to the rules of subsections (a)(5) and (d) shall apply for purposes of this subsection.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) DISQUALIFIED INTEREST.—

“(i) IN GENERAL.—The term ‘disqualified interest’ means, with respect to any investment entity—

“(I) any interest in such entity other than indebtedness,
“(II) convertible or contingent
debt of such entity,

“(III) any option or other right
to acquire property described in sub-
clause (I) or (II), and

“(IV) any derivative instrument
entered into (directly or indirectly)
with such entity or any investor in
such entity.

“(ii) EXCEPTIONS.—Such term shall
not include—

“(I) a partnership interest,

“(II) except as provided by the
Secretary, any interest in a taxable
corporation, and

“(III) except as provided by the
Secretary, stock in an S corporation.

“(B) TAXABLE CORPORATION.—The term
‘taxable corporation’ means—

“(i) a domestic C corporation, or

“(ii) a foreign corporation substan-
tially all of the income of which is—

“(I) effectively connected with
the conduct of a trade or business in
the United States, or
“(II) subject to a comprehensive foreign income tax (as defined in section 457A(d)(2)).

“(C) Investment management services.—The term ‘investment management services’ means a substantial quantity of any of the services described in subsection (c)(2).

“(D) Investment entity.—The term ‘investment entity’ means any entity which, if it were a partnership, would be an investment partnership.

“(f) Regulations.—The Secretary shall prescribe such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance to—

“(1) provide modifications to the application of this section (including treating related persons as not related to one another) to the extent such modification is consistent with the purposes of this section, and

“(2) coordinate this section with the other provisions of this title.

“(g) Cross Reference.—For 40 percent penalty on certain underpayments due to the avoidance of this section, see section 6662.”.

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(b) Application of Section 751 to Indirect Dispositions of Investment Services Partnership Interests.—

(1) In General.—Subsection (a) of section 751 of the Internal Revenue Code of 1986 is amended by striking “or” at the end of paragraph (1), by inserting “or” at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

“(3) investment services partnership interests held by the partnership,”.

(2) Certain Distributions Treated as Sales or Exchanges.—Subparagraph (A) of section 751(b)(1) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of clause (i), by inserting “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) investment services partnership interests held by the partnership,”.

(3) Application of Special Rules in the Case of Tiered Partnerships.—Subsection (f) of section 751 of the Internal Revenue Code of 1986 is amended by striking “or” at the end of paragraph (1), by inserting “or” at the end of paragraph (2),
and by inserting after paragraph (2) the following new paragraph:

“(3) investment services partnership interests held by the partnership.”.

(4) INVESTMENT SERVICES PARTNERSHIP INTERESTS; QUALIFIED CAPITAL INTERESTS. — Section 751 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(g) INVESTMENT SERVICES PARTNERSHIP INTERESTS. — For purposes of this section —

“(1) IN GENERAL. — The term ‘investment services partnership interest’ has the meaning given such term by section 710(c).

“(2) ADJUSTMENTS FOR QUALIFIED CAPITAL INTERESTS. — The amount to which subsection (a) applies by reason of paragraph (3) thereof shall not include so much of such amount as is attributable to any portion of the investment services partnership interest which is a qualified capital interest (determined under rules similar to the rules of section 710(d)).

“(3) RECOGNITION OF GAINS. — Any gain with respect to which subsection (a) applies by reason of
paragraph (3) thereof shall be recognized notwith-
standing any other provision of this title.

“(4) COORDINATION WITH INVENTORY
ITEMS.—An investment services partnership interest
held by the partnership shall not be treated as an
inventory item of the partnership.

“(5) PREVENTION OF DOUBLE COUNTING.—
Under regulations or other guidance prescribed by
the Secretary, subsection (a)(3) shall not apply with
respect to any amount to which section 710 ap-
plies.”.

(c) TREATMENT FOR PURPOSES OF SECTION
7704.—Subsection (d) of section 7704 of the Internal
Revenue Code of 1986 is amended by adding at the end
the following new paragraph:

“(6) INCOME FROM CERTAIN CARRIED INTER-
ESTS NOT QUALIFIED.—

“(A) IN GENERAL.—Specified carried in-
terest income shall not be treated as qualifying
income.

“(B) SPECIFIED CARRIED INTEREST IN-
COME.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘speci-
fied carried interest income’ means—
“(I) any item of income or gain allocated to an investment services partnership interest (as defined in section 710(c)) held by the partnership,

“(II) any gain on the disposition of an investment services partnership interest (as so defined) or a partnership interest to which (in the hands of the partnership) section 751 applies, and

“(III) any income or gain taken into account by the partnership under subsection (b)(4) or (e) of section 710.

“(ii) EXCEPTION FOR QUALIFIED CAPITAL INTERESTS.—A rule similar to the rule of section 710(d) shall apply for purposes of clause (i).

“(C) COORDINATION WITH OTHER PROVISIONS.—Subparagraph (A) shall not apply to any item described in paragraph (1)(E) (or so much of paragraph (1)(F) as relates to paragraph (1)(E)).
“(D) Special rules for certain partnerships.—

“(i) Certain partnerships owned by real estate investment trusts.—
Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Such partnership is treated as publicly traded under this section solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

“(II) Fifty percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(c)).

“(III) Such partnership meets the requirements of paragraphs (2), (3), and (4) of section 856(e).

“(ii) Certain partnerships owning other publicly traded partner-
SHIPS.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Substantially all of the assets of such partnership consist of interests in one or more publicly traded partnerships (determined without regard to subsection (b)(2)).

“(II) Substantially all of the income of such partnership is ordinary income or section 1231 gain (as defined in section 1231(a)(3)).

“(E) TRANSITIONAL RULE.—Subparagraph (A) shall not apply to any taxable year of the partnership beginning before the date which is 10 years after January 1, 2013.”

(d) IMPOSITION OF PENALTY ON UNDERPAYMENTS.—

(1) IN GENERAL.—Subsection (b) of section 6662 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (7) the following new paragraph:

“(8) The application of section 710(e) or the regulations or other guidance prescribed under sec-
tion 710(h) to prevent the avoidance of the purposes of section 710.”.

(2) Amount of penalty.—

(A) In general.—Section 6662 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(k) Increase in penalty in case of property transferred for investment management services.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(8), subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

(B) Conforming amendment.—Subparagraph (B) of section 6662A(e)(2) is amended by striking “or (i)” and inserting “, (i), or (k)”.

(3) Special rules for application of reasonable cause exception.—Subsection (c) of section 6664 is amended—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(B) by striking “paragraph (3)” in paragraph (5)(A), as so redesignated, and inserting “paragraph (4)”;

(C) by inserting after paragraph (2) the following new paragraph:
“(3) Special rule for underpayments attributable to investment management services.—

“(A) In general.—Paragraph (1) shall not apply to any portion of an underpayment to which section 6662 applies by reason of subsection (b)(8) unless—

“(i) the relevant facts affecting the tax treatment of the item are adequately disclosed,

“(ii) there is or was substantial authority for such treatment, and

“(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

“(B) Rules relating to reasonable belief.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of subparagraph (A)(iii).”.

(e) Income and Loss from Investment Services Partnership Interests Taken into Account in Determining Net Earnings from Self-Employment.—

(1) Internal Revenue Code.—

(A) In general.—Section 1402(a) of the Internal Revenue Code of 1986 is amended by
striking “and” at the end of paragraph (16), by
striking the period at the end of paragraph (17)
and inserting “; and”, and by inserting after
paragraph (17) the following new paragraph:
“(18) notwithstanding the preceding provisions
of this subsection, in the case of any individual en-
gaged in the trade or business of providing services
described in section 710(c)(2) with respect to any
entity, investment services partnership income or
loss (as defined in subsection (m)) of such individual
with respect to such entity shall be taken into ac-
count in determining the net earnings from self-em-
ployment of such individual.”.

(B) INVESTMENT SERVICES PARTNERSHIP
INCOME OR LOSS.—Section 1402 of the Inter-
nal Revenue Code is amended by adding at the
end the following new subsection:
“(m) INVESTMENT SERVICES PARTNERSHIP INCOME
OR LOSS.—For purposes of subsection (a)—
“(1) IN GENERAL.—The term ‘investment serv-
ices partnership income or loss’ means, with respect
to any investment services partnership interest (as
defined in section 710(e)), the net of—
“(A) the amounts treated as ordinary income or ordinary loss under subsections (b) and (e) of section 710 with respect to such interest,
“(B) all items of income, gain, loss, and deduction allocated to such interest, and
“(C) the amounts treated as realized from the sale or exchange of property other than a capital asset under section 751 with respect to such interest.
“(2) EXCEPTION FOR QUALIFIED CAPITAL INTERESTS.—A rule similar to the rule of section 710(d) shall apply for purposes of applying paragraph (1)(B)(ii).”.

(2) SOCIAL SECURITY ACT.—Section 211(a) of the Social Security Act is amended by striking “and” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “; and”, and by inserting after paragraph (16) the following new paragraph:
“(17) Notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(c)(2) of the Internal Revenue Code of 1986 with respect to any entity, investment services partnership income or loss (as defined
in section 1402(m) of such Code) shall be taken into account in determining the net earnings from self-employment of such individual.”.

(f) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 731 of the Internal Revenue Code of 1986 is amended by inserting “section 710(b)(4) (relating to distributions of partnership property),” after “to the extent otherwise provided by”.

(2) Section 741 of the Internal Revenue Code of 1986 is amended by inserting “or section 710 (relating to special rules for partners providing investment management services to partnerships)” before the period at the end.

(3) The table of sections for part I of subchapter K of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services to partnerships.”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 2012.
(2) Partnership taxable years which include effective date.—In applying section 710(a) of the Internal Revenue Code of 1986 (as added by this section) in the case of any partnership taxable year which includes January 1, 2013, the amount of the net income referred to in such section shall be treated as being the lesser of the net income for the entire partnership taxable year or the net income determined by only taking into account items attributable to the portion of the partnership taxable year which is after such date.

(3) Dispositions of partnership interests.—

(A) In general.—Section 710(b) of such Code (as added by this section) shall apply to dispositions and distributions after December 31, 2012.

(B) Indirect dispositions.—The amendments made by subsection (b) shall apply to transactions after December 31, 2012.

(4) Other income and gain in connection with investment management services.—Section 710(e) of such Code (as added by this section) shall take effect on January 1, 2013.
Subtitle C—Dual Capacity Taxpayers

SEC. 221. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) In General.—Section 901 of the Internal Revenue Code of 1986 (relating to credit for taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) Special Rules Relating to Dual Capacity Taxpayers.—

“(1) General rule.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer or any member of the worldwide affiliated group of which such dual capacity taxpayer is also a member to any foreign country or to any possession of the United States for any period shall not be considered a tax to the extent such amount exceeds the amount (determined in accordance with regulations) which would have been required to be paid if the taxpayer were not a dual capacity taxpayer.

“(2) Dual capacity taxpayer.—For purposes of this subsection, the term ‘dual capacity tax-
payer’ means, with respect to any foreign country or possession of the United States, a person who—

“(A) is subject to a levy of such country or possession, and

“(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

“(3) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection.”.

(b) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts that, if such amounts were an amount of tax paid or accrued, would be considered paid or accrued in taxable years beginning after December 31, 2012.

SEC. 222. SEPARATE BASKET TREATMENT TAXES PAID ON FOREIGN OIL AND GAS INCOME.

(a) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—Paragraph (1) of section 904(d) of the Internal Rev-
enue Code of 1986 is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following:

“(C) combined foreign oil and gas income (as defined in section 907(b)(1)).”.

(b) COORDINATION.—Section 904(d)(2) of such Code is amended by redesignating subparagraphs (J) and (K) as subparagraphs (K) and (L) and by inserting after subparagraph (I) the following:

“(J) COORDINATION WITH COMBINED FOREIGN OIL AND GAS INCOME.—For purposes of this section, passive category income and general category income shall not include combined foreign oil and gas income (as defined in section 907(b)(1)).”.

(c) CONFORMING AMENDMENTS.—

(1) Section 907(a) is hereby repealed.

(2) Section 907(c)(4) is hereby repealed.

(3) Section 907(f) is hereby repealed.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

(2) TRANSITIONAL RULES.—
(A) Carryovers.—Any unused foreign oil and gas taxes which under section 907(f) of such Code (as in effect before the amendment made by subsection (c)(3)) would have been allowable as a carryover to the taxpayer’s first taxable year beginning after December 31, 2012 (without regard to the limitation of paragraph (2) of such section 907(f) for first taxable year) shall be allowed as carryovers under section 904(c) of such Code in the same manner as if such taxes were unused taxes under such section 904(c) with respect to foreign oil and gas extraction income.

(B) Losses.—The amendment made by subsection (c)(2) shall not apply to foreign oil and gas extraction losses arising in taxable years beginning on or before the date of the enactment of this Act.

Subtitle D—Close Exclusion of Foreign-Earned Income Loophole

SEC. 231. REPEAL OF FOREIGN EARNED INCOME EXCLUSION.

(a) In General.—Subsection (a) of section 911 of the Internal Revenue Code of 1986 is amended by striking “for any taxable year—” and all that follows through the
end and inserting “for any taxable year the housing cost
amount of such individual.”.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 86 of such Code is
amended by inserting “and” at the end of paragraph
(2), by striking “, and” at the end of paragraph (3)
and inserting a period, and by striking paragraph
(4).

(2) Section 1401(a) of such Code is amended
by striking paragraph (11).

(3)(A) Clause (i) of section 1411(a)(1)(B) of
such Code is amended by striking “modified”.

(B) Section 1411 of such Code is amended
by striking subsection (d) and by redesignating
subsection (e) as subsection (d).

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

Subtitle E—Close S Corporation
Loophole

SEC. 241. EMPLOYMENT TAX TREATMENT OF PROFES-
SIONAL SERVICE BUSINESSES.

(a) IN GENERAL.—Section 1402 of the Internal Rev-
enue Code of 1986 is amended by adding at the end the
following new subsection:
“(m) Special Rules for Professional Service Businesses.—

“(1) Shareholders Providing Services to Specified S Corporations.—

“(A) In General.—In the case of an applicable shareholder who provides substantial services with respect to a professional service business referred to in subparagraph (C) of a specified S corporation—

“(i) such shareholder shall be treated as engaged in the trade or business of such professional service business with respect to items of income or loss described in section 1366 which are attributable to such business, and

“(ii) such shareholder’s net earnings from self-employment shall include such shareholder’s pro rata share of such items of income or loss, except that in computing such pro rata share of such items the exceptions provided in subsection (a) shall apply.

“(B) Treatment of Family Members.—

Except as otherwise provided by the Secretary, the applicable shareholder’s pro rata share of
items referred to in subparagraph (A) shall be increased by the pro rata share of such items of each member of such applicable shareholder’s family (within the meaning of section 318(a)(1)) who does not provide substantial services with respect to such professional service business.

“(C) SPECIFIED S CORPORATION.—For purposes of this subsection, the term ‘specified S corporation’ means—

“(i) any S corporation which is a partner in a partnership which is engaged in a professional service business if substantially all of the activities of such S corporation are performed in connection with such partnership, and

“(ii) any other S corporation which is engaged in a professional service business if 75 percent or more of the gross income of such business is attributable to service of 3 or fewer shareholders of such corporation.

“(D) APPLICABLE SHAREHOLDER.—For purposes of this paragraph, the term ‘applicable shareholder’ means any shareholder whose
modified adjusted gross income for the taxable year exceeds—

“(i) in the case of a shareholder making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), $250,000,

“(ii) in the case of a married shareholder (as defined in section 7703) filing a separate return, half of the dollar amount determined under clause (i), and

“(iii) in any other case, $200,000.

“(2) PARTNERS.—

“(A) IN GENERAL.—In the case of any partnership which is engaged in a professional service business, subsection (a)(13) shall not apply to any applicable partner who provides substantial services with respect to such professional service business.

“(B) APPLICABLE PARTNER.—For purposes of this paragraph, the term ‘applicable partner’ means any partner whose modified adjusted gross income for the taxable year exceeds—

“(i) in the case of a partner making a joint return under section 6013 or a sur-
viving spouse (as defined in section 2(a)), $250,000,

“(ii) in the case of a married partner (as defined in section 7703) filing a separate return, half of the dollar amount determined under clause (i), and

“(iii) in any other case, $200,000.

“(3) PROFESSIONAL SERVICE BUSINESS.—For purposes of this subsection, the term ‘professional service business’ means any trade or business (or portion thereof) providing services in the fields of health, law, lobbying, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, or brokerage services.

“(4) MODIFIED ADJUSTED GROSS INCOME.— For purposes of this subsection, the term ‘modified adjusted gross income’ means adjusted gross income—

“(A) determined without regard to any deduction allowed under section 164(f), and

“(B) increased by the amount excluded from gross income under section 911(a)(1).

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or ap-
propriate to carry out the purposes of this subsection, including regulations which prevent the avoidance of the purposes of this subsection through tiered entities or otherwise.

“(6) CROSS REFERENCE.—For employment tax treatment of wages paid to shareholders of S corporations, see subtitle C.”.

(b) CONFORMING AMENDMENT.—Section 211 of the Social Security Act is amended by adding at the end the following new subsection:

“(l) SPECIAL RULES FOR PROFESSIONAL SERVICE BUSINESSES.—

“(1) SHAREHOLDERS PROVIDING SERVICES TO SPECIFIED S CORPORATIONS.—

“(A) IN GENERAL.—In the case of an applicable shareholder who provides substantial services with respect to a professional service business referred to in subparagraph (C) of a specified S corporation—

“(i) such shareholder shall be treated as engaged in the trade or business of such professional service business with respect to items of income or loss described in section 1366 of the Internal Revenue Code of
1986 which are attributable to such business, and

“(ii) such shareholder’s net earnings from self-employment shall include such shareholder’s pro rata share of such items of income or loss, except that in computing such pro rata share of such items the exceptions provided in subsection (a) shall apply.

“(B) TREATMENT OF FAMILY MEMBERS.—Except as otherwise provided by the Secretary of the Treasury, the applicable shareholder’s pro rata share of items referred to in subparagraph (A) shall be increased by the pro rata share of such items of each member of such applicable shareholder’s family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) who does not provide substantial services with respect to such professional service business.

“(C) SPECIFIED S CORPORATION.—For purposes of this subsection, the term ‘specified S corporation’ means—

“(i) any S corporation (as defined in section 1361(a) of the Internal Revenue
Code of 1986) which is a partner in a partnership which is engaged in a professional service business if substantially all of the activities of such S corporation are performed in connection with such partnership, and

“(ii) any other S corporation (as so defined) which is engaged in a professional service business if 75 percent or more of the gross income of such business is attributable to service of 3 or fewer shareholders of such corporation.

“(D) APPLICABLE SHAREHOLDER.—For purposes of this paragraph, the term ‘applicable shareholder’ means any shareholder whose modified adjusted gross income for the taxable year exceeds—

“(i) in the case of a shareholder making a joint return under section 6013 of the Internal Revenue Code of 1986 or a surviving spouse (as defined in section 2(a) of such Code), $250,000,

“(ii) in the case of a married shareholder (as defined in section 7703 of such Code) filing a separate return, half of the
dollar amount determined under clause (i), and

“(iii) in any other case, $200,000.

“(2) PARTNERS.—

“(A) IN GENERAL.—In the case of any partnership which is engaged in a professional service business, subsection (a)(12) shall not apply to any applicable partner who provides substantial services with respect to such professional service business.

“(B) APPLICABLE PARTNER.—For purposes of this paragraph, the term ‘applicable partner’ means any partner whose modified adjusted gross income for the taxable year exceeds—

“(i) in the case of a partner making a joint return under section 6013 of the Internal Revenue Code of 1986 or a surviving spouse (as defined in section 2(a) of such Code), $250,000,

“(ii) in the case of a married partner (as defined in section 7703 of such Code) filing a separate return, half of the dollar amount determined under clause (i), and

“(iii) in any other case, $200,000.
“(3) Professional service business.—For purposes of this subsection, the term ‘professional service business’ means any trade or business (or portion thereof) providing services in the fields of health, law, lobbying, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, or brokerage services.

“(4) Modified adjusted gross income.—For purposes of this subsection, the term ‘modified adjusted gross income’ means adjusted gross income as determined under section 62 of the Internal Revenue Code of 1986—

“(A) determined without regard to any deduction allowed under section 164(f) of such Code, and

“(B) increased by the amount excluded from gross income under section 911(a)(1) of such Code.”.

(c) Effective date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.
Subtitle F—Limitation on Mortgage Interest Deduction With Respect to Boats

SEC. 251. MORTGAGE INTEREST DEDUCTION ALLOWED WITH RESPECT TO BOATS ONLY IF BOAT IS USED AS THE PRINCIPAL RESIDENCE OF THE TAXPAYER.

(a) In General.—Subclause (ii) of section 163(h)(4)(A) of the Internal Revenue Code of 1986 is amended by inserting “(other than a boat)” after “1 other residence of the taxpayer”.

(b) Effective Date.—

(1) In General.—The amendment made by this section shall apply to indebtedness incurred after the date of the enactment of this Act.

(2) Special Rule for Refinancings.—For purposes of this subsection, indebtedness resulting from the refinancing of indebtedness shall be treated as incurred on the date the refinanced indebtedness was incurred (taking into account the application of this paragraph in the case of multiple refinancings) but only to the extent the indebtedness resulting from such refinancing does not exceed the refinanced indebtedness.
TITLE III—ENDING CORPORATE SUBSIDIES

Subtitle A—End Fossil Fuel Subsidies

SEC. 301. TERMINATION OF VARIOUS TAX EXPENDITURES RELATING TO FOSSIL FUELS.

(a) IN GENERAL.—Subchapter C of chapter 90 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 7875. TERMINATION OF CERTAIN PROVISIONS RELATING TO FOSSIL FUEL INCENTIVES.

“(a) IN GENERAL.—The following provisions shall not apply to taxable years beginning after the date of the enactment of the Balancing Act:

“(1) Section 43 (relating to enhanced oil recovery credit).

“(2) Section 45I (relating to credit for producing oil and natural gas from marginal wells).

“(3) Section 45K (relating to credit for producing fuel from a nonconventional source).

“(4) Section 193 (relating to tertiary injectants).

“(5) Section 199(d)(9) (relating to special rule for taxpayers with oil related qualified production activities income).
“(6) Section 461(i)(2) (relating to special rule for spudding of oil or natural gas wells).

“(7) Section 469(c)(3) (relating to working interests in oil and natural gas property).

“(8) Section 613A (relating to limitations on percentage depletion in case of oil and natural gas wells).

“(9) Section 617 (relating to deduction and recapture of certain mining exploration expenditures).

“(10) Section 7704(d)(1)(E) (relating to qualifying income).

“(b) Provisions Relating to Property.—The following provisions shall not apply to property placed in service after the date of the enactment of the Balancing Act:

“(1) Subparagraphs (C)(iii) and (E)(viii) of section 168(e)(3) (relating to classification of certain property).

“(2) Section 169 (relating to amortization of pollution control facilities) with respect to any atmospheric pollution control facility.

“(3) Section 179C (relating to election to expense certain refineries).

“(c) Provisions Relating to Costs and Expenses.—The following provisions shall not apply to costs
or expenses paid or incurred after the date of the enact-
ment of the Balancing Act:

“(1) Section 179B (relating to deduction for
capital costs incurred in complying with Environ-
mental Protection Agency sulfur regulations).

“(2) Section 198 (relating to expensing of envi-
ronmental remediation costs).

“(3) Section 263(c) (relating to intangible drill-
ing and development costs) with respect to costs in
the case of oil and natural gas wells.

“(4) Section 468 (relating to special rules for
mining and solid waste reclamation and closing
costs).

“(d) 5-YEAR CARRYBACK FOR MARGINAL OIL AND
NATURAL GAS WELL PRODUCTION CREDIT.—Section
39(a)(3) (relating to 5-year carryback for marginal oil and
natural gas well production credit) shall not apply to cred-
its determined in taxable years beginning after the date
of the enactment of the Balancing Act.

“(e) CREDIT FOR CARBON DIOXIDE SEQUESTRA-
TION.—Section 45Q (relating to credit for carbon dioxide
sequestration) shall not apply to carbon dioxide captured
after the date of the enactment of the Balancing Act.

“(f) ALLOCATED CREDITS.—No new credits shall be
certified under section 48A (relating to qualifying ad-
advanced coal project credit) or section 48B (relating to qualifying gasification project credit) after the date of the enactment of the Balancing Act.

“(g) Arbitrage Bonds.—Section 148(b)(4) (relating to safe harbor for prepaid natural gas) shall not apply to obligations issued after the date of the enactment of the Balancing Act.”.

(b) Conforming Amendment.—The table of sections for subchapter C of chapter 90 is amended by adding at the end the following new item:

“Sec. 7875. Termination of certain provisions.”.

SEC. 302. TERMINATION OF ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT WITH RESPECT TO FOSSIL FUELS.

(a) In General.—Paragraph (2) of section 30C(c) of the Internal Revenue Code of 1986 is amended—

(1) by striking “, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas,” in subparagraph (A),

(2) by striking subparagraph (B), and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) Technical Amendment.—Paragraph (2) of section 30C(g) of the Internal Revenue Code of 1986 is amended by striking the second period.
(c) Effective Date.—The amendments made by this section shall apply to property placed in service after December 31, 2012.

SEC. 303. UNIFORM SEVEN-YEAR AMORTIZATION FOR GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) In General.—Section 167(h) of the Internal Revenue Code of 1986 is amended—

(1) by striking “24-month period” each place it appears in paragraphs (1) and (4) and inserting “7-year period”, and

(2) by striking paragraph (5).

(b) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 304. REPEAL OF DOMESTIC MANUFACTURING DEDUCTION FOR HARD MINERAL MINING.

(a) In General.—Subparagraph (B) of section 199(c)(4) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause:

“(iv) the mining of any hard mineral.”.
(b) **Effective Date.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 305. LIMITATION ON DEDUCTION FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, NATURAL GAS, OR PRIMARY PRODUCTS THEREOF.**

(a) **Denial of Deduction.**—Paragraph (4) of section 199(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(E) **Special rule for oil, natural gas, and coal income.**—The term ‘domestic production gross receipts’ shall not include gross receipts from the production, refining, processing, transportation, or distribution of oil, natural gas, or coal, or any primary product (within the meaning of subsection (d)(9)) thereof."

(b) **Effective Date.**—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.
SEC. 306. TERMINATION OF LAST-IN, FIRST-OUT METHOD OF INVENTORY FOR OIL, NATURAL GAS, AND COAL COMPANIES.

(a) In General.—Section 472 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(h) TERMINATION FOR OIL, NATURAL GAS, AND COAL COMPANIES.—Subsection (a) shall not apply to any taxpayer that is in the trade or business of the production, refining, processing, transportation, or distribution of oil, natural gas, or coal for any taxable year beginning after December 31, 2012.”.

(b) Additional Termination.—Section 473 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(h) TERMINATION FOR OIL, NATURAL GAS, AND COAL COMPANIES.—This section shall not apply to any taxpayer that is in the trade or business of the production, refining, processing, transportation, or distribution of oil, natural gas, or coal for any taxable year beginning after December 31, 2012.”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.
SEC. 307. REPEAL OF PERCENTAGE DEPLETION FOR COAL AND HARD MINERAL FOSSIL FUELS.

(a) In General.—Section 613 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) Termination With Respect to Coal and Hard Mineral Fossil Fuels.—In the case of coal, lignite, and oil shale (other than oil shale described in subsection (b)(5)), the allowance for depletion shall be computed without reference to this section for any taxable year beginning after the date of the enactment of the Balancing Act.”.

(b) Conforming Amendments.—

(1) Coal and Lignite.—Section 613(b)(4) of the Internal Revenue Code of 1986 is amended by striking “coal, lignite,”.

(2) Oil Shale.—Section 613(b)(2) of such Code is amended to read as follows:

“(2) 15 percent.—If, from deposits in the United States, gold, silver, copper, and iron ore.”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.
SEC. 308. TERMINATION OF CAPITAL GAINS TREATMENT FOR ROYALTIES FROM COAL.

(a) In General.—Subsection (c) of section 631 of the Internal Revenue Code of 1986 is amended—

(1) by striking “coal (including lignite), or iron ore” and inserting “iron ore”,

(2) by striking “coal or iron ore” each place it appears and inserting “iron ore”,

(3) by striking “iron ore or coal” each place it appears and inserting “iron ore”, and

(4) by striking “COAL OR” in the heading.

(b) Conforming Amendment.—The heading of section 631 of the Internal Revenue Code of 1986 is amended by striking “, COAL,”.

(c) Effective Date.—The amendments made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 309. INCREASE IN OIL SPILL LIABILITY TRUST FUND FINANCING RATE.

(a) In General.—Subparagraph (B) of section 4611(c)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

“(B) the Oil Spill Liability Trust Fund financing rate is—
“(i) in the case of crude oil received or petroleum products entered before January 1, 2013, 8 cents a barrel,
“(ii) in the case of crude oil received or petroleum products entered after December 31, 2012, and before January 1, 2017, 9 cents a barrel, and
“(iii) in the case of crude oil received or petroleum products entered after December 31, 2016, 10 cents a barrel.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to crude oil received and petroleum products entered after the date of the enactment of this Act.

SEC. 310. DENIAL OF DEDUCTION FOR REMOVAL COSTS AND DAMAGES FOR CERTAIN OIL SPILLS.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 280I. EXPENSES FOR REMOVAL COSTS AND DAMAGES RELATING TO CERTAIN OIL SPILL LIABILITY.

“No deduction shall be allowed under this chapter for any amount paid or incurred with respect to any costs or damages for which the taxpayer is liable under section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702).”. 
(b) Clerical Amendment.—The table of sections for part IX of subchapter B of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 280I. Expenses for removal costs and damages relating to certain oil spill liability."

(c) Effective Date.—The amendments made by this section shall apply with respect to any liability arising in taxable years ending after the date of the enactment of this Act.

SEC. 311. TAX ON CRUDE OIL AND NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF IN THE GULF OF MEXICO.

(a) In General.—Subtitle E of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

"CHAPTER 56—TAX ON SEVERANCE OF CRUDE OIL AND NATURAL GAS FROM THE OUTER CONTINENTAL SHELF IN THE GULF OF MEXICO"

"Sec. 5896. Imposition of tax.
Sec. 5897. Taxable crude oil or natural gas and removal price.
Sec. 5898. Special rules and definitions.

SEC. 5896. IMPOSITION OF TAX.

(a) In General.—In addition to any other tax imposed under this title, there is hereby imposed a tax equal to 13 percent of the removal price of any taxable crude
oil or natural gas removed from the premises during any taxable period.

“(b) CREDIT FOR FEDERAL ROYALTIES PAID.—

“(1) IN GENERAL.—There shall be allowed as a credit against the tax imposed by subsection (a) with respect to the production of any taxable crude oil or natural gas an amount equal to the aggregate amount of royalties paid under Federal law with respect to such production.

“(2) LIMITATION.—The aggregate amount of credits allowed under paragraph (1) to any taxpayer for any taxable period shall not exceed the amount of tax imposed by subsection (a) for such taxable period.

“(c) TAX PAID BY PRODUCER.—The tax imposed by this section shall be paid by the producer of the taxable crude oil or natural gas.

“SEC. 5897. TAXABLE CRUDE OIL OR NATURAL GAS AND REMOVAL PRICE.

“(a) TAXABLE CRUDE OIL OR NATURAL GAS.—For purposes of this chapter, the term ‘taxable crude oil or natural gas’ means crude oil or natural gas which is produced from Federal submerged lands on the outer Continental Shelf in the Gulf of Mexico pursuant to a lease
entered into with the United States which authorizes the production.

“(b) Removal Price.—For purposes of this chapter—

“(1) In General.—Except as otherwise provided in this subsection, the term ‘removal price’ means—

“(A) in the case of taxable crude oil, the amount for which a barrel of such crude oil is sold, and

“(B) in the case of taxable natural gas, the amount per 1,000 cubic feet for which such natural gas is sold.

“(2) Sales Between Related Persons.—In the case of a sale between related persons, the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613.

“(3) Oil or Natural Gas Removed From Property Before Sale.—If crude oil or natural gas is removed from the property before it is sold, the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.
“(4) Refining begun on property.—If the manufacture or conversion of crude oil into refined products begins before such oil is removed from the property—

“(A) such oil shall be treated as removed on the day such manufacture or conversion begins, and

“(B) the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

“(5) Property.—The term ‘property’ has the meaning given such term by section 614.

“SEC. 5898. SPECIAL RULES AND DEFINITIONS.

“(a) Administrative Requirements.—

“(1) Withholding and deposit of tax.—The Secretary shall provide for the withholding and deposit of the tax imposed under section 5896 on a quarterly basis.

“(2) Records and Information.—Each taxpayer liable for tax under section 5896 shall keep such records, make such returns, and furnish such information (to the Secretary and to other persons having an interest in the taxable crude oil or natural
gas) with respect to such oil as the Secretary may by regulations prescribe.

“(3) TAXABLE PERIODS; RETURN OF TAX.—

“(A) TAXABLE PERIOD.—Except as pro-
vided by the Secretary, each calendar year shall constitute a taxable period.

“(B) RETURNS.—The Secretary shall pro-
vide for the filing, and the time for filing, of the return of the tax imposed under section 5896.

“(b) DEFINITIONS.—For purposes of this chapter—

“(1) PRODUCER.—The term ‘producer’ means the holder of the economic interest with respect to the crude oil or natural gas.

“(2) CRUDE OIL.—The term ‘crude oil’ includes crude oil condensates and natural gasoline.

“(3) PREMISES AND CRUDE OIL PRODUCT.—
The terms ‘premises’ and ‘crude oil product’ have the same meanings as when used for purposes of determining gross income from the property under sec-

“(c) ADJUSTMENT OF REMOVAL PRICE.—In deter-
mining the removal price of oil or natural gas from a prop-
erty in the case of any transaction, the Secretary may ad-
just the removal price to reflect clearly the fair market value of oil or natural gas removed.
“(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter.”.

(b) DEDUCTIBILITY OF TAX.—The first sentence of section 164(a) is amended by inserting after paragraph (6) the following new paragraph:

“(7) The tax imposed by section 5896(a) (after application of section 5896(b)) on the severance of crude oil or natural gas from the outer Continental Shelf in the Gulf of Mexico.”.

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

“CHAPTER 56. Tax on severance of crude oil and natural gas from the outer Continental Shelf in the Gulf of Mexico.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to crude oil or natural gas removed after December 31, 2012.

Subtitle B—Ending Excessive Corporate Tax Deductions for Stock Options

SEC. 331. CONSISTENT Treatment OF STOCK OPTIONS BY CORPORATIONS.

(a) CONSISTENT Treatment FOR WAGE DEDUCTION.—

(1) IN GENERAL.—Section 83(h) is amended—
(A) by striking “In the case of” and inserting:

“(1) IN GENERAL.—In the case of”, and

(B) by adding at the end the following new paragraph:

“(2) STOCK OPTIONS.—In the case of property transferred to a person in connection with a stock option, any deduction related to such stock option shall be allowed only under section 162(q) and paragraph (1) shall not apply.”.

(2) TREATMENT OF COMPENSATION PAID WITH STOCK OPTIONS.—Section 162 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

“(q) TREATMENT OF COMPENSATION PAID WITH STOCK OPTIONS.—

“(1) IN GENERAL.—In the case of compensation for personal services that is paid with stock options, the deduction under subsection (a)(1) shall not exceed the amount the taxpayer has treated as compensation cost with respect to such stock options for the purpose of ascertaining income, profit, or loss in a report or statement to shareholders, partners, or other proprietors (or to beneficiaries), and
shall be taken into account in the same period that such compensation cost is recognized for such purpose.

“(2) Special rules for controlled groups.—The Secretary may prescribe rules for the application of paragraph (1) in cases where the stock option is granted by—

“(A) a parent or subsidiary corporation (within the meaning of section 424) of the taxpayer, or

“(B) another corporation.”.

(b) Consistent Treatment for Research Tax Credit.—Section 41(b)(2)(D) is amended by inserting at the end the following new clause:

“(iv) Special rule for stock options.—The amount which may be treated as wages for any taxable year in connection with the issuance of a stock option shall not exceed the amount allowed for such taxable year as a compensation deduction under section 162(q) with respect to such stock option.”.

(e) Application of Amendments.—The amendments made by this section shall apply to stock options
exercised after the date of the enactment of this Act, except that—

(1) such amendments shall not apply to stock options that were granted before such date and that vested in taxable periods beginning on or before June 15, 2005,

(2) for stock options that were granted before such date of enactment and vested during taxable periods beginning after June 15, 2005, and ending before such date of enactment, a deduction under section 162(q) of the Internal Revenue Code of 1986 (as added by subsection (a)(2)) shall be allowed in the first taxable period of the taxpayer that ends after such date of enactment,

(3) for public entities reporting as small business issuers and for non-public entities required to file public reports of financial condition, paragraphs (1) and (2) shall be applied by substituting “December 15, 2005” for “June 15, 2005”, and

(4) no deduction shall be allowed under section 83(h) or section 162(q) of such Code with respect to any stock option the vesting date of which is changed to accelerate the time at which the option may be exercised in order to avoid the applicability of such amendments.
SEC. 332. APPLICATION OF EXECUTIVE PAY DEDUCTION LIMIT.

(a) In General.—Subparagraph (D) of section 162(m)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

“(D) Stock option compensation.—

The term ‘applicable employee remuneration’ shall include any compensation deducted under subsection (q), and such compensation shall not qualify as performance-based compensation under subparagraph (C).”.

(b) Effective Date.—The amendment made by this section shall apply to stock options exercised or granted after the date of the enactment of this Act.

Subtitle C—Reduce Deduction of Corporate Meals and Entertainment

SEC. 341. REDUCTION IN BUSINESS MEALS AND ENTERTAINMENT TAX DEDUCTION.

(a) In General.—Section 274(n)(1) of the Internal Revenue Code of 1986 (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by striking “50 percent” and inserting “25 percent”.
(b) CONFORMING AMENDMENT.—Section 274(n) of the Internal Revenue Code of 1986 is amended by striking paragraph (3).

(c) CLERICAL AMENDMENT.—The heading for section 274(n) of the Internal Revenue Code of 1986 is amended by striking “ONLY 50 PERCENT” and inserting “ONLY 25 PERCENT”.

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

TITLE IV—CLOSE INTERNATIONAL TAX SYSTEM LOOPHOLES

Subtitle A—Reformation of U.S. International Tax System

SEC. 401. ALLOCATION OF EXPENSES AND TAXES ON BASIS OF REPATRIATION OF FOREIGN INCOME.

(a) IN GENERAL.—Part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after subpart G the following new subpart:

“Subpart H—Special Rules for Allocation of Foreign-Related Deductions and Foreign Tax Credits

Sec. 975. Deductions allocated to deferred foreign income may not offset United States source income.

Sec. 976. Amount of foreign taxes computed on overall basis.

Sec. 977. Application of subpart.
“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOREIGN INCOME MAY NOT OFFSET UNITED STATES SOURCE INCOME.

“(a) CURRENT YEAR DEDUCTIONS.—For purposes of this chapter, foreign-related deductions for any taxable year—

“(1) shall be taken into account for such taxable year only to the extent that such deductions are allocable to currently-taxed foreign income, and

“(2) to the extent not so allowed, shall be taken into account in subsequent taxable years as provided in subsection (b).

Foreign-related deductions shall be allocated to currently taxed foreign income in the same proportion which currently taxed foreign income bears to the sum of currently taxed foreign income and deferred foreign income.

“(b) DEDUCTIONS RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

“(1) IN GENERAL.—If there is repatriated foreign income for a taxable year, the portion of the previously deferred deductions allocated to the repatriated foreign income shall be taken into account for the taxable year as a deduction allocated to income from sources outside the United States. Any such amount shall not be included in foreign-related
deductions for purposes of applying subsection (a) to such taxable year.

“(2) Portion of previously deferred deductions.—For purposes of paragraph (1), the portion of the previously deferred deductions allocated to repatriated foreign income is—

“(A) the amount which bears the same proportion to such deductions, as

“(B) the repatriated income bears to the previously deferred foreign income.

“(c) Definitions and special rule.—For purposes of this section—

“(1) Foreign-related deductions.—The term ‘foreign-related deductions’ means the total amount of deductions and expenses which would be allocated or apportioned to gross income from sources without the United States for the taxable year if both the currently-taxed foreign income and deferred foreign income were taken into account.

“(2) Currently-taxed foreign income.—The term ‘currently-taxed foreign income’ means the amount of gross income from sources without the United States for the taxable year (determined without regard to repatriated foreign income for such year).
“(3) Deferred foreign income.—The term ‘deferred foreign income’ means the excess of—

“(A) the amount that would be includible in gross income under subpart F of this part for the taxable year if—

“(i) all controlled foreign corporations were treated as one controlled foreign corporation, and

“(ii) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952),

over

“(B) the sum of—

“(i) all dividends received during the taxable year from controlled foreign corporations, plus

“(ii) amounts includible in gross income under section 951(a).

“(4) Previously deferred foreign income.—The term ‘previously deferred foreign income’ means the aggregate amount of deferred foreign income for all prior taxable years to which this part applies, determined as of the beginning of the taxable year, reduced by the repatriated foreign income for all such prior taxable years.
“(5) Repatriated foreign income.—The term ‘repatriated foreign income’ means the amount included in gross income on account of distributions out of previously deferred foreign income.

“(6) Previously deferred deductions.—The term ‘previously deferred deductions’ means the aggregate amount of foreign-related deductions not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

“(7) Treatment of certain foreign taxes.—

“(A) Paid by controlled foreign corporation.—Section 78 shall not apply for purposes of determining currently-taxed foreign income and deferred foreign income.

“(B) Paid by taxpayer.—For purposes of determining currently-taxed foreign income, gross income from sources without the United States shall be reduced by the aggregate amount of taxes described in the applicable paragraph of section 901(b) which are paid by
the taxpayer (without regard to sections 902 and 960) during the taxable year.

“(8) COORDINATION WITH SECTION 976.—In determining currently-taxed foreign income and deferred foreign income, the amount of deemed foreign tax credits shall be determined with regard to section 976.

“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON OVERALL BASIS.

“(a) CURRENT YEAR ALLOWANCE.—For purposes of this chapter, the amount taken into account as foreign income taxes for any taxable year shall be an amount which bears the same ratio to the total foreign income taxes for that taxable year as—

“(1) the currently-taxed foreign income for such taxable year, bears to

“(2) the sum of the currently-taxed foreign income and deferred foreign income for such year.

The portion of the total foreign income taxes for any taxable year not taken into account under the preceding sentence for a taxable year shall only be taken into account as provided in subsection (b) (and shall not be taken into account for purposes of applying sections 902 and 960).

“(b) ALLOWANCE RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—
“(1) IN GENERAL.—If there is repatriated foreign income for any taxable year, the portion of the previously deferred foreign income taxes paid or accrued during such taxable year shall be taken into account for the taxable year as foreign taxes paid or accrued. Any such taxes so taken into account shall not be included in foreign income taxes for purposes of applying subsection (a) to such taxable year.

“(2) PORTION OF PREVIOUSLY DEFERRED FOREIGN INCOME TAXES.—For purposes of paragraph (1), the portion of the previously deferred foreign income taxes allocated to repatriated deferred foreign income is—

“(A) the amount which bears the same proportion to such taxes, as

“(B) the repatriated deferred income bears to the previously deferred foreign income.

“(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

“(1) PREVIOUSLY DEFERRED FOREIGN INCOME TAXES.—The term ‘previously deferred foreign income taxes’ means the aggregate amount of total foreign income taxes not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by
any amounts taken into account under subsection (b) for such prior taxable years.

“(2) TOTAL FOREIGN INCOME TAXES.—The term ‘total foreign income taxes’ means the sum of foreign income taxes paid or accrued during the taxable year (determined without regard to section 904(c)) plus the increase in foreign income taxes that would be paid or accrued during the taxable year under sections 902 and 960 if—

“(A) all controlled foreign corporations were treated as one controlled foreign corporation, and

“(B) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952).

“(3) FOREIGN INCOME TAXES.—The term ‘foreign income taxes’ means any income, war profits, or excess profits taxes paid by the taxpayer to any foreign country or possession of the United States.

“(4) CURRENTLY-TAXED FOREIGN INCOME AND DEFERRED FOREIGN INCOME.—The terms ‘currently-taxed foreign income’ and ‘deferred foreign income’ have the meanings given such terms by section 975(c)).
SEC. 977. APPLICATION OF SUBPART.

"This subpart—

(1) shall be applied before subpart A, and

(2) shall be applied separately with respect to
the categories of income specified in section
904(d)(1)."

(b) Clerical Amendment.—The table of subparts
for part III of subpart N of chapter 1 of such Code is
amended by inserting after the item relating to subpart
G the following new item:

"SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED
DEDUCTIONS AND FOREIGN TAX CREDITS."

(c) Effective Date.—The amendments made by
this section shall apply to taxable years beginning after
the date of the enactment of this Act.

SEC. 402. EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME.

(a) In General.—Subsection (a) of section 954 of
such Code is amended by inserting after paragraph (3)
the following new paragraph:

"(4) the foreign base company excess intangible
income for the taxable year (determined under sub-
section (f) and reduced as provided in subsection
(b)(5)), and".

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(b) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—Section 954 of such Code is amended by inserting after subsection (e) the following new subsection:

“(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—For purposes of subsection (a)(4) and this subsection:

“(1) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME DEFINED.—

“(A) IN GENERAL.—The term ‘foreign base company excess intangible income’ means, with respect to any covered intangible, the excess of—

“(i) the sum of—

“(I) gross income from the sale, lease, license, or other disposition of property in which such covered intangible is used directly or indirectly, and

“(II) gross income from the provision of services related to such covered intangible or in connection with property in which such covered intangible is used directly or indirectly, over

“(ii) 150 percent of the costs properly allocated and apportioned to the gross in-
come taken into account under clause (i) other than expenses for interest and taxes and any expenses which are not directly allocable to such gross income.

“(B) Same country income not taken into account.—If—

“(i) the sale, lease, license, or other disposition of the property referred to in subparagraph (A)(i)(I) is for use, consumption, or disposition in the country under the laws of which the controlled foreign corporation is created or organized, or

“(ii) the services referred to in subparagraph (A)(i)(II) are performed in such country,

the gross income from such sale, lease, license, or other disposition, or provision of services, shall not be taken into account under subparagraph (A)(i).

“(2) Exception based on effective foreign income tax rate.—

“(A) In general.—Foreign base company excess intangible income shall not include the applicable percentage of any item of income received by a controlled foreign corporation if the
taxpayer establishes to the satisfaction of the
Secretary that such income was subject to an
effective rate of income tax imposed by a for-

(B) **Applicable Percentage.**—For
pursposes of subparagraph (A), the term ‘appli-
cable percentage’ means the ratio (expressed as
a percentage), not greater than 100 percent, of—

(i) the number of percentage points
by which the effective rate of income tax
referred to in subparagraph (A) exceeds 5
percentage points, over

(ii) 10 percentage points.

(C) **Treatment of Losses in Determining Effective Rate of Foreign Income Tax.**—For purposes of determining the effective
rate of income tax imposed by any foreign
country—

(i) such effective rate shall be deter-
mined without regard to any losses carried
to the relevant taxable year, and

(ii) to the extent the income with re-
spect to such intangible reduces losses in
the relevant taxable year, such effective
rate shall be treated as being the effective rate which would have been imposed on such income without regard to such losses.

“(3) COVERED INTANGIBLE.—The term ‘covered intangible’ means, with respect to any controlled foreign corporation, any intangible property (as defined in section 936(h)(3)(B))—

“(A) which is sold, leased, licensed, or otherwise transferred (directly or indirectly) to such controlled foreign corporation from a related person, or

“(B) with respect to which such controlled foreign corporation and one or more related persons has (directly or indirectly) entered into any shared risk or development agreement (including any cost sharing agreement).

“(4) RELATED PERSON.—The term ‘related person’ has the meaning given such term in subsection (d)(3).”.

(e) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—Subsection (d) of section 904 of such Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

•HR 505 IH
'(6) Separate application to foreign base company excess intangible income.—

"(A) In general.—Subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each item of income which is taken into account under section 954(a)(4) as foreign base company excess intangible income.

"(B) Regulations.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph."

(d) Conforming Amendments.—

(1) Paragraph (4) of section 954(b) of such Code is amended by inserting "foreign base company excess intangible income described in subsection (a)(4) or" before "foreign base company oil-related income" in the last sentence thereof.

(2) Subsection (b) of section 954 of such Code is amended by adding at the end the following new paragraph:
“(7) Foreign base company excess intangible income not treated as another kind of base company income.—Income of a corporation which is foreign base company excess intangible income shall not be considered foreign base company income of such corporation under paragraph (2), (3), or (5) of subsection (a).”.

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 403. LIMITATIONS ON INCOME SHIFTING THROUGH INTANGIBLE PROPERTY TRANSFERS.

(a) Clarification of definition of intangible asset.—Clause (vi) of section 936(h)(3)(B) of such Code is amended by inserting “(including any section 197 intangible described in subparagraph (A), (B), or (C)(i) of subsection (d)(1) of such section)” after “item”.

(b) Clarification of allowable valuation methods.—

(1) Foreign corporations.—Paragraph (2) of section 367(d) of such Code is amended by adding at the end the following new subparagraph:

“(D) Regulatory authority.—For purposes of the last sentence of subparagraph (A), the Secretary may require—
“(i) the valuation of transfers of intangible property on an aggregate basis, or
“(ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,
in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.”.

(2) ALLOCATION AMONG TAXPAYERS.—Section 482 of such Code is amended by adding at the end the following: “For purposes of the preceding sentence, the Secretary may require the valuation of transfers of intangible property on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers in taxable years beginning after the date of the enactment of this Act.

(2) NO INFERENCE.—Nothing in the amendment made by subsection (a) shall be construed to
create any inference with respect to the application of section 936(h)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treasury to provide regulations for such application, on or before the date of the enactment of such amendment.

SEC. 404. LIMITATION ON EARNINGS STRIPPING BY EXPATRIATED ENTITIES.

(a) In General.—Subsection (j) of section 163 of such Code is amended—

(1) by redesignating paragraph (9) as paragraph (10), and

(2) by inserting after paragraph (8) the following new paragraph:

“(9) Special rules for expatriated entities.—

“(A) In general.—In the case of a corporation to which this subsection applies which is an expatriated entity, this subsection shall apply to such corporation with the following modifications:

“(i) Paragraph (2)(A) shall be applied without regard to clause (ii) thereof.

“(ii) Paragraph (1)(B) shall be applied—
“(I) without regard to the parenthetical, and
“(II) by substituting ‘in the 1st succeeding taxable year and in the 2nd through 10th succeeding taxable years to the extent not previously taken into account under this subparagraph’ for ‘in the succeeding taxable year’.
“(iii) Paragraph (2)(B) shall be applied—
“(I) without regard to clauses (ii) and (iii), and
“(II) by substituting ‘25 percent of the adjusted taxable income of the corporation for such taxable year’ for the matter of clause (i)(II) thereof.
“(B) EXPATRIATED ENTITY.—For purposes of this paragraph—
“(i) IN GENERAL.—With respect to a corporation and a taxable year, the term ‘expatriated entity’ has the meaning given such term by section 7874(a)(2), determined as if such section and the regulations under such section as in effect on the
first day of such taxable year applied to all taxable years of the corporation beginning after July 10, 1989.

“(ii) Exception for surrogates treated as a domestic corporation.—The term ‘expatriated entity’ does not include a surrogate foreign corporation which is treated as a domestic corporation by reason of section 7874(b).”.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 405. PREVENTION OF AVOIDANCE OF TAX THROUGH REINSURANCE WITH NON-TAXED AFFILIATES.

(a) In General.—Part III of subchapter L of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-LIFE CONTRACTS WITH NON-TAXED AFFILIATES.

“(a) In General.—The taxable income under section 831(a) or the life insurance company taxable income under section 801(b) (as the case may be) of an insurance company shall be determined by not taking into account—

“(1) any non-taxed reinsurance premium,
“(2) any additional amount paid by such insurance company with respect to the reinsurance for which such non-taxed reinsurance premium is paid, to the extent such additional amount is properly allocable to such non-taxed reinsurance premium, and

“(3) any return premium, ceding commission, reinsurance recovered, or other amount received by such insurance company with respect to the reinsurance for which such non-taxed reinsurance premium is paid, to the extent such return premium, ceding commission, reinsurance recovered, or other amount is properly allocable to such non-taxed reinsurance premium.

“(b) Non-Taxed Reinsurance Premiums.—For purposes of this section—

“(1) In general.—The term ‘non-taxed reinsurance premium’ means any reinsurance premium paid directly or indirectly to an affiliated corporation with respect to reinsurance of risks (other than excepted risks), to the extent that the income attributable to the premium is not subject to tax under this subtitle (either as the income of the affiliated corporation or as amounts included in gross income by a United States shareholder under section 951).
“(2) EXCEPTED RISKS.—The term ‘excepted risks’ means any risk with respect to which reserves described in section 816(b)(1) are established.

“(c) AFFILIATED CORPORATIONS.—For purposes of this section, a corporation shall be treated as affiliated with an insurance company if both corporations would be members of the same controlled group of corporations (as defined in section 1563(a)) if section 1563 were applied—

“(1) by substituting ‘at least 50 percent’ for ‘at least 80 percent’ each place it appears in subsection (a)(1), and

“(2) without regard to subsections (a)(4), (b)(2)(C), (b)(2)(D), and (e)(3)(C).

“(d) ELECTION TO TREAT REINSURANCE INCOME AS EFFECTIVELY CONNECTED.—

“(1) IN GENERAL.—A specified affiliated corporation may elect for any taxable year to treat specified reinsurance income as—

“(A) income effectively connected with the conduct of a trade or business in the United States, and

“(B) for purposes of any treaty between the United States and any foreign country, income attributable to a permanent establishment in the United States.
“(2) Effect of election.—In the case of any specified reinsurance income with respect to which the election under this subsection applies—

“(A) Deduction allowed for reinsurance premiums.—For exemption from subsection (a), see definition of non-taxed reinsurance premiums in subsection (b).

“(B) Exception from excise tax.—The tax imposed by section 4371 shall not apply with respect to any income treated as effectively connected with the conduct of a trade or business in the United States under paragraph (1).

“(C) Taxation under this subchapter.—Such income shall be subject to tax under this subchapter to the same extent and in the same manner as if such income were the income of a domestic insurance company.

“(D) Coordination with foreign tax credit provisions.—For purposes of subpart A of part III of subchapter N and sections 78 and 960—

“(i) such specified reinsurance income shall be treated as derived from sources without the United States, and
“(ii) subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to each item of such income.

The Secretary may issue regulations or other guidance which provide that related items of specified reinsurance income may be aggregated for purposes of applying clause (ii).

“(3) SPECIFIED AFFILIATED CORPORATION.—For purposes of this subsection, the term ‘specified affiliated corporation’ means any affiliated corporation which is a foreign corporation and which meets such requirements as the Secretary shall prescribe to ensure that tax on the specified reinsurance income of such corporation is properly determined and paid.

“(4) SPECIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term ‘specified reinsurance income’ means all income of a specified affiliated corporation which is attributable to reinsurance with respect to which subsection (a) would (but for the election under this subsection) apply.

“(5) RULES RELATED TO ELECTION.—Any election under paragraph (1) shall—
“(A) be made at such time and in such form and manner as the Secretary may provide, and

“(B) apply for the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

“(e) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be appropriate to carry out, or to prevent the avoidance of the purposes of, this section, including regulations or other guidance which provide for the application of this section to alternative reinsurance transactions, fronting transactions, conduit and reciprocal transactions, and any economically equivalent transactions.”.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter L of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 849. Special rules for reinsurance of non-life contracts with non-taxed affiliates.”.

(e) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2012.
Subtitle B—Reinsurance

SEC. 411. PREVENTION OF AVOIDANCE OF TAX THROUGH REINSURANCE WITH NON-TAXED AFFILIATES.

(a) In General.—Part III of subchapter L of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

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“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-LIFE CONTRACTS WITH NON-TAXED AFFILIATES.

“(a) In General.—The taxable income under section 831(a) or the life insurance company taxable income under section 801(b) (as the case may be) of an insurance company shall be determined by not taking into account—

“(1) any non-taxed reinsurance premium,

“(2) any additional amount paid by such insurance company with respect to the reinsurance for which such non-taxed reinsurance premium is paid, to the extent such additional amount is properly allocable to such non-taxed reinsurance premium, and

“(3) any return premium, ceding commission, reinsurance recovered, or other amount received by such insurance company with respect to the reinsurance for which such non-taxed reinsurance premium is paid, to the extent such return premium, ceding commission, reinsurance recovered, or other amount
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is properly allocable to such non-taxed reinsurance
premium.

“(b) NON-TAXED REINSURANCE PREMIUMS.—For
purposes of this section—

“(1) IN GENERAL.—The term ‘non-taxed rein-
surance premium’ means any reinsurance premium
paid directly or indirectly to an affiliated corporation
with respect to reinsurance of risks (other than ex-
cepted risks), to the extent that the income attrib-
utable to the premium is not subject to tax under
this subtitle (either as the income of the affiliated
corporation or as amounts included in gross income
by a United States shareholder under section 951).

“(2) EXCEPTED RISKS.—The term ‘excepted
risks’ means any risk with respect to which reserves
described in section 816(b)(1) are established.

“(c) AFFILIATED CORPORATIONS.—For purposes of
this section, a corporation shall be treated as affiliated
with an insurance company if both corporations would be
members of the same controlled group of corporations (as
defined in section 1563(a)) if section 1563 were applied—

“(1) by substituting ‘at least 50 percent’ for ‘at
least 80 percent’ each place it appears in subsection
(a)(1), and
“(2) without regard to subsections (a)(4),
(b)(2)(C), (b)(2)(D), and (e)(3)(C).

“(d) ELECTION TO TREAT REINSURANCE INCOME AS
EFFECTIVELY CONNECTED.—

“(1) IN GENERAL.—A specified affiliated cor-
poration may elect for any taxable year to treat
specified reinsurance income as—

“(A) income effectively connected with the
conduct of a trade or business in the United
States, and

“(B) for purposes of any treaty between
the United States and any foreign country, in-
come attributable to a permanent establishment
in the United States.

“(2) EFFECT OF ELECTION.—In the case of
any specified reinsurance income with respect to
which the election under this subsection applies—

“(A) DEDUCTION ALLOWED FOR REINSUR-
ANCE PREMIUMS.—For exemption from sub-
section (a), see definition of non-taxed reinsur-
ance premiums in subsection (b).

“(B) EXCEPTION FROM EXCISE TAX.—The
tax imposed by section 4371 shall not apply
with respect to any income treated as effectively
connected with the conduct of a trade or busi-
ness in the United States under paragraph (1).

“(C) Taxation under this sub-
chapter.—Such income shall be subject to tax
under this subchapter to the same extent and
in the same manner as if such income were the
income of a domestic insurance company.

“(D) Coordination with foreign tax
credit provisions.—For purposes of subpart
A of part III of subchapter N and sections 78
and 960—

“(i) such specified reinsurance income
shall be treated as derived from sources
without the United States, and

“(ii) subsections (a), (b), and (c) of
section 904 and sections 902, 907, and
960 shall be applied separately with re-
spect to each item of such income.

The Secretary may issue regulations or other
guidance which provide that related items of
specified reinsurance income may be aggregated
for purposes of applying clause (ii).

“(3) Specified affiliated corporation.—
For purposes of this subsection, the term ‘specified
affiliated corporation’ means any affiliated corpora-
tion which is a foreign corporation and which meets
such requirements as the Secretary shall prescribe to
ensure that tax on the specified reinsurance income
of such corporation is properly determined and paid.

“(4) Specified reinsurance income.—For
purposes of this paragraph, the term ‘specified rein-
surance income’ means all income of a specified af-
iliated corporation which is attributable to reinsur-
ance with respect to which subsection (a) would (but
for the election under this subsection) apply.

“(5) Rules related to election.—Any
election under paragraph (1) shall—

“(A) be made at such time and in such
form and manner as the Secretary may provide,
and

“(B) apply for the taxable year for which
made and all subsequent taxable years unless
revoked with the consent of the Secretary.

“(e) Regulations.—The Secretary shall prescribe
such regulations or other guidance as may be appropriate
to carry out, or to prevent the avoidance of the purposes
of, this section, including regulations or other guidance
which provide for the application of this section to alter-
native reinsurance transactions, fronting transactions,
conduit and reciprocal transactions, and any economically equivalent transactions.”.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter L of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 849. Special rules for reinsurance of non-life contracts with non-taxed affiliates.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2012.

Subtitle C—Close Loophole for Corporate Jet Depreciation

SEC. 421. GENERAL AVIATION AIRCRAFT TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) of the Internal Revenue Code of 1986 (relating to classification of certain property) is amended by striking “and” at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

“(v) any general aviation aircraft, and”.

(b) CLASS LIFE.—Paragraph (3) of section 168(g) Internal Revenue Code of 1986 is amended by inserting after subparagraph (E) the following new subparagraph:

“(F) General aviation aircraft. In the case of any general aviation aircraft, the recovery
period used for purposes of paragraph (2) shall be 12 years.”.

(c) General Aviation Aircraft.—Subsection (i) of section 168 Internal Revenue Code of 1986 is amended by inserting after paragraph (19) the following new paragraph:

“(20) General Aviation Aircraft.—The term ‘general aviation aircraft’ means any airplane or helicopter (including airframes and engines) not used in commercial or contract carrying of passengers or freight, but which primarily engages in the carrying of passengers.”.

(d) Effective Date.—This section shall be effective for property placed in service after December 31, 2012.

TITLE V—CLOSE ESTATE TAX LOOPHOLES

SEC. 501. VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS; LIMITATION ON MINORITY DISCOUNTS.

(a) In General.—Section 2031 of the Internal Revenue Code of 1986 is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (e) the following new subsections:
“(d) Valuation Rules for Certain Transfers of Nonbusiness Assets.—For purposes of this chapter and chapter 12—

“(1) In General.—In the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092)—

“(A) the value of any nonbusiness assets held by the entity shall be determined as if the transferor had transferred such assets directly to the transferee (and no valuation discount shall be allowed with respect to such nonbusiness assets), and

“(B) the nonbusiness assets shall not be taken into account in determining the value of the interest in the entity.

“(2) Nonbusiness Assets.—For purposes of this subsection—

“(A) In General.—The term ‘nonbusiness asset’ means any asset which is not used in the active conduct of 1 or more trades or businesses.

“(B) Exception for Certain Passive Assets.—Except as provided in subparagraph (C), a passive asset shall not be treated for pur-
poses of subparagraph (A) as used in the active conduct of a trade or business unless—

“(i) the asset is property described in paragraph (1) or (4) of section 1221(a) or is a hedge with respect to such property, or

“(ii) the asset is real property used in the active conduct of 1 or more real property trades or businesses (within the meaning of section 469(c)(7)(C)) in which the transferor materially participates and with respect to which the transferor meets the requirements of section 469(c)(7)(B)(ii).

For purposes of clause (ii), material participation shall be determined under the rules of section 469(h), except that section 469(h)(3) shall be applied without regard to the limitation to farming activity.

“(C) EXCEPTION FOR WORKING CAPITAL.—Any asset (including a passive asset) which is held as a part of the reasonably required working capital needs of a trade or business shall be treated as used in the active conduct of a trade or business.
“(3) Passive asset.—For purposes of this subsection, the term ‘passive asset’ means any—

“(A) cash or cash equivalents,

“(B) except to the extent provided by the Secretary, stock in a corporation or any other equity, profits, or capital interest in any entity,

“(C) evidence of indebtedness, option, forward or futures contract, notional principal contract, or derivative,

“(D) asset described in clause (iii), (iv), or (v) of section 351(e)(1)(B),

“(E) annuity,

“(F) real property used in 1 or more real property trades or businesses (as defined in section 469(e)(7)(C)),

“(G) asset (other than a patent, trademark, or copyright) which produces royalty income,

“(H) commodity,

“(I) collectible (within the meaning of section 401(m)), or

“(J) any other asset specified in regulations prescribed by the Secretary.

“(4) Look-thru rules.—
“(A) IN GENERAL.—If a nonbusiness asset of an entity consists of a 10-percent interest in any other entity, this subsection shall be applied by disregarding the 10-percent interest and by treating the entity as holding directly its ratable share of the assets of the other entity. This subparagraph shall be applied successively to any 10-percent interest of such other entity in any other entity.

“(B) 10-PERCENT INTEREST.—The term ‘10-percent interest’ means—

“(i) in the case of an interest in a corporation, ownership of at least 10 percent (by vote or value) of the stock in such corporation,

“(ii) in the case of an interest in a partnership, ownership of at least 10 percent of the capital or profits interest in the partnership, and

“(iii) in any other case, ownership of at least 10 percent of the beneficial interests in the entity.

“(C) EXCEPTION FOR ACTIVELY TRADED INTERESTS.—Subparagraph (A) shall not apply to any nonbusiness asset which consists of an
interest which is actively traded (within the
meaning of section 1092).

“(5) COORDINATION WITH SUBSECTION (b).—
Subsection (b) shall apply after the application of
this subsection.

“(e) LIMITATION ON MINORITY DISCOUNTS.—For
purposes of this chapter and chapter 12, in the case of
the transfer of any interest in an entity other than an in-
terest which is actively traded (within the meaning of sec-
tion 1092), no discount shall be allowed by reason of the
fact that the transferee does not have control of such enti-
ty if the transferee and members of the family (as defined
in section 2032A(e)(2)) of the transferee have control of
such entity (determined immediately after such trans-
fer).”.

(b) EFFECTIVE DATE.—The amendments made by
this section shall apply to transfers after the date of the
enactment of this Act.

SEC. 502. CONSISTENT BASIS REPORTING BETWEEN ES-
TATE AND PERSON ACQUIRING PROPERTY
FROM DECEDEDENT.

(a) CONSISTENT USE OF BASIS.—

(1) PROPERTY ACQUIRED FROM A DECE-
DENT.—Section 1014 of the Internal Revenue Code
of 1986 is amended by adding at the end the fol-
lowing new subsection:

“(f) **Basis Must Be Consistent With Estate Tax Return.**—

“(1) **In General.**—For purposes of this sec-
tion, the value used to determine the basis of any in-
terest in property in the hands of the person acquir-
ning such property shall not exceed the value of such
interest as finally determined for purposes of chap-
ter 11.

“(2) **Special Rule Where No Final Determination.**—In any case in which the final value of
property has not been determined under chapter 11
and there has been a statement furnished under sec-
tion 6035(a), the value used to determine the basis
of any interest in property in the hands of the per-
son acquiring such property shall not exceed the
amount reported on any statement furnished under
section 6035(a).

“(3) **Regulations.**—The Secretary may by
regulations provide exceptions to the application of
this subsection.”.

(2) **Property Acquired by Gifts and Transfers in Trust.**—Section 1015 of the Inter-
nal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) Basis Must Be Consistent Gift Tax Return.—

“(1) In General.—For purposes of this section, the value used to determine the basis of any interest in property in the hands of the person acquiring such property shall not exceed the value of such interest as finally determined for purposes of chapter 12.

“(2) Special Rule Where No Final Determination.—In any case in which the final value of property has not been determined under chapter 12 and there has been a statement furnished under section 6035(b), the value used to determine the basis of any interest in property in the hands of the person acquiring such property shall not exceed the amount reported on any statement furnished under section 6035(b).

“(3) Regulations.—The Secretary may by regulations provide exceptions to the application of this subsection.”.

(b) Information Reporting.—

(1) In General.—Subpart A of part III of subchapter A of chapter 61 of the Internal Revenue
Code of 1986 is amended by inserting after section 6034A the following new section:

“SEC. 6035. BASIS INFORMATION TO PERSONS ACQUIRING PROPERTY FROM DECEdent OR BY GIFT.

“(a) INFORMATION WITH RESPECT TO PROPERTY ACQUIRED FROM DECEdENTS.—

“(1) IN GENERAL.—The executor of any estate required to file a return under section 6018(a) shall furnish to the Secretary and to each person acquiring any interest in property included in the decedent’s gross estate for Federal estate tax purposes a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

“(2) STATEMENTS BY BENEFICIARIES.—Each person required to file a return under section 6018(b) shall furnish to the Secretary and to each other person who holds a legal or beneficial interest in the property to which such return relates a statement identifying the information described in paragraph (1).

“(3) TIME FOR FURNISHING STATEMENT.—

“(A) IN GENERAL.—Each statement required to be furnished under paragraph (1) or
(2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of—

“(i) the date which is 30 days after the date on which the return under section 6018 was required to be filed (including extensions, if any), or

“(ii) the date which is 30 days after the date such return is filed.

“(B) Adjustments.—In any case in which there is an adjustment to the information required to be included on a statement filed under paragraph (1) or (2) after such statement has been filed, a supplemental statement under such paragraph shall be filed not later than the date which is 30 days after such adjustment is made.

“(b) Information With Respect to Property Acquired by Gift.—

“(1) In general.—Each person making a transfer by gift who is required to file a return under section 6019 with respect to such transfer shall furnish to the Secretary and to each person acquiring any interest in property by reason of such transfer a statement identifying the value of each in-
terest in such property as reported on such return and such other information with respect to such in-
terest as the Secretary may prescribe.

“(2) TIME FOR FURNISHING STATEMENT.—

“(A) IN GENERAL.—Each statement re-
quired to be furnished under paragraph (1) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of—

“(i) the date which is 30 days after
the date on which the return under section
6019 was required to be filed (including
extensions, if any), or

“(ii) the date which is 30 days after
the date such return is filed.

“(B) ADJUSTMENTS.—In any case in which there is an adjustment to the information required to be included on a statement filed under paragraph (1) after such statement has been filed, a supplemental statement under such paragraph shall be filed not later than the date which is 30 days after such adjustment is made.
“(c) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out this section, including regulations relating to—

“(1) the application of this section to property with regard to which no estate or gift tax return is required to be filed, and

“(2) situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or fair market value of the property.”.

(2) PENALTY FOR FAILURE TO FILE.—

(A) RETURN.—Section 6724(d)(1) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting “, and”, and by adding at the end the following new subparagraph:

“(D) any statement required to be filed with the Secretary under section 6035.”.

(B) STATEMENT.—Section 6724(d)(2) of such Code is amended by striking “or” at the end of subparagraph (GG), by striking the period at the end of subparagraph (HH) and inserting “, or”, and by adding at the end the following new subparagraph:
“(II) section 6035 (other than a statement
described in paragraph (1)(D)).”.

(3) CLERICAL AMENDMENT.—The table of sec-
tions for subpart A of part III of subchapter A of
chapter 61 of the Internal Revenue Code of 1986 is
amended by inserting after the item relating to sec-
tion 6034A the following new item:

“Sec. 6035. Basis information to persons acquiring property from decedent or
by gift.”.

(c) PENALTY FOR INCONSISTENT REPORTING.—

(1) IN GENERAL.—Subsection (b) of section
6662 of the Internal Revenue Code of 1986 is
amended by inserting after paragraph (7) the fol-
lowing new paragraph:

“(8) Any inconsistent estate or gift basis.”.

(2) INCONSISTENT BASIS REPORTING.—Section
6662 of such Code is amended by adding at the end
the following new subsection:

“(k) INCONSISTENT ESTATE OR GIFT BASIS RE-
PORTING.—For purposes of this section, the term ‘incon-
sistent estate or gift basis’ means the portion of the under-
statement which is attributable to—

“(1) in the case of property acquired from a de-
cedent, a basis determination with respect to such
property which is not consistent with the value of
such property as determined under section 1014(f),
and
“(2) in the case of property acquired by gift, a
basis determination with respect to such property
which is not consistent with the value of such prop-
erty as determined under section 1015(f).”.
(d) Effective Date.—The amendments made by
this section shall apply to transfers for which returns are
filed after the date of the enactment of this Act.

SEC. 503. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR
GRANTOR RETAINED ANNUITY TRUSTS.
(a) In General.—Subsection (b) of section 2702 of
the Internal Revenue Code of 1986 is amended—
(1) by redesignating paragraphs (1), (2) and
(3) as subparagraphs (A), (B), and (C), respectively,
and by moving such subparagraphs (as so redesign-
nated) 2 ems to the right;
(2) by striking “For purposes of” and inserting
the following:
“(1) In General.—For purposes of”;
(3) by striking “paragraph (1) or (2)” in para-
graph (1)(C) (as so redesignated) and inserting
“subparagraph (A) or (B)” ; and
(4) by adding at the end the following new
paragraph:
“(2) ADDITIONAL REQUIREMENTS WITH RESPECT TO GRANTOR RETAINED ANNUITIES.—For purposes of subsection (a), in the case of an interest described in paragraph (1)(A) (determined without regard to this paragraph) which is retained by the transferor, such interest shall be treated as described in such paragraph only if—

“(A) the right to receive the fixed amounts referred to in such paragraph is for a term of not less than 10 years,

“(B) such fixed amounts, when determined on an annual basis, do not decrease relative to any prior year during the first 10 years of the term referred to in subparagraph (A), and

“(C) the remainder interest has a value greater than zero determined as of the time of the transfer.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after the date of the enactment of this Act.

SEC. 504. LIMITATION ON GST EXEMPTION OF PERPETUAL DYNASTY TRUSTS.

(a) IN GENERAL.—Section 2642 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:
“(h) Expiration of GST Exemption 90 Years After Establishment of Trust.—

“(1) In general.—In the case of any generation-skipping transfer made from a trust after the date which is 90 years after the date on which such trust is created, the inclusion ratio with respect to any property transferred in such transfer shall be 1.

“(2) Special rules.—For purposes of this subsection—

“(A) Date of creation of certain deemed separate trusts.—In the case of any portion of a trust which is treated as a separate trust under section 2654(b)(1), such separate trust shall be treated as created on the date of the first transfer described in such section with respect to such separate trust.

“(B) Date of creation of pour-over trusts.—In the case of any generation-skipping transfer of property which involves the transfer of property from 1 trust to another trust, the date of the creation of the transferee trust shall be treated as being the earlier of—

“(i) the date of the creation of such transferee trust, or
“(ii) the date of the creation of the transferor trust.

In the case of multiple transfers to which the preceding sentence applies, the date of the creation of the transferor trust shall be determined under the preceding sentence before the application of the preceding sentence to determine the date of the creation of the transferee trust.

“(C) Exception for certain transfers for education and medical expenses.—Subparagraph (B) shall not apply to the transfer of property from 1 trust to another trust if—

“(i) such transfer is described in section 2642(c)(2), and

“(ii) the individual referred to in such section with respect to the transferee trust was also a beneficiary of the transferor trust.

“(3) Regulations.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this subsection.”.

(b) Effective Date.—
(1) IN GENERAL.—The amendments made this section shall apply to—

(A) trusts created after the date of the enactment of this Act, and

(B) generation-skipping transfers made from trusts created on or before such date, but only to the extent such transfer is made out of corpus added to the trust after such date (or out of income attributable to corpus so added).

(2) DETERMINATION OF DATE OF CREATION.—For purposes of this subsection, the rules of sections 2642(h)(2) (as added by this section) and 2654(b) of the Internal Revenue Code of 1986 shall apply for purposes of determining the date of the creation of any trust.

(3) EXCEPTIONS.—The Secretary of the Treasury, or his designee, shall issue regulations or other guidance which provide exceptions to the application of the amendments made by this section which are substantially similar to the relevant exceptions under paragraph (2) of section 1433(b) of the Tax Reform Act of 1986.
TITLE VI—CUT PENTAGON WASTE TO ACHIEVE BALANCE
Subtitle A—Smarter Approach to Nuclear Expenditures

SEC. 601. SHORT TITLE.
This title may be cited as the “Smarter Approach to Nuclear Expenditures Act”.

SEC. 602. FINDINGS.
Congress finds the following:

(1) The Berlin Wall fell in 1989, the U.S.S.R. no longer exists, and the Cold War is over. The nature of threats to the national security and military interests of the United States has changed. However, the United States continues to maintain an enormous arsenal of nuclear weapons and delivery systems that were devised with the Cold War in mind.

(2) The current nuclear arsenal of the United States includes approximately 5,000 total nuclear warheads, of which approximately 2,000 are deployed with three delivery components: long-range strategic bomber aircraft, land-based intercontinental ballistic missiles, and submarine-launched ballistic missiles. The bomber fleet of the United States comprises 93 B–52 and 20 B–2 aircraft. The
United States maintains 450 intercontinental ballistic missiles. The United States also maintains 14 Ohio-class submarines, up to 12 of which are deployed at sea. Each of these submarines is armed with up to 96 independently targetable nuclear warheads.

(3) This Cold War-based approach to nuclear security comes at significant cost. Over the next 10 years, the United States will spend hundreds of billions of dollars maintaining its nuclear force. A substantial decrease in the nuclear arsenal of the United States is prudent for both the budget and national security.

(4) The national security interests of the United States can be well served by reducing the total number of deployed nuclear warheads and their delivery systems, as suggested by the Department of Defense’s January 2012 strategic guidance titled “Sustaining U.S. Global Leadership: Priorities for 21st Century Defense”. Furthermore, a number of arms control, nuclear, and national security experts have urged the United States to reduce the number of deployed nuclear warheads to no more than 1,000.
(5) Economic security and national security are linked and both will be well served by smart defense spending. Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, stated on June 24, 2010, that “Our national debt is our biggest national security threat” and on August 2, 2011, stated that “I haven’t changed my view that the continually increasing debt is the biggest threat we have to our national security.”

(6) The Government Accountability Office has found that there is significant waste in the construction of the nuclear facilities of the National Nuclear Security Administration of the Department of Energy.

SEC. 603. REDUCTION IN NUCLEAR FORCES.

(a) Prohibition on Use of B–2 and B–52 Aircraft for Nuclear Missions.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended to arm a B–2 or B–52 aircraft with a nuclear weapon.

(b) Prohibition on New Long-Range Penetrating Bomber Aircraft.—Notwithstanding any other provision of law, none of the funds authorized to
be appropriated or otherwise made available for any of fiscal years 2014 through 2024 for the Department of Defense may be obligated or expended for the research, development, test, and evaluation or procurement of a long-range penetrating bomber aircraft.

(c) **Prohibition on F–35 Nuclear Mission.**—

Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense or the Department of Energy may be used to make the F–35 Joint Strike Fighter aircraft capable of carrying nuclear weapons.

(d) **Termination of B61 LEP.**—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense or the Department of Energy may be obligated or expended for the B61 life extension program.

(e) **Termination of W78 LEP.**—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense or the Department of Energy may be obligated or expended for the W78 life extension program.
(f) **Reduction of Nuclear-Armed Submarines.**—Notwithstanding any other provision of law, beginning in fiscal year 2014, the forces of the Navy shall include not more than eight operational ballistic-missile submarines available for deployment.

(g) **Limitation on SSBN–X Submarines.**—Notwithstanding any other provision of law—

1. none of the funds authorized to be appropriated or otherwise made available for any of fiscal years 2014 through 2024 for the Department of Defense may be obligated or expended for the procurement of an SSBN–X submarine; and

2. none of the funds authorized to be appropriated or otherwise made available for fiscal year 2025 or any fiscal year thereafter for the Department of Defense may be obligated or expended for the procurement of more than eight such submarines.

(h) **Reduction of ICBMs.**—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended to maintain more than 200 intercontinental ballistic missiles.
(i) Reduction of SLBMs.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended to maintain more than 250 submarine-launched ballistic missiles.

(j) Prohibition on New ICBM.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended for the research, development, test, and evaluation or procurement of a new intercontinental ballistic missile.

(k) Termination of MOX Fuel Plant Project.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense or the Department of Energy may be obligated or expended for the Mixed Oxide (MOX) Fuel Fabrication Facility project.

(l) Termination of CMRR Project.—Notwithstanding section 4215 of the Atomic Energy Defense Act or any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department
of Defense or the Department of Energy may be obligated
or expended for the Chemistry and Metallurgy Research
Replacement nuclear facility.

(m) TERMINATION OF UPF.—Notwithstanding any
other provision of law, none of the funds authorized to
be appropriated or otherwise made available for fiscal year
2014 or any fiscal year thereafter for the Department of
Defense or the Department of Energy may be obligated
or expended for the Uranium Processing Facility located
at the Y–12 National Security Complex.

(n) TERMINATION OF MEADS.—Notwithstanding
any other provision of law, none of the funds authorized
to be appropriated or otherwise made available for fiscal
year 2014 or any fiscal year thereafter for the Department
of Defense may be obligated or expended for the medium
extended air defense system.

SEC. 604. REPORTS REQUIRED.

(a) INITIAL REPORT.—Not later than 180 days after
the date of the enactment of this Act, the Secretary of
Defense and the Secretary of Energy shall jointly submit
to the appropriate committees of Congress a report out-
lining the plan of each Secretary to carry out section 603.

(b) ANNUAL REPORT.—Not later than March 1,
2014, and each year thereafter, the Secretary of Defense
and the Secretary of Energy shall jointly submit to the
appropriate committees of Congress a report outlining the
plan of each Secretary to carry out section 603, including
any updates to previously submitted reports.

(c) ANNUAL NUCLEAR WEAPONS ACCOUNTING.—Not later than September 30, 2014, and each year thereafter, the President shall transmit to the appropriate committees of Congress a report containing a comprehensive accounting by the Director of the Office of Management and Budget of the amounts obligated and expended by the Federal Government for each nuclear weapon and related nuclear program during—

(1) the fiscal year covered by the report; and

(2) the life cycle of such weapon or program.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Committee on Energy and Natural Resources of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Natural Resources of the House of Representatives.
Subtitle B—Limiting Excessive Contractor Compensation

SEC. 611. LIMITATION ON ALLOWABLE COMPENSATION COSTS.

(a) LIMITATION.—

(1) CIVILIAN CONTRACTS.—Section 4304(a)(16) of title 41, United States Code, is amended to read as follows:

“(16) Costs of compensation of contractor and subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the rate payable for level I of the Executive Schedule under section 5312 of title 5.”.

(2) DEFENSE CONTRACTS.—Section 2324(e)(1)(P) of title 10, United States Code, is amended to read as follows:

“(P) Costs of compensation of contractor and subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the rate payable for level I of the Executive Schedule under section 5312 of title 5.”.

(b) CONFORMING AMENDMENTS.—
(1) In general.—Section 1127 of title 41, United States Code, is hereby repealed.

(2) Clerical amendment.—The table of sections at the beginning of chapter 11 of title 41, United States Code, is amended by striking the item relating to section 1127.

Subtitle C—Relocate Troops From Europe to the United States

Sec. 615. Relocation to United States Military Installations of Members of the United States Armed Forces Assigned to Permanent Duty in Europe.

(a) Relocation required.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall complete the relocation to military installations in the United States of at least 10,000 members of the Armed Forces of the United States who, as of the date of the enactment of this Act, are assigned to permanent duty ashore in Europe. The members relocated shall not be replaced by the assignment of other members of the Armed Forces of the United States to permanent duty ashore in Europe.

(b) Exclusion of certain members.—For purposes of complying with this section, the Secretary of Defense shall not select members of the Armed Forces per-
forming the following assignments for relocation to the United States:

(1) Members assigned to permanent duty ashore in Iceland, Greenland, and the Azores.

(2) Members performing duties in Europe for more than 179 days under a military-to-military contact program under section 168 of title 10, United States Code.

(e) Exceptions; Waiver.—This section shall not apply in the event of a declaration of war or an armed attack on any European member nation of the North Atlantic Treaty Organization. The President may waive operation of this section if the President declares an emergency and immediately informs the Congress of the waiver and the reasons therefor.

(d) Conforming Amendment to Permanent Ceiling on United States Military Presence in Europe.—Section 1002(c)(1) of the Department of Defense Authorization Act, 1985 (22 U.S.C. 1928 note) is amended by striking “100,000” and inserting “60,000”.
Subtitle D—Additional Reduction in Armed Forces End Strength Levels

SEC. 621. ADDITIONAL ARMY AND MARINE CORPS END STRENGTH REDUCTIONS THROUGH RETIREMENT AND SEPARATION.

(a) ARMY.—In addition to the reductions in end strength levels of active duty members of the Army otherwise required to be achieved during fiscal years 2013 through 2017, the Secretary of the Army shall reduce the end strength numbers for active duty personnel as of the end of fiscal year 2017 by an additional 20,000.

(b) MARINE CORPS.—In addition to the reductions in end strength levels of active duty members of the Marine Corps otherwise required to be achieved during fiscal years 2013 through 2017, the Secretary of the Navy shall reduce the end strength numbers for active duty personnel as of the end of fiscal year 2017 by an additional 7,000.

(c) METHODS OF ACHIEVING REDUCTIONS.—To achieve the personnel reductions required by subsections (a) and (b), the Secretary of the Army and the Secretary of the Navy shall rely on the retirement and separation of members of the Army and Marine Corps, including as a result of the use of enhanced selective early retirement boards and early discharges under section 638a of title...
Subtitle E—Procurement of Certain Submarines, Carriers, and Aircraft

SEC. 631. LIMITATION ON PROCUREMENT OF VIRGINIA CLASS SUBMARINES.

Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal years 2014 through 2024 for the Department of Defense may be obligated or expended to procure more than one Virginia class submarine per fiscal year.

SEC. 632. LIMITATION ON PROCUREMENT OF ONE FORD CLASS AIRCRAFT CARRIER.

(a) LIMITATION.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended to procure the Ford class aircraft carrier designated CVN–80.

(b) EFFECT ON REQUIREMENT FOR 11 OPERATIONAL AIRCRAFT CARRIERS.—Subsection (a) applies even in the event that the number of operational aircraft
SEC. 633. AUTHORITY FOR PROCUREMENT OF F/A–18E AND F/A–18F AIRCRAFT.

(a) REPLACEMENT OF PLANNED PROCUREMENT OF F–35C AIRCRAFT.—

(1) LIMITATION ON PROCUREMENT.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended to procure the 237 F–35C aircraft that the Secretary of the Navy planned to procure as of the date on which the budget of the President was submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2013.

(2) AUTHORITY FOR PROCUREMENT.—Of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense, the Secretary of the Navy may procure not more than a total of 240 F/A–18E and F/A–18F aircraft.
(b) Replacement of Procurement of F–35B Aircraft.—

(1) Limitation on procurement.—Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended to procure more than 200 F–35B aircraft.

(2) Authority for procurement.—Of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense, the Secretary of the Navy may procure not more than a total of 220 F/A–18E and F/A–18F aircraft.


Notwithstanding any other provision of law, none of the funds authorized to be appropriated or otherwise made available for fiscal year 2014 or any fiscal year thereafter for the Department of Defense may be obligated or expended for the procurement of V–22 Osprey aircraft.
Subtitle F—Limit Military Bands

SEC. 641. LIMITATION ON EXPENDITURES FOR MILITARY MUSICAL UNITS.

Amounts expended for any fiscal year for military musical units (as defined in section 974 of title 10, United States Code) may not exceed $200,000,000.

Subtitle G—Reduction in Number of General and Flag Officers

SEC. 651. RETURN OF MAXIMUM NUMBER OF GENERAL AND FLAG OFFICERS TO COLD WAR LEVELS.

Section 526 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(i) ADDITIONAL LIMITATION STATED AS RATIO OF MEMBERS ON ACTIVE DUTY.—Notwithstanding any other provision of this section, the number of general officers on active duty in the Army, Air Force, or Marine Corps, and the number of flag officers on active duty in the Navy, may not exceed six general officers or flag officers for each 10,000 members of that armed force on active duty.”.

Subtitle H—Audit the Pentagon

SEC. 661. PURPOSES.

The purposes of this subtitle are as follows:

(1) To strengthen American national security by ensuring that—
(A) military planning, operations, weapons
development, and a long-term national security
strategy are connected to sound financial con-
trols; and

(B) defense dollars are spent efficiently.

(2) To instill a culture of accountability at the
Department of Defense that supports the vast ma-
jority of dedicated members of the Armed Forces
and civilians who want to ensure proper accounting
and prevent waste, fraud, and abuse.

SEC. 662. FINDINGS.

Congress finds the following:

States Government found that 32 of 35 major Fed-
eral agencies received clean audit opinions. Two
more, the Department of Homeland Security and
the Department of State, received “qualified” audit
opinions but are making progress. Only the Depart-
ment of Defense had a “disclaimer” because it
lacked any auditable reporting or accounting avail-
able for independent review.

(2) The financial management of the Depart-
ment of Defense has been on the “High-Risk” list
of the Government Accountability Office (GAO). The
GAO found that the Department is not consistently
able to “control costs; ensure basic accountability; anticipate future costs and claims on the budget; measure performance; maintain funds control; and prevent and detect fraud, waste, and abuse”.

(3) At a September 2010 hearing of the Senate, the Government Accountability Office stated that past expenditures by the Department of Defense of $5,800,000,000 to improve financial information, and billions of dollars more of anticipated expenditures on new information technology systems for that purpose, may not suffice to achieve full audit readiness of the financial statement of the Department. At that hearing, the Government Accountability Office could not predict when the Department would achieve full audit readiness of such statements.

(4) Section 9 of article I of the Constitution of the United States requires all agencies of the Federal Government, including the Department of Defense, to publish “a regular statement and account of the receipts and expenditures of all public money”.

(5) Section 303(d) of the Chief Financial Officers Act of 1990 (Public Law 101–576) required that financial statements be prepared and independ-
ently audited for the Department of the Army by
March 31, 1992, and for the Department of the Air
Force by March 31, 1993. Neither the Department
of the Army nor the Department of the Air Force
has complied.

(6) Section 3515 of title 31, United States
Code, requires the agencies of the Federal Govern-
ment, including the Department of Defense, to
present auditable financial statements beginning not
later than March 1, 1997. The Department has not
complied with this law.

(7) The Federal Financial Management Im-
provement Act of 1996 (31 U.S.C. 3512 note) re-
quires financial systems acquired by the Federal
Government, including the Department of Defense,
to be able to provide information to leaders to man-
age and control the cost of government. The Depart-
ment has not complied with this law.

Fiscal Year 2002 (Public Law 107–107) requires
the Secretary of Defense to report to Congress an-
nually on the reliability of the financial statements
of the Department of Defense, to minimize resources
spent on producing unreliable financial statements,
and to use resources saved to improve financial management policies, procedures, and internal controls.

(9) In 2005, the Department of Defense created a Financial Improvement and Audit Readiness (FIAR) Plan, overseen by a directorate within the office of the Under Secretary of Defense (Comptroller), to improve Department business processes with the goal of producing timely, reliable, and accurate financial information that could generate an audit-ready annual financial statement. In December 2005, that directorate, known as the FIAR Directorate, issued the first of a series of semianual reports on the status of the Financial Improvement and Audit Readiness Plan.

(10) The National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) requires regular status reports on the Financial Improvement and Audit Readiness Plan described in paragraph (9), and codified as a statutory requirement the goal of the Plan in ensuring that Department of Defense financial statements are validated as ready for audit not later than September 30, 2017.

SEC. 663. SPENDING REDUCTIONS FOR AGENCIES WITHOUT CLEAN AUDITS.

(a) APPLICABILITY.—
(1) **In General.**—Subject to paragraph (2), this section applies to each Federal agency identified by the Director of the Office of Management and Budget as required to have an audited financial statement under section 3515 of title 31, United States Code.

(2) **Applicability to Military Departments and Defense Agencies.**—For purposes of paragraph (1), in the case of the Department of Defense, each military department and each Defense Agency shall be treated as a separate Federal agency.

(b) **Definitions.**—In this section, the terms “financial statement” and “external independent auditor” have the meanings given those terms in section 3521(e) of title 31, United States Code.

(e) **Adjustments for Financial Accountability.**—

(1) **Reduction Required.**—If a Federal agency has not submitted a financial statement for a fiscal year by March 1 of the next fiscal year, or if such financial statement has not received either an unqualified or a qualified audit opinion by an independent external auditor by such date, the discretionary budget authority available for the Federal agency for the then current fiscal year is reduced by...
5 percent, with the reduction applied proportionately to each account (other than an account listed in sub-
section (d) or an account for which a waiver is made under subsection (e)).

(2) TREATMENT OF REDUCTION.—An amount equal to the total amount of any reduction made under paragraph (2) shall be retained in the general fund of the Treasury for the purposes of deficit re-
duction.

(d) ACCOUNTS EXCLUDED.—The following accounts are excluded from any reductions referred to in subsection (c)(1):

(1) Military personnel, reserve personnel, and National Guard personnel accounts of the Depart-
ment of Defense.

(2) The Defense Health Program account of the Department of Defense.

(e) WAIVER.—The President may waive subsection (c)(1) with respect to an account if the President certifies that applying the subsection to that account would harm national security or members of the Armed Forces who are serving in a combat zone.

(f) REPORT.—Not later than 60 days after an adjust-
ment is made under subsection (c), the Director of the Office of Management and Budget shall submit to Con-
gress a report describing the amount of the adjustment
and the affected accounts.

SEC. 664. REPORT ON DEPARTMENT OF DEFENSE REPORT-
ING REQUIREMENTS.

Not later than 180 days after the date of the enact-
ment of this Act, the Under Secretary of Defense (Comp-
troller) shall submit to Congress a report setting forth the
following:

(1) A list of each report of the Department of
Defense required by law to be submitted to Congress
which, in the opinion of the Under Secretary, would
no longer be necessary if the financial statements of
the Department of Defense were audited with an un-
qualified opinion.

(2) A list of each report of the Department re-
quired by law to be submitted to Congress which, in
the opinion of the Under Secretary, interferes with
the capacity of the Department to achieve an audit
of the financial statements of the Department with
an unqualified opinion.

SEC. 665. SENSE OF CONGRESS IN IMPLEMENTATION OF
DEFENSE BUDGET REDUCTIONS.

It is the sense of Congress that—

(1) as the overall defense budget is cut, con-
gressional defense committees and the Department
of Defense should not endanger members of the Armed Forces by reducing wounded warrior accounts or vital protection (such as body armor) for members of the Armed Forces in harm’s way;

(2) the valuation of legacy assets by the Department of Defense should be simplified without compromising essential controls or generally accepted government auditing standards; and

(3) nothing in this subtitle should be construed to require or permit the declassification of accounting details about classified defense programs, and, as required by law, the Department of Defense should ensure financial accountability in such programs using proven practices, including using auditors with security clearances.

TITLE VII—INVEST IN JOB CREATION
Subtitle A—Making Work Pay Extension

SEC. 701. ONE-YEAR EXTENSION OF MAKING WORK PAY CREDIT.

(a) In General.—Subsection (e) of section 36A of the Internal Revenue Code of 1986 is amended to read as follows:
“(e) Termination.—This section shall not apply to taxable years—

“(1) beginning after December 31, 2010, and before January 1, 2013, or

“(2) beginning after December 31, 2013.”.

(b) Treatment of Possessions.—Paragraph (1) of section 1001(b) of the American Recovery and Reinvestment Tax Act of 2009 is amended by striking “2009 and 2010” both places it appears and inserting “2009, 2010, and 2013”.

(c) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2012.

Subtitle B—Support for Teachers and School Modernization

Part I—Preventing Teacher Layoffs and Supporting the Creation of Additional Jobs in Public Early Childhood, Elementary, and Secondary Education

Sec. 711. Purpose.

The purpose of this part is to provide funds to States to prevent teacher layoffs and support the creation of additional jobs in public early childhood, elementary, and secondary education in the 2012–2013 and 2013–2014 school years.
SEC. 712. GRANTS FOR THE OUTLYING AREAS AND THE SECRETARY OF THE INTERIOR; AVAILABILITY OF FUNDS.

(a) Reservation of Funds.—From the amount appropriated to carry out this subtitle under section 721, the Secretary—

(1) shall reserve up to one-half of one percent to provide assistance to the outlying areas on the basis of their respective needs, as determined by the Secretary, for activities consistent with this part under such terms and conditions as the Secretary may determine;

(2) shall reserve up to one-half of one percent to provide assistance to the Secretary of the Interior to carry out activities consistent with this part, in schools operated or funded by the Bureau of Indian Education; and

(3) may reserve up to $2,000,000 for administration and oversight of this subtitle, including program evaluation.

(b) Availability of Funds.—Funds made available under section 721 shall remain available to the Secretary until September 30, 2014.

SEC. 713. STATE ALLOCATION.

(a) Allocation.—After reserving funds under section 712(a), the Secretary shall allocate the re-
mainfing funds appropriated under section 721 to States, of which—

(1) 60 percent shall be allocated to States on the basis of their relative population of individuals aged 5 through 17; and

(2) 40 percent shall be allocated to States on the basis of their relative total population.

(b) AWARDS.—The Secretary shall award a State’s allocation under subsection (a) to the Governor of the State only if the Secretary has approved the State’s application under section 714.

(c) ALTERNATE DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—If, within 30 days after the date of enactment of this Act, a Governor has not submitted an approvable application to the Secretary, the Secretary shall, consistent with paragraph (2), provide for funds allocated to that State to be distributed to another entity or other entities in the State for the support of early childhood, elementary, and secondary education, under such terms and conditions as the Secretary may establish.

(2) MAINTENANCE OF EFFORT.—

(A) GOVERNOR ASSURANCE.—The Secretary shall not allocate funds under paragraph (1) unless the Governor of the State provides
an assurance to the Secretary that the State will for fiscal years 2013 and 2014 meet the requirements of section 718.

(B) ALLOCATIONS TO OTHER ENTITIES.—Notwithstanding subparagraph (A), the Secretary may allocate up to 50 percent of the funds that are available to the State under paragraph (1) to another entity or entities in the State, provided that the State educational agency submits data to the Secretary demonstrating that the State will for fiscal year 2013 meet the requirements of section 718(a) or the Secretary otherwise determines that the State will meet those requirements, or such comparable requirements as the Secretary may establish, for that year.

(3) REQUIREMENTS.—An entity that receives funds under paragraph (1) shall use those funds in accordance with the requirements of this subtitle.

(d) REALLOCATION.—If a State does not receive funding under this part or only receives a portion of its allocation under subsection (c), the Secretary shall reallocate the State’s entire allocation or the remaining portion of its allocation, as the case may be, to the remaining States in accordance with subsection (a).
SEC. 714. STATE APPLICATION.

The Governor of a State desiring to receive a grant under this subtitle shall submit an application to the Secretary within 30 days of the date of enactment of this Act, in such manner, and containing such information as the Secretary may reasonably require to determine the State’s compliance with applicable provisions of law.

SEC. 715. STATE RESERVATION AND RESPONSIBILITIES.

(a) Reservation.—Each State receiving a grant under section 713(b) may reserve—

(1) not more than 10 percent of the grant funds for awards to State-funded early learning programs; and

(2) not more than 2 percent of the grant funds for the administrative costs of carrying out its responsibilities under this subtitle.

(b) State Responsibilities.—Each State receiving a grant under this part shall, after reserving any funds under subsection (a)—

(1) use the remaining grant funds only for awards to local educational agencies for the support of early childhood, elementary, and secondary education; and

(2) distribute those funds, through subgrants, to its local educational agencies by distributing—
(A) 60 percent on the basis of the local educational agencies’ relative shares of enrollment; and

(B) 40 percent on the basis of the local educational agencies’ relative shares of funds received under part A of title I of the Elementary and Secondary Education Act of 1965 for fiscal year 2012; and

(3) make those funds available to local educational agencies no later than 100 days after receiving a grant from the Secretary.

(c) PROHIBITIONS.—A State shall not use funds received under this subtitle to directly or indirectly—

(1) establish, restore, or supplement a rainy-day fund;

(2) supplant State funds in a manner that has the effect of establishing, restoring, or supplementing a rainy-day fund;

(3) reduce or retire debt obligations incurred by the State; or

(4) supplant State funds in a manner that has the effect of reducing or retiring debt obligations incurred by the State.
SEC. 716. LOCAL EDUCATIONAL AGENCIES.

Each local educational agency that receives a subgrant under this part—

(1) shall use the subgrant funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, recall or rehire former employees, or hire new employees to provide early childhood, elementary, or secondary educational and related services;

(2) shall obligate those funds not later than September 30, 2014; and

(3) may not use those funds for general administrative expenses or for other support services or expenditures, as those terms are defined by the National Center for Education Statistics in the Common Core of Data, as of the date of enactment of this Act.

SEC. 717. EARLY LEARNING.

Each State-funded early learning program that receives funds under this subtitle shall—

(1) use those funds only for compensation, benefits, and other expenses, such as support services, necessary to retain early childhood educators, recall or rehire former early childhood educators, or hire new early childhood educators to provide early learning services; and
(2) obligate those funds not later than September 30, 2014.

SEC. 718. MAINTENANCE OF EFFORT.

(a) REQUIREMENT.—The Secretary shall not allocate funds to a State under this subtitle unless the State provides an assurance to the Secretary that—

(1) for State fiscal year 2013—

(A) the State will maintain State support for early childhood, elementary, and secondary education (in the aggregate or on the basis of expenditure per pupil) and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for each of the two categories for State fiscal year 2012; or

(B) the State will maintain State support for early childhood, elementary, and secondary education and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that
is equal to or greater than the percentage provided for State fiscal year 2012; and

(2) for State fiscal year 2014—

(A) the State will maintain State support for early childhood, elementary, and secondary education (in the aggregate or on the basis of expenditure per pupil) and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for each of the two categories for State fiscal year 2013;

or

(B) the State will maintain State support for early childhood, elementary, and secondary education and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for State fiscal year 2013.

(b) WAIVER.—The Secretary may 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 State.

SEC. 719. REPORTING.

Each State that receives a grant under this part shall submit, on an annual basis, a report to the Secretary that contains—

(1) a description of how funds received under this part were expended or obligated; and

(2) an estimate of the number of jobs supported by the State using funds received under this subtitle.

SEC. 720. DEFINITIONS.

In this part:

(1) ESEA DEFINITIONS.—Except as otherwise provided, the terms “local educational agency”, “outlying area”, “Secretary”, “State”, and “State educational agency” have the meanings given those terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) STATE.—The term “State” does not include an outlying area.

(3) EARLY CHILD EDUCATOR.—The term “early childhood educator” means an individual who—
(A) works directly with children in a State-funded early learning program in a low-income community;

(B) is involved directly in the care, development, and education of infants, toddlers, or young children age five and under; and

(C) has completed a baccalaureate or advanced degree in early childhood development or early childhood education, or in a field related to early childhood education.

(4) State-funded early learning program.—The term “State-funded early learning program” means a program that provides educational services to children from birth to kindergarten entry and receives funding from a State.

SEC. 721. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, and there are appropriated, $30,000,000,000 to carry out this part for fiscal year 2013.

PART II—ELEMENTARY AND SECONDARY SCHOOLS

SEC. 731. PURPOSE.

The purpose of this part is to provide assistance for the modernization, renovation, and repair of elementary and secondary school buildings in public school districts
across America in order to support the achievement of im-
proved educational outcomes in those schools.

SEC. 732. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, and there
are appropriated, $25,000,000,000 to carry out this part,
which shall be available for obligation by the Secretary
until September 30, 2014.

SEC. 733. ALLOCATION OF FUNDS.

(a) Reservations.—Of the amount made available
to carry out this part, the Secretary shall reserve—

(1) one-half of one percent for the Secretary of
the Interior to carry out modernization, renovation,
and repair activities described in section 736 in
schools operated or funded by the Bureau of Indian
Education;

(2) one-half of one percent to make grants to
the outlying areas for modernization, renovation,
and repair activities described in section 736; and

(3) such funds as the Secretary determines are
needed to conduct a survey, by the National Center
for Education Statistics, of the school construction,
modernization, renovation, and repair needs of the
public schools of the United States.

(b) State Allocation.—After reserving funds
under subsection (a), the Secretary shall allocate the re-
remaining amount among the States in proportion to their respective allocations under part A of title I of the Elementary and Secondary Education Act of 1965 (in this part referred to as the “ESEA”) (20 U.S.C. 6311 et seq.) for fiscal year 2013, except that—

(1) the Secretary shall allocate 40 percent of such remaining amount to the 100 local educational agencies with the largest numbers of children aged 5–17 living in poverty, as determined using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, in proportion to those agencies’ respective allocations under part A of title I of the ESEA for fiscal year 2013; and

(2) the allocation to any State shall be reduced by the aggregate amount of the allocations under paragraph (1) to local educational agencies in that State.

(c) REMAINING ALLOCATION.—

(1) STATES.—If a State does not apply for its allocation under subsection (b) (or applies for less than the full allocation for which it is eligible) or does not use that allocation in a timely manner, the Secretary may—
(A) reallocate all or a portion of that allocation to the other States in accordance with subsection (b); or

(B) use all or a portion of that allocation to make direct allocations to local educational agencies within the State based on their respective allocations under part A of title I of the ESEA for fiscal year 2013 or such other method as the Secretary may determine.

(2) LOCAL EDUCATIONAL AGENCIES.—If a local educational agency does not apply for its allocation under subsection (b)(1), applies for less than the full allocation for which it is eligible, or does not use that allocation in a timely manner, the Secretary may reallocate all or a portion of its allocation to the State in which that agency is located.

SEC. 734. STATE USE OF FUNDS.

(a) RESERVATION.—Each State that receives a grant under this part may reserve not more than one percent of the State’s allocation under section 733(b) for the purpose of administering the grant, except that no State may reserve more than $750,000 for this purpose.

(b) FUNDS TO LOCAL EDUCATIONAL AGENCIES.—

(1) FORMULA SUBGRANTS.—From the grant funds that are not reserved under subsection (a), a
State shall allocate at least 50 percent to local educational agencies, including charter schools that are local educational agencies, that did not receive funds under section 733(b)(1) from the Secretary, in accordance with their respective allocations under part A of title I of the ESEA for fiscal year 2013, except that no such local educational agency shall receive less than $10,000.

(2) ADDITIONAL SUBGRANTS.—The State shall use any funds remaining, after reserving funds under subsection (a) and allocating funds under paragraph (1), for subgrants to local educational agencies that did not receive funds under section 733(b)(1), including charter schools that are local educational agencies, to support modernization, renovation, and repair projects that the State determines, using objective criteria, are most needed in the State, with priority given to projects in rural local educational agencies.

(c) REMAINING FUNDS.—If a local educational agency does not apply for an allocation under subsection (b)(1), applies for less than its full allocation, or fails to use that allocation in a timely manner, the State may reallocate any unused portion to other local educational agencies in accordance with subsection (b).
SEC. 735. STATE AND LOCAL APPLICATIONS.

(a) State Application.—A State that desires to receive a grant under this part shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require, which shall include—

(1) an identification of the State agency or entity that will administer the program under this part; and

(2) the State’s process for determining how the grant funds will be distributed and administered, including—

(A) how the State will determine the criteria and priorities in making subgrants under section 734(b)(2);

(B) any additional criteria the State will use in determining which projects it will fund under that section;

(C) a description of how the State will consider—

(i) the needs of local educational agencies for assistance under this part;

(ii) the impact of potential projects on job creation in the State;

(iii) the fiscal capacity of local educational agencies applying for assistance;
(iv) the percentage of children in those local educational agencies who are from low-income families; and

(v) the potential for leveraging assistance provided by the program under this part through matching or other financing mechanisms;

(D) a description of how the State will ensure that the local educational agencies receiving subgrants meet the requirements of this part;

(E) a description of how the State will ensure that the State and its local educational agencies meet the deadlines established in section 738;

(F) a description of how the State will give priority to the use of green practices that are certified, verified, or consistent with any applicable provisions of—

(i) the LEED Green Building Rating System;

(ii) Energy Star;

(iii) the CHPS Criteria;

(iv) Green Globes; or
(v) an equivalent program adopted by
the State or another jurisdiction with au-
thority over the local educational agency;

(G) a description of the steps that the
State will take to ensure that local educational
agencies receiving subgrants under this part
will adequately maintain any facilities that are
modernized, renovated, or repaired with such
subgrant funds; and

(H) such additional information and assur-
ances as the Secretary may require.

(b) LOCAL APPLICATION.—A local educational agen-
cy that is eligible under section 733(b)(1) that desires to
receive a grant under this part shall submit an application
to the Secretary at such time, in such manner, and con-
taining such information and assurances as the Secretary
may require, which shall include—

(1) a description of how the local educational
agency will meet the deadlines and requirements of
this part;

(2) a description of the steps that the local edu-
cational agency will take to adequately maintain any
facilities that are modernized, renovated, or repaired
with funds under this part; and
(3) such additional information and assurances as the Secretary may require.

SEC. 736. USE OF FUNDS.

(a) In General.—Funds awarded to local educational agencies under this part shall be used only for either or both of the following modernization, renovation, or repair activities in facilities that are used for elementary or secondary education or for early learning programs:

(1) Direct payments for school modernization, renovation, or repair.

(2) To pay interest on bonds or payments for other financing instruments that are newly issued for the purpose of financing school modernization, renovation, or repair.

(b) Supplement, Not Supplant.—Funds made available under this part shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to modernize, renovate, or repair eligible school facilities.

(c) Prohibition.—Funds awarded to local educational agencies under this part may not be used for—

(1) new construction;

(2) payment of routine maintenance costs; or
(3) 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.

SEC. 737. PRIVATE SCHOOLS.

(a) IN GENERAL.—Section 9501 of the ESEA (20 U.S.C. 7881) shall apply to this part in the same manner as it applies to activities under that Act, except that—

(1) such section 9501 shall not apply with respect to the title to any real property modernized, renovated, or repaired with assistance provided under this part;

(2) educational services or other benefits funded under this part for private schools shall be provided only to private, nonprofit elementary or secondary schools with a rate of child poverty of at least 40 percent and may include only—

(A) modifications of school facilities necessary to meet the standards applicable to public schools under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(B) modifications of school facilities necessary to meet the standards applicable to public schools under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and
(C) asbestos or polychlorinated biphenyls
abatement or removal from school facilities; and

(3) expenditures for services provided using
funds made available under section 736 shall be con-
considered equal for purposes of section 9501(a)(4) of
the ESEA if the per-pupil expenditures for services
described in paragraph (2) for students enrolled in
private, nonprofit elementary and secondary schools
that have child-poverty rates of at least 40 percent
are consistent with the per-pupil expenditures under
this part for children enrolled in the public schools
of the local educational agency receiving funds under
this part.

(b) REMAINING FUNDS.—If the expenditure for serv-
ices described in subsection (a)(2) is less than the amount
calculated under subsection (a)(3) because of insufficient
need for those services, the remainder shall be available
to the local educational agency for modernization, renova-
tion, or repair of its school facilities.

(c) APPLICATION.—If any provision of this section,
or the application thereof, to any person or circumstance
is judicially determined to be invalid, the remainder of the
section and the application to other persons or cir-
cumstances shall not be affected thereby.
SEC. 738. ADDITIONAL PROVISIONS.

(a) 24-Month Period of Availability.—Funds appropriated under section 732 shall be available for obligation by local educational agencies receiving grants from the Secretary under section 733(b)(1), by States reserving funds under section 734(a), and by local educational agencies receiving subgrants under section 734(b)(1) only during the period that ends 24 months after the date of enactment of this Act.

(b) 36-Month Period of Availability.—Funds appropriated under section 732 shall be available for obligation by local educational agencies receiving subgrants under section 734(b)(2) only during the period that ends 36 months after the date of enactment of this Act.

(c) Applicability of GEPA.—Section 439 of the General Education Provisions Act (20 U.S.C. 1232b) shall apply to funds available under this part.

(d) Limitation.—For purposes of section 733(b)(1), Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico are not local educational agencies.

PART III—COMMUNITY COLLEGE MODERNIZATION

SEC. 739. FEDERAL ASSISTANCE FOR COMMUNITY COLLEGE MODERNIZATION.

(a) In General.—
(1) Grant Program.—From the amounts made available under subsection (h), the Secretary shall award grants to States to modernize, renovate, or repair existing facilities at community colleges.

(2) Allocation.—

(A) Reservations.—Of the amount made available to carry out this section, the Secretary shall reserve—

(i) up to 0.25 percent for grants to institutions that are eligible under section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c) to provide for modernization, renovation, and repair activities described in this section; and

(ii) up to 0.25 percent for grants to the outlying areas to provide for modernization, renovation, and repair activities described in this section.

(B) Allocation.—After reserving funds under subparagraph (A), the Secretary shall allocate to each State that has an application approved by the Secretary an amount that bears the same relation to any remaining funds as the total number of students in such State who are enrolled in institutions described in section
740(b)(1)(A) plus the number of students who are estimated to be enrolled in and pursuing a degree or certificate that is not a bachelor’s, master’s, professional, or other advanced degree in institutions described in section 740(b)(1)(B), based on the proportion of degrees or certificates awarded by such institutions that are not bachelor’s, master’s, professional, or other advanced degrees, as reported to the Integrated Postsecondary Data System bears to the estimated total number of such students in all States, except that no State shall receive less than $2,500,000.

(C) REALLOCATION.—Amounts not allocated under this section to a State because the State either did not submit an application under subsection (b), the State submitted an application that the Secretary determined did not meet the requirements of such subsection, or the State cannot demonstrate to the Secretary a sufficient demand for projects to warrant the full allocation of the funds, shall be proportionately reallocated under this paragraph to the other States that have a dem-
onstrated need for, and are receiving, allocations under this section.

(D) **STATE ADMINISTRATION.**—A State that receives a grant under this section may use not more than one percent of that grant to administer it, except that no State may use more than $750,000 of its grant for this purpose.

(3) **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 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 description of—

(1) how the funds provided under this section will improve instruction at community colleges in the State and will improve the ability of those colleges to educate and train students to meet the workforce needs of employers in the State;
(2) the projected start of each project and the estimated number of persons to be employed in the project; and

(3) the cost of each project and the total amount of funds requested for each project and for all projects.

(e) Prohibited Uses of Funds.—

(1) In General.—No funds awarded under this section may be used for—

(A) payment of routine maintenance costs;

(B) 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

(C) 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.

(2) Four-Year Institutions.—No funds awarded to a four-year public institution of higher
education under this section may be used for any fa-
cility, 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, pro-
fessional, or other advanced degree.

(d) GREEN PROJECTS.—In providing assistance to
community college projects under this section, the State
shall consider the extent to which a community college’s
project involves activities that are certified, verified, or
consistent with the applicable provisions of—

(1) the LEED Green Building Rating System;
(2) Energy Star;
(3) the CHPS Criteria, as applicable;
(4) Green Globes; or
(5) an equivalent program adopted by the State
or the State higher education agency that includes
a verifiable method to demonstrate compliance with
such program.

(e) APPLICATION OF GEPA.—Section 439 of the
General Education Provisions Act (20 U.S.C. 1232b) shall
apply to funds available under this section.

(f) REPORTS BY THE STATES.—Each State that re-
ceives a grant under this section shall, not later than Sep-
tember 30, 2013, 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 of the projects for which the
grant was, or will be, used;

(2) a description of the amount and nature of
the assistance provided to each community college
under this section; and

(3) the number of jobs created by the projects
funded under this section.

(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; 20
U.S.C. 1003) an annual report on the grants made under
this section, including the information described in sub-
section (f).

(h) AVAILABILITY OF FUNDS.—

(1) 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),
$5,000,000,000 for fiscal year 2013.

(2) Funds appropriated under this subsection
shall be available for obligation by community col-
leges only during the period that ends 36 months
after the date of enactment of this Act.

PART IV—GENERAL PROVISIONS

SEC. 740. DEFINITIONS.

(a) ESEA TERMS.—Except as otherwise provided, in
this subtitle, the terms “local educational agency”, “Sec-
retary”, and “State educational agency” have the mean-
ings given those terms in section 9101 of the Elementary

(b) ADDITIONAL DEFINITIONS.—The following defi-
nitions apply to this title:

(1) COMMUNITY COLLEGE.—The term “commu-
nity college” means—

(A) a junior or community college, as that
term is defined in section 312(f) of the Higher
Education Act of 1965 (20 U.S.C. 1058(f)); or

(B) an institution of higher education (as
defined in section 101 of the Higher Education
Act of 1965 (20 U.S.C. 1001)) that awards a
significant number of degrees and certificates,
as determined by the Secretary, that are not—

(i) bachelor’s degrees (or an equiva-
 lent); 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.


(4) GREEN GLOBES.—The term “Green Globes” means the Green Building Initiative environmental design and rating system referred to as Green Globes.


(6) MODERNIZATION, RENOVATION, AND REPAIR.—The term “modernization, renovation, and repair” means—

(A) comprehensive assessments of facilities, including indoor air-quality assessments, to identify—
(i) facility conditions or deficiencies that could adversely affect student and staff health, safety, performance, or productivity or energy, water, or materials efficiency; and

(ii) needed facility improvements;

(B) repairing, replacing, or installing roofs (which may be extensive, intensive, or semi-intensive “green” roofs); electrical wiring; water supply and plumbing systems, sewage systems, storm water runoff systems, lighting systems (or components of such systems); or building envelope, windows, ceilings, flooring, or doors, including security doors;

(C) repairing, replacing, or installing heating, ventilation, or air conditioning systems, or components of those systems (including insulation) to improve energy efficiency;

(D) 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 facilities are prepared for such emergencies as acts of terrorism, campus violence, and natural disasters, such as improving build-
ing infrastructure to accommodate security
measures and installing or upgrading tech-
nology to ensure that a school or incident is
able to respond to such emergencies;

(E) making modifications necessary to
make educational facilities accessible in compli-
ance with the Americans with Disabilities Act
of 1990 (42 U.S.C. 12101 et seq.) and section
504 of the Rehabilitation Act of 1973 (29
U.S.C. 794), except that such modifications
shall not be the primary use of a grant or
subgrant;

(F) abatement, removal, or interim con-
trols of asbestos, polychlorinated biphenyls,
mold, mildew, or lead-based hazards, including
lead-based paint hazards;

(G) retrofitting necessary to increase en-
ergy efficiency;

(H) measures, such as selection and sub-
stitution of products and materials, and imple-
mentation of improved maintenance and oper-
ational procedures, such as “green cleaning”
programs, to reduce or eliminate potential stu-
dent or staff exposure to—

(i) volatile organic compounds;
(ii) particles such as dust and pollens;

or

(iii) combustion gases;

(I) modernization, renovation, or repair necessary to reduce the consumption of coal, electricity, land, natural gas, oil, or water;

(J) installation or upgrading of educational technology infrastructure;

(K) 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;

(L) modernization, renovation, or repair activities related to energy efficiency and renewable energy, and improvements to building infrastructures to accommodate bicycle and pedestrian access;

(M) ground improvements, storm water management, landscaping, and environmental clean-up when necessary;

(N) other modernization, renovation, or repair to—
(i) improve teachers’ ability to teach and students’ ability to learn;

(ii) ensure the health and safety of students and staff; or

(iii) improve classroom, laboratory, and vocational facilities in order to enhance the quality of science, technology, engineering, and mathematics instruction;

and

(O) required environmental remediation related to facilities modernization, renovation, or repair activities described in subparagraphs (A) through (N).

(7) OUTLYING AREA.—The term “outlying area” means the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(8) STATE.—The term “State” means each of the 50 States of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

SEC. 741. BUY AMERICAN.

Section 1605 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) applies to funds made available under this title.
Subtitle C—Transportation

Infrastructure Investments

PART I—IMMEDIATE TRANSPORTATION

INFRASTRUCTURE INVESTMENTS

SEC. 751. IMMEDIATE TRANSPORTATION INFRASTRUCTURE INVESTMENTS.

(a) Grants-In-Aid for Airports.—

(1) In general.—There is made available to the Secretary of Transportation $6,000,000,000 to carry out airport improvement under subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code.

(2) Federal share; limitation on obligations.—The Federal share payable of the costs for which a grant is made under this subsection, shall be 100 percent. The amount made available under this subsection shall not be subject to any limitation on obligations for the Grants-In-Aid for Airports program set forth in any Act or in title 49, United States Code.

(3) Distribution of funds.—Funds provided to the Secretary under this subsection shall not be subject to apportionment formulas, special apportionment categories, or minimum percentages under chapter 471 of such title.
(4) **Availability.**—The amounts made available under this subsection shall be available for obligation until the date that is two years after the date of the enactment of this Act. The Secretary shall obligate amounts totaling not less than 50 percent of the funds made available within one year of enactment and obligate remaining amounts not later than two years after enactment.

(5) **Administrative Expenses.**—Of the funds made available under this subsection, 0.3 percent shall be available to the Secretary for administrative expenses, shall remain available for obligation until September 30, 2015, and may be used in conjunction with funds otherwise provided for the administration of the Grants-In-Aid for Airports program.

(b) **Next Generation Air Traffic Control Advancements.**—

(1) **In General.**—There is made available to the Secretary of Transportation $3,000,000,000 for necessary Federal Aviation Administration capital, research, and operating costs to carry out Next Generation air traffic control system advancements.

(2) **Availability.**—The amounts made available under this subsection shall be available for obli-
(c) HIGHWAY INFRASTRUCTURE INVESTMENT.—

(1) IN GENERAL.—There is made available to the Secretary of Transportation $81,000,000,000 for restoration, repair, construction and other activities eligible under section 133(b) of title 23, United States Code, and for passenger and freight rail transportation and port infrastructure projects eligible for assistance under section 601(a)(8) of title 23.

(2) FEDERAL SHARE; LIMITATION ON OBLIGATIONS.—The Federal share payable on account of any project or activity carried out with funds made available under this subsection shall be, at the option of the recipient, up to 100 percent of the total cost thereof. The amount made available under this subsection shall not be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in any Act or in title 23, United States Code.

(3) AVAILABILITY.—The amounts made available under this subsection shall be available for obligation until the date that is two years after the date of the enactment of this Act. The Secretary shall obligate amounts totaling not less than 50 percent of
the funds made available within one year of enactment and obligate remaining amounts not later than two years after enactment.

(4) **Distribution of Funds.**—Of the funds provided in this subsection, after making the set-asides required by paragraphs (9), (10), (11), (12), and (15), 50 percent of the funds shall be apportioned to States using the formula set forth in section 104(b)(3) of title 23, United States Code, and the remaining funds shall be apportioned to States in the same ratio as the obligation limitation for fiscal year 2010 was distributed among the States in accordance with the formula specified in section 120(a)(6) of division A of Public Law 111–117.

(5) **Apportionment.**—Apportionments under paragraph (4) shall be made not later than 30 days after the date of the enactment of this Act.

(6) **Redistribution.**—

(A) The Secretary shall, 180 days following the date of apportionment, withdraw from each State an amount equal to 50 percent of the funds apportioned under paragraph (4) to that State (excluding funds suballocated within the State) less the amount of funding obligated (excluding funds suballocated within
the State), and the Secretary shall redistribute such amounts to other States that have had no funds withdrawn under this subparagraph in the manner described in section 120(c) of division A of Public Law 111–117.

(B) One year following the date of apportionment, the Secretary shall withdraw from each recipient of funds apportioned under paragraph (4) any unobligated funds, and the Secretary shall redistribute such amounts to States that have had no funds withdrawn under this paragraph (excluding funds suballocated within the State) in the manner described in section 120(c) of division A of Public Law 111–117.

(C) At the request of a State, the Secretary may provide an extension of the one-year period only to the extent that the Secretary determines that the State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances. Before granting an extension, the Secretary shall notify in writing the Committee on Transportation and Infrastructure and the Committee on Environment and Public Works,
providing a thorough justification for the extension.

(7) **Puerto Rico and Territorial Highway Programs.**—Of the funds provided under this subsection, $315,000,000 shall be set aside for the Puerto Rico highway program and $135,000,000 shall be for the territorial highway program authorized under section 165 of title 23, United States Code.

(8) **Federal Lands and Indian Reservations.**—Of the funds provided under this subsection, $1,650,000,000 shall be set aside for investments in transportation at Indian reservations and Federal lands in accordance with the following:

(A) Of the funds set aside by this paragraph, $930,000,000 shall be for the Indian Reservation Roads program, $510,000,000 shall be for the Park Roads and Parkways program, $180,000,000 shall be for the Forest Highway Program, and $30,000,000 shall be for the Refuge Roads program.

(B) For investments at Indian reservations and Federal lands, priority shall be given to capital investments, and to projects and activi-
ties that can be completed within 2 years of enactment of this Act.

(C) One year following the enactment of this Act, to ensure the prompt use of the funding provided for investments at Indian reservations and Federal lands, the Secretary shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated.

(D) Up to four percent of the funding provided for Indian Reservation Roads may be used by the Secretary of the Interior for program management and oversight and project-related administrative expenses.

(9) Job Training.—Of the funds provided under this subsection, $150,000,000 shall be set aside for the development and administration of transportation training programs under section 140(b) title 23, United States Code.

(A) Funds set aside under this subsection shall be competitively awarded and used for the purpose of providing training, apprenticeship (including Registered Apprenticeship), skill development, and skill improvement programs, as well as summer transportation institutes and
may be transferred to, or administered in partnership with, the Secretary of Labor and shall demonstrate to the Secretary of Transportation program outcomes, including—

(i) impact on areas with transportation workforce shortages;

(ii) diversity of training participants;

(iii) number of participants obtaining certifications or credentials required for specific types of employment;

(iv) employment outcome metrics, such as job placement and job retention rates, established in consultation with the Secretary of Labor and consistent with metrics used by programs under the Workforce Investment Act;

(v) to the extent practical, evidence that the program did not preclude workers that participate in training or apprenticeship activities under the program from being referred to, or hired on, projects funded under this chapter; and

(vi) identification of areas of collaboration with the Department of Labor programs, including co-enrollment.
(B) To be eligible to receive a competitively awarded grant under this subsection, a State must certify that at least 0.1 percent of the amounts apportioned under the Surface Transportation Program and Bridge Program will be obligated in the first fiscal year after enactment of this act for job training activities consistent with section 140(b) of title 23, United States Code.

(10) DISADVANTAGED BUSINESS ENTERPRISES.—Of the funds provided under this subsection, $30,000,000 shall be set aside for training programs and assistance programs under section 140(c) of title 23, United States Code. Funds set aside under this paragraph should be allocated to businesses that have proven success in adding staff while effectively completing projects.

(11) STATE PLANNING AND OVERSIGHT EXPENSES.—Of amounts apportioned under paragraph (4) of this subsection, a State may use up to 0.5 percent for activities related to projects funded under this subsection, including activities eligible under sections 134 and 135 of title 23, United States Code, State administration of subgrants, and State oversight of subrecipients.
(12) Conditions.—

(A) Funds made available under this subsection shall be administered as if apportioned under chapter 1 of title 23, United States Code, except for funds made available for investments in transportation at Indian reservations and Federal lands, and for the territorial highway program, which shall be administered in accordance with chapter 2 of title 23, United States Code, and except for funds made available for disadvantaged business enterprises bonding assistance, which shall be administered in accordance with chapter 3 of title 49, United States Code.

(B) Funds made available under this subsection shall not be obligated for the purposes authorized under section 115(b) of title 23, United States Code.

(C) Funding provided under this subsection shall be in addition to any and all funds provided for fiscal years 2011 and 2012 in any other Act for “Federal-aid Highways” and shall not affect the distribution of funds provided for “Federal-aid Highways” in any other Act.
(D) Section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this subsection.

(13) OVERSIGHT.—The Administrator of the Federal Highway Administration may set aside up to 0.15 percent of the funds provided under this subsection to fund the oversight by the Administrator of projects and activities carried out with funds made available to the Federal Highway Administration in this Act, and such funds shall be available through September 30, 2015.

(d) CAPITAL ASSISTANCE FOR HIGH SPEED RAIL CORRIDORS AND INTERCITY PASSENGER RAIL SERVICE.—

(1) IN GENERAL.—There is made available to the Secretary of Transportation $12,000,000,000 for grants for high-speed rail projects as authorized under sections 26104 and 26106 of title 49, United States Code, capital investment grants to support intercity passenger rail service as authorized under section 24406 of title 49, United States Code, and congestion grants as authorized under section 24105 of title 49, United States Code, and to enter into cooperative agreements for these purposes as authorized, except that the Administrator of the Federal
Railroad Administration may retain up to one percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this subsection, which retained amount shall remain available for obligation until September 30, 2015.

(2) Availability.—The amounts made available under this subsection shall be available for obligation until the date that is two years after the date of the enactment of this Act. The Secretary shall obligate amounts totaling not less than 50 percent of the funds made available within one year of enactment and obligate remaining amounts not later than two years after enactment.

(3) Federal Share.—The Federal share payable of the costs for which a grant or cooperative agreements is made under this subsection shall be, at the option of the recipient, up to 100 percent.

(4) Interim Guidance.—The Secretary shall issue interim guidance to applicants covering application procedures and administer the grants provided under this subsection pursuant to that guidance until final regulations are issued.

(5) Intercity Passenger Rail Corridors.—Not less than 85 percent of the funds provided
under this subsection shall be for cooperative agree-
ments that lead to the development of entire seg-
ments or phases of intercity or high-speed rail cor-
ridors.

(6) CONDITIONS.—

(A) In addition to the provisions of title
49, United States Code, that apply to each of
the individual programs funded under this sub-
section, subsections 24402(a)(2), 24402(i), and
24403(a) and (c) of title 49, United States
Code, shall also apply to the provision of funds
provided under this subsection.

(B) A project need not be in a State rail
plan developed under chapter 227 of title 49,
United States Code, to be eligible for assistance
under this subsection.

(C) Recipients of grants under this para-
graph shall conduct all procurement trans-
actions using such grant funds in a manner
that provides full and open competition, as de-
termined by the Secretary, in compliance with
existing labor agreements.

(e) CAPITAL GRANTS TO THE NATIONAL RAILROAD
PASSENGER CORPORATION.—
(1) IN GENERAL.—There is made available
$6,000,000,000 to enable the Secretary of Transpor-
tation to make capital grants to the National Rail-
road Passenger Corporation (Amtrak), as authorized
by section 101(c) of the Passenger Rail Investment
and Improvement Act of 2008 (Public Law 110–
432).

(2) AVAILABILITY.—The amounts made avail-
able under this subsection shall be available for obli-
gation until the date that is two years after the date
of the enactment of this Act. The Secretary shall ob-
ligate amounts totaling not less than 50 percent of
the funds made available within one year of enact-
ment and obligate remaining amounts not later than
two years after enactment.

(3) PROJECT PRIORITY.—The priority for the
use of funds shall be given to projects for the repair,
rehabilitation, or upgrade of railroad assets or infra-
structure, and for capital projects that expand pas-
senger rail capacity including the rehabilitation of
rolling stock.

(4) CONDITIONS.—

(A) None of the funds under this sub-
section shall be used to subsidize the operating
losses of Amtrak.
(B) The funds provided under this subsection shall be awarded not later than 90 days after the date of enactment of this Act.

(C) The Secretary shall take measures to ensure that projects funded under this subsection shall be completed within 2 years of enactment of this Act, and shall serve to supplement and not supplant planned expenditures for such activities from other Federal, State, local and corporate sources. The Secretary shall certify to the House and Senate Committees on Appropriations in writing compliance with the preceding sentence.

(5) OVERSIGHT.—The Administrator of the Federal Railroad Administration may set aside 0.5 percent of the funds provided under this subsection to fund the oversight by the Administrator of projects and activities carried out with funds made available in this subsection, and such funds shall be available through September 30, 2015.

(f) TRANSIT CAPITAL ASSISTANCE.—

(1) IN GENERAL.—There is made available to the Secretary of Transportation $9,000,000,000 for grants for transit capital assistance grants as defined by section 5302(a)(3) of title 49, United
States Code. Notwithstanding any provision of chapter 53 of title 49, however, a recipient of funding under this subsection may use up to 10 percent of the amount provided for the operating costs of equipment and facilities for use in public transportation or for other eligible activities.

(2) Federal share; limitation on obligations.—The applicable requirements of chapter 53 of title 49, United States Code, shall apply to funding provided under this subsection, except that the Federal share of the costs for which any grant is made under this subsection shall be, at the option of the recipient, up to 100 percent. The amount made available under this subsection shall not be subject to any limitation on obligations for transit programs set forth in any Act or chapter 53 of title 49.

(3) Availability.—The amounts made available under this subsection shall be available for obligation until the date that is two years after the date of the enactment of this Act. The Secretary shall obligate amounts totaling not less than 50 percent of the funds made available within one year of enactment and obligate remaining amounts not later than two years after enactment.
(4) Distribution of Funds.—The Secretary of Transportation shall—

(A) provide 80 percent of the funds appropriated under this subsection for grants under section 5307 of title 49, United States Code, and apportion such funds in accordance with section 5336 of such title;

(B) provide 10 percent of the funds appropriated under this subsection in accordance with section 5340 of such title; and

(C) provide 10 percent of the funds appropriated under this subsection for grants under section 5311 of title 49, United States Code, and apportion such funds in accordance with such section.

(5) Apportionment.—The funds apportioned under this subsection shall be apportioned not later than 21 days after the date of the enactment of this Act.

(6) Redistribution.—

(A) The Secretary shall, 180 days following the date of apportionment, withdraw from each urbanized area or State an amount equal to 50 percent of the funds apportioned to such urbanized areas or States less the amount
of funding obligated, and the Secretary shall re-
distribute such amounts to other urbanized
areas or States that have had no funds with-
drawn under this proviso utilizing whatever
method he deems appropriate to ensure that all
funds redistributed under this proviso shall be
utilized promptly.

(B) One year following the date of appor-
tionment, the Secretary shall withdraw from
each urbanized area or State any unobligated
funds, and the Secretary shall redistribute such
amounts to other urbanized areas or States
that have had no funds withdrawn under this
proviso utilizing whatever method the Secretary
deems appropriate to ensure that all funds re-
distributed under this proviso shall be utilized
promptly.

(C) At the request of an urbanized area or
State, the Secretary of Transportation may pro-
vide an extension of such 1-year period if the
Secretary determines that the urbanized area or
State has encountered an unworkable bidding
environment or other extenuating cir-
cumstances. Before granting an extension, the
Secretary shall notify in writing the Committee
on Transportation and Infrastructure and the Committee on Banking, Housing and Urban Affairs, providing a thorough justification for the extension.

(7) CONDITIONS.—

(A) Of the funds provided for section 5311 of title 49, United States Code, 2.5 percent shall be made available for section 5311(c)(1).

(B) Section 1101(b) of Public Law 109–59 shall apply to funds appropriated under this subsection.

(C) The funds appropriated under this subsection shall not be comingled with any prior year funds.

(8) OVERSIGHT.—Notwithstanding any other provision of law, 0.3 percent of the funds provided for grants under section 5307 and section 5340, and 0.3 percent of the funds provided for grants under section 5311, shall be available for administrative expenses and program management oversight, and such funds shall be available through September 30, 2015.

(g) STATE OF GOOD REPAIR.—

(1) IN GENERAL.—There is made available to the Secretary of Transportation $18,000,000,000
for capital expenditures as authorized by section 5309(b)(5) of title 49, United States Code.

(2) Federal share.—The applicable requirements of chapter 53 of title 49, United States Code, shall apply, except that the Federal share of the costs for which a grant is made under this subsection shall be, at the option of the recipient, up to 100 percent.

(3) Availability.—The amounts made available under this subsection shall be available for obligation until the date that is two years after the date of the enactment of this Act. The Secretary shall obligate amounts totaling not less than 50 percent of the funds made available within one year of enactment and obligate remaining amounts not later than two years after enactment.

(4) Distribution of funds.—

(A) The Secretary of Transportation shall apportion not less than 75 percent of the funds under this subsection for the modernization of fixed guideway systems, pursuant to the formula set forth in section 5336(b) title 49, United States Code, other than subsection (b)(2)(A)(ii).
(B) Of the funds appropriated under this subsection, not less than 25 percent shall be available for the restoration or replacement of existing public transportation assets related to bus systems, pursuant to the formula set forth in section 5336 other than subsection (b).

(5) APPORTIONMENT.—The funds made available under this subsection shall be apportioned not later than 30 days after the date of the enactment of this Act.

(6) REDISTRIBUTION.—

(A) The Secretary shall, 180 days following the date of apportionment, withdraw from each urbanized area an amount equal to 50 percent of the funds apportioned to such urbanized area less the amount of funding obligated, and the Secretary shall redistribute such amounts to other urbanized areas that have had no funds withdrawn under this paragraph utilizing whatever method the Secretary deems appropriate to ensure that all funds redistributed under this paragraph shall be utilized promptly.

(B) One year following the date of apportionment, the Secretary shall withdraw from each urbanized area any unobligated funds, and
the Secretary shall redistribute such amounts to other urbanized areas that have had no funds withdrawn under this paragraph, utilizing whatever method the Secretary deems appropriate to ensure that all funds redistributed under this paragraph shall be utilized promptly.

(C) At the request of an urbanized area, the Secretary may provide an extension of the 1-year period if the Secretary finds that the urbanized area has encountered an unworkable bidding environment or other extenuating circumstances. Before granting an extension, the Secretary shall notify the Committee on Transportation and Infrastructure and the Committee on Banking, Housing, and Urban Affairs, providing a thorough justification for the extension.

(7) CONDITIONS.—

(A) The provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this subsection.

(B) The funds appropriated under this subsection shall not be commingled with any prior year funds.
(8) OVERSIGHT.—Notwithstanding any other provision of law, 0.3 percent of the funds under this subsection shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2015.

(h) TRANSPORTATION INFRASTRUCTURE GRANTS AND FINANCING.—

(1) IN GENERAL.—There is made available to the Secretary of Transportation $15,000,000,000 for capital investments in surface transportation infrastructure. The Secretary shall distribute funds provided under this subsection as discretionary grants to be awarded to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region.

(2) FEDERAL SHARE; LIMITATION ON OBLIGATIONS.—The Federal share payable of the costs for which a grant is made under this subsection, shall be 100 percent.

(3) AVAILABILITY.—The amounts made available under this subsection shall be available for obligation until the date that is two years after the date of the enactment of this Act. The Secretary shall ob-
ligate amounts totaling not less than 50 percent of the funds made available within one year of enactment and obligate remaining amounts not later than two years after enactment.

(4) PROJECT ELIGIBILITY.—Projects eligible for funding provided under this subsection include—

(A) highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments;

(B) public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service;

(C) passenger and freight rail transportation projects; and

(D) port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement.
(5) **TIFIA PROGRAM.**—The Secretary may transfer to the Federal Highway Administration funds made available under this subsection for the purpose of paying the subsidy and administrative costs of projects eligible for Federal credit assistance under chapter 6 of title 23, United States Code, if the Secretary finds that such use of the funds would advance the purposes of this subsection.

(6) **PROJECT PRIORITY.**—The Secretary shall give priority to projects that are expected to be completed within 3 years of the date of the enactment of this Act.

(7) **DEADLINE FOR ISSUANCE OF COMPETITION CRITERIA.**—The Secretary shall publish criteria on which to base the competition for any grants awarded under this subsection not later than 90 days after enactment of this Act. The Secretary shall require applications for funding provided under this subsection to be submitted not later than 180 days after the publication of the criteria, and announce all projects selected to be funded from such funds not later than 1 year after the date of the enactment of the Act.

(8) **APPLICABILITY OF TITLE 40.**—Each project conducted using funds provided under this sub-
section shall comply with the requirements of sub-
chapter IV of chapter 31 of title 40, United States
Code.

(9) ADMINISTRATIVE EXPENSES.—The Sec-

retary may retain up to one half of one percent of

the funds provided under this subsection, and may

transfer portions of those funds to the Administra-
tors of the Federal Highway Administration, the
Federal Transit Administration, the Federal Rail-
road Administration and the Maritime Administra-

tion, to fund the award and oversight of grants
made under this subsection. Funds retained shall re-
main available for obligation until September 30,

2015.

(i) LOCAL HIRING.—

(1) IN GENERAL.—In the case of the funding
made available under subsections (a) through (h) of
this section, the Secretary of Transportation may es-

establish standards under which a contract for con-
struction may be advertised that contains require-
ments for the employment of individuals residing in
or adjacent to any of the areas in which the work
is to be performed to perform construction work re-
quired under the contract, provided that—
(A) all or part of the construction work performed under the contract occurs in an area designated by the Secretary as an area of high unemployment, using data reported by the United States Department of Labor, Bureau of Labor Statistics;

(B) the estimated cost of the project of which the contract is a part is greater than $10,000,000, except that the estimated cost of the project in the case of construction funded under subsection (c) shall be greater than $50,000,000; and

(C) the recipient may not require the hiring of individuals who do not have the necessary skills to perform work in any craft or trade; provided that the recipient may require the hiring of such individuals if the recipient establishes reasonable provisions to train such individuals to perform any such work under the contract effectively.

(2) Project Standards.—Any standards established by the Secretary under this section shall ensure that any requirements specified under subsection (c)(9)—
(A) do not compromise the quality of the project;

(B) are reasonable in scope and application;

(C) do not unreasonably delay the completion of the project; and

(D) do not unreasonably increase the cost of the project.

(3) IMPLEMENTING REGULATIONS.—The Secretary shall promulgate final regulations to implement the authority of this subsection.

(j) ADMINISTRATIVE PROVISIONS.—

(1) APPLICABILITY OF TITLE 40.—Each project conducted using funds provided under this subtitle shall comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code.

(2) BUY AMERICAN.—Section 1605 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) applies to each project conducted using funds provided under this subtitle.
PART II—BUILDING AND UPGRADING INFRASTRUCTURE FOR LONG-TERM DEVELOPMENT

Subpart A—Immediate Transportation

Infrastructure Investments

SEC. 761. SHORT TITLE.

This part may be cited as the “Building and Upgrading Infrastructure for Long-Term Development Act”.

SEC. 762. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) infrastructure has always been a vital element of the economic strength of the United States and a key indicator of the international leadership of the United States;

(2) the Erie Canal, the Hoover Dam, the railroads, and the interstate highway system are all testaments to American ingenuity and have helped propel and maintain the United States as the world’s largest economy;

(3) according to the World Economic Forum’s Global Competitiveness Report, the United States fell to second place in 2009, and dropped to fourth place overall in 2010, however, in the “Quality of overall infrastructure” category of the same report, the United States ranked twenty-third in the world;
(4) according to the World Bank’s 2010 Logistic Performance Index, the capacity of countries to efficiently move goods and connect manufacturers and consumers with international markets is improving around the world, and the United States now ranks seventh in the world in logistics-related infrastructure behind countries from both Europe and Asia;

(5) according to a January 2009 report from the University of Massachusetts/Alliance for American Manufacturing entitled “Employment, Productivity and Growth,” infrastructure investment is a “highly effective engine of job creation”;  

(6) according to the American Society of Civil Engineers, the current condition of the infrastructure in the United States earns a grade point average of D, and an estimated $2,200,000,000,000 investment is needed over the next 5 years to bring American infrastructure up to adequate condition;  

(7) according to the National Surface Transportation Policy and Revenue Study Commission, $225,000,000,000 is needed annually from all sources for the next 50 years to upgrade the United States surface transportation system to a state of good repair and create a more advanced system;
(8) the current infrastructure financing mechanisms of the United States, both on the Federal and State level, will fail to meet current and foreseeable demands and will create large funding gaps;

(9) published reports state that there may not be enough demand for municipal bonds to maintain the same level of borrowing at the same rates, resulting in significantly decreased infrastructure investment at the State and local level;

(10) current funding mechanisms are not readily scalable and do not—

(A) serve large in-State or cross jurisdiction infrastructure projects, projects of regional or national significance, or projects that cross sector silos;

(B) sufficiently catalyze private sector investment; or

(C) ensure the optimal return on public resources;

(11) although grant programs of the United States Government must continue to play a central role in financing the transportation, environment, and energy infrastructure needs of the United States, current and foreseeable demands on existing Federal, State, and local funding for infrastructure
expansion clearly exceed the resources to support these programs by margins wide enough to prompt serious concerns about the United States ability to sustain long-term economic development, productivity, and international competitiveness;

(12) the capital markets, including pension funds, private equity funds, mutual funds, sovereign wealth funds, and other investors, have a growing interest in infrastructure investment and represent hundreds of billions of dollars of potential investment; and

(13) the establishment of a United States Government-owned, independent, professionally managed institution that could provide credit support to qualified infrastructure projects of regional and national significance, making transparent merit-based investment decisions based on the commercial viability of infrastructure projects, would catalyze the participation of significant private investment capital.

(b) PURPOSE.—The purpose of this part is to facilitate investment in, and long-term financing of, economically viable infrastructure projects of regional or national significance in a manner that both complements existing Federal, State, local, and private funding sources for these projects and introduces a merit-based system for financing
such projects, in order to mobilize significant private sec-
tor investment, create jobs, and ensure United States com-
petitiveness through an institution that limits the need for
ongoing Federal funding.

SEC. 763. DEFINITIONS.

For purposes of this part, the following definitions
shall apply:

(1) AIFA.—The term “AIFA” means the
American Infrastructure Financing Authority estab-
lished under this part.

(2) Blind trust.—The term “blind trust”
means a trust in which the beneficiary has no knowl-
edge of the specific holdings and no rights over how
those holdings are managed by the fiduciary of the
trust prior to the dissolution of the trust.

(3) Board of Directors.—The term “Board
of Directors” means Board of Directors of AIFA.

(4) Chairperson.—The term “Chairperson”
means the Chairperson of the Board of Directors of
AIFA.

(5) Chief executive officer.—The term
“chief executive officer” means the chief executive
officer of AIFA, appointed under section 767.
(6) **Cost.**—The term “cost” has the same meaning as in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(7) **Direct Loan.**—The term “direct loan” has the same meaning as in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(8) **Eligible Entity.**—The term “eligible entity” means an individual, corporation, partnership (including a public-private partnership), joint venture, trust, State, or other non-Federal governmental entity, including a political subdivision or any other instrumentality of a State, or a revolving fund.

(9) **Infrastructure Project.**—

(A) **In General.**—The term “eligible infrastructure project” means any non-Federal transportation, water, or energy infrastructure project, or an aggregation of such infrastructure projects, as provided in this part.

(B) **Transportation Infrastructure Project.**—The term “transportation infrastructure project” means the construction, alteration, or repair, including the facilitation of intermodal transit, of the following subsectors:

(i) Highway or road.

(ii) Bridge.
(iii) Mass transit.
(iv) Inland waterways.
(v) Commercial ports.
(vi) Airports.
(vii) Air traffic control systems.
(viii) Passenger rail, including high-speed rail.
(ix) Freight rail systems.

(C) WATER INFRASTRUCTURE PROJECT.—The term “water infrastructure project” means the construction, consolidation, alteration, or repair of the following subsectors:

(i) Waterwaste treatment facility.
(ii) Storm water management system.
(iii) Dam.
(iv) Solid waste disposal facility.
(v) Drinking water treatment facility.
(vi) Levee.
(vii) Open space management system.

(D) ENERGY INFRASTRUCTURE PROJECT.—The term “energy infrastructure project” means the construction, alteration, or repair of the following subsectors:

(i) Pollution reduced energy generation.
(ii) Transmission and distribution.

(iii) Storage.

(iv) Energy efficiency enhancements for buildings, including public and commercial buildings.

(E) BOARD AUTHORITY TO MODIFY SUB-SECTORS.—The Board of Directors may make modifications, at the discretion of the Board, to the subsectors described in this paragraph by a vote of not fewer than 5 of the voting members of the Board of Directors.

(10) INVESTMENT PROSPECTUS.—

(A) The term “investment prospectus” means the processes and publications described below that will guide the priorities and strategic focus for the Bank’s investments. The investment prospectus shall follow rulemaking procedures under section 553 of title 5, United States Code.

(B) The Bank shall publish a detailed description of its strategy in an Investment Prospectus within one year of the enactment of this subchapter. The Investment Prospectus shall—

(i) specify what the Bank shall consider significant to the economic competi-
tiveness of the United States or a region thereof in a manner consistent with the primary objective;

(ii) specify the priorities and strategic focus of the Bank in forwarding its strategic objectives and carrying out the Bank strategy;

(iii) specify the priorities and strategic focus of the Bank in promoting greater efficiency in the movement of freight;

(iv) specify the priorities and strategic focus of the Bank in promoting the use of innovation and best practices in the planning, design, development and delivery of projects;

(v) describe in detail the framework and methodology for calculating application qualification scores and associated ranges as specified in this subchapter, along with the data to be requested from applicants and the mechanics of calculations to be applied to that data to determine qualification scores and ranges;

(vi) describe how selection criteria will be applied by the Chief Executive Officer
in determining the competitiveness of an
application and its qualification score and
range relative to other current applications
and previously funded applications; and

(vii) describe how the qualification
score and range methodology and project
selection framework are consistent with
maximizing the Bank goals in both urban
and rural areas.

(C) The Investment Prospectus and any
subsequent updates thereto shall be approved
by a majority vote of the Board of Directors
prior to publication.

(D) The Bank shall update the Investment
Prospectus on every biennial anniversary of its
original publication.

(11) INVESTMENT-GRADE RATING.—The term
“investment-grade rating” means a rating of BBB
minus, Baa3, or higher assigned to an infrastructure
project by a ratings agency.

(12) LOAN GUARANTEE.—The term “loan guar-
antee” has the same meaning as in section 502 of
the Federal Credit Reform Act of 1990 (2 U.S.C.
661a).
(13) **Public-Private Partnership.**—The term “public-private partnership” means any eligible entity—

(A)(i) which is undertaking the development of all or part of an infrastructure project that will have a public benefit, pursuant to requirements established in one or more contracts between the entity and a State or an instrumentality of a State; or

(ii) the activities of which, with respect to such an infrastructure project, are subject to regulation by a State or any instrumentality of a State;

(B) which owns, leases, or operates or will own, lease, or operate, the project in whole or in part; and

(C) the participants in which include not fewer than 1 nongovernmental entity with significant investment and some control over the project or project vehicle.

(14) **Rural Infrastructure Project.**—The term “rural infrastructure project” means an infrastructure project in a rural area, as that term is defined in section 343(a)(13)(A) of the Consolidated
Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(A)).

(15) SECRETARY.—Unless the context otherwise requires, the term “Secretary” means the Secretary of the Treasury or the designee thereof.

(16) SENIOR MANAGEMENT.—The term “senior management” means the chief financial officer, chief risk officer, chief compliance officer, general counsel, chief lending officer, and chief operations officer of AIFA established under section 769, and such other officers as the Board of Directors may, by majority vote, add to senior management.

(17) STATE.—The term “State” includes the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of Northern Mariana Islands, and any other territory of the United States.

Subpart B—American Infrastructure Financing Authority

SEC. 765. ESTABLISHMENT AND GENERAL AUTHORITY OF AIFA.

(a) ESTABLISHMENT OF AIFA.—The American Infrastructure Financing Authority is established as a wholly owned Government corporation.
(b) General Authority of AIFA.—AIFA shall provide direct loans and loan guarantees to facilitate infrastructure projects that are both economically viable and of regional or national significance, and shall have such other authority, as provided in this part.

(c) Incorporation.—

(1) In general.—The Board of Directors first appointed shall be deemed the incorporator of AIFA, and the incorporation shall be held to have been effected from the date of the first meeting of the Board of Directors.

(2) Corporate office.—AIFA shall—

(A) maintain an office in Washington, DC; and

(B) for purposes of venue in civil actions, be considered to be a resident of Washington, DC.

(d) Responsibility of the Secretary.—The Secretary shall take such action as may be necessary to assist in implementing AIFA, and in carrying out the purpose of this part.

(e) Rule of Construction.—Chapter 91 of title 31, United States Code, does not apply to AIFA, unless otherwise specifically provided in this part.
SEC. 766. VOTING MEMBERS OF THE BOARD OF DIRECTORS.

(a) Voting Membership of the Board of Directors.—

(1) In general.—AIFA shall have a Board of Directors consisting of 7 voting members appointed by the President, by and with the advice and consent of the Senate, not more than 4 of whom shall be from the same political party.

(2) Chairperson.—One of the voting members of the Board of Directors shall be designated by the President to serve as Chairperson thereof.

(3) Congressional recommendations.—Not later than 30 days after the date of enactment of this Act, the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall each submit a recommendation to the President for appointment of a member of the Board of Directors, after consultation with the appropriate committees of Congress.

(b) Voting Rights.—Each voting member of the Board of Directors shall have an equal vote in all decisions of the Board of Directors.

(c) Qualifications of Voting Members.—Each voting member of the Board of Directors shall—
(1) be a citizen of the United States; and
(2) have significant demonstrated expertise in—
   (A) the management and administration of
   a financial institution relevant to the operation
   of AIFA; or a public financial agency or author-
   ity;
   (B) the financing, development, or oper-
   ation of infrastructure projects; or
   (C) analyzing the economic benefits of in-
   frastructure investment.

(d) TERMS.—
   (1) IN GENERAL.—Except as otherwise pro-
   vided in this part, each voting member of the Board
   of Directors shall be appointed for a term of 4 years.
   (2) INITIAL STAGGERED TERMS.—Of the voting
   members first appointed to the Board of Directors—
   (A) the initial Chairperson and 3 of the
   other voting members shall each be appointed
   for a term of 4 years; and
   (B) the remaining 3 voting members shall
   each be appointed for a term of 2 years.
   (3) DATE OF INITIAL NOMINATIONS.—The ini-
   tial nominations for the appointment of all voting
   members of the Board of Directors shall be made
not later than 60 days after the date of enactment of this Act.

4) Beginning of Term.—The term of each of the initial voting members appointed under this section shall commence immediately upon the date of appointment, except that, for purposes of calculating the term limits specified in this subsection, the initial terms shall each be construed as beginning on January 22 of the year following the date of the initial appointment.

5) Vacancies.—A vacancy in the position of a voting member of the Board of Directors shall be filled by the President, and a member appointed to fill a vacancy on the Board of Directors occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

e) Meetings.—

(1) Open to the Public; Notice.—Except as provided in paragraph (3), all meetings of the Board of Directors shall be—

(A) open to the public; and

(B) preceded by reasonable public notice.

(2) Frequency.—The Board of Directors shall meet not later than 60 days after the date on which
all members of the Board of Directors are first ap-
pointed, at least quarterly thereafter, and otherwise
at the call of either the Chairperson or 5 voting
members of the Board of Directors.

(3) EXCEPTION FOR CLOSED MEETINGS.—The
voting members of the Board of Directors may, by
majority vote, close a meeting to the public if, dur-
ing the meeting to be closed, there is likely to be dis-
closed proprietary or sensitive information regarding
an infrastructure project under consideration for as-
sistance under this part. The Board of Directors
shall prepare minutes of any meeting that is closed
to the public, and shall make such minutes available
as soon as practicable, not later than 1 year after
the date of the closed meeting, with any necessary
redactions to protect any proprietary or sensitive in-
formation.

(4) QUORUM.—For purposes of meetings of the
Board of Directors, 5 voting members of the Board
of Directors shall constitute a quorum.

(f) COMPENSATION OF MEMBERS.—Each voting
member of the Board of Directors shall be compensated
at a rate equal to the daily equivalent of the annual rate
of basic pay prescribed for level III of the Executive
Schedule under section 5314 of title 5, United States
Code, for each day (including travel time) during which
the member is engaged in the performance of the duties
of the Board of Directors.

(g) Conflicts of Interest.—A voting member of
the Board of Directors may not participate in any review
or decision affecting an infrastructure project under con-
sideration for assistance under this part, if the member
has or is affiliated with an entity who has a financial inter-
est in such project.

SEC. 767. CHIEF EXECUTIVE OFFICER OF AIFA.

(a) In General.—The chief executive officer of
AIFA shall be a nonvoting member of the Board of Direc-
tors, who shall be responsible for all activities of AIFA,
and shall support the Board of Directors as set forth in
this part and as the Board of Directors deems necessary
or appropriate.

(b) Appointment and Tenure of the Chief Ex-
ecutive Officer.—

(1) In General.—The President shall appoint
the chief executive officer, by and with the advice
and consent of the Senate.

(2) Term.—The chief executive officer shall be
appointed for a term of 6 years.

(3) Vacancies.—Any vacancy in the office of
the chief executive officer shall be filled by the Presi-
dent, and the person appointed to fill a vacancy in
that position occurring before the expiration of the
term for which the predecessor was appointed shall
be appointed only for the remainder of that term.

(c) QUALIFICATIONS.—The chief executive officer—

(1) shall have significant expertise in manage-
ment and administration of a financial institution,
or significant expertise in the financing and develop-
ment of infrastructure projects, or significant exper-
tise in analyzing the economic benefits of infrastruc-
ture investment; and

(2) may not—

(A) hold any other public office;

(B) have any financial interest in an infra-
structure project then being considered by the
Board of Directors, unless that interest is
placed in a blind trust; or

(C) have any financial interest in an inv-
vestment institution or its affiliates or any
other entity seeking or likely to seek financial
assistance for any infrastructure project from
AIFA, unless any such interest is placed in a
blind trust for the tenure of the service of the
chief executive officer plus 2 additional years.
(d) Responsibilities.—The chief executive officer shall have such executive functions, powers, and duties as may be prescribed by this part, the bylaws of AIFA, or the Board of Directors, including—

(1) responsibility for the development and implementation of the strategy of AIFA, including—

(A) the development and submission to the Board of Directors of the investment prospectus, the annual business plans and budget;

(B) the development and submission to the Board of Directors of a long-term strategic plan; and

(C) the development, revision, and submission to the Board of Directors of internal policies; and

(2) responsibility for the management and oversight of the daily activities, decisions, operations, and personnel of AIFA, including—

(A) the appointment of senior management, subject to approval by the voting members of the Board of Directors, and the hiring and termination of all other AIFA personnel;

(B) requesting the detail, on a reimbursable basis, of personnel from any Federal agency having specific expertise not available from
within AIFA, following which request the head
of the Federal agency may detail, on a reim-
bursable basis, any personnel of such agency
reasonably requested by the chief executive offi-
cer;

(C) assessing and recommending in the
first instance, for ultimate approval or dis-
approval by the Board of Directors, compensa-
tion and adjustments to compensation of senior
management and other personnel of AIFA as
may be necessary for carrying out the functions
of AIFA;

(D) ensuring, in conjunction with the gen-
eral counsel of AIFA, that all activities of
AIFA are carried out in compliance with appli-
cable law;

(E) overseeing the involvement of AIFA in
all projects, including—

(i) developing eligible projects for
AIFA financial assistance;

(ii) determining the terms and condi-
tions of all financial assistance packages;

(iii) monitoring all infrastructure
projects assisted by AIFA, including re-
ponsibility for ensuring that the proceeds
of any loan made, guaranteed, or participated in are used only for the purposes for which the loan or guarantee was made;

(iv) preparing and submitting for approval by the Board of Directors the documents required under paragraph (1); and

(v) ensuring the implementation of decisions of the Board of Directors; and

(F) such other activities as may be necessary or appropriate in carrying out this part.

(e) COMPENSATION.—

(1) IN GENERAL.—Any compensation assessment or recommendation by the chief executive officer under this section shall be without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(2) CONSIDERATIONS.—The compensation assessment or recommendation required under this subsection shall take into account merit principles, where applicable, as well as the education, experience, level of responsibility, geographic differences, and retention and recruitment needs in determining compensation of personnel.
SEC. 768. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

The Board of Directors shall—

(1) as soon as is practicable after the date on which all members are appointed, approve or disapprove senior management appointed by the chief executive officer;

(2) not later than 180 days after the date on which all members are appointed—

(A) develop and approve the bylaws of AIFA, including bylaws for the regulation of the affairs and conduct of the business of AIFA, consistent with the purpose, goals, objectives, and policies set forth in this part;

(B) establish subcommittees, including an audit committee that is composed solely of members of the Board of Directors who are independent of the senior management of AIFA;

(C) develop and approve, in consultation with senior management, a conflict-of-interest policy for the Board of Directors and for senior management;

(D) approve or disapprove internal policies that the chief executive officer shall submit to the Board of Directors, including—
(i) policies regarding the loan application and approval process, including—

(I) disclosure and application procedures to be followed by entities in the course of nominating infrastructure projects for assistance under this part;

(II) guidelines for the selection and approval of projects;

(III) specific criteria for determining eligibility for project selection, consistent with title II; and

(IV) standardized terms and conditions, fee schedules, or legal requirements of a contract or program, so as to carry out this part; and

(ii) operational guidelines; and

(E) approve or disapprove a multi-year or 1-year business plan and budget for AIFA;

(3) ensure that AIFA is at all times operated in a manner that is consistent with this part, by—

(A) monitoring and assessing the effectiveness of AIFA in achieving its strategic goals;

(B) periodically reviewing internal policies;
(C) reviewing and approving annual business plans, annual budgets, and long-term strategies submitted by the chief executive officer;

(D) reviewing and approving annual reports submitted by the chief executive officer;

(E) engaging one or more external auditors, as set forth in this part; and

(F) reviewing and approving all changes to the organization of senior management;

(4) appoint and fix, by a vote of 5 of the 7 voting members of the Board of Directors, and without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code, the compensation and adjustments to compensation of all AIFA personnel, provided that in appointing and fixing any compensation or adjustments to compensation under this paragraph, the Board shall—

(A) consult with, and seek to maintain comparability with, other comparable Federal personnel;

(B) consult with the Office of Personnel Management; and

(C) carry out such duties consistent with merit principles, where applicable, as well as the
education, experience, level of responsibility, geographic differences, and retention and recruitment needs in determining compensation of personnel;

(5) establish such other criteria, requirements, or procedures as the Board of Directors may consider to be appropriate in carrying out this part;

(6) serve as the primary liaison for AIFA in interactions with Congress, the Executive Branch, and State and local governments, and to represent the interests of AIFA in such interactions and others;

(7) approve by a vote of 5 of the 7 voting members of the Board of Directors any changes to the bylaws or internal policies of AIFA;

(8) have the authority and responsibility—

(A) to oversee entering into and carry out such contracts, leases, cooperative agreements, or other transactions as are necessary to carry out this part with—

(i) any Federal department or agency;

(ii) any State, territory, or possession (or any political subdivision thereof, including State infrastructure banks) of the United States; and
(iii) any individual, public-private partnership, firm, association, or corporation;

(B) to approve of the acquisition, lease, pledge, exchange, and disposal of real and personal property by AIFA and otherwise approve the exercise by AIFA of all of the usual incidents of ownership of property, to the extent that the exercise of such powers is appropriate to and consistent with the purposes of AIFA;

(C) to determine the character of, and the necessity for, the obligations and expenditures of AIFA, and the manner in which the obligations and expenditures will be incurred, allowed, and paid, subject to this part and other Federal law specifically applicable to wholly owned Federal corporations;

(D) to execute, in accordance with applicable bylaws and regulations, appropriate instruments;

(E) to approve other forms of credit enhancement that AIFA may provide to eligible projects, as long as the forms of credit enhancements are consistent with the purposes of this part and terms set forth in title II;
(F) to exercise all other lawful powers which are necessary or appropriate to carry out, and are consistent with, the purposes of AIFA;

(G) to sue or be sued in the corporate capacity of AIFA in any court of competent jurisdiction;

(H) to indemnify the members of the Board of Directors and officers of AIFA for any liabilities arising out of the actions of the members and officers in such capacity, in accordance with, and subject to the limitations contained in this part;

(I) to review all financial assistance packages to all eligible infrastructure projects, as submitted by the chief executive officer and to approve, postpone, or deny the same by majority vote;

(J) to review all restructuring proposals submitted by the chief executive officer, including assignation, pledging, or disposal of the interest of AIFA in a project, including payment or income from any interest owned or held by AIFA, and to approve, postpone, or deny the same by majority vote; and
(K) to enter into binding commitments, as
specified in approved financial assistance pack-
ages;

(9) delegate to the chief executive officer those
duties that the Board of Directors deems appro-
priate, to better carry out the powers and purposes
of the Board of Directors under this section; and

(10) to approve a maximum aggregate amount
of outstanding obligations of AIFA at any given
time, taking into consideration funding, and the size
of AIFA’s addressable market for infrastructure
projects.

SEC. 769. SENIOR MANAGEMENT.

(a) In General.—Senior management shall support
the chief executive officer in the discharge of the respon-
sibilities of the chief executive officer.

(b) Appointment of Senior Management.—The
chief executive officer shall appoint such senior managers
as are necessary to carry out the purpose of AIFA, as
approved by a majority vote of the voting members of the
Board of Directors.

(c) Term.—Each member of senior management
shall serve at the pleasure of the chief executive officer
and the Board of Directors.
(d) Removal of Senior Management.—Any member of senior management may be removed, either by a majority of the voting members of the Board of Directors upon request by the chief executive officer, or otherwise by vote of not fewer than 5 voting members of the Board of Directors.

(e) Senior Management.—

(1) In general.—Each member of senior management shall report directly to the chief executive officer, other than the Chief Risk Officer, who shall report directly to the Board of Directors.

(2) Duties and Responsibilities.—

(A) Chief Financial Officer.—The Chief Financial Officer shall be responsible for all financial functions of AIFA, provided that, at the discretion of the Board of Directors, specific functions of the Chief Financial Officer may be delegated externally.

(B) Chief Risk Officer.—The Chief Risk Officer shall be responsible for all functions of AIFA relating to—

(i) the creation of financial, credit, and operational risk management guidelines and policies;
(ii) credit analysis for infrastructure projects;

(iii) the creation of conforming standards for infrastructure finance agreements;

(iv) the monitoring of the financial, credit, and operational exposure of AIFA; and

(v) risk management and mitigation actions, including by reporting such actions, or recommendations of such actions to be taken, directly to the Board of Directors.

(C) CHIEF COMPLIANCE OFFICER.—The Chief Compliance Officer shall be responsible for all functions of AIFA relating to internal audits, accounting safeguards, and the enforcement of such safeguards and other applicable requirements.

(D) GENERAL COUNSEL.—The General Counsel shall be responsible for all functions of AIFA relating to legal matters and, in consultation with the chief executive officer, shall be responsible for ensuring that AIFA complies with all applicable law.
(E) CHIEF OPERATIONS OFFICER.—The Chief Operations Officer shall be responsible for all operational functions of AIFA, including those relating to the continuing operations and performance of all infrastructure projects in which AIFA retains an interest and for all AIFA functions related to human resources.

(F) CHIEF LENDING OFFICER.—The Chief Lending Officer shall be responsible for—

(i) all functions of AIFA relating to the development of project pipeline, financial structuring of projects, selection of infrastructure projects to be reviewed by the Board of Directors, preparation of infrastructure projects to be presented to the Board of Directors, and set aside for rural infrastructure projects;

(ii) the creation and management of—

(I) a Center for Excellence to provide technical assistance to public sector borrowers in the development and financing of infrastructure projects; and

(II) an Office of Rural Assistance to provide technical assistance in the
development and financing of rural infrastructure projects; and

(iii) the establishment of guidelines to ensure diversification of lending activities by region, infrastructure project type, and project size.

(f) CHANGES TO SENIOR MANAGEMENT.—The Board of Directors, in consultation with the chief executive officer, may alter the structure of the senior management of AIFA at any time to better accomplish the goals, objectives, and purposes of AIFA, provided that the functions of the Chief Financial Officer set forth in subsection (e) remain separate from the functions of the Chief Risk Officer set forth in subsection (e).

(g) CONFLICTS OF INTEREST.—No individual appointed to senior management may—

(1) hold any other public office;

(2) have any financial interest in an infrastructure project then being considered by the Board of Directors, unless that interest is placed in a blind trust; or

(3) have any financial interest in an investment institution or its affiliates, AIFA or its affiliates, or other entity then seeking or likely to seek financial assistance for any infrastructure project from AIFA,
unless any such interest is placed in a blind trust
during the term of service of that individual in a
senior management position, and for a period of 2
years thereafter.

SEC. 770. SPECIAL INSPECTOR GENERAL FOR AIFA.

(a) In General.—During the first 5 operating years
of AIFA, the Office of the Inspector General of the De-
partment of the Treasury shall have responsibility for
AIFA.

(b) Office of the Special Inspector General.—Effective 5 years after the date of enactment of
the commencement of the operations of AIFA, there is es-
tablished the Office of the Special Inspector General for
AIFA.

(c) Appointment of Inspector General; Re-
moval.—

(1) Head of Office.—The head of the Office
of the Special Inspector General for AIFA shall be
the Special Inspector General for AIFA (in this part
referred to as the “Special Inspector General’’), who
shall be appointed by the President, by and with the
advice and consent of the Senate.

(2) Basis of Appointment.—The appoint-
ment of the Special Inspector General shall be made
on the basis of integrity and demonstrated ability in
accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) **Timing of Nomination.**—The nomination of an individual as Special Inspector General shall be made as soon as is practicable after the effective date under subsection (b).

(4) **Removal.**—The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) **Rule of Construction.**—For purposes of section 7324 of title 5, United States Code, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) **Rate of Pay.**—The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) **Duties.**—

(1) **In general.**—It shall be the duty of the Special Inspector General to conduct, supervise, and
coordinate audits and investigations of the business
activities of AIFA.

(2) OTHER SYSTEMS, PROCEDURES, AND CON-
tROLS.—The Special Inspector General shall estab-
lish, maintain, and oversee such systems, procedures,
and controls as the Special Inspector General con-
siders appropriate to discharge the duty under para-
graph (1).

(3) ADDITIONAL DUTIES.—In addition to the
duties specified in paragraphs (1) and (2), the In-
spector General shall also have the duties and re-
sponsibilities of inspectors general under the Inspec-

(e) POWERS AND AUTHORITIES.—

(1) IN GENERAL.—In carrying out the duties
specified in subsection (e), the Special Inspector
General shall have the authorities provided in section

(2) ADDITIONAL AUTHORITY.—The Special In-
spector General shall carry out the duties specified
in subsection (c)(1) in accordance with section

(f) PERSONNEL, FACILITIES, AND OTHER RE-
sOURCES.—

(1) ADDITIONAL OFFICERS.—
(A) The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(B) The Special Inspector General may exercise the authorities of subsections (b) through (i) of section 3161 of title 5, United States Code (without regard to subsection (a) of that section).

(2) RETENTION OF SERVICES.—The Special Inspector General may obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–15 of the General Schedule by section 5332 of such title.

(3) ABILITY TO CONTRACT FOR AUDITS, STUDIES, AND OTHER SERVICES.—The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other serv-
ices with public agencies and with private persons, 
and make such payments as may be necessary to 
carry out the duties of the Special Inspector Gen-
eral.

(4) Request for Information.—

(A) In General.—Upon request of the 
Special Inspector General for information or as-
sistance from any department, agency, or other 
entity of the Federal Government, the head of 
such entity shall, insofar as is practicable and 
not in contravention of any existing law, furnish 
such information or assistance to the Special 
Inspector General, or an authorized designee.

(B) Refusal to Comply.—Whenever in-
formation or assistance requested by the Spe-
cial Inspector General is, in the judgment of the 
Special Inspector General, unreasonably refused 
or not provided, the Special Inspector General 
shall report the circumstances to the Secretary 
of the Treasury, without delay.

(g) Reports.—

(1) Annual Report.—Not later than 1 year 
after the confirmation of the Special Inspector Gen-
eral, and every calendar year thereafter, the Special 
Inspector General shall submit to the President a re-
port summarizing the activities of the Special Inspector General during the previous 1-year period ending on the date of such report.

(2) **Public Disclosures.**—Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

**SEC. 771. OTHER PERSONNEL.**

Except as otherwise provided in the bylaws of AIFA, the chief executive officer, in consultation with the Board of Directors, shall appoint, remove, and define the duties of such qualified personnel as are necessary to carry out the powers, duties, and purpose of AIFA, other than senior management, who shall be appointed in accordance with section 769.

**SEC. 772. COMPLIANCE.**

The provision of assistance by the Board of Directors pursuant to this part shall not be construed as super-
Subpart C—Terms and Limitations on Direct Loans and Loan Guarantees

Subpart C—Terms and Limitations on Direct Loans and Loan Guarantees

SEC. 773. ELIGIBILITY CRITERIA FOR ASSISTANCE FROM AIFA AND TERMS AND LIMITATIONS OF LOANS.

(a) IN GENERAL.—Any project whose use or purpose is private and for which no public benefit is created shall not be eligible for financial assistance from AIFA under this part. Financial assistance under this part shall only be made available if the applicant for such assistance has demonstrated to the satisfaction of the Board of Directors that the infrastructure project for which such assistance is being sought—

(1) is not for the refinancing of an existing infrastructure project; and

(2) meets—

(A) any pertinent requirements set forth in this part;

(B) any criteria established by the Board of Directors or chief executive officer in accordance with this part; and
(C) the definition of a transportation infra-
structure project, water infrastructure project,
or energy infrastructure project.

(b) CONSIDERATIONS.—The criteria established by
the Board of Directors pursuant to this part shall provide
adequate consideration of—

(1) the economic, financial, technical, environ-
mental, and public benefits and costs of each infra-
structure project under consideration for financial
assistance under this part, prioritizing infrastructure
projects that—

(A) contribute to regional or national eco-

(B) offer value for money to taxpayers;

(C) demonstrate a clear and significant

(D) lead to job creation; and

(E) mitigate environmental concerns;

(2) the means by which development of the in-
frastucture project under consideration is being fi-
nanced, including—

(A) the terms, conditions, and structure of
the proposed financing;
(B) the credit worthiness and standing of the project sponsors, providers of equity, and cofinanciers;

(C) the financial assumptions and projections on which the infrastructure project is based; and

(D) whether there is sufficient State or municipal political support for the successful completion of the infrastructure project;

(3) the likelihood that the provision of assistance by AIFA will cause such development to proceed more promptly and with lower costs than would be the case without such assistance;

(4) the extent to which the provision of assistance by AIFA maximizes the level of private investment in the infrastructure project or supports a public-private partnership, while providing a significant public benefit;

(5) the extent to which the provision of assistance by AIFA can mobilize the participation of other financing partners in the infrastructure project;

(6) the technical and operational viability of the infrastructure project;

(7) the proportion of financial assistance from AIFA;
(8) the geographic location of the project in an effort to have geographic diversity of projects funded by AIFA;

(9) the size of the project and its impact on the resources of AIFA;

(10) the infrastructure sector of the project, in an effort to have projects from more than one sector funded by AIFA; and

(11) encourages use of innovative procurement, asset management, or financing to minimize the all-in-life-cycle cost, and improve the cost-effectiveness of a project.

(c) APPLICATION.—

(1) IN GENERAL.—Any eligible entity seeking assistance from AIFA under this part for an eligible infrastructure project shall submit an application to AIFA at such time, in such manner, and containing such information as the Board of Directors or the chief executive officer may require.

(2) REVIEW OF APPLICATIONS.—AIFA shall review applications for assistance under this part on an ongoing basis. The chief executive officer, working with the senior management, shall prepare eligible infrastructure projects for review and approval by the Board of Directors.
(3) Dedicated revenue sources.—The Federal credit instrument shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the infrastructure project obligations.

(d) Eligible infrastructure project costs.—

(1) In general.—Except as provided in paragraph (2), to be eligible for assistance under this part, an infrastructure project shall have project costs that are reasonably anticipated to equal or exceed $100,000,000.

(2) Rural infrastructure projects.—To be eligible for assistance under this part a rural infrastructure project shall have project costs that are reasonably anticipated to equal or exceed $25,000,000.

(e) Loan eligibility and maximum amounts.—

(1) In general.—The amount of a direct loan or loan guarantee under this part shall not exceed the lesser of 50 percent of the reasonably anticipated eligible infrastructure project costs or, if the direct loan or loan guarantee does not receive an investment grade rating, the amount of the senior project obligations.
(2) **Maximum Annual Loan and Loan Guarantee Volume.**—The aggregate amount of direct loans and loan guarantees made by AIFA in any single fiscal year may not exceed—

   (A) during the first 2 fiscal years of the operations of AIFA, $10,000,000,000;

   (B) during fiscal years 3 through 9 of the operations of AIFA, $20,000,000,000; or

   (C) during any fiscal year thereafter, $50,000,000,000.

(f) **State and Local Permits Required.**—The provision of assistance by the Board of Directors pursuant to this part shall not be deemed to relieve any recipient of such assistance, or the related infrastructure project, of any obligation to obtain required State and local permits and approvals.

**SEC. 774. Loan Terms and Repayment.**

(a) **In General.**—A direct loan or loan guarantee under this part with respect to an eligible infrastructure project shall be on such terms, subject to such conditions, and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the chief executive officer determines appropriate.

(b) **Terms.**—A direct loan or loan guarantee under this part—
(1) shall—

(A) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations (such as availability payments and dedicated State or local revenues); and

(B) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(2) may have a lien on revenues described in paragraph (1), subject to any lien securing project obligations.

(c) BASE INTEREST RATE.—The base interest rate on a direct loan under this part shall be not less than the yield on United States Treasury obligations of a similar maturity to the maturity of the direct loan.

(d) RISK ASSESSMENT.—Before entering into an agreement for assistance under this part, the chief executive officer, in consultation with the Director of the Office of Management and Budget and considering rating agency preliminary or final rating opinion letters of the project under this section, shall estimate an appropriate Federal credit subsidy amount for each direct loan and loan guarantee, taking into account such letter, as well as any comparable market rates available for such a loan or loan.
guarantee, should any exist. The final credit subsidy cost
for each loan and loan guarantee shall be determined con-
sistent with the Federal Credit Reform Act, 2 U.S.C. 661a
et seq.

(e) CREDIT FEE.—With respect to each agreement
for assistance under this part, the chief executive officer
may charge a credit fee to the recipient of such assistance
to pay for, over time, all or a portion of the Federal credit
subsidy determined under subsection (d), with the remain-
der paid by the account established for AIFA; provided,
that the source of fees paid under this section shall not
be a loan or debt obligation guaranteed by the Federal
Government. In the case of a direct loan, such credit fee
shall be in addition to the base interest rate established
under subsection (c).

(f) MATURITY DATE.—The final maturity date of a
direct loan or loan guaranteed by AIFA under this part
shall be not later than 35 years after the date of substan-
tial completion of the infrastructure project, as determined
by the chief executive officer.

(g) RATING OPINION LETTER.—

(1) IN GENERAL.—The chief executive officer
shall require each applicant for assistance under this
part to provide a rating opinion letter from at least
1 ratings agency, indicating that the senior obliga-
tions of the infrastructure project, which may be the
Federal credit instrument, have the potential to
achieve an investment-grade rating.

(2) RURAL INFRASTRUCTURE PROJECTS.—With
respect to a rural infrastructure project, a rating
agency opinion letter described in paragraph (1)
shall not be required, except that the loan or loan
guarantee shall receive an internal rating score,
using methods similar to the ratings agencies gen-
erated by AIFA, measuring the proposed direct loan
or loan guarantee against comparable direct loans or
loan guarantees of similar credit quality in a similar
sector.

(h) INVESTMENT-GRADE RATING REQUIREMENT.—

(1) LOANS AND LOAN GUARANTEES.—The exe-
cution of a direct loan or loan guarantee under this
part shall be contingent on the senior obligations of
the infrastructure project receiving an investment-
grade rating.

(2) RATING OF AIFA OVERALL PORTFOLIO.—
The average rating of the overall portfolio of AIFA
shall be not less than investment grade after 5 years
of operation.

(i) TERMS AND REPAYMENT OF DIRECT LOANS.—
(1) **Schedule.**—The chief executive officer shall establish a repayment schedule for each direct loan under this part, based on the projected cash flow from infrastructure project revenues and other repayment sources.

(2) **Commencement.**—Scheduled loan repayments of principal or interest on a direct loan under this part shall commence not later than 5 years after the date of substantial completion of the infrastructure project, as determined by the chief executive officer of AIFA.

(3) **Deferred Payments of Direct Loans.**—

(A) **Authorization.**—If, at any time after the date of substantial completion of an infrastructure project assisted under this part, the infrastructure project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the direct loan under this part, the chief executive officer may allow the obligor to add unpaid principal and interest to the outstanding balance of the direct loan, if the result would benefit the taxpayer.
(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest, in accordance with the terms of the obligation, until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan.

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the infrastructure project meeting criteria established by the Board of Directors.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT OF DIRECT LOANS.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the infrastructure project obligations and direct loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations under
this part may be applied annually to prepay the direct loan, without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—A direct loan under this part may be prepaid at any time, without penalty, from the proceeds of refinancing from non-Federal funding sources.

(5) SALE OF DIRECT LOANS.—

(A) IN GENERAL.—As soon as is practicable after substantial completion of an infrastructure project assisted under this part, and after notifying the obligor, the chief executive officer may sell to another entity, or reoffer into the capital markets, a direct loan for the infrastructure project, if the chief executive officer determines that the sale or reoffering can be made on favorable terms for the taxpayer.

(B) CONSENT OF OBLIGOR.—In making a sale or reoffering under subparagraph (A), the chief executive officer may not change the original terms and conditions of the direct loan, without the written consent of the obligor.

(j) LOAN GUARANTEES.—

(1) TERMS.—The terms of a loan guaranteed by AIFA under this part shall be consistent with the
terms set forth in this section for a direct loan, except that the rate on the guaranteed loan and any payment, pre-payment, or refinancing features shall be negotiated between the obligor and the lender, with the consent of the chief executive officer.

(2) GUARANTEED LENDER.—A guaranteed lender shall be limited to those lenders meeting the definition of that term in section 601(a) of title 23, United States Code.

(k) COMPLIANCE WITH FCRA; IN GENERAL.—Direct loans and loan guarantees authorized by this part shall be subject to the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), as amended.

SEC. 775. COMPLIANCE AND ENFORCEMENT.

(a) CREDIT AGREEMENT.—Notwithstanding any other provision of law, each eligible entity that receives assistance under this part from AIFA shall enter into a credit agreement that requires such entity to comply with all applicable policies and procedures of AIFA, in addition to all other provisions of the loan agreement.

(b) AIFA AUTHORITY ON NONCOMPLIANCE.—In any case in which a recipient of assistance under this part is materially out of compliance with the loan agreement, or any applicable policy or procedure of AIFA, the Board of Directors may take action to cancel unutilized loan
amounts, or to accelerate the repayment terms of any outstanding obligation.

(c) Nothing in this part is intended to affect existing provisions of law applicable to the planning, development, construction, or operation of projects funded under the Act.

SEC. 776. AUDITS; REPORTS TO THE PRESIDENT AND CONGRESS.

(a) ACCOUNTING.—The books of account of AIFA shall be maintained in accordance with generally accepted accounting principles, and shall be subject to an annual audit by independent public accountants of nationally recognized standing appointed by the Board of Directors.

(b) REPORTS.—

(1) BOARD OF DIRECTORS.—Not later than 90 days after the last day of each fiscal year, the Board of Directors shall submit to the President and Congress a complete and detailed report with respect to the preceding fiscal year, setting forth—

(A) a summary of the operations of AIFA, for such fiscal year;

(B) a schedule of the obligations of AIFA and capital securities outstanding at the end of such fiscal year, with a statement of the
amounts issued and redeemed or paid during such fiscal year;

(C) the status of infrastructure projects receiving funding or other assistance pursuant to this part during such fiscal year, including all nonperforming loans, and including disclosure of all entities with a development, ownership, or operational interest in such infrastructure projects;

(D) a description of the successes and challenges encountered in lending to rural communities, including the role of the Center for Excellence and the Office of Rural Assistance established under this part; and

(E) an assessment of the risks of the portfolio of AIFA, prepared by an independent source.

(2) GAO.—Not later than 5 years after the date of enactment of this part, the Comptroller General of the United States shall conduct an evaluation of, and shall submit to Congress a report on, activities of AIFA for the fiscal years covered by the report that includes an assessment of the impact and benefits of each funded infrastructure project, including a review of how effectively each such infra-
structure project accomplished the goals prioritized by the infrastructure project criteria of AIFA.

(c) Books and Records.—

(1) In General.—AIFA shall maintain adequate books and records to support the financial transactions of AIFA, with a description of financial transactions and infrastructure projects receiving funding, and the amount of funding for each such project maintained on a publically accessible database.

(2) Audits by the Secretary and GAO.—

The books and records of AIFA shall at all times be open to inspection by the Secretary of the Treasury, the Special Inspector General, and the Comptroller General of the United States.

Subpart D—Funding of AIFA

SEC. 777. ADMINISTRATIVE FEES.

(a) In General.—In addition to fees that may be collected under section 774(e), the chief executive officer shall establish and collect fees from eligible funding recipients with respect to loans and loan guarantees under this part that—

(1) are sufficient to cover all or a portion of the administrative costs to the Federal Government for the operations of AIFA, including the costs of expert
firms, including counsel in the field of municipal and project finance, and financial advisors to assist with underwriting, credit analysis, or other independent reviews, as appropriate;

(2) may be in the form of an application or transaction fee, or other form established by the CEO; and

(3) may be based on the risk premium associated with the loan or loan guarantee, taking into consideration—

(A) the price of United States Treasury obligations of a similar maturity;

(B) prevailing market conditions;

(C) the ability of the infrastructure project to support the loan or loan guarantee; and

(D) the total amount of the loan or loan guarantee.

(b) AVAILABILITY OF AMOUNTS.—Amounts collected under subsections (a)(1), (a)(2), and (a)(3) shall be available without further action; provided further, that the source of fees paid under this section shall not be a loan or debt obligation guaranteed by the Federal Government.

SEC. 778. EFFICIENCY OF AIFA.

The chief executive officer shall, to the extent possible, take actions consistent with this part to minimize
the risk and cost to the taxpayer of AIFA activities. Fees and premiums for loan guarantee or insurance coverage will be set at levels that minimize administrative and Federal credit subsidy costs to the Government, as defined in Section 502 of the Federal Credit Reform Act of 1990, as amended, of such coverage, while supporting achievement of the program’s objectives, consistent with policies as set forth in the Business Plan.

SEC. 779. FUNDING.

There is hereby appropriated to AIFA to carry out this part, for the cost of direct loans and loan guarantees subject to the limitations under section 773, and for administrative costs, $10,000,000,000, to remain available until expended; provided, that such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Federal Credit Reform Act of 1990, as amended; provided further, that of this amount, not more than $25,000,000 for each of fiscal years 2013 through 2014, and not more than $50,000,000 for fiscal year 2015 may be used for administrative costs of AIFA; provided further, that not more than 5 percent of such amount shall be used to offset subsidy costs associated with rural projects. Amounts authorized shall be available without further action.
Subpart E—Extension of Exemption From Alternative Minimum Tax Treatment for Certain Tax-Exempt Bonds

SEC. 780. EXTENSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX TREATMENT FOR CERTAIN TAX-EXEMPT BONDS.

(a) In General.—Clause (vi) of section 57(a)(5)(C) of the Internal Revenue Code of 1986 is amended—

(1) by striking “January 1, 2011” in subclause (I) and inserting “January 1, 2014”; and


(b) Adjusted Current Earnings.—Clause (iv) of section 56(g)(4)(B) of the Internal Revenue Code of 1986 is amended—

(1) by striking “January 1, 2011” in subclause (I) and inserting “January 1, 2014”; and


(c) Effective Date.—The amendments made by this section shall apply to obligations issued after December 31, 2010.