United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, FRIDAY, JANUARY 30, 2009 No. 19

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, February 2, 2009, at 2 p.m.

Senate

FRIDAY, JANUARY 30, 2009

The Senate met at 9:31 a.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, our shelter in the time of storm, our rock in a weary land, Lord, we live in challenging times that require more than human solutions for our problems. In the midst of these days, help our lawmakers to find in You a sure place to stand and a strong support they can absolutely trust. Lord, give them such faith in You that they will seek and follow Your guidance, living lives that honor Your Name. Rule in their hearts as they deliberate so that Your higher wisdom will prevail. Help them to remember that they must give an account to You for how responsible they are in carrying out their duties.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 30, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, we are going to be in a period for the transaction of morning business today. Senators will be allowed to speak for up to 10 minutes each. There will be no roll-call votes today, as we announced last night. We will proceed to the consideration of the American Recovery and Investment Act of 2009 on Monday. Under a previous agreement, the Senate will debate and vote on the Holder nomination to be Attorney General of the United States. That will occur at 6:15 p.m. on Monday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I also ask unanimous consent to speak for as much time as I may use in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Texas is recognized.

NOMINATION OF ERIC HOLDER

Mr. CORNYN. Mr. President, on Monday, the Senate will take up the nomination of Eric Holder to be the next Attorney General of the United States. I

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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serve on the Senate Judiciary Committee, and that committee held hearings regarding Mr. Holder's confirmation. Regrettably, last Wednesday, when the Senate Judiciary Committee voted that nomination out of the committee, I was a ''no'' vote.

I wish to say that originally I approached this nomination with an open mind and a determination to ask—indeed to demand—answers to legitimate questions. I think that is the responsibility of each Senator under the Constitution in performing our duties of advice and consent. I also think it is important for me to explain why, even though I approached that nomination with an open mind and a predisposition to vote for Mr. Holder's nomination, I ultimately concluded, as a result of some of the evidence, which I will lay out, I could not do so in good conscience.

Mr. Holder, of course, served as Deputy Attorney General during the Clinton administration, and if there is any public service that is more illustrative of how someone will actually perform as Attorney General, I think it would be in performing as Deputy Attorney General. The Deputy Attorney General is the one job on Earth most similar to the job for which Mr. Holder will be confirmed on Monday. It is rare to have such a clear picture of the job a nominee will do if confirmed. Thus, I reviewed Mr. Holder's record with great care, as you might expect, and also with great interest.

Unfortunately, two of Mr. Holder's actions as Deputy Attorney General: the recommendation that President Clinton commute the sentences of 16 Puerto Rican separatist terrorists and the recommendation that President Clinton pardon the billionaire fugitive Marc Rich, raised serious questions about Mr. Holder's judgment and independence from the wishes of his political sponsors—two key qualities I would hope the Senate would want for any Attorney General, independence, adherence and fidelity only to the rule of law—and good judgment.

Two other aspects of Mr. Holder's record also raised concerns for me. Mr. Holder's record demonstrates a failure to understand the profound threat posed by radical Islamic terrorism; and, second, Mr. Holder has often appeared to be hostile to the second amendment, to the constitutional right to keep and bear arms.

As I said, in the Judiciary Committee, Mr. Holder failed to answer my questions, regrettably, and the questions of my colleagues in a way that alleviated these concerns. As I will explain, I indeed found Mr. Holder's answers to be nothing short of evasive in some key respects. Because I have doubts about Mr. Holder's judgment and independence, I am opposing this nomination, and the four reasons, as I tried earlier to summarize but which I will repeat are Mr. Holder's role in the FALN and Los Macheteros commutations, his role in the Marc Rich pardon, his misjudgments and shifting opinions with regard to the war on terror, and his record of hostility toward the individual's right to keep and bear arms.

First, I would ask my colleagues to consider Mr. Holder's role in the FALN and Los Macheteros commutations. In August 1999, President Clinton offered clemency to 16 members of two Puerto Rican separatist terrorist organizations, FALN and Los Macheteros. Deputy Attorney General Eric Holder made the recommendation that he should do so. The FALN was a clandestine terrorist group devoted to bringing about the independence of Puerto Rico through violent means. Its members waged open war on the United States, with more than 150 bombings, arsons, kidnappings, prison escapes, threats and intimidation, which resulted in the deaths of at least six people and injuries to many more between 1974 and 1983.

The most gruesome attack was in 1975 in lower Manhattan. Timed to explode during the lunch hour, the bomb decapitated 1 of the 4 people killed and injured another 60. In another attack in Puerto Rico, Los Macheteros opened fire on a bus of U.S. sailors. Two American sailors were killed and nine were wounded. Fortunately, much of the leadership and membership of these terrorist groups was captured and brought to justice in the late 1970s and early 1980s. By the late 1980s, the worst of the FALN's reign of terror was over.

In the early 1990s, sympathetic activists petitioned for clemency on behalf of these terrorists, and it was an easy call for the pardon attorney. The pardon attorney is the attorney at the Department of Justice who reviews clemency requests and makes recommendations. They make sure the record is thoroughly reviewed and, as I said, then make recommendations. The fact is these unrepentant terrorists who were given clemency by the Clinton administration never even petitioned for clemency. They never even asked for it.

Pardon attorney Margaret Love, who worked for then-Deputy Attorney General Jamie Gorelick, recommended against clemency for any of these prisoners, and a recommendation was transmitted to the President. Shortly thereafter, when Eric Holder became Deputy Attorney General, he rescinded that recommendation opposing clemency and recommended that President Clinton grant clemency to these unrepentant terrorists.

Strangely, Mr. Holder still stands behind this recommendation, saying he considered it reasonable. But the reasons he gives are not persuasive. Mr. Holder claims these men were not linked to violence. That is false. These men were active members of a terrorist organization that had committed dozens of violent crimes, including, as I mentioned earlier, bombings, murder, and arson. It is true the particular crimes for which these individuals were convicted were not, in and of themselves, violent crimes, but by that standard, Saddam Hussein did not commit crimes, unless he pulled the trigger himself. Likewise, Osama bin Laden, responsible for the deaths of thousands of innocent American citizens, would not be linked to crime under the standard Mr. Holder posits.

There is ample evidence that at least some of the men for whom Eric Holder recommended clemency were, in fact, murderers. These commutations were, at the time, widely believed to have some political motivation. Indeed, the Clinton White House discussed how these clemencies would affect then-Vice President Gore's political standing within the Puerto Rican community. For this reason, I believe a full accounting of whom Mr. Holder met with, what they discussed, and what went into his decision to recommend these commutations is in order.

But there is another equally important reason that these questions must be answered. The victims of the FALN and the Los Macheteros deserve answers. I would encourage all my colleagues, before voting, to review the testimony of Joseph Connor, whose father was killed in the bombing in lower Manhattan in 1975. Mr. Connor testified that Mr. Holder did not consult with him, did not inform him or his family or other victims before recommending that the President set FALN terrorists free.

I cannot vote for Mr. Holder until I can explain my vote to Joseph Connor. Because Mr. Holder has failed to answer my questions about the FALN commutations, I do not have an explanation I can give to Mr. Connor.

One of the reasons Mr. Holder has refused to answer some questions is, it appears he is invoking executive privilege. But it is very odd because this apparent assertion of executive privilege comes despite the fact that President Clinton waived executive privilege for all testimony concerning these commutations. That is in the record of the hearing before the Judiciary Committee. I think it is unfortunate that the current administration's first apparent assertion of executive privilege seems to come for no purpose other than to protect Mr. Holder's record from scrutiny.

As I said, in 2001, President Clinton waived executive privilege with regard to the commutations and pardons he granted. In a letter to the House of Representatives, President Clinton's lawyer explicitly stated President Clinton ''will interpose no executive privilege objections to the testimony of his former staff concerning these pardons, or to other pardons and commutations he granted.''

Nonetheless, Mr. Holder continues to assert he is not authorized to testify about the so-called options memorandum, which is part of the record underlying these commutations. Instead of forthright answers about Mr. Holder's decision to recommend these

commutations or present the options memo to then-President Clinton, he has repeatedly refused to answer questions submitted by Judiciary Committee members, including me.

For example, I asked Mr. Holder whether he was aware at the time he made his commutation recommendation of the leadership positions of three of these terrorists and their alleged involvement of another murder of a U.S. Navy sailor—more than one. Mr. Holder responded that this information ''was included in [their] presentence reports which in the ordinary course would be requested and reviewed by the Office of Pardon Attorney as one of the first investigative steps.''

This answer, I have to say, is a very lawyerly answer, but it is nonresponsive to my question. It avoids the question of whether he was aware of these matters when he recommended commutation. In fact, Chairman LEAHY and Ranking Member SPECTER sent a letter to the Department of Justice citing President Clinton's waiver of executive privilege and requesting the relevant documents regarding the clemency decision. This request, inexplicably, has been denied.

Because President Clinton has waived this privilege, this assertion of privilege is apparently now being made by the present administration of President Obama. Of course, executive privilege only belongs to the principal, to the client—in this case the Executive—so it has to be either President Clinton or President Obama, and clearly President Clinton has waived it.

The Justice Department has apparently advanced the argument that the Clinton waiver applied only to testimony and not to documents, but Mr. Holder's testimony about the options paper is clearly testimony and not a document. Thus, his assertion of privilege is indeed broader than the most restrictive reading of the Clinton waiver. So who is denying the Holder authorization to testify about the options paper? Apparently, I conclude, it could only be President Obama.

Assertions of executive privilege, as we know, raise questions about the balance of power between the executive branch and the legislative branch. The Executive's interest in secrecy and confidential communications, and Congress's right to information, particularly in the context of a confirmation hearing when performing our constitutional duty of advice and consent, are in tension and, in this case, conflict. It is up to the branches to negotiate and work together to take both interests into account and to make public relevant information that bears on the qualifications and experience of members of the President's Cabinet—in this instance, Mr. Holder. I believe President Obama owes the American people—consistent with his ideals on open government, which I enthusiastically support—to make his assertion of privilege plainly and in the light of day.

Moreover, it is hard to imagine any significant executive branch interest in keeping this information secret. These documents are a decade old and concern crimes committed about 30 years ago. President Clinton, of course, is no longer in office, and he has waived the privilege. The context of these documents has been alluded to in U.S. major newspapers and even by Mr. Holder himself. So it seems to me there is no further executive branch interest in continuing to hide these documents, only a desire to shield Mr. Holder from hard questions.

In short, Mr. Holder's responses to questions regarding these commutations has been evasive. The Senate and the American people deserve forthright answers to questions that pertain to Mr. Holder's judgment, his independence, his seriousness of mind when it comes to the threat of Islamic extremism, and his qualifications to be Attorney General.

I also believe the families of the victims of the terrorist acts by the FALN and Los Macheteros terrorists deserve a full accounting for the release of terrorists who were partly to blame for their loved one's deaths. Instead of providing a forthright accounting, Mr. Holder has simply dodged the question, hidden behind an apparent claim of executive privilege, and refused to cooperate with the Judiciary Committee in getting to the bottom of some of these matters.

The next concern I have has to do with the Rich pardon I alluded to at the very beginning. Less than 2 years after the controversy surrounding the FALN commutations, on the very last night of the Clinton administration, Mr. Holder made a very similar error of judgment when he recommended that President Clinton pardon the notorious fugitive by the name of Marc Rich. At the time, Mr. Rich was No. 6 on the FBI's Ten Most Wanted List.

In 1983, then-U.S. attorney Rudy Giuliani in the Southern District of New York, obtained an indictment of international commodities trader Marc Rich and his business partner, Pincus Green. The indictment charged 65 counts of tax evasion, racketeering, and trading with the enemy.

Specific charges include illegally trading with the Ayatollah Khomeini's Iranian terrorist regime in violation of U.S. energy laws and a trade embargo against Iran.

Indeed, Mr. Rich made a fortune trading with the Ayatollah's regime at the same time that 52 American diplomats were still being held hostage in the U.S. Embassy in Iran. Mr. Rich profited by trading with Cuba, Libya, and South Africa during apartheid—all despite U.S. embargoes. Rather than face these charges head on, Mr. Rich simply fled to Switzerland where he remained a fugitive for 17 years. Federal law enforcement, with help from the CIA, the NSA, and other agencies, expended substantial resources in an effort to apprehend Mr. Rich. These efforts included extradition requests and attempts by U.S. marshals to arrest him abroad. Rich refused to return to the United States, despite an offer by prosecutors to drop the racketeering charges in exchange for his return.

In an effort to avoid his extradition, though, Mr. Rich went so far as to renounce his U.S. citizenship, and he tried to become a citizen of Bolivia. It is hard to imagine a more inappropriate candidate for a pardon than a fugitive from justice accused of trading with the enemy. Mr. Rich's own lawyer told him he ''spit on the American flag'' by avoiding the jurisdiction of U.S. courts.

According to those involved in the pardon process, including President Clinton and Marc Rich's lawyer, Eric Holder was more responsible for this controversial decision than any other member of the Clinton administration with the exception of the President himself.

In fact, on the last evening of the Clinton administration, White House counsel called Mr. Holder to solicit his views on the Rich pardon application. As Deputy Attorney General, Holder was effectively speaking for the entire Department of Justice during this crucial phone call.

Disregarding the strongly held views of hundreds of Department of Justice prosecutors and FBI agents who worked nearly two decades to bring Marc Rich to justice, Mr. Holder told Nolan he was ''neutral, leaning to favorable.''

What is crucial to understand is that Mr. Holder was not just speaking for himself but the entire Department of Justice. But with this recommendation from the Deputy Attorney General, President Clinton granted the Rich pardon, one of his last and most despicable actions.

Even after having ample opportunity to explain himself, it is unclear what Mr. Holder's rationale was for recommending this despicable pardon, as I said, which former FBI Director Louis Freeh called a ''corrupt act'' on the part of President Clinton.

Mr. Holder has admitted he made a mistake, which is commendable. But never in a full day of hearings and in answers to several written questions did Mr. Holder offer a persuasive reason for supporting this pardon—other than, apparently, caving in to pressure from the Clinton White House. Mr. Holder defends himself by claiming he was naive; and, again, we have all made mistakes. I grant that. He now admits the Rich pardon was a mistake and promises he will never make a similar mistake again. In fact, he takes the position he will be a better Attorney General because of learning from this mistake.

But this pledge is difficult to square with the fact that Mr. Holder had essentially made the same error in judgment less than 2 years before with the

FALN commutation. I am also concerned that Mr. Holder's testimony regarding key conversations and meetings on the Rich pardon seem to contradict the recollections of members of the Marc Rich legal and lobbying team.

In the fall of 2000, there was an e-mail from former White House Counsel Jack Quinn—who was representing Rich in his quest for a pardon—to the rest of the Rich legal team indicating Mr. Rich told Mr. Quinn to ''go straight to the White House.''

This suggests that Holder was telling Quinn to bypass the typical pardon process through the Department of Justice, where opponents of the Rich pardon were legion. Mr. Holder disputes this interpretation, arguing that an application sent to the White House would be forwarded to the Department of Justice in any case. Whether this is true, it is indisputable that the prosecutors in the Southern District of New York who indicted Marc Rich for the crimes I mentioned earlier—they were never asked about their views on the Rich pardon, as they would have been if the normal pardon process had been followed at the Department of Justice.

If Mr. Holder advised the Rich pardon team on strategic matters, it would be a serious violation of his duties as the second highest law enforcement officer in the land. Such aid would be particularly disappointing because a House committee had specifically reprimanded Mr. Holder for improperly aiding and facilitating the clemency application of the FALN terrorists 2 years earlier. It is not disputed, though, that the Rich pardon application was fast-tracked and sheltered from its many opponents.

It is clear to me that Mr. Holder played a role in clearing the way for this pardon and, at a minimum, he knew it had not been appropriately handled through the Department of Justice pardon process.

Nevertheless, he declared himself as ''neutral, leaning favorable'' when the White House asked him about his opinion.

In summary, Mr. Holder appears once again to simply have given President Clinton the answer he wanted. The Rich pardon recommendation is the most recent major action by Mr. Holder as a public official. I believe the evidence casts doubt on his independence and his judgment once again.

My greatest concerns, however, are that Mr. Holder fails to fully understand the unique challenges and threats posed to our country by radical Islamic terrorism. I want to explain why I say that. I agree with Mr. Holder when he says the most important duty of the Attorney General is to protect America from another terrorist attack. But his public statements regarding the war on terror too often betray a willingness to advance ideological rhetoric without fully appreciating the sensitivity and the complexity of this issue.

I find it especially troubling that Mr. Holder's legal views on national security have seemed to shift, depending upon the political mood of the day and the audience to whom he is speaking.

Shortly after the terrorist attacks of 9/11, Mr. Holder voiced support for the Bush administration's interpretation of the status of terrorist detainees. Mr. Holder said, in January 2002, that al-Qaida terrorists:

> . . . are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.

He went on to endorse indefinite detention of terrorist prisoners at Guantanamo Bay and argued that such prisoners should not be afforded Geneva Conventions protections so that they could, in fact, be interrogated to provide actionable intelligence.

He did insist, as did the Bush administration at the time, that these detainees should be treated humanely, though. But more recently, as the political winds have shifted, Mr. Holder has chastised the Bush administration for policies he now seems to believe defy the law.

There is a disturbing Jekyll-and-Hyde quality to Mr. Holder's legal pronouncements concerning our counterterrorism policies. I wish to quote from an Associated Press article entitled ''Obama AG pick defended Guantanamo policy,'' dated November 22, 2008. I ask unanimous consent that this article be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. Asked whether terrorism suspects could be held forever, Holder responded:

> It seems to me that you can think of these people as combatants and we are in the middle of a war.

Holder said in a CNN interview in January 2002:

> And it seems to me that you could probably say, looking at precedent, that you are going to detain these people until the war is over, if that is ultimately what we wanted to do.

Just weeks later, Holder told CNN he did not believe al-Qaida suspects qualified as prisoners of war under the Geneva Conventions.

> One of the things that we clearly want to do with these prisoners is to have an ability to interrogate them and find out what their future plans might be, where other cells are located. Under the Geneva Convention, you are really limited to the amount of information that you can elicit from people.

Holder said it was important to treat detainees humanely, but he said they:

> . . . are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.

He also downplayed criticism that prisoners were being mistreated.

> Those in Europe and other places who are concerned about the treatment of al-Qaida members should come to Camp X-ray and see how people are, in fact, being treated.

Those were essentially the same arguments the Bush administration made with regard to Guantanamo Bay with regard to holding enemy combatants who wear no uniform, who do not obey the laws of war, and are not citizens of a state, a nation state, but, in fact, are a terrorist organization bent on killing innocent civilians here and abroad in an effort to pursue their ideology.

Since then, however, these arguments have been heavily criticized, as we know, by human rights activists and leading Democrats and, inexplicably to me, Mr. Holder himself.

He said in June of 2008:

> We must close our detention center at Guantanamo Bay.

He said that in a speech to the American Constitution Society. He said:

> A great nation should not detain people, military or civilian, in dark places beyond the reach of law. Guantanamo Bay is an international embarrassment.

Holder added he never thought he would see the day when the ''Supreme Court would have to order the President of the United States to treat detainees in accordance with the Geneva Convention.''

These sharply contrasting legal conclusions were made, again inexplicably by one and the same person, Eric Holder, the nominee for the highest law enforcement officer in the United States. One can only wonder what he truly believes.

In a 2008 speech to the liberal American Constitution Society, he attacked many of the same legal positions he once held as ''making a mockery of the rule of law.''

In that same speech, Holder called for a ''reckoning'' over the Bush administration's ''unlawful practices in the war on terror.''

He also accused the Bush administration of ''act[ing] in direct defiance of Federal law'' and railed against counterterrorism policies that he claimed ''violate international law and the United States Constitution.''

In this way, Mr. Holder appears to have already publicly prejudged a potential prosecutorial question that may come before him as Attorney General, without knowing all the facts.

Now, it is one thing to change your mind, but it is quite different to change your mind and then attack the very same position you once held as one that could only be held in bad faith, describing it as ''making a mockery of the rule of law.''

I can only conclude that as an act of pure cynicism, somebody who tells you, particularly a lawyer who takes a legal position he once embraced, as now only being able to be held in bad faith, is a person who has made a bad-faith legal argument at least once.

The recent terrorist attacks in India, in Mumbai, have reminded Americans of the possibility of further attacks on U.S. soil or literally anywhere around the world. On November 26, last year, Mumbai, as we know, was ravaged by a gang of terrorists. One of the attackers

was captured while the rest were killed.

More than 170 individuals died as a result of bombings and gunfire, including 6 Americans. If a U.S. city was targeted in the same way Mumbai was, or worse, biological, chemical, other even nuclear weapons being used, it is critical that we be able to obtain the intelligence from captured terrorists in order to assess whether any other imminent attacks are in the works.

If we captured the terrorist in an ongoing attack on an American city, it is critically important that we not treat him as an ordinary criminal, with all the rights conferred by the Constitution on an American citizen. That, I believe, is one of the most important lessons we must recall and never forget from the tragedy of 9/11. To do so would effectively shut down the intelligence-gathering process and risk American lives.

When this sort of unpredictable legal challenge arises in the war on terrorism, I wish to know whether the Eric Holder of 2002 or the Eric Holder of 2008 will be calling the shots. I was not encouraged by Mr. Holder's refusal to say he would authorize aggressive interrogation against terrorists, even if he knew that to do so would prevent a major attack on an American city.

I also fear his recommendation for and continued endorsement of the FALN terrorist commutations is evidence of a failure to appreciate the continuing dangers of terrorism. At his confirmation hearing, Mr. Holder attempted to defend his poor judgment on the terrorist clemency issue by noting these commutations occurred long before 9/11.

But as I reminded him, the FALN clemencies came after the first World Trade Center bombing of 1993, and the al-Qaida attacks on U.S. embassies in Kenya and Tanzania in 1998. As Senator COBURN rightly pointed out, his clemency recommendation came in the wake of the 1995 Oklahoma City bombing right here on our own soil, the most horrific domestic terror attack that has ever occurred in our country.

So I worry that Mr. Holder is not prepared to lead the Department of Justice at a moment when this Nation is waging an asymmetric war whose battlefield extends across the globe and even onto U.S. soil.

If confirmed as the next Attorney General, Mr. Holder will inherit a complex legal architecture constructed to prevent terrorist attacks here in America and against our allies. That has admittedly been controversial. But I do not think anyone can question its effectiveness given the fact that we have not had another terrorist attack on our own soil since 9/11.

If Mr. Holder is confirmed, I hope he will study these issues and treat them more carefully and with greater deliberation and greater soundness of judgment than he has demonstrated by his conflicting positions in 2002 and 2008. I hope that rather than shifting his opinions with the political winds, he will do his very best to uphold the rule of law and the Constitution of the United States while protecting the American people by making sure we are protected within the limits of our law from future attacks.

The final issue I wish to mention is my concern about Mr. Holder's adherence to the Supreme Court ruling in the District of Columbia v. Heller, which interpreted an individual's right to keep and bear arms.

That case reversed the District of Columbia's position that said individuals could not own firearms in their homes to protect their family and their possessions. I believe this is an important victory for the second amendment that must be protected and preserved.

As the Nation's chief law enforcement officer, the Attorney General steers Federal gun law policy. The next Attorney General's views will shape not only law enforcement and prosecution priorities with regard to these issues but also the positions the Department of Justice takes in court. The views of the Justice Department will always be given considerable weight during the early stages of the law's development post-Heller.

It is crucial the next Attorney General fully appreciate that an individual's right to keep and bear arms is a fundamental freedom protected by our Constitution. I was not comforted by Mr. Holder's vague assurance that Heller now is the law of the land because it cannot be reconciled with his long record of hostility to second amendment rights.

Through his service as Deputy Attorney General and continuing to private practice, Mr. Holder has opposed the individual right to keep and bear arms. As Deputy Attorney General, he advocated for a wide variety of Federal gun restrictions. Mr. Holder's fierce hostility to gun rights continued after, as I say, his tenure as Deputy Attorney General.

Mr. Holder feels so strongly about his opposition to gun rights that he, along with his former boss, the former Attorney General Janet Reno, filed a brief with the Supreme Court in the Heller case and argued against the individual rights approach to the second amendment and in favor of the view that the second amendment protects only militia activities.

The Holder-Reno brief argued:

> The Second Amendment does not protect firearms possession or use that is unrelated to participation in a well-regulated militia.

Although the individual rights approach prevailed in the Supreme Court and in the D.C. Circuit, Holder's brief described that approach as ''unwise'' and ''unjustified.'' The Holder-Reno brief goes on to argue that, even if the second amendment protects an individual right, that right should be narrowly construed.

I worry it will be impossible for Mr. Holder to vigorously protect the second amendment rights of all Americans when he is so clearly opposed to the decision in the Heller case. I believe his hostility to the second amendment could lead the Department of Justice to take opposing positions to narrow that Supreme Court decision, particularly in court.

Holder's Heller brief was directly at odds with the Court's opinion, as we have seen. Can we expect him to vigorously enforce and protect the constitutional right to bear arms, a right with which he personally and strenuously disagrees?

Let me say, in conclusion, the Senate's advice and consent function requires us to carefully review a nominee's career, to ask hard questions, and to insist on satisfactory answers. I take this duty seriously, as I know all my colleagues do. With this nominee, I conclude that there are simply too many questions to which I have not yet heard a satisfactory answer.

Why would he recommend clemency for unrepentant terrorists?

Why would he recommend a pardon for a fugitive who made billions trading with America's enemies? Did Mr. Holder know one of the men whose clemency he recommended was linked to the murder of a U.S. sailor and, if so, did he communicate this to the White House? Why did Mr. Holder consult with Mr. Rich's prosecutors before recommending a pardon? Why is President Obama asserting executive privilege to prevent Mr. Holder from testifying about these commutations? Was Mr. Holder's judgment in the Rich and FLAN clemency decisions influenced by the outcome that he believed President Clinton wanted so badly? How can I explain to Joseph Connor, whose father was killed in the 1975 bombing in lower Manhattan, that the man who never spoke to his family before championing clemency for the men responsible for his father's murder will be the next Attorney General of the United States?

Does Mr. Holder appreciate the gravity of the threats and the complexity of the legal issues posed by the war on terror? Can Mr. Holder be counted on to support and defend the constitutional right to keep and bear arms?

I can't answer these questions with any degree of certainty. I regret to say I will vote against the nomination of Eric Holder to be the next Attorney General.

EXHIBIT 1

OBAMA AG PICK DEFENDED GUANTANAMO POLICY)

(By Matt Apuzzo)

WASHINGTON. Nov. 22, 2008—President-elect Barack Obama's choice to become the next attorney general, Eric Holder, once defended the Bush administration's arguments for holding detainees at Guantanamo Bay, a position that runs counter to his more recent comments—and to a signature policy of the incoming administration.

Holder, a confidant to Obama on legal issues, recently has been a leading voice in the chorus calling to close Guantanamo Bay, which he has described as an international embarrassment. Likewise, Obama has called

it a ''sad chapter in American history,'' pledged to close the island prison and criticized the Bush administration for arguing that terrorism suspects aren't covered by standards set by the Geneva Conventions.

But in the months after the Sept. 11, 2001, terror attacks, Holder defended the Bush administration's policies at Guantanamo.

Asked whether terrorism suspects could be held forever, Holder responded: ''It seems to me you can think of these people as combatants and we are in the middle of a war,'' Holder said in a CNN interview in January 2002. ''And it seems to me that you could probably say, looking at precedent, that you are going to detain these people until war is over, if that is ultimately what we wanted to do.''

Just weeks later, Holder told CNN he didn't believe al-Qaida suspects qualified as prisoners of war under the Geneva Conventions.

''One of the things we clearly want to do with these prisoners is to have an ability to interrogate them and find out what their future plans might be, where other cells are located,'' said Holder, the former deputy attorney general during the Clinton administration. ''Under the Geneva Convention, you are really limited in the amount of information that you can elicit from people.''

Holder said it was important to treat detainees humanely. But he said they ''are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.'' He also downplayed criticism that prisoners were being mistreated.

''Those in Europe and other places who are concerned about the treatment of al-Qaida members should come to Camp X-ray and see how the people are, in fact, being treated,'' he said.

Those were essentially the arguments of the Bush administration. Since then, those arguments have been criticized by human rights groups, leading Democrats, and Holder himself.

''We must close our detention center in Guantanamo Bay,'' Holder told the American Constitution Society this summer. ''A great nation should not detain people, military or civilian, in dark places beyond the reach of law. Guantanamo Bay is an international embarrassment.''

Holder added that he never thought he'd see the day where the ''Supreme Court would have to order the President of the United States to treat detainees in accordance with the Geneva Convention.''

Those comments are in line with Obama's views. Holder did not return e-mail and telephone messages seeking comment about his earlier interviews. Brooke Anderson, a spokeswoman in Obama's transition office, restated Obama's commitment to opposing torture.

''Eric Holder shares that view,'' she said. ''The president-elect has complete confidence that Eric Holder will be an attorney general who will restore respect for the rule of law and for our international commitments.''

Obama's advisers are crafting plans to close Guantanamo Bay, release some detainees and bring others to the United States to face trial. One unanswered question, however, is what to do with detainees who could not be prosecuted in criminal courts without jeopardizing national security.

The Justice Department under Holder almost certainly would help answer that question.

In introducing Holder and other members of his national security team, Obama said he welcomed differences of opinion.

''I assembled this team because I am a strong believer in strong personalities and strong opinions,'' he said. ''I think that's how the best decisions are made.

''I will be responsible for the vision that this team carries out,'' Obama said, ''and I will expect them to implement that vision once decisions are made.''

Mr. CORNYN. I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALEXANDER. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ECONOMIC STIMULUS

Mr. ALEXANDER. Mr. President, next week the Senate begins the debate of the so-called stimulus package. I wish to talk about that for a few minutes. It is $1.2 trillion of borrowed taxpayer money to be spent in an effort to help get our economy restarted. Here is my position on it, and I believe the position of most Republicans and of some Democrats. We believe that in order for the stimulus to be effective, it should be reoriented on housing. First, fix the real problem: housing. If housing is restarted, if home values are stabilized, and if people are buying homes, that will do more to help restart the economy than anything else. Second, we should let people keep more of their own money. A true stimulus is permanent tax relief. If people have more of their own money in their pockets, they will have more confidence. They will be able to buy more. After reorienting toward housing, that will also help restart the economy.

Since we are borrowing so much of this money, especially, we believe it ought to be oriented directly toward those items that would specifically create jobs now. It should not go toward good sounding ideas such as Head Start and Pell grants for college students that we may want to take up later, maybe as early as the following week, in a regular appropriations bill. So that is our belief: reorient the stimulus toward housing, let people keep more of their own money, and get the stuff out of the bill that has nothing to do with creating jobs now, in the next few months or in the first year.

We know Americans are hurting. Every single Senator knows that. Our country's economic turmoil is hitting every family where it matters, in the family budgets. More than 860,000 properties were repossessed by lenders in 2008, more than double the 2007 level. Manufacturing is at a 28-year low. Tennessee is a State that relies heavily on manufacturing. The unemployment rate is 7.2 percent, too high. It has been higher. I can remember at a time when I was Governor of Tennessee in 1982, the unemployment rate was 12 percent, but 7.2 percent is too high. There were 1.9 million jobs lost in the last 4 months of 2008. The long-term unemployed, people out of work for 27 weeks or more, rose to 2.6 million in December of 2008. So there are a number of steps we need to take as a government, and we have been taking them.

At a hearing this week, where the Presiding Officer and I are both members of the Budget Committee—and we probably agree those hearings were excellent—Douglas Elmendorf, Director of the Congressional Budget Office, reminded us of the steps the Government is already taking. The Federal Reserve negotiated the sale of Bear Sterns to JPMorgan Chase, $29 billion, to form a new limited liability company. Fannie Mae and Freddie Mac, the agencies that guaranteed half the home loans in the country, were taken over by their regulator and the Treasury put up $100 billion to stabilize that situation. The Federal Reserve extended $60 billion in a line of credit to the American International Group, the insurance company called AIG. We had a debate in October where on both sides of the aisle, two-thirds of Republicans as well as many Democrats voted to give the Secretary of the Treasury $700 billion to invest in troubled assets or to use in a variety of ways to try to keep our economy from going straight down. It has gone down, but it didn't go straight down; we believe this is partly because of the action the Congress and the President took at that time.

What we had was, in effect, a wreck on the highway. There is an old Roy Acuff song by that title. I think that is the best way to explain what was happening. It was like a wreck on the interstate outside Knoxville and suddenly traffic is backed up all the way to Lenoir City or even Kingston. One lane was the money for the bank loan, the next lane was the money for your auto loan, and the next lane was for meeting payroll. As long as that wreck was on the highway, none of the money could get where it needed to go, and nobody could borrow on anything. It is better today than it would have been, but we still have a deeply serious problem.

The law we passed in October temporarily raised the insurance for deposits from $100,000 to $250,000. Steps were taken to guarantee money market funds. The Treasury, Federal Reserve, and Federal Deposit Insurance Corporation announced agreements with Citibank and Bank of America. They created a liquidity program for the banking system.

The Federal Government, in all of its variety of agencies, has been very busy since October using taxpayer dollars, where necessary, or the Federal Reserve balance sheet, or Federal Deposit Insurance Corporation funds collected from banks to try to create a situation in which our economy can restart.

We know, having visited with President Obama and his team of advisers, that they are thinking of even more things we may need to do. But next week in the Senate we will be talking about whether it is a good idea to borrow $1.2 trillion and spend it as the Appropriations and Finance Committees

have recommended we spend it as a way of trying to restart the economy. What I am here today to say is: we believe there ought to be a stimulus, but we believe it ought to be reoriented toward housing, that it ought to be reoriented toward permanent tax cuts, and that we ought to take out of this so-called stimulus anything that doesn't stimulate jobs now.

Let me try to give an idea of how much money $1.2 trillion is. It is more money than we spent on the Vietnam war in today's dollars. This comes from an article in Politico this week. It is more money than we spent on the invasion of Iraq. It is more money than we spent on the entire New Deal in today's dollars, and a lot more money than we spent on the Marshall plan. It is nearly as much money as we've spent on NASA ever since it started. It is a lot more money than we spent going to the Moon. This is a lot of money. We throw dollars around up here. Years ago Senator Dirksen said: A billion here, a billion there, sooner or later it adds up to real money. This is a trillion, a number that is hard for us to imagine. It is borrowed money, which I will get to in a moment.

Let me give one example of how I have been trying to describe how much money $1.2 trillion is. The Presiding Officer was Governor of Virginia. I was Governor of Tennessee. I looked around the Budget Committee the other day and almost every member there had been in State government in one way or another. In other words, we used to deal with real dollars. We couldn't print anything. At the end of the year, we had to balance our budgets. Sometimes we had to veto $25,000 programs for epilepsy. I had to do that in 1981, 1982, and 1983, when we had an economic turndown. That is why this amount of money is hard for me to get my arms around. I think it is hard for most Americans.

Let me give you an idea about how much money it is. The previous Governor of Tennessee, one who came after me, Governor Sundquist, thought we needed a State income tax. He recommended Tennessee should have a State income tax. It was about 4 percent. It would have raised about $400 million a year. There was never a more unpopular act in our State than the Governor Sundquist proposal that we have a State income tax. Many people said he was courageous for recommending it, but it was rejected. People wouldn't even invite him to dinner for a few months. I would, but many other people wouldn't. That was $400 million a year. The State of Tennessee will receive almost $4 billion of this money. I am sure it will make life easier for the current Governor and the current legislature, but think about that. The State only collects close to $12 billion a year in State tax dollars, and it is going to get $4 billion over the next 2 years from this so-called stimulus package. This would be the equivalent of imposing about a 20-percent new income tax on the people of Tennessee for 2 years to raise that same amount of money. There would be a revolution in Tennessee if we did this. That is the amount of money we're talking about.

We are not talking about giving the State of Tennessee $40 million or $4 million or $400 million. Its shortfall this year is $900 million, which is the worst it has ever had. We are talking about shipping $4 billion of borrowed taxpayer money to Tennessee. My point is, that is a lot of money.

There is another aspect to this amount of money. I listed a number of things that the Federal Reserve Board and the Congress have done to try to create a better economic situation, to get housing going, to help stabilize banks, and even to deal with automobile companies. Almost all of those dollars we used either came from the Federal Reserve Board, which is not part of the Federal budget, not part of taxpayer dollars, or it was an investment.

In Tennessee, people don't like the word ''bailout.'' It has come to be right up there with the top number. I voted twice, because I thought our country needed it, first to give President Bush, then to give President Obama the amount of money he needed to actually invest in banks or nonfinance companies so we could get the credit moving again. But in that case, we were investing dollars. We were not spending dollars. We hope and believe that we will get almost all of those dollars back for the taxpayer. When those dollars are put in a bank, for example, they pay 5 percent or 8 percent or even 10 percent interest, in some cases, back to the taxpayer. Maybe we will lose some of that money, but we don't intend to. It is not our goal. That is the purpose of it, investment. In this case, this is money gone.

This is borrowed taxpayer dollars, more than $1.2 trillion. I get to $1.2 trillion because the Senate bill is $900 billion, and the interest over the next 10 years is another $300 billion. That is the real cost of the stimulus package over the next 10 years. It is borrowed money.

Let me go to the borrowed money part.

We print money in Washington. We Governors cannot. That is one of the adjustments you make when you come here. It just takes a little while to do, and I understand the difference. The truth is, there is a reasonable level of debt a strong industrial country such as the United States can tolerate and still continue to grow. As the country grows, the debt reduces as a percentage of our output.

While it might be important for the State of Tennessee, as we always did, to balance our budget and almost never have any debt—and we did not even have an income tax—the Federal Government structure is different. I recognize that. But there is some reasonable limit to the amount of debt we should have, and there are good reasons there is a reasonable limit to that.

I think it is important to understand exactly what the debt we have is. USA Today did a story last year that talked about each family's share of Government debt and Government obligations. By ''obligations,'' I mean what we owe for programs such as Medicare, what we owe for Medicaid, what we owe veterans. It is real money. It is money we are obligated to pay. It comes down to more than $500,000 per family a year.

So I think the way to talk about this stimulus package is: Should we ask every American family to increase their $531,000 debt in order to spend money for a stimulus package to try to restart the economy? I believe we should increase our debt for some purposes, such as restarting housing or permanent tax cuts—that actually allows people to keep their own money. Or possibly increase our debt for programs that would, perhaps, actually do things in the next 6 months or 12 months to stimulate the economy. There are roads, and bridges, and national park maintenance that could happen right now that would create jobs that would be genuinely stimulative. But that is a very severe test we should ask the American people.

Mr. President, I ask unanimous consent that the USA Today article detailing the obligation every American family owes be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ALEXANDER. Now, there is another problem of running up too much debt. At the hearing where the Acting President pro tempore, the Senator from Virginia, and I were at earlier this week, I asked a question of the three witnesses: What can we learn from the rest of the world about how much debt is too much debt for the United States of America? The general answer was, today our debt is measured at about 40 percent of our annual gross domestic product. The estimates they gave suggested if the stimulus packages and if the other things that are going on continue to happen, we will be up to 60 or 70 percent of GDP. If the entitlement growth—the automatic spending we have in the Government from Social Security, Medicare, and Medicaid—keeps growing, and we keep adding at the rate we are doing, we will soon be at 100 percent of GDP. In other words, every year, government debt could equal everything we produced in this great country of ours—which produces 25 percent of all the wealth in the world every single year. We forget how fortunate we are. Twenty-five percent of all the wealth in the world, every single year, is produced in the United States of America and distributed among just 5 percent of the people in the world, which is us, those of us who live here. So we would have to take all that production for a whole year and use it to pay off our national debt.

Those economists who were testifying before us said that is too high. Forty percent is OK. They thought 60 percent is getting into a little bit of a problem. Eighty percent is too much, and 100 percent is a real problem. The practical problem is, as that number goes up—for example, as the entitlement spending goes up and other debt goes up—it squeezes out our ability to do anything else. I worked last year across party lines with Senator BINGAMAN and many others, and Senator WARNER worked in the private sector in this way, to try to do something about American competitiveness. We put into the law that we needed to double our investments in scientific research, and if we wanted to keep this high standard of living, we have a lot of work to do in high technology.

If we keep spending all the money on welfare, Medicare, Medicaid, Social Security, and debt, we are not going to have anything left for the great universities in the country on a yearly basis or for investments in our future. Those are annual investments. We will be squeezing them out. That is another problem with debt. With a lower debt, we have more money for not just the investments in our future but for our national parks, our clean air, and the other things we need to do to have a desirable country.

Let me go back to the stimulus package and ask: What do we need to do? We need to, in the words of Senator GREGG—and I believe it is fair to characterize Senator CONRAD, the chairman of the Budget Committee, in the testimony this week—we need to reorient the stimulus package toward real estate, toward housing, and toward credit having to do with banks. First, fix the problem: housing.

Every big mess has a way into it, and I believe—and many on this side, and I think some on the other side also believe—the way into it is housing. How would one fix that? Well, one suggestion by Glenn Hubbard—former chairman of the Council of Economic Advisors and now at Columbia University is have the Treasury back, for a period of a year or 18 months, a 4-percent, 30-year fixed rate mortgage for creditworthy customers.

In other words, a bank in Nashville would say to you, if you are creditworthy: We will give you a 30-year mortgage at 4 percent. If today's prevailing rate were 5.2 or 5.3 percent—which it is in the marketplace—the Government would make up the difference, and it would probably guarantee the loan. That would create a new demand for housing.

I was talking with someone in the mortgage business yesterday who pointed out that for one of our large lenders in America, when the rates went down naturally after the Federal Reserve action a few weeks ago, the number of mortgages issued by that bank quadrupled.

So if we were to say to the American people: If you are creditworthy, you can buy a house; you can get a 4-percent mortgage for a principal residence, and we are going to keep that option open for a year. That will cost us some money. That could be part of this stimulus. It would create demand in housing. It would create liquidity. It would get banks lending. We believe it would make a real difference. It would be a better way to start the stimulus package.

A second idea, as Senator ISAKSON and others have suggested, is to create a tax credit for home buyers. We would say $15,000. So if you are sitting around thinking today, well, homes in Richmond have actually gotten down to a pretty good level, and I like that house—you could get a $15,000 tax credit when you buy the house, and when you file your income tax return, you get $15,000 back. This is real money, and you do not have to pay it back. If you had a combination of a 4-percent mortgage and a $15,000 tax credit for the next year, maybe we could get housing stabilized, maybe we could get demand stirring, and maybe we could get people confidence that there is liquidity in the market. That might not solve every problem, but it is the place to start. We would say first, fix housing. That is the way to restart the economy.

Senator GREGG has suggested we take some of the Federal Deposit Insurance Corporation's ideas about helping people who are stuck in houses that are about to be foreclosed on and help to relieve those foreclosures. There may be a way for us to encourage servicers for all of these mortgages out across the country to modify the loans as some banks are now doing. By modifying the loan, they simply say to you: What can you afford to pay? As long as you can pay that and pay the interest on a regular basis, we will change the loan to fit you. That way there is no foreclosure. The loan does not go bad. The houses on that same street do not go down in value because your house is foreclosed on. We suggest we should spend the next week talking about reorienting the money that we seek to spend to stimulate the economy on housing first.

Second, we suggest the next component of a stimulus package should be tax relief that would help create jobs now. My own view is that temporary tax relief is nice. I like having the money in my pocket, but it does not stimulate very much. Permanent tax relief, the economists tell us—money you can depend on for the future—builds confidence and stimulates the economy.

For example, the small business expensing provision, which would spur investments by doubling the amount that small business owners can immediately write off on their taxes for capital investments and for purchases of new equipment in 2009. Another example is the bonus depreciation provision, that would be helpful. Middle-class tax relief—this is the permanent tax relief I was talking about—by lowering the 15-percent bracket to 10 percent and the 10-percent bracket to 5 percent. Those are examples of permanent tax relief or business tax relief that could help create jobs now.

Third, we should not spend this kind of money on many of these programs. We should not borrow this money when each family already owes over a half a million dollars. We should not borrow the money to spend on programs we do not have to have. That is not a wise use of our dollars. We ought to take all of that out of this stimulus bill.

For example, there are small examples: buying new cars, money for contraceptives, rehabilitating off-road trails, honey bee insurance. We can find items like that which don't create jobs now. But the fact is, I am more concerned about the $190 billion of entitlement spending, the automatic spending that is in this $1.2 trillion. Every estimate is that $130 billion, $140 billion, $150 billion of that will never get out of the budget. The House put in almost $100 billion of new Medicaid spending for the States.

Well, Governors and legislators are going to like that except we are never going to be able to reform the Medicaid Program. The Federal contribution to it is so rich that States cannot afford to take a fresh look at it. What is Tennessee going to do after it gets $2 billion—$1 billion a year—for the Medicaid Program for the next 2 years and, then, in the third year, gets zero of that money? That sort of money ought not to be in a so-called stimulus package.

We need some truth in packaging. If it stimulates—and all of us can think of things that do—then put it in; if it does not, keep it out. Historic preservation fund grants, I love those, but they are not going to stimulate jobs in the next few months. Head Start, I was the principal sponsor of that. Pell grants, I was a college president. Next week, after the stimulus, we will be talking about how much we can afford in our budget to increase those. Federal spending for Pell grants has doubled in the last 6 years, but those things do not belong in a stimulus budget.

Some things do. There are highways that can be built. There are Corps of Engineers projects that can be completed. There are National Park Service infrastructure projects that can be worked on next month. These are important improvement programs. That would help stimulate as well. We should be able to make an intelligent distinction between those things that can actually stimulate and those things that are just good-sounding things that we might vote for if we had the money and if we did not have to borrow so much of it. That is our third suggestion about what we should do.

One other suggestion—here is an area where we actually have potential, I believe, for bipartisan support. We should do something, when we debate the stimulus package, about automatic spending, entitlement spending, and by that we mean Social Security, Medicare, and Medicaid.

As I mentioned earlier, by the year 2015—not so far away—that will be 70 percent of our budget. In other words, when we come here, we get to vote to appropriate 30 percent of the taxpayer dollars we spend because 70 percent is automatically spent on those entitlement programs. That is forcing our debt up to 100 percent of gross domestic product.

We had a breakfast on Tuesday here, the bipartisan breakfast we have on Tuesday mornings. It is a chance for us to get together across party lines. It was evenly divided, actually. There were 24 Members who came. The whole subject was the Senator Conrad-Senator Gregg proposal to create a commission that would come up with a way to deal with Social Security, Medicare, and Medicaid, and present it to us. We would vote it up or down, and some way we would be forced to deal with this entitlement growth problem.

Senator MCCONNELL, the Republican leader, said in a speech a week ago today that he was ready to deal with the entitlement programs, but he was disappointed it was not dealt with in the last 2 years. He pledged to President Obama he would give him more support on dealing with it than the Democrats gave to President Bush during the last few years. You will remember President Bush tried in the beginning of his second term to deal with Social Security. He wanted private accounts. The Democrats said no to private accounts. So they just went down their parallel tracks and never got anywhere. Somehow they never got together and said: Well, let's drop private accounts, or let's try to do this; we can't do that.

President Obama has made clear he is serious about this. Senator MCCONNELL has made clear we are serious about it. We have a Conrad-Gregg proposal. We had 24 Senators meeting last Tuesday. We are meeting again next Tuesday. We believe something ought to be in this stimulus package that at least begins the process of dealing with entitlements in the long term so we can say to the American people: Yes, we are going to borrow some amount of money—maybe hundreds of billions of dollars—to stimulate the economy, and we know it contributes to the debt, but we are at least taking a step toward dealing with the long-term excessive debt we are experiencing in our country.

Finally, after listening to the Budget Committee hearings this week, the conclusion I came to was that I wish we were doing it all now. Here is what I mean by that. I spoke a little earlier about all the things we have tried to do since October at the Washington level—some by Congress, some by the Federal Reserve, and some by the Federal Deposit Insurance Corporation—to restart the economy. Whether it was dealing with the banks or the auto companies or troubled assets, there has been a lot of effort here.

After listening to the testimony in the Budget Committee, it seems perfectly obvious that we are going to have to do more. We are going to have to do more in housing. We would like to suggest we at least start addressing housing in this stimulus package, but if we don't do it here, President Obama and his team are going to have to recommend some steps for us to take in housing because that is how you restart the economy.

Everyone who looks at the Nation's banks and financial institutions knows we are going to have to do something there. We passed a bill in October called the Emergency Economic Stabilization Act, providing money to Treasury to address troubled assets. We thought it was going to be used to go get those bad assets off of the bank balance sheets so they could get back in good shape and lend again. That is what happens when banks fail or get in trouble. In normal times, the FDIC swoops in and takes the troubled assets out, sells them to another bank, and it closes on Friday and opens on Monday. Depositors are protected, and sometimes stockholders lose, but we go on and barely notice it. However, that is not what the money we passed was used for. It was used, basically, to give money to banks to capitalize, and the reason, apparently, was they were in such bad shape, they had to have it. So maybe it wasn't a bad thing to do, but it wasn't what we thought was going to be done, and now we still have the problem of bad assets.

We asked the witnesses: How many troubled assets do we have in all of these banks? They said $1 trillion or $2 trillion. I am not talking about a stimulus package; I am talking about troubled assets in financial institutions in the United States. We said: Well, then, what are we supposed to do about that? They suggested that the ideas we are likely to hear—they did not represent the administration, but the administration is listening to many of the same people—was that they may recommend, for example, some entity that will actually take the troubled assets out of the banks at some price, and then the banks are free to go ahead and with confidence start lending again. And we can start borrowing again, the economy goes again, but then we still have this entity over here. If it is going to buy $1 trillion or $2 trillion worth of bad assets, where does it get the money? Some of it is going to come from the taxpayers. How much of it? One witness said as much as we can afford to put in. So maybe $500 billion, $600 billion, $700 billion, $800 billion more dollars, not to spend as the stimulus package does but to invest in assets that we hope to sell for at least as much as we paid for them. That could happen. We might lose some money, we might make some money, but we are not spending it. But it is a lot of money, and it is taxpayers dollars, and there will be a lot of concern in Virginia and in Tennessee and in every State when we have to do that on top of what we have done before—on top of this stimulus. So why aren't we considering that today? Why aren't we considering that bad bank or what we are going to have to do about troubled assets?

So I think a better way to do it would be to say: Let's bring in the amount of money for troubled assets—is it $500 billion?—let's bring in the money to reorient toward housing, $200 billion or $300 billion, and then let's see what projects really do stimulate. Let's do it all together, and then let's see how much money we are talking about so that we are not surprised and the people we represent are not surprised. I would like to see us do it all at once.

So next week in the Senate is a very important week. There is a good deal of talk about bipartisanship. We appreciate President Obama's efforts on that. In my view, he and his team have been genuine in their outreach to Republicans. Just because we don't agree with their ideas doesn't mean there is not a bipartisan spirit here. And as time goes on, maybe we will get into a situation where even though the Democrats have enough votes to pass most bills and we have enough votes to stop cold some bills and to slow down any bill, that is not the way we work. If we come up with a better idea, maybe the majority will adopt it and create a bill that builds confidence in the country.

President Bush technically didn't need Congress's approval, except on appropriations, to wage the war in Iraq. Some of us thought it would be better if he had it, though, so Senator SALAZAR and I, along with 17 Senators and about 60 House Members across party lines, suggested that we adopt a resolution approving the principles of the Iraq Study Group as a way to conclude the war in Iraq honorably. President Bush didn't like that, and Majority Leader REID wouldn't bring it up for a vote. We might have been the only group that unified Senator REID and President Bush on the Iraq war, but we couldn't get it done.

I think it is a shame we couldn't because Secretary Rice and Secretary Gates told me not long ago they thought where we were going to end up in Iraq under Secretary Gates' administration is about where the Iraq Study Group said we should. If we had adopted that as a Congress, perhaps the war would have been easier, and our enemies would have gotten a clearer message, and our troops would have gotten more support, and President Bush would have had a more successful Presidency.

So we won the election, and we passed the bill. That is the recipe for passing many bills, but it is not the recipe for a successful Presidency. I think President Obama knows that, and that is why he has gone out of his way to visit with us and talk with us. I hope—with the stimulus package, with entitlements coming down the road and health care plans coming down the road—that the ideas we have

on this side of the aisle, if they are good, are adopted on the other side of the aisle and we genuinely can work together in a legislative way. I think that can happen, and I would like for it to happen starting next week.

Next week is important for the Senate and important for the American people. We on the Republican side of the aisle believe we need a stimulus package, but we believe it needs to be the right stimulus package.

First, it should fix the problem, and the problem is housing. That would help restart the economy. And we have specific ideas about how to do that which I have suggested.

Second, we should let people keep more of their own money. That means permanent tax cuts. That is a way to build confidence.

Third, because we are borrowing this extraordinary amount of money and because we have other requirements for borrowed dollars, we should be very careful about what we borrow and what we spend it for and only spend it for those items that genuinely stimulate the economy and create jobs in the very near term. That is the truth in packaging.

If we adopt those three principles, then I think there will be genuine bipartisan support next week for a stimulus. If we don't, there won't be. That is why we have the Senate. That is why we have the debate. That is why I think we are here.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks an article by R. Glenn Hubbard and Christopher J. Mayer detailing the proposal for a 4.5-percent mortgage loan over 30 years.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ALEXANDER. Mr. President, I ask unanimous consent to have printed in the RECORD as well an article from the Wall Street Journal this week called ''A 40-Year Wish List'' as an example of the kinds of items that are in the stimulus bill that ought not to be if we are careful about the money we are borrowing to spend.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 3.)

EXHIBIT 1

[From USA Today, May 19, 2008]

TAXPAYERS' BILL LEAPS BY TRILLIONS

(By Dennis Cauchon)

The federal government's long-term financial obligations grew by $2.5 trillion last year, a reflection of the mushrooming cost of Medicare and Social Security benefits as more baby boomers reach retirement.

That's double the red ink of a year earlier.

Taxpayers are on the hook for a record $57.3 trillion in federal liabilities to cover the lifetime benefits of everyone eligible for Medicare, Social Security and other government programs, a USA TODAY analysis found. That's nearly $500,000 per household.

When obligations of state and local governments are added, the total rises to $61.7 trillion, or $531,472 per household. That is more than four times what Americans owe in personal debt such as mortgages.

The $2.5 trillion in federal liabilities dwarfs the $162 billion the government officially announced as last year's deficit, down from $248 billion a year earlier.

''We're running deficits in the trillions of dollars, not the hundreds of billions of dollars we're being told,'' says Sheila Weinberg, chief executive of the Institute for Truth in Accounting of Chicago.

The reason for the discrepancy: Accounting standards require corporations and state governments to count new financial obligations, even if the payments will be made later. The federal government doesn't follow that rule. Instead of counting lifetime benefits for programs such as Social Security, the government counts the cost of benefits for the current year.

The deteriorating condition of these programs doesn't show up in the government's bottom line, but the information is released elsewhere—in Medicare's annual report, for example. Since 2004, USA TODAY has collected the information to provide taxpayers with a financial report similar to what a corporation would give shareholders. Big new liabilities taken on in 2007:

Medicare: $1.2 trillion.

Social Security: $900 billion.

Civil servant retirement: $106 billion.

Veteran benefits: $34 billion.

The multitrillion-dollar loss is a more meaningful financial number than the official deficit, says Tom Allen, chairman of the Federal Accounting Standards Advisory Board, which helps set federal accounting rules.

Medicare has an unfunded liability of $30.4 trillion.

That means, in addition to paying all future Medicare taxes, the government needs $30.4 trillion set aside in an interest-earning account to pay benefits promised to existing taxpayers and beneficiaries. The amount is sure to rise when the oldest of 79 million baby boomers—62 this year—reach 65 and become eligible.

Economist Dean Baker says the huge liabilities are potentially misleading because future generations will have greater income. ''If we fix health care, then our deficits can be easily dealt with,'' he says.

EXHIBIT 2

[From the Wall Street Journal, Dec. 17, 2008]

LOW-INTEREST MORTGAGES ARE THE ANSWER—STOP THE DECLINE IN HOME PRICES, STOP THE CRISIS

(By R. Glenn Hubbard and Christopher J. Mayer)

Recent news articles suggest that the Treasury Department is considering a plan to offer a 4.5% mortgage for home buyers for a period of time. Let's hope it does. It would help arrest the decline in house prices that is at the base of the ongoing financial crisis and recession.

Raising the demand for housing makes sense now. While fundamental factors clearly played a role in driving down house prices that were at excessive levels two years ago, we have argued in a paper (to be published in the Berkeley Electronic Journal of Economic Analysis and Policy) that in most markets house values are today lower than what is consistent with the average level of affordability in the past 20 years.

Nonetheless, without policy action house prices are likely to continue falling, thanks largely to the meltdown in mortgage markets and the weakening employment outlook. Conversely, we see little risk that increasing the demand for housing will touch off another housing bubble. And indexing the mortgage rate to the Treasury yield could avoid this outcome in the future. While the economy is contracting, low interest rates would spur housing activity. When economic activity improves, the U.S. Treasury yield and mortgage rates would rise.

A 4.5% mortgage rate is not too low. The 10-year U.S. Treasury yield closed at 2.3% on Dec. 12, 2008. Hence a 4.5% mortgage rate is 2.2% above the Treasury yield, above the 1.6% spread that would prevail in a normally functioning mortgage market.

Some have argued that lenders should earn more than the average 1.6% spread, to compensate for the fact that housing is a much riskier investment today. We don't think so. Recall that a mortgage can be thought of as a risk-free bond plus two possibilities that increase risk to lenders: default and/or prepayment. Historically, the risk of default adds about 0.25% to the interest rate. The remaining spread of the mortgage rate over the Treasury yield represents the risk of prepayment and underwriting costs. With falling house prices, the risk of default could indeed add 0.75% or more for a newly underwritten and fully documented loan. But 4.5% would be the lowest mortgage rate in more than 3o years—so the additional risk to lenders of prepayment would be almost nil. And low mortgage rates would substantially reduce the risk of further house price declines.

Moreover, a 4.5% mortgage rate will raise housing demand significantly. A simple forecast can be obtained by applying the 2003–2004 homeownership rates to 2007 households. We use the 2003–2004 home ownership rates because those were the years of the lowest previous mortgage rates (the average mortgage rate was 5.8%).

An increase in the homeownership rate from 67.9 (third quarter, 2008) to 68.6 (the average rate from 2003–2004) would increase homeownership by about 800,000 new homeowners. If we also take into account the changing relative age distribution of the population, there would be a total of 1.6 million new homeowners. A simple statistical analysis examining the impact of lower mortgage rates and higher unemployment rates yields an even higher, and firmer, estimate of 2.4 million additional owner occupied homes in 2009.

The increased demand for housing arising from lower mortgage rates would provide a floor on further house price declines. Estimates in our recent paper suggest that real house prices increase by about 75% of the decline in after-tax mortgage payments. So a decline in mortgage payments of 16% would result in approximately a 12% floor on the decline in house prices.

Current futures markets suggest that house prices will decline by 12%–18% in the next 18 months. So a 4.5% interest rate might well lead to flat or even slightly higher house prices in 2009.

Stabilizing house prices will likely improve consumer confidence substantially. Increases in house prices relative to where they would have gone with higher mortgage rates would also provide a housing wealth effect—that is, higher annual increases in spending as consumers feel richer—on consumption of as much as $76 billion to $113 billion each year.

The 4.5% mortgage rate that the Treasury is considering also should be available for present homeowners who want to refinance, because of the benefits for the economy as a whole. We calculate that up to 34 million households would be able to do so, at an average monthly savings of $428—or a total reduction in mortgage payments of $174 billion. This is a permanent reduction in payments and is thus likely to spur appreciable increases in consumption.

Moreover, trillions of dollars of refinancings would retire a large number of

the existing mortgage-backed securities. This would reduce uncertainty about the value of existing mortgage-backed securities. It would flood the market with additional liquidity that the private sector could deploy to other uses such as auto loans, credit cards, commercial mortgages and general business lending.

A reduction of mortgage interest rates to 4.5% (or, given yesterday's Fed action, to a lower level) is superior to other proposals that focus only on stopping foreclosures, or on reforming the bankruptcy code to keep people in their homes. Stopping foreclosures, however meritorious, may not limit the dangerous decline in house prices as much as proponents claim. It could work the other way. Stripping down mortgage balances in bankruptcy would likely raise future mortgage interest rates and lower the availability of mortgages, reducing house prices.

Finally, a decrease in the mortgage rate, even though it is intended be a temporary intervention in the present exigency, plants a seed for future thought. Given the chaos of the recent past, wouldn't a return to simple, 30-year fixed-rate mortgages with a low rate be the right foundation for the long-term future?

EXHIBIT 3

[From the Wall Street Journal, Jan. 28, 2009]

A 40-YEAR WISH LIST

''Never let a serious crisis go to waste. What I mean by that is it's an opportunity to do things you couldn't do before.''

So said White House Chief of Staff Rahm Emanuel in November, and Democrats in Congress are certainly taking his advice to heart. The 647-page, $825 billion House legislation is being sold as an economic ''stimulus,'' but now that Democrats have finally released the details we understand Rahm's point much better. This is a political wonder that manages to spend money on just about every pent-up Democratic proposal of the last 40 years.

We've looked it over, and even we can't quite believe it. There's $1 billion for Amtrak, the federal railroad that hasn't turned a profit in 40 years; $2 billion for child-care subsidies; $50 million for that great engine of job creation, the National Endowment for the Arts; $400 million for global-warming research and another $2.4 billion for carbon-capture demonstration projects. There's even $650 million on top of the billions already doled out to pay for digital TV conversion coupons.

In selling the plan, President Obama has said this bill will make ''dramatic investments to revive our flagging economy.'' Well, you be the judge. Some $30 billion, or less than 5% of the spending in the bill, is for fixing bridges or other highway projects. There's another $40 billion for broadband and electric grid development, airports and clean water projects that are arguably worthwhile priorities.

Add the roughly $20 billion for business tax cuts, and by our estimate only $90 billion out of $825 billion, or about 12 cents of every $1, is for something that can plausibly be considered a growth stimulus. And even many of these projects aren't likely to help the economy immediately. As Peter Orszag, the President's new budget director, told Congress a year ago, ''even those [public works] that are 'on the shelf' generally cannot be undertaken quickly enough to provide timely stimulus to the economy.''

Most of the rest of this project spending will go to such things as renewable energy funding ($8 billion) or mass transit ($6 billion) that have a low or negative return on investment. Most urban transit systems are so badly managed that their fares cover less than half of their costs. However, the people who operate these systems belong to public-employee unions that are campaign contributors to . . . guess which party?

Here's another lu-lu: Congress wants to spend $600 million more for the federal government to buy new cars. Uncle Sam already spends $3 billion a year on its fleet of 600,000 vehicles. Congress also wants to spend $7 billion for modernizing federal buildings and facilities. The Smithsonian is targeted to receive $150 million; we love the Smithsonian, too, but this is a job creator?

Another ''stimulus'' secret is that some $252 billion is for income-transfer payments—that is, not investments that arguably help everyone, but cash or benefits to individuals for doing nothing at all. There's $81 billion for Medicaid, $36 billion for expanded unemployment benefits, $20 billion for food stamps, and $83 billion for the earned income credit for people who don't pay income tax. While some of that may be justified to help poorer Americans ride out the recession, they aren't job creators.

As for the promise of accountability, some $54 billion will go to federal programs that the Office of Management and Budget or the Government Accountability Office have already criticized as ''ineffective'' or unable to pass basic financial audits. These include the Economic Development Administration, the Small Business Administration, the 10 federal job training programs, and many more.

Oh, and don't forget education, which would get $66 billion more. That's more than the entire Education Department spent a mere 10 years ago and is on top of the doubling under President Bush. Some $6 billion of this will subsidize university building projects. If you think the intention here is to help kids learn, the House declares on page 257 that ''No recipient . . . shall use such funds to provide financial assistance to students to attend private elementary or secondary schools.'' Horrors: Some money might go to nonunion teachers.

The larger fiscal issue here is whether this spending bonanza will become part of the annual ''budget baseline'' that Congress uses as the new floor when calculating how much to increase spending the following year, and into the future. Democrats insist that it will not. But it's hard—no, impossible—to believe that Congress will cut spending next year on any of these programs from their new, higher levels. The likelihood is that this allegedly emergency spending will become a permanent addition to federal outlays—increasing pressure for tax increases in the bargain. Any Blue Dog Democrat who votes for this ought to turn in his ''deficit hawk'' credentials.

This is supposed to be a new era of bipartisanship, but this bill was written based on the wish list of every living—or dead—Democratic interest group. As Speaker Nancy Pelosi put it, ''We won the election. We wrote the bill.'' So they did. Republicans should let them take all of the credit.

Mr. ALEXANDER. Mr. President, I yield the floor, and I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, there is a growing recognition in the Congress that the so-called spending stimulus bill is colossal in nature, and it is going to be moved through the Congress with little or no significant changes. Those of us who have been around a while can see what is happening. The bill moved through committee. A lot of good amendments and suggestions for change were made in the Appropriations Committee, but none passed. A lot of ideas and suggestions were made in the Finance Committee, and none were agreed to, at least none of any significance. There are provisions in the bill I would strongly support and believe should be part of a stimulus package because I think a targeted, smart bill can help improve our economy, but it is not going to change the difficulties we are in, I am convinced of that.

Christina Romer, President Obama's top economist, has predicted that if we pass a stimulus bill, the unemployment rate will not reach quite so high. Her numbers were referred to in the Budget Committee, of which the Presiding Officer, Senator WARNER, is a member. Those numbers were brought out, but even without any stimulus, she projected the unemployment rate would not reach 10 percent.

During the tough recession when President Reagan broke the inflationary spiral we were in, we hit almost 11 percent unemployment. The Congressional Budget Office also projected that with no stimulus, the unemployment rate would not reach 10 percent. When asked if the stimulus package would make it any better, Mr. Sunshine, the Acting Director of the Budget Office at that time, said it might.

I think a stimulus package can help but I do not think a stimulus package is going to change the fundamentals of this tremendous economy, which is going through a period of rebalancing and adjustment that is painful. It is not going to be bought away by throwing a few billion dollars or maybe even a trillion dollars at it.

I wish to make that point in general. We are in a tough time. We are going to go through a tough time. It is not going to be easy, but this country has gone through tough times before. We can hope and pray it will not be as tough as the tough recession we had in the early to mid-1980s. We survived that. We developed some economic principles that ended inflation, and we had 25 years of steady progress based on a sound dollar and sound economy. I guess I would say let's be a bit humble in what we think we can accomplish.

I will add one more point. Politically, Presidents and Congress like to do something. When there is difficulty out there and the TV every night is coming with some bad news stories and our constituents are worried, elected officials feel like they must do something; if we don't do something, our constituents will get mad at us and vote us out of office. But what if the right thing to do is to not overreact?

What if the right thing for America is to ask ourselves what it is that can actually be of benefit, and let's do that. But let's not go hog-wild, let's not do some things that are going to do long-term damage to the country. That is where we are. Good people can disagree on where that line is drawn. A lot of people are talking about politics—Republicans did not get this amendment or that amendment. I am beyond discussing those issues at this point. My view is: Is the stimulus bill that is going to be moved in this Senate, which is even bigger than the one in the House—it was $818 billion, I believe, in the House legislation, and this one is already now at $888 billion. They added $70 billion for the AMT tax fix. So it is now almost $900 billion.

I am not sure how much thought we have given to it. We certainly have not had extensive hearings on this legislation. That is where we are strategically.

Let me say to my colleagues on both sides of the aisle, the more people look at this so-called stimulus bill, really a spending bill, the more disastrous and the more flawed they are finding it to be. Most Members of Congress, most Members of the Senate, I think, want to support a stimulus bill. They probably have made public statements that they want to support a stimulus bill. But all of a sudden, people are saying: Whoa, really? Is that much in it? This is in it? Only 3 percent of the money goes to roads? Really? I thought it was a roads bill. We are hearing that kind of talk. People are beginning to ask questions about what is in the legislation that can spend $900 billion.

It doesn't just cost $900 billion. The Congressional Budget Office has looked at it, as they are supposed to do. They are a nonpartisan office. They give us good information on how much legislation costs, among other things.

Remember, every dime of spending, all of this $900 billion increases the debt. We are already in debt. Any other dollar that is spent increases the debt. So the $900 billion spending bill will increase the debt in 10 years by $900 billion, and you have to ask yourself: Where do we get that money? We have to borrow the money. And to borrow the money, we have to pay interest on it. The Congressional Budget Office has calculated it. They didn't at first, but now they have. They calculate $347 billion over the next 10 years, the budget period we are looking at, will be expended by the American taxpayers to pay interest on this debt. By the way, the deficit this year is the largest one in the history of the Republic.

I will talk about the debt a little bit more because it is important. There is no free lunch. Julie Andrews in ''The Sound of Music'' said nothing comes from nothing, nothing ever could. Debts will be repaid. You think: Well, we may not repay these debts. We will have to, and we will pay interest on it. We may succumb to the very pernicious temptation to inflate the currency and pay back our debt with dollars less valuable than the ones we borrow today. That is what we call debasing the currency. That is inflation. That is a corrosive situation the country must not get into and has not been in for the last 25 years. Those are the temptations we can fall into when the debt gets too great.

The argument is we want to have shovel-ready projects, and those shovel-ready projects will increase employment and will help us work our way through this recession. It is going to be longer than most recessions. It is going to end, but it will be longer than most recessions.

The message that has gone out is infrastructure is behind. Roads and bridges are not up-to-date. We need to spend money on them. Now would be a good time to go into debt and borrow money and fix roads and bridges and that we would, therefore, be able to create jobs and have something concrete after it is all over.

I like building bridges because it is a concrete thing, and when it is over, people can benefit from it for generations to come. Unlike a lot of the Government programs that are in this bill, we spend billions and billions of dollars, and when it is over, we ask ourselves: Did it do any good at all?

As I indicated, we now know the request for roads and bridges in the $900 billion stimulus bill amounts to around $30 billion—$15 billion the first year, $15 billion the second. There is other infrastructure spending—on hospitals, school money, those kinds of things.

The idea that this is a roads and bridge bill is false. It is false. It is not so.

In addition to that point, I note the Congressional Budget Office examined the legislation to ask whether this spending we would be participating in would actually come forward quickly, as everybody says it must, to create jobs now and, therefore, help us ease the rising unemployment we are seeing.

CBO has found that only around 50 percent of the spending that is in the legislation will occur in the first 2 years.

What about this year, the first year? But even over 2 years, only 50 percent of it is spent. The other 50 percent is going to be spent after 2 years, in years 3, 4, 5. According to Ms. Romer, the President's top adviser on the economy, we will be coming out of the recession by then anyway without a stimulus package.

The programs, in addition to the construction projects and spending plans that are put together, have been poorly cobbled together in haste. They have not been well thought out. There is no way they could have been well thought out.

Three hundred economists, including three Nobel laureates, have signed a petition condemning the stimulus plan as it is now written. Many of them would favor a stimulus plan, but when they look at this one, they are aghast, and they are warning us that infrastructure spending has never successfully lifted a country out of an economic slowdown. There are many examples of that around the world. These economists are saying that.

Marty Feldstein, an economist President Reagan admired and conservatives have admired and most Americans have admired, said at one point he favored a stimulus bill. I think about $350 billion. He has now written an op-ed in the Wall Street Journal saying this is bad; do not pass this stimulus bill. He opposes it.

The Chamber of Commerce—I like the Chamber of Commerce. They are great folks. But if anybody thinks they are not self-interested does not know what they do. They have a lot of Members who are going to benefit from this program. They are going to get bucks out of it. They favored a stimulus package sometime ago, and they said we need a stimulus package. Now they are saying they are not for this bill. They are opposing it, even though their members, a lot of them, are going to get bucks out of it. Because we are throwing a lot of bucks out there, and they are going to get some. Even they, in the interest of their country and the long-term vision for the economy, have concluded it is not good for this country to pass the bill we are dealing with now.

The bottom line is that I am convinced now that the extreme long-term cost of this legislation outweighs any short-term benefits. And remember, the $1.2 trillion, the $900 billion plus the interest on it that CBO has calculated—and it is only right that they do so—comes on top of a $700 billion bank/Wall Street bailout that proved ineffectual, has not been successful. We are being told now—and President Obama met with the Republicans in a very nice discussion, and the President acknowledged that they are going to have to be coming back and asking for more Wall Street money not that many weeks from now. So we are not through yet with throwing taxpayers' money into this vortex.

The surge in debt and reckless spending that we have seen in the last year, from both parties, is unlike anything this Nation has ever seen in its history, yet there has been such little serious discussion about where the money is going, how we are going to account for it, and whether we will receive a legitimate benefit from it. It is amazing to me. So I think we have to reconsider the size and the nature of this legislation. We cannot do this. It is bad for America. It is not a question of Republicans and Democrats and that kind of thing. I know the conventional wisdom is we have to do something; if we don't do something, people will be mad at us; if we don't do something and the economy gets worse, they will say: You didn't do anything, you stupid goof. You sat on the sideline and didn't do anything. But I have to say, at some

point you can do too much and you can do things that are unwise, and that is what we are paid to decide here.

So I am committed, and I will do what I can, to defeat the bill as written. I will support a more targeted, cost-effective, temporary plan that can help our economy, but it must be done at a price we can afford.

I am going to talk in a minute about the size of the deficit we are facing. As a member of the Budget Committee, I know it is a grim discussion. I have concluded that this is a fight for the very financial soul of our country. I mean, what is it we are doing here? Are we fulfilling our responsibilities to watch over the taxpayers' money? Presidents can't spend money if we don't appropriate it. Every dime President Bush spent on the Wall Street bailout, we gave to him. Every dime President Bush spent on sending out those checks last spring that were supposed to stop the recession went to the debt. It increased our debt, causing us last year to have the biggest deficit in the history of the Republic. It didn't work, but we gave the money. It is not President Bush who did it; we funded it. And no stimulus spending bill is going to get passed and no money is going to be available to be spent unless Congress spends it. It is our responsibility. We can't pass it off on President Obama.

Let me show this chart. As a member of the Budget Committee who has dealt with these issues for a number of years, this chart is where my mind is, if you want to know the truth. In 2004, after that recession, when President Bush cut taxes and did some other things—I think he even sent out some stimulus checks in that period of time—the deficit that year amounted to $413 billion. That is how much we spent that year more than we took in, in 2004. It was the largest number we had ever seen. And he was pummeled by the loyal opposition, my Democratic colleagues, for wasteful spending and for putting us in deficit and that kind of thing, and some of that was justified, in my view.

In 2005, the deficit dropped about $100 billion. It dropped to $318 billion. In 2006, it dropped to $248 billion. In 2007, a year and a half ago, it was $161 billion. We were heading in the right direction. I began to feel better about the country. Last spring, we sent out $160 billion in checks to try to stop this economic slowdown, and that virtually doubled the deficit. We came in, September 30 of last year, when the fiscal year ended, the deficit was $455 billion—the largest, I think, ever, but certainly the largest since World War II—and we didn't hear much talk about that. The Congressional Budget Office is our expert office on this, and we now see that they have estimated that without the stimulus package, without the stimulus bill, the deficit this year will be $1.2 trillion, more than twice the highest deficit in the history of the Republic. To give you some idea of how much money we are talking about, imagine all the income tax payments that come to our country from individuals. That amounts to $1.1 trillion. Right here, without the stimulus, we are at $1.2 trillion, equal to the entire revenue from the income tax in America. With the stimulus package, CBO estimates it will be just over $2 trillion, and that does not include the interest that will be accumulated on it.

That $1.2 trillion deficit that they are projecting now includes $200-plus billion for the Wall Street bailout, and they are also including about $240 billion for the Freddie and Fannie financial bailout, those huge institutions that bought up these bad mortgages and then we bailed them out. That is what helps drive the number. Next year, they are projecting $703 billion and then $498 billion—all of those bigger than any in previous history, and we will be seeing some additional expenditures there.

For example, this $703 billion does not include the alternative minimum tax fix, which costs $70 billion a year. I think most of my colleagues probably know this, but I see some new Members of the Senate here, so to tell you all how we gimmick the system, the alternative minimum tax is $70 billion a year to fix it. Everybody knows we are not going to allow it to kick in and hit the American economy at the full amount. So why don't we go on and fix it permanently and set a rate? Because CBO will score it. And if we score it for $70 billion a year, for a 10-year budget, that is $700 billion. So we pass a law that fixes it for 1 year, and the next year, when they calculate the debt, they assume we are going to have $70 billion more in revenue from the alternative revenue tax. But we are not going to have that money because we are going to fix it again. There are a lot of gimmicks in here, so those numbers are going to be a lot higher. I know this. I have been here, and I know how the system works.

Finally, I will add one more thing to the discussion, and that is the interest on the debt. We are now a little under $200 billion a year in paying interest on the debt. The debt has been growing. I think it is about $10 trillion. In the next 10 years, the estimates are it could be $21 trillion in debt—the total debt of America. This bill, by the way, raises the debt limit. It has to, because we are adding another trillion dollars in debt. The Congressional Budget Office scores that in 2014—5 years from now—the interest on the debt will not be $200 billion, but counting the stimulus package it will be around $430 billion.

Now, how much money is that—$430 billion? Today, it is $200 billion, and 5 years from now it will be $430 billion. Big deal. But that is every year, No. 1. It is every year. And to give some perspective on how large that is, it is more than a third of the income tax revenue of the entire U.S. Government from individuals, and it is a number that is almost equal to the 5-year cost of the Iraq war. We have spent about $500 billion on the Iraq war in the 5 years that has occurred. That has been a major expense of the U.S. Government, and it has been very painful to us. People have been not happy about it. But by surging this debt, we will in the future be incurring an interest payment almost equal every year to the 5-year cost of the Iraq war.

So I say to my colleagues, I know the momentum has been going forward. I know the House moved forward with the bill and people have expected that we are going to pass it, but I am not sure. I think the American people are getting concerned about this, and they are saying, let's pare this down. Why can't we do a $200 billion or a $300 billion dollar stimulus package that will actually create jobs and won't add so much money to our deficit and will create things that are of permanent value to the public, not providing relief to soldiers who fought with us in world wars and other programs that are in the legislation.

This is the beginning of a discussion, or it ought to be the beginning of a national discussion about what this country is about. We need to ask ourselves: Isn't it important that we have a sound currency? Shouldn't a sound dollar be one of the highest possible goals of the Congress? And to have that, aren't we, as a Congress, going to have to be responsible enough to, in times of uncertainty and fear, be able to rationally think through this and do this right?

My 90-year-old aunt, who I was with last week in Alabama, said to me: You all don't know what you are doing up there, do you? And I don't think we do. I think that was as good a synopsis of what the American people are thinking about us as anything I have heard. We don't know, and we have to get serious here. It is our responsibility. When we are talking about trillions, we are talking about real money.

I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Colorado is recognized.

OUR COUNTRY'S CHALLENGES

Mr. UDALL of Colorado. Mr. President, I rise today with full and humble appreciation for the critical scrutiny a Senator's maiden speech usually attracts. I am also aware of the somewhat forgotten tradition here in which freshmen Senators took some considerable time before throwing caution to the wind, opening their mouths, and hoping to enlighten their wiser and more experienced colleagues. That tradition like many others has eroded over time, such that in recent years freshmen Senators have taken to the floor early and often. I hope my words today will not encourage a revival of the older tradition.

I am also aware that many new Senators use the occasion of their first speech to introduce a specific bill or to

speak at length about pending legislation. I hope to do something different today. I will not speak about specific legislation, but I will speak about this moment in our country's history, the perils we face, and my sincere hope that we will address the critical issues of our time in a new way, with less rancor and with a shared commitment to bridge the partisan divide that has characterized so much of our recent political experience.

We have inaugurated a new President and a new administration, and a new Congress is taking shape. These developments represent a fresh start, a new start, one in which every American, regardless of party or political affiliation, can rejoice because if there were ever a time when our country hungered for a fresh start, it is here and it is now.

The American people are impatient with politics, and with good reason. Our country is facing significant peril. More of our fellow citizens are losing their jobs and their homes. Credit is drying up. Businesses, large and small, are cutting back. Americans have seen the value of their college and retirement savings plans reduced dramatically. We may be facing the most significant and difficult economic crisis since the Great Depression of the 1930s.

This has put me in mind of a great and courageous predecessor, Senator Edward Costigan, who served here, from Colorado, from 1931 to 1937, the very depths of the Great Depression. I have reverence for Senator Costigan because he was born of the progressive tradition of the West—a tradition the Udall family has participated in over many generations. Senator Costigan is largely remembered for his effort to pass an antilynching law at a time when people of color were under a constant threat of mob violence. He was also a champion of economic reform.

I found it interesting that Senator Costigan, in this Chamber in 1932, spoke on behalf of a stimulus bill—which was then called a relief bill—using words that are eerily relevant 76 years later. Arguing for the bill, Senator Costigan said:

> One almost despairs of the ability of America's industrial and political generals to save America in its present crisis. . . .

Thankfully, we have not reached a point of economic collapse anything like that which occurred when Senator Costigan spoke. But Americans who have lost their jobs or their savings know this crisis is every bit as real and every bit as devastating.

This current crisis is made worse by our continued addiction to oil and our dangerous dependence on foreign oil in particular. While the global market price of oil and gasoline dropped remarkably from record highs of last year, no one should be under any illusion that this price slide will continue. Continued instability in the Middle East, combined with ever-increasing demand in China, in India, and other global markets, will inevitably mean that the price of oil will rise. We have not seen the end of the energy crisis that crippled our economy last summer. We did survive the first wave of this energy tsunami, but we must prepare for the waves to come.

This economic crisis is also made more perilous by the fact that our country is still engaged in two unfinished wars. Mr. President, 150,000 of our best and bravest are serving in Iraq and Afghanistan. Our Army has been stretched to the breaking point, and our national security depends on implementing a new strategy that includes rebuilding our defense capability.

Elsewhere in the world, in North Korea, in Gaza, in the winding alleys of Pakistan, in the shadowy corridors of power in Iran, we face threats from new enemies, the risks of widening conflict, and the gravest danger of all in the new century—the potential for a nuclear weapon to fall into the hands of terrorists.

David Sanger points out in his compelling book, ''The Inheritance,'' that America's response to 9/11 has not been without strategic error. America's position in the world, military and economic, has been weakened at the very moment we need to lead the world.

This list of challenges is daunting, and it does not include other pressing problems bearing down on us, such as the escalating cost of health care, a Federal budget deficit that threatens to wash away the foundation for our children's economic future, illusive solvency for key programs such as Medicare and Social Security, a broken immigration system, and mounting evidence that global climate change is threatening our natural environment.

In addition to losing influence on the world stage and struggling to restore a wrecked economy, in addition to Iraq and Afghanistan, we may also have a third war on our hands—this one with Mother Nature. If Mother Nature fails, our list of challenges will seem small by comparison.

The question, then, before us is, Will this be a moment of anxiety or optimism? In truth, I believe it is both. The challenges we face are among the most significant ever faced by a new President and Congress.

Although I join the Senate as a proud western Democrat, buoyed by the success my party enjoyed in the last election, I think it would be a terrible mistake to see the challenge of this moment in purely partisan terms. The problems we face are not Democratic or Republican problems, they are American problems, and they will only be met by American solutions. Much lipservice is given to the idea of bipartisanship and the notion of working across the aisle. Frankly, I have to tell you, I think it is cynicism to breathe life and action into these words that hamstring us.

Like many of you, I was serving in the Congress on 9/11. That tragedy awakened a deep spirit, a deep spirit of shared purpose. I call it the spirit of 9/11, in the best sense of that term. I want to invoke it here, not to use it as a patriotic bludgeon but to remind us how it felt to know our country had been attacked and that we were united in our response and in our resolve. If there were ever a time when we needed to recapture that spirit of 9/11, it is now. Surely we do not need another tragedy to unite us in that common response and resolve. We need only look ahead at the deep challenges we face.

I am comforted by our history. A reading of our history shows that we have been through worse. We have endured a terrible Civil War, two world wars, and an economic catastrophe of far greater dimension. With each successive American generation, we have worked to cleanse the Nation from the stain of slavery, bigotry, and racial prejudice. With each successive generation, we have grown wiser, more enlightened, and more prosperous. We have seen the great middle class lifted and engaged in building the strongest and most creative economy the world has ever seen. So if history is our guide, I know we will meet the challenge of this moment.

As a son of the West, I am also proud of our special history. Of course, every region of America has a story to tell and a contribution to make to the whole. Among many qualities in the West, we particularly treasure independence and we have little time for brooding pessimism. The great western writer Wallace Stegner put it best when he wrote about the people he called ''stickers,'' those who settled the West against all odds and obstacles. He called them stickers because they were not quitters and they did not leave the scene of a challenge. They stuck to the land because of their spirit, their courage, and their hopes for a better community in which to raise their children—and, to be honest, because they were too doggone ornery to give up.

We are a country of stickers, and now it is up to the 111th Congress to be stickers too. The American people have vested their hopes and aspirations in us, to serve them well in the institutions of democracy we call the Congress.

As I close, I want to return to my predecessor in this seat, Senator Edward Costigan, and his long fight against the evil of lynching. In a speech on this subject in 1935, he expressed the hope that partisan and sectional division would give way to a true common purpose. He said:

> Ours is truly at last a new South, a new North, a new East, and a new West, unitedly building a new America of common humanity, guarded by just and ever more equal laws.

Senator Costigan was calling for a new way of looking at the political challenge in his day, one that looked toward a uniting purpose. We have a similar calling today. We may often divide as Republicans and Democrats on

what we think is best for our country. Debate is good. We should encourage a vigorous exchange of ideas and not fear disagreement. But we ought always, always to strive for a common purpose.

I wish to express my deep thanks to my fell Coloradans who have given me the opportunity and honor to represent them here at this challenging and important time in our history.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. UDALL of Colorado.) Without objection, it is so ordered.

CONGRATULATING THE UNIVERSITY OF UTAH

Mr. HATCH. Mr. President, I rise today to speak about the recent college football season and the success enjoyed by our own University of Utah football team.

First, I want to mention that a while back, during last week's festivities, I had the opportunity to meet with members of the University of Utah Marching Band as they were in town to march and perform in the inauguration parade.

I want to publicly recognize the members of the Church of Jesus Christ of Latter Day Saints in Ashburn, VA, who offered their homes to these musicians and the band, allowing them the once-in-a-lifetime opportunity to perform for the President of the United States of America. The band would not have been able to make it to Washington had it not been for the generosity of these private citizens who housed them and took care of them and fed them. I appreciate their willingness to help some of my follow Utahns.

My meeting with the band out in Ashburn reminded me of what a wonderful year it has been for sports fans in my State. I wish to once again publicly extend my congratulations to the Utah Utes on an outstanding season.

On January 2, the Utes capped an undefeated season with a 31-to-17 victory in the Sugar Bowl over a highly favored Alabama team. Under the scrutiny of the national spotlight, Utah played with poise and precision, silencing the naysayers who claimed they could not compete with a national powerhouse such as Alabama.

Alabama had been rated No. 1 much of the season. This was Utah's second undefeated season in 5 years, demonstrating that school's football team deserves to be considered among the country's elite college football programs.

In particular, I want to congratulate Coach Kyle Whittingham, who, on January 13, was named National Coach of the Year by the American Football Coaches Association. What an honor. Coach Whittingham took over the head coaching job at Utah 4 years ago, following what was, at that time, the most successful season in school history. The Whittingham family is sort of a football institution in the State of Utah. So fans and alumni had high expectations about the future of the program, and Coach Whittingham has not disappointed them. In each of his four seasons, the Utes have finished with a winning record and have won a bowl game. In fact, the University of Utah has won a bowl game in six consecutive seasons and, overall, they have been victorious in their last eight bowl appearances—the longest current streak in college football. Coach Whittingham has been on the staff that entire time, first as defensive coordinator and now as the head coach.

The Utes have been lead on the field by quarterback Brian Johnson. He capped an outstanding college career this past season by winning the Mountain West Conference's Offensive Player of the Year Award. He was also a finalist for numerous national quarterback awards. Brian's story is actually a very inspirational one. Late in the 2005 season, he suffered what is, in many cases, a career-ending injury when he tore his ACL. This injury forced him to sit out the entire 2006 season. Then, in the first game of the 2007 season, he was injured again and missed two more games. But he was able to finish the season, leading the Utes to a winning record and an impressive victory over Navy in the Poinsettia Bowl. He returned for his senior season, fully healed and ready to take the team on his shoulders for what proved to be a historic season.

One of the most popular members of the Ute squad has been kicker and punter Louie Sakoda who, in each of the last three seasons, was the Mountain West Special Teams Player of the Year and named to several All-America teams. Nicknamed ''King Louie,'' this 5-foot-9, 178-pound team captain is something of a celebrity in Salt Lake City. Last year, he offered himself as a date for a campus charity auction and drew the highest bid of any item on sale—though NCAA restrictions kept him from actually going on the date. His parents, according to news stories, can join any pregame party in the parking lot outside Rice Eccles Stadium if they just mention their son's name. He has also lent his celebrity to an ad campaign started by Utah First Lady Mary Kaye Huntsman aimed at combating teenage drinking and driving. Louie can be seen in TV commercials in Utah urging teens and anyone who's been drinking to ''punt the keys.''

Indeed, the entire University of Utah football team has become the toast of every town in my State—even among those who typically root for the Utah's other fine football programs. They have also become one of the most talked about teams in college football nationwide.

Unfortunately, the success enjoyed by the Utah football team has been marred somewhat by the controversy surrounding the Bowl Championship Series. The Utes were the only football team in NCAA Division I to finish the season 2008 undefeated. Their season included victories against a powerhouse team at Brigham Young University, Oregon State, Texas Christian University, and Alabama, all of which finished the season ranked in the Associated Press Top 25—the latter two in the Top 10. In fact, Alabama spent much of the regular season ranked number one in the country before losing to Florida near the end of the season.

Yet despite these accomplishments, even with its perfect record and impressive schedule, the University of Utah finished the season ranked second in the country. Florida, the team that won the so-called BCS Championship Game, had a very good year. But unlike Utah, they were not undefeated; they had one loss, as did at least three other teams in the country. Yet under the BCS system, this unbeaten Utah team was denied an opportunity to even play for the national championship. One has to wonder what more Utah could have done with its season in order to get into the national championship game. It is interesting that the former Utah coach under whom Coach Whittingham served, Urban Meyer, had a championship team. We all admired him. He was a great coach at Utah and one of the greatest coaches in America today. Unfortunately, the answer to this question is even more disheartening than the question itself: nothing. The fact of the matter is that the Utah team was left out of the national championship picture, not due to any competitive shortcoming, but because the BCS system categorically excluded them from consideration.

Under the BCS, the champions of six athletic conferences receive automatic bids to play in the five most lucrative and prestigious bowl games. Collectively, those six conferences include 66 of the 119 teams in NCAA Division I football. So, in short, nearly half of all college football teams begin the season virtually left out of the BCS picture, yet the BCS still wants to call the winner of its championship game the ''national champion.'' I don't know about you, Mr. President, but that strikes me as odd.

Of course, it needs to be acknowledged that teams from non-BCS conferences can play their way into a BCS game. The University of Utah did so both this year and in 2004. In other years, teams from Boise State and Hawaii have earned bids to play BCS bowl games. But in doing so, these teams had to overcome serious competitive disadvantages. For example, it is virtually impossible for a school from a non-BCS conference to get a BCS bid without going undefeated in the regular season, and even that is not a guarantee. Yet this past season, each

of the six BCS conference champions had at least one regular season loss—three of them had two or more. Two non-BCS teams—Utah and Boise State—were undefeated after the 2008 regular season. In addition, Texas Christian University, another non-BCS team, had only one loss and was higher in the BCS rankings than two of the conference champions with automatic berths. Yet of these three teams, only Utah was invited to play in a BCS game.

These are the disadvantages non-BCS teams must face just to get into one of five prestigious BCS bowl games. While mere participation is an uphill battle, the system makes it virtually impossible for a non-BCS team to win the national championship. The BCS relies on a combination of polls and computer formulas to determine its rankings. For decades, these polls have almost invariably tended to favor teams from the bigger BCS conferences, evidenced by the fact that no team from an outside conference has finished a season atop a major college football poll since 1984. So unless a team from a non-BCS conference begins the season with a very high national ranking in the polls, they stand virtually no chance of getting ranked high enough to play in the championship game, even if they go undefeated. This system excludes teams like this year's Utah team, which began the season unranked and spent the season shocking opponents and exceeding expectations, from national championship contention.

The flaws of the BCS system might not be so bad if it helped to clear what traditionally had been a muddled national championship picture. But unfortunately, that is not the case. In at least 6 out of the last 10 years, there has been substantial controversy over the selection of the teams to play for the championship. So the system is not only biased, but ineffective as well.

Mr. President, the BCS system is anti-competitive, unfair, and, in my opinion, un-American. I am not just saying that because my team was treated unfairly. I am making the case that many teams are not treated fairly. In no other sport in this country are champions selected by arbitrary and biased polls and computer ranking systems. Much worse, the BCS ensures that the millions of dollars paid to the participants of these prestigious games remain concentrated among a few elitist conferences. Such exclusionary practices put teams from non-BCS conferences at a monetary, recruiting and competitive disadvantage. This may not only be unfair in the normative sense, it may very well violate our nation's antitrust laws.

In 1984, in NCAA v. Board of Regents of the University of Oklahoma, the Supreme Court determined that NCAA is not exempt from the requirements of the Sherman Antitrust Act. That being the case, college football, like most other industries in this country, must conduct business in a manner that does not intentionally stifle competition or systemically favor specified competitors. Specifically, in the words the Sherman Antitrust Act, no ''contract, combination, or conspiracy'' may be undertaken to exclude competitors.

In my opinion, it is quite probable that the BCS violates the Sherman requirements. In 2003, I chaired a series of Judiciary Committee hearings to investigate the antitrust implications of the BCS. I stated at that time that I believed the BCS was anticompetitive and in dire need of reform. Shortly thereafter, the BCS added another bowl game and, to some extent, expanded the field of eligibility. However, as this past season demonstrates, these changes leave much to be desired in terms of fairness and competition. Utah Attorney General Mark Shurtleff shares this view and is consulting with lawyers and investigators to determine whether the BCS system constitutes an antitrust violation. Indeed, it appears that litigation over this matter may be on the horizon. Also, on at least two separate occasions, President Obama has publicly stated his concern about the fairness of the BCS and his hope to see the creation of a playoff system. Therefore, it is not unreasonable to predict that a Justice Department investigation into the potential antitrust violations of BCS will be forthcoming.

Mr. President, I would prefer that reforms take place without putting the matter before the courts. In addition, given the many problems facing our nation, I hope that the Justice Department will not have to get involved in this issue. And while some have proposed a legislative fix, this also would not be my preferred solution, though ultimately, this may end up being the only effective means of addressing these problems. Instead, I would hope that those with the power to change or eliminate the BCS, including NCAA President Myles Brand as well as the university presidents and the conference commissioners in the BCS conferences, will hear the public outcry against the BCS and voluntarily work to reform the system to ensure that, as in every other American sport, championships are decided on the field and not in arbitrary polls and computer calculations. While a playoff seems like the most natural solution, other means may be available.

That said, I want to say that I believe the University of Utah football team are champions in the truest sense of the word. They won on the field against worthy competition in a year when literally everyone else proved unable to do so. Once again, I want to congratulate University President Michael Young, Coach Whittingham and every member of the team for what proved to be an exhilarating and tremendous season. I also congratulate other teams that qualified for bowl games who were winners and deserve certainly the plaudits of all of us.

I hope this helps to bring this matter to a head. I hope we can change this system that is an unjust system.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, let me say, first, what a pleasure it is to hear the distinguished Senator from Utah speak about his beautiful State and his beloved Utes.

EXECUTIVE COMPENSATION AND THE BAILOUTS

Mr. WHITEHOUSE. Thank you, Mr. President. I have a different topic today. This speech is about a stove, a jet, and $40 billion.

The stove belonged to Margarita Fuentes, and a local deputy sheriff in Florida repossessed it for the finance company. The case went all the way to the Supreme Court, and became the famous case of Fuentes v. Shevin, which every first year law student has to read.

The court held that you couldn't take away Ms. Fuentes' stove, not without giving her a hearing; that she had a constitutional right to a hearing. The court stated:

> [T]he constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions.

Important rule: The finance company may well have been right about the stove, but the sheriff still cannot take property without due process.

That is the stove. Now the jet.

Citigroup has received billions and billions in Federal funds—$45 billion in preferred stock purchases alone—to prevent Citigroup from failing. What did they do? Bought a $50 million French-made luxury private jet.

It took the new Secretary of the Treasury to personally talk them out of it, with a helpful push from our colleague, Senator LEVIN. And that's not all. Here's how Maureen Dowd reports they spent the money on executive office furnishings at Merrill Lynch, just bought by Citigroup:

> . . . big-ticket items included curtains for $28,000, a pair of chairs for $87,000, fabric for a ''Roman Shade'' for $11,000, Regency chairs for $24,000, six wall sconces for $2,700, a $13,000 chandelier in the private dining room and six dining chairs for $37,000, a ''custom coffee table'' for $16,000, an antique commode ''on legs'' for $35,000, and a $1,400 ''parchment waste can.''

A lot of executive compensation goes to the same executives who led their companies into this mess, while reaping vast sums.

For example, Wells Fargo, which received $25 billion in bailout money, is planning layoffs but is keeping its CEO and chairman who were paid $12.5 million and nearly $23 million in 2007, respectively.

JP Morgan received $25 billion in bailout money, but is keeping its CEO who was paid $28 million in 2007.

Capital One bought and closed GreenPoint mortgage—1,900 layoffs, 1,900 families where someone lost a

job—received about $3.5 billion in bailout money, and is keeping its CEO who was paid more than $73 million in 2007.

And this week's New York Times reports that despite ''crippling losses, multimillion dollar bailouts and the passing of some of the most important names in the business,'' an estimated $18.4 billion in bonuses were paid out to Wall Street employees in 2008—the sixth highest total in history—in what was most certainly not the sixth best year in Wall Street's history.

In other words, firms on the brink of extinction that were saved only by the U.S. taxpayer still saw fit to reward people who created the mess with over $18 billion for their performance this past year. President Obama rightly called this shameful.

So that jet is symbolic of a Wall Street culture of unrestrained self-indulgence that now, because of the bailouts, begins to happen at public expense and shows no signs of abating.

And now we come to the $40 billion.

According to an analysis by the Wall Street Journal, the executive-deferred compensation obligations of bailed out Wall Street firms amount to more than $40 billion. As shown on this chart: Banks Owe Billions To Executives. Financial giants getting injections of Federal cash owed their executives more than $40 billion for past years' pay and pensions as of the end of 2007, a Wall Street Journal analysis shows.

By the way, this whole executive-deferred compensation scheme is nothing but a big tax dodge to begin with.

Banks participating in the bailout program carried these obligations on their books, and the cash from our bailout is being used to pay them, or will be used to pay them. Mr. President, $40 billion in taxpayer dollars will end up in the pockets of the very executives who tanked those firms.

How much is $40 billion? Here is how it breaks down State by State based on population.

If you are the Governor of California, you can look forward to $4.780 billion as your State's share of that $40 billion bailout.

If you are, as the wonderful new Presiding Officer is, from Colorado, you can look forward to $636 million as your State's share of deferred executive compensation for Wall Street.

If you are from Missouri, as is the distinguished Senator in the Chamber, you are looking at $768 million as Missouri taxpayers' share of the $40 billion bailout.

Generally, when a company goes into bankruptcy, the executives who are owed the $40 billion in deferred compensation would have become general unsecured creditors and have to wait in line with other such general unsecured creditors.

Experts report that in most cases this means losing all deferred compensation or recovering pennies on the dollar. Executives at Lehman Brothers, which was allowed to go into bankruptcy, will probably lose out on their deferred compensation.

By contrast, nothing has been done to address the deferred compensation obligations of Citigroup, Goldman Sachs, Bank of America, JP Morgan, and other banks that have been given a lifeline.

As shown on this chart, you will see the estimated debt to executives at Goldman Sachs is actually bigger than the capital injection. It is an astonishing sum of money.

I should throw in my own home State of Rhode Island. We are a small State. Here is our share of it: $140 million. That is our entire budget for our two 4-year State colleges for a year—the entire State budget for them; $140 million out of Rhode Island to pay for $40 billion in tax-dodged, deferred executive compensation.

As people who are on the floor will recall, that is more than the entire program we spent so many hours fighting about for the U.S. auto industry. Remember that. That was sort of $18 billion to $35 billion. This is $40 billion, and nobody is even talking about it. And we fought for days about whether to support our own domestic auto industry.

Well, I think the jet shows that the Wall Street culture of lavish self-indulgence is not likely to change. But something very important has changed, and that is the taxpayers are now starting to pay for it, and they are not going to stand for it for long.

If something is going to change, we in Congress have to change it; we need to do it now, and we need to do it in a way that sticks. That's where Ms. Fuentes' stove comes in.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions.

That is the case of Ms. Fuentes' stove.

If it takes due process before poor Ms. Fuentes can have her stove taken away, then it takes due process before certain adjustments can be made to the obscene and grotesque executive compensation paid for by bailouts.

It takes some due process before anything can be done about this $40 billion in executive-deferred compensation.

Without a due process forum, we have unilaterally disarmed the powers of Government that can make those adjustments. That is a choice we make to unilaterally disarm the powers of Government that could do something about the $40 billion.

I submit if we don't make some reasonable adjustments, that failure will so damage public credibility and faith in the entire exercise; in addition to being profoundly unfair, in fact, that it will eliminate or diminish our ability to manage the crisis. People will not want to hear any longer from us.

The ordinary due process forum for troubled companies, bankruptcy court, is not the best forum for this, for the very reasons that corporations need rescue: they serve a public utility for us in the economy. But the fact that they provide that vital public utility function is no reason to say these other things cannot also be adjusted. That does not mean they should not have to change their ways.

As I said, the only way to change their ways, it appears, is to make them change. So, I will shortly be filing legislation to create a Temporary Economic Recovery Oversight Court, a forum that could provide due process, short of a full bankruptcy filing, and empower Government to take reasonable steps to restrain the lavish self-indulgences to which these masters of the universe have become accustomed. I am also exploring other ways of addressing this critical issue.

But I encourage colleagues of mine who are interested in this issue to talk to me about how we can make this right. There are technical issues. If anybody is interested, please contact me. I think this is a bipartisan issue. I do not think a Republican is any happier about $40 billion in deferred executive compensation coming out of the public fisc than a Democrat, and if we do not take action, the swelling river of the righteous and proper anger of the American people will rise up, and overswell its banks. I have lived through difficult economic situations in Rhode Island, where public anger overswelled its banks. It is not a good place to be.

The people's confidence in their Government's ability to treat them fairly will be justifiably compromised, and we will have lost their confidence, the old-fashioned way: We will have earned it.

The poet William Blake spoke of times when we should not let our sword sleep in our hand. American Government gives us a vital sword, one that can trim away the lavish excesses of the lotus years, and treat all Americans fairly, not create a favored taxpayer-supported Wall Street class that is treated differently than workers in Michigan and elsewhere. I submit we must not let that sword sleep in our hands.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

(The remarks of Mrs. MCCASKILL pertaining to the introduction of S. 360 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mrs. MCCASKILL. Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO DR. JOHN LOGAN

Mr. MCCONNELL. Mr. President, I rise today to honor a well-respected Kentuckian, Dr. John Logan. Mr. Logan's outstanding dedication to Kentucky history is truly immeasurable as is his devotion to the Commonwealth itself.

Recently the Gleaner in Henderson, KY, published a story highlighting Dr. Logan's new book about the extraordinary history of Methodist Hospital in Henderson, KY. The story highlights not only Dr. Logan's allegiance to the medical industry but his unknown talents as an archivist. Dr. Logan was able to compile such a vast amount of research for his new book because, as he says, he ''lived'' it. Having been involved with the hospital since 1962, Dr. Logan has certainly seen his share of history firsthand. Without Dr. Logan's remarkable efforts to preserve history, the triumphant story of this great Kentucky institution would be lost forever.

Mr. President, I ask my colleagues to join me in honoring Dr. Logan as a true patriot and Kentuckian whose legacy will forever be remembered, and I further ask unanimous consent to have the full article printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Gleaner, Jan. 17, 2009]

TIME TO TELL THE STORY: LOCAL PHYSICIAN ADMINISTERS DOSE OF HISTORY WITH NEW BOOK ON METHODIST HOSPITAL

(By Judy Jenkins)

It wasn't so much a want as it was a need.

And it wasn't so much a need as it was a deep conviction that time wouldn't wait forever and something important could be lost.

That's why, five years ago, Dr. John Logan began a long-contemplated project that required the patience of a saint, more than a few detective skills, and the excavation of nearly half a century of his own memories.

The result, just off the press, is the 192-page ''History of Methodist Hospital, Henderson, Ky., 1948–2008.''

The hardcover volume, published by McClanahan Publishing House, Inc. of Lyon County, Ky., is chock full of photographs and doesn't merely chronicle the development of the hospital from a simple, one-story brick building with 12 doctors and 35 employees to the towering complex it is today.

It also pays tribute to the legions of people of all ages, races and socio-economic backgrounds who have done everything from polishing the floors and baking the bread to utilizing space age diagnostic technology and performing life-saving procedures.

''I decided it was time to tell the story,'' says John, who has served as the hospital's medical director for 22 years, been president of the medical staff, and completed 19 terms as chief of the medical staff.

His thought, he said, was, ''If I don't tell it, it's gone.''

He couldn't let that happen because ''It's a great story. That this hospital all these years has survived across the river from hospitals twice our size. That says we're doing something right.''

Because he has been associated with the hospital since 1962 and has witnessed its growth and advancements, he didn't have to spend all of his time in a basement room with dusty boxes of scrapbooks and loose clippings.

''I've LIVED the research,'' he said, grinning.

He came to this area as a brand new physician, hanging out his shingle in Sebree in his wife Jackie's home county.

Probably no one in his native Edmonson County had expected him or his brother Tom to become doctors. Their family was thick with attorneys, but the siblings opted to follow the medical path.

John's mentor was a country doctor named Sidney Farmer, who hired him at age 14 to clean his offices. When John got a driver's license, he drove Farmer to make house calls.

A year after the youthful family practitioner came to these parts, he was introduced to a dynamic 31-year-old named Charles ''Chuck'' Jarrett, who had accepted the post of Methodist Hospital executive director.

Chuck, who was a former Marine and ''a dreamer'' who had the unique ability to persuade others to dream with him, soon was plotting a tall, gleaming modern hospital on that hill off Twelfth and Elm Streets.

When he died, far too young, in 1973, the institution had four sprawling wings and was just as he had envisioned it.

Since that time, his successors Ron Chapman and Bruce Begley have kept the dreams alive and the hospital is flanked by a North Tower and South Tower.

In his book, John fleshes out what otherwise could be the bare bones of history. For instance, he relates that in addition to being a popular veteran pediatrician and hunter, Dr. John Jenkins is a pig farmer.

The author says Jenkins once told him, ''If I work very hard practicing medicine, I can almost cover my losses in pig farming.''

John also writes about the late Dr. M.G. Veal, a fellow with a well developed sense of humor and hobby sideline as a trumpet player in several area bands. He smoked, though he knew better, and ''His trademark was a cigarette with an inch of ashes hanging.''

(I can vouch for that mischievous sense of humor. Once he passed me in the hospital lobby and loudly congratulated me. When I, confused, asked why he was congratulating me, he said, ''I just heard that you're expecting your tenth child, Mrs. Jenkins!'' Heads turned, believe me. For the record, I only had three kids at the time and the fourth and last was born a year later).

As I read the book, I was reminded of the tragic losses the hospital medical staff has suffered over the years.

Among them, the death of the young and much-revered Dr. W.B. Blue, who practiced in Henderson's East End. He died in a vehicular accident here.

And there was Dr. Elton House, who was reaching the height of his career when he drowned during an outing on Barkley Lake.

And Dr. Joe McGruder, who had brought so many babies into the world, lost his life while scuba diving on vacation.

John is proud of the fact that he unearthed photos of every Methodist Hospital physician—but one—who was on the original staff, or who had served at least 20 years.

His only failure was Dr. Ira Cosby, an original staff member who regularly made house calls and was never known to drive faster than 35 mph.

John and his faithful helpers searched high and low, contacting relatives and doing everything possible to come up with a likeness of the doctor, but had to admit defeat.

There are numerous photos of hospital employees who have made their own marks on the institution. They include the late Bill Beck, director of materials management. He was a soft-spoken man who never minded going above and beyond the call of duty to honor a request.

James ''Rip'' Van Winkle was like that too, and I don't recall an instance when the late director of building and grounds left a room without relating an anecdote or witticism that had everyone laughing.

John himself could fill a book, but because space is limited we'll just say he played a major role in many things we take for granted here, including the spacious YMCA, the Henderson Fine Arts Center, the Depot/Tourism Center—and the hospital's Level II Neonatal Intensive Care Unit that makes it possible to care for most of the tiniest and sickest babies right here.

He's not happy about everything related to the hospital. It just irks him that while the facility regularly performs cardiac catheterizations and has a staff of 24 cardiologists as well as a dedicated telemetry unit, it hasn't yet been able to obtain a state Certificate of Need to permit angioplasty procedures or stent placements here.

He'll keep pursuing that, no doubt, as he has, at 71, no immediate plans to retire.

Nor does he plan a sequel to the history.

''I've done the first 60 years. Somebody else will have to do the next 60.''

SPENCER COUNTY FFA DAIRY JUDGING TEAM

Mr. MCCONNELL. Mr. President, I rise today to honor the Spencer County FFA Dairy Judging Team for winning the 2008 National FFA Dairy Cattle Judging Contest. This team is comprised of four outstanding young ladies: Whitney Owen, Cassandra Peterson, Kelli Smitha, and Michella White.

After countless hours spent preparing for the Kentucky FFA Dairy Judging Contest, they were awarded top honors at the State competition last August. The team then had the privilege of representing the Commonwealth at the 2008 National FFA Dairy Cattle Judging Contest in Indianapolis, IN, where they were again victorious.

Founded in 1928 as the Future Farmers of America, the group that is today known as the National FFA Organization brings together students, teachers, and members of the agribusiness community to promote agricultural education. In Kentucky, the National FFA Organization has over 15,000 members spread across 145 chapters. And over 24,000 Kentucky middle- and high-school students are enrolled in agricultural education programs.

Agriculture is obviously an important sector of the economy for my State, and I am proud of the many young people and adults who work with the National FFA Organization in Kentucky to ensure that the Bluegrass State remains at the forefront of agricultural education and innovation for years to come. Members are always recognizable during their visits to our Nation's Capitol by their distinctive blue jackets.

By securing a first-place finish at the national competition, the Spencer County FFA Dairy Judging Team now has the opportunity to represent America this summer at the International Dairy Judging Contest in Scotland. FFA is known for producing many of our Nation's future leaders, and I won't be surprised to see that trend continue

based on the success Whitney, Cassandra, Kelli, and Michella have already achieved. I know my fellow Senators join me in wishing them the best of luck in their future endeavors.

SELECT COMMITTEE ON ETHICS 2008 ANNUAL REPORT

Mrs. BOXER. Mr. President, I ask unanimous consent to have printed in the RECORD the 2008 Annual Report of the Select Committee on Ethics.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ANNUAL REPORT FOR 2008—SELECT COMMITTEE ON ETHICS

The Honest Leadership and Open Government Act of 2007 (the ''Act'') calls for the Select Committee on Ethics of the United States Senate to issue an annual report no later than January 31 of each year providing information in certain categories describing its activities for the preceding year. Reported below is the information describing the Committee's activities in 2008 in the categories set forth in the Act:

(1) The number of alleged violations of Senate rules received, from any source [in 2008], including the number raised by a Senator or staff of the Committee: 85. (This figure does not include 13 alleged violations from the previous year carried into 2008.)

(2) The number of alleged violations that were dismissed—

(A) For lack of subject matter jurisdiction or in which, even if the allegations in the complaint are true, no violation of Senate rules would exist: 52. (This figure includes 5 matters originating in the previous year.)

(B) Because they failed to provide sufficient facts as to any material violation of the Senate rules beyond mere allegation or assertion: 21. (This figure includes 4 matters originating in the previous year.)

(3) The number of alleged violations in which the Committee staff conducted a preliminary inquiry: 10. (Th(s figure includes 4 matters from the previous year carried into 2008.)

(4) The number of alleged violations that resulted in an adjudicatory review: 0.

(5) The number of alleged violations that the Committee dismissed for lack of substantial merit. 4. (This figure includes 1 matter from the previous year carried into 2008).

(6) The number of private letters of admonition or public letters of admonition issued: 2.

(7) The number of matters resulting in a disciplinary sanction: 0.

(8) Any other information deemed by the Committee to be appropriate to describe its activities in the previous year.

Between January 4 and February 25, 2008 the Committee staff conducted mandatory ethics training for all Senate employees: 8 training sessions for Members, 19 training sessions for staff, and 1 training session for Member spouses. In addition, the Committee conducted 11 new employee training sessions during the year; 17 ethics seminars for Member DC offices, state offices, Senate committees, and outside delegations; 2 mandatory campaign related ethics briefings; and 1 Senator-elect orientation session and 1 training session for transition staff.

In 2008, Committee staff handled 15,555 telephone inquiries for ethics advice and guidance.

In 2008, the Committee wrote 1,264 ethics advisory letters and responses, including 869 advisories concerning gifts or travel.

The Committee issued 3,395 letters concerning financial disclosure filings by Senators, Senate staff and Senate candidates and reviewed 1,510 reports.

HOLDER NOMINATION

Mr. INHOFE. Mr. President, I believe I am speaking on behalf of Americans who value their second amendment personal right to own their own firearms. I also believe I am speaking on behalf of Americans who favor justice over political patronage. Finally, I believe I am speaking on behalf of Americans who realize we are in a war on terror and want to continue the strong efforts to bring terrorists to justice. I am opposed to the appointment of Eric Holder to be the next Attorney General of the United States.

I take particular interest in this nomination because I, as well as the voters of the State of Oklahoma, feel strongly that the rights conferred upon us by the second amendment of the Constitution guarantee an individual freedom that no government regulation can take away. Eric Holder's record and his true beliefs about the second amendment are clear. In a brief filed in the Heller case, Holder joined other past Department of Justice officials by saying: ''[t]he Second Amendment Does Not Protect Firearms Possession or Use That Is Unrelated To Participation In a Well-Regulated Militia.'' The brief also stated that the ''recognition of an expansive individual right to keep and bear arms for private purposes will make it more difficult for the government to defend present and future firearms laws.'' During his confirmation hearing, Eric Holder noted the importance of the Heller decision and recognized it as precedent. But I certainly do not believe that the decision in Heller has changed the underlying beliefs held by Eric Holder, and his leadership as the chief lawyer of the United States will be a detriment to the gun ownership rights of American citizens.

I am also very uncomfortable with Mr. Holder's judgment and record on pardons and clemency during the Clinton administration. He apparently chose to circumvent the standard process by which all pardons are considered and granted, and clouded this process with the appearance of impropriety. If the pardon of Mark Rich was not impropriety, and I believe it was, then it was at the very least extreme negligence, and such negligence has no place in any level of government. Mark Rich, whom many label a tax evader, is in fact even more than that. Rich was indicted in 1983 on 65 counts of not only tax evasion, but also fraud, racketeering, and trading with the enemy. Rich fled to Switzerland before he could stand trial, which is perhaps the most egregious element of this case—he was a fugitive and a regular fixture on the FBI's Ten Most Wanted List. How can one justify recommending a pardon, bypass the Department of Justice and the hundreds of individuals who worked to bring Mark Rich to justice, when the man who is being pardoned is not even willing to face the same justice system to which every other American must answer? In fact, Holder admitted during his confirmation hearing that he did not adequately acquaint himself with the facts of the case. The United States Senate should not allow such injustice to go unanswered.

Equally egregious, Holder was Deputy Attorney General in an administration which granted clemency to 16 members of the Armed Forces of National Liberation, or FALN. This is a group which not only carried out violent protests, FALN set off bombs several times in New York City and Chicago and were convicted for conspiracies to commit robbery, bomb-making, and sedition. The Clinton administration granted clemency despite opposition from the U.S. Attorney's Office, FBI, and most importantly, the victims of FALN terrorist activities.

Finally, we continue to be in a war on terror, however, Holder is an individual who is opposed to the military commissions which have tried terrorists and is opposed to the Guantanamo Bay detention facility for detaining terrorists. This Senate and the American people should know that since October 2001, the U.S. has detained almost 800 al-Qaida and Taliban combatants at GTMO. Currently, 60 more are ready for transfer or release to another country, 70 have either been tried or in process, and 130 are a high threat to the U.S. Since 2002, more than 525 detainees have departed GTMO for other countries. Today, there are approximately 240 detainees at GTMO. If GTMO is no longer a prison, some U.S. domestic or overseas prison will have to house these men while they await a habeas hearing and trial. All the while, the military detention facilities at GTMO meet the highest international standards. The Pentagon spends $2.5 million each year on Korans, prayer rugs, and special meals for prisoners. There are on average two lawyers for every detainee at GTMO. He believes our military commissions currently in place would have to be substantially revamped and even holds the position that U.S. interrogation techniques should be published for the world to see.

For at least these reasons, I cannot vote to support the nomination of an individual who holds opinions on a wide range of issues which I find so objectionable and objectionable to my constituents. I will be voting a definitive no on the Holder nomination.

CHILDREN'S HEALTH INSURANCE PROGRAM

Mr. NELSON of Florida. Mr. President, I wish to express my optimism that with a new administration and a new Congress, we will finally be able to achieve what was left unfinished last year: the expansion of the Children's Health Insurance Program. Though we are in difficult economic times, we can

never afford to squander our Nation's most precious resource—our children.

From 1994 to 2000 I served as the State of Florida's elected treasurer and insurance commissioner. During my tenure, I oversaw the implementation of the SCHIP program, or the Healthy Kids Program, as it is known in Florida. There is no doubt in my mind that this program works. Nationwide, in 1997 23.3 percent of low-income children were uninsured. By 2006, this number had dropped to 15.4 percent.

However, much remains to be done. The rate of uninsured children in Florida is nearly 19 percent—the second worst in the country. Around 8.6 million children in America are uninsured; nearly 900,000 of these children are in Florida. One of the reasons I support this bill so strongly is that it expands coverage and offers incentives for States like Florida to find and enroll uncovered children. During difficult economic times such as these, there are more children in need of the CHIP program, not fewer.

While I am very satisfied with the progress this legislation would make in covering children, I do have concerns about its financing. I want to emphasize that increasing the tobacco tax is an appropriate funding mechanism for this legislation. It will have significant positive impacts on health, save untold millions in health care costs, and reduce the prevalence of smoking among the children whom this bill is designed to protect. However, I am concerned that the tax is applied unequally across different tobacco products.

Under the current legislation, there is a much higher tax increase for large cigars than for other tobacco products. This is no small problem for Florida—90 percent of large cigars in the U.S. are either manufactured or imported through Florida, accounting for approximately 3,000 jobs. While I remain opposed to placing an unfair tax burden on any one product, I still feel we have a strong bill on the whole, one that will improve health care dramatically for America's children.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

You are asking Idahoans to write about gas prices? You mean you do not know? I think Washington D.C. may as well be registered as another planet because I think your colleagues are so far from reality of the rest of the people it is absolutely outrageous.

[Some of] your colleagues [suggest that] Americans use alternative [modes] of transportation and that it is a good thing that gas prices force people to take the bus, ride bikes, or walk to their destination because it helps reduce global warming.

I have something [for you to share with your colleagues]:

I am a driver for a living. I deliver products right here in Boise. I have to drive I have no choice. I am also a salesman, and a night supervisor. I live in Idaho. I do not have the option of riding the bus. I cannot walk my deliveries or ride my bike with my products.

I find it absolutely insulting [to think this suggestion can be taken seriously. Too many liberals] love these high gas prices because they want to use it as an excuse to make us live how they want us to live to fight so-called global warming, while [they make no sacrifices in their own personal travel behaviors.] That is eco-socialism in my opinion.

Senator Crapo, I have three jobs!! Three jobs, and I am still having problems fueling up. I have had to open credit card accounts for the first time in my life, and my debt is still going up!

You would think with three jobs and three paychecks for one person! I am not married, no kids. I would be starving with fuel prices if I had a family. I am just barely paying my bills on time as they are, to about $1,500 a month, not including gas prices!

Starting in 2005 till 2007, I did very well financially. I was saving up and putting money away in my savings account. I loved myself for putting money away. This month [June 2008], I had to take one-quarter of my life savings out of my bank to pay for bills, including gas because the price skyrocketed from $3 to $4 a gallon in one month. This is outrageous!

I think it is 80 percent the government's fault for this and 20 percent the oil companies. The only thing the oil companies are doing wrong is speculating the price of oil for really dumb reasons.

Congress has done this because [legislation to drill for oil in ANWR has been blocked because of environmental concerns that do not exist.] Congress is more worried about a stupid deer than they are about [the lives of Americans]? More worried about the mating season of the caribou than they are about the economy? My jobs? My gas prices? My bills? My lifestyle?

You will not allow drilling off shore? Well, did you know that China is drilling for oil off the coast of Florida? But we cannot. Why? This is outrageous!

Do not listen to those radical environmentalists. They were wrong about the second Ice Age in the 70s. When I was kid in school in the 1980s, my teachers told me by the year 1999, New York would be underwater and Los Angeles would be a bunch of Islands. It has not happened. Of course, the earth's temperature changes and jumps over time. The earth's climate changes all the time, has been since the earth cooled and formed. The earth's temperature does not stay the same all the time. There are so many scientists and people who disagree with Al Gore, but if we disagree, we are labeled ''flat-earthers'' and ''Holocaust Deniers.''

My question for [conservatives] is this. Why did you not approve drilling for oil when you [controlled Congress and the White House]?

You want to help me? A person with three jobs and struggling with gas prices? I have not had a vacation since March of 2007. I cannot even take a one-day vacation to Jackpot anymore. I work all seven days a week, get no weekends and I still struggle to pay gas prices of about $15 a day, not a week, a day!

Drill here, drill in ANWR, drill in America!

AARON, *Boise*.

Thank you, Senator, for your sincere concern for Idaho residents. I am 58 next month and on disability from a very severe fire I was trapped in several years ago. Though I do get an income, this is where it goes:

I receive $625 a month.

1. $200 a month mobile home space rent.
2. $156 a month mortgage payments for my mobile home . . . which without the owner of the mobile home, I would not be on my way to being a first time home owner!
3. $48 a month mobile home insurance.
4. $40 a month vehicle insurance . . . it is a 1988 Plymouth Voyager van that I have had since 1988.
5. $39 phone bill. which was supposed to reduced several months ago through my social worker, and still remains at the normal price and I do not have long distance.
6. $30-40 electricity monthly; I do not have an air conditioner for summer but do open my windows and use my ceiling fans that helps.
7. $125 and up in winter for gas to run my heater monthly. That is after I receive fuel assistance which for some reason only lasts 1–2 months and only use the heater to warm up the area so can start my wood stove which is usually one-half hour.

So, if I am lucky, all I can afford to do is put up to $20 a month in gas, which gives me almost 1/4 tank and that has to last the month. I have medical problems that mean many trips to the doctor and pharmacy, and with such a low amount of gas I have to depend on others for rides when I run out of gas. Thank you for your sincere concern and we are all hoping and praying that gas will once again come down to where people like me can afford to purchase more.

LORETTA, *Nampa*.

From your letter on gas prices that you sent me, you are starting to understand that the Congress holds most of the blame for high oil (and thus gas) prices. Congress has failed to act in the thirty years since the last gas crisis, continually failing to take responsible action to make sure domestic supplies are developed and used to reduce dependence on foreign oil.

It should be clear that the single most deleterious action of Congress over the last forty years was the Environmental Protection Act. It has desperately needed revision since the early seventies and because it was not, the economic impact on America has been extreme. The inability to build domestic gas refineries, increase domestic oil production and take advantage of resources in ANWR are only a few of the unintended and disastrous impacts of that act. An environmentalist has only to write a single letter to cause the price of any such proposal to escalade exponentially. The latest case of the proposed nuclear reactor in Idaho is an example. One man writing one letter can cause the waste of hundreds of thousands of dollars to ''prove'' the lack of environmental

impacts of such a proposal. The price of a house in Idaho has risen by 10–15 percent, for instance, because of the ludicrous and technically flawed environmental studies and reactions on the spotted owl.

Still, no action in Congress to alleviate the situation. We simply need someone to stand up and take the actions necessary to replace political correctness with what used to be common sense.

So the bottom line, Senator, is that Congress bears the responsibility to stop passing stupid laws and start reigning in those that are hurting the nation's ability to do the right things rather than the politically correct things. Do you have the courage to start?

ROBERT, *Meridian*.

You asked what the high gas prices are doing to me. It has become very difficult to even do normal things. I cannot afford to go up town and buy necessary things. Since I am on Social Security Disability, my sister and I have been living off my money. Since my sister does not have a car and I cannot afford to buy one for her, nor could I afford the gas. She would love to go to work. How would she get there? Idaho, and particularly this area has a really horrible public transportation system. It truly is a disgrace to our state. My sister walks as much as possible. Our nation needs to stop depending on foreign oil. I love all the animals and have tried to protect them as much as possible, but we need to start taking care of our families first.

The oil companies are making over the profit margin; that is disgusting by itself. I do not trust one thing they say or do. Therefore, we need to have alternative fuel. The wind can run electricity. The air can fuel a car, water can do both, after seeing the pictures of a car that runs on air. America, the greatest country in the world needs to step up to the plate. Oil companies need to step up to the plate before they become the dinosaurs. Therefore, we need to drill. Do it. Many families like mine are being devastated by the high gasoline prices which makes high food prices we cannot afford. Thank you for your time

MARIAN, *Nampa*.

This is in response to a solicitation from Senator Crapo regarding personal stories on how high energy prices are affecting lives. Greed is the source of most of the world's evil. I know I sound like an ideologue, but please read on.

It is hard to disaggregate the effects of the high cost of energy from other economic hits our family is experiencing. When construction activity slowed in Valley and Adams County, wage earning families left our valleys looking for jobs elsewhere.

The resulting reduced school enrollment (now compounded by the end of Craig-Wyden) in our districts led me to being one of the teachers RIF'd from the Council School District. Fortunately, I found work part-time in the McCall School District. Unfortunately, this 70-mile, round-trip commute (in my 2000 140,000+ mile Dodge AWD Caravan—needed for unpredictable roads) costs me $9.00–$12.00 a trip! I would like to buy a more fuel efficient Subaru—but I cannot afford to.)

My school-age children suffer because programs are being severely reduced—shop and art are gone. Some high school courses will only be offered every other year. Summer school for poor learners is truncated. Field trips? Sports? Both are severely reduced. How can our small-town children go out and experience the world when there is not even money for gas?

As consumers, our family lives so far from ''the source'' that not only gas, but also milk and other basic commodities seem to cost at least 25 percent more than they did a year ago. Last year I was able to find milk for $2.29 gallon; now milk costs close to $4.00/gallon. Healthy bread costs close to $4.00/loaf. As a family, we certainly have not received a COLA to offset these price increases.

As middle-class professionals (my husband is a forester) and as parents, the drain on our budget means belt-tightening for any of ''fun things'' like vacation trips. Additionally, we have experienced a health crisis (and have met our catastrophic limits). I now must commute to Fruitland (140 miles round trip) every 2 weeks for chemo; in the fall I will need to commute 5 days a week for radiation for 6 weeks! (My doctor cavalierly denied me two prescriptions for drugs since they are also available OTC. ''They only cost a few dollars. '' He casually shrugged off my request for RXs. Well, the two drugs cost more than $30 altogether. I do not think that the upper-middle-class and upper-class have a clue that there is an exponential difference between a few bucks (a latte) and $30 (a chance to visit a museum or movie, or halfway fill up a gas tank to make it to a chemo session!)

I believe that our tax system rewards the rich on the backs of the poor and middle class. I believe that oil companies and owners of stocks are making fortunes as the little guy suffers.

I believe we should take global warning seriously and allow tax credits for the development of alternative energy. We need to take recycling very seriously. We also need to be a world economic partner on a fair playing field (Kyoto convention), quit out-sourcing to countries that do not provide the labor protections we do to our workers, and build respectful relationships among all peoples and all cultures—as a first step to world peace and understanding and a step away from the ugliness of war.

I also believe that limiting population growth and sharing the world's resource's equably is the only way we will ever establish peace on earth.

Locally, for our family, what have been the effects of high energy costs? Higher food and medical costs, loss of job, reduced school programs for my children, dwindled savings, ''making do'' with older cars and housing needs, fewer amenities, no vacation.

Glad you asked.

LYNN, *Fruitvale*.

I read your letter sent out today. Glad to hear that at least one of our Senators in Washington gets it. I hope there are more of you in DC that can support the policies you want to support in your letter.

We do need to start drilling again in the US and offshore. We need to make sure that we take precautions to avoid damage to the environment. We cannot sacrifice one for the other. But we must start drilling again, and do so in a respective manner of Mother Nature.

And we are going to need some new refining capability. Again, do it new technology and with respect to our environment. Build it in Eastern Idaho—we have the space and we could use the jobs and economic boost. Tough to get oil here, but if they need a place for it, bring it here.

We must start the nuclear programs again. We need to build some new reactors soon. I do not know for sure, but I am betting some of our older reactors are getting long in the tooth, and if they go off the grid, then what happens? Besides we need more power and money spent to renew our grid system.

We need to take a serious look at Ethanol. I am not sure it is all it is being promoted to be. I am not sure the benefits outweigh all of the costs. With the flooding in the Midwest, I wonder what the cost of corn will be now? But it is not just food issues, but the processing issues as well.

Wind Power should be promoted as well. But a Nuclear Power Plant is much easier on the eyes than 1000 wind towers, and not as susceptible to the changes in the wind.

Coal alternatives should be looked at as well. We need to check if the benefits we can gain from technology like coal gasification are valid and have low impact. Some of the claims you hear and read about look promising. But as I am learning with Ethanol, there may be some significant costs to chase this type of technology.

But the short of it—we need to develop our energy and become more independent. The amount of jobs created would be incredible in the process. You want a better health care system and less unemployment and less government care programs—just set the energy companies loose and see this economy rebound in a heartbeat. These energy companies can afford health care plans and benefits for their workers. Our current policies are killing us—and I really hope there are enough in Congress to turn this around. We have been shooting ourselves in the foot for more than 20 years.

Good Luck.

STEPHEN, *Rigby*.

Thank you for inviting me to share how the increased gas prices has affected my daily life. I have begun carpooling and eliminating unnecessary trips, and have really saved a lot of money, not to mention reducing the pollution my daily commute had been producing. Though it has not always been convenient, I look at it as one small step that I can do to help our world for future generations. You opposed the proposed climate change legislation that would further hike gas prices up, though I called and wrote your office to ask you to support it. I feel that the higher the gas prices are, the more people will look to limit extraneous trips which will help reduce emissions (greenhouse gases). I also think that the more you reduce the prices on gas, people will use more gas and will choose not to conserve.

Measures I want you to support would be to develop a larger, stronger infrastructure of public transportation so that people do not have to worry about getting to work the traditional way of driving singly in their own vehicle. We should encourage production and development of non-fossil fuels, such as cellulosic ethanol, which does not take from the food supply, but does give work to both the scientific developers as well as the laborers necessary to move this idea to fruition. Also, you should support solar, geothermal, and wind production. If measures could be discovered that would allow for the long-term safe storage of nuclear waste, as well as safe practices of running plants on a daily basis, no matter the weather conditions (i.e., drought), keeping in mind the larger picture of our environment, including fish and other natural resources, I would be supportive of that method as well. I know these newer methods are not as easy or convenient as just simply reducing gas prices, but your legacy for truly caring about the environment would be something that would be worth the extra work.

Thank you for reading this, even though it probably goes against what you are looking for.

SUSAN, *Boise*.

ADDITONAL STATEMENTS

REMEMBERING HARRY MAGNUSON

• Mr. CRAPO. Mr. President, on January 24, a man whose life was intricately woven into Idaho's history passed on. Harry Frank Magnuson, son of an Italian immigrant mother and Polish immigrant father, was born in Idaho in the early part of the 20th century in the small Idaho mining town of Wallace. As a young man, Harry sought and obtained his education, first at the University of Idaho. After completing his military service with the U.S. Navy during World War II, he obtained a master's degree in business administration at Harvard University. Harry returned to his hometown of Wallace, ID, and opened an accounting firm that was active for 60 years. At the time of his death, Harry Magnuson was known well beyond Idaho's borders for his leadership, philanthropy and business acumen.

Harry was a devoted father and husband and committed man of the community. He was first and foremost an Idahoan. His work brought him accolades from the University of Idaho, Gonzaga University, and Idaho State University. In 1990, our State's largest newspaper, the Idaho Statesman, named him Idaho Citizen of the Year. He chaired the Idaho Centennial Commission from 1987 to 1991. In 1999, Harry received the ''Esto Perpetua'' award from the Idaho State Historical Society, an award that honors an individual's lifetime contributions to the history of Idaho. One of the projects closest to his heart was the Cataldo Mission in north Idaho, the preservation of which he contributed mightily over the years.

My thoughts and prayers are with Colleen Magnuson and their children at this difficult time.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:35 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 27. Concurrent resolution authorizing the use of the rotunda of the Capitol for a ceremony in honor of the bicentennial of the birth of President Abraham Lincoln.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–554. A communication from the Senior Counsel for Regulatory Affairs, Office of Financial Stability, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''TARP Conflicts of Interest'' (RIN1505–AC05) received in the Office of the President of the Senate on January 26, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–555. A communication from the Deputy Secretary of the Interior and the General Counsel, Department of Commerce, transmitting draft legislation entitled ''The Albatross and Petrel Conservation Act of 2009''; to the Committee on Environment and Public Works.

EC–556. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Credit Rates on Tax Credit Bonds'' (Notice 2009–15) received in the Office of the President of the Senate on January 28, 2009; to the Committee on Finance.

EC–557. A communication from the Acting Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the extension of the waiver of restrictions contained in Section 907 of the FREEDOM Support Act of 1992; to the Committee on Foreign Relations.

EC–558. A communication from the Assistant Secretary for Civil Rights, Department of Education, transmitting, pursuant to law, the annual report of the Office for Civil Rights for fiscal years 2007–2008; to the Committee on Health, Education, Labor, and Pensions.

EC–559. A communication from the Director of Legislative Affairs, Office of the Director of National Intelligence, transmitting, pursuant to law, a report relative to the vacancy, designation of acting officer and nomination for the position of Director of National Intelligence, received in the Office of the President of the Senate on January 28, 2009; to the Select Committee on Intelligence.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Mr. SPECTER, and Mr. FEINGOLD):

S. 357. A bill to allow for certiorari review of certain cases denied relief or review by the United States Court of Appeals for the Armed Forces; to the Committee on the Judiciary.

By Mr. CORNYN (for himself, Mr. LIEBERMAN, Mr. PRYOR, and Mrs. MCCASKILL):

S. 358. A bill to ensure the safety of members of the United States Armed Forces while using expeditionary facilities, infrastructure, and equipment supporting United States military operations overseas; to the Committee on Armed Services.

By Mr. INOUYE:

S. 359. A bill to establish the Hawaii Capital National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. MCCASKILL:

S. 360. A bill to limit compensation to officers and directors of entities receiving emergency economic assistance from the Government; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEVIN:

S. 361. A bill for the relief of Guy Vang, Genevieve Chong Foung, Caroline Vang, and Meline ''Melanie'' Vang; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mr. WEBB, Mr. BROWN, Ms. MIKULSKI, and Mr. SANDERS):

S. 362. A bill to amend title 38, United States Code, to improve the collective bargaining rights and procedures for review of adverse actions of certain employees of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

ADDITIONAL COSPONSORS

S. 150

At the request of Mr. LEAHY, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 150, a bill to provide Federal assistance to States for rural law enforcement and for other purposes.

S. 244

At the request of Mr. BOND, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 244, a bill to expand programs of early childhood home visitation that increase school readiness, child abuse and neglect prevention, and early identification of developmental and health delays, including potential mental health concerns, and for other purposes.

S. 252

At the request of Mr. AKAKA, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 252, a bill to amend title 38, United States Code, to enhance the capacity of the Department of Veterans Affairs to recruit and retain nurses and other critical health-care professionals, to improve the provision of health care veterans, and for other purposes.

S. 262

At the request of Mr. CASEY, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 262, a bill to improve and enhance the operations of the reserve components of the Armed Forces, to improve mobilization and demobilization processes for members of the reserve components of the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Mr. SPECTER, and Mr. FEINGOLD):

S. 357. A bill to allow for certiorari review of certain cases denied relief or review by the United States Court of Appeals for the Armed Forces; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, today I am pleased to join with Senators SPECTER and FEINGOLD in introducing the Equal Justice for U.S. Service Members Act. The Act would eliminate an inequity in current law by allowing all court-martialed U.S. servicemembers who face dismissal, discharge or confinement for a year or more to petition the United States Supreme Court for discretionary review through a writ of certiorari.

The bill is a simple one, and would do the following: allow a writ of certiorari to be filed in any case in which the U.S. Court of Appeals for the Armed Forces has denied review; and allow a writ of certiorari to be filed in any case in which the U.S. Court of Appeals for the Armed Forces denied a petition for extraordinary relief.

In our civilian courts today, all person convicted of a crime, if they lose on appeal, have a right to petition the U.S. Supreme Court for discretionary review. Even enemy combatants have the right to direct appellate review in the Supreme Court.

In contrast, however, our men and women in uniform do not share this same right. Our military personnel can apply to the U.S. Supreme Court only if the U.S. Court of Appeals for the Armed Forces actually conducts a review of their case or grants a petition for extraordinary relief. That only happens about 10 percent of the time.

In other words, in 90 percent of their case, our U.S. servicemembers are prevented from ever seeking or obtaining direct review from the Supreme Court.

This disparity is not limited to our civilian and military court systems. A similar disparity exists within our military court system relief. The Government routinely has the chance to petition the Supreme Court for review of adverse court-martial rulings in any case where the charges are severe enough to make a punitive discharge possible. But our military personnel do not share the same rights to petition the Supreme Court as the military prosecutors on the other side of the aisle.

This is wrong, and this inequity was recently noted by the American Bar Association, which passed a resolution calling on Congress on fix this longstanding ''disparity in our laws governing procedural due process.''

Every day, our U.S. service personnel place their lives on the line in defense of American rights. It is unacceptable for us to continue to routinely deprive our men and women in uniform one of those rights—the ability to petition their Nation's highest court for direct relief. It is a right given to common criminals in our civilian courts, to the Government, and even to some of the terrorists who we hope to prosecute as war criminals.

The bill is supported by the American Bar Association, the Military Officers Association of America, and the National Institute of Military Justice. Robinson Everett, the former Chief Judge of the U.S. Court of Military Appeals, the predecessor to the Court of Appeals for the Armed Forces, also supports the bill.

It's long past time we give them the same rights as the American citizens they fight, and sometimes die, to protect.

I urge my colleagues to support this important legislation to give equal justice to our U.S. servicemembers.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 357

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Equal Justice for United States Military Personnel Act of 2009''.

SEC. 2. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.

(a) IN GENERAL.—Section 1259 of title 28, United States Code, is amended—

(1) in paragraph (3), by inserting ''or denied'' after ''granted''; and

(2) in paragraph (4), by inserting ''or denied'' after ''granted''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 867a(a) of title 10, United States Code, is amended by striking ''The Supreme Court may not review by a writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.''.

By Mr. INOUYE:

S. 359. A bill to establish the Hawai'i Capital National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. INOUYE. Mr. President, I rise to introduce a bill that will establish the Hawaii Capital National Heritage Area.

National Heritage Areas allow residents, government agencies, nonprofit groups and private partners to collaboratively plan and implement programs that recognize and preserve America's defining landscapes. Of the 40 National Heritage Areas established, only a few are west of the Mississippi River. This will be Hawaii's first official Heritage Area.

I believe that Hawaii's unique cultural make up coupled with its historical significance will surely attract both residents and visitors to this special place. The proposed area is rich with cultural sites, museums, historic buildings, art galleries, performing arts venues, ethnic markets, and restaurants that will surely provide the average person with an experience of a lifetime.

This makes Hawaii Capital Cultural district an ideal candidate for a Heritage Area designation.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 359

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hawai'i Capital National Heritage Area Establishment Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Hawai'i Capital National Heritage Area established by section 3(a).

(2) LOCAL COORDINATING ENTITY.—The term ''local coordinating entity'' means the local coordinating entity for the Heritage Area designated by section 3(d).

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area required under section 5.

(4) MAP.—The term ''map'' means the map entitled ''Hawai'i Capital National Heritage Area Proposed Boundary'', numbered T17/90,000B, and dated January 2009.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of Hawai'i.

SEC. 3. HAWAI'I CAPITAL NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Hawai'i Capital National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of portions of Honolulu and the Honolulu Ahupua'a, as depicted on the map.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service and the Hawai'i Capital Cultural Coalition.

(d) LOCAL COORDINATING ENTITY.—The Hawai'i Capital Cultural Coalition shall be the local coordinating entity for the Heritage Area.

SEC. 4. DUTIES AND AUTHORITIES OF THE LOCAL COORDINATING ENTITY.

(a) DUTIES OF THE LOCAL COORDINATING ENTITY.—To further the purposes of the Heritage Area, the local coordinating entity shall—

(1) prepare and submit a management plan for the Heritage Area to the Secretary in accordance with section 5;

(2) assist units of local government, regional planning organizations, and nonprofit organizations in implementing the approved management plan by—

(A) carrying out programs and projects that recognize, protect, and enhance important resource values in the Heritage Area;

(B) establishing and maintaining interpretive exhibits and programs within the Heritage Area;

(C) developing recreational and educational opportunities in the Heritage Area;

(D) increasing public awareness of, and appreciation for, natural, historic, scenic, and cultural resources of the Heritage Area;

(E) protecting and restoring historic sites and buildings in the Heritage Area that are consistent with the themes of the Heritage Area;

(F) ensuring that signs identifying points of public access and sites of interest are posted throughout the Heritage Area; and

(G) promoting a wide range of partnerships among governments, organizations, and individuals to further the purposes of the Heritage Area;

(3) consider the interests of diverse units of government, businesses, organizations, and individuals in the Heritage Area in the preparation and implementation of the management plan;

(4) conduct meetings open to the public at least semiannually regarding the development and implementation of the management plan;

(5) for any fiscal year for which the local coordinating entity receives Federal funds under this Act—

(A) submit to the Secretary an annual report that describes, for the fiscal year—

(i) the accomplishments, expenses, income, amounts, and sources of matching funds;

(ii) the amounts leveraged with Federal funds and sources of the leveraged funds; and

(iii) grants made to any other entities;

(B) make available to the Secretary for audit all information relating to the expenditure of Federal funds and any matching funds for the fiscal year; and

(C) require, in all agreements authorizing the expenditure of Federal funds by other organizations, that the organizations receiving the Federal funds make available to the Secretary for audit all records and other information relating to the expenditure of the funds; and

(6) encourage, by appropriate means, economic development that is consistent with the purposes of the Heritage Area.

(b) AUTHORITIES.—The local coordinating entity may, subject to the prior approval of the Secretary, for the purposes of preparing and implementing the management plan for the Heritage Area, use Federal funds made available under this Act to—

(1) make grants to the State or a political subdivision of the State, nonprofit organizations, and other persons;

(2) enter into cooperative agreements with, or provide technical assistance to, the State or a political subdivision of the State, nonprofit organizations, Federal agencies, and other interested parties;

(3) hire and compensate staff;

(4) obtain money or services from any source, including under any other Federal law or program;

(5) contract for goods or services; and

(6) support activities of partners and any other activities that—

(A) further the purposes of the Heritage Area; and

(B) are consistent with the approved management plan.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The local coordinating entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

SEC. 5. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are made available to carry out this Act, the local coordinating entity shall submit to the Secretary for approval a management plan for the Heritage Area.

(b) REQUIREMENTS.—The management plan shall—

(1) describe comprehensive policies, goals, strategies, and recommendations for—

(A) conveying the heritage of the region; and

(B) encouraging long-term resource protection, enhancement, interpretation, funding, management, and development of the Heritage Area;

(2) take into consideration existing State, county, and local plans in the development and implementation of the management plan;

(3) include a description of actions and commitments that governments, private organizations, and individuals have agreed to take to protect, enhance, and interpret the natural, historic, scenic, and cultural resources of the Heritage Area;

(4) specify existing and potential sources of funding or economic development strategies to protect, enhance, interpret, fund, manage, and develop the Heritage Area;

(5) include an inventory of the natural, historic, cultural, educational, scenic, and recreational resources of the Heritage Area related to the stories and themes of the region that should be protected, enhanced, managed, or developed;

(6) recommend policies and strategies for resource management, including the development of intergovernmental and interagency agreements to protect the natural, historic, cultural, educational, scenic, and recreational resources of the Heritage Area;

(7) describe a program of implementation for the management plan, including—

(A) performance goals;

(B) plans for resource protection, enhancement, and interpretation; and

(C) specific commitments for implementation of the management plan that have been made by the local coordinating entity or any government, organization, business, or individual;

(8) include an analysis of, and recommendations for, ways in which Federal, tribal, State, and local programs may best be coordinated to carry out the purposes of this Act, including recommendations for the role of the National Park Service and other Federal agencies associated with the Heritage Area;

(9) include an interpretive plan for the Heritage Area; and

(10) include a business plan that—

(A) describes the role, operation, financing, and functions of—

(i) the local coordinating entity; and

(ii) each of the major activities contained in the management plan; and

(B) provides adequate assurances that the local coordinating entity has the partnerships and financial and other resources necessary to implement the management plan for the Heritage Area.

(c) TERMINATION OF FUNDING.—If the management plan is not submitted to the Secretary in accordance with this Act, the local coordinating entity shall be ineligible to receive additional funding under this Act until the date on which the Secretary approves the management plan.

(d) APPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of receipt of the management plan under subsection (a), the Secretary, in consultation with the Governor of the State and any applicable tribal government, shall approve or disapprove the management plan.

(2) CRITERIA FOR APPROVAL.—In determining whether to approve the management plan, the Secretary shall consider whether—

(A) the local coordinating entity represents the diverse interests of the Heritage Area, including governments, natural and historical resource protection organizations, educational institutions, businesses, community residents, and recreational organizations;

(B) the local coordinating entity has afforded adequate opportunity for public and governmental involvement, including workshops and public meetings, in the preparation of the management plan;

(C) the resource protection and interpretation strategies contained in the management plan, if implemented, would adequately protect the natural, historic, and cultural resources of the Heritage Area;

(D) the management plan would not adversely affect any activities authorized on Federal or tribal land under applicable laws or land use plans;

(E) the Secretary has received adequate assurances from the appropriate State, tribal, and local officials, the support of which is necessary to ensure the effective implementation of the State, tribal, and local aspects of the management plan; and

(F) the local coordinating entity has demonstrated the financial capability, in partnership with others, to carry out the plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan under paragraph (1), the Secretary—

(A) shall advise the local coordinating entity in writing of the reasons for the disapproval;

(B) may make recommendations to the local coordinating entity for revisions to the management plan; and

(C) not later than 180 days after the receipt of any proposed revision of the management plan from the local coordinating entity, shall approve or disapprove the proposed revised management plan.

(4) AMENDMENTS.—The Secretary shall approve or disapprove each amendment to the management plan that the Secretary determines would make a substantial change to the management plan in accordance with this subsection.

(5) USE OF FUNDS.—The local coordinating entity shall not use Federal funds authorized by this Act to carry out any amendments to the management plan until the Secretary has approved the amendments.

SEC. 6. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—On the request of the local coordinating entity, the Secretary may provide to the local coordinating entity technical and financial assistance on a reimbursable or nonreimbursable basis, as determined by the Secretary, to develop and implement the management plan.

(2) PRIORITY ACTIONS.—In providing assistance under this subsection, the Secretary shall give priority to actions that assist in—

(A) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(3) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the local coordinating entity and other public or private entities for the purposes of carrying out this subsection.

(b) EVALUATION.—

(1) IN GENERAL.—Not later than 3 years before the date on which authority for Federal funding terminates for the Heritage Area under section 10, the Secretary shall—

(A) conduct an evaluation of the accomplishments of the Heritage Area; and

(B) prepare a report with recommendations for the future role of the National Park Service, if any, with respect to the Heritage Area.

(2) EVALUATION COMPONENTS.—An evaluation conducted under paragraph (1)(A) shall—

(A) assess the progress of the local coordinating entity with respect to—

(i) accomplishing the purposes of this Act for the Heritage Area; and

(ii) achieving the goals and objectives of the approved management plan for the Heritage Area;

(B) analyze the Federal, State, local, and private investments in the Heritage Area to determine the leverage and impact of the investments; and

(C) review the management structure, partnership relationships, and funding of the Heritage Area for purposes of identifying the critical components for sustainability of the Heritage Area.

(3) REPORT.—

(A) IN GENERAL.—Based on the evaluation conducted under paragraph (1)(A), the Secretary shall prepare a report with recommendations for the future role of the National Park Service, if any, with respect to the Heritage Area.

(B) REQUIRED ANALYSIS.—If the report prepared under subparagraph (A) recommends that Federal funding for the Heritage Area be reauthorized, the report shall include an analysis of—

(i) ways in which Federal funding for the Heritage Area may be reduced or eliminated; and

(ii) the appropriate time period necessary to achieve the recommended reduction or elimination.

(C) SUBMISSION TO CONGRESS.—On completion of the report, the Secretary shall submit the report to—

(i) the Committee on Energy and Natural Resources of the Senate; and

(ii) the Committee on Natural Resources of the House of Representatives.

SEC. 7. RELATIONSHIP TO OTHER FEDERAL AGENCIES.

(a) IN GENERAL.—Nothing in this Act affects the authority of a Federal agency to provide technical or financial assistance under any other law.

(b) CONSULTATION AND COORDINATION.—To the maximum extent practicable, the head of any Federal agency planning to conduct activities that may have an impact on the Heritage Area is encouraged to consult and coordinate the activities with the Secretary and the local coordinating entity.

(c) OTHER FEDERAL AGENCIES.—Nothing in this Act—

(1) modifies, alters, or amends any laws (including regulations) authorizing a Federal agency to manage Federal land under the jurisdiction of the Federal agency;

(2) limits the discretion of a Federal land manager to implement an approved land use plan within the boundaries of the Heritage Area; or

(3) modifies, alters, or amends any authorized use of Federal land under the jurisdiction of a Federal agency.

SEC. 8. PRIVATE PROPERTY OWNERS AND REGULATORY PROTECTIONS.

Nothing in this Act—

(1) abridges the rights of any owner of public or private property, including the right to refrain from participating in any plan, project, program, or activity conducted within the Heritage Area;

(2) requires any property owner to permit public access (including access by any Federal, tribal, State, or local agency) to the property;

(3) modifies any provisions of Federal, tribal, State, or local law with regard to public access to, or use of, private land;

(4) alters any land use regulation, approved land use plan, or other regulatory authority of any Federal, tribal, State, or local agency;

(5) conveys any land use or other regulatory authority to the local coordinating entity;

(6) authorizes or implies the reservation or appropriation of water or water rights;

(7) diminishes the authority of the State to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area; or

(8) creates any liability, or affects any liability under any other law, of any private property owner with respect to any person injured on the private property.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—The Federal share of the cost of any activity provided assistance or a grant under this Act shall not exceed 50 percent of the total cost of the activity.

(2) FORM OF NON-FEDERAL SHARE.—The non-Federal share—

(A) shall be from non-Federal sources; and

(B) may be in the form of in-kind contributions of goods and services fairly valued.

SEC. 10. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide financial assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

By Mrs. MCCASKILL:

S. 360. A bill to limit compensation to officers and directors of entities receiving emergency economic assistance from the Government; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. MCCASKILL. Mr. President, I could not agree more with my colleague from Rhode Island. There are a lot of things we need in this country right now. We need jobs. We need something to stimulate our economy. We need certainty in the credit market. But probably more than anything what we need in this country right now is confidence, confidence that we can face down these problems and move forward like America has always done.

What do we have instead of confidence? Raw anger. I am mad. Everyone I work for is mad. Anger can be constructive. It can be channeling. I am here today to say it is time we channel this anger and change the law. We do not need anger. We have a bunch of idiots on Wall Street who are kicking sand in the face of the American taxpayer. My colleague talked about some of them. Let me review. These financial institutions, on the brink of extinction, come to the American taxpayer for hundreds of billions of dollars at the very same time they think they are going to buy a $50 million corporate jet. They are going to pay out $18 billion in bonuses. They paid an average of $2.6 million to every executive at the first 116 banks that got taxpayer money under TARP. Let me say that again: An average of $2.6 million in executive pay to the folks at the first 116 banks that got money from the taxpayers.

They don't get it. These people are idiots. You can't use taxpayer money to pay out $18 billion in bonuses. Merrill Lynch is unbelievable. They saved $3 billion to $4 billion from the pot of money that was going to Bank of America, the sale that was going to close the first week in January. They always gave bonuses in January. Do you know what these sneaky guys did? They decided to give their bonuses in December before the Bank of America took over. They paid out $3 billion to $4 billion in bonuses in December, and that quarter, Merrill Lynch lost $21 billion. What planet are these people on? What could they be thinking about?

So here is what this bill is going to do. This is called the Cap Executive Officer Pay Act of 2009, and it is very simple. Going forward, you want taxpayers to help you survive? You want the people at your financial institution to have a job tomorrow? Then you are going to have to limit everyone's pay at your company to the same salary the President of the United States makes. Is that so unreasonable? It is eight times the median household income in the United States of America—$400,000 a year. I don't think that sounds like a bad deal. Should these people be making more than the President of the United States? Now, really, should they? They should not be making more than the President of the United States. So every executive going forward could not make more than $400,000 a year, and they have to limit that executive compensation for everyone in their company until they pay back every dime to the taxpayers.

Now, once they are off the public dole, once the taxpayers aren't footing the bill, then it is not as much our business what they get paid. But right now, they are on the hook to us, and they owe us something other than a fancy wastebasket and a $50 million jet. They owe us some common sense. If any of them think it is a hardship to take the salary of the President of the United States, I dare them to say so out loud right now because that is not going to instill confidence.

What is going to instill confidence is for the men and women in these companies to realize it is time for everyone in this country to tighten their belt. It is time for everyone to realize we must have our financial institutions survive but not with a culture that thinks it is OK to kick the taxpayer in the shins while they drink champagne and fly in fancy jets. It doesn't work; not in the United States of America.

I ask my colleagues to sign on to this bill. I think it makes sense. We should have done it in the first place, but I don't think any of us thought these guys were this stupid. I don't think any of us believed they would take billions of dollars of bonuses while their institutions were literally days from being wiped out, but they did, and we have learned our lesson.

So I hope all my colleagues will sign on this bill. I hope we can get it passed quickly so that from this day forward, the President of the United States will make the same amount of money as the executives of these companies who owe the taxpayers hundreds and hundreds of billions of dollars.

By Mr. ROCKEFELLER (for himself, Mr. WEBB, Mr. BROWN, Ms. MIKULSKI, and Mr. SANDERS

S. 362. A bill to amend title 38, United States Code, to improve the collective bargaining rights and procedures for review of adverse actions of certain employees of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Mr. President, I rise today to reintroduce legislation designed to fix the personnel laws that

cover the Department of Veterans Affairs health care professionals, including registered nurses, physicians, physician assistants, dentists, podiatrists, optometrists, and dental assistants. I am proud to have the support of my colleagues, Senators WEBB, BROWN, MIKULSKI, and SANDERS.

Whenever I visit VA Medical Centers and meet with veterans, I hear wonderful stories about nurses and other VA health care professionals who work long and hard to provide care to our veterans. Too often, our health care professionals are working under real stress due to lack of funds or staff shortages. Almost 22,000 of the registered nurses caring for our veterans will be eligible to retire by 2010. Even more stunning is that 77 percent of all resignations of nurses occur within the first 5 years. This is a clear signal that more must be done to retain VA nurses and quality health care staff. Anyone involved in health care understands the important role that nurses play in the quality of care and patient satisfaction.

The goal of this bill is to support the VA health care professionals who work hard to provide quality care to our veterans. The bill seeks to return to the partnership agreement of the 1990s between VA management and workforce. Flexible scheduling and basic fairness from management are key issues that must be addressed to recruit and retain a strong workforce. Morale is important in every workplace, and particularly in a VA Medical Center.

West Virginia has four VA Medical Centers, each with a dedicated team of health care professionals. I have met with the nurses and other professionals to hear their requests for flexible scheduling. I believe that we should restore the management partnership and work hard to retain our dedicated team of health professionals for our aging veterans, and those newly returning from Iraq and Afghanistan, with both physical and mental wounds of war, that deserve experienced VA care.

AMENDMENTS SUBMITTED AND PROPOSED

SA 98. Mr. INOUYE (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill H.R. 1, making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 98. Mr. INOUYE (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill H.R. 1, making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purpose; which was ordered to lie on the table; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

DIVISION A—APPROPRIATIONS PROVISIONS
TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
TITLE III—DEPARTMENT OF DEFENSE
TITLE IV—ENERGY AND WATER DEVELOPMENT
TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT
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TITLE XIV—STATE FISCAL STABILIZATION
TITLE XV—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD AND RECOVERY INDEPENDENT ADVISORY PANEL
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DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS
TITLE I—TAX PROVISIONS
TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES
TITLE III—HEALTH INSURANCE ASSISTANCE
TITLE IV—HEALTH INFORMATION TECHNOLOGY
TITLE V—STATE FISCAL RELIEF

SEC. 3. REFERENCES.

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

DIVISION A—APPROPRIATIONS PROVISIONS

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2009, and for other purposes, namely:

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for the ''Office of the Secretary'', $300,000,000, to remain available until September 30, 2010: *Provided*, That the Secretary may transfer these funds to agencies of the Department, other than the Forest Service, for necessary replacement, modernization, or upgrades of laboratories or other facilities to improve workplace safety and mission-area efficiencies as deemed appropriate by the Secretary: *Provided further*, that the Secretary shall provide to the Committees on Appropriations of the House and Senate a plan on the allocation of these funds no later than 60 days after the date of enactment of this Act.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $5,000,000, to remain available until September 30, 2010, for oversight and audit of programs, grants, and activities funded under this title.

COOPERATIVE STATE RESEARCH, EDUCATION AND ECONOMIC SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For an additional amount for competitive grants authorized at 7 U.S.C. 450(i)(b), $100,000,000, to remain available until September 30, 2010.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

For an additional amount for ''Farm Service Agency, Salaries and Expenses'', $171,000,000, to remain available until September 30, 2010.

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

For an additional amount for gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, to be available from funds in the Agricultural Credit Insurance Fund Program Account, as follows: farm ownership loans, $400,000,000 of which $100,000,000 shall be for unsubsidized guaranteed loans and $300,000,000 shall be for direct loans; and operating loans, $250,000,000 of which $50,000,000 shall be for unsubsidized guaranteed loans and $200,000,000 shall be for direct loans.

For an additional amount for the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, to remain available until September 30, 2010, as follows: farm ownership loans, $17,530,000 of which $330,000 shall be for unsubsidized guaranteed loans and $17,200,000 shall be for direct loans; and operating loans, $24,900,000 of which $1,300,000 shall be for unsubsidized guaranteed loans and $23,600,000 shall be for direct loans.

Funds appropriated by this Act to the Agricultural Credit Insurance Fund Program Account for farm ownership, operating, and emergency direct loans and unsubsidized guaranteed loans may be transferred among these programs: *Provided*, That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

For an additional amount for ''Watershed and Flood Prevention Operations'', $275,000,000, to remain available until September 30, 2010.

WATERSHED REHABILITATION PROGRAM

For an additional amount for the ''Watershed Rehabilitation Program'', $120,000,000, to remain available until September 30, 2010.

RURAL DEVELOPMENT SALARIES AND EXPENSES

For an additional amount for ''Rural Development, Salaries and Expenses'', $110,000,000, to remain available until September 30, 2010.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE PROGRAM ACCOUNT

For an additional amount for gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the Rural Housing Insurance Fund Program Account, as follows: $1,000,000,000 for section 502 direct loans; and $10,472,000,000 for section 502 unsubsidized guaranteed loans.

For an additional amount for the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, to remain available until September 30, 2010, as follows: $67,000,000 for section 502 direct loans; and $133,000,000 for section 502 unsubsidized guaranteed loans.

RURAL COMMUNITY FACILITIES PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, loan guarantees, and grants for rural community facilities programs as authorized by section 306 and described in section 381E(d)(1) of the Consolidated Farm and Rural Development Act, $127,000,000, to remain available until September 30, 2010.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL BUSINESS PROGRAM ACCOUNT

For an additional amount for the cost of guaranteed loans and grants as authorized by sections 310B(a)(2)(A) and 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), $150,000,000, to remain available until September 30, 2010.

BIOREFINERY ASSISTANCE

For the cost of loan guarantees and grants, as authorized by section 9003 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103), $200,000,000, to remain available until September 30, 2010.

RURAL ENERGY FOR AMERICA PROGRAM

For an additional amount for the cost of loan guarantees and grants, as authorized by section 9007 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107), $50,000,000, to remain available until September 30, 2010: *Provided,* That these funds may be used by tribes, local units of government, and schools in rural areas, as defined in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

RURAL UTILITIES SERVICE

RURAL WATER AND WASTE DISPOSAL PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, loan guarantees, and grants for the rural water, waste water, waste disposal, and solid waste management programs authorized by sections 306, 306A, 306C, 306D, and 310B and described in sections 306C(a)(2), 306D, and 381E(d)(2) of the Consolidated Farm and Rural Development Act, $1,375,000,000, to remain available until September 30, 2010.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM ACCOUNT

For an additional amount for direct loans and grants for distance learning and telemedicine services in rural areas, as authorized by 7 U.S.C. 950aaa, et seq., $200,000,000, to remain available until September 30, 2010.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

For additional amount for the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et. seq.), except sections 17 and 21, $198,000,000, to remain available until September 30, 2010, to carry out a grant program for National School Lunch Program equipment assistance: *Provided,* That such funds shall be provided to States administering a school lunch program through a formula based on the ratio that the total number of lunches served in the Program during the second preceding fiscal year bears to the total number of such lunches served in all States in such second preceding fiscal year: *Provided further,* That of such funds, the Secretary may approve the reserve by States of up to $20,000,000 for necessary enhancements to the State Distributing Agency's commodity ordering and management system to achieve compatibility with the Department's web-based supply chain management system: *Provided further,* That of the funds remaining, the State shall provide competitive grants to school food authorities based upon the need for equipment assistance in participating schools with priority given to schools in which not less than 50 percent of the students are eligible for free or reduced price meals under the Richard B. Russell National School Lunch Act and priority given to schools purchasing equipment for the purpose of offering more healthful foods and meals, in accordance with standards established by the Secretary.

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

For an additional amount for the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), to remain available until September 30, 2010, $500,000,000, of which $380,000,000 shall be placed in reserve to be allocated as the Secretary deems necessary, notwithstanding section 17(i) of such Act, to support participation should cost or participation exceed budget estimates, and of which $120,000,000 shall be for the purposes specified in section 17(h)(10)(B)(ii): *Provided,* That up to one percent of the funding provided for the purposes specified in section 17(h)(10)(B)(ii) may be reserved by the Secretary for Federal administrative activities in support of those purposes.

COMMODITY ASSISTANCE PROGRAM

For an additional amount for the ''Commodity Assistance Program'', to remain available until September 30, 2010, $150,000,000, which the Secretary shall use to purchase a variety of commodities as authorized by the Commodity Credit Corporation or under section 32 of the Act entitled ''An Act to amend the Agricultural Adjustment Act, and for other purposes'', approved August 24, 1935 (7 U.S.C. 612c): *Provided,* That the Secretary shall distribute the commodities to States for distribution in accordance with section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note): *Provided further,* That of the funds made available, the Secretary may use up to $50,000,000 for costs associated with the distribution of commodities.

GENERAL PROVISIONS—THIS TITLE

SEC. 101. Funds appropriated by this Act and made available to the United States Department of Agriculture for broadband direct loans and loan guarantees, as authorized under title VI of the Rural Electrification Act of 1936 (7 U.S.C. 950bb) and for grants, shall be available for broadband infrastructure in any area of the United States notwithstanding title VI of the Rural Electrification Act of 1936: *Provided,* That at least 75 percent of the area served by the projects receiving funds from such grants, loans, or loan guarantees is in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary: *Provided further,* That priority for awarding funds made available under this paragraph shall be given to projects that provide service to the highest proportion of rural residents that do not have sufficient access to broadband service: *Provided further,* That priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded: *Provided further,* That priority for awarding such funds shall be given to activities that can commence promptly following approval: *Provided further,* That the Department shall submit a report on planned spending and actual obligations describing the use of these funds not later than 90 days after the date of enactment of this Act, and quarterly thereafter until all funds are obligated, to the Committees on Appropriations of the House of Representatives and the Senate.

SEC. 102. NUTRITION FOR ECONOMIC RECOVERY. (a) MAXIMUM BENEFIT INCREASES.—

(1) ECONOMIC RECOVERY 1-MONTH BEGINNING STIMULUS PAYMENT.—For the first month that begins not less than 25 days after the date of enactment of this Act, the Secretary of Agriculture (referred to in this section as the ''Secretary'') shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by 85 percent.

(2) REMAINDER OF FISCAL YEAR 2009.—Beginning with the second month that begins not less than 25 days after the date of enactment of this Act, and for each subsequent month through the month ending September 30, 2009, the Secretary shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by 12 percent.

(3) SUBSEQUENT INCREASE FOR FISCAL YEAR 2010.—Beginning on October 1, 2009, and for each subsequent month through the month ending September 30, 2010, the Secretary shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by an amount equal to 12 percent, less the percentage by which the Secretary determines the thrifty food plan would otherwise be adjusted on October 1, 2009, as required under section 3(u) of that Act (7 U.S.C. 2012(u)), if the percentage is less than 12 percent.

(4) SUBSEQUENT INCREASE FOR FISCAL YEAR 2011.—Beginning on October 1, 2010, and for each subsequent month through the month ending September 30, 2011, the Secretary shall increase the cost of the thrifty food plan for purposes of section 8(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2017(a)) by an amount equal to 12 percent, less the sum of the percentages by which the Secretary determines the thrifty food plan would otherwise be adjusted on October 1, 2009 and October 1, 2010, as required under section 3(u) of that Act (7 U.S.C. 2012(u)), if the sum of such percentages is less than 12 percent.

(5) TERMINATION OF EFFECTIVENESS.—Effective beginning October 1, 2011, the authority provided by this subsection terminates and has no effect.

(b) ADMINISTRATION.—In carrying out this section, the Secretary shall—

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

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

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

(4) disregard the additional amount of benefits that a household receives as a result of this section in determining the amount of overissuances under section 13 of the Food and Nutrition Act of 2008 (7 U.S.C. 2022) and the hours of participation in a program

under section 6(d), 20, or 26 of that Act (7 U.S.C. 2015(d), 2029, 2035); and

(5) set the tolerance level for excluding small errors for the purposes of section 16(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(c)) at $50 for the period that the benefit increase under subsection (a) is in effect.

(c) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—For the costs of State administrative expenses associated with carrying out this section and administering the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) (referred to in this section as the ''supplemental nutrition assistance program'') during a period of rising program caseloads, and for the expenses of the Secretary under paragraph (6), the Secretary shall make available $150,000,000 for each of fiscal years 2009 and 2010, to remain available through September 30, 2010.

(2) TIMING FOR FISCAL YEAR 2009.—Not later than 60 days after the date of enactment of this Act, the Secretary shall make available to States amounts for fiscal year 2009 under paragraph (1).

(3) ALLOCATION OF FUNDS.—Except as provided in paragraph (6), funds described in paragraph (1) shall be made available to States that meet the requirements of paragraph (5) as grants to State agencies for each fiscal year as follows:

(A) 75 percent of the amounts available for each fiscal year shall be allocated to States based on the share of each State of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture for the most recent 12-month period for which data are available, adjusted by the Secretary (in the discretion of the Secretary) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)); and

(B) 25 percent of the amounts available for each fiscal year shall be allocated to States based on the increase in the number of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture over the most recent 12-month period for which data are available, adjusted by the Secretary (in the discretion of the Secretary) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)).

(4) REDISTRIBUTION.—The Secretary shall determine an appropriate procedure for redistribution of amounts allocated to States that would otherwise be provided allocations under paragraph (3) for a fiscal year but that do not meet the requirements of paragraph (5).

(5) MAINTENANCE OF EFFORT.—

(A) DEFINITION OF SPECIFIED STATE ADMINISTRATIVE COSTS.—In this paragraph:

(i) IN GENERAL.—The term ''specified State administrative costs'' includes all State administrative costs under the supplemental nutrition assistance program.

(ii) EXCLUSIONS.—The term ''specified State administrative costs'' does not include—

(I) the costs of employment and training programs under section 6(d), 20, or 26 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d), 2029, 2035);

(II) the costs of nutrition education under section 11(f) of that Act (7 U.S.C. 2020(f)); and

(III) any other costs the Secretary determines should be excluded.

(B) REQUIREMENT.—The Secretary shall make funds under this subsection available only to States that, as determined by the Secretary, maintain State expenditures on specified State administrative costs.

(6) MONITORING AND EVALUATION.—Of the amounts made available under paragraph (1), the Secretary may retain up to $5,000,000 for the costs incurred by the Secretary in monitoring the integrity and evaluating the effects of the payments made under this section.

(d) FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS.—For the costs of administrative expenses associated with the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)), the Secretary shall make available $5,000,000, to remain available until September 30, 2010.

(e) CONSOLIDATED BLOCK GRANTS FOR PUERTO RICO AND AMERICAN SAMOA.—

(1) FISCAL YEAR 2009.—

(A) IN GENERAL.—For fiscal year 2009, the Secretary shall increase by 12 percent the amount available for nutrition assistance for eligible households under the consolidated block grants for the Commonwealth of Puerto Rico and American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028).

(B) AVAILABILITY OF FUNDS.—Funds made available under subparagraph (A) shall remain available through September 30, 2010.

(2) FISCAL YEAR 2010.—For fiscal year 2010, the Secretary shall increase the amount available for nutrition assistance for eligible households under the consolidated block grants for the Commonwealth of Puerto Rico and American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028) by 12 percent, less the percentage by which the Secretary determines the consolidated block grants would otherwise be adjusted on October 1, 2009, as required by section 19(a)(2)(A)(ii) of that Act (7 U.S.C. 2028(a)(2)(A)(ii)), if the percentage is less than 12 percent.

(3) FISCAL YEAR 2011.—For fiscal year 2011, the Secretary shall increase the amount available for nutrition assistance for eligible households under the consolidated block grants for the Commonwealth of Puerto Rico and American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028) by 12 percent, less the sum of the percentages by which the Secretary determines the consolidated block grants would otherwise be adjusted on October 1, 2009, and October 1, 2010, as required by section 19(a)(2)(A)(ii) of that Act (7 U.S.C. 2028(a)(2)(A)(ii)), if the sum of the percentages is less than 12 percent.

(f) TREATMENT OF JOBLESS WORKERS.—

(1) REMAINDER OF FISCAL YEAR 2009 THROUGH FISCAL YEAR 2011.—Beginning with the first month that begins not less than 25 days after the date of enactment of this Act and for each subsequent month through September 30, 2011, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of 2008 unless an individual does not comply with the requirements of a program offered by the State agency that meets the standards of subparagraphs (B) or (C) of that paragraph.

(2) FISCAL YEAR 2012 AND THEREAFTER.—Beginning on October 1, 2011, for the purposes of section 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)), a State agency shall disregard any period during which an individual received benefits under the supplemental nutrition assistance program prior to October 1, 2011.

(g) FUNDING.—There are appropriated to the Secretary out of funds of the Treasury not otherwise appropriated such sums as are necessary to carry out this section.

SEC. 103. AGRICULTURAL DISASTER ASSISTANCE TRANSITION. (a) FEDERAL CROP INSURANCE ACT.—Section 531(g) of the Federal Crop Insurance Act (7 U.S.C. 1531(g)) is amended by adding at the end the following:

''(7) 2008 TRANSITION ASSISTANCE.—

''(A) IN GENERAL.—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

''(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

''(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under subtitle A (excluding a crop insurance pilot program under that subtitle) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

''(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2009 crop year.

''(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

''(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

''(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining yield under that program, the Secretary shall use a percentage that is 70 percent.

''(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and received, or are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an additional amount equal to the greater of—

''(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

''(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

''(I) in clause (i) of that subparagraph, '120 percent' is substituted for '115 percent'; and

''(II) in clause (ii) of that subparagraph, '125' is substituted for '120 percent'.

''(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

''(E) AUTHORITY OF THE SECRETARY.—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

''(F) LACK OF ACCESS.—Notwithstanding any other provision of this section, the Secretary may provide assistance under this section to eligible producers on a farm that—

''(i) suffered a production loss due to a natural cause during the 2008 crop year; and

''(ii) as determined by the Secretary—

''(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

''(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

''(II) are not eligible for the noninsured crop disaster assistance program established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).''.

(b) TRADE ACT OF 1974.—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended by adding at the end the following:

''(7) 2008 TRANSITION ASSISTANCE.—

''(A) IN GENERAL.—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

''(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

''(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

''(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2009 crop year.

''(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

''(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

''(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining yield under that program, the Secretary shall use a percentage that is 70 percent.

''(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and received, or are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an additional amount equal to the greater of—

''(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

''(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

''(I) in clause (i) of that subparagraph, '120 percent' is substituted for '115 percent'; and

''(II) in clause (ii) of that subparagraph, '125' is substituted for '120 percent'.

''(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

''(E) AUTHORITY OF THE SECRETARY.—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

''(F) LACK OF ACCESS.—Notwithstanding any other provision of this section, the Secretary may provide assistance under this section to eligible producers on a farm that—

''(i) suffered a production loss due to a natural cause during the 2008 crop year; and

''(ii) as determined by the Secretary—

''(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

''(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

''(II) are not eligible for the noninsured crop disaster assistance program established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).''.

(c) EMERGENCY LOANS.—

(1) IN GENERAL.—For the principal amount of direct emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), $200,000,000.

(2) DIRECT EMERGENCY LOANS.—For the cost of direct emergency loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), $28,440,000, to remain available until September 30, 2010.

(d) 2008 AQUACULTURE ASSISTANCE.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE AQUACULTURE PRODUCER.—The term ''eligible aquaculture producer'' means an aquaculture producer that during the 2008 calendar year, as determined by the Secretary—

(i) produced an aquaculture species for which feed costs represented a substantial percentage of the input costs of the aquaculture operation; and

(ii) experienced a substantial price increase of feed costs above the previous 5-year average.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(2) GRANT PROGRAM.—

(A) IN GENERAL.—Of the funds of the Commodity Credit Corporation, the Secretary shall use not more than $100,000,000, to remain available until September 30, 2010, to carry out a program of grants to States to assist eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year.

(B) NOTIFICATION.—Not later than 60 days after the date of enactment of this Act, the Secretary shall notify the State department of agriculture (or similar entity) in each State of the availability of funds to assist eligible aquaculture producers, including such terms as determined by the Secretary to be necessary for the equitable treatment of eligible aquaculture producers.

(C) PROVISION OF GRANTS.—

(i) IN GENERAL.—The Secretary shall make grants to States under this subsection on a pro rata basis based on the amount of aquaculture feed used in each State during the 2007 calendar year, as determined by the Secretary.

(ii) TIMING.—Not later than 120 days after the date of enactment of this Act, the Secretary shall make grants to States to provide assistance under this subsection.

(D) REQUIREMENTS.—The Secretary shall make grants under this subsection only to States that demonstrate to the satisfaction of the Secretary that the State will—

(i) use grant funds to assist eligible aquaculture producers;

(ii) provide assistance to eligible aquaculture producers not later than 60 days after the date on which the State receives grant funds; and

(iii) not later than 30 days after the date on which the State provides assistance to eligible aquaculture producers, submit to the Secretary a report that describes—

(I) the manner in which the State provided assistance;

(II) the amounts of assistance provided per species of aquaculture; and

(III) the process by which the State determined the levels of assistance to eligible aquaculture producers.

(3) REDUCTION IN PAYMENTS.—An eligible aquaculture producer that receives assistance under this subsection shall not be eligible to receive any other assistance under the supplemental agricultural disaster assistance program established under section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) and section 901 of the Trade Act of 1974 (19 U.S.C. 2497) for any losses in 2008 relating to the same species of aquaculture.

(4) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report that—

(A) describes in detail the manner in which this subsection has been carried out; and

(B) includes the information reported to the Secretary under paragraph (2)(D)(iii).

SEC. 104. (a) Hereafter, in this section, the term ''nonambulatory disabled cattle'' means cattle, other than cattle that are less than 5 months old or weigh less than 500 pounds, subject to inspection under section 3(b) of the Federal Meat Inspection Act (21 U.S.C. 603(b)) that cannot rise from a recumbent position or walk, including cattle with a broken appendage, severed tendon or ligament, nerve paralysis, fractured vertebral column, or a metabolic condition.

(b) Hereafter, none of the funds made available under this or any other Act may be used to pay the salaries or expenses of any personnel of the Food Safety and Inspection Service to pass through inspection any nonambulatory disabled cattle for use as human food, regardless of the reason for the nonambulatory status of the cattle or the time at which the cattle became nonambulatory.

SEC. 105. STATE AND LOCAL GOVERNMENTS. Section 1001(f)(6)(A) of the Food Security Act of 1985 (7 U.S.C. 1308(f)(6)(A)) is amended by inserting ''(other than the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of this Act)'' before the period at the end.

SEC. 106. Except for title I of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246), Commodity Credit Corporation funds provided in that Act shall be available for administrative expenses, including technical assistance, without regard to the limitation in 15 U.S.C. 714i.

TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

BUREAU OF INDUSTRY AND SECURITY

OPERATIONS AND ADMINISTRATION

For an additional amount for ''Operations and Administration'', $20,000,000, to remain available until September 30, 2010.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For an additional amount for ''Economic Development Assistance Programs'', $150,000,000, to remain available until September 30, 2010: *Provided*, That $50,000,000 shall be for economic adjustment assistance as authorized by section 209 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3149): *Provided further*, That in allocating the funds provided in the previous proviso, the Secretary of Commerce shall give priority consideration to areas of the Nation that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

For an additional amount for ''Periodic Censuses and Programs'', $1,000,000,000, to remain available until September 30, 2010.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

For an amount for ''Broadband Technology Opportunities Program'', $9,000,000,000, to remain available until September 30, 2010: *Provided*, That of the funds provided under this heading, $8,650,000,000 shall be expended pursuant to section 201 of this Act, of which: not less than $200,000,000 shall be available for competitive grants for expanding public computer center capacity, including at community colleges and public libraries; not less than $250,000,000 shall be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service; and $10,000,000 shall be transferred to ''Department of Commerce, Office of Inspector General'' for the purposes of audits and oversight of funds provided under this heading and such funds shall remain available until expended: *Provided further*, That 50 percent of the funds provided in the previous proviso shall be used to support projects in rural communities, which in part may be transferred to the Department of Agriculture for administration through the Rural Utilities Service if deemed necessary and appropriate by the Secretary of Commerce, in consultation with the Secretary of Agriculture, and only if the Committees on Appropriations of the House and the Senate are notified not less than 15 days in advance of the transfer of such funds: *Provided further*, That of the funds provided under this heading, up to $350,000,000 may be expended pursuant to Public Law 110–385 (47 U.S.C. 1301 note) and for the purposes of developing and maintaining a broadband inventory map pursuant to section 201 of this Act: *Provided further*, That of the funds provided under this heading, amounts deemed necessary and appropriate by the Secretary of Commerce, in consultation with the Federal Communications Commission (FCC), may be transferred to the FCC for the purposes of developing a national broadband plan or for carrying out any other FCC responsibilities pursuant to section 201 of this Act, and only if the Committees on Appropriations of the House and the Senate are notified not less than 15 days in advance of the transfer of such funds: *Provided further*, That not more than 3 percent of funds provided under this heading may be used for administrative costs, and this limitation shall apply to funds which may be transferred to the Department of Agriculture and the FCC.

DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

For an amount for ''Digital-to-Analog Converter Box Program'', $650,000,000, for additional coupons and related activities under the program implemented under section 3005 of the Digital Television Transition and Public Safety Act of 2005, to remain available until September 30, 2010: *Provided*, That of the amounts provided under this heading, $90,000,000 may be for education and outreach, including grants to organizations for programs to educate vulnerable populations, including senior citizens, minority communities, people with disabilities, low-income individuals, and people living in rural areas, about the transition and to provide one-on-one assistance to vulnerable populations, including help with converter box installation: *Provided further*, That the amounts provided in the previous proviso may be transferred to the Federal Communications Commission (Commission) if deemed necessary and appropriate by the Secretary of Commerce in consultation with the Commission, and only if the Committees on Appropriations of the House and the Senate are notified not less than 5 days in advance of transfer of such funds: *Provided further*, That $2,000,000 of funds provided under this heading shall be transferred to ''Department of Commerce, Office of Inspector General'' for audits and oversight of funds provided under this heading.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For an additional amount for ''Scientific and Technical Research and Services'', $218,000,000, to remain available until September 30, 2010.

CONSTRUCTION OF RESEARCH FACILITIES

For an additional amount for ''Construction of Research Facilities'', $357,000,000, to remain available until September 30, 2010.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for ''Operations, Research, and Facilities'', $427,000,000, to remain available until September 30, 2010.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For an additional amount for ''Procurement, Acquisition and Construction'', $795,000,000, to remain available until September 30, 2010.

DEPARTMENTAL MANAGEMENT

For an additional amount for ''Departmental Management'', $34,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $6,000,000, to remain available until September 30, 2010.

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

TACTICAL LAW ENFORCEMENT WIRELESS COMMUNICATIONS

For an additional amount for ''Tactical Law Enforcement Wireless Communications'', $200,000,000 for the costs of developing and implementing a nationwide Integrated Wireless network supporting Federal law enforcement, to remain available until September 30, 2010.

DETENTION TRUSTEE

For an additional amount for ''Detention Trustee'', $150,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $2,000,000, to remain available until September 30, 2010.

UNITED STATES MARSHALS SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $50,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $125,000,000, to remain available until September 30, 2010.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $75,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $400,000,000, to remain available until September 30, 2010.

FEDERAL PRISON SYSTEM

BUILDINGS AND FACILITIES

For an additional amount for ''Federal Prison System, Buildings and Facilities'', $1,000,000,000, to remain available until September 30, 2010.

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For an additional amount for ''Violence Against Women Prevention and Prosecution Programs'', $300,000,000 for grants to combat violence against women, as authorized by part T of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.): *Provided*, That, $50,000,000 shall be transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by section 40299 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322).

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For an additional amount for ''State and Local Law Enforcement Assistance'', $1,500,000,000 for the Edward Byrne Memorial Justice Assistance Grant program as authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Street Act of 1968 (''1968 Act''), (except that section 1001(c), and the special rules for Puerto Rico under section 505(g), of the 1968 Act, shall not apply for purposes of this Act), to remain available until September 30, 2010.

For an additional amount for ''State and Local Law Enforcement Assistance'', $440,000,000 for competitive grants to improve the functioning of the criminal justice system, to assist victims of crime (other than compensation), and youth mentoring grants, to remain available until September 30, 2010.

For an additional amount for ''State and Local Law Enforcement Assistance'', $100,000,000, to remain available until September 30, 2010, for competitive grants to provide assistance and equipment to local law enforcement along the Southern border and in High-Intensity Drug Trafficking Areas to combat criminal narcotics activity stemming from the Southern border, of which $10,000,000 shall be transferred to ''Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses'' for the ATF Project Gunrunner.

For an additional amount for ''State and Local Law Enforcement Assistance'', $300,000,000, to remain available until September 30, 2010, for assistance to Indian tribes, notwithstanding Public Law 108–199, division B, title I, section 112(a)(1) (118 Stat. 62), of which—

(1) $250,000,000 shall be available for grants under section 20109 of subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322);

(2) $25,000,000 shall be available for the Tribal Courts Initiative; and

(3) $25,000,000 shall be available for tribal alcohol and substance abuse drug reduction assistance grants.

For an additional amount for ''State and Local Law Enforcement Assistance'', $100,000,000, to remain available until September 30, 2010, to be distributed by the Office for Victims of Crime in accordance with section 1402(d)(4) of the Victims of Crime Act of 1984 (Public Law 98–473).

For an additional amount for ''State and Local Law Enforcement Assistance'', $150,000,000, to remain available until September 30, 2010, for assistance to law enforcement in rural areas, to prevent and combat crime, especially drug-related crime.

For an additional amount for ''State and Local Law Enforcement Assistance'', $50,000,000, to remain available until September 30, 2010, for Internet Crimes Against Children (ICAC) initiatives.

COMMUNITY ORIENTED POLICING SERVICES

For an additional amount for ''Community Oriented Policing Services'', for grants under section 1701 of title I of the 1968 Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3796dd) for hiring and rehiring of additional career law enforcement officers under part Q of such title, and civilian public safety personnel, notwithstanding subsection (i) of such section and notwithstanding 42 U.S.C. 3796dd–3(c), $1,000,000,000, to remain available until September 30, 2010.

SALARIES AND EXPENSES

For an additional amount, not elsewhere specified in this title, for management and administration and oversight of programs within the Office on Violence Against Women, the Office of Justice Programs, and the Community Oriented Policing Services Office, $10,000,000, to remain available until September 30, 2010.

SCIENCE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE

For an additional amount for ''Science'', $500,000,000, to remain available until September 30, 2010.

AERONAUTICS

For an additional amount for ''Aeronautics'', $250,000,000, to remain available until September 30, 2010.

EXPLORATION

For an additional amount for ''Exploration'', $500,000,000, to remain available until September 30, 2010.

CROSS AGENCY SUPPORT

For an additional amount for ''Cross Agency Support'', $250,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $2,000,000, to remain available until September 30, 2010.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For an additional amount for ''Research and Related Activities'', $1,200,000,000, to remain available until September 30, 2010.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For an additional amount for ''Major Research Equipment and Facilities Construction'', $150,000,000, to remain available until September 30, 2010.

EDUCATION AND HUMAN RESOURCES

For an additional amount for ''Education and Human Resources'', $50,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $2,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 201. The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission) (and, with respect to rural areas, the Secretary of Agriculture), shall establish a national broadband service development and expansion program in conjunction with the technology opportunities program, which shall be referred to the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

(1) The purposes of the program are to—

(A) provide access to broadband service to citizens residing in unserved areas of the United States;

(B) provide improved access to broadband service to citizens residing in underserved areas of the United States;

(C) provide broadband education, awareness, training, access, equipment, and support to—

(i) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(ii) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(iii) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture.

(D) improve access to, and use of, broadband service by public safety agencies; and

(E) stimulate the demand for broadband, economic growth, and job creation.

(2) The Assistant Secretary may consult with the chief executive officer of any State with respect to—

(A) the identification of areas described in subsection (1)(A) or (B) located in that State; and

(B) the allocation of grant funds within that State for projects in or affecting the State.

(3) The Assistant Secretary shall—

(A) establish and implement the grant program as expeditiously as practicable;

(B) ensure that all awards are made before the end of fiscal year 2010;

(C) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(D) report on the status of the program to the Committees on Appropriations of the House and the Senate, the Committee on Energy and Commerce of the House, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

(4) To be eligible for a grant under the program an applicant shall—

(A) be a State or political subdivision thereof, a nonprofit foundation, corporation, institution or association, Indian tribe, Native Hawaiian organization, or other nongovernmental entity in partnership with a State or political subdivision thereof, Indian tribe, or Native Hawaiian organization if the Assistant Secretary determines the partnership consistent with the purposes this section;

(B) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(C) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a demonstration that the project would not have been implemented during the grant period without Federal grant assistance;

(D) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws;

(E) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of paragraph (5);

(F) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(G) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

(5) The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

(A) the applicant petitions the Assistant Secretary for a waiver; and

(B) the Assistant Secretary determines that the petition demonstrates financial need.

(6) The Assistant Secretary may make competitive grants under the program to—

(A) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;

(B) construct and deploy broadband service related infrastructure;

(C) ensure access to broadband service by community anchor institutions;

(D) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(E) construct and deploy broadband facilities that improve public safety broadband communications services; and

(F) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

(7) The Assistant Secretary—

(A) shall require any entity receiving a grant pursuant to this section to report quarterly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(B) may establish additional reporting and information requirements for any recipient of any assistance made available pursuant to this section;

(C) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(D) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(E) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least the name of each entity receiving funds made available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

(8) Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Federal Communications Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section.

(9) Within 1 year after the date of enactment of this Act, the Commission shall complete a rulemaking to develop a national broadband plan. In developing the plan, the Commission shall—

(A) consider the most effective and efficient national strategy for ensuring that all Americans have access to, and take advantage of, advanced broadband services;

(B) have access to data provided to other Government agencies under the Broadband Data Improvement Act (47 U.S.C. 1301 note);

(C) evaluate the status of deployments of broadband service, including the progress of projects supported by the grants made pursuant to this section; and

(D) develop recommendations for achieving the goal of nationally available broadband service for the United States and for promoting broadband adoption nationwide.

(10) The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that entities and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State: *Provided*, That not later than 2 years after the date of the enactment of the Act, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible to the public.

SEC. 202. The Assistant Secretary of Commerce for Communications and Information may reissue any coupon issued under section 3005(a) of the Digital Television Transition and Public Safety Act of 2005 that has expired before use, and shall cancel any unredeemed coupon reported as lost and may issue a replacement coupon for the lost coupon.

TITLE III—DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for ''Operation and Maintenance, Army'', $1,169,291,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for ''Operation and Maintenance, Navy'', $571,843,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for ''Operation and Maintenance, Marine Corps'', $112,167,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for ''Operation and Maintenance, Air Force'', $927,113,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, ARMY RESERVE

For an additional amount for ''Operation and Maintenance, Army Reserve'', $79,543,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, NAVY RESERVE

For an additional amount for ''Operation and Maintenance, Navy Reserve'', $44,586,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For an additional amount for ''Operation and Maintenance, Marine Corps Reserve'', $32,304,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For an additional amount for ''Operation and Maintenance, Air Force Reserve'', $10,674,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for ''Operation and Maintenance, Army National Guard'', $215,557,000, to remain available for obligation until September 30, 2010.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For an additional amount for ''Operation and Maintenance, Air National Guard'', $20,922,000, to remain available for obligation until September 30, 2010.

PROCUREMENT

DEFENSE PRODUCTION ACT PURCHASES

For an additional amount for ''Defense Production Act Purchases'', $100,000,000, to remain available for obligation until September 30, 2010.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for ''Research, Development, Test and Evaluation, Defense-Wide'', $200,000,000, to remain available for obligation until September 30, 2010.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for ''Defense Health Program'', $250,000,000 for operation and maintenance, to remain available for obligation until September 30, 2010.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for ''Office of the Inspector General'', $12,000,000 for operation and maintenance, to remain available for obligation until September 30, 2010.

TITLE IV—ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

INVESTIGATIONS

For an additional amount for ''Investigations'' for expenses necessary where authorized by law for the collection and study of basic information pertaining to river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related needs; for surveys and detailed studies, and plans and specifications of proposed river and harbor, flood and storm damage reduction, shore protection, and aquatic ecosystem restoration projects and related efforts prior to construction; for restudy of authorized projects; and for miscellaneous investigations and, when authorized by law, surveys and detailed studies, and plans and specifications of projects prior to construction, $25,000,000: *Provided*, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further*, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further*, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

CONSTRUCTION

For an additional amount for ''Construction'' for expenses necessary for the construction of river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related projects authorized by law, $2,000,000,000, of which such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund as authorized by Public Law 104–303: *Provided*, That not less than $200,000,000 of the funds provided shall be for water-related environmental infrastructure assistance: *Provided further*, That section 102 of Public Law 109–103 (33 U.S.C. 2221) shall not apply to funds provided in this title: *Provided further*, That notwithstanding any other provision of law, no funds shall be drawn from the Inland Waterways Trust Fund, as authorized in Public Law 99–662: *Provided further*, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further*, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities

that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further*, That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: *Provided further*, That funds appropriated under this heading may be used by the Secretary of the Army, acting through the Chief of Engineers, to undertake work authorized to be carried out in accordance with section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r); section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s); section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330); or section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), notwithstanding the program cost limitations set forth in those sections: *Provided further*, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for ''Mississippi River and Tributaries'' for expenses necessary for flood damage reduction projects and related efforts as authorized by law, $500,000,000, of which such sums as are necessary to cover the Federal share of operation and maintenance costs for inland harbors shall be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662: *Provided*, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further*, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further*, That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: *Provided further*, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

OPERATION AND MAINTENANCE

For an additional amount for ''Operation and Maintenance'' for expenses necessary for the operation, maintenance, and care of existing river and harbor, flood and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law, and for surveys and charting of northern and northwestern lakes and connecting waters, clearing and straightening channels, and removal of obstructions to navigation, $1,900,000,000, of which such sums as are necessary to cover the Federal share of operation and maintenance costs for coastal harbors and channels, and inland harbors shall be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662; and of which such sums as become available under section 217 of the Water Resources Development Act of 1996, Public Law 104–303, shall be used to cover the cost of operation and maintenance of the dredged material disposal facilities for which fees have been collected: *Provided*, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further*, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further*, That $90,000,000 of the funds provided under this heading shall be used for activities described in section 9004 of Public Law 110–114: *Provided further*, That section 9006 of Public Law 110–114 shall not apply to funds provided in this title: *Provided further*, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

REGULATORY PROGRAM

For an additional amount for ''Regulatory Program'' for expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, $25,000,000 is provided.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For an additional amount for ''Formerly Utilized Sites Remedial Action Program'' for expenses necessary to clean up contamination from sites in the United States resulting from work performed as part of the Nation's early atomic energy program, $100,000,000: *Provided further*, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: *Provided further*, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

FLOOD CONTROL AND COASTAL EMERGENCIES

For an additional amount for ''Flood Control and Coastal Emergencies'' for expenses necessary for pre-placement of materials and equipment, advance measures and other activities authorized by law, $50,000,000 is provided.

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WATER AND RELATED RESOURCES

For an additional amount for management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local governments, federally recognized Indian tribes, and others, $1,400,000,000; of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund: *Provided*, That of the total appropriated, the amount for program activities that can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 4601–6a(i) shall be derived from that Fund or account: *Provided further*, That funds contributed under 43 U.S.C. 395 are available until expended for the purposes for which contributed: *Provided further*, That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: *Provided further*, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: *Provided further*, That funds provided in this Act shall be used for elements of projects, programs or activities that can be completed within these funding amounts and not create budgetary obligations in future fiscal years: *Provided further*, That $50,000,000 of the funds provided under this heading may be transferred to the Department of the Interior for programs, projects and activities authorized by the Central Utah Project Completion Act (titles II–V of Public Law 102–575): *Provided further*, That $50,000,000 of the funds provided under this heading may be used for programs, projects, and activities authorized by the California Bay-Delta Restoration Act (Public Law 108–361): *Provided further*, That not less than $60,000,000 of the funds provided under this heading shall be used for rural water projects and shall be expended primarily on water intake and treatment facilities of such projects: *Provided further*, That not less than $10,000,000 of the funds provided under this heading shall be used for a bureau-wide inspection of canals program in urbanized areas: *Provided further*, That not less than $110,000,000 of the funds provided under this heading shall be used for water reclamation and reuse projects (title 16 of Public Law 102–575): *Provided further*, That the costs of reimbursable activities, other than for maintenance and rehabilitation, carried out with funds provided in this Act shall be repaid pursuant to existing authorities and agreements: *Provided further*, That the costs of maintenance and rehabilitation activities carried out with funds provided in this Act shall be repaid pursuant to existing authority, except the length of repayment period shall be determined on needs-based criteria to be established and adopted by the Commissioner, but in no case shall the repayment period exceed 25 years: *Provided further*, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, over engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

For an additional amount for ''Energy Efficiency and Renewable Energy'',

$14,398,000,000, for necessary expenses, to remain available until September 30, 2010: *Provided,* That $4,200,000,000 shall be available for Energy Efficiency and Conservation Block Grants for implementation of programs authorized under subtitle E of title V of the Energy Independence and Security Act of 2007 (42 U.S.C. 17151 et seq.), of which $2,100,000,000 is available through the formula in subtitle E: *Provided further,* That the remaining $2,100,000,000 shall be awarded on a competitive basis only to competitive grant applicants from States in which the Governor certifies to the Secretary of Energy that the applicable State regulatory authority will implement the integrated resource planning and rate design modifications standards required to be considered under paragraphs (16) and (17) of section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)(16) and (17)); and the Governor will take all actions within his or her authority to ensure that the State, or the applicable units of local government that have authority to adopt building codes, will implement—

(A) building energy codes for residential buildings that the Secretary determines are likely to meet or exceed the 2009 International Energy Conservation Code;

(B) building energy codes for commercial buildings that the Secretary determines are likely to meet or exceed the ANSI/ASHRAE/IESNA Standard 90.1–2007; and

(C) a plan for implementing and enforcing the building energy codes described in subparagraphs (A) and (B) that is likely to ensure that at least 90 percent of the new and renovated residential and commercial building space will meet the standards within 8 years after the date of enactment of this Act:

Provided further, That $2,000,000,000 shall be available for grants for the manufacturing of advanced batteries and components and the Secretary shall provide facility funding awards under this section to manufacturers of advanced battery systems and vehicle batteries that are produced in the United States, including advanced lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers: *Provided further,* That notwithstanding section 3304 of title 5, United States Code, and without regard to the provisions of sections 3309 through 3318 of such title 5, the Secretary of Energy, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, may from within the funds provided, recruit and directly appoint highly qualified individuals into the competitive service: *Provided further,* That such authority shall not apply to positions in the Excepted Service or the Senior Executive Service: *Provided further,* That any action authorized herein shall be consistent with the merit principles of section 2301 of such title 5, and the Department shall comply with the public notice requirements of section 3327 of such title 5.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

For an additional amount for ''Electricity Delivery and Energy Reliability'', $4,500,000,000, for necessary expenses, to remain available until September 30, 2010: *Provided,* That $100,000,000 shall be available for worker training activities: *Provided further,* That notwithstanding section 3304 of title 5, United States Code, and without regard to the provisions of sections 3309 through 3318 of such title 5, the Secretary of Energy, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, may from within the funds provided, recruit and directly appoint highly qualified individuals into the competitive service: *Provided further,* That such authority shall not apply to positions in the Excepted Service or the Senior Executive Service: *Provided further,* That any action authorized herein shall be consistent with the merit principles of section 2301 of such title 5, and the Department shall comply with the public notice requirements of section 3327 of such title 5: *Provided,* That for the purpose of facilitating the development of regional transmission plans, the Office of Electricity Delivery and Energy Reliability within the Department of Energy is provided $80,000,000 within the available funds to conduct a resource assessment and an analysis of future demand and transmission requirements: *Provided further,* That the Office of Electricity Delivery and Energy Reliability will provide technical assistance to the North American Electric Reliability Corporation, the regional reliability entities, the States, and other transmission owners and operators for the formation of interconnection-based transmission plans for the Eastern and Western Interconnections and ERCOT: *Provided further,* That such assistance may include modeling, support to regions and States for the development of coordinated State electricity policies, programs, laws, and regulations: *Provided further,* That $10,000,000 is provided to implement section 1305 of Public Law 110–140.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

For an additional amount for ''Fossil Energy Research and Development'', $4,600,000,000, to remain available until September 30, 2010: *Provided,* That $2,000,000,000 is available for one or more near zero emissions powerplant(s): *Provided further,* $1,000,000,000 is available for selections under the Department's Clean Coal Power Initiative Round III Funding Opportunity Announcement; notwithstanding the mandatory eligibility requirements of the Funding Opportunity Announcement, the Department shall consider applications that utilize petroleum coke for some or all of the project's fuel input: *Provided further,* $1,520,000,000 is available for a competitive solicitation pursuant to section 703 of Public Law 110–140 for projects that demonstrate carbon capture from industrial sources: *Provided further,* That awards for such projects may include plant efficiency improvements for integration with carbon capture technology.

NON-DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for ''Non-Defense Environmental Cleanup'', $483,000,000, to remain available until September 30, 2010.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For an additional amount for ''Uranium Enrichment Decontamination and Decommissioning Fund'', $390,000,000, to remain available until September 30, 2010, of which $70,000,000 shall be available in accordance with title X, subtitle A of the Energy Policy Act of 1992.

SCIENCE

For an additional amount for ''Science'', $430,000,000, to remain available until September 30, 2010.

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

Subject to section 502 of the Congressional Budget Act of 1974, commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005, shall not exceed a total principal amount of $50,000,000,000 for eligible projects, to remain available until committed: *Provided,* That these amounts are in addition to any authority provided elsewhere in this Act and this and previous fiscal years: *Provided further,* That such sums as are derived from amounts received from borrowers pursuant to section 1702(b)(2) of the Energy Policy Act of 2005 under this heading in this and prior Acts, shall be collected in accordance with section 502(7) of the Congressional Budget Act of 1974: *Provided further,* That the source of such payment received from borrowers is not a loan or other debt obligation that is guaranteed by the Federal Government: *Provided further,* That pursuant to section 1702(b)(2) of the Energy Policy Act of 2005, no appropriations are available to pay the subsidy cost of such guarantees: *Provided further,* That none of the loan guarantee authority made available in this Act shall be available for commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005 for any projects where funds, personnel, or property (tangible or intangible) of any Federal agency, instrumentality, personnel or affiliated entity are expected to be used (directly or indirectly) through acquisitions, contracts, demonstrations, exchanges, grants, incentives, leases, procurements, sales, other transaction authority, or other arrangements, to support the project or to obtain goods or services from the project: *Provided further,* That none of the loan guarantee authority made available in this Act shall be available under section 1702(b)(2) of the Energy Policy Act of 2005 for any project unless the Director of the Office of Management and Budget has certified in advance in writing that the loan guarantee and the project comply with the provisions under this title: *Provided further,* That for an additional amount for the cost of guaranteed loans authorized by section 1702(b)(1) and section 1705 of the Energy Policy Act of 2005, $9,500,000,000, available until expended, to pay the costs of guarantees made under this section: *Provided further,* That of the amount provided for Title XVII, $15,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $5,000,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

For an additional amount for weapons activities, $1,000,000,000, to remain available until September 30, 2010.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for ''Defense Environmental Cleanup'', $5,527,000,000, to remain available until September 30, 2010.

CONSTRUCTION, REHABILITATION, OPERATION, AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, $10,000,000, to remain available until expended: *Provided,* That the Administrator shall establish such personnel staffing levels as he deems necessary to economically and efficiently complete the activities pursued under the authority granted by section 402 of this Act: *Provided further,* That this appropriation is non-reimbursable.

GENERAL PROVISIONS—THIS TITLE

SEC. 401. BONNEVILLE POWER ADMINISTRATION BORROWING AUTHORITY. For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the

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

SEC. 402. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY. The Hoover Power Plant Act of 1984 (Public Law 98–381) is amended by adding at the end the following:

"TITLE III—BORROWING AUTHORITY

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

''(a) DEFINITIONS.—In this section:

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

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

''(b) AUTHORITY.—

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

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

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

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

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

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

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

''(4) PARTICIPATION.—The Administrator may permit other entities to participate in the financing, construction and ownership projects financed under this section.

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

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

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

''(A) each other such project; and

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

''(2) PROCEEDS.—The Western Area Power Administration shall apply the proceeds from the use of the transmission capacity from an individual project under this section to the repayment of the principal and interest of the loan from the Treasury attributable to that project, after reserving such funds as the Western Area Power Administration determines are necessary—

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

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

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

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

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

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

''(5) TREATMENT OF CERTAIN REVENUES.—Revenue from ancillary services provided by existing Federal power systems to users of transmission projects funded pursuant to this section shall be treated as revenue to the existing power system that provided the ancillary services.

''(d) CERTIFICATION.—

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

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

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

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

''(2) FORGIVENESS OF BALANCES.—

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

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

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

''(e) PUBLIC PROCESSES.—

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

''(2) REQUESTS FOR INTEREST.—In the course of selecting potential projects to be funded under this section, the Administrator shall seek Requests For Interest from entities interested in identifying potential projects through one or more notices published in the Federal Register.''

SEC. 403. TECHNICAL CORRECTIONS TO THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007. Title XIII of the Energy Independence and Security Act of 2007 (15 U.S.C. 17381 and following) is amended as follows:

(1) By amending subparagraph (A) of section 1304(b)(3) to read as follows:

''(A) IN GENERAL.—In carrying out the initiative, the Secretary shall provide financial support to smart grid demonstration projects including those in rural areas and/or areas where the majority of generation and transmission assets are controlled by a tax-exempt entity.''.

(2) By amending subparagraph (C) of section 1304(b)(3) to read as follows:

''(C) FEDERAL SHARE OF COST OF TECHNOLOGY INVESTMENTS.—The Secretary shall provide to an electric utility described in subparagraph (B) or to other parties financial assistance for use in paying an amount equal to not more than 50 percent of the cost of qualifying advanced grid technology investments made by the electric utility or other party to carry out a demonstration project. ''.

(3) By inserting a new subparagraph (E) after 1304(b)(3)(D) as follows:

''(E) AVAILABILITY OF DATA.—The Secretary shall establish and maintain a smart grid information clearinghouse in a timely manner which will make data from smart grid demonstration projects and other sources available to the public. As a condition of receiving financial assistance under this subsection, a utility or other participant in a smart grid demonstration project shall provide such information as the Secretary may require to become available through the smart grid information clearinghouse in the form and within the timeframes as directed by the Secretary. The Secretary shall assure that business proprietary information and individual customer information is not included in the information made available through the clearinghouse.''.

(4) By amending paragraph (2) of section 1304(c) to read as follows:

''(2) to carry out subsection (b), such sums as may be necessary.''.

(5) By amending subsection (a) of section 1306 by striking ''reimbursement of one-fifth (20 percent)'' and inserting ''grants of up to one-half (50 percent)''.

(6) By striking the last sentence of subsection (b)(9) of section 1306.

(7) By striking ''are eligible for'' in subsection (c)(1) of section 1306 and inserting ''utilize''.

(8) By amending subsection (e) of section 1306 to read as follows:

''(e) The Secretary shall—

''(1) establish within 60 days after the enactment of the American Recovery and Reinvestment Act of 2009 procedures by which applicants can obtain grants of not more than one-half of their documented costs;

''(2) establish procedures to ensure that there is no duplication or multiple payment for the same investment or costs, that the grant goes to the party making the actual expenditures for Qualifying Smart Grid Investments, and that the grants made have significant effect in encouraging and facilitating the development of a smart grid;

''(3) maintain public records of grants made, recipients, and qualifying Smart Grid investments which have received grants;

''(4) establish procedures to provide advance payment of moneys up to the full amount of the grant award; and

''(5) have and exercise the discretion to deny grants for investments that do not qualify in the reasonable judgment of the Secretary.''.

SEC. 404. TEMPORARY STIMULUS LOAN GUARANTEE PROGRAM. (a) AMENDMENT.—Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.) is amended by adding the following at the end:

"SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION PROJECTS.

''(a) IN GENERAL.—Notwithstanding section 1703, the Secretary may make guarantees under this section only for commercial technology projects under subsection (b) that will reach financial close not later than September 30, 2012.

''(b) CATEGORIES.—Projects from only the following categories shall be eligible for support under this section:

''(1) Renewable energy systems.

''(2) Electric power transmission systems.

''(c) AUTHORIZATION LIMIT.—There are authorized to be appropriated $10,000,000,000 to the Secretary for fiscal years 2009 through 2012 to provide the cost of guarantees made under section.

''(d) SUNSET.—The authority to enter into guarantees under this section shall expire on September 30, 2012.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents for the Energy Policy Act of 2005 is amended by inserting after the item relating to section 1704 the following new item:

''Sec. 1705. Temporary program for rapid deployment of renewable energy and electric power transmission projects.''.

SEC. 405. WEATHERIZATION PROGRAM AMENDMENTS. (a) INCOME LEVEL.—Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking ''150 percent'' both places it appears and inserting ''200 percent''.

(b) ASSISTANCE LEVEL PER DWELLING UNIT.—Section 415(c)(1) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(1)) is amended by striking ''$2,500'' and inserting ''$5,000''.

(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 416 of the Energy Conservation and Production Act (42 U.S.C. 6866) is amended by striking ''10 percent'' and inserting ''up to 20 percent''.

SEC. 406. TECHNICAL CORRECTIONS TO PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978. (a) Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by redesignating paragraph (16) relating to consideration of smart grid investments (added by section 1307(a) of Public Law 110–140) as paragraph (18) and by redesignating paragraph (17) relating to smart grid information (added by section 1308(a) of Public Law 110–140) as paragraph (19).

(b) Subsections (b) and (d) of section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) are each amended by striking ''(17) through (18)'' in each place it appears and inserting ''(16) through (19)''.

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

For an additional amount for ''Community Development Financial Institutions Fund Program Account'', $250,000,000, to remain available until September 30, 2010, for qualified applicants under the fiscal year 2008 and 2009 funding rounds of the Community Development Financial Institutions Program, of which up to $20,000,000 may be for financial assistance, technical assistance, training and outreach programs, including up to $5,000 for subsistence expenses, designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers and up to $5,000,000 may be used for administrative expenses: *Provided,* That for purposes of the fiscal year 2008 and 2009 funding rounds, the following statutory provisions are hereby waived: 12 U.S.C. 4707(e) and 12 U.S.C. 4707(d): *Provided further,* That no awardee, together with its subsidiaries and affiliates, may be awarded more than 15 percent of the aggregate funds available during each of fiscal years 2008 and 2009 from the Community Development Financial Institutions Program: *Provided further,* That no later than 60 days after the date of enactment of this Act, the Department of the Treasury shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under this heading.

DISTRICT OF COLUMBIA

FEDERAL PAYMENTS

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

For a Federal payment to the District of Columbia Water and Sewer Authority, $125,000,000, to remain available until September 30, 2010, to continue implementation of the Combined Sewer Overflow Long-Term Control Plan: *Provided,* That the District of Columbia Water and Sewer Authority provide a 100 percent match for this payment: *Provided further,* That no later than 60 days after the date of enactment of this Act, the District of Columbia Water and Sewer Authority shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under this heading: *Provided further,* That such expenditure plan shall include a description of each specific project, how specific projects will further the objectives of the Long-Term Control Plan, and all funding sources for each project.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount to be deposited in the Federal Buildings Fund, $9,048,000,000, to carry out the purposes of the Fund, of which not less than $1,400,000,000 shall be available for Federal buildings and United States courthouses, not less than $1,200,000,000 shall be available for border stations, and not less than $6,000,000,000 shall be available for measures necessary to convert GSA facilities to High-Performance Green Buildings, as defined in section 401 of Public Law 110–140: *Provided,* That not to exceed $108,000,000 of the amounts provided under this heading may be expended for rental of space, related to leasing of temporary space in connection with projects funded under this heading: *Provided further,* That not to exceed $206,000,000 of the amounts provided under this heading may be expended for building operations, for the administrative costs of completing projects funded under this heading: *Provided further,* That (1) not less than $7,000,000,000 of the funds provided under this heading shall be obligated by September 30, 2010, and (2) $1,600,000,000 shall be available until September 30, 2011: *Provided further,* That the Administrator of General Services is authorized to initiate design, construction, repair, alteration, and other projects through existing authorities of the Administrator: *Provided further,* That the General Services Administration shall submit a detailed plan, by project, regarding the use of funds made available in this Act to the Committees on Appropriations of the House of Representatives and the Senate within 60 days of enactment of this Act: *Provided further,* That of the amounts provided for converting GSA facilities to High-Performance Green Buildings, $4,000,000 shall be transferred to and merged with ''Government-Wide Policy'', for carrying out the provisions of section 436 of the Energy Independence and Security Act of 2007 (Public Law 110–140), establishing an Office of Federal High-Performance Green Buildings, to remain available until September 30, 2010: *Provided further,* That within the overall amount to be deposited into the Fund, $448,000,000 shall remain available until September 30, 2011, for the development and construction of the headquarters for the Department of Homeland Security, except that none of the preceding provisos shall apply to amounts made available under this proviso.

ENERGY-EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT

For capital expenditures and necessary expenses of acquiring motor vehicles with higher fuel economy, including: hybrid vehicles; neighborhood electric vehicles; electric vehicles; and commercially-available, plug-in hybrid vehicles, $600,000,000, to remain available until September 30, 2011.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the Office of the Inspector General, to remain available until September 30, 2011, $2,000,000.

RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY BOARD

For necessary expenses of the Recovery Act Accountability and Transparency Board to carry out the provisions of title XV of this Act, $7,000,000, to remain available until September 30, 2010.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount, to remain available until September 30, 2010, $84,000,000, of which $24,000,000 is for marketing, management, and technical assistance under section 7(m) of the Small Business Act (15 U.S.C. 636(m)(4)) by intermediaries that make microloans under the microloan program, of which $15,000,000 is for lender oversight activities as authorized in section 501(c) of this title, and of which $20,000,000 is for improving, streamlining, and automating information technology systems related to lender processes and lender oversight: *Provided,* That no later than 60 days after the date of enactment of this Act, the Small Business Administration shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under the heading ''Small Business Administration'' in this Act.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $10,000,000, to remain available until September 30, 2011.

SURETY BOND GUARANTEES REVOLVING FUND

For additional capital for the Surety Bond Guarantees Revolving Fund, authorized by the Small Business Investment Act of 1958, $15,000,000, to remain available until expended.

BUSINESS LOANS PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, $6,000,000, to remain available until September 30, 2010, and for an additional amount for the cost of guaranteed loans, $615,000,000, to remain available until September 30, 2010: *Provided,* That of the amount for the cost of guaranteed loans, $515,000,000 shall be for loan subsidies and loan modifications for loans to small business concerns authorized in section 501(a) of this title; and $100,000,000 shall be for loan subsidies and loan modifications for loans to small business concerns authorized in section 501(b) of this title: *Provided further,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

SEC. 501. ECONOMIC STIMULUS FOR SMALL BUSINESS CONCERNS. (a) TEMPORARY FEE

ELIMINATION FOR THE 7(a) LOAN PROGRAM.—Until September 30, 2010, and to the extent that the cost of such elimination of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) for which the application is approved on or after the date of enactment of this Act, the Administrator shall—

(1) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)), collect no fee; and

(2) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee.

(b) TEMPORARY FEE ELIMINATION FOR THE 504 LOAN PROGRAM.—

(1) IN GENERAL.—Until September 30, 2010, and to the extent the cost of such elimination in fees is offset by appropriations, with respect to each project or loan guaranteed by the Administrator under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) for which an application is approved or pending approval on or after the date of enactment of this Act—

(A) the Administrator shall, in lieu of the fee otherwise applicable under section 503(d)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)(2)), collect no fee;

(B) a development company shall, in lieu of the processing fee under section 120.971(a)(1) of title 13, Code of Federal Regulations (relating to fees paid by borrowers), or any successor thereto, collect no fee.

(2) REIMBURSEMENT FOR WAIVED FEES.—

(A) IN GENERAL.—To the extent that the cost of such payments is offset by appropriations, the Administrator shall reimburse each development company that does not collect a processing fee pursuant to paragraph (1)(B).

(B) AMOUNT.—The payment to a development company under subparagraph (A) shall be in an amount equal to 1.5 percent of the net debenture proceeds for which the development company does not collect a processing fee pursuant to paragraph (1)(B).

(c) TEMPORARY FEE ELIMINATION OF LENDER OVERSIGHT FEES.—Until September 30, 2010, and to the extent the cost of such elimination in fees is offset by appropriations, the Administrator shall, in lieu of the fee otherwise applicable under section 5(b)(14) of the Small Business Act (15 U.S.C. 634(b)(14)), collect no fee.

(d) APPLICATION OF FEE ELIMINATIONS.—The Administrator shall eliminate fees under subsections (a), (b), and (c) until the amount provided for such purposes, as applicable, under the headings ''Salaries and Expenses'' and ''Business Loans Program Account'' under the heading ''Small Business Administration'' under this Act are expended.

SEC. 502. FINANCIAL ASSISTANCE PROGRAM IMPROVEMENTS. (a) 7(a) LOAN MAXIMUM AMOUNT.—Section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) is amended by striking ''$1,500,000 (or if the gross loan amount would exceed $2,000,000)'' and inserting ''$2,250,000 (or if the gross loan amount would exceed $3,000,000)''.

(b) SMALL BUSINESS INVESTMENT COMPANIES.—

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

(A) in paragraph (2), by striking subparagraphs (A), (B), and (C) and inserting the following:

''(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any 1 company licensed under section 301(c) may not exceed the lesser of—

''(i) 300 percent of the private capital of the company; or

''(ii) $150,000,000.

''(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to 2 or more companies licensed under section 301(c) that are commonly controlled (as determined by the Administrator) may not exceed $225,000,000.

''(C) INVESTMENTS IN LOW–INCOME GEOGRAPHIC AREAS.—

''(i) IN GENERAL.—The maximum amount of outstanding leverage made available to—

''(I) any 1 company described in clause (ii) may not exceed the lesser of—

''(aa) 300 percent of private capital of the company; or

''(bb) $175,000,000; and

''(II) 2 or more companies described in clause (ii) that are commonly controlled (as determined by the Administrator) may not exceed $250,000,000.

''(ii) APPLICABILITY.—A company described in this clause is a company licensed under section 301(c) that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 351).''; and

(B) by striking paragraph (4).

(2) INVESTMENTS IN SMALLER ENTERPRISES.—Section 303(d) of the Small Business Investment Act of 1958 (15 U.S.C. 683(d)) is amended to read as follows:

''(d) INVESTMENTS IN SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.''.

(3) MAXIMUM INVESTMENT IN A COMPANY.—Section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(c) MAXIMUM 504 LOAN SIZE.—Section 502(2)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

(1) in clause (i), by striking ''$1,500,000'' and inserting ''$3,000,000'';

(2) in clause (ii), by striking ''$2,000,000'' and inserting ''$3,500,000''; and

(3) in clause (iii), by striking ''$4,000,000'' and inserting ''$5,500,000''.

SEC. 503. LOW-INTEREST REFINANCING. Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended by adding at the end the following:

''(7) PERMISSIBLE DEBT FINANCING.—A financing under this title may include refinancing of existing indebtedness, in an amount not to exceed 50 percent of the projected cost of the project financed under this title, if—

''(A) the project financed under this title involves the expansion of a small business concern;

''(B) the existing indebtedness is collateralized by fixed assets;

''(C) the existing indebtedness was incurred for the benefit of the small business concern;

''(D) the proceeds of the existing indebtedness were used to acquire land (including a building situated thereon), to construct or expand a building thereon, or to purchase equipment;

''(E) the borrower has been current on all payments due on the existing indebtedness for not less than 1 year preceding the proposed date of refinancing;

''(F) the financing under this title will provide better terms or a better rate of interest than exists on the existing indebtedness on the proposed date of refinancing;

''(G) the financing under this title is not being used to refinance any debt guaranteed by the Government; and

''(H) the financing under this title will be used only for—

''(i) refinancing existing indebtedness; or

''(ii) costs relating to the project financed under this title.''.

SEC. 504. DEFINITIONS. Under the heading ''Small Business Administration'' in this title—

(1) the terms ''Administration'' and ''Administrator'' mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term ''development company'' has the meaning given the term ''development companies'' in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); and

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

TITLE VI—DEPARTMENT OF HOMELAND SECURITY

DEPARTMENT OF HOMELAND SECURITY

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

For an additional amount for the ''Office of the Under Secretary for Management'', $248,000,000, to remain available until September 30, 2011, solely for planning, design, and construction costs, including site security, information technology infrastructure, furniture, fixtures, and related costs to consolidate the Department of Homeland Security headquarters: *Provided*, That no later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Administrator of General Services, shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the ''Office of Inspector General'', $5,000,000, to remain available until September 30, 2010, for oversight and audit of programs, grants, and projects funded under this title.

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $198,000,000, to remain available until September 30, 2010, of which $100,800,000 shall be for the procurement and deployment of non-intrusive inspection systems to improve port security; and of which $97,200,000 shall be for procurement and deployment of tactical communications equipment and radios: *Provided*, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For an additional amount for ''Border Security Fencing, Infrastructure, and Technology'', $200,000,000, to remain available until September 30, 2010, for expedited development and deployment of border security technology on the Southwest border: *Provided*, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

CONSTRUCTION

For an additional amount for ''Construction'', $800,000,000, to remain available until

expended, solely for planning, management, design, alteration, and construction of U.S. Customs and Border Protection owned land border ports of entry: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

AUTOMATION MODERNIZATION

For an additional amount for ''Automation Modernization'', $27,800,000, to remain available until September 30, 2010, for the procurement and deployment of tactical communications equipment and radios: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

For an additional amount for ''Aviation Security'', $1,200,000,000, to remain available until September 30, 2010, for procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for ''Acquisition, Construction, and Improvements'', $572,500,000, to remain available until September 30, 2010, of which $255,000,000 shall be for shortfalls in priority procurements due to materials and labor cost increases; of which $195,000,000 shall be for shore facilities and aids to navigation facilities; of which $87,500,000 shall be for the design of a new polar icebreaker or the renovation of an existing polar icebreaker, and major repair and maintenance of existing polar icebreakers; and of which $35,000,000 shall be for emergency maintenance of the Coast Guard's high endurance cutters: *Provided,* That amounts made available for the activities under this heading shall be available for all necessary expenses related to the oversight and management of such activities: *Provided further,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

ALTERATION OF BRIDGES

For an additional amount for ''Alteration of Bridges'', $240,400,000, to remain available until September 30, 2010, for alteration or removal of obstructive bridges, as authorized by section 6 of the Truman-Hobbs Act (33 U.S.C. 516): *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

FEDERAL EMERGENCY MANAGEMENT AGENCY

MANAGEMENT AND ADMINISTRATION

For an additional amount for ''Management and Administration'', $6,000,000 for the acquisition of communications response vehicles to be deployed in response to a disaster or a national security event.

STATE AND LOCAL PROGRAMS

For an additional amount for grants, $950,000,000, to be allocated as follows:

(1) $100,000,000, to remain available until September 30, 2010, for Public Transportation Security Assistance, Railroad Security Assistance, and Systemwide Amtrak Security Upgrades under sections 1406, 1513, and 1514 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53; 6 U.S.C. 1135, 1163, and 1164).

(2) $100,000,000, to remain available until September 30, 2010, for Port Security Grants in accordance with 46 U.S.C. 70107, notwithstanding 46 U.S.C. 70107(c).

(3) $250,000,000, to remain available until September 30, 2010, for upgrading, modifying, or constructing emergency operations centers under section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, notwithstanding section 614(c) of that Act or for upgrading, modifying, or constructing State and local fusion centers as defined by section 210A(j)(1) of the Homeland Security Act of 2002 (6 U.S.C. 124h(j)(1)).

(4) $500,000,000 for construction to upgrade or modify critical infrastructure, as defined in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195c(e)), to mitigate consequences related to potential damage from all-hazards: *Provided,* That funds in this paragraph shall remain available until September 30, 2011: *Provided further,* That 5 percent shall be for program administration: *Provided further,* That no later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

FIREFIGHTER ASSISTANCE GRANTS

For an additional amount for competitive grants, $500,000,000, to remain available until September 30, 2010, for modifying, upgrading, or constructing State and local fire stations: *Provided,* That up to 5 percent shall be for program administration: *Provided further,* That no grant shall exceed $15,000,000.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

Notwithstanding section 417(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the amount of any such loan issued pursuant to this section for major disasters occurring in calendar year 2008 may exceed $5,000,000, and may be equal to not more than 50 percent of the annual operating budget of the local government in any case in which that local government has suffered a loss of 25 percent or more in tax revenues: *Provided,* That the cost of modifying such loans shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

EMERGENCY FOOD AND SHELTER

For an additional amount to carry out the emergency food and shelter program pursuant to title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.), $100,000,000: *Provided,* That total administrative costs shall not exceed 3.5 percent of the total amount made available under this heading.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES

For an additional amount for ''Acquisition, Construction, Improvements, and Related Expenses'', $15,000,000, to remain available until September 30, 2010, for security systems and law enforcement upgrades for all Federal Law Enforcement Training Center facilities: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

SCIENCE AND TECHNOLOGY

RESEARCH, DEVELOPMENT, ACQUISITION, AND OPERATIONS

For an additional amount for ''Research, Development, Acquisition, and Operations'', $14,000,000, to remain available until September 30, 2010, for cyber security research: *Provided,* That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

GENERAL PROVISIONS—THIS TITLE

SEC. 601. Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina, Rita, Gustav, and Ike within the Gulf Coast Region. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, or 5173) for a project the total amount of which is more than $500,000.

SEC. 602. The Administrator of the Federal Emergency Management Agency may not prohibit or restrict the use of funds designated under the hazard mitigation grant program for damage caused by Hurricanes Katrina and Rita if the homeowner who is an applicant for assistance under such program commenced work otherwise eligible for hazard mitigation grant program assistance under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) without approval in writing from the Administrator.

TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For an additional amount for ''Management of Lands and Resources'', $135,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $180,000,000, to remain available until September 30, 2010.

WILDLAND FIRE MANAGEMENT

For an additional amount for ''Wildland Fire Management'', $15,000,000, to remain available until September 30, 2010.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For an additional amount for ''Resource Management'', $190,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $110,000,000, to remain available until September 30, 2010.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For an additional amount for ''Operation of the National Park System'', $158,000,000, to remain available until September 30, 2010.

HISTORIC PRESERVATION FUND

For an additional amount for ''Historic Preservation Fund'', $55,000,000, to remain available until September 30, 2010.

CONSTRUCTION

For an additional amount for ''Construction'', $589,000,000, to remain available until September 30, 2010.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for ''Surveys, Investigations, and Research'', $135,000,000, to remain available until September 30, 2010.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for ''Operation of Indian Programs'', $40,000,000, to remain available until September 30, 2010, of which $20,000,000 shall be for the housing improvement program.

CONSTRUCTION

For an additional amount for ''Construction'', $522,000,000, to remain available until September 30, 2010.

INDIAN GUARANTEED LOAN PROGRAM ACCOUNT

For an additional amount for ''Indian Guaranteed Loan Program Account'', $10,000,000, to remain available until September 30, 2010.

DEPARTMENTAL OFFICES

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

For an additional amount for ''Assistance to Territories'', $62,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For an additional amount for ''Office of Inspector General'', $7,600,000, to remain available until September 30, 2010.

DEPARTMENT-WIDE PROGRAMS

CENTRAL HAZARDOUS MATERIALS FUND

For an additional amount for ''Central Hazardous Materials Fund'', $20,000,000, to remain available until September 30, 2010.

WORKING CAPITAL FUND

For an additional amount for ''Working Capital Fund'', $20,000,000, to remain available until September 30, 2010.

ENVIROMENTAL PROTECTION AGENCY

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for ''Hazardous Substance Superfund'', $800,000,000, to remain available until September 30, 2010, as a payment from general revenues to the Hazardous Substance Superfund, to carry out remedial actions: *Provided,* That the Administrator may retain up to 2 percent of the funds appropriated herein for Superfund remedial actions for program oversight and support purposes, and may transfer those funds to other accounts as needed.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

For an additional amount for ''Leaking Underground Storage Tank Trust Fund Program'', $200,000,0000, to remain available until September 30, 2010, for cleanup activities: *Provided,* That none of these funds shall be subject to cost share requirements.

STATE AND TRIBAL ASSISTANCE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for ''State and Tribal Assistance Grants'', $6,400,000,000, to remain available until September 30, 2010, of which $4,000,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended; of which $2,000,000,000 shall be for making capitalization grants for the Drinking Water State Revolving Fund under section 1452 of the Safe Drinking Water Act, as amended; of which $100,000,000 shall be available for Brownfields remediation grants pursuant to section 104(k)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; and of which $300,000,000 shall be for Diesel Emission Reduction Act grants pursuant to title VII, subtitle G of the Energy Policy Act of 2005, as amended: *Provided,* That notwithstanding the priority ranking they would otherwise receive under each program, priority for funds appropriated herein for the Clean Water State Revolving Funds and Drinking Water State Revolving Funds (Revolving Funds) shall be allocated to projects that are ready to proceed to construction within 180 days of enactment of this Act: *Provided further,* That the Administrator of the Environmental Protection Agency (Administrator) may reallocate funds appropriated herein for the Revolving Funds that are not under binding commitments to proceed to construction within 180 days of enactment of this Act: *Provided further,* That notwithstanding any other provision of law, financial assistance provided from funds appropriated herein for the Revolving Funds may include additional subsidization, including forgiveness of principal and negative interest loans: *Provided further,* That not less than 15 percent of the funds appropriated herein for the Revolving Funds shall be designated for green infrastructure, water efficiency improvements or other environmentally innovative projects: *Provided further,* That notwithstanding the limitation on amounts specified in section 518(c) of the Federal Water Pollution Control Act, up to a total of 1.5 percent of the funds appropriated herein for the Clean Water State Revolving Funds may be reserved by the Administrator for tribal grants under section 518(c) of such Act: *Provided further,* That section 1452(k) of the Safe Drinking Water Act shall not apply to amounts appropriated herein for the Drinking Water State Revolving Funds: *Provided further,* That the Administrator may exceed the 30 percent limitation on State grants for funds appropriated herein for Diesel Emission Reduction Act grants if the Administrator determines such action will expedite allocation of funds: *Provided further,* That none of the funds appropriated herein shall be subject to cost share requirements: *Provided further,* That the Administrator may retain up to 0.25 percent of the funds appropriated herein for the Clean Water State Revolving Funds and Drinking Water State Revolving Funds and up to 1.5 percent of the funds appropriated herein for the Diesel Emission Reduction Act grants program for program oversight and support purposes and may transfer those funds to other accounts as needed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

For an additional amount for ''Capital Improvement and Maintenance'', $650,000,000, to remain available until September 30, 2010, which shall include remediation of abandoned mine sites and support costs necessary to carry out this work.

WILDLAND FIRE MANAGEMENT

For an additional amount for ''Wildland Fire Management'', $650,000,000, to remain available until September 30, 2010, for hazardous fuels reduction and hazard mitigation activities in areas at high risk of catastrophic wildfire, of which $350,000,000 is available for work on State and private lands using all the authorities available to the Forest Service: *Provided,* That of the funds provided for State and private land fuels reduction activities, up to $50,000,000 may be used to make grants for the purpose of creating incentives for increased use of biomass from national forest lands.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For an additional amount for ''Indian Health Services'', $135,000,000, to remain available until September 30, 2010, of which $50,000,000 is for contract health services; and of which $85,000,000 is for health information technology: *Provided,* That the amount made available for health information technology activities may be used for both telehealth services development and related infrastructure requirements that are typically funded through the ''Indian Health Facilities'' account: *Provided further,* That notwithstanding any other provision of law, health information technology funds provided within this title shall be allocated at the discretion of the Director of the Indian Health Service.

INDIAN HEALTH FACILITIES

For an additional amount for ''Indian Health Facilities'', $410,000,000, to remain available until September 30, 2010: *Provided,* That for the purposes of this Act, spending caps included within the annual appropriation for ''Indian Health Facilities'' for the purchase of medical equipment shall not apply.

SMITHSONIAN INSTITUTION

FACILITIES CAPITAL

For an additional amount for ''Facilities Capital'', $150,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 701. (a) Within 30 days of enactment of this Act, each agency receiving funds under this title shall submit a general plan for the expenditure of such funds to the House and Senate Committees on Appropriations.

(b) Within 90 days of enactment of this Act, each agency receiving funds under this title shall submit to the Committees a report containing detailed project level information associated with the general plan submitted pursuant to subsection (a).

SEC. 702. In carrying out the work for which funds in this title are being made available, the Secretary of the Interior and the Secretary of Agriculture may utilize the Public Lands Corps, Youth Conservation Corps, Job Corps and other related partnerships with Federal, State, local, tribal or non-profit groups that serve young adults.

TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For an additional amount for ''Training and Employment Services'' for activities authorized by the Workforce Investment Act of 1998 (''WIA''), $3,250,000,000, which shall be available on the date of enactment of this Act, as follows:

(1) $500,000,000 for adult employment and training activities, including supportive services and needs-related payments described in section 134(e)(2) and (3) of the WIA: *Provided,* That a priority use of these funds shall be services to individuals described in 134(d)(4)(E) of the WIA;

(2) $1,200,000,000 for grants to the States for youth activities, including summer employment for youth: *Provided,* That no portion of such funds shall be reserved to carry out section 127(b)(1)(A) of the WIA: *Provided further,* That for purposes of section 127(b)(1)(C)(iv) of the WIA, funds available for youth activities shall be allotted as if the total amount available for youth activities in the fiscal year

does not exceed $1,000,000,000: *Provided further,* That, with respect to the youth activities provided with such funds, section 101(13)(A) of the WIA shall be applied by substituting ''age 24'' for ''age 21'': *Provided further,* That the work readiness performance indicator described in section 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure of performance used to assess the effectiveness of youth activities provided with such funds;

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

(4) $200,000,000 for national emergency grants;

(5) $250,000,000 under the dislocated worker national reserve for a program of competitive grants for worker training in high growth and emerging industry sectors and assistance under 132(b)(2)(A) of the WIA: *Provided,* That the Secretary of Labor shall give priority when awarding such grants to projects that prepare workers for careers in energy efficiency and renewable energy as described in section 171(e)(1)(B) of the WIA and for careers in the health care sector; and

(6) $100,000,000 for YouthBuild activities as described in section 173A of the WIA: *Provided,* That for program years 2008 and 2009, the YouthBuild program may serve an individual who has dropped out of high school and re-enrolled in an alternative school, if that re-enrollment is part of a sequential service strategy:

Provided, That funds made available in this paragraph shall remain available through June 30, 2010: *Provided further,* That a local board may award a contract to an institution of higher education if the local board determines that it would facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

For an additional amount for ''Community Service Employment for Older Americans'' for carrying out title V of the Older Americans Act of 1965, $120,000,000, which shall be available on the date of enactment of this Act and shall remain available through June 30, 2010: *Provided,* That funds shall be allotted within 30 days of such enactment to current grantees in proportion to their allotment in program year 2008: *Provided further,* That funds made available under this heading in this Act may, in accordance with section 517(c) of the Older Americans Act of 1965, be recaptured and reobligated.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For an additional amount for ''State Unemployment Insurance and Employment Service Operations'' for grants to States in accordance with section 6 of the Wagner-Peyser Act, $400,000,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund: *Provided,* That such funds shall be available on the date of enactment of this Act and remain available to the States through September 30, 2010: *Provided further,* That $250,000,000 of such funds shall be used by States for reemployment services for unemployment insurance claimants (including the integrated Employment Service and Unemployment Insurance information technology required to identify and serve the needs of such claimants): *Provided further,* That the Secretary of Labor shall establish planning and reporting procedures necessary to provide oversight of funds used for reemployment services.

DEPARTMENTAL MANAGEMENT

OFFICE OF JOB CORPS

For an additional amount for ''Office of Job Corps'' for construction, alteration and repairs of buildings and other facilities, $160,000,000, which shall remain available through June 30, 2010: *Provided,* That the Secretary of Labor may transfer up to 15 percent of such funds to meet the operational needs of Job Corps Centers, which may include training for careers in the energy efficiency, renewable energy, and environmental protection industries: *Provided further,* That not later than 90 days after the date of enactment of this Act, the Secretary shall provide to the Committee on Appropriations of the House of Representatives and the Senate an operating plan describing the planned uses of funds available in this paragraph.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the ''Office of Inspector General'', $3,000,000, which shall remain available through September 30, 2010, for salaries and expenses necessary for oversight and audit of programs, grants, and projects funded in this Act and administered by the Department of Labor.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For an additional amount for ''Health Resources and Services'', $1,088,000,000, which shall remain available through September 30, 2010, of which $88,000,000 shall be for necessary expenses related to leasing and renovating a headquarters building for Public Health Service agencies and other components of the Department of Health and Human Services, including renovation and fit-out costs, and of which $1,000,000,000 shall be for grants for construction, renovation and equipment for health centers receiving operating grants under section 330 of the Public Health Service Act, notwithstanding the limitation in section 330(e)(3).

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

For an additional amount for ''Disease Control, Research, and Training'' for acquisition of real property, equipment, construction, and renovation of facilities, including necessary repairs and improvements to leased laboratories, $412,000,000, which shall remain available through September 30, 2010: *Provided,* That notwithstanding any other provision of law, the Centers for Disease Control and Prevention may award a single contract or related contracts for development and construction of facilities that collectively include the full scope of the project: *Provided further,* That the solicitation and contract shall contain the clause ''availability of funds'' found at 48 CFR 52.232–18.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CENTER FOR RESEARCH RESOURCES

For an additional amount for ''National Center for Research Resources'', $300,000,000, which shall be available through September 30, 2010, for shared instrumentation and other capital research equipment.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Office of the Director'', $2,700,000,000, which shall be available through September 30, 2010: *Provided,* That $1,350,000,000 shall be transferred to the Institutes and Centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act in proportion to the appropriations otherwise made to such Institutes, Centers, and Common Fund for fiscal year 2009: *Provided further,* That these funds shall be used to support additional scientific research and shall be merged with and be available for the same purposes as the appropriation or fund to which transferred: *Provided further,* That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: *Provided further,* That none of these funds may be transferred to ''National Institutes of Health—Buildings and Facilities'', the Center for Scientific Review, the Center for Information Technology, the Clinical Center, the Global Fund for HIV/AIDS, Tuberculosis and Malaria, or the Office of the Director (except for the transfer to the Common Fund).

BUILDINGS AND FACILITIES

For an additional amount for ''Buildings and Facilities'', $500,000,000, which shall be available through September 30, 2010, to fund high-priority repair, construction and improvement projects for National Institutes of Health facilities on the Bethesda, Maryland campus and other agency locations.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Healthcare Research and Quality'' to carry out titles III and IX of the Public Health Service Act, part A of title XI of the Social Security Act, and section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, $700,000,000 for comparative clinical effectiveness research, which shall remain available through September 30, 2010: *Provided,* That of the amount appropriated in this paragraph, $400,000,000 shall be transferred to the Office of the Director of the National Institutes of Health (''Office of the Director'') to conduct or support comparative clinical effectiveness research under section 301 and title IV of the Public Health Service Act: *Provided further,* That funds transferred to the Office of the Director may be transferred to the Institutes and Centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act: *Provided further,* That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: *Provided further,* That within the amount available in this paragraph for the Agency for Healthcare Research and Quality, not more than 1 percent shall be made available for additional full-time equivalents.

In addition, $400,000,000 shall be available for comparative clinical effectiveness research to be allocated at the discretion of the Secretary of Health and Human Services (''Secretary'') and shall remain available through September 30, 2010: *Provided,* That the funding appropriated in this paragraph shall be used to accelerate the development and dissemination of research assessing the comparative clinical effectiveness of health care treatments and strategies, including through efforts that: (1) conduct, support, or synthesize research that compares the clinical outcomes, effectiveness, and appropriateness of items, services, and procedures that are used to prevent, diagnose, or treat diseases, disorders, and other health conditions and (2) encourage the development and use of clinical registries, clinical data networks, and other forms of electronic health data that can be used to generate or obtain outcomes data: *Provided further,* That the Secretary shall enter into a contract with the Institute of Medicine, for which no more

than $1,500,000 shall be made available from funds provided in this paragraph, to produce and submit a report to the Congress and the Secretary by not later than June 30, 2009 that includes recommendations on the national priorities for comparative clinical effectiveness research to be conducted or supported with the funds provided in this paragraph and that considers input from stakeholders: *Provided further*, That the Secretary shall consider any recommendations of the Federal Coordinating Council for Comparative Clinical Effectiveness Research established by section 802 of this Act and any recommendations included in the Institute of Medicine report pursuant to the preceding proviso in designating activities to receive funds provided in this paragraph and may make grants and contracts with appropriate entities, which may include agencies within the Department of Health and Human Services and other governmental agencies, as well as private sector entities, that have demonstrated experience and capacity to achieve the goals of comparative clinical effectiveness research: *Provided further*, That the Secretary shall publish information on grants and contracts awarded with the funds provided under this heading within a reasonable time of the obligation of funds for such grants and contracts and shall disseminate research findings from such grants and contracts to clinicians, patients, and the general public, as appropriate: *Provided further*, That, to the extent feasible, the Secretary shall ensure that the recipients of the funds provided by this paragraph offer an opportunity for public comment on the research: *Provided further*, That the Secretary shall provide the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate with an annual report on the research conducted or supported through the funds provided under this heading.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For an additional amount for ''Payments to States for the Child Care and Development Block Grant'' for carrying out the Child Care and Development Block Grant Act of 1990, $2,000,000,000, which shall remain available through September 30, 2010: *Provided*, That funds provided under this heading shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided further*, That, in addition to the amounts required to be reserved by the States under section 658G of such Act, $255,186,000 shall be reserved by the States for activities authorized under section 658G, of which $93,587,000 shall be for activities that improve the quality of infant and toddler care.

SOCIAL SERVICES BLOCK GRANT

For an additional amount for ''Social Services Block Grant,'' $400,000,000: *Provided*, That notwithstanding section 2003 of the Social Security Act, funds shall be allocated to States on the basis of unemployment: *Provided further*, That these funds shall be obligated to States within 60 calendar days from the date they become available for obligation.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For an additional amount for ''Children and Families Services Programs'' for carrying out activities under the Head Start Act, $1,000,000,000, which shall remain available through September 30, 2010. In addition, $1,100,000,000, which shall remain available through September 30, 2010, is hereby appropriated for expansion of Early Head Start programs, as described in section 645A of such Act: *Provided*, That of the funds provided in this sentence, up to 10 percent shall be available for the provision of training and technical assistance to such programs consistent with section 645A(g)(2) of such Act, and up to 3 percent shall be available for monitoring the operation of such programs consistent with section 641A of such Act.

For an additional amount for ''Children and Families Services Programs'' for carrying out activities under sections 674 through 679 of the Community Services Block Grant Act, $200,000,000, which shall remain available through September 30, 2010: *Provided*, That of the funds provided under this paragraph, no part shall be subject to paragraph (3) of section 674(b) of such Act: *Provided further*, That not less than 5 percent of the funds allotted to a State from the appropriation under this paragraph shall be used under section 675C(b)(1) for benefits enrollment coordination activities relating to the identification and enrollment of eligible individuals and families in Federal, State and local benefit programs.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For an additional amount for ''Aging Services Programs,'' $100,000,000, of which $67,000,000 shall be for Congregate Nutrition Services and $33,000,000 shall be for Home-Delivered Nutrition Services: *Provided*, That these funds shall remain available through September 30, 2010.

OFFICE OF THE SECRETARY

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Office of the National Coordinator for Health Information Technology'', $5,000,000,000, to carry out title XIII of this Act which shall be available until expended: *Provided*, That of this amount, the Secretary of Health and Human Services shall transfer $20,000,000 to the Director of the National Institute of Standards and Technology in the Department of Commerce for continued work on advancing health care information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure so long as such activities are coordinated with the Office of the National Coordinator for Health Information Technology: *Provided further*, That funds available under this heading shall become available for obligation only upon submission of an annual operating plan by the Secretary to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each major set of activities not later than November 1, 2009 and every 6 months thereafter as long as funding under this heading is available for obligation or expenditure.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the Office of the Inspector General, $4,000,000 which shall remain available until September 30, 2011.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the ''Public Health and Social Services Emergency Fund'' to carry out a program of grants, contracts, and cooperative agreements to fund projects and activities to reduce the incidence or severity of preventable disabilities, diseases and conditions and to invest in health workforce training, $5,800,000,000, to remain available through September 30, 2011: *Provided*, That the amount made available in this paragraph may be transferred to another appropriation account of the Department of Health and Human Services (''HHS''), as determined by the Secretary of Health and Human Services to be appropriate and upon notification of the Committees on Appropriations of the House of Representatives and the Senate, to be used for the purposes specified in this paragraph, and the provisos of this paragraph shall apply to any funds so transferred: *Provided further*, That of the amount provided in this paragraph, not less than $1,000,000,000 shall be transferred to the Centers for Disease Control and Prevention (''CDC'') as an additional amount for screening activities related to preventable disabilities and chronic diseases and conditions, including counseling to prevent and mitigate the precursors of those disorders: *Provided further*, That of the amount provided in this paragraph, not less than $750,000,000 shall be transferred to the CDC as an additional amount to carry out the immunization program authorized by section 317(a), (j), and (k)(1) of the Public Health Service Act (''PHS Act''): *Provided further*, That of the amount provided in this paragraph, not less than $600,000,000 shall be transferred to the Health Resources and Services Administration as an additional amount to address health professions workforce shortages through scholarships, loan repayment, grants to training programs for equipment and activities to foster cross-state licensure agreements, authorized under sections 330 through 338, 737, 738, and 846 of the PHS Act, of which $200,000,000 shall be available until expended for extending service contracts and the recapture and reallocation of funds in the event that a participant fails to fulfill their term of service: *Provided further*, That of the amount provided in this paragraph, $400,000,000 shall be transferred to the CDC as an additional amount for the Healthy Communities program, which shall be used for multi-year awards: *Provided further*, That of the amount provided in this paragraph, not less than $60,000,000 shall be made available for additional research, data collection and surveys relating to prevention science and the current state of health, including equipment: *Provided further*, That of the amount provided in this paragraph, $40,000,000 shall be transferred to the CDC for information technology improvements to vital statistics record systems, including grants to State health departments for equipment: *Provided further*, That of the amount provided in this paragraph, $15,000,000 shall be made available for grants to States for equipment and maintenance related to newborn screening: *Provided further*, That not less than 1 percent of the amount provided in this paragraph shall be available for evaluation of the activities supported by the amounts provided in this paragraph: *Provided further*, That up to 1 percent of amounts made available in this paragraph may be used for administrative expenses in the office or division of HHS administering the funds: *Provided further*, That the transfers required by this paragraph shall be completed within 30 days of enactment of this Act: *Provided further*, That the Secretary shall submit reports to the Committees on Appropriations of the House of Representatives and the Senate detailing the following information on the amounts appropriated in this paragraph: (1) an operating plan detailing activities to be supported and timelines for expenditure, to be submitted no later than 120 days after the enactment of this Act; (2) 15 day prior notification of any funds

to be obligated prior to the submission of the operating plan; (3) an obligation and expenditure report to be submitted quarterly until all funds are fully expended; (4) a briefing 15 days prior to any new grant solicitation; (5) an evaluation plan that details the manner in which the Secretary intends to evaluate the outcomes of activities supported, to be submitted 120 days after enactment of this Act; (6) an outcomes report on all activities supported, to be submitted 1 year after enactment and every 6 months thereafter until all funds have been expended; and (7) a report on best practices to be submitted 18 months after enactment and every 6 months thereafter until all funds have been expended.

For an additional amount for the ''Public Health and Social Services Emergency Fund'' to prepare for and respond to an influenza pandemic, $870,000,000, for activities including the development and purchase of vaccine, antivirals, necessary medical supplies, diagnostics, and other surveillance tools which shall be available until expended: *Provided,* That products purchased with these funds may, at the discretion of the Secretary, be deposited in the Strategic National Stockpile: *Provided further,* That notwithstanding section 496(b) of the Public Health Service Act, funds may be used for the construction or renovation of privately owned facilities for the production of pandemic influenza vaccines and other biologics, where the Secretary finds such a contract necessary to secure sufficient supplies of such vaccines or biologics: *Provided further,* That funds appropriated herein may be transferred to other appropriation accounts of the Department of Health and Human Services, as determined by the Secretary to be appropriate, to be used for the purposes specified in this sentence.

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For an additional amount for carrying out title I of the Elementary and Secondary Education Act of 1965, $13,000,000,000, which shall be available through September 30, 2010: *Provided,* That $5,500,000,000 shall be for targeted grants under section 1125, $5,500,000,000 shall be for education finance incentive grants under section 1125A, and $2,000,000,000 shall be for school improvement grants under section 1003(g): *Provided further*, That each local educational agency receiving funds available under this paragraph for sections 1125 and 1125A shall use not less than 15 percent of such funds for activities serving children who are eligible pursuant to section 1115(b)(1)(A)(ii) and programs in section 1112(b)(1)(K): *Provided further*, That each local educational agency receiving funds available under this paragraph shall be required to file with the State educational agency, no later than December 1, 2009, a school-by-school listing of per-pupil educational expenditures from State and local sources during the 2008–2009 academic year.

SCHOOL IMPROVEMENT PROGRAMS

For an additional amount for ''School Improvement Programs,'' $17,070,000,000, which shall be available through September 30, 2010, for carrying out activities authorized by part D of title II of the Elementary and Secondary Education Act of 1965, subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (''McKinney-Vento''), and section 804 of this Act: *Provided,* That the Secretary shall allot $70,000,000 for grants under McKinney-Vento to each State in proportion to the number of homeless students identified by the State during the 2007–2008 school year relative to the number of such children identified nationally during that school year: *Provided further,* That State educational agencies shall subgrant the McKinney-Vento funds to local educational agencies on a competitive basis or according to a formula based on the number of homeless students identified by the local educational agencies in the State: *Provided further*, That the Secretary shall distribute the McKinney-Vento funds to the States not later than 60 days after the date of the enactment of this Act: *Provided further*, That each State shall subgrant the McKinney-Vento funds to local educational agencies not later than 120 days after receiving its grant from the Secretary.

SPECIAL EDUCATION

For an additional amount for ''Special Education'' for carrying out parts B and C of the Individuals with Disabilities Education Act (''IDEA''), $13,500,000,000, which shall remain available through September 30, 2010: *Provided,* That if every State, as defined by section 602(31) of the IDEA, reaches its maximum allocation under section 611(d)(3)(B)(iii) of the IDEA, and there are remaining funds, such funds shall be proportionally allocated to each State subject to the maximum amounts contained in section 611(a)(2) of the IDEA: *Provided further,* That by July 1, 2009, the Secretary of Education shall reserve the amount needed for grants under section 643(e) of the IDEA, with any remaining funds to be allocated in accordance with section 643(c) of the IDEA: *Provided further*, That the amount for section 611(b)(2) of the IDEA shall be equal to the lesser of the amount available for that activity during fiscal year 2008, increased by the amount of inflation as specified in section 619(d)(2)(B), or the percentage increase in the funds appropriated under section 611(i): *Provided further*, That each local educational agency receiving funds available under this paragraph for part B shall use not less than 15 percent for special education and related services to children described in section 619(a) of the IDEA.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For an additional amount for ''Rehabilitation Services and Disability Research'' for providing grants to States to carry out the Vocational Rehabilitation Services program under part B of title I and parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act of 1973, $610,000,000, which shall remain available through September 30, 2010: *Provided,* That $500,000,000 shall be available for part B of title I of the Rehabilitation Act: *Provided further,* That funds provided herein shall not be considered in determining the amount required to be appropriated under section 100(b)(1) of the Rehabilitation Act of 1973 in any fiscal year: *Provided further,* That, notwithstanding section 7(14)(A), the Federal share of the costs of vocational rehabilitation services provided with the funds provided herein shall be 100 percent.

STUDENT FINANCIAL ASSISTANCE

For an additional amount for ''Student Financial Assistance'' to carry out subpart 1 of part A of title IV of the Higher Education Act of 1965, $13,869,000,000: *Provided,* That such funds shall be used to increase the maximum Pell Grant by $281 for award year 2009–2010, to increase the maximum Pell Grant by $400 for the award year 2010–2011, and to reduce or eliminate the Pell Grant shortfall: *Provided further*, That these funds shall remain available through September 30, 2011.

For an additional amount for ''Student Financial Assistance'' to carry out part E of title IV of the Higher Education Act of 1965, $61,000,000: *Provided,* That these funds shall remain available through September 30, 2010.

HIGHER EDUCATION

For an additional amount for ''Higher Education'' for carrying out activities under part A of title II of the Higher Education Act of 1965, $100,000,000: *Provided,* That these funds shall remain available through September 30, 2010.

HIGHER EDUCATION FACILITIES

For carrying out activities authorized under section 803 of this Act, $3,500,000,000: *Provided,* That these funds shall remain available through September 30, 2010.

DEPARTMENTAL MANAGEMENT

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the ''Office of the Inspector General'', $4,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, grants, and projects funded in this Act and administered by the Department of Education.

RELATED AGENCIES

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Operating Expenses'' to carry out the Domestic Volunteer Service Act of 1973 (''1973 Act'') and the National and Community Service Act of 1990 (''1990 Act''), $160,000,000, to remain available through September 30, 2010: *Provided,* That funds made available in this paragraph may be used to provide adjustments to awards under subtitle C of title I of the 1990 Act made prior to September 30, 2010 for which the Chief Executive Officer of the Corporation for National and Community Service (''CEO'') determines that a waiver of the Federal share limitation is warranted under section 2521.70 of title 45 of the Code of Federal Regulations: *Provided further,* That of the amount made available in this paragraph, not less than $6,000,000 shall be transferred to ''Salaries and Expenses'' for necessary expenses relating to information technology upgrades: *Provided further,* That of the amount provided in this paragraph, $10,000,000 shall be available for additional members in the Civilian Community Corps authorized under subtitle E of title I of the 1990 Act: *Provided further,* That of the amount provided in this paragraph, $1,000,000 shall be made available for a one-time supplement grant to State commissions on national and community service under section 126(a) of the 1990 Act without regard to the limitation on Federal share under section 126(a)(2) of the 1990 Act: *Provided further,* That of the amount made available in this paragraph, not less than $13,000,000 shall be for research activities authorized under subtitle H of title I of the 1990 Act: *Provided further,* That of the amount made available in this paragraph, not less than $65,000,000 shall be for programs under title I, part A of the 1973 Act: *Provided further,* That funds provided in the previous proviso shall not be made available in connection with cost-share agreements authorized under section 192A(g)(10) of the 1990 Act: *Provided further,* That of the funds available under this heading, up to 20 percent of funds allocated to grants authorized under section 124(b) of title I, subtitle C of the 1990 Act may be used to administer, reimburse, or support any national service program under section 129(d)(2) of the 1990 Act: *Provided further,* That, except as provided herein and in addition to requirements identified herein, funds provided in this paragraph shall be subject to the terms and conditions under which funds were appropriated in fiscal year 2008: *Provided further,* That the CEO shall provide the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the funds appropriated in this paragraph prior to making

any Federal obligations of such funds in fiscal year 2009, but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the allocation of resources and the increased number of members supported by the AmeriCorps programs: *Provided further*, That the CEO shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''National Service Trust'' established under subtitle D of title I of the National and Community Service Act of 1990 (''1990 Act''), $40,000,000, which shall remain available until expended: *Provided*, That the Corporation for National and Community Service may transfer additional funds from the amount provided within ''Operating Expenses'' for grants made under subtitle C of title I of the 1990 Act to this appropriation upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That the amount appropriated for or transferred to the National Service Trust may be invested under section 145(b) of the 1990 Act without regard to the requirement to apportion funds under 31 U.S.C. 1513(b).

SOCIAL SECURITY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Limitation on Administrative Expenses'', $890,000,000 shall be available as follows:

(1) $750,000,000 shall remain available until expended for necessary expenses of the replacement of the National Computer Center and the information technology costs associated with such Center: *Provided*, That the Commissioner of Social Security shall notify the Committees on Appropriations of the House of Representatives and the Senate not later than 10 days prior to each public notice soliciting bids related to site selection and construction: *Provided further*, That unobligated balances of funds not needed for this purpose may be used as described in subparagraph (2); and

(2) $140,000,000 shall be available through September 30, 2010 for information technology acquisitions and research, which may include research and activities to facilitate the adoption of electronic medical records in disability claims and the transfer of funds to ''Supplemental Security Income'' to carry out activities under section 1110 of the Social Security Act: *Provided further*, That not later than 10 days prior to the obligation of such funds, the Commissioner shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan describing the planned uses of such funds.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the ''Office of Inspector General'', $3,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, projects, and activities funded in this Act and administered by the Social Security Administration.

GENERAL PROVISIONS—THIS TITLE

SEC. 801. REPORT ON THE IMPACT OF PAST AND FUTURE MINIMUM WAGE INCREASES. (a) IN GENERAL.—Section 8104 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28; 121 Stat. 189) is amended to read as follows:

''SEC. 8104. REPORT ON THE IMPACT OF PAST AND FUTURE MINIMUM WAGE INCREASES.

''(a) STUDY.—Beginning on the date that is 60 days after the date of enactment of this Act, and every year thereafter until the minimum wage in the respective territory is $7.25 per hour, the Government Accountability Office shall conduct a study to—

''(1) assess the impact of the minimum wage increases that occurred in American Samoa and the Commonwealth of the Northern Mariana Islands in 2007 and 2008, as required under Public Law 110–28, on the rates of employment and the living standards of workers, with full consideration of the other factors that impact rates of employment and the living standards of workers such as inflation in the cost of food, energy, and other commodities; and

''(2) estimate the impact of any further wage increases on rates of employment and the living standards of workers in American Samoa and the Commonwealth of the Northern Mariana Islands, with full consideration of the other factors that may impact the rates of employment and the living standards of workers, including assessing how the profitability of major private sector firms may be impacted by wage increases in comparison to other factors such as energy costs and the value of tax benefits.

''(b) REPORT.—No earlier than March 15, 2009, and not later than April 15, 2009, the Government Accountability Office shall transmit its first report to Congress concerning the findings of the study required under subsection (a). The Government Accountability Office shall transmit any subsequent reports to Congress concerning the findings of a study required by subsection (a) between March 15 and April 15 of each year.

''(c) ECONOMIC INFORMATION.—To provide sufficient economic data for the conduct of the study under subsection (a)—

''(1) the Department of Labor shall include and separately report on American Samoa and the Commonwealth of the Northern Mariana Islands in its household surveys and establishment surveys;

''(2) the Bureau of Economic Analysis of the Department of Commerce shall include and separately report on American Samoa and the Commonwealth of the Northern Mariana Islands in its gross domestic product data; and

''(3) the Bureau of the Census of the Department of Commerce shall include and separately report on American Samoa and the Commonwealth of the Northern Mariana Islands in its population estimates and demographic profiles from the American Community Survey,

with the same regularity and to the same extent as the Department or each Bureau collects and reports such data for the 50 States. In the event that the inclusion of American Samoa and the Commonwealth of the Northern Mariana Islands in such surveys and data compilations requires time to structure and implement, the Department of Labor, the Bureau of Economic Analysis, and the Bureau of the Census (as the case may be) shall in the interim annually report the best available data that can feasibly be secured with respect to such territories. Such interim reports shall describe the steps the Department or the respective Bureau will take to improve future data collection in the territories to achieve comparability with the data collected in the United States. The Department of Labor, the Bureau of Economic Analysis, and the Bureau of the Census, together with the Department of the Interior, shall coordinate their efforts to achieve such improvements.''.

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

SEC. 802. FEDERAL COORDINATING COUNCIL FOR COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH. (a) ESTABLISHMENT.—There is hereby established a Federal Coordinating Council for Comparative Clinical Effectiveness Research (in this section referred to as the ''Council'').

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

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

(2) advise the President and Congress on—

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

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

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

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Council shall be composed of not more than 15 members, all of whom are senior Federal officers or employees with responsibility for health-related programs, appointed by the President, acting through the Secretary of Health and Human Services (in this section referred to as the ''Secretary''). Members shall first be appointed to the Council not later than 30 days after the date of the enactment of this Act.

(2) MEMBERS.—

(A) IN GENERAL.—The members of the Council shall include one senior officer or employee from each of the following agencies:

(i) The Agency for Healthcare Research and Quality.

(ii) The Centers for Medicare and Medicaid Services.

(iii) The National Institutes of Health.

(iv) The Office of the National Coordinator for Health Information Technology.

(v) The Food and Drug Administration.

(vi) The Veterans Health Administration within the Department of Veterans Affairs.

(vii) The office within the Department of Defense responsible for management of the Department of Defense Military Health Care System.

(B) QUALIFICATIONS.—At least half of the members of the Council shall be physicians or other experts with clinical expertise.

(3) CHAIRMAN; VICE CHAIRMAN.—The Secretary shall serve as Chairman of the Council and shall designate a member to serve as Vice Chairman.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than June 30, 2009, the Council shall submit to the President and the Congress a report containing information describing Federal activities on comparative clinical effectiveness

research and recommendations for additional investments in such research conducted or supported from funds made available for allotment by the Secretary for comparative clinical effectiveness research in this Act.

(2) ANNUAL REPORT.—The Council shall submit to the President and Congress an annual report regarding its activities and recommendations concerning the infrastructure needs, appropriate organizational expenditures and opportunities for better coordination of comparative clinical effectiveness research by relevant Federal departments and agencies.

(e) STAFFING; SUPPORT.—From funds made available for allotment by the Secretary for comparative clinical effectiveness research in this Act, the Secretary shall make available not more than 1 percent to the Council for staff and administrative support.

SEC. 803. HIGHER EDUCATION MODERNIZATION, RENOVATION, AND REPAIR. (a) PURPOSE.—Grants awarded under this section shall be for the purpose of modernizing, renovating, and repairing institution of higher education facilities that are primarily used for instruction and research.

Funds may also be used for leasing, purchasing or upgrading equipment, designed to strengthen and support academic and technical skill achievement.

(b) GRANTS TO STATE HIGHER EDUCATION AGENCIES.—

(1) FORMULA.—From the amounts appropriated to carry out this section, the Secretary of Education shall allocate funds to State higher education agencies based on the number of students attending institutions of higher education, with the State higher education agency in each State receiving an amount that is in proportion to the number of full-time equivalent undergraduate students attending institutions of higher education in such State for the most recent fiscal year for which there are data available, relative to the total number of full-time equivalent undergraduate students attending institutions of higher education in all States for such fiscal year.

(2) APPLICATION.—To be eligible to receive an allocation from the Secretary under paragraph (1), a State higher education agency shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(3) REALLOCATION.—Amounts allocated to a State higher education agency under this section that are not obligated by such agency within 12 months of the date the agency receives such amounts shall be returned to the Secretary, and the Secretary shall reallocate such amounts to State higher education agencies in other States on the same basis as the original allocations under paragraph (1).

(4) ADMINISTRATION AND OVERSIGHT EXPENSES.—From the amounts appropriated to carry out this section, not more than $3,000,000 shall be available to the Secretary for administrative and oversight expenses related to carrying out this section.

(c) USE OF GRANTS BY STATE HIGHER EDUCATION AGENCIES.—

(1) SUBGRANTS TO INSTITUTIONS OF HIGHER EDUCATION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each State higher education agency receiving an allocation under subsection (b)(1) shall use the amount allocated to award subgrants to institutions of higher education within the State to carry out projects in accordance with subsection (d)(1).

(B) SUBGRANT AWARD ALLOCATION.—A State higher education agency shall award subgrants to institutions of higher education under this section based on the demonstrated need of each institution for facility modernization, renovation, repair, and equipment.

(C) COMMUNITY COLLEGES.—Notwithstanding, subparagraph (B), the percentage of funds allocated to community colleges in each State shall be no less than the percentage of full-time equivalent students attending community colleges relative to the total number of full-time equivalent undergraduate students attending public institutions of higher education in the State.

(D) PRIORITY CONSIDERATIONS.—In awarding subgrants under this section, each State higher education agency shall give priority consideration to institutions of higher education with any of the following characteristics:

(i) The institution is eligible for Federal assistance under title III or title V of the Higher Education Act of 1965.

(ii) The institution was impacted by a major disaster or emergency declared by the President (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))), including an institution affected by a Gulf hurricane disaster, as such term is defined in section 824(g)(1) of the Higher Education Act of 1965 (20 U.S.C. 11611–3(g)(1)).

(iii) The institution demonstrates that the proposed project or projects to be carried out with a subgrant under this section will increase the energy efficiency of the institution's facilities and comply with the LEED Green Building Rating System.

(2) ADMINISTRATIVE AND OVERSIGHT EXPENSES.—Of the allocation amount received under subsection (b)(1), a State higher education agency may reserve not more than 5 percent of such amount, or $500,000, whichever is less, for administrative and oversight expenses related to carrying out this section.

(d) USE OF SUBGRANTS BY INSTITUTIONS OF HIGHER EDUCATION.—

(1) PERMISSIBLE USES OF FUNDS.—An institution of higher education receiving a subgrant under this section shall use such subgrant to modernize, renovate, or repair facilities of the institution that are primarily used for instruction, research, or student housing, which may include any of the following:

(A) Repair, replacement, or installation of roofs, electrical wiring, plumbing systems, sewage systems, or lighting systems.

(B) Repair, replacement, or installation of heating, ventilation, or air conditioning systems (including insulation).

(C) Compliance with fire and safety codes, including—

(i) professional installation of fire or life safety alarms; and

(ii) modernizations, renovations, and repairs that ensure that the institution's facilities are prepared for emergencies, such as improving building infrastructure to accommodate security measures.

(D) Retrofitting necessary to increase the energy efficiency of the institution's facilities.

(E) Renovations to the institution's facilities necessary to comply with accessibility requirements in the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(F) Abatement or removal of asbestos from the institution's facilities.

(G) Modernization, renovation, and repair relating to improving science and engineering laboratories, libraries, and instructional facilities.

(H) Upgrading or installation of educational technology infrastructure.

(I) Installation or upgrading of renewable energy generation and heating systems, including solar, photovoltaic, wind, biomass (including wood pellet), or geothermal systems, or components of such systems.

(J) Other modernization, renovation, or repair projects or purchase of equipment that are primarily for instruction or research.

(2) PROHIBITED USES OF FUNDS.—No funds awarded under this section may be used for—

(A) the maintenance of systems, equipment, or facilities, including maintenance associated with any permissible uses of funds described in paragraph (1);

(B) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(C) modernization, renovation, or repair of facilities—

(i) used for sectarian instruction, religious worship, or a school or department of divinity; or

(ii) in which a substantial portion of the functions of the facilities are subsumed in a religious mission; or

(D) construction of new facilities.

(e) APPLICATION OF GEPA.—The grant program authorized in this section is an applicable program (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b). The Secretary shall, notwithstanding section 437 of such Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, establish such program rules as may be necessary to implement such grant program by notice in the Federal Register.

(f) REPORTING.—

(1) REPORTS BY INSTITUTIONS.—Not later than September 30, 2011, each institution of higher education receiving a subgrant under this section shall submit to the State higher education agency awarding such subgrant a report describing the projects for which such subgrant was received, including—

(A) a description of each project carried out, or planned to be carried out, with such subgrant, including the types of modernization, renovation, and repair to be completed by each such project;

(B) the total amount of funds received by the institution under this section and the amount of such funds expended, as of the date of the report, on the such projects;

(C) the actual or planned cost of each such project and any demonstrable or expected academic, energy, or environmental benefits resulting from such project; and

(D) the total number of contracts, and amount of funding for such contracts, awarded by the institution to carry out such projects, as of the date of such report, including the number of contracts, and amount of funding for such contracts, awarded to local, small, minority-owned, women-owned, and veteran-owned businesses, as such terms are defined by the Small Business Act.

(2) REPORTS BY STATES.—Not later than December 31, 2011, each State higher education agency receiving a grant under this section shall submit to the Secretary a report containing a compilation of all of the reports under paragraph (1) submitted to the agency by institutions of higher education.

(3) REPORTS BY THE SECRETARY.—Not later than March 31, 2012, the Secretary shall submit to the Committee on Education and Labor in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate and Committees on Appropriations of the House of Representatives and the Senate a report on grants and subgrants made under this section, including the information described in paragraph (1).

(g) DEFINITIONS.—In this section:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has

the meaning given such term in section 101 of the Higher Education Act of 1965.

(2) LEED GREEN BUILDING RATING SYSTEM.—The term ''LEED Green Building Rating System'' means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as the LEED Green Building Rating System.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(4) STATE.—The term ''State'' has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(5) STATE HIGHER EDUCATION AGENCY.—The term ''State higher education agency'' has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(6) COMMUNITY COLLEGE.—The term ''Community College'' means a public non-profit institution of higher education as defined in section 101(a) of the Higher Education Act, whose highest degree offered is predominantly the associate degree.

SEC. 804. GRANTS FOR SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION. (a) ALLOCATION OF FUNDS.—

(1) RESERVATIONS.—

(A) OUTLYING AREAS AND BUREAU OF INDIAN EDUCATION.—From the funds appropriated to carry out this section, the Secretary shall reserve 1 percent to provide assistance under this section to the outlying areas and for payments to the Secretary of the Interior to provide assistance consistent with this section to schools funded by the Bureau of Indian Education. Funds reserved under this subparagraph shall be distributed by the Secretary among the outlying areas and the Secretary of the Interior on the basis of relative need, as determined by the Secretary, in accordance with the purposes of this section.

(B) IMPACT AID SCHOOLS.—

(i) IN GENERAL.—From the funds appropriated to carry out this section, the Secretary shall reserve 2 percent to make payments and award grants to local educational agencies under section 8007 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707).

(ii) CONSTRUCTION PAYMENTS AUTHORIZED.—

(I) IN GENERAL.—From 40 percent of the amount reserved under clause (i), the Secretary shall make payments in accordance with section 8007(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(a)), except that the amount of such payments shall be determined in accordance with subclause (II).

(II) AMOUNT OF PAYMENTS.—The Secretary shall make a payment to each local educational agency eligible for a payment under section 8007(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(a)) in an amount that bears the same relationship to the funds made available under subclause (I) as the number of children determined under subparagraphs (B), (C), and (D)(i) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)(B), (C), and (D)(i)) who were in average daily attendance in the local educational agency for the most recent year for which such information is available bears to the number of such children in all the local educational agencies eligible for a payment under section 8007(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(a)).

(iii) SCHOOL FACILITY EMERGENCY AND MODERNIZATION GRANTS AUTHORIZED.—

(I) IN GENERAL.—From 60 percent of the amount reserved under clause (i), the Secretary—

(aa) shall award emergency grants in accordance with section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)) to eligible local educational agencies to enable the agencies to carry out emergency repairs of school facilities; and

(bb) may award modernization grants in accordance with section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)) to eligible local educational agencies to enable the agencies to carry out the modernization of school facilities.

(II) PROVISIONS NOT TO APPLY.—Paragraphs (2), (3), (4), (5)(A)(i), and (5)(A)(vi) of section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2), (3), (4), (5)(A)(i), and (5)(A)(vi)) shall not apply to grants made under this clause.

(III) ELIGIBILITY.—A local educational agency is eligible to receive a grant under this clause if the local educational agency—

(aa) is eligible to receive a payment under section 8002 or 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702 and 7703) for fiscal year 2008; and

(bb) has—

(AA) a total taxable assessed value of real property that may be taxed for school purposes of less than $100,000,000; or

(BB) an assessed value of real property per student that may be taxed for school purposes that is less than the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the local educational agency is located.

(IV) CRITERIA FOR GRANTS.—In awarding grants under this clause, the Secretary shall consider the following criteria:

(aa) Whether the facility poses a health or safety threat to students and school personnel, including noncompliance with building codes and inaccessibility for persons with disabilities, or whether the existing building capacity meets the needs of the current enrollment and supports the provision of comprehensive educational services to meet current standards in the State in which the local educational agency is located.

(bb) The extent to which the new design and proposed construction utilize energy efficient and recyclable materials.

(cc) The extent to which the new design and proposed construction utilizes non-traditional or alternative building methods to expedite construction and project completion and maximize cost efficiency.

(dd) The feasibility of project completion within 24 months from award.

(ee) The availability of other resources for the proposed project.

(C) ADMINISTRATION AND OVERSIGHT.—The Secretary may, in addition, reserve up to $5,000,000 of the amount appropriated to carry out this section for administration and oversight of this section.

(2) ALLOCATION TO STATE EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), after making the reservations described in paragraph (1), from the remainder of the appropriated funds described in paragraph (1), the Secretary shall allocate to each State educational agency serving a State an amount that bears the same relation to the remainder as the amount the State received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for fiscal year 2008 bears to the amount all States received under such part for fiscal year 2008.

(B) MINIMUM AMOUNT.—No State educational agency shall receive less than 0.5 percent of the amount allocated under this paragraph.

(3) SPECIAL RULE.—The Secretary shall make and distribute the reservations and allocations described in paragraphs (1) and (2) not later than 60 days after the date of enactment of this Act.

(b) WITHIN-STATE ALLOTMENTS.—

(1) ADMINISTRATIVE COSTS.—

(A) STATE EDUCATIONAL AGENCY ADMINISTRATION.—Except as provided in subparagraph (C), each State educational agency may reserve not more than 1 percent of its allocation under subsection (a)(2) or $2,000,000, whichever is less, for the purpose of administering the distribution of grants under this subsection.

(B) REQUIRED USES.—Each State educational agency shall use a portion of the reserved funds under subparagraph (A) to establish or support a State-level database of public school facility inventory, condition, design, and utilization.

(C) STATE ENTITY ADMINISTRATION.—If a State educational agency transfers funds to a State entity described in paragraph (3)(A)(ii), the State educational agency shall transfer to such entity 0.75 percent of the amount reserved under subparagraph (A) for the purpose of administering the distribution of grants under this subsection.

(2) ALLOTMENTS TO THE LOCAL EDUCATIONAL AGENCIES WITH THE MOST POOR CHILDREN.—

(A) IN GENERAL.—

(i) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—In this subparagraph, the term ''eligible local educational agency'' means a local educational agency that is 1 of the 100 local educational agencies in the United States that serve the most students who are poor children.

(ii) ALLOTMENT.—Not later than 60 days after the date a State educational agency receives an allocation from the Secretary under this section, the State educational agency shall allot to each eligible local educational agency in the State an amount determined under clause (iii) to be used consistent with subsection (c) for school repair, renovation, and construction.

(iii) DETERMINATION OF AMOUNT.—An allotment under this subparagraph to an eligible local educational agency shall be in an amount that bears the same relation to the amount allocated to the State under this section and not reserved under paragraph (1), as the amount of funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) that the eligible local educational agency received from the State for the most recent fiscal year for which data is available bears to the total amount of such funds received by all local educational agencies in the State under such part for the most recent fiscal year for which data is available.

(B) NO ELIGIBILITY FOR COMPETITIVE GRANTS.—No local educational agency receiving funding under subparagraph (A) shall be eligible for funding under paragraph (3).

(C) PRIORITY IN FUNDING GREEN PROJECTS.—A local educational agency that receives funding under subparagraph (A) shall give priority to funding school repair, renovation, or construction projects 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 authority over the local educational agency.

(3) RESERVATION FOR COMPETITIVE SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION GRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—After making the reservation described in paragraph (1), from the remainder of the funds allocated to a State

educational agency under this section, the State educational agency shall—

(i) award grants to local educational agencies to be used, consistent with subsection (c), for school renovation, repair, and construction; or

(ii) if such State educational agency is not responsible for the financing of education facilities, transfer such funds to the State entity responsible for the financing of education facilities (referred to in this section as the ''State entity'') to award grants to local educational agencies to be used as described in clause (i).

(B) COMPETITIVE GRANTS TO LOCAL EDUCATIONAL AGENCIES.—The State educational agency or State entity shall carry out a program awarding grants, on a competitive basis, to local educational agencies for the purpose described in subparagraph (A). Of the total amount allocated to the State under this section and not reserved under paragraph (1), the State educational agency or State entity, shall carry out the following:

(i) Award to high-need local educational agencies, in the aggregate, not less than an amount which bears the same relationship to such total amount as the aggregate amount such high-need local educational agencies received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for fiscal year 2008 bears to the aggregate amount received for such fiscal year under such part by all local educational agencies in the State, reduced by the total amount the State educational agency has allotted under paragraph (2).

(ii) Award to rural local educational agencies, in the aggregate, not less than an amount which bears the same relationship to such total amount as the aggregate amount such rural local educational agencies received under such part for fiscal year 2008 bears to the aggregate amount received for such fiscal year under such part by all local educational agencies in the State.

(iii) Award the remaining funds to local educational agencies not receiving an award under clause (i) or (ii), including high-need local educational agencies and rural local educational agencies that did not receive such an award.

(C) CRITERIA FOR AWARDING COMPETITIVE GRANTS.—In awarding competitive grants under this paragraph, a State educational agency or State entity shall take into account the following criteria:

(i) PERCENTAGE OF POOR CHILDREN.—The percentage of poor children in a local educational agency.

(ii) NEED FOR SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION.—The need of a local educational agency for school renovation, repair, and construction, as demonstrated by the condition of the public school facilities of the local educational agency.

(iii) GREEN SCHOOLS.—The extent to which the local educational agency will make 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 authority over the local educational agency.

(iv) CAPABILITY TO IMPLEMENT PROJECTS EXPEDITIOUSLY.—The capability of the local educational agency to implement school renovation, repair, or construction projects expeditiously.

(v) FISCAL CAPACITY.—The fiscal capacity of a local educational agency to meet the needs of the local educational agency for renovation, repair, and construction of public school facilities without assistance under this section, including the ability of the local educational agency to raise funds through the use of local bonding capacity and otherwise.

(vi) LIKELIHOOD OF MAINTAINING THE FACILITY.—The likelihood that the local educational agency will maintain, in good condition, any facility whose renovation, repair, or construction is assisted under this section.

(vii) CHARTER SCHOOL ACCESS TO FUNDING.—In the case of a local educational agency that proposes to fund a renovation, repair, or construction project for a charter school, the extent to which the school has access to funding for the project through the financing methods available to other public schools or local educational agencies in the State.

(D) POSSIBLE MATCHING REQUIREMENT.—

(i) IN GENERAL.—A State educational agency or State entity may require local educational agencies to match competitive grant funds awarded under this section.

(ii) MATCH AMOUNT.—The amount of a match described in clause (i) may be established by using a sliding scale that takes into account the relative poverty of the population served by the local educational agency.

(c) RULES APPLICABLE TO SCHOOL RENOVATION, REPAIR, AND CONSTRUCTION.—With respect to funds made available under this section that are used for school renovation, repair, and construction, the following rules shall apply:

(1) PERMISSIBLE USES OF FUNDS.—School renovation, repair, and construction shall be limited to 1 or more of the following:

(A) Upgrade, repair, construct, or replace existing or planned public school building systems and components to improve the quality of education and ensure the health and safety of students and staff, including—

(i) repairing, replacing, or constructing early learning facilities (including renovation of existing facilities to serve children under 5 years of age);

(ii) repairing, replacing, or installing roofs, windows, doors, electrical wiring, plumbing systems, or sewage systems;

(iii) repairing, replacing, or installing heating, ventilation, or air conditioning systems (including insulation); and

(iv) bringing public schools into compliance with fire and safety codes.

(B) Modifications necessary to reduce the consumption of electricity, natural gas, oil, water, coal, or land.

(C) Modifications necessary to make public school facilities accessible to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(D) Improve environmental conditions of school sites, including asbestos abatement or removal, and the reduction or elimination of human exposure to lead-based paint, mold, or mildew.

(E) Upgrade or install educational technology infrastructure to ensure that students have access to up-to-date educational technology.

(F) Broaden or improve the use of school buildings and grounds to the community to improve educational outcomes.

(2) IMPERMISSIBLE USES OF FUNDS.—No funds received under this section may be used for—

(A) payment of maintenance costs in connection with any projects constructed in whole or part with Federal funds provided under this section;

(B) purchase or upgrade of vehicles;

(C) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(D) improvement or construction of standalone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or

(E) purchase of information technology hardware, including computers, monitors, or printers.

(3) SUPPLEMENT, NOT SUPPLANT.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and excluding the uses described in paragraph (1)(C), a local educational agency shall use Federal funds received under this section only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for school renovation, repair, and construction.

(B) EXCEPTION.—A local educational agency that is located in a State that is under a court order to finance school facilities shall not be subject to the requirement under subparagraph (A).

(d) QUALIFIED BIDDERS; COMPETITION.—Each local educational agency that receives funds under this section shall ensure that, if the local educational agency carries out renovation, repair, or construction through a contract, any such contract process ensures the maximum number of qualified bidders, including small, minority, and women-owned businesses, through full and open competition.

(e) REPORTING.—

(1) LOCAL REPORTING.—Each local educational agency receiving funds made available under this section shall submit a report to the State educational agency, at such time as the State educational agency may require describing the use of such funds for school renovation, repair, and construction, including the following:

(A) Type and description of work completed.

(B) The source of any non-federal funds used to complete the project.

(C) Person hours needed at various wage levels to complete the project.

(D) Anticipated energy or natural resource savings.

(2) STATE REPORTING.—Each State educational agency receiving funds made available under this section shall submit to the Secretary, not later than December 31, 2010, a report on the use of funds received under subsection (a)(2) and made available to local educational agencies for school renovation, repair, and construction.

(f) ADMINISTRATIVE COSTS.—Each local educational agency that receives funds under this section may reserve not more than 1 percent of the funds or $750,000, whichever amount is less, for the purpose of—

(1) administering school renovation, repair, and construction projects; and

(2) reporting under subsection (e).

(g) REALLOCATION.—If a State educational agency does not apply for an allocation of funds under subsection (a)(2), or does not use its entire allocation, then the Secretary may reallocate the amount of the State educational agency's allocation (or the remainder thereof, as the case may be) to the remaining State educational agencies in accordance with subsection (a)(2).

(h) APPLICATION OF GEPA.—The grant program under this section is an applicable program (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b).

(i) DEFINITIONS.—In this section:

(1) IN GENERAL.—The terms ''local educational agency'', ''Secretary'', and ''State educational agency'' have the meanings

given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) CHARTER SCHOOL.—The term ''charter school'' has the meaning given the term in section 5210 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7221i).

(3) CHPS CRITERIA.—The term ''CHPS Criteria'' means the green building rating program developed by the Collaborative for High Performance Schools.

(4) ENERGY STAR.—The term ''Energy Star'' means the Energy Star program of the Department of Energy and the Environmental Protection Agency.

(5) GREEN GLOBES.—The term ''Green Globes'' means the Green Building Initiative environmental design and rating system.

(6) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term ''high-need local educational agency'' has the meaning given the term in section 2102(3)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6602(3)(A)).

(7) LEED GREEN BUILDING RATING SYSTEM.—The term ''LEED Green Building Rating System'' means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard.

(8) OUTLYING AREA.—The term ''outlying area'' has the meaning given the term in section 1121(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331(c)).

(9) POOR CHILDREN.—The term ''poor children'' refers to children 5 to 17 years of age, inclusive, who are from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved for the most recent fiscal year for which data satisfactory to the Secretary are available.

(10) RURAL LOCAL EDUCATIONAL AGENCY.—The term ''rural local educational agency'' means a local educational agency that the State determines is located in a rural area using objective data and a commonly employed definition of the term ''rural''.

(11) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(TRANSFER OF FUNDS)

SEC. 805. (a) Not more than 1 percent of the funds made available to the Department of Labor in this title may be transferred by the Secretary of Labor to ''Employment and Training Administration—Program Administration'', ''Employment Standards Administration—Salaries and Expenses'', ''Occupational Safety and Health Administration—Salaries and Expenses'' and ''Departmental Management—Salaries and Expenses'' for expenses necessary to administer and coordinate funds made available to the Department of Labor in this title; oversee and evaluate the use of such funds; and enforce applicable laws and regulations governing worker rights and protections associated with the funds made available in this Act.

(b) Not later than 10 days prior to obligating any funds proposed to be transferred under subsection (a), the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan describing the planned uses of each amount proposed to be transferred.

(c) Funds transferred under this section may be available for obligation through September 30, 2010.

SEC. 806. ELIGIBLE EMPLOYEES IN THE RECREATIONAL MARINE INDUSTRY. Section 2(3)(F) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(3)(F)) is amended—

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

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

TITLE IX—LEGISLATIVE BRANCH

GOVERNMENT ACCOUNTABLIITY OFFICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' of the Government Accountability Office, $20,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 901. GOVERNMENT ACCOUNTABILITY OFFICE REVIEWS AND REPORTS. (a) REVIEWS AND REPORTS.—

(1) IN GENERAL.—The Comptroller General shall conduct bimonthly reviews and prepare reports on such reviews on the use by selected State and localities of funds made available in this Act. Such reports, along with any audits conducted by the Comptroller General of such funds, shall be posted on the Internet and linked to the website established under this Act by the Recovery Accountability and Transparency Board.

(2) REDACTIONS.—Any portion of a report or audit under this subsection may be redacted when made publicly available, if that portion would disclose information that is not subject to disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

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

SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE. Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives are authorized—

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

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

TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS, AND RELATED AGENCIES

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For an additional amount for ''Military Construction, Army'', $637,875,000, to remain available until September 30, 2013, of which $84,100,000 shall be for child development centers; $481,000,000 shall be for warrior transition complexes; and $42,400,000 shall be for health and dental clinics (including acquisition, construction, installation, and equipment): *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That of the funds provided under this heading, not to exceed $30,375,000 shall be available for study, planning, design, and architect and engineer services: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Army shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For an additional amount for ''Military Construction, Navy and Marine Corps'', $990,092,000, to remain available until September 30, 2013, of which $172,820,000 shall be for child development centers; $174,304,000 shall be for barracks; $125,000,000 shall be for health clinic replacement, and $494,362,000 shall be for energy conservation and alternative energy projects (including acquisition, construction, installation, and equipment): *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That of the funds provided under this heading, not to exceed $23,606,000 shall be available for study, planning, design, and architect and engineer services: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Navy shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for ''Military Construction, Air Force'', $871,332,000, to remain available until September 30, 2013, of which $80,100,000 shall be for child development centers; $612,246,000 shall be for dormitories; and $138,100,000 shall be for health clinics (including acquisition, construction, installation, and equipment): *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That of the funds provided under this heading, not to exceed $40,886,000 shall be available for study, planning, design, and architect and engineer services: *Provided further,* That within 30 days of enactment of this Act the Secretary of the Air Force shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, DEFENSE-WIDE

For an additional amount for ''Military Construction, Defense-Wide'', $118,560,000 for the Energy Conservation Investment Program, to remain available until September 30, 2010: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That within 30 days of enactment of this Act the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For an additional amount for ''Military Construction, Army National Guard'', $150,000,000 for readiness centers (including construction, acquisition, expansion, rehabilitation, and conversion), to remain available until September 30, 2013: *Provided,* That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further,* That within 30 days of enactment of this Act the Director of the Army National Guard shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For an additional amount for ''Military Construction, Air National Guard'',

$110,000,000, to remain available until September 30, 2013: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That within 30 days of enactment of this Act the Director of the Air National Guard shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

FAMILY HOUSING CONSTRUCTION, ARMY

For an additional amount for ''Family Housing Construction, Army'', $34,570,000, to remain available until September 30, 2013: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That within 30 days of enactment of this Act the Secretary of the Army shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For an additional amount for ''Family Housing Operation and Maintenance, Army'', $3,932,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended for operation and maintenance and minor construction projects in the United States not otherwise authorized by law.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

For an additional amount for ''Family Housing Construction, Air Force'', $80,100,000, to remain available until September 30, 2013: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That within 30 days of enactment of this Act the Secretary of the Air Force shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for ''Family Housing Operation and Maintenance, Air Force'', $16,461,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended for operation and maintenance and minor construction projects in the United States not otherwise authorized by law.

HOMEOWNERS ASSISTANCE FUND

For an additional amount for ''Homeowners Assistance Fund'', established by section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3374), $410,973,000, to remain available until expended.

ADMINISTRATIVE PROVISION

SEC. 1001. (a) TEMPORARY EXPANSION OF HOMEOWNERS ASSISTANCE PLAN TO RESPOND TO MORTGAGE FORECLOSURE AND CREDIT CRISIS.—Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as clauses (i), (ii), and (iii), respectively, and indenting such subparagraphs, as so redesignated, 6 ems from the left margin;

(B) by striking ''Notwithstanding any other provision of law'' and inserting the following:

''(1) ACQUISITION OF PROPERTY AT OR NEAR MILITARY INSTALLATIONS THAT HAVE BEEN ORDERED TO BE CLOSED.—Notwithstanding any other provision of law'';

(C) by striking ''if he determines'' and inserting ''if—

''(A) the Secretary determines—'';

(D) in clause (iii), as redesignated by subparagraph (A), by striking the period at the end and inserting ''; or''; and

(E) by adding at the end the following:

''(B) the Secretary determines—

''(i) that the conditions in clauses (i) and (ii) of subparagraph (A) have been met;

''(ii) that the closing or realignment of the base or installation resulted from a realignment or closure carried out under the 2005 round of defense base closure and realignment under the Defense Base Closure and Realignment Act of 1990 (part XXIX of Public Law 101–510; 10 U.S.C. 2687 note);

''(iii) that the property was purchased by the owner before July 1, 2006;

''(iv) that the property was sold by the owner between July 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

''(v) that the property is the primary residence of the owner; and

''(vi) that the owner has not previously received benefit payments authorized under this subsection.

''(2) HOMEOWNER ASSISTANCE FOR WOUNDED MEMBERS OF THE ARMED FORCES, DEPARTMENT OF DEFENSE AND UNITED STATES COAST GUARD CIVILIAN EMPLOYEES, AND THEIR SPOUSES.—Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling which was at the time of the relevant wound, injury, or illness, the primary residence of—

''(A) any member of the Armed Forces in medical transition who—

''(i) incurred a wound, injury, or illness in the line of duty during a deployment in support of the Armed Forces;

''(ii) is disabled to a degree of 30 percent or more as a result of such wound, injury, or illness, as determined by the Secretary of Defense or the Secretary of Veterans Affairs; and

''(iii) is reassigned in furtherance of medical treatment or rehabilitation, or due to medical retirement in connection with such disability;

''(B) any civilian employee of the Department of Defense or the United States Coast Guard who—

''(i) was wounded, injured, or became ill in the line of duty during a forward deployment in support of the Armed Forces; and

''(ii) is reassigned in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the sustained disability; or

''(C) the spouse of a member of the Armed Forces or a civilian employee of the Department of Defense or the United States Coast Guard if—

''(i) the member or employee was killed in the line of duty during a deployment in support of the Armed Forces or died from a wound, injury, or illness incurred in the line of duty during such a deployment; and

''(ii) the spouse relocates from such residence within 2 years after the death of such member or employee.

''(3) TEMPORARY HOMEOWNER ASSISTANCE FOR MEMBERS OF THE ARMED FORCES PERMANENTLY REASSIGNED DURING SPECIFIED MORTGAGE CRISIS.—Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling situated at or near a military base or installation, if the Secretary determines—

''(A) that the owner is a member of the Armed Forces serving on permanent assignment;

''(B) that the owner is permanently reassigned by order of the United States Government to a duty station or home port outside a 50-mile radius of the base or installation;

''(C) that the reassignment was ordered between February 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

''(D) that the property was purchased by the owner before July 1, 2006;

''(E) that the property was sold by the owner between July 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

''(F) that the property is the primary residence of the owner; and

''(G) that the owner has not previously received benefit payments authorized under this subsection.'';

(2) in subsection (b), by striking ''this section'' each place it appears and inserting ''subsection (a)(1)'';

(3) in subsection (c)—

(A) by striking ''Such persons'' and inserting the following:

''(1) HOMEOWNER ASSISTANCE RELATED TO CLOSED MILITARY INSTALLATIONS.—

''(A) IN GENERAL.—Such persons'';

(B) by striking ''set forth above shall elect either (1) to receive'' and inserting the following: ''set forth in subsection (a)(1) shall elect either—

''(i) to receive'';

(C) by striking ''difference between (A) 95 per centum'' and all that follows through ''(B) the fair market value'' and inserting the following: ''difference between—

''(I) 95 per centum of the fair market value of their property (as such value is determined by the Secretary of Defense) prior to public announcement of intention to close all or part of the military base or installation; and

''(II) the fair market value'';

(D) by striking ''time of the sale, or (2) to receive'' and inserting the following: ''time of the sale; or

''(ii) to receive'';

(E) by striking ''outstanding mortgages. The Secretary may also pay a person who elects to receive a cash payment under clause (1) of the preceding sentence an amount'' and inserting ''outstanding mortgages.

''(B) REIMBURSEMENT OF EXPENSES.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount''; and

(F) by striking ''best interest of the Federal Government. Cash payment'' and inserting the following: ''best interest of the United States.

''(2) HOMEOWNER ASSISTANCE FOR WOUNDED INDIVIDUALS AND THEIR SPOUSES.—

''(A) IN GENERAL.—Persons eligible under the criteria set forth in subsection (a)(2) may elect either—

''(i) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between—

''(I) 95 per centum of prior fair market value of their property (as such value is determined by the Secretary of Defense); and

''(II) the fair market value of such property (as such value is so determined) at the time of the wound, injury, or illness qualifying the individual for benefits under subsection (a)(2); or

''(ii) to receive, as purchase price for their property an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages.

''(B) DETERMINATION OF BENEFITS.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the United States.

''(3) HOMEOWNER ASSISTANCE FOR PERMANENTLY REASSIGNED INDIVIDUALS.—

''(A) IN GENERAL.—Persons eligible under the criteria set forth in subsection (a)(3) may elect either—

''(i) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between—

''(I) 95 per centum of prior fair market value of their property (as such value is determined by the Secretary of Defense); and

''(II) the fair market value of such property (as such value is so determined) at the time the person received change of permanent station orders; or

''(ii) to receive, as purchase price for their property an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages.

''(B) DETERMINATION OF BENEFITS.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the United States.

''(4) COMPENSATION AND LIMITATIONS RELATED TO FORECLOSURES AND ENCUMBRANCES.—Cash payment'';

(4) by striking subsection (g);

(5) in subsection (l), by striking ''(a)(2)'' and inserting ''(a)(1)(A)(ii)'';

(6) in subsection (m), by striking ''this section'' and inserting ''subsection (a)(1)'';

(7) in subsection (n)—

(A) in paragraph (1), by striking ''this section'' and inserting ''subsection (a)(1)''; and

(B) in paragraph (2), by striking ''this section'' and inserting ''subsection (a)(1)'';

(8) in subsection (o)—

(A) in paragraph (1), by striking ''this section'' and inserting ''subsection (a)(1)'';

(B) in paragraph (2), by striking ''this section'' and inserting ''subsection (a)(1)''; and

(C) by striking paragraph (4); and

(9) by adding at the end the following new subsection:

''(p) DEFINITIONS.—In this section:

''(1) the term 'Armed Forces' has the meaning given the term 'armed forces' in section 101(a) of title 10, United States Code;

''(2) the term 'civilian employee' has the meaning given the term 'employee' in section 2105(a) of title 5, United States Code;

''(3) the term 'medical transition', in the case of a member of the Armed Forces, means a member who—

''(A) is in Medical Holdover status;

''(B) is in Active Duty Medical Extension status;

''(C) is in Medical Hold status;

''(D) is in a status pending an evaluation by a medical evaluation board;

''(E) has a complex medical need requiring six or more months of medical treatment; or

''(F) is assigned or attached to an Army Warrior Transition Unit, an Air Force Patient Squadron, a Navy Patient Multidisciplinary Care Team, or a Marine Patient Affairs Team/Wounded Warrior Regiment; and

''(4) the term 'nonappropriated fund instrumentality employee' means a civilian employee who—

''(A) is a citizen of the United States; and

''(B) is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.''.

(b) CLERICAL AMENDMENT.—Such section is further amended in the section heading by inserting ''and certain property owned by members of the armed forces, department of defense and united states coast guard civilian employees, and surviving spouses'' after ''ordered to be closed''.

(c) AUTHORITY TO USE APPROPRIATED FUNDS.—Notwithstanding subsection (i) of such section, amounts appropriated or otherwise made available by this title under the heading ''Homeowners Assistance Fund'' may be used for the Homeowners Assistance Fund established under such section.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SUPPORT AND COMPLIANCE

For an additional amount for ''Medical Support and Compliance'', $5,000,000, to remain available until September 30, 2010, to support contract administration and energy initiative execution at the Veterans Health Administration.

MEDICAL FACILITIES

For an additional amount for ''Medical Facilities'', $1,370,459,000, to remain available until September 30, 2010, of which $1,047,313,000 shall be for facility condition assessment deficiencies and non-recurring maintenance at existing medical facilities; and $323,146,000 shall be for energy efficiency initiatives.

NATIONAL CEMETERY ADMINISTRATION

For an additional amount for ''National Cemetery Administration'', $64,961,000, to remain available until September 30, 2010, of which $59,476,000 shall be for capital infrastructure and memorial and monument repairs; and $5,485,000 shall be for energy efficiency initiatives.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For an additional amount for ''General Operating Expenses'', $1,125,000, to remain available until September 30, 2010, for additional Full Time Equivalent salary and expenses for major construction project administration and execution and energy initiative execution.

INFORMATION TECHNOLOGY SYSTEMS

For an additional amount for ''Information Technology Systems'', $195,000,000, to remain available until September 30, 2010, of which $145,000,000 shall be for the Veterans Benefits Administration's development of paperless claims processing; and $50,000,000 shall be for the development of systems required to implement chapter 33 of title 38, United States Code.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'', $4,400,000, to remain available until September 30, 2010, for oversight and audit of programs, grants and projects funded under this title.

CONSTRUCTION, MAJOR PROJECTS

For an additional amount for ''Construction, Major Projects'', $1,105,333,000, to remain available until September 30, 2013, which shall be for acceleration and construction of ongoing and planned construction, including physical security construction, of major medical facilities and National Cemeteries consistent with the Department of Veterans Affairs' Five Year Capital Plan: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and major medical facility construction not otherwise authorized by law: *Provided further*, That within 30 days of enactment of this Act the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading prior to obligation.

CONSTRUCTION, MINOR PROJECTS

For an additional amount for ''Construction, Minor Projects'', $939,836,000, to remain available until September 30, 2010, of which $860,742,000 shall be for Veterans Health Administration minor construction; $20,300,000 shall be for Veterans Benefits Administration minor construction, including $300,000 for energy efficiency initiatives; and $29,012,000 shall be for National Cemetery Administration minor construction.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For an additional amount for ''Grants for Construction of State Extended Care Facilities'', $257,986,000, to remain available until September 30, 2010, for grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify, or alter existing hospital, nursing home, and domiciliary facilities in State homes, for furnishing care to veterans as authorized by sections 8131 through 8137 of title 38, United States Code.

ADMINISTRATIVE PROVISION

SEC. 1002. PAYMENTS TO ELIGIBLE PERSONS WHO SERVED IN THE UNITED STATES ARMED FORCES IN THE FAR EAST DURING WORLD WAR II. (a) FINDINGS.—Congress makes the following findings:

(1) The Philippine islands became a United States possession in 1898 when they were ceded from Spain following the Spanish-American War.

(2) During World War II, Filipinos served in a variety of units, some of which came under the direct control of the United States Armed Forces.

(3) The regular Philippine Scouts, the new Philippine Scouts, the Guerilla Services, and more than 100,000 members of the Philippine Commonwealth Army were called into the service of the United States Armed Forces of the Far East on July 26, 1941, by an executive order of President Franklin D. Roosevelt.

(4) Even after hostilities had ceased, wartime service of the new Philippine Scouts continued as a matter of law until the end of 1946, and the force gradually disbanded and was disestablished in 1950.

(5) Filipino veterans who were granted benefits prior to the enactment of the so-called Rescissions Acts of 1946 (Public Laws 79–301 and 79–391) currently receive full benefits under laws administered by the Secretary of Veterans Affairs, but under section 107 of title 38, United States Code, the service of certain other Filipino veterans is deemed not to be active service for purposes of such laws.

(6) These other Filipino veterans only receive certain benefits under title 38, United States Code, and, depending on where they legally reside, are paid such benefit amounts at reduced rates.

(7) The benefits such veterans receive include service-connected compensation benefits paid under chapter 11 of title 38, United

States Code, dependency indemnity compensation survivor benefits paid under chapter 13 of title 38, United States Code, and burial benefits under chapters 23 and 24 of title 38, United States Code, and such benefits are paid to beneficiaries at the rate of $0.50 per dollar authorized, unless they lawfully reside in the United States.

(8) Dependents' educational assistance under chapter 35 of title 38, United States Code, is also payable for the dependents of such veterans at the rate of $0.50 per dollar authorized, regardless of the veterans' residency.

(b) COMPENSATION FUND.—

(1) IN GENERAL.—There is in the general fund of the Treasury a fund to be known as the ''Filipino Veterans Equity Compensation Fund'' (in this section referred to as the ''compensation fund'').

(2) AVAILABILITY OF FUNDS.—Subject to the availability of appropriations for such purpose, amounts in the fund shall be available to the Secretary of Veterans Affairs without fiscal year limitation to make payments to eligible persons in accordance with this section.

(c) PAYMENTS.—

(1) IN GENERAL.—The Secretary may make a payment from the compensation fund to an eligible person who, during the one-year period beginning on the date of the enactment of this Act, submits to the Secretary a claim for benefits under this section. The application for the claim shall contain such information and evidence as the Secretary may require.

(2) PAYMENT TO SURVIVING SPOUSE.—If an eligible person who has filed a claim for benefits under this section dies before payment is made under this section, the payment under this section shall be made instead to the surviving spouse, if any, of the eligible person.

(d) ELIGIBLE PERSONS.—An eligible person is any person who—

(1) served—

(A) before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States; or

(B) in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 (59 Stat. 538); and

(2) was discharged or released from service described in paragraph (1) under conditions other than dishonorable.

(e) PAYMENT AMOUNTS.—Each payment under this section shall be—

(1) in the case of an eligible person who is not a citizen of the United States, in the amount of $9,000; and

(2) in the case of an eligible person who is a citizen of the United States, in the amount of $15,000.

(f) LIMITATION.—The Secretary may not make more than one payment under this section for each eligible person described in subsection (d).

(g) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER CERTAIN LAWS.—Amounts paid to a person under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included in income or resources for purposes of determining—

(A) eligibility of an individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits;

(B) eligibility of an individual to receive benefits under title VIII of the Social Security Act, or the amount of such benefits; or

(C) eligibility of an individual for, or the amount of benefits under, any other Federal or federally assisted program.

(h) RELEASE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the acceptance by an eligible person or surviving spouse, as applicable, of a payment under this section shall be final, and shall constitute a complete release of any claim against the United States by reason of any service described in subsection (d).

(2) PAYMENT OF PRIOR ELIGIBILITY STATUS.—Nothing in this section shall prohibit a person from receiving any benefit (including health care, survivor, or burial benefits) which the person would have been eligible to receive based on laws in effect as of the day before the date of the enactment of this Act.

(i) RECOGNITION OF SERVICE.—The service of a person as described in subsection (d) is hereby recognized as active military service in the Armed Forces for purposes of, and to the extent provided in, this section.

(j) ADMINISTRATION.—

(1) The Secretary shall promptly issue application forms and instructions to ensure the prompt and efficient administration of the provisions of this section.

(2) The Secretary shall administer the provisions of this section in a manner consistent with applicable provisions of title 38, United States Code, and other provisions of law, and shall apply the definitions in section 101 of such title in the administration of such provisions, except to the extent otherwise provided in this section.

(k) REPORTS.—The Secretary shall include, in documents submitted to Congress by the Secretary in support of the President's budget for each fiscal year, detailed information on the operation of the compensation fund, including the number of applicants, the number of eligible persons receiving benefits, the amounts paid out of the compensation fund, and the administration of the compensation fund for the most recent fiscal year for which such data is available.

(l) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the compensation fund $198,000,000, to remain available until expended, to make payments under this section.

RELATED AGENCY

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARY AND EXPENSES

For an additional amount for ''Cemeterial Expenses, Army'', $60,300,000, to remain available until September 30, 2010, for land development, columbarium construction, and relocation of utilities at Arlington National Cemetery.

TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For an additional amount for ''Diplomatic and Consular Programs'' for urgent domestic facilities requirements, $180,500,000, to remain available until September 30, 2010, of which up to $45,000,000 shall be available for passport and visa facilities and systems, and up to $75,000,000 shall be available for a consolidated security training facility in the United States: *Provided,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading: *Provided further,* That with respect to the funds made available for passport facilities and systems, such plan shall be developed in consultation with the Department of Homeland Security and the General Services Administration and shall coordinate and co-locate, to the extent feasible, the construction of passport agencies with other Federal facilities.

CAPITAL INVESTMENT FUND

For an additional amount for ''Capital Investment Fund'', $524,000,000, to remain available until September 30, 2010, of which up to $120,000,000 shall be available for the design and construction of a backup information management facility in the United States to support continuity of critical mission operations and programs, and up to $98,527,000 shall be available to carry out the Department of State's responsibilities under the Comprehensive National Cybersecurity Initiative: *Provided,* That the Secretary of State and the Administrator of the United States Agency for International Development shall coordinate information technology systems, where appropriate, to increase efficiencies and eliminate redundancies, to include co-location of backup information management facilities: *Provided further,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Office of Inspector General'' for oversight requirements, $2,000,000, to remain available until September 30, 2010.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Construction'' for the water quantity program to meet immediate repair and rehabilitation requirements, $224,000,000, to remain available until September 30, 2010: *Provided,* That up to $2,000,000 may be transferred to, and merged with, funds available under the heading ''International Boundary and Water Commission, United States and Mexico—Salaries and Expenses'': *Provided,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

CAPITAL INVESTMENT FUND

For an additional amount for ''Capital Investment Fund'', $100,000,000, to remain available until September 30, 2010, of which $34,000,000 shall be available for information technology modernization programs and of which up to $35,000,000 shall be available for implementation of the Global Acquisition System: *Provided,* That the Administrator of the United States Agency for International Development shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

For an additional amount for ''Operating Expenses of the United States Agency for International Development Office of Inspector General'' for oversight requirements, $500,000, to remain available until September 30, 2010.

TITLE XII—TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL SURFACE TRANSPORTATION SYSTEM

For an additional amount for capital investments in surface transportation infrastructure, $5,500,000,000, to remain available until September 30, 2011: *Provided,* That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to be awarded to State and local governments on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region: *Provided further,* That projects eligible for funding provided under this heading shall include, but not be limited to, 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; 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; passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement: *Provided further,* That of the amount made available under this paragraph, the Secretary may use an amount not to exceed $200,000,000 for the purpose of paying the subsidy 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 paragraph: *Provided further,* That in distributing funds provided under this heading, the Secretary shall take such measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities: *Provided further,* That a grant funded under this heading shall be not less than $20,000,000 and not greater than $500,000,000: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading may be up to 100 percent: *Provided further,* That the Secretary shall give priority to projects that require an additional share of Federal funds in order to complete an overall financing package, and to projects that are expected to be completed within 3 years of enactment of this Act: *Provided further,* That the Secretary shall publish criteria on which to base the competition for any grants awarded under this heading not later than 75 days after enactment of this Act: *Provided further,* That the Secretary shall require applications for funding provided under this heading to be submitted not later than 180 days after enactment of this Act, and announce all projects selected to be funded from such funds not later than 1 year after enactment of this Act: *Provided further,* That the Secretary shall require all additional applications to be submitted not later than 1 year after enactment of this Act, and announce not later than 180 days following such 1-year period all additional projects selected to be funded with funds withdrawn from States and grantees and transferred from ''Supplemental Grants for Highway Investments'' and ''Supplemental Grants for Public Transit Investment'': *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That the Secretary may retain up to $5,000,000 of the funds provided under this heading, and may transfer portions of those funds to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration and the Maritime Administration, to fund the award and oversight of grants made under this heading.

FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT

For an additional amount for necessary investments in Federal Aviation Administration infrastructure, $200,000,000: *Provided,* That funding provided under this heading shall be used to make improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment: *Provided further,* That priority be given to such projects or activities that will be completed within 2 years of enactment of this Act: *Provided further,* That amounts made available under this heading may be provided through grants in addition to the other instruments authorized under section 106(l)(6) of title 49, United States Code: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading shall be 100 percent: *Provided further,* That amounts provided under this heading may be used for expenses the agency incurs in administering this program: *Provided further,* That not more than 60 days after enactment of this Act, the Administrator shall establish a process for applying, reviewing and awarding grants and cooperative and other transaction agreements, including the form and content of an application, and requirements for the maintenance of records that are necessary to facilitate an effective audit of the use of the funding provided: *Provided further,* That section 50101 of title 49, United States Code, shall apply to funds provided under this heading.

SUPPLEMENTAL DISCRETIONARY GRANTS FOR AIRPORT INVESTMENT

For an additional amount for capital expenditures authorized under sections 47102(3) and 47504(c) of title 49, United States Code, and for the procurement, installation and commissioning of runway incursion prevention devices and systems at airports of such title, $1,100,000,000: *Provided,* That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to airports, with priority given to those projects that demonstrate to his or her satisfaction their ability to be completed within 2 years of enactment of this Act, and serve to supplement and not supplant planned expenditures from airport-generated revenues or from other State and local sources on such activities: *Provided further,* That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further,* That the amount made available under this heading shall not be subject to any limitation on obligations for the Grants-in-Aid for Airports program set forth in any Act: *Provided further,* That section 50101 of title 49, United States Code, shall apply to funds provided under this heading: *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That the Administrator of the Federal Aviation Administration may retain and transfer to ''Federal Aviation Administration, Operations'' up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

FEDERAL HIGHWAY ADMINISTRATION

SUPPLEMENTAL GRANTS FOR HIGHWAY INVESTMENT

For an additional amount for restoration, repair, construction and other activities eligible under paragraph (b) of section 133 of title 23, United States Code, $27,060,000,000: *Provided,* That funds provided under this heading shall be apportioned to States using the formula set forth in section 104(b)(3) of such title: *Provided further,* That 180 days following the date of such apportionment, the Secretary of Transportation shall withdraw from each State an amount equal to 50 percent of the funds awarded to that grantee less the amount of funding obligated, and the Secretary shall redistribute such amounts to other States that have had no funds withdrawn under this proviso in the manner described in section 120(c) of division K of Public Law 110–161: *Provided further,* That 1 year following the date of such apportionment, the Secretary shall withdraw from each recipient of funds apportioned under this heading any unobligated funds and transfer such funds to ''Supplemental Discretionary Grants for a National Surface Transportation System'': *Provided further,* That at the request of a State, the Secretary of Transportation may provide an extension of such 1-year period only to the extent that he or she feels satisfied that the State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances: *Provided further,* That before granting a such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: *Provided further,* That the provisions of subsections 133(d)(3) and 133(d)(4) of title 23, United States Code, shall apply to funds apportioned under this heading, except that the percentage of funds to be allocated to local jurisdictions shall be 40 percent and such allocation, notwithstanding any other provision of law, shall be conducted in all states within the United States: *Provided further,* That funds allocated to such urbanized areas and other areas shall not be subject to the redistribution of amounts required 180 days following the date of apportionment of funds provided under this heading: *Provided further,* That funds apportioned under this heading may be used for, but not be limited to, projects that address stormwater runoff, investments in passenger and freight rail transportation, and investments in port infrastructure: *Provided further,* that each State shall use not less than 5 percent of funds apportioned to it for activities eligible under subsections 149(b) and (c) of title 23, United States Code: *Provided further,* That of the funds provided under this heading, $60,000,000 shall be for capital expenditures eligible under section 147 of title 23, United States Code: *Provided further,* That the Secretary of Transportation shall distribute such $60,000,000 as competitive discretionary grants to States, with priority given to those projects that demonstrate to his or her satisfaction their ability to be completed within 2 years of enactment of this Act: *Provided further,* That of the funds provided under this heading, $500,000,000 shall be for investments in transportation at Indian reservations and Federal lands, and administered in accordance with chapter 2 of title 23, United States Code: *Provided further,* That of the funds identified in the preceding proviso, $320,000,000 shall be for the Indian Reservation Roads program, $100,000,000 shall be for the Park Roads and

Parkways program, $70,000,000 shall be for the Forest Highway Program, and $10,000,000 shall be for the Refuge Roads program: *Provided further*, That for investments at Indian reservations and Federal lands, priority shall be given to capital investments, and to projects and activities that can be completed within 2 years of enactment of this Act: *Provided further*, That 1 year following the enactment of this Act, to ensure the prompt use of the $500,000,000 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: *Provided further*, That up to 4 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: *Provided further*, That section 134(f)(3)(C)(ii)(II) of title 23, United States Code, shall not apply to funds provided under this heading: *Provided further*, That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall be at the option of the recipient, and may be up to 100 percent of the total cost thereof: *Provided further*, That funding provided under this heading shall be in addition to any and all funds provided for fiscal years 2008 and 2009 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: *Provided further*, That the amount made available under this heading shall not be subject to any limitation on obligations for Federal-aid highways or highway safety construction programs set forth in any Act: *Provided further*, That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further*, That section 313 of title 23, United States Code, shall apply to funds provided under this heading: *Provided further*, That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this heading: *Provided further*, That for the purposes of the definition of States for this paragraph, sections 101(a)(32) of title 23, United States Code, shall apply: *Provided further*, That the Administrator of the Federal Highway Administration may retain up to $12,000,000 of the funds provided under this heading to carry out the function of the ''Federal Highway Administration, Limitation on Administrative Expenses'' and 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.

FEDERAL RAILROAD ADMINISTRATION

SUPPLEMENTAL GRANTS TO STATES FOR INTERCITY PASSENGER RAIL SERVICE

For an additional amount for discretionary grants to States to pay for the cost of projects described in paragraphs (2)(A) and (2)(B) of section 24401 of title 49, United States Code, and subsection (b) of section 24105 of such title, $250,000,000: *Provided*, That to be eligible for assistance under this paragraph, the specific project must be on a Statewide Transportation Improvement Plan at the time of the application to qualify: *Provided further*, That the Secretary of Transportation shall give priority to projects that demonstrate an ability to be completed within 2 years of enactment of this Act, and to projects that improve the safety and reliability of intercity passenger trains: *Provided further*, That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further*, That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further*, That section 24405(a) of title 49, United States Code, shall apply to funds provided under this heading: *Provided further*, That the Administrator of the Federal Railroad Administration may retain and transfer to ''Federal Railroad Administration, Safety and Operations'' up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

SUPPLEMENTAL CAPITAL GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for the immediate investment in capital projects necessary to maintain and improve national intercity passenger rail service, including the rehabilitation of rolling stock, $850,000,000: *Provided*, That funds made available under this heading shall be allocated directly to the National Railroad Passenger Corporation: *Provided further*, That the Board of Directors of the corporation shall take measures to ensure that priority is given to capital projects that expand passenger rail capacity: *Provided further*, That the Board of Directors shall take measures to ensure that projects funded under this heading 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: *Provided further*, That said Board of Directors shall certify to the House and Senate Committees on Appropriations in writing their compliance with the preceding proviso: *Provided further*, That section 24305(f) of title 49, United States Code, shall apply to funds provided under this heading: *Provided further*, That not more than 50 percent of the funds provided under this heading may be used for capital projects along the Northeast Corridor.

HIGH-SPEED RAIL CORRIDOR PROGRAM

To make grants for high-speed rail projects under the provisions of section 26106 of title 49, United States Code, $2,000,000,000, to remain available until September 30, 2011: *Provided*, That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further*, That the Administrator of the Federal Railroad Administration may retain and transfer to ''Federal Railroad Administration, Safety and Operations'' up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this paragraph.

FEDERAL TRANSIT ADMINISTRATION

SUPPLEMENTAL GRANTS FOR PUBLIC TRANSIT INVESTMENT

For an additional amount for capital expenditures authorized under section 5302(a)(1) of title 49, United States Code, $8,400,000,000: *Provided*, That the Secretary of Transportation shall apportion 71 percent of the funds apportioned under this heading using the formula set forth in subsections (a) through (c) of section 5336 of title 49, United States Code, 19 percent of the funds apportioned under this heading using the formula set forth in section 5340 of such title, and 10 percent of the funding apportioned under this heading using the formula set forth in subsection 5311(c) of such title: *Provided further*, That 180 days following the date of such apportionment, the Secretary shall withdraw from each grantee an amount equal to 50 percent of the funds awarded to that grantee less the amount of funding obligated, and the Secretary shall redistribute such amounts to other grantees that have had no funds withdrawn under this proviso utilizing whatever method he or she deems appropriate to ensure that all funds provided under this paragraph shall be utilized promptly: *Provided further*, That 1 year following the date of such apportionment, the Secretary shall withdraw from each grantee any unobligated funds and transfer such funds to ''Supplemental Discretionary Grants for a National Surface Transportation System'': *Provided further*, That at the request of a grantee, the Secretary of Transportation may provide an extension of such 1-year periods if he or she feels satisfied that the grantee has encountered an unworkable bidding environment or other extenuating circumstances: *Provided further*, That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: *Provided further*, That of the funds apportioned using the formula set forth in subsection 5311(c) of title 49, United States Code, 2 percent shall be made available for section 5311(c)(1): *Provided further*, That of the funding provided under this heading, $200,000,000 shall be distributed as discretionary grants to public transit agencies for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems: *Provided further*, That for such grants on energy-related investments, priority shall be given to projects based on the total energy savings that are projected to result from the investment, and projected energy savings as a percentage of the total energy usage of the public transit agency: *Provided further*, That the Federal share of the costs for which any grant is made under this heading shall be at the option of the recipient, and may be up to 100 percent: *Provided further*, That the amount made available under this heading shall not be subject to any limitation on obligations for transit programs set forth in any Act: *Provided further*, That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this heading: *Provided further*, That the funds appropriated under this heading shall be subject to subsection 5323(j) and section 5333 of title 49, United States Code as well as sections 5304 and 5305 of said title, as appropriate, but shall not be comingled with funds available under the Formula and Bus Grants account: *Provided further*, That the Administrator of the Federal Transit Administration may retain up to $3,000,000 of the funds provided under this heading to carry out the function of ''Federal Transit Administration, Administrative Expenses'' and to fund the oversight of grants made under this heading by the Administrator.

MARITIME ADMINISTRATION

SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL SHIPYARDS

To make grants to qualified shipyards as authorized under section 3506 of Public Law 109–163 or section 54101 of title 46, United States Code, $100,000,000: *Provided*, That the Secretary of Transportation shall institute measures to ensure that funds provided under this heading shall be obligated within 180 days of the date of their distribution: *Provided further*, That the Maritime Administrator may retain and transfer to ''Maritime Administration, Operations and Training'' up to 2 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For an additional amount for necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector

General Act of 1978, as amended, $7,750,000, to remain available until September 30, 2011: *Provided*, That the funding made available under this heading shall be used for conducting audits and investigations of projects and activities carried out with funds made available in this Act to the Department of Transportation and to the National Railroad Passenger Corporation: *Provided further*, That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3), to investigate allegations of fraud, including false statements to the Government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department.

GENERAL PROVISION—DEPARTMENT OF TRANSPORTATION

SEC. 1201. Section 5309(g)(4)(A) of title 49, United States Code, is amended by striking ''or an amount equivalent to the last 3 fiscal years of funding allocated under subsections (m)(1)(A) and (m)(2)(A)(ii)'' and inserting ''or the sum of the funds available for the next 3 fiscal years beyond the current fiscal year, assuming an annual growth of the program of 10 percent''.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIVE AMERICAN HOUSING BLOCK GRANTS

For an additional amount for ''Native American Housing Block Grants'', as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (''NAHASDA'') (25 U.S.C. 4111 et seq.), $510,000,000, to remain available until September 30, 2011: *Provided*, That $255,000,000 of the amount provided under this heading shall be distributed according to the same funding formula used in fiscal year 2008: *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 180 days from the date that funds are available to recipients: *Provided further*, That the Secretary shall obligate $255,000,000 of the amount provided under this heading for competitive grants to eligible entities that apply for funds authorized under NAHASDA: *Provided further*, That in awarding competitive funds, the Secretary shall give priority to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons: *Provided further*, That recipients of funds under this heading shall obligate 100 percent of such funds within 1 year of the date of enactment of this Act, expend at least 50 percent of such funds within 2 years of the date on which funds become available to such jurisdictions for obligation, and expend 100 percent of such funds within 3 years of such date: *Provided further*, That if a recipient fails to comply with either the 1-year obligation requirement or the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds to recipients that are in compliance with those requirements: *Provided further*, That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the recipient: *Provided further*, That, notwithstanding any other provision of this paragraph, the Secretary may institute measures to ensure participation in the formula and competitive allocation of funds provided under this paragraph by any housing entity eligible to receive funding under title VIII of NAHASDA (25 U.S.C. 4221 et seq.): *Provided further*, That in administering funds provided in this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further*, That, of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Public and Indian Housing'': *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

PUBLIC HOUSING CAPITAL FUND

For an additional amount for the ''Public Housing Capital Fund'' to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (the ''Act''), $5,000,000,000, to remain available until September 30, 2011: *Provided*, That the Secretary of Housing and Urban Development shall allocate $3,000,000,000 of this amount by the formula authorized under section 9(d)(2) of the Act, except that the Secretary may determine not to allocate funding to public housing agencies currently designated as troubled or to public housing agencies that elect not to accept such funding: *Provided further*, That the Secretary shall make available $2,000,000,000 by competition for priority investments, including investments that leverage private sector funding or financing for renovations and energy conservation retrofit investments: *Provided further*, That public housing agencies shall prioritize capital projects that are already underway or included in the 5-year capital fund plans required by the Act (42 U.S.C. 1437c–1(a)): *Provided further*, That in allocating competitive grants under this heading, the Secretary shall give priority consideration to the rehabilitation of vacant rental units: *Provided further*, That notwithstanding any other provision of law, (1) funding provided herein may not be used for operating or rental assistance activities, and (2) any restriction of funding to replacement housing uses shall be inapplicable: *Provided further*, That notwithstanding any other provision of law, the Secretary shall institute measures to ensure that funds provided under this heading shall serve to supplement and not supplant expenditures from other Federal, State, or local sources or funds independently generated by the grantee: *Provided further*, That notwithstanding section 9(j), public housing agencies shall obligate 100 percent of the funds within 1 year of the date of enactment of this Act, shall expend at least 60 percent of funds within 2 years of the date on which funds become available to the agency for obligation, and shall expend 100 percent of the funds within 3 years of such date: *Provided further*, That if a public housing agency fails to comply with either the 1-year obligation requirement or the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the public housing agency and reallocate such funds to agencies that are in compliance with those requirements: *Provided further*, That if a public housing agency fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the public housing agency: *Provided further*, That in administering funds provided in this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to conditions on use of funds for development and modernization, fair housing, non-discrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further*, That of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Public and Indian Housing'': *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

NEIGHBORHOOD STABILIZATION PROGRAM

For the provision of emergency assistance for the redevelopment of abandoned and foreclosed homes, as authorized by title III of division B of the Housing and Economic Recovery Act of 2008 (the ''Act'') (42 U.S.C. 5301 note), $2,250,000,000, to remain available until September 30, 2011: *Provided*, That funding shall be allocated by a competition for which eligible entities shall be States, units of general local government, and nonprofit entities or consortia of nonprofit entities, which may submit proposals in partnership with for-profit entities: *Provided further*, That in selecting grantees the Secretary shall ensure that the grantee can expend funding within the period allowed under this heading: *Provided further*, That additional award criteria for such competition shall include demonstrated grantee capacity to execute projects, leveraging potential, targeted impact of foreclosure prevention, neighborhood stabilization, and any additional factors determined by the Secretary of Housing and Urban Development: *Provided further*, That the Secretary may establish a minimum grant size: *Provided further*, That the Secretary shall publish criteria on which to base the competition for any grants awarded under this heading not later than 75 days after the enactment of this Act and applications shall be due not later than 180 days after the enactment of this Act: *Provided further*, That the Secretary shall award all funding within 1 year of enactment of this Act: *Provided further*, That grantees shall expend at least 75 percent of allocated funds within 2 years of the date funds become available to the grantees for obligation and

100 percent of such funds within 3 years of such date: *Provided further*, That funding used for section 2301(c)(3)(E) of the Act shall be available only for the redevelopment of demolished or vacant properties as housing: *Provided further*, That in addition to the eligible uses in section 2301, the Secretary may also use up to 10 percent of the funds provided under this heading for grantees for the provision of capacity building of and support for local communities receiving funding under section 2301 of the Act or under this heading: *Provided further*, That the construction or rehabilitation of early childhood and development centers serving households that qualify as low income shall also be an eligible use of funding: *Provided further*, That in addition to the allowable uses of revenues provided in section 2301 of the Act, any revenues generated in the first 5 years using the funds provided under this heading may be used by the State or applicable unit of general local government for maintenance associated with property acquisition and holding and with land banking activities: *Provided further*, That of the funds provided under this heading, up to 1.5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expense shall be transferred to and merged with funding provided to ''Community Planning and Development Personnel Compensation and Benefits'': *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'' for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funding made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund.''

HOME INVESTMENT PARTNERSHIPS PROGRAM

For an additional amount for the ''HOME Investment Partnerships Program'' as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act (the ''Act''), $2,250,000,000, to remain available until September 30, 2011: *Provided*, That except as specifically provided herein, funds provided under this heading shall be distributed pursuant to the formula authorized by section 217 of the Act: *Provided further*, That the Secretary may establish a minimum grant size: *Provided further*, That participating jurisdictions shall obligate 100 percent of the funds within 1 year of the date of enactment of this Act, shall expend at least 60 percent of funds within 2 years of the date on which funds become available to the participating jurisdiction for obligation and shall expend 100 percent of the funds within 3 years of such date: *Provided further*, That if a participating jurisdiction fails to comply with either the 1-year obligation requirement or the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the participating jurisdiction and reallocate such funds to participating jurisdictions that are in compliance with those requirements: *Provided further*, That if a participating jurisdiction fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the participating jurisdiction: *Provided further*, That in administering funds under this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further*, That the Secretary may use funds provided under this heading to provide incentives to grantees to use funding for investments in energy efficiency and green building technology: *Provided further*, That such incentives may include allocation of up to 20 percent of funds made available under this heading other than pursuant to the formula authorized by section 217 of the Act: *Provided further*, That, of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Community Planning and Development'': *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

HOMELESSNESS PREVENTION FUND

For homelessness prevention activities, $1,500,000,000, to remain available until September 30, 2011: *Provided*, That funds provided under this heading shall be used for the provision of short-term or medium-term rental assistance; housing relocation and stabilization services including housing search, mediation or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, and moving cost assistance; or other appropriate homelessness prevention activities: *Provided further*, That grantees receiving such assistance shall collect data on the use of the funds awarded and persons served with this assistance in the Homeless Management Information System (HMIS) or other comparable database: *Provided further*, That grantees may use up to 5 percent of any grant for administrative costs: *Provided further*, That funding made available under this heading shall be allocated to eligible grantees (as defined and designated in sections 411 and 412 of subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, (the ''Act'')) pursuant to the formula authorized by section 413 of the Act: *Provided further*, That the Secretary may establish a minimum grant size: *Provided further*, That grantees shall expend at least 75 percent of funds within 2 years of the date that funds became available to them for obligation, and 100 percent of funds within 3 years of such date, and the Secretary may recapture unexpended funds in violation of the 2-year expenditure requirement and reallocate such funds to grantees in compliance with that requirement: *Provided further*, That the Secretary may waive statutory or regulatory provisions (except provisions for fair housing, nondiscrimination, labor standards, and the environment) necessary to facilitate the timely expenditure of funds: *Provided further*, That the Secretary shall publish a notice to establish such requirements as may be necessary to carry out the provisions of this section within 30 days of enactment of the Act and that this notice shall take effect upon issuance: *Provided further*, That of the funds provided under this heading, up to 1.5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expense shall be transferred to and merged with funding provided to ''Community Planning and Development Personnel Compensation and Benefits'': *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'' for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funding made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund.''

ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS

For assistance to owners of properties receiving project-based assistance pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 17012), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), or section 8 of the United States Housing Act of 1937 as amended (42 U.S.C. 1437f), $3,500,000,000, of which $2,132,000,000 shall be for an additional amount for paragraph (1) under the heading ''Project-Based Rental Assistance'' in Public Law 110–161 for payments to owners for 12-month periods, and of which $1,368,000,000 shall be for grants or loans for energy retrofit and green investments in such assisted housing: *Provided*, That projects funded with grants or loans provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further*, That such grants or loans shall be provided through the existing policies, procedures, contracts, and transactional infrastructure of the authorized programs administered by the Office of Affordable Housing Preservation of the Department of Housing and Urban Development, on such terms and conditions as the Secretary of Housing and Urban Development deems appropriate to ensure the maintenance and preservation of the property, the continued operation and maintenance of energy efficiency technologies, and the timely expenditure of funds: *Provided further*, That the Secretary may provide incentives to owners to undertake energy or green retrofits as a part of such grant or loan terms, including, but not limited to, investment fees to cover oversight and implementation costs incurred by said owner, or to encourage job creation for low-income or very low-income individuals: *Provided further*, That the grants or loans shall include a financial assessment and physical inspection of such property: *Provided further*, That eligible owners must have at least a satisfactory management review rating, be in substantial compliance with applicable performance standards and legal requirements, and commit to an additional period of affordability determined by the Secretary, but of not fewer than 15 years: *Provided further*, That the Secretary shall undertake appropriate underwriting and oversight with respect to grant and loan transactions and may set aside up to 5 percent of the funds made available under this heading for grants or loans for such purpose: *Provided further*, That the Secretary shall take steps necessary to ensure that owners receiving funding for energy and green retrofit investments under

this heading shall expend such funding within 2 years of the date they received the funding: *Provided further*, That the Secretary may waive or modify statutory or regulatory requirements with respect to any existing grant, loan, or insurance mechanism authorized to be used by the Secretary to enable or facilitate the accomplishment of investments supported with funds made available under this heading for grants or loans: *Provided further*, That of the funds provided under this heading, up to 1.5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That funding made available under this heading and used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Housing Compensation and Benefits'': *Provided further*, That any funding made available under this heading used by the Secretary for training and other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations and Management'' for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funding made available under this heading used by the Secretary for technology shall be transferred to and merged with funding provided to ''Working Capital Fund.''

OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL

For an additional amount for the ''Lead Hazard Reduction'', as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $100,000,000, to remain available until September 30, 2011: *Provided*, That funds shall be awarded first to applicant jurisdictions which had applied under the Lead-Based Paint Hazard Control Grant Program Notice of Funding Availability for fiscal year 2008, and were found in the application review to be qualified for award, but were not awarded because of funding limitations, and that any funds which remain after reservation of funds for such grants shall be added to the amount of funds to be awarded under the Lead-Based Paint Hazard Control Grant Program Notice of Funding Availability for fiscal year 2009: *Provided further*, That each applicant jurisdiction for the Lead-Based Paint Hazard control Grant Program Notice of Funding Availability for fiscal year 2009 shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds: *Provided further*, That recipients of funds under this heading shall obligate 100 percent of such funds within 1 year of the date of enactment of this Act, expend at least 75 percent of such funds within 2 years of the date on which funds become available to such jurisdictions for obligation, and expend 100 percent of such funds within 3 years of such date: *Provided further*, That if a recipient fails to comply with either the 1-year obligation requirement or the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds to recipients that are in compliance with those requirements: *Provided further*, That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the recipient: *Provided further*, That in administering funds provided in this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute or regulation: *Provided further*, That, of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expenses shall be transferred to and merged with funding provided to ''Personnel Compensation and Benefits, Office of Healthy Homes and Lead Hazard Control'': *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to and merged with funding provided to ''Administration, Operations, and Management'', for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funds made available under this heading used by the Secretary for technology shall be transferred to and merged with the funding provided to ''Working Capital Fund''.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the necessary salaries and expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $2,750,000, to remain available until September 30, 2011: *Provided*, That the Inspector General shall have independent authority over all personnel issues within this office.

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 13101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

''TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

''SEC. 3000. DEFINITIONS.

''In this title:

''(1) CERTIFIED EHR TECHNOLOGY.—The term 'certified EHR technology' means a qualified electronic health record and that is certified pursuant to section 3001(c)(5) as meeting standards adopted under section 3004 that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

''(2) ENTERPRISE INTEGRATION.—The term 'enterprise integration' means the electronic linkage of health care providers, health plans, the government, and other interested parties, to enable the electronic exchange and use of health information among all the components in the health care infrastructure in accordance with applicable law, and such term includes related application protocols and other related standards.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nursing facility, nursing facility, home health entity, or other long-term care facility, health care clinic, emergency medical services provider, Federally qualified health center, group practice (as defined in section 1877(h)(4) of the Social Security Act), a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1861(r) of the Social Security Act), a practitioner (as described in section 1842(b)(18)(C) of the Social Security Act), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act), tribal organization, or urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act), a rural health clinic, a covered entity under section 340B, and any other category of facility or clinician determined appropriate by the Secretary.

''(4) HEALTH INFORMATION.—The term 'health information' has the meaning given such term in section 1171(4) of the Social Security Act.

''(5) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means hardware, software, integrated technologies and related licenses, intellectual property, upgrades, and packaged solutions sold as services for use by health care entities for the electronic creation, maintenance, or exchange of health information.

''(6) HEALTH PLAN.—The term 'health plan' has the meaning given such term in section 1171(5) of the Social Security Act.

''(7) HIT POLICY COMMITTEE.—The term 'HIT Policy Committee' means such Committee established under section 3002(a).

''(8) HIT STANDARDS COMMITTEE.—The term 'HIT Standards Committee' means such Committee established under section 3003(a).

''(9) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term 'individually identifiable health information' has the meaning given such term in section 1171(6) of the Social Security Act.

''(10) LABORATORY.—The term 'laboratory' has the meaning given such term in section 353(a).

''(11) NATIONAL COORDINATOR.—The term 'National Coordinator' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a).

''(12) PHARMACIST.—The term 'pharmacist' has the meaning given such term in section 804(2) of the Federal Food, Drug, and Cosmetic Act.

''(13) QUALIFIED ELECTRONIC HEALTH RECORD.—The term 'qualified electronic health record' means an electronic record of health-related information on an individual that—

''(A) includes patient demographic and clinical health information, such as medical history and problem lists; and

''(B) has the capacity—

''(i) to provide clinical decision support;

''(ii) to support physician order entry;

''(iii) to capture and query information relevant to health care quality; and

''(iv) to exchange electronic health information with, and integrate such information from other sources.

''(14) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

''Subtitle A—Promotion of Health Information Technology

''SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

''(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary and shall report directly to the Secretary.

''(b) PURPOSE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that—

''(1) ensures that each patient's health information is secure and protected, in accordance with applicable law;

''(2) improves health care quality, reduces medical errors, and advances the delivery of patient-centered medical care;

''(3) reduces health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care, and incomplete information;

''(4) provides appropriate information to help guide medical decisions at the time and place of care;

''(5) ensures the inclusion of meaningful public input in such development of such infrastructure;

''(6) improves the coordination of care and information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information;

''(7) improves public health activities and facilitates the early identification and rapid response to public health threats and emergencies, including bioterror events and infectious disease outbreaks;

''(8) facilitates health and clinical research and health care quality;

''(9) promotes early detection, prevention, and management of chronic diseases;

''(10) promotes a more effective marketplace, greater competition, greater systems analysis, increased consumer choice, and improved outcomes in health care services; and

''(11) improves efforts to reduce health disparities.

''(c) DUTIES OF THE NATIONAL COORDINATOR.—

''(1) STANDARDS.—The National Coordinator shall review and determine whether to endorse each standard, implementation specification, and certification criterion for the electronic exchange and use of health information that is recommended by the HIT Standards Committee under section 3003 for purposes of adoption under section 3004. The Coordinator shall make such determination, and report to the Secretary such determination, not later than 45 days after the date the recommendation is received by the Coordinator.

''(2) HIT POLICY COORDINATION.—

''(A) IN GENERAL.—The National Coordinator shall coordinate health information technology policy and programs of the Department with those of other relevant executive branch agencies with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes health information technology activities primarily within the areas of its greatest expertise and technical capability and in a manner towards a coordinated national goal.

''(B) HIT POLICY AND STANDARDS COMMITTEES.—The National Coordinator shall be a leading member in the establishment and operations of the HIT Policy Committee and the HIT Standards Committee and shall serve as a liaison among those two Committees and the Federal Government.

''(3) STRATEGIC PLAN.—

''(A) IN GENERAL.—The National Coordinator shall, in consultation with other appropriate Federal agencies (including the National Institute of Standards and Technology), update the Federal Health IT Strategic Plan (developed as of June 3, 2008) to include specific objectives, milestones, and metrics with respect to the following:

''(i) The electronic exchange and use of health information and the enterprise integration of such information.

''(ii) The utilization of an electronic health record for each person in the United States by 2014.

''(iii) The incorporation of privacy and security protections for the electronic exchange of an individual's individually identifiable health information.

''(iv) Ensuring security methods to ensure appropriate authorization and electronic authentication of health information and specifying technologies or methodologies for rendering health information unusable, unreadable, or indecipherable.

''(v) Specifying a framework for coordination and flow of recommendations and policies under this subtitle among the Secretary, the National Coordinator, the HIT Policy Committee, the HIT Standards Committee, and other health information exchanges and other relevant entities.

''(vi) Methods to foster the public understanding of health information technology.

''(vii) Strategies to enhance the use of health information technology in improving the quality of health care, reducing medical errors, reducing health disparities, improving public health, increasing prevention and coordination with community resources, and improving the continuity of care among health care settings.

''(viii) Specific plans for ensuring that populations with unique needs, such as children, are appropriately addressed in the technology design, as appropriate, which may include technology that automates enrollment and retention for eligible individuals.

''(B) COLLABORATION.—The strategic plan shall be updated through collaboration of public and private entities.

''(C) MEASURABLE OUTCOME GOALS.—The strategic plan update shall include measurable outcome goals.

''(D) PUBLICATION.—The National Coordinator shall republish the strategic plan, including all updates.

''(4) WEBSITE.—The National Coordinator shall maintain and frequently update an Internet website on which there is posted information on the work, schedules, reports, recommendations, and other information to ensure transparency in promotion of a nationwide health information technology infrastructure.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall develop a program (either directly or by contract) for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle. Such program shall include testing of the technology in accordance with section 14201(b) of the Health Information Technology for Economic and Clinical Health Act.

''(B) CERTIFICATION CRITERIA DESCRIBED.—In this title, the term 'certification criteria' means, with respect to standards and implementation specifications for health information technology, criteria to establish that the technology meets such standards and implementation specifications.

''(6) REPORTS AND PUBLICATIONS.—

''(A) REPORT ON ADDITIONAL FUNDING OR AUTHORITY NEEDED.—Not later than 12 months after the date of the enactment of this title, the National Coordinator shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on any additional funding or authority the Coordinator or the HIT Policy Committee or HIT Standards Committee requires to evaluate and develop standards, implementation specifications, and certification criteria, or to achieve full participation of stakeholders in the adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

''(B) IMPLEMENTATION REPORT.—The National Coordinator shall prepare a report that identifies lessons learned from major public and private health care systems in their implementation of health information technology, including information on whether the technologies and practices developed by such systems may be applicable to and usable in whole or in part by other health care providers.

''(C) ASSESSMENT OF IMPACT OF HIT ON COMMUNITIES WITH HEALTH DISPARITIES AND UNINSURED, UNDERINSURED, AND MEDICALLY UNDERSERVED AREAS.—The National Coordinator shall assess and publish the impact of health information technology in communities with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals (including urban and rural areas) and identify practices to increase the adoption of such technology by health care providers in such communities, and the use of health information technology to reduce and better manage chronic diseases.

''(D) EVALUATION OF BENEFITS AND COSTS OF THE ELECTRONIC USE AND EXCHANGE OF HEALTH INFORMATION.—The National Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.

''(E) RESOURCE REQUIREMENTS.—The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an electronic health record for each person in the United States by 2014, including the required level of Federal funding, expectations for regional, State, and private investment, and the expected contributions by volunteers to activities for the utilization of such records.

''(7) ASSISTANCE.—The National Coordinator may provide financial assistance to consumer advocacy groups and not-for-profit entities that work in the public interest for purposes of defraying the cost to such groups and entities to participate under, whether in whole or in part, the National Technology Transfer Act of 1995 (15 U.S.C. 272 note).

''(8) GOVERNANCE FOR NATIONWIDE HEALTH INFORMATION NETWORK.—The National Coordinator shall establish a governance mechanism for the nationwide health information network.

''(d) DETAIL OF FEDERAL EMPLOYEES.—

''(1) IN GENERAL.—Upon the request of the National Coordinator, the head of any Federal agency is authorized to detail, with or without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section.

''(2) EFFECT OF DETAIL.—Any detail of personnel under paragraph (1) shall—

''(A) not interrupt or otherwise affect the civil service status or privileges of the Federal employee; and

''(B) be in addition to any other staff of the Department employed by the National Coordinator.

''(3) ACCEPTANCE OF DETAILEES.—Notwithstanding any other provision of law, the Office may accept detailed personnel from other Federal agencies without regard to whether the agency described under paragraph (1) is reimbursed.

''(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF THE NATIONAL COORDINATOR.—Not later

than 12 months after the date of the enactment of this title, the Secretary shall appoint a Chief Privacy Officer of the Office of the National Coordinator, whose duty it shall be to advise the National Coordinator on privacy, security, and data stewardship of electronic health information and to coordinate with other Federal agencies (and similar privacy officers in such agencies), with State and regional efforts, and with foreign countries with regard to the privacy, security, and data stewardship of electronic individually identifiable health information.

"SEC. 3002. HIT POLICY COMMITTEE.

''(a) ESTABLISHMENT.—There is established a HIT Policy Committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure, including implementation of the strategic plan described in section 3001(c)(3).

''(b) DUTIES.—

''(1) RECOMMENDATIONS ON HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The HIT Policy Committee shall recommend a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the strategic plan under section 3001(c)(3) and that includes the recommendations under paragraph (2). The Committee shall update such recommendations and make new recommendations as appropriate.

''(2) SPECIFIC AREAS OF STANDARD DEVELOPMENT.—

''(A) IN GENERAL.—The HIT Policy Committee shall recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information for purposes of adoption under section 3004 and shall recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended. Such standards and implementation specifications shall include named standards, architectures, and software schemes for the authentication and security of individually identifiable health information and other information as needed to ensure the reproducible development of common solutions across disparate entities.

''(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the HIT Policy Committee shall make recommendations for at least the following areas:

''(i) Technologies that protect the privacy of health information and promote security in a qualified electronic health record, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.

''(ii) A nationwide health information technology infrastructure that allows for the electronic use and accurate exchange of health information.

''(iii) The utilization of a certified electronic health record for each person in the United States by 2014.

''(iv) Technologies that as a part of a qualified electronic health record allow for an accounting of disclosures made by a covered entity (as defined for purposes of regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996) for purposes of treatment, payment, and health care operations (as such terms are defined for purposes of such regulations).

''(v) The use of certified electronic health records to improve the quality of health care, such as by promoting the coordination of health care and improving continuity of health care among health care providers, by reducing medical errors, by improving population health, reducing chronic disease, and by advancing research and education.

''(C) OTHER AREAS FOR CONSIDERATION.—In making recommendations under subparagraph (A), the HIT Policy Committee may consider the following additional areas:

''(i) The appropriate uses of a nationwide health information infrastructure, including for purposes of—

''(I) the collection of quality data and public reporting;

''(II) biosurveillance and public health;

''(III) medical and clinical research; and

''(IV) drug safety.

''(ii) Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.

''(iii) Telemedicine technologies, in order to reduce travel requirements for patients in remote areas.

''(iv) Technologies that facilitate home health care and the monitoring of patients recuperating at home.

''(v) Technologies that help reduce medical errors.

''(vi) Technologies that facilitate the continuity of care among health settings.

''(vii) Technologies that meet the needs of diverse populations.

''(viii) Technologies and design features that address the needs of children and other vulnerable populations.

''(ix) Any other technology that the HIT Policy Committee finds to be among the technologies with the greatest potential to improve the quality and efficiency of health care.

''(3) FORUM.—The HIT Policy Committee shall serve as a forum for broad stakeholder input with specific expertise in policies relating to the matters described in paragraphs (1) and (2).

''(c) MEMBERSHIP AND OPERATIONS.—

''(1) IN GENERAL.—The National Coordinator shall provide leadership in the establishment and operations of the HIT Policy Committee.

''(2) MEMBERSHIP.—The membership of the HIT Policy Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

''(3) CONSIDERATION.—The National Coordinator shall ensure that the relevant recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of policies.

''(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of such Act, shall apply to the HIT Policy Committee.

''(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all policy recommendations made by the HIT Policy Committee under this section.

"SEC. 3003. HIT STANDARDS COMMITTEE.

''(a) ESTABLISHMENT.—There is established a committee to be known as the HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption under section 3004, consistent with the implementation of the strategic plan described in section 3001(c)(3) and beginning with the areas listed in section 3002(b)(2)(B) in accordance with policies developed by the HIT Policy Committee.

''(b) DUTIES.—

''(1) STANDARD DEVELOPMENT.—

''(A) IN GENERAL.—The HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria described in subsection (a) that have been developed, harmonized, or recognized by the HIT Standards Committee. The HIT Standards Committee shall update such recommendations and make new recommendations as appropriate, including in response to a notification sent under section 3004(b)(2). Such recommendations shall be consistent with the latest recommendations made by the HIT Policy Committee.

''(B) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In the development, harmonization, or recognition of standards and implementation specifications, the HIT Standards Committee shall, as appropriate, provide for the testing of such standards and specifications by the National Institute for Standards and Technology under section 14201 of the Health Information Technology for Economic and Clinical Health Act.

''(C) CONSISTENCY.—The standards, implementation specifications, and certification criteria recommended under this subsection shall be consistent with the standards for information transactions and data elements adopted pursuant to section 1173 of the Social Security Act.

''(2) FORUM.—The HIT Standards Committee shall serve as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards, implementation specifications, and certification criteria necessary for the development and adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

''(3) SCHEDULE.—Not later than 90 days after the date of the enactment of this title, the HIT Standards Committee shall develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee under section 3002. The HIT Standards Committee shall update such schedule annually. The Secretary shall publish such schedule in the Federal Register.

''(4) PUBLIC INPUT.—The HIT Standards Committee shall conduct open public meetings and develop a process to allow for public comment on the schedule described in paragraph (3) and recommendations described in this subsection. Under such process comments shall be submitted in a timely manner after the date of publication of a recommendation under this subsection.

''(c) MEMBERSHIP AND OPERATIONS.—

''(1) IN GENERAL.—The National Coordinator shall provide leadership in the establishment and operations of the HIT Standards Committee.

''(2) MEMBERSHIP.—The membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

''(3) CONSIDERATION.—The National Coordinator shall ensure that the relevant recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of standards.

''(4) ASSISTANCE.—For the purposes of carrying out this section, the Secretary may provide or ensure that financial assistance is provided by the HIT Standards Committee to defray in whole or in part any membership fees or dues charged by such Committee to those consumer advocacy groups and not for profit entities that work in the public interest as a part of their mission.

''(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, shall apply to the HIT Standards Committee.

''(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all recommendations made by the HIT Standards Committee under this section.

''SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS; ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.

''(a) PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS.—

''(1) REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

''(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

''(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not to adopt such grouping of standards, implementation specifications, or certification criteria; or

''(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.

''(3) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph (1).

''(b) ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

''(1) IN GENERAL.—Not later than December 31, 2009, the Secretary shall, through the rulemaking process described in section 3003, adopt an initial set of standards, implementation specifications, and certification criteria for the areas required for consideration under section 3002(b)(2)(B).

''(2) APPLICATION OF CURRENT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—The standards, implementation specifications, and certification criteria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement of paragraph (1).

''SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.

''For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 13111 of the Health Information Technology for Economic and Clinical Health Act.

''SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

''(a) IN GENERAL.—Except as provided under section 13112 of the Health Information Technology for Economic and Clinical Health Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.

''(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications adopted under section 3004 with respect to activities not related to the contract.

''SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.

''(a) IN GENERAL.—The National Coordinator shall support the development, routine updating and provision of qualified EHR technology (as defined in section 3000) consistent with subsections (b) and (c) unless the Secretary determines that the needs and demands of providers are being substantially and adequately met through the marketplace.

''(b) CERTIFICATION.—In making such EHR technology publicly available, the National Coordinator shall ensure that the qualified EHR technology described in subsection (a) is certified under the program developed under section 3001(c)(3) to be in compliance with applicable standards adopted under section 3003(a).

''(c) AUTHORIZATION TO CHARGE A NOMINAL FEE.—The National Coordinator may impose a nominal fee for the adoption by a health care provider of the health information technology system developed or approved under subsection (a) and (b). Such fee shall take into account the financial circumstances of smaller providers, low income providers, and providers located in rural or other medically underserved areas.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require that a private or government entity adopt or use the technology provided under this section.

''SEC. 3008. TRANSITIONS.

''(a) ONCHIT.—To the extent consistent with section 3001, all functions, personnel, assets, liabilities, and administrative actions applicable to the National Coordinator for Health Information Technology appointed under Executive Order 13335 or the Office of such National Coordinator on the date before the date of the enactment of this title shall be transferred to the National Coordinator appointed under section 3001(a) and the Office of such National Coordinator as of the date of the enactment of this title.

''(b) AHIC.—

''(1) To the extent consistent with sections 3002 and 3003, all functions, personnel, assets, and liabilities applicable to the AHIC Successor, Inc. doing business as the National eHealth Collaborative as of the day before the date of the enactment of this title shall be transferred to the HIT Policy Committee or the HIT Standards Committee, established under section 3002(a) or 3003(a), as appropriate, as of the date of the enactment of this title.

''(2) In carrying out section 3003(b)(1)(A), until recommendations are made by the HIT Policy Committee, recommendations of the HIT Standards Committee shall be consistent with the most recent recommendations made by such AHIC Successor, Inc.

''(c) RULES OF CONSTRUCTION.—

''(1) ONCHIT.—Nothing in section 3001 or subsection (a) shall be construed as requiring the creation of a new entity to the extent that the Office of the National Coordinator for Health Information Technology established pursuant to Executive Order 13335 is consistent with the provisions of section 3001.

''(2) AHIC.—Nothing in sections 3002 or 3003 or subsection (b) shall be construed as prohibiting the AHIC Successor, Inc. doing business as the National eHealth Collaborative from modifying its charter, duties, membership, and any other structure or function required to be consistent with section 3002 and 3003 in a manner that would permit the Secretary to choose to recognize such AHIC Successor, Inc. as the HIT Policy Committee or the HIT Standards Committee.

''SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY LAW.

''(a) IN GENERAL.—With respect to the relation of this title to HIPAA privacy and security law:

''(1) This title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law.

''(2) The purposes of this title include ensuring that the health information technology standards and implementation specifications adopted under section 3004 take into account the requirements of HIPAA privacy and security law.

''(b) DEFINITION.—For purposes of this section, the term 'HIPAA privacy and security law' means—

''(1) the provisions of part C of title XI of the Social Security Act, section 264 of the Health Insurance Portability and Accountability Act of 1996, and subtitle D of the Health Information Technology for Economic and Clinical Health Act; and

''(2) regulations under such provisions.''.

SEC. 13102. TECHNICAL AMENDMENT.

Section 1171(5) of the Social Security Act (42 U.S.C. 1320d) is amended by striking ''or C'' and inserting ''C, or D''.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

SEC. 13111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined in the Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004(b) of the Public Health Service Act, as added by section 13101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation specification adopted under section 3004(b) of the Public Health Service Act, as added by section 13101, the President shall take measures to ensure that Federal

activities involving the broad collection and submission of health information are consistent with such standard or implementation specification, respectively, within three years after the date of such adoption.

(c) APPLICATION OF DEFINITIONS.—The definitions contained in section 3000 of the Public Health Service Act, as added by section 13101, shall apply for purposes of this part.

SEC. 13112. APPLICATION TO PRIVATE ENTITIES.

Each agency (as defined in such Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004(b) of the Public Health Service Act, as added by section 13101.

SEC. 13113. STUDY AND REPORTS.

(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that—

(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information;

(2) describes barriers to the adoption of such a nationwide system; and

(3) contains recommendations to achieve full implementation of such a nationwide system.

(b) REIMBURSEMENT INCENTIVE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on the study carried out under paragraph (1).

(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.

(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) an evaluation of—

(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;

(ii) methods for fostering scientific innovation with respect to aging services technology within the business and academic communities; and

(iii) developments in aging services technology in other countries that may be applied in the United States; and

(B) identification of—

(i) barriers to innovation in aging services technology and devising strategies for removing such barriers; and

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term ''aging services technology'' means health technology that meets the health care needs of seniors, individuals with disabilities, and the caregivers of such seniors and individuals.

(B) SENIOR.—The term ''senior'' has such meaning as specified by the Secretary.

Subtitle B—Testing of Health Information Technology

SEC. 13201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 13101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 13101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards and Technology shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.

SEC. 13202. RESEARCH AND DEVELOPMENT PROGRAMS.

(a) HEALTH CARE INFORMATION ENTERPRISE INTEGRATION RESEARCH CENTERS.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.

(2) REVIEW; COMPETITION.—Grants shall be awarded under this subsection on a merit-reviewed, competitive basis.

(3) PURPOSE.—The purposes of the Centers described in paragraph (1) shall be—

(A) to generate innovative approaches to health care information enterprise integration by conducting cutting-edge, multidisciplinary research on the systems challenges to health care delivery; and

(B) the development and use of health information technologies and other complementary fields.

(4) RESEARCH AREAS.—Research areas may include—

(A) interfaces between human information and communications technology systems;

(B) voice-recognition systems;

(C) software that improves interoperability and connectivity among health information systems;

(D) software dependability in systems critical to health care delivery;

(E) measurement of the impact of information technologies on the quality and productivity of health care;

(F) health information enterprise management;

(G) health information technology security and integrity; and

(H) relevant health information technology to reduce medical errors.

(5) APPLICATIONS.—An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director of the National Institute of Standards and Technology at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center established pursuant to assistance under paragraph (1) and the respective contributions of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;

(C) technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and

(D) how the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.

(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The National High-Performance Computing Program established by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall coordinate Federal research and development programs related to the development and deployment of health information technology, including activities related to—

(1) computer infrastructure;

(2) data security;

(3) development of large-scale, distributed, reliable computing systems;

(4) wired, wireless, and hybrid high-speed networking;

(5) development of software and software-intensive systems;

(6) human-computer interaction and information management technologies; and

(7) the social and economic implications of information technology.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

SEC. 13301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 13101, is amended by adding at the end the following new subtitle:

''Subtitle B—Incentives for the Use of Health Information Technology

''SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

''(a) IN GENERAL.—The Secretary of Health and Human Services shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the

National Coordinator (and, as available) under section 3001. To the greatest extent practicable, the Secretary shall ensure that any funds so appropriated shall be used for the acquisition of health information technology that meets standards and certification criteria adopted before the date of the enactment of this title until such date as the standards are adopted under section 3004. The Secretary shall invest funds through the different agencies with expertise in such goals, such as the Office of the National Coordinator for Health Information Technology, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers of Medicare & Medicaid Services, the Centers for Disease Control and Prevention, and the Indian Health Service to support the following:

''(1) Health information technology architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of the Department of Health and Human Services to support the electronic use and exchange of health information.

''(2) Development and adoption of appropriate certified electronic health records for categories of providers not eligible for support under title XVIII or XIX of the Social Security Act for the adoption of such records.

''(3) Training on and dissemination of information on best practices to integrate health information technology, including electronic health records, into a provider's delivery of care, consistent with best practices learned from the Health Information Technology Research Center developed under section 3012, including community health centers receiving assistance under section 330 of the Public Health Service Act, covered entities under section 340B of such Act, and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children's Health Insurance Program).

''(4) Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.

''(5) Promotion of the interoperability of clinical data repositories or registries.

''(6) Promotion of technologies and best practices that enhance the protection of health information by all holders of individually identifiable health information.

''(7) Improve and expand the use of health information technology by public health departments.

''(8) Provide $300,000,000 to support regional or sub-national efforts towards health information exchange.

''(b) COORDINATION.—The Secretary shall ensure funds under this section are used in a coordinated manner with other health information promotion activities.

''(c) ADDITIONAL USE OF FUNDS.—In addition to using funds as provided in subsection (a), the Secretary may use amounts appropriated under section 3018 to carry out activities that are provided for under laws in effect on the date of enactment of this title.

''SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLEMENTATION ASSISTANCE.

''(a) HEALTH INFORMATION TECHNOLOGY EXTENSION PROGRAM.—To assist health care providers to adopt, implement, and effectively use certified EHR technology that allows for the electronic exchange and use of health information, the Secretary, acting through the Office of the National Coordinator, shall establish a health information technology extension program to provide health information technology assistance services to be carried out through the Department of Health and Human Services. The National Coordinator shall consult with other Federal agencies with demonstrated experience and expertise in information technology services, such as the National Institute of Standards and Technology, in developing and implementing this program.

''(b) HEALTH INFORMATION TECHNOLOGY RESEARCH CENTER.—

''(1) IN GENERAL.—The Secretary shall create a Health Information Technology Research Center (in this section referred to as the 'Center') to provide technical assistance and develop or recognize best practices to support and accelerate efforts to adopt, implement, and effectively utilize health information technology that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004(b).

''(2) INPUT.—The Center shall incorporate input from—

''(A) other Federal agencies with demonstrated experience and expertise in information technology services such as the National Institute of Standards and Technology;

''(B) users of health information technology, such as providers and their support and clerical staff and others involved in the care and care coordination of patients, from the health care and health information technology industry; and

''(C) others as appropriate.

''(3) PURPOSES.—The purposes of the Center are to—

''(A) provide a forum for the exchange of knowledge and experience;

''(B) accelerate the transfer of lessons learned from existing public and private sector initiatives, including those currently receiving Federal financial support;

''(C) assemble, analyze, and widely disseminate evidence and experience related to the adoption, implementation, and effective use of health information technology that allows for the electronic exchange and use of information including through the regional centers described in subsection (c);

''(D) provide technical assistance for the establishment and evaluation of regional and local health information networks to facilitate the electronic exchange of information across health care settings and improve the quality of health care;

''(E) provide technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information; and

''(F) learn about effective strategies to adopt and utilize health information technology in medically underserved communities.

''(c) HEALTH INFORMATION TECHNOLOGY REGIONAL EXTENSION CENTERS.—

''(1) IN GENERAL.—The Secretary shall provide assistance for the creation and support of regional centers (in this subsection referred to as 'regional centers') to provide technical assistance and disseminate best practices and other information learned from the Center to support and accelerate efforts to adopt, implement, and effectively utilize health information technology that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004. Activities conducted under this subsection shall be consistent with the strategic plan developed by the National Coordinator (and, as available) under section 3001.

''(2) AFFILIATION.—Regional centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies and is awarded financial assistance under this section. Individual awards shall be decided on the basis of merit.

''(3) OBJECTIVE.—The objective of the regional centers is to enhance and promote the adoption of health information technology through—

''(A) assistance with the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to healthcare providers nationwide;

''(B) broad participation of individuals from industry, universities, and State governments;

''(C) active dissemination of best practices and research on the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to health care providers in order to improve the quality of healthcare and protect the privacy and security of health information;

''(D) participation, to the extent practicable, in health information exchanges;

''(E) utilization, when appropriate, of the expertise and capability that exists in federal agencies other than the Department; and

''(F) integration of health information technology, including electronic health records, into the initial and ongoing training of health professionals and others in the healthcare industry that would be instrumental to improving the quality of healthcare through the smooth and accurate electronic use and exchange of health information.

''(4) REGIONAL ASSISTANCE.—Each regional center shall aim to provide assistance and education to all providers in a region, but shall prioritize any direct assistance first to the following:

''(A) Public or not-for-profit hospitals or critical access hospitals.

''(B) Federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act).

''(C) Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).

''(D) Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.

''(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

''(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this Act, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:

''(A) A detailed explanation of the program and the programs goals.

''(B) Procedures to be followed by the applicants.

''(C) Criteria for determining qualified applicants.

''(D) Maximum support levels expected to be available to centers under the program.

''(7) APPLICATION REVIEW.—The Secretary shall subject each application under this subsection to merit review. In making a decision whether to approve such application and provide financial support, the Secretary shall consider at a minimum the merits of the application, including those portions of the application regarding—

''(A) the ability of the applicant to provide assistance under this subsection and utilization of health information technology appropriate to the needs of particular categories of health care providers;

''(B) the types of service to be provided to health care providers;

''(C) geographical diversity and extent of service area; and

''(D) the percentage of funding and amount of in-kind commitment from other sources.

''(8) BIENNIAL EVALUATION.—Each regional center which receives financial assistance under this subsection shall be evaluated biennially by an evaluation panel appointed by the Secretary. Each evaluation panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

''(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

''(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

''(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as described in subsection (d)) that submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may specify, for the purpose of planning activities described in subsection (b).

''(c) IMPLEMENTATION GRANTS.—The Secretary may award a grant to a State or qualified State designated entity that—

''(1) has submitted, and the Secretary has approved, a plan described in subsection (c) (regardless of whether such plan was prepared using amounts awarded under paragraph (1)); and

''(2) submits an application at such time, in such manner, and containing such information as the Secretary may specify.

''(d) USE OF FUNDS.—Amounts received under a grant under subsection (a)(3) shall be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards through activities that include—

''(1) enhancing broad and varied participation in the authorized and secure nationwide electronic use and exchange of health information;

''(2) identifying State or local resources available towards a nationwide effort to promote health information technology;

''(3) complementing other Federal grants, programs, and efforts towards the promotion of health information technology;

''(4) providing technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information;

''(5) promoting effective strategies to adopt and utilize health information technology in medically underserved communities;

''(6) assisting patients in utilizing health information technology;

''(7) encouraging clinicians to work with Health Information Technology Regional Extension Centers as described in section 3012, to the extent they are available and valuable;

''(8) supporting public health agencies' authorized use of and access to electronic health information;

''(9) promoting the use of electronic health records for quality improvement including through quality measures reporting; and

''(10) such other activities as the Secretary may specify.

''(e) PLAN.—

''(1) IN GENERAL.—A plan described in this subsection is a plan that describes the activities to be carried out by a State or by the qualified State-designated entity within such State to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards and implementation specifications.

''(2) REQUIRED ELEMENTS.—A plan described in paragraph (1) shall—

''(A) be pursued in the public interest;

''(B) be consistent with the strategic plan developed by the National Coordinator (and, as available) under section 3001;

''(C) include a description of the ways the State or qualified State-designated entity will carry out the activities described in subsection (b); and

''(D) contain such elements as the Secretary may require.

''(f) QUALIFIED STATE-DESIGNATED ENTITY.—For purposes of this section, to be a qualified State-designated entity, with respect to a State, an entity shall—

''(1) be designated by the State as eligible to receive awards under this section;

''(2) be a not-for-profit entity with broad stakeholder representation on its governing board;

''(3) demonstrate that one of its principal goals is to use information technology to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information;

''(4) adopt nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders; and

''(5) conform to such other requirements as the Secretary may establish.

''(g) REQUIRED CONSULTATION.—In carrying out activities described in subsections (a)(2) and (a)(3), a State or qualified State-designated entity shall consult with and consider the recommendations of—

''(1) health care providers (including providers that provide services to low income and underserved populations);

''(2) health plans;

''(3) patient or consumer organizations that represent the population to be served;

''(4) health information technology vendors;

''(5) health care purchasers and employers;

''(6) public health agencies;

''(7) health professions schools, universities and colleges;

''(8) clinical researchers;

''(9) other users of health information technology such as the support and clerical staff of providers and others involved in the care and care coordination of patients; and

''(10) such other entities, as may be determined appropriate by the Secretary.

''(h) CONTINUOUS IMPROVEMENT.—The Secretary shall annually evaluate the activities conducted under this section and shall, in awarding grants under this section, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the Secretary, will lead towards the greatest improvement in quality of care, decrease in costs, and the most effective authorized and secure electronic exchange of health information.

''(i) REQUIRED MATCH.—

''(1) IN GENERAL.—For a fiscal year (beginning with fiscal year 2011), the Secretary may not make a grant under subsection (a) to a State unless the State agrees to make available non-Federal contributions (which may include in-kind contributions) toward the costs of a grant awarded under subsection (a)(3) in an amount equal to—

''(A) for fiscal year 2011, not less than $1 for each $10 of Federal funds provided under the grant;

''(B) for fiscal year 2012, not less than $1 for each $7 of Federal funds provided under the grant; and

''(C) for fiscal year 2013 and each subsequent fiscal year, not less than $1 for each $3 of Federal funds provided under the grant.

''(2) AUTHORITY TO REQUIRE STATE MATCH FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For any fiscal year during the grant program under this section before fiscal year 2011, the Secretary may determine the extent to which there shall be required a non-Federal contribution from a State receiving a grant under this section.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

''(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

''(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

''(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

''(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

''(3) provides assurances to the National Coordinator that the entity will establish a Loan Fund in accordance with subsection (c);

''(4) provides assurances to the National Coordinator that the entity will not provide a loan from the Loan Fund to a health care provider unless the provider agrees to—

''(A) submit reports on quality measures adopted by the Federal Government (by not later than 90 days after the date on which such measures are adopted), to—

''(i) the Director of the Centers for Medicare & Medicaid Services (or his or her designee), in the case of an entity participating in the Medicare program under title XVIII of the Social Security Act or the Medicaid program under title XIX of such Act; or

''(ii) the Secretary in the case of other entities;

''(B) demonstrate to the satisfaction of the Secretary (through criteria established by

the Secretary) that any certified EHR technology purchased, improved, or otherwise financially supported under a loan under this section is used to exchange health information in a manner that, in accordance with law and standards (as adopted under section 3005) applicable to the exchange of information, improves the quality of health care, such as promoting care coordination;

''(C) comply with such other requirements as the entity or the Secretary may require;

''(D) include a plan on how healthcare providers involved intend to maintain and support the certified EHR technology over time; and

''(E) include a plan on how the healthcare providers involved intend to maintain and support the certified EHR technology that would be purchased with such loan, including the type of resources expected to be involved and any such other information as the State or Indian tribe, respectively, may require; and

''(5) agrees to provide matching funds in accordance with subsection (i).

''(c) ESTABLISHMENT OF FUND.—For purposes of subsection (b)(3), an eligible entity shall establish a certified EHR technology loan fund (referred to in this subsection as a 'Loan Fund') and comply with the other requirements contained in this section. A grant to an eligible entity under this section shall be deposited in the Loan Fund established by the eligible entity. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any Loan Fund.

''(d) STRATEGIC PLAN.—

''(1) IN GENERAL.—For purposes of subsection (b)(2), a strategic plan of an eligible entity under this subsection shall identify the intended uses of amounts available to the Loan Fund of such entity.

''(2) CONTENTS.—A strategic plan under paragraph (1), with respect to a Loan Fund of an eligible entity, shall include for a year the following:

''(A) A list of the projects to be assisted through the Loan Fund during such year.

''(B) A description of the criteria and methods established for the distribution of funds from the Loan Fund during the year.

''(C) A description of the financial status of the Loan Fund as of the date of submission of the plan.

''(D) The short-term and long-term goals of the Loan Fund.

''(e) USE OF FUNDS.—Amounts deposited in a Loan Fund, including loan repayments and interest earned on such amounts, shall be used only for awarding loans or loan guarantees, making reimbursements described in subsection (g)(4)(A), or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the Loan Fund established under subsection (a). Loans under this section may be used by a health care provider to—

''(1) facilitate the purchase of certified EHR technology;

''(2) enhance the utilization of certified EHR technology (which may include costs associated with upgrading health information technology so that it meets criteria necessary to be a certified EHR technology);

''(3) train personnel in the use of such technology; or

''(4) improve the secure electronic exchange of health information.

''(f) TYPES OF ASSISTANCE.—Except as otherwise limited by applicable State law, amounts deposited into a Loan Fund under this subsection may only be used for the following:

''(1) To award loans that comply with the following:

''(A) The interest rate for each loan shall not exceed the market interest rate.

''(B) The principal and interest payments on each loan shall commence not later than 1 year after the date the loan was awarded, and each loan shall be fully amortized not later than 10 years after the date of the loan.

''(C) The Loan Fund shall be credited with all payments of principal and interest on each loan awarded from the Loan Fund.

''(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this subsection) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation involved.

''(3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the eligible entity if the proceeds of the sale of the bonds will be deposited into the Loan Fund.

''(4) To earn interest on the amounts deposited into the Loan Fund.

''(5) To make reimbursements described in subsection (g)(4)(A).

''(g) ADMINISTRATION OF LOAN FUNDS.—

''(1) COMBINED FINANCIAL ADMINISTRATION.—An eligible entity may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with applicable State law, the financial administration of a Loan Fund established under this subsection with the financial administration of any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.

''(2) COST OF ADMINISTERING FUND.—Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this subsection to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.

''(3) GUIDANCE AND REGULATIONS.—The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

''(A) provisions to ensure that each eligible entity commits and expends funds allotted to the entity under this subsection as efficiently as possible in accordance with this title and applicable State laws; and

''(B) guidance to prevent waste, fraud, and abuse.

''(4) PRIVATE SECTOR CONTRIBUTIONS.—

''(A) IN GENERAL.—A Loan Fund established under this subsection may accept contributions from private sector entities, except that such entities may not specify the recipient or recipients of any loan issued under this subsection. An eligible entity may agree to reimburse a private sector entity for any contribution made under this subparagraph, except that the amount of such reimbursement may not be greater than the principal amount of the contribution made.

''(B) AVAILABILITY OF INFORMATION.—An eligible entity shall make publicly available the identity of, and amount contributed by, any private sector entity under subparagraph (A) and may issue letters of commendation or make other awards (that have no financial value) to any such entity.

''(h) MATCHING REQUIREMENTS.—

''(1) IN GENERAL.—The National Coordinator may not make a grant under subsection (a) to an eligible entity unless the entity agrees to make available (directly or through donations from public or private entities) non-Federal contributions in cash to the costs of carrying out the activities for which the grant is awarded in an amount equal to not less than $1 for each $5 of Federal funds provided under the grant.

''(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

''(i) EFFECTIVE DATE.—The Secretary may not make an award under this section prior to January 1, 2010.

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

''(a) IN GENERAL.—The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

''(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

''(1) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

''(2) submit to the Secretary a strategic plan for integrating certified EHR technology in the clinical education of health professionals to reduce medical errors, increase access to prevention, reduce chronic diseases, and enhance health care quality;

''(3) be—

''(A) a school of medicine, osteopathic medicine, dentistry, or pharmacy, a graduate program in behavioral or mental health, or any other graduate health professions school;

''(B) a graduate school of nursing or physician assistant studies;

''(C) a consortium of two or more schools described in subparagraph (A) or (B); or

''(D) an institution with a graduate medical education program in medicine, osteopathic medicine, dentistry, pharmacy, nursing, or physician assistance studies.

''(4) provide for the collection of data regarding the effectiveness of the demonstration project to be funded under the grant in improving the safety of patients, the efficiency of health care delivery, and in increasing the likelihood that graduates of the grantee will adopt and incorporate certified EHR technology, in the delivery of health care services; and

''(5) provide matching funds in accordance with subsection (d).

''(c) USE OF FUNDS.—

''(1) IN GENERAL.—With respect to a grant under subsection (a), an eligible entity shall—

''(A) use grant funds in collaboration with 2 or more disciplines; and

''(B) use grant funds to integrate certified EHR technology into community-based clinical education.

''(2) LIMITATION.—An eligible entity shall not use amounts received under a grant under subsection (a) to purchase hardware, software, or services.

''(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

''(e) EVALUATION.—The Secretary shall take such action as may be necessary to evaluate the projects funded under this section and publish, make available, and disseminate the results of such evaluations on as wide a basis as is practicable.

''(f) REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report that—

''(1) describes the specific projects established under this section; and

''(2) contains recommendations for Congress based on the evaluation conducted under subsection (e).

''SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS ON HEALTH CARE.

''(a) IN GENERAL.—The Secretary, in consultation with the Director of the National Science Foundation, shall provide assistance to institutions of higher education (or consortia thereof) to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

''(b) ACTIVITIES.—Activities for which assistance may be provided under subsection (a) may include the following:

''(1) Developing and revising curricula in medical health informatics and related disciplines.

''(2) Recruiting and retaining students to the program involved.

''(3) Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.

''(4) Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.

''(c) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give preference to the following:

''(1) Existing education and training programs.

''(2) Programs designed to be completed in less than six months.

''(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

''SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

''(a) REPORTS.—The Secretary may require that an entity receiving assistance under this title shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—

''(1) an analysis of the effectiveness of such activities for which the entity receives such assistance, as compared to the goals for such activities; and

''(2) an analysis of the impact of the project on healthcare quality and safety.

''(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this title and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National Coordinator, will result in the greatest improvement in the quality and efficiency of health care.

''SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.

''For the purposes of carrying out this subtitle, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013. Amounts so appropriated shall remain available until expended.''.

Subtitle D—Privacy

SEC. 13400. DEFINITIONS.

In this subtitle, except as specified otherwise:

(1) BREACH.—The term ''breach'' means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security, privacy, or integrity of protected health information maintained by or on behalf of a person. Such term does not include any unintentional acquisition, access, use, or disclosure of such information by an employee or agent of the covered entity or business associate involved if such acquisition, access, use, or disclosure, respectively, was made in good faith and within the course and scope of the employment or other contractual relationship of such employee or agent, respectively, with the covered entity or business associate and if such information is not further acquired, accessed, used, or disclosed by such employee or agent.

(2) BUSINESS ASSOCIATE.—The term ''business associate'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term ''covered entity'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms ''disclose'' and ''disclosure'' have the meaning given the term ''disclosure'' in section 160.103 of title 45, Code of Federal Regulations.

(5) ELECTRONIC HEALTH RECORD.—The term ''electronic health record'' means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(6) HEALTH CARE OPERATIONS.—The term ''health care operation'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(7) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(8) HEALTH PLAN.—The term ''health plan'' has the meaning given such term in section 1171(5) of the Social Security Act.

(9) NATIONAL COORDINATOR.—The term ''National Coordinator'' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 13101.

(10) PAYMENT.—The term ''payment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(11) PERSONAL HEALTH RECORD.—The term ''personal health record'' means an electronic record of individually identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(14) SECURITY.—The term ''security'' has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.

(15) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(16) TREATMENT.—The term ''treatment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(17) USE.—The term ''use'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term ''vendor of personal health records'' means an entity, other than a covered entity (as defined in paragraph (3)), that offers or maintains a personal health record.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

SEC. 13401. APPLICATION OF SECURITY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES; ANNUAL GUIDANCE ON SECURITY PROVISIONS.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate with respect to such violation in the same manner such sections apply to a covered entity that violates such security provision.

(c) ANNUAL GUIDANCE.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall, in consultation with industry stakeholders, annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date before the enactment of this Act.

SEC. 13402. NOTIFICATION IN THE CASE OF BREACH.

(a) IN GENERAL.—A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information (as defined in subsection (h)(1)) shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach.

(b) NOTIFICATION OF COVERED ENTITY BY BUSINESS ASSOCIATE.—A business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discovery of a breach of such information, notify the covered entity of such breach. Such notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such breach.

(c) BREACHES TREATED AS DISCOVERED.—For purposes of this section, a breach shall

be treated as discovered by a covered entity or by a business associate as of the first day on which such breach is known to such entity or associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such entity or associate (or person) to have occurred.

(d) TIMELINESS OF NOTIFICATION.—

(1) IN GENERAL.—Subject to subsection (g), all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach by the covered entity involved (or business associate involved in the case of a notification required under subsection (b)).

(2) BURDEN OF PROOF.—The covered entity involved (or business associate involved in the case of a notification required under subsection (b)), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(e) METHODS OF NOTICE.—

(1) INDIVIDUAL NOTICE.—Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:

(A) Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.

(B) In the case in which there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes direct written (or, if specified by the individual under subparagraph (A), electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the home page of the Web site of the covered entity involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether or not the individual's unsecured protected health information is possibly included in the breach.

(C) In any case deemed by the covered entity involved to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity, in addition to notice provided under subparagraph (A), may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided to prominent media outlets serving a State or jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(3) NOTICE TO SECRETARY.—Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.

(4) POSTING ON HHS PUBLIC WEBSITE.—The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.

(f) CONTENT OF NOTIFICATION.—Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following:

(1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

(2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(3) The steps individuals should take to protect themselves from potential harm resulting from the breach.

(4) A brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

(5) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

(h) UNSECURED PROTECTED HEALTH INFORMATION.—

(1) DEFINITION.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this section, the term ''unsecured protected health information'' means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph (2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under paragraph (2) by the date specified in such paragraph, for purposes of this section, the term ''unsecured protected health information'' shall mean protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(2) GUIDANCE.—For purposes of paragraph (1) and section 13407(f)(3), not later than the date that is 60 days after the date of the enactment of this Act, the Secretary shall, after consultation with stakeholders, issue (and annually update) guidance specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

(i) REPORT TO CONGRESS ON BREACHES.—

(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).

(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

(A) the number and nature of such breaches; and

(B) actions taken in response to such breaches.

(j) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 13403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of the Department of Health and Human Services to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information.

(b) EDUCATION INITIATIVE ON USES OF HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this Act, the Office for Civil Rights within the Department of Health and Human Services shall develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information, including programs to educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. Such programs shall be conducted in a variety of languages and present information in a clear and understandable manner.

SEC. 13404. APPLICATION OF PRIVACY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES.

(a) APPLICATION OF CONTRACT REQUIREMENTS.—In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations, with such covered entity, the business associate may use and disclose such protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of section 164.504(e) of such title. The additional requirements of this subtitle that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF KNOWLEDGE ELEMENTS ASSOCIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to a business associate described in subsection (a), with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e)

and 164.504(e) of such title, except that in applying such section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.

(c) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any provision of subsection (a) or (b), the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

SEC. 13405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE LIMITED DATA SET OR THE MINIMUM NECESSARY.—

(1) IN GENERAL.—

(A) IN GENERAL.—Subject to subparagraph (B), a covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.

(B) GUIDANCE.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes ''minimum necessary'' for purposes of subpart E of part 164 of title 45, Code of Federal Regulation. In issuing such guidance the Secretary shall take into consideration the guidance under section 13424(c).

(C) SUNSET.—Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).

(2) DETERMINATION OF MINIMUM NECESSARY.—For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

(3) APPLICATION OF EXCEPTIONS.—The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 13423 in the same manner that such exceptions apply to section 164.502(b)(1) of such title before such date.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.

(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES REQUIRED IF COVERED ENTITY USES ELECTRONIC HEALTH RECORD.—

(1) IN GENERAL.—In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—

(A) the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and

(B) an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.

(2) REGULATIONS.—The Secretary shall promulgate regulations on what information shall be collected about each disclosure referred to in paragraph (1)(A) not later than 18 months after the date on which the Secretary adopts standards on accounting for disclosure described in the section 3002(b)(2)(B)(iv) of the Public Health Service Act, as added by section 13101. Such regulations shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burden of accounting for such disclosures.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed as—

(A) requiring a covered entity to account for disclosures of protected health information that are not made by such covered entity; or

(B) requiring a business associate of a covered entity to account for disclosures of protected health information that are not made by such business associate.

(4) REASONABLE FEE.—A covered entity may impose a reasonable fee on an individual for an accounting performed under paragraph (1)(B). Any such fee shall not be greater than the entity's labor costs in responding to the request.

(5) EFFECTIVE DATE.—

(A) CURRENT USERS OF ELECTRONIC RECORDS.—In the case of a covered entity insofar as it acquired an electronic health record as of January 1, 2009, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such a record on and after January 1, 2014.

(B) OTHERS.—In the case of a covered entity insofar as it acquires an electronic health record after January 1, 2010, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such record on and after the later of the following:

(i) January 1, 2011; or

(ii) the date that it acquires an electronic health record.

(d) REVIEW OF HEALTH CARE OPERATIONS.—Not later than 18 months after the date of the enactment of this title, the Secretary shall promulgate regulations to eliminate from the definition of health care operations under section 164.501 of title 45, Code of Federal Regulations, those activities that can reasonably and efficiently be conducted through the use of information that is de-identified (in accordance with the requirements of section 164.514(b) of such title) or that should require a valid authorization for use or disclosure. In promulgating such regulations, the Secretary may choose to narrow or clarify activities that the Secretary chooses to retain in the definition of health care operations and the Secretary shall take into account the report under section 13424(d). In such regulations the Secretary shall specify the date on which such regulations shall apply to disclosures made by a covered entity, but in no case would such date be sooner than the date that is 24 months after the date of the enactment of this section.

(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION OBTAINED FROM ELECTRONIC HEALTH RECORDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the following cases:

(A) The purpose of the exchange is for research or public health activities (as described in sections 164.501, 164.512(i), and 164.512(b) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.

(B) The purpose of the exchange is for the treatment of the individual and the price charges reflects not more than the costs of preparation and transmittal of the data for such purpose.

(C) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.

(D) The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.

(E) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.

(F) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (E).

(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out this subsection, including exceptions described in paragraph (2), not later than 18 months after the date of the enactment of this title.

(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.

(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format; and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

SEC. 13406. CONDITIONS ON CERTAIN CONTACTS AS PART OF HEALTH CARE OPERATIONS.

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A covered entity or business associate may not receive direct or indirect payment in exchange for making any communication described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, except—

(A) a business associate of a covered entity may receive payment from the covered entity for making any such communication on behalf of the covered entity that is consistent with the written contract (or other written arrangement) described in section 164.502(e)(2) of such title between such business associate and covered entity;

(B) a covered entity may receive payment in exchange for making any such communication if the entity obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in paragraph (b) of such section) with respect to such communication; and

(C) where such communication describes only a health care item or service that has previously been prescribed for or administered to the recipient of the communication, or a family member of such recipient.

(b) FUNDRAISING.—Fundraising for the benefit of a covered entity shall not be considered a health care operation for purposes of section 164.501 of title 45, Code of Federal Regulations.

(c) EFFECTIVE DATE.—This section shall apply to contracting occurring on or after the effective date specified under section 13423.

SEC. 13407. TEMPORARY BREACH NOTIFICATION REQUIREMENT FOR VENDORS OF PERSONAL HEALTH RECORDS AND OTHER NON-HIPAA COVERED ENTITIES.

(a) IN GENERAL.—In accordance with subsection (c), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each entity described in clause (ii) or (iii) of section 13424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

(1) notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such a breach of security; and

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 13424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or service and that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information in such a record as a result of such services shall, following the discovery of a breach of security of such information, notify such vendor or entity, respectively, of such breach. Such notice shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS, METHOD, AND CONTENT OF NOTIFICATIONS.—Subsections (c), (d), (e), and (f) of section 13402 shall apply to a notification required under subsection (a) and a vendor of personal health records, an entity described in subsection (a) and a third party service provider described in subsection (b), with respect to a breach of security under subsection (a) of unsecured PHR identifiable health information in such records maintained or offered by such vendor, in a manner specified by the Federal Trade Commission.

(d) NOTIFICATION OF THE SECRETARY.—Upon receipt of a notification of a breach of security under subsection (a)(2), the Federal Trade Commission shall notify the Secretary of such breach.

(e) ENFORCEMENT.—A violation of subsection (a) or (b) shall be treated as an unfair and deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57*a*(a)(1)(B)) regarding unfair or deceptive acts or practices.

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

(1) BREACH OF SECURITY.—The term ''breach of security'' means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual.

(2) PHR IDENTIFIABLE HEALTH INFORMATION.—The term ''PHR identifiable health information'' means individually identifiable health information, as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), and includes, with respect to an individual, information—

(A) that is provided by or on behalf of the individual; and

(B) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(3) UNSECURED PHR IDENTIFIABLE HEALTH INFORMATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''unsecured PHR identifiable health information'' means PHR identifiable health information that is not protected through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under section 13402(h)(2) by the date specified in such section, for purposes of this section, the term ''unsecured PHR identifiable health information'' shall mean PHR identifiable health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

(1) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this section. The provisions of this section shall apply to breaches of security that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

(2) SUNSET.—The provisions of this section shall not apply to breaches of security occurring on or after the earlier of the following the dates:

(A) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Secretary.

(B) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Federal Trade Commission and has taken effect.

SEC. 13408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

SEC. 13409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: ''For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.''.

SEC. 13410. IMPROVED ENFORCEMENT.

(a) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d-5) is amended—

(1) in subsection (b)(1), by striking ''the act constitutes an offense punishable under section 1177'' and inserting ''a penalty has been imposed under section 1177 with respect to such act''; and

(2) by adding at the end the following new subsection:

''(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—

''(1) IN GENERAL.—A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

''(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.''.

(b) EFFECTIVE DATE; REGULATIONS.—

(1) The amendments made by subsection (a) shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.

(2) Not later than 18 months after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate regulations to implement such amendments.

(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY PENALTIES COLLECTED.—

(1) IN GENERAL.—Subject to the regulation promulgated pursuant to paragraph (3), any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d-5) insofar as such section relates to privacy or security shall be transferred to the Office of Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act.

(2) GAO REPORT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary settlements imposed on or after the effective date of the regulation.

(d) TIERED INCREASE IN AMOUNT OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d-5(a)(1)) is amended by striking ''who violates a provision of this part a penalty of not more than'' and all that follows and inserting the following: ''who violates a provision of this part—

''(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);

''(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

''(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

''(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

''(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

''In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.''.

(2) TIERS OF PENALTIES DESCRIBED.—Section 1176(a) of such Act (42 U.S.C. 1320d-5(a)) is further amended by adding at the end the following new paragraph:

''(3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

''(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

''(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

''(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000; and

''(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000.''.

(3) CONFORMING AMENDMENTS.—Section 1176(b) of such Act (42 U.S.C. 1320d-5(b)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(B) in paragraph (2), as so redesignated—

(i) in subparagraph (A), by striking ''in subparagraph (B), a penalty may not be imposed under subsection (a) if'' and all that follows through ''the failure to comply is corrected'' and inserting ''in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected''; and

(ii) in subparagraph (B), by striking ''(A)(ii)'' and inserting ''(A)'' each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

(e) ENFORCEMENT THROUGH STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection:

''(d) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

''(1) CIVIL ACTION.—Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

''(A) to enjoin further such violation by the defendant; or

''(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

''(2) STATUTORY DAMAGES.—

''(A) IN GENERAL.—For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

''(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

''(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

''(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

''(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

''(A) to intervene in the action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

''(6) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) maintains a physical place of business.

''(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

''(8) APPLICATION OF CMP STATUTE OF LIMITATION.—A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with

respect to such violation consistent with the second sentence of section 1128A(c)(1).''.

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking ''A penalty may not be imposed under subsection (a)'' and inserting ''No penalty may be imposed under subsection (a) and no damages obtained under subsection (d)'';

(B) in paragraph (2)(A)—

(i) after ''subsection (a)(1)(C),'', by striking ''a penalty may not be imposed under subsection (a)'' and inserting ''no penalty may be imposed under subsection (a) and no damages obtained under subsection (d)''; and

(ii) in clause (ii), by inserting ''or damages'' after ''the penalty'';

(C) in paragraph (2)(B)(i), by striking ''The period'' and inserting ''With respect to the imposition of a penalty by the Secretary under subsection (a), the period''; and

(D) in paragraph (3), by inserting ''and any damages under subsection (d)'' after ''any penalty under subsection (a)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Such section is further amended by adding at the end the following new subsection:

''(e) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Nothing in this section shall be construed as preventing the Office of Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.''.

SEC. 13411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 13421. RELATIONSHIP TO OTHER LAWS.

(a) APPLICATION OF HIPAA STATE PREEMPTION.—Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of such Act or a standard or implementation specification adopted or established under sections 1172 through 1174 of such Act.

(b) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.—The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle. In carrying out the preceding sentence, the Secretary shall revise the definition of ''psychotherapy notes'' in section 164.501 of title 45, Code of Federal Regulations, to include test data that is related to direct responses, scores, items, forms, protocols, manuals, or other materials that are part of a mental health evaluation, as determined by the mental health professional providing treatment or evaluation.

SEC. 13422. REGULATORY REFERENCES.

Each reference in this subtitle to a provision of the Code of Federal Regulations refers to such provision as in effect on the date of the enactment of this title (or to the most recent update of such provision).

SEC. 13423. EFFECTIVE DATE.

Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

SEC. 13424. STUDIES, REPORTS, GUIDANCE.

(a) REPORT ON COMPLIANCE.—

(1) IN GENERAL.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report concerning complaints of alleged violations of law, including the provisions of this subtitle as well as the provisions of subparts C and E of part 164 of title 45, Code of Federal Regulations, (as such provisions are in effect as of the date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—

(A) the number of such complaints;

(B) the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;

(C) the number of such complaints that have resulted in the imposition of civil monetary penalties or have been resolved through monetary settlements, including the nature of the complaints involved and the amount paid in each penalty or settlement;

(D) the number of compliance reviews conducted and the outcome of each such review;

(E) the number of subpoenas or inquiries issued;

(F) the Secretary's plan for improving compliance with and enforcement of such provisions for the following year; and

(G) the number of audits performed and a summary of audit findings pursuant to section 13411.

(2) AVAILABILITY TO PUBLIC.—Each report under paragraph (1) shall be made available to the public on the Internet website of the Department of Health and Human Services.

(b) STUDY AND REPORT ON APPLICATION OF PRIVACY AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED ENTITIES.—

(1) STUDY.—Not later than one year after the date of the enactment of this title, the Secretary, in consultation with the Federal Trade Commission, shall conduct a study, and submit a report under paragraph (2), on privacy and security requirements for entities that are not covered entities or business associates as of the date of the enactment of this title, including—

(A) requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—

(i) vendors of personal health records;

(ii) entities that offer products or services through the website of a vendor of personal health records;

(iii) entities that are not covered entities and that offer products or services through the websites of covered entities that offer individuals personal health records;

(iv) entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and

(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing personal health record products or services;

(B) a determination of which Federal government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

(C) a timeframe for implementing regulations based on such findings.

(2) REPORT.—The Secretary shall submit to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on Commerce of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the findings of the study under paragraph (1) and shall include in such report recommendations on the privacy and security requirements described in such paragraph.

(c) GUIDANCE ON IMPLEMENTATION SPECIFICATION TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this title, the Secretary shall, in consultation with stakeholders, issue guidance on how best to implement the requirements for the de-identification of protected health information under section 164.514(b) of title 45, Code of Federal Regulations.

(d) GAO REPORT ON TREATMENT DISCLOSURES.—Not later than one year after the date of the enactment of this title, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the best practices related to the disclosure among health care providers of protected health information of an individual for purposes of treatment of such individual. Such report shall include an examination of the best practices implemented by States and by other entities, such as health information exchanges and regional health information organizations, an examination of the extent to which such best practices are successful with respect to the quality of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

TITLE XIV—STATE FISCAL STABILIZATION

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

For necessary expenses for a State Fiscal Stabilization Fund, $79,000,000,000, which shall be administered by the Department of Education, and shall be available through September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 1401. ALLOCATIONS.

(a) OUTLYING AREAS.—The Secretary of Education shall first allocate one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, for activities consistent with this

title under such terms and conditions as the Secretary may determine.

(b) ADMINISTRATION AND OVERSIGHT.—The Secretary may reserve up to $25,000,000 for administration and oversight of this title, including for program evaluation.

(c) RESERVATION FOR ADDITIONAL PROGRAMS.—After reserving funds under subsections (a) and (b), the Secretary shall reserve $15,000,000,000 for grants under sections 1406 and 1407.

(d) STATE ALLOCATIONS.—After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

(1) 61 percent on the basis of their relative population of individuals aged 5 through 24.

(2) 39 percent on the basis of their relative total population.

(e) STATE GRANTS.—From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) REALLOCATION.—The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not obligate within 1 year of receiving a grant, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

SEC. 1402. STATE USES OF FUNDS.

(a) EDUCATION FUND.—

(1) IN GENERAL.—The Governor shall use at least 61 percent of the State's allocation under section 1401 for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) RESTORING 2008 STATE SUPPORT FOR EDUCATION.—

(A) IN GENERAL.—The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's principal elementary and secondary funding formula, that is needed to restore State support for elementary and secondary education to the fiscal year 2008 level; and where applicable, to allow existing State formula increases for fiscal years 2009, 2010, and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments that were enacted prior to July 1, 2008; and

(ii) to provide the amount of funds to public institutions of higher education in the State that is needed to restore State support for postsecondary education to the fiscal year 2008 level.

(B) SHORTFALL.—If the Governor determines that the amount of funds available under paragraph (1) is insufficient to restore State support for education to the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(3) SUBGRANTS TO IMPROVE BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) OTHER GOVERNMENT SERVICES.—The Governor may use up to 39 percent of the State's allocation under section 1401 for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education.

SEC. 1403. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—A local educational agency that receives funds under this title may use the funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) (''ESEA''), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (''IDEA''), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (''the Perkins Act'').

(b) PROHIBITION.—A local educational agency may not use funds received under this title for capital projects unless authorized by ESEA, IDEA, or the Perkins Act.

SEC. 1404. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students.

(b) PROHIBITION.—An institution of higher education may not use funds received under this title to increase its endowment.

(c) ADDITIONAL PROHIBITION.—An institution of higher education may not use funds received under this title for construction, renovation, or facility repair.

SEC. 1405. STATE APPLICATIONS.

(a) IN GENERAL.—The Governor of a State desiring to receive an allocation under section 1401 shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) APPLICATION.—The Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation.

(c) INCENTIVE GRANT APPLICATION.—The Governor of a State seeking a grant under section 1406 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d);

(3) describe the achievement and graduation rates of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in 1111(b)(2) of ESEA in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need schools and local educational agencies; and

(5) include a plan for evaluating its progress in closing achievement gaps.

(d) ASSURANCES.—An application under subsection (b) shall include the following assurances:

(1) MAINTENANCE OF EFFORT.—

(A) ELEMENTARY AND SECONDARY EDUCATION.—The State will, in each of fiscal years 2009 and 2010, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) HIGHER EDUCATION.—The State will, in each of fiscal years 2009 and 2010, maintain State support for public institutions of higher education (not including support for capital projects or for research and development) at least at the level of such support in fiscal year 2006.

(2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take action, including activities outlined in section 2113(c) of ESEA, to increase the number, and improve the distribution, of effective teachers and principals in high-poverty schools and local educational agencies throughout the State.

(3) IMPROVING COLLECTION AND USE OF DATA.—The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) STANDARDS AND ASSESSMENTS.—The State—

(A) will enhance the quality of academic assessments described in section 1111(b)(3) of ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with 6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) will ensure compliance with the requirements of section 1116(a)(7)(C)(iv) and section 1116(a)(8)(B) with respect to schools identified under such sections.

SEC. 1406. STATE INCENTIVE GRANTS.

(a) IN GENERAL.—From the total amount reserved under section 1401(c) that is not used for section 1407, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 1405(d).

(b) BASIS FOR GRANTS.—The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 1405 and such other criteria as the Secretary determines appropriate.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

SEC. 1407. INNOVATION FUND.

(a) IN GENERAL.—

(1) ELIGIBLE ENTITY.—For the purposes of this section, the term ''eligible entity'' means—

(A) A local educational agency; or

(B) a partnership between a nonprofit organization and—

(i) one or more local educational agencies;

(ii) or a consortium of schools.

(2) PROGRAM ESTABLISHED.—From the total amount reserved under section 1401(c), the Secretary may reserve up to $650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) BASIS FOR AWARDS.—The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

(A) to allow such eligible entities to expand their work and serve as models for best practices;

(B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and

(C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) ELIGIBILITY.—To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

SEC. 1408. STATE REPORTS.

A State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of teachers, in implementing a State student longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases; and

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance.

SEC. 1409. EVALUATION.

The Comptroller General of the United States shall conduct evaluations of the programs under sections 1406 and 1407 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

SEC. 1410. SECRETARY'S REPORT TO CONGRESS.

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of the State reports, that evaluates the information provided in the State reports under section 1408.

SEC. 1411. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

SEC. 1412. DEFINITIONS.

Except as otherwise provided in this title, as used in this title—

(1) the term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(2) the term ''Secretary'' means the Secretary of Education;

(3) the term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(4) any other term that is defined in section 9101 of ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

SEC. 1413. REGULATORY RELIEF.

(a) WAIVER AUTHORITY.—Subject to subsections (b) and (c), the Secretary of Education may, as applicable, waive or modify, in order to ease fiscal burdens, any requirement relating to the following:

(1) Maintenance of effort.

(2) The use of Federal funds to supplement, not supplant, non-Federal funds.

(b) DURATION.—A waiver under this section shall be for fiscal years 2009 and 2010.

(c) LIMITATIONS.—

(1) RELATION TO IDEA.—Nothing in this section shall be construed to permit the Secretary to waive or modify any provision of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), except as described in a(1) and a(2).

(2) MAINTENANCE OF EFFORT.—If the Secretary grants a waiver or modification under this section waiving or modifying a requirement relating to maintenance of effort for fiscal years 2009 and 2010, the level of effort required for fiscal year 2011 shall not be reduced because of the waiver or modification.

TITLE XV—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD AND RECOVERY INDEPENDENT ADVISORY PANEL

SEC. 1501. DEFINITIONS.

In this title:

(1) AGENCY.—The term ''agency'' has the meaning given under section 551 of title 5, United States Code.

(2) BOARD.—The term ''Board'' means the Recovery Accountability and Transparency Board established in section 1511.

(3) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the Board.

(4) COVERED FUNDS.—The term ''covered funds'' means any funds that are expended or obligated—

(A) from appropriations made under this Act; and

(B) under any other authorities provided under this Act.

(5) PANEL.—The term ''Panel'' means the Recovery Independent Advisory Panel established in section 1531.

Subtitle A—Recovery Accountability and Transparency Board

SEC. 1511. ESTABLISHMENT OF THE RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD.

There is established the Recovery Accountability and Transparency Board to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.

SEC. 1512. COMPOSITION OF BOARD.

(a) CHAIRPERSON.—

(1) DESIGNATION OR APPOINTMENT.—The President shall—

(A) designate the Deputy Director for Management of the Office of Management and Budget to serve as Chairperson of the Board;

(B) designate another Federal officer who was appointed by the President to a position that required the advice and consent of the Senate, to serve as Chairperson of the Board; or

(C) appoint an individual as the Chairperson of the Board, by and with the advice and consent of the Senate.

(2) COMPENSATION.—

(A) DESIGNATION OF FEDERAL OFFICER.—If the President designates a Federal officer under paragraph (1)(A) or (B) to serve as Chairperson, that Federal officer may not receive additional compensation for services performed as Chairperson.

(B) APPOINTMENT OF NON-FEDERAL OFFICER.—If the President appoints an individual as Chairperson under paragraph (1)(C), that individual shall be compensated at the rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) MEMBERS.—The members of the Board shall include—

(1) the Inspectors General of the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Justice, Transportation, Treasury, and the Treasury Inspector General for Tax Administration; and

(2) any other Inspector General as designated by the President from any agency that expends or obligates covered funds.

SEC. 1513. FUNCTIONS OF THE BOARD.

(a) FUNCTIONS.—

(1) IN GENERAL.—The Board shall coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse.

(2) SPECIFIC FUNCTIONS.—The functions of the Board shall include—

(A) reviewing whether the reporting of contracts and grants using covered funds meets applicable standards and specifies the purpose of the contract or grant and measures of performance;

(B) reviewing whether competition requirements applicable to contracts and grants using covered funds have been satisfied;

(C) auditing and investigating covered funds to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring;

(D) reviewing whether there are sufficient qualified acquisition and grant personnel overseeing covered funds;

(E) reviewing whether personnel whose duties involve acquisitions or grants made with covered funds receive adequate training; and

(F) reviewing whether there are appropriate mechanisms for interagency collaboration relating to covered funds.

(b) REPORTS.—

(1) QUARTERLY REPORTS.—The Board shall submit quarterly reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, summarizing the findings of the Board and the findings of inspectors general of agencies. The Board may submit additional reports as appropriate.

(2) ANNUAL REPORTS.—The Board shall submit annual reports to the President and the Committees on Appropriations of the Senate and House of Representatives, consolidating applicable quarterly reports on the use of covered funds.

(3) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—All reports submitted under this subsection shall be made publicly available and posted on a website established by the Board.

(B) REDACTIONS.—Any portion of a report submitted under this subsection may be redacted when made publicly available, if that portion would disclose information that is not subject to disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

(c) RECOMMENDATIONS.—

(1) IN GENERAL.—The Board shall make recommendations to agencies on measures to prevent fraud, waste, and abuse relating to covered funds.

(2) RESPONSIVE REPORTS.—Not later than 30 days after receipt of a recommendation under paragraph (1), an agency shall submit a report to the President, the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, and the Board on—

(A) whether the agency agrees or disagrees with the recommendations; and

(B) any actions the agency will take to implement the recommendations.

SEC. 1514. POWERS OF THE BOARD.

(a) IN GENERAL.—The Board shall conduct, supervise, and coordinate audits and investigations by inspectors general of agencies relating to covered funds.

(b) AUDITS AND INVESTIGATIONS.—The Board may—

(1) conduct its own independent audits and investigations relating to covered funds; and

(2) collaborate on audits and investigations relating to covered funds with any inspector general of an agency.

(c) AUTHORITIES.—

(1) AUDITS AND INVESTIGATIONS.—In conducting audits and investigations, the Board shall have the authorities provided under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(2) STANDARDS AND GUIDELINES.—The Board shall carry out the powers under subsections (a) and (b) in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) PUBLIC HEARINGS.—The Board may hold public hearings and Board personnel may conduct investigative depositions. The head of each agency shall make all officers and employees of that agency available to provide testimony to the Board and Board personnel. The Board may issue subpoenas to compel the testimony of persons who are not Federal officers or employees. Any such subpoenas may be enforced as provided under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(e) CONTRACTS.—The Board may enter into contracts to enable the Board to discharge its duties under this subtitle, including contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Board.

(f) TRANSFER OF FUNDS.—The Board may transfer funds appropriated to the Board for expenses to support administrative support services and audits or investigations of covered funds to any office of inspector general, the Office of Management and Budget, the General Services Administration, and the Panel.

SEC. 1515. EMPLOYMENT, PERSONNEL, AND RELATED AUTHORITIES.

(a) EMPLOYMENT AND PERSONNEL AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES.—Subject to paragraph (2), the Board 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).

(B) APPLICATION.—For purposes of exercising the authorities described under subparagraph (A), the term ''Chairperson of the Board'' shall be substituted for the term ''head of a temporary organization''.

(C) CONSULTATION.—In exercising the authorities described under subparagraph (A), the Chairperson shall consult with members of the Board.

(2) EMPLOYMENT AUTHORITIES.—In exercising the employment authorities under subsection (b) of section 3161 of title 5, United States Code, as provided under paragraph (1) of this subsection—

(A) paragraph (2) of subsection (b) of section 3161 of that title (relating to periods of appointments) shall not apply; and

(B) no period of appointment may exceed the date on which the Board terminates under section 1521.

(b) INFORMATION AND ASSISTANCE.—

(1) IN GENERAL.—Upon request of the Board for information or assistance from any 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 Board, or an authorized designee.

(2) REPORT OF REFUSALS.—Whenever information or assistance requested by the Board is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, without delay.

(c) ADMINISTRATIVE SUPPORT.—The General Services Administration shall provide the Board with administrative support services, including the provision of office space and facilities.

SEC. 1516. INDEPENDENCE OF INSPECTORS GENERAL.

(a) INDEPENDENT AUTHORITY.—Nothing in this subtitle shall affect the independent authority of an inspector general to determine whether to conduct an audit or investigation of covered funds.

(b) REQUESTS BY BOARD.—If the Board requests that an inspector general conduct or refrain from conducting an audit or investigation and the inspector general rejects the request in whole or in part, the inspector general shall, not later than 30 days after rejecting the request, submit a report to the Board, the head of the applicable agency, and the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives. The report shall state the reasons that the inspector general has rejected the request in whole or in part.

SEC. 1517. COORDINATION WITH THE COMPTROLLER GENERAL AND STATE AUDITORS.

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

SEC. 1518. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.

(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to the Board, an inspector general, the Comptroller General, a member of Congress, or a the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

(1) gross mismanagement of an agency contract or grant relating to covered funds;

(2) a gross waste of covered funds;

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

(4) a violation of law related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the appropriate inspector general. Unless the inspector general determines that the complaint is frivolous, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

(2) TIME LIMITATIONS FOR ACTIONS.—

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

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

(c) REMEDY AND ENFORCEMENT AUTHORITY.—

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

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

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

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

(2) CIVIL ACTION.—If the head of an agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under subsection (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

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

(4) JUDICIAL ENFORCEMENT OF ORDER.—Whenever a person fails to comply with an order issued under paragraph (1), the head of

the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

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

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

SEC. 1519. BOARD WEBSITE.

(a) ESTABLISHMENT.—The Board shall establish and maintain a user-friendly, public-facing website to foster greater accountability and transparency in the use of covered funds.

(b) PURPOSE.—The website established and maintained under subsection (a) shall be a portal or gateway to key information relating to this Act and provide connections to other Government websites with related information.

(c) CONTENT AND FUNCTION.—In establishing the website established and maintained under subsection (a), the Board shall ensure the following:

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

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

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

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

(5) The website shall include printable reports on covered funds obligated by month to each State and congressional district.

(6) The website shall provide a means for the public to give feedback on the performance of contracts that expend covered funds.

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

(d) WAIVER.—The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security.

SEC. 1520. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

SEC. 1521. TERMINATION OF THE BOARD.

The Board shall terminate on September 30, 2012.

Subtitle B—Recovery Independent Advisory Panel

SEC. 1531. ESTABLISHMENT OF RECOVERY INDEPENDENT ADVISORY PANEL.

(a) ESTABLISHMENT.—There is established the Recovery Independent Advisory Panel.

(b) MEMBERSHIP.—The Panel shall be composed of 5 members who shall be appointed by the President.

(c) QUALIFICATIONS.—Members shall be appointed on the basis of expertise in economics, public finance, contracting, accounting, or any other relevant field.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Panel have been appointed, the Panel shall hold its first meeting.

(e) MEETINGS.—The Panel shall meet at the call of the Chairperson of the Panel.

(f) QUORUM.—A majority of the members of the Panel shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—The Panel shall select a Chairperson and Vice Chairperson from among its members.

SEC. 1532. DUTIES OF THE PANEL.

The Panel shall make recommendations to the Board on actions the Board could take to prevent fraud, waste, and abuse relating to covered funds.

SEC. 1533. POWERS OF THE PANEL.

(a) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers advisable to carry out this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Panel may secure directly from any agency such information as the Panel considers necessary to carry out this subtitle. Upon request of the Chairperson of the Panel, the head of such agency shall furnish such information to the Panel.

(c) POSTAL SERVICES.—The Panel may use the United States mails in the same manner and under the same conditions as agencies of the Federal Government.

(d) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

SEC. 1534. PANEL PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Panel who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel. All members of the Panel who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Panel may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) ADMINISTRATIVE SUPPORT.—The General Services Administration shall provide the Board with administrative support services, including the provision of office space and facilities.

SEC. 1535. TERMINATION OF THE PANEL.

The Panel shall terminate on September 30, 2012.

SEC. 1536. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

Subtitle C—Reports of the Council of Economic Advisers

SEC. 1541. REPORTS OF THE COUNCIL OF ECONOMIC ADVISERS.

(a) IN GENERAL.—In consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, the Chairperson of the Council of Economic Advisers shall submit quarterly reports to the Committees on Appropriations of the Senate and House of Representatives that detail the estimated impact of programs funded through covered funds on employment, economic growth, and other key economic indicators.

(b) SUBMISSION.—The first report under subsection (a) shall be submitted not later than 15 days after the end of the first full quarter following the date of enactment of this Act. The last report required to be submitted under subsection (a) shall apply to the quarter in which the Board terminates under section 1521.

TITLE XVI—GENERAL PROVISIONS—THIS ACT

EMERGENCY DESIGNATION

SEC. 1601. Each amount in this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009.

AVAILABILITY

SEC. 1602. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

RELATIONSHIP TO OTHER APPROPRIATIONS

SEC. 1603. Each amount appropriated or made available in this Act is in addition to

amounts otherwise appropriated for the fiscal year involved. Enactment of this Act shall have no effect on the availability of amounts under the Continuing Appropriations Resolution, 2009 (division A of Public Law 110–329).

BUY AMERICAN

SEC. 1604. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS. (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

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

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

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

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

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written jurisdiction as to why the provision is being waived.

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

CERTIFICATION

SEC. 1605. With respect to funds in titles I though XVI of this Act made available to State, or local government agencies, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made.

ECONOMIC STABILIZATION CONTRACTING

SEC. 1606. REFORM OF CONTRACTING PROCEDURES UNDER EESA. Section 107(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5217(b)) is amended by inserting ''and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term 'individual with disability' has the same meaning as the term 'handicapped individual' as that term is defined in section 3(f) of the Small Business Act (15 U.S.C. 632(f)),'' after ''(12 U.S.C. 1441a(r)(4)),''.

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS

SEC. 1000. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the ''American Recovery and Reinvestment Tax Act of 2009''.

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

TITLE I—TAX PROVISIONS

Sec. 1000. Short title, etc.

Subtitle A—Tax Relief for Individuals and Families

PART I—GENERAL TAX RELIEF

Sec. 1001. Making work pay credit.
Sec. 1002. Temporary increase in earned income tax credit.
Sec. 1003. Temporary increase of refundable portion of child credit.
Sec. 1004. American opportunity tax credit.
Sec. 1005. Computer technology and equipment allowed as a qualified higher education expense for section 529 accounts in 2009 and 2010.
Sec. 1006. Extension of first-time homebuyer credit; waiver of requirement to repay.
Sec. 1007. Suspension of tax on portion of unemployment compensation.

PART II—ALTERNATIVE MINIMUM TAX RELIEF

Sec. 1011. Extension of alternative minimum tax relief for nonrefundable personal credits.
Sec. 1012. Extension of increased alternative minimum tax exemption amount.

Subtitle B—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

Sec. 1101. Extension of credit for electricity produced from certain renewable resources.
Sec. 1102. Election of investment credit in lieu of production credit.
Sec. 1103. Repeal of certain limitations on credit for renewable energy property.

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

Sec. 1111. Increased limitation on issuance of new clean renewable energy bonds.
Sec. 1112. Increased limitation on issuance of qualified energy conservation bonds.

PART III—ENERGY CONSERVATION INCENTIVES

Sec. 1121. Extension and modification of credit for nonbusiness energy property.
Sec. 1122. Modification of credit for residential energy efficient property.
Sec. 1123. Temporary increase in credit for alternative fuel vehicle refueling property.

PART IV—ENERGY RESEARCH INCENTIVES

Sec. 1131. Increased research credit for energy research.

PART V—GENERAL BUSINESS CREDIT

Sec. 1141. 5-year carryback of general business credits.
Sec. 1142. Temporary provision allowing general business credits to offset 100 percent of Federal income tax liability.

PART VI—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

Sec. 1151. Application of monitoring requirements to carbon dioxide used as a tertiary injectant.

PART VII—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

Sec. 1161. Modification of credit for qualified plug-in electric motor vehicles.

Subtitle C—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

Sec. 1201. Special allowance for certain property acquired during 2009.
Sec. 1202. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1211. 5-year carryback of operating losses.
Sec. 1212. Exception for TARP recipients.

PART III—INCENTIVES FOR NEW JOBS

Sec. 1221. Incentives to hire unemployed veterans and disconnected youth.

PART IV—CANCELLATION OF INDEBTEDNESS

Sec. 1231. Deferral and ratable inclusion of income arising from indebtedness discharged by the repurchase of a debt instrument.

PART V—QUALIFIED SMALL BUSINESS STOCK

Sec. 1241. Special rules applicable to qualified small business stock for 2009 and 2010.

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

Sec. 1251. Increased exclusion amount for commuter transit benefits and transit passes.

PART VII—S CORPORATIONS

Sec. 1261. Temporary reduction in recognition period for built-in gains tax.

PART VIII—BROADBAND INCENTIVES

Sec. 1271. Broadband Internet access tax credit.

PART IX—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Sec. 1281. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle D—Manufacturing Recovery Provisions

Sec. 1301. Temporary expansion of availability of industrial development bonds to facilities manufacturing intangible property.
Sec. 1302. Credit for investment in advanced energy facilities.

Subtitle E—Economic Recovery Tools

Sec. 1401. Recovery zone bonds.
Sec. 1402. Tribal economic development bonds.
Sec. 1403. Modifications to new markets tax credit.

Subtitle F—Infrastructure Financing Tools

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.
Sec. 1504. Modification to high speed intercity rail facility bonds.

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

Sec. 1511. Delay in application of withholding tax on government contractors.

PART III—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1521. Qualified school construction bonds.
Sec. 1522. Extension and expansion of qualified zone academy bonds.

PART IV—BUILD AMERICA BONDS

Sec. 1531. Build America bonds.

Subtitle G—Economic Recovery Payments to Certain Individuals

Sec. 1601. Economic recovery payment to recipients of Social Security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.

Subtitle H—Trade Adjustment Assistance

Sec. 1701. Temporary extension of Trade Adjustment Assistance program.

Subtitle I—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

Sec. 1801. Prohibition on collection of certain payments made under the Continued Dumping and Subsidy Offset Act of 2000.

Subtitle J—Other Provisions

Sec. 1901. Application of certain labor standards to projects financed with certain tax-favored bonds.

Sec. 1902. Increase in public debt limit.

Subtitle A—Tax Relief for Individuals and Families

PART I—GENERAL TAX RELIEF

SEC. 1001. MAKING WORK PAY CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by inserting after section 36 the following new section:

"SEC. 36A. MAKING WORK PAY CREDIT.<Q P='02'>

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

''(1) 6.2 percent of earned income of the taxpayer, or

''(2) $500 ($1,000 in the case of a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable year shall be reduced (but not below zero) by 4 percent of so much of the taxpayer's modified adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

''(c) REDUCTION FOR CERTAIN OTHER PAYMENTS.—The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 1601 of the American Recovery and Reinvestment Tax Act of 2009.

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

''(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any individual other than—

''(A) any nonresident alien individual,

''(B) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

''(C) an estate or trust.

Such term shall not include any individual unless the requirements of section 32(c)(1)(E) are met with respect to such individual.

''(2) EARNED INCOME.—The term 'earned income' has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.<Q P='02'>

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

(b) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

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

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

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

(3) DEFINITIONS AND SPECIAL RULES.—

(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).

(c) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

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

''(N) an omission of the reduction required under section 36A(c) with respect to the credit allowed under section 36A or an omission of the correct TIN required under section 36A(d)(1).''.

(e) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) is amended by inserting ''36A,'' after ''36,''.

(2) Section 1324(b)(2) of title 31, United States Code, is amended by inserting ''36A,'' after ''36,''.

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 36 the following new item:

''Sec. 36A. Making work pay credit.''.

(f) EFFECTIVE DATE.—This section, and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.

SEC. 1002. TEMPORARY INCREASE IN EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Subsection (b) of section 32 is amended by adding at the end the following new paragraph:

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

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

''(B) REDUCTION OF MARRIAGE PENALTY.—

''(i) IN GENERAL.—The dollar amount in effect under paragraph (2)(B) shall be $5,000.

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

''(I) such dollar amount, multiplied by

''(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

''(iii) ROUNDING.—Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).''.

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

SEC. 1003. TEMPORARY INCREASE OF REFUNDABLE PORTION OF CHILD CREDIT.

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

''(4) SPECIAL RULE FOR 2009 AND 2010.—Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009 or 2010, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $6,000.''.

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

SEC. 1004. AMERICAN OPPORTUNITY TAX CREDIT.

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

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

''(1) INCREASE IN CREDIT.—The Hope Scholarship Credit shall be an amount equal to the sum of—

''(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

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

''(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF POST-SECONDARY EDUCATION.—Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting '4' for '2'.

''(3) QUALIFIED TUITION AND RELATED EXPENSES TO INCLUDE REQUIRED COURSE MATERIALS.—Subsection (f)(1)(A) shall be applied by substituting 'tuition, fees, and course materials' for 'tuition and fees'.

''(4) INCREASE IN AGI LIMITS FOR HOPE SCHOLARSHIP CREDIT.—In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

''(A) the excess of—

''(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

''(ii) $80,000 ($160,000 in the case of a joint return), bears to

''(B) $10,000 ($20,000 in the case of a joint return).

''(5) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

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

Any reference in this section or section 24, 25, 26, 25B, 904, or 1400C to a credit allowable under this subsection shall be treated as a reference to so much of the credit allowable under subsection (a) as is attributable to the Hope Scholarship Credit.

''(6) PORTION OF CREDIT MADE REFUNDABLE.—30 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

''(7) COORDINATION WITH MIDWESTERN DISASTER AREA BENEFITS.—In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive the application of this subsection to such taxpayer for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

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

(2) Section 25(e)(1)(C)(ii) is amended by inserting ''25A(i),'' after ''24,''.

(3) Section 26(a)(1) is amended by inserting ''25A(i),'' after ''24,''.

(4) Section 25B(g)(2) is amended by inserting ''25A(i),'' after ''23,''.

(5) Section 904(i) is amended by inserting ''25A(i),'' after ''24,''.

(6) Section 1400C(d)(2) is amended by inserting ''25A(i),'' after ''24,''.

(7) Section 1324(b)(2) of title 31, United States Code, is amended by inserting ''25A,'' before ''35''.

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

(d) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

(e) TREASURY STUDIES REGARDING EDUCATION INCENTIVES.—

(1) STUDY REGARDING COORDINATION WITH NON-TAX EDUCATIONAL INCENTIVES.—The Secretary of the Treasury, or the Secretary's delegate, shall study how to coordinate the credit allowed under section 25A of the Internal Revenue Code of 1986 with the Federal Pell Grant program under section 401 of the Higher Education Act of 1965.

(2) STUDY REGARDING IMPOSITION OF COMMUNITY SERVICE REQUIREMENTS.—The Secretary of the Treasury, or the Secretary's delegate, shall study the feasibility of requiring students to perform community service as a condition of taking their tuition and related expenses into account under section 25A of the Internal Revenue Code of 1986.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the studies conducted under this paragraph.

SEC. 1005. COMPUTER TECHNOLOGY AND EQUIPMENT ALLOWED AS A QUALIFIED HIGHER EDUCATION EXPENSE FOR SECTION 529 ACCOUNTS IN 2009 AND 2010.

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

''(iii) expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2008.

SEC. 1006. EXTENSION OF FIRST-TIME HOMEBUYER CREDIT; WAIVER OF REQUIREMENT TO REPAY.

(a) EXTENSION.—

(1) IN GENERAL.—Section 36(h) is amended by striking ''July 1, 2009'' and inserting ''September 1, 2009''.

(2) CONFORMING AMENDMENT.—Section 36(g) is amended by striking ''July 1, 2009'' and inserting ''September 1, 2009''.

(b) WAIVER OF RECAPTURE.—

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

''(D) WAIVER OF RECAPTURE FOR PURCHASES IN 2009.—In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008, and before September 1, 2009—

''(i) paragraph (1) shall not apply, and

''(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.''.

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased after December 31, 2008.

SEC. 1007. SUSPENSION OF TAX ON PORTION OF UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 85 of the Internal Revenue Code of 1986 (relating to unemployment compensation) is amended by adding at the end the following new subsection:

''(c) SPECIAL RULE FOR 2009.—In the case of any taxable year beginning in 2009, gross income shall not include so much of the unemployment compensation received by an individual as does not exceed $2,400.''.

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

PART II—ALTERNATIVE MINIMUM TAX RELIEF

SEC. 1011. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

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

(1) by striking ''or 2008'' and inserting ''2008, or 2009'', and

(2) by striking ''2008'' in the heading thereof and inserting ''2009''.

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

SEC. 1012. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

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

(1) by striking ''($69,950 in the case of taxable years beginning in 2008)'' in subparagraph (A) and inserting ''($70,950 in the case of taxable years beginning in 2009)'', and

(2) by striking ''($46,200 in the case of taxable years beginning in 2008)'' in subparagraph (B) and inserting ''($46,700 in the case of taxable years beginning in 2009)''.

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

Subtitle B—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

SEC. 1101. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

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

(1) by striking ''2010'' in paragraph (1) and inserting ''2013'',

(2) by striking ''2011'' each place it appears in paragraphs (2), (3), (4), (6), (7) and (9) and inserting ''2014'', and

(3) by striking ''2012'' in paragraph (11)(B) and inserting ''2014''.

(b) TECHNICAL AMENDMENT.—Paragraph (5) of section 45(d) is amended by striking ''and before'' and all that follows and inserting '' and before October 3, 2008.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

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

SEC. 1102. ELECTION OF INVESTMENT CREDIT IN LIEU OF PRODUCTION CREDIT.

(a) IN GENERAL.—Subsection (a) of section 48 is amended by adding at the end the following new paragraph:

''(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

''(A) IN GENERAL.—In the case of any qualified investment credit facility—

''(i) such facility shall be treated as energy property for purposes of this section, and

''(ii) the energy percentage with respect to such property shall be 30 percent.

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

''(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term 'qualified investment credit facility' means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:

''(i) WIND FACILITIES.—Any facility described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

''(ii) OTHER FACILITIES.—Any facility described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.''.

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

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

(a) REPEAL OF LIMITATION ON CREDIT FOR QUALIFIED SMALL WIND ENERGY PROPERTY.—Paragraph (4) of section 48(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C).

(b) REPEAL OF LIMITATION ON PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—

(1) IN GENERAL.—Section 48(a)(4) is amended by adding at the end the following new subparagraph:

''(D) TERMINATION.—This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(1) is amended by striking ''(8), and (9)'' and inserting ''and (8)''.

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

(C) Section 48A(b)(2) is amended by inserting ''(without regard to subparagraph (D) thereof)'' after ''section 48(a)(4)''.

(D) Section 48B(b)(2) is amended by inserting ''(without regard to subparagraph (D) thereof)'' after ''section 48(a)(4)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) shall apply to taxable years beginning after December 31, 2008.

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

SEC. 1111. INCREASED LIMITATION ON ISSUANCE OF NEW CLEAN RENEWABLE ENERGY BONDS.

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

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

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

Section 54D(d) is amended by striking ''800,000,000'' and inserting ''$3,200,000,000''.

PART III—ENERGY CONSERVATION INCENTIVES

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

(a) IN GENERAL.—Section 25C is amended by striking subsections (a) and (b) and inserting the following new subsections:

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

''(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

''(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

''(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500.''.

(b) EXTENSION.—Section 25C(g)(2) is amended by striking ''December 31, 2009'' and inserting ''December 31, 2010''.

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

SEC. 1122. MODIFICATION OF CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) REMOVAL OF CREDIT LIMITATION FOR PROPERTY PLACED IN SERVICE.—

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

''(1) MAXIMUM CREDIT FOR FUEL CELLS.—In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.''.

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

(A) by striking all that precedes subparagraph (B) and inserting the following:

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

''(A) MAXIMUM EXPENDITURES FOR FUEL CELLS.—The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.'', and

(B) by striking subparagraph (C).

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

SEC. 1123. TEMPORARY INCREASE IN CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) IN GENERAL.—Section 30C(e) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR PROPERTY PLACED IN SERVICE DURING 2009 AND 2010.—In the case of property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011—

''(A) in the case of any such property which does not relate to hydrogen—

''(i) subsection (a) shall be applied by substituting '50 percent' for '30 percent',

''(ii) subsection (b)(1) shall be applied by substituting '$50,000' for '$30,000', and

''(iii) subsection (b)(2) shall be applied by substituting '$2,000' for '$1,000', and

''(B) in the case of any such property which relates to hydrogen, subsection (b)(1) shall be applied by substituting '$200,000' for '$30,000'.''.

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

PART IV—ENERGY RESEARCH INCENTIVES

SEC. 1131. INCREASED RESEARCH CREDIT FOR ENERGY RESEARCH.

(a) IN GENERAL.—Section 41 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) ENERGY RESEARCH CREDIT.—In the case of any taxable year beginning in 2009 or 2010—

''(1) IN GENERAL.—The credit determined under subsection (a)(1) shall be increased by 20 percent of the qualified energy research expenses for the taxable year.

''(2) QUALIFIED ENERGY RESEARCH EXPENSES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified energy research expenses' means so much of the taxpayer's qualified research expenses as are related to the fields of fuel cells and battery technology, renewable energy and renewable fuels, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

''(B) COORDINATION WITH QUALIFYING ADVANCED ENERGY PROJECT CREDIT.—Such term shall not include expenditures taken into account in determining the amount of the credit under section 48 or 48C.

''(3) COORDINATION WITH OTHER RESEARCH CREDITS.—

''(A) IN GENERAL.—The amount of qualified energy research expenses taken into account under subsection (a)(1)(A) shall not exceed the base amount.

''(B) ALTERNATIVE SIMPLIFIED CREDIT.—For purposes of subsection (c)(5), the amount of qualified energy research expenses taken into account for the taxable year for which the credit is being determined shall not exceed—

''(i) in the case of subsection (c)(5)(A), 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined, and

''(ii) in the case of subsection (c)(5)(B)(ii), zero.

''(C) BASIC RESEARCH AND ENERGY RESEARCH CONSORTIUM PAYMENTS.—Any amount taken into account under paragraph (1) shall not be taken into account under paragraph (2) or (3) of subsection (a).''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 41(i)(1)(B), as redesignated by subsection (a), is amended by inserting ''(in the case of the increase in the credit determined under subsection (h), December 31, 2010)'' after ''December 31, 2009''.

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

PART V—GENERAL BUSINESS CREDIT

SEC. 1141. 5-YEAR CARRYBACK OF GENERAL BUSINESS CREDITS.

(a) IN GENERAL.—Subsection (a) of section 39 is amended by adding at the end the following new paragraph:

''(4) SPECIAL RULE FOR 2008 AND 2009 BUSINESS CREDITS.—In the case of any current year business credit for a taxable year ending in 2008 or 2009—

''(A) paragraph (1)(A) shall be applied by substituting 'each of the 5 taxable years' for 'the taxable year' in subparagraph (A) thereof, and

''(B) paragraph (2) shall be applied—

''(i) by substituting '25 taxable years' for '21 taxable years', and

''(ii) by substituting '24 taxable years' for '20 taxable years'.''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after December 31, 2007, and to carrybacks of business credits from such taxable years.

SEC. 1142. TEMPORARY PROVISION ALLOWING GENERAL BUSINESS CREDITS TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX LIABILITY.

(a) IN GENERAL.—Subsection (c) of section 38 is amended by adding at the end the following new paragraph:

''(6) TEMPORARY PROVISION ALLOWING GENERAL BUSINESS CREDITS TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX LIABILITY.—

''(A) IN GENERAL.—In the case of a taxable year ending in 2008 or 2009—

''(i) the limitation under paragraph (1) shall be the net income tax (as defined in paragraph (1)) for purposes of determining the amount of the credit allowed under subsection (a) for such taxable year, and

''(ii) the excess credit for such taxable year shall, solely for purposes of determining the amount of such excess credit which may be carried back to a preceding taxable year, be increased by the amount of business credit carryforwards which are carried to such taxable year and which are not allowed for such taxable year by reason of the limitation under paragraph (1) (as modified by clause (i)).

''(B) INCREASE IN LIMITATION FOR TAXABLE YEARS TO WHICH EXCESS CREDITS FOR 2008 AND 2009 ARE CARRIED BACK.—

''(i) IN GENERAL.—Solely for purposes of determining the portion of any excess credit described in subparagraph (A)(ii) for which credit will be allowed under subsection (a)(3) for any preceding taxable year, the limitation under paragraph (1) for such preceding taxable year shall be the net income tax (as defined in paragraph (1)).

''(ii) ORDERING RULE.—If the excess credit described in subparagraph (A)(ii) includes business credit carryforwards from preceding taxable years, such excess credit shall be treated as allowed for any preceding taxable year on a first-in first-out basis.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2007, and to carrybacks of credits from such taxable years.

PART VI—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

SEC. 1151. APPLICATION OF MONITORING REQUIREMENTS TO CARBON DIOXIDE USED AS A TERTIARY INJECTANT.

(a) IN GENERAL.—Section 45Q(a)(2) 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 new subparagraph:

''(C) disposed of by the taxpayer in secure geological storage.''.

(b) CONFORMING AMENDMENT.—Section 45Q(d)(2) is amended by striking ''subsection (a)(1)(B)'' and inserting ''paragraph (1)(B) or (2)(C) of subsection (a)''.

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

PART VII—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

SEC. 1161. MODIFICATION OF CREDIT FOR QUALIFIED PLUG-IN ELECTRIC MOTOR VEHICLES.

(a) INCREASE IN VEHICLES ELIGIBLE FOR CREDIT.—Section 30D(b)(2)(B) is amended by striking ''250,000'' and inserting ''500,000''.

(b) EXCLUSION OF NEIGHBORHOOD ELECTRIC VEHICLES FROM EXISTING CREDIT.—Section 30D(e)(1) is amended to read as follows:

''(1) MOTOR VEHICLE.—The term 'motor vehicle' means a motor vehicle (as defined in section 30(c)(2)), which is treated as a motor vehicle for purposes of title II of the Clean Air Act.''.

(c) CREDIT FOR CERTAIN OTHER VEHICLES.—Section 30D is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and

(2) by inserting after subsection (e) the following new subsection:

''(f) CREDIT FOR CERTAIN OTHER VEHICLES.—For purposes of this section—

''(1) IN GENERAL.—In the case of a specified vehicle, this section shall be applied with the following modifications:

''(A) For purposes of subsection (a)(1), in lieu of the applicable amount determined under subsection (a)(2), the applicable amount shall be 10 percent of so much of the cost of the specified vehicle as does not exceed $40,000.

''(B) Subsection (b) shall not apply and no specified vehicle shall be taken into account under subsection (b)(2).

''(C) Subsection (c)(3) shall not apply.

''(2) SPECIFIED VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'specified vehicle' means—

''(i) any 2- or 3- wheeled motor vehicle, or

''(ii) any low-speed motor vehicle,

which is placed in service after December 31, 2009, and before January 1, 2012.

''(B) 2- OR 3-WHEELED MOTOR VEHICLE.—The term '2- or 3-wheeled motor vehicle' means any vehicle—

''(i) which would be described in section 30(c)(2) except that it has 2 or 3 wheels,

''(ii) with motive power having a seat or saddle for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground,

''(iii) which has an electric motor that produces in excess of 5-brake horsepower,

''(iv) which draws propulsion from 1 or more traction batteries, and

''(v) which has been certified to the Department of Transportation pursuant to section 567 of title 49, Code of Federal Regulations, as conforming to all applicable Federal motor vehicle safety standards in effect on the date of the manufacture of the vehicle.

''(C) LOW-SPEED MOTOR VEHICLE.—The term 'low-speed motor vehicle' means a motor vehicle (as defined in section 30(c)(2)) which meets the requirements of section 571.500 of title 49, Code of Federal Regulations.''.

(d) EFFECTIVE DATES.—

(1) INCREASE IN VEHICLES ELIGIBLE FOR CREDIT.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) OTHER MODIFICATIONS.—The amendments made by subsections (b) and (c) shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

Subtitle C—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

SEC. 1201. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

(a) EXTENSION OF SPECIAL ALLOWANCE.—

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

(A) by striking ''January 1, 2010'' and inserting ''January 1, 2011'', and

(B) by striking ''January 1, 2009'' each place it appears and inserting ''January 1, 2010''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for subsection (k) of section 168 is amended by striking ''JANUARY 1, 2009'' and inserting ''JANUARY 1, 2010''.

(B) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking ''PRE-JANUARY 1, 2009'' and inserting ''PRE-JANUARY 1, 2010''.

(C) Subparagraph (B) of section 168(l)(5) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(D) Subparagraph (C) of section 168(n)(2) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(E) Subparagraph (B) of section 1400N(d)(3) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(3) TECHNICAL AMENDMENT.—Subparagraph (D) of section 168(k)(4) is amended—

(A) by striking ''and'' at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

''(ii) 'April 1, 2008' shall be substituted for 'January 1, 2008' in subparagraph (A)(iii)(I) thereof, and''.

(b) EXTENSION OF ELECTION TO ACCELERATE THE AMT AND RESEARCH CREDITS IN LIEU OF BONUS DEPRECIATION.—Section 168(k)(4) (relating to election to accelerate the AMT and research credits in lieu of bonus depreciation) is amended—

(1) by striking ''2009'' and inserting ''2010''in subparagraph (D)(iii) (as redesignated by subsection (a)(3)), and

(2) by adding at the end the following new subparagraph:

''(H) SPECIAL RULES FOR EXTENSION PROPERTY.—

''(i) TAXPAYERS PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

''(I) the taxpayer may elect not to have this paragraph apply to extension property, but

''(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

''(ii) TAXPAYERS NOT PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who did not make the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

''(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

''(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

''(iii) EXTENSION PROPERTY.—For purposes of this subparagraph, the term 'extension property' means property which is eligible

qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).''.

(c) INCLUSION OF FILMS OR VIDEOTAPE AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Section 168(k)(2) is amended by adding at the end the following new subparagraph:

''(H) CERTAIN FILMS.—The term 'qualified property' includes property—

''(i) which is a motion picture film or video tape (within the meaning of subsection (f)(3)) for which a deduction is allowable under section 167(a) without regard to this section,

''(ii) the original use of which commences with the taxpayer after December 31, 2008,

''(iii) which is—

''(I) acquired by the taxpayer after December 31, 2008, and before January 1, 2010, but only if no written binding contract for the acquisition was in effect before January 1, 2009, or

''(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2008, and before January 1, 2010,

''(iv) which is placed in service by the taxpayer before January 1, 2010, or, in the case of property described in subparagraph (B), before January 1, 2011, and

''(v) the production of which is a qualified film or television production (as defined in section 181(d) (determined without regard to paragraph (2)(B)(ii) thereof)) with respect to which an election is not in effect under section 181.''.

(2) CONFORMING AMENDMENTS.—

(A) Subclause (I) of section 168(k)(2)(B)(i) is amended by inserting ''subparagraph (H) or'' after ''requirements of''.

(B) Subclause (II) of section 168(k)(2)(B)(i) is amended by striking ''or is transportation property'' and inserting '', is transportation property, or is property described in subparagraph (H)''.

(C) Clause (iii) of section 168(k)(2)(D) is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, all property described in subparagraph (H) shall be treated as one class of property.''.

(D) Subparagraph (E) of section 168(k)(2) is amended by adding at the end the following new clause:

''(v) APPLICATION TO FILM AND VIDEOTAPE PROPERTY.—In the case of property described in subparagraph (H), clauses (i), (ii), (iii), and (iv) of this subparagraph shall be applied—

''(I) by substituting 'December 31, 2008' for 'December 31, 2007' each place it appears, and

''(II) by treating any reference to a clause of subparagraph (A) as a reference to the corresponding clause of subparagraph (H).''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

(2) TECHNICAL AMENDMENT.—The amendments made by subsection (a)(3) shall apply to taxable years ending after March 31, 2008.

SEC. 1202. TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

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

(1) by striking ''2008'' and inserting ''2008, or 2009'', and

(2) by striking ''2008'' in the heading thereof and inserting ''2008, AND 2009''.

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

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

SEC. 1211. 5-YEAR CARRYBACK OF OPERATING LOSSES.

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

''(H) CARRYBACK FOR 2008 AND 2009 NET OPERATING LOSSES.—

''(i) IN GENERAL.—In the case of an applicable 2008 or 2009 net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

''(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for '2',

''(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (II) for '2', and

''(III) subparagraph (F) shall not apply.

''(ii) APPLICABLE 2008 OR 2009 NET OPERATING LOSS.—For purposes of this subparagraph, the term 'applicable 2008 or 2009 net operating loss' means—

''(I) the taxpayer's net operating loss for any taxable year ending in 2008 or 2009, or

''(II) if the taxpayer elects to have this subclause apply in lieu of subclause (I), the taxpayer's net operating loss for any taxable year beginning in 2008 or 2009.

''(iii) ELECTION.—Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable.

''(iv) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have clause (ii)(II) apply, section 56(d)(1)(A)(ii) shall be applied by substituting 'ending during 2001 or 2002 or beginning during 2008 or 2009' for 'ending during 2001, 2002, 2008, or 2009'.''.

(b) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is amended to read as follows:

''(I) the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during 2001, 2002, 2008, or 2009 and carryovers of net operating losses to such taxable years, or''.

(c) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—Subsection (b) of section 810 is amended by adding at the end the following new paragraph:

''(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

''(A) IN GENERAL.—In the case of an applicable 2008 or 2009 loss from operations with respect to which the taxpayer has elected the application of this paragraph, paragraph (1)(A) shall be applied, at the election of the taxpayer, by substituting '5' or '4' for '3'.

''(B) APPLICABLE 2008 OR 2009 LOSS FROM OPERATIONS.—For purposes of this paragraph, the term 'applicable 2008 or 2009 loss from operations' means—

''(i) the taxpayer's loss from operations for any taxable year ending in 2008 or 2009, or

''(ii) if the taxpayer elects to have this clause apply in lieu of clause (i), the taxpayer's loss from operations for any taxable year beginning in 2008 or 2009.

''(C) ELECTION.—Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the loss from operations. Any such election, once made, shall be irrevocable.

''(D) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have subparagraph (B)(ii) apply, section 56(d)(1)(A)(ii) shall be applied by substituting 'ending during 2001 or 2002 or beginning during 2008 or 2009' for 'ending during 2001, 2002, 2008, or 2009'.''.

(d) CONFORMING AMENDMENT.—Section 172 is amended by striking subsection (k) and by redesignating subsection (l) as subsection (k).

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to net operating losses arising in taxable years ending after December 31, 2007.

(2) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The amendment made by subsection (b) shall apply to taxable years ending after 1997.

(3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) shall apply to losses from operations arising in taxable years ending after December 31, 2007.

(4) TRANSITIONAL RULE.—In the case of a net operating loss (or, in the case of a life insurance company, a loss from operations) for a taxable year ending before the date of the enactment of this Act—

(A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

(B) any election made under section 172(k) or 810(b)(4) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term ''applicable date'' means the date which is 60 days after the date of the enactment of this Act.

SEC. 1212. EXCEPTION FOR TARP RECIPIENTS.

The amendments made by this part shall not apply to—

(1) any taxpayer if—

(A) the Federal Government acquires, at any time, an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or

(B) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act,

(2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and

(3) any taxpayer which at any time in 2008 or 2009 is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986, determined without regard to subsection (b) thereof) as a taxpayer described in paragraph (1) or (2).

PART III—INCENTIVES FOR NEW JOBS

SEC. 1221. INCENTIVES TO HIRE UNEMPLOYED VETERANS AND DISCONNECTED YOUTH.

(a) IN GENERAL.—Subsection (d) of section 51 is amended by adding at the end the following new paragraph:

''(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—

''(A) IN GENERAL.—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) UNEMPLOYED VETERAN.—The term 'unemployed veteran' means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

''(I) having been discharged or released from active duty in the Armed Forces during 2008, 2009, or 2010, and

''(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

''(ii) DISCONNECTED YOUTH.—The term 'disconnected youth' means any individual who is certified by the designated local agency—

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

''(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

''(III) as not regularly employed during such 6-month period, and

''(IV) as not readily employable by reason of lacking a sufficient number of basic skills.''.

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

PART IV—CANCELLATION OF INDEBTEDNESS

SEC. 1231. DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM INDEBTEDNESS DISCHARGED BY THE REPURCHASE OF A DEBT INSTRUMENT.

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

''(i) DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM INDEBTEDNESS DISCHARGED BY THE REPURCHASE OF A DEBT INSTRUMENT.—

''(1) IN GENERAL.—Notwithstanding section 61, income from the discharge of indebtedness in connection with the repurchase of a debt instrument after December 31, 2008, and before January 1, 2011, shall be includible in gross income ratably over the 8-taxable-year period beginning with—

''(A) in the case of a repurchase occurring in 2009, the second taxable year following the taxable year in which the repurchase occurs, and

''(B) in the case of a repurchase occurring in 2010, the taxable year following the taxable year in which the repurchase occurs.

''(2) DEBT INSTRUMENT.—For purposes of this subsection, the term 'debt instrument' means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

''(3) REPURCHASE.—For purposes of this subsection, the term 'repurchase' means, with respect to any debt instrument, a cash purchase of the debt instrument by—

''(A) the debtor which issued the debt instrument, or

''(B) any person related to such debtor.

For purposes of subparagraph (B), the determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

''(4) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate for purposes of applying this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges in taxable years ending after December 31, 2008.

PART V—QUALIFIED SMALL BUSINESS STOCK

SEC. 1241. SPECIAL RULES APPLICABLE TO QUALIFIED SMALL BUSINESS STOCK FOR 2009 AND 2010.

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

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

''(A) paragraph (1) shall be applied by substituting '75 percent' for '50 percent', and

''(B) paragraph (2) shall not apply.''.

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

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

SEC. 1251. INCREASED EXCLUSION AMOUNT FOR COMMUTER TRANSIT BENEFITS AND TRANSIT PASSES.

(a) IN GENERAL.—Paragraph (2) of section 132(f) is amended by adding at the end the following flush sentence:

''In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2011, subparagraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount under subparagraph (B) (as in effect for such month).''.

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

PART VII—S CORPORATIONS

SEC. 1261. TEMPORARY REDUCTION IN RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.

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

''(7) RECOGNITION PERIOD.—

''(A) IN GENERAL.—The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

''(B) SPECIAL RULE FOR 2009 AND 2010.—In the case of any taxable year beginning in 2009 or 2010, no tax shall be imposed on the net unrecognized built-in gain of an S corporation if the 7th taxable year in the recognition period preceded such taxable year. The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.

''(C) SPECIAL RULE FOR DISTRIBUTIONS TO SHAREHOLDERS.—For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e)—

''(i) subparagraph (A) shall be applied without regard to the phrase '10-year', and

''(ii) subparagraph (B) shall not apply.''.

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

PART VIII—BROADBAND INCENTIVES

SEC. 1271. BROADBAND INTERNET ACCESS TAX CREDIT.

(a) IN GENERAL.—Subpart E of part IV of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48C the following new section:

''SEC. 48D. BROADBAND INTERNET ACCESS CREDIT.

''(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

''(1) the current generation broadband credit, plus

''(2) the next generation broadband credit.

''(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

''(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent (20 percent in the case of qualified subscribers which are unserved subscribers) of the qualified broadband expenditures incurred with respect to qualified equipment providing current generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified broadband expenditures incurred with respect to qualified equipment providing next generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified broadband expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service, after December 31, 2008, and before January 1, 2011.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after December 31, 2008, by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES FOR CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

''(1) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas and the unserved areas which the equipment is capable of serving with current generation broadband services, and

''(2) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service

carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 5,000,000 bits per second to the subscriber and at least 1,000,000 bits per second from the subscriber (at least 3,000,000 bits per second to the subscriber and at least 768,000 bits per second from the subscriber in the case of service through radio transmission of energy).

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 100,000,000 bits per second to the subscriber (or its equivalent when the data rate is measured before being compressed for transmission) and at least 20,000,000 bits per second from the subscriber (or its equivalent as so measured).

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment any—

''(A) cable operator,

''(B) commercial mobile service carrier,

''(C) open video system operator,

''(D) satellite carrier,

''(E) telecommunications carrier, or

''(F) other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier or broadband-over-powerline operator,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED BROADBAND EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified broadband expenditure' means any amount—

''(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168, and

''(ii) incurred after December 31, 2008, and before January 1, 2011.

''(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

''(C) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in subparagraph (A).

''(15) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, an underserved area, or an unserved area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area, an underserved area, or an unserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, an underserved area, or an unserved area , or

''(ii) any residential subscriber.

''(16) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(17) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(18) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(19) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(20) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(21) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(22) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of

the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include any commercial mobile service carrier.

''(23) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(24) UNDERSERVED AREA.—The term 'underserved area' means any census tract which is located in—

''(A) an empowerment zone or enterprise community designated under section 1391,

''(B) the District of Columbia Enterprise Zone established under section 1400,

''(C) a renewal community designated under section 1400E, or

''(D) a low-income community designated under section 45D.

''(25) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

''(26) UNSERVED AREA.—The term 'unserved area' means any census tract in which no current generation broadband services are provided, as certified by the State in which such tract is located not later than September 30, 2009.

''(27) UNSERVED SUBSCRIBER.—The term 'unserved subscriber' means any residential subscriber residing in a dwelling located in an unserved area or nonresidential subscriber maintaining a permanent place of business located in an unserved area.''.

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 (relating to the amount of investment credit), as amended by this Act, is amended by striking ''and'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', and'', and by adding at the end the following:

''(6) the broadband Internet access credit.''

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from the sale of property subject to a lease described in section 48D(c)(2)(B), but only to the extent such income does not in any year exceed an amount equal to the credit for qualified broadband expenditures which would be determined under section 48D for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 49(a)(1)(C), as amended by this Act, is amended by striking ''and'' at the end of clause (iv), by striking the period at the end of clause (v) and inserting '', and'', and by adding after clause (v) the following new clause:

''(vi) the portion of the basis of any qualified equipment attributable to qualified broadband expenditures under section 48D.''.

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 48C the following:

''Sec. 48D. Broadband internet access credit''.

(e) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (17), (23), (24), and (26) of section 48D(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(20) of such section 48D—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts submitted and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(C) AUTHORITY TO DISREGARD FALSE SUBMISSIONS.—In addition to imposing any other applicable penalties, the Secretary of the Treasury shall have the discretion to disregard any form described in subparagraph (A)(i) on which a provider knowingly submitted false information.

(f) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of eliminating or reducing any credit or portion thereof allowed under section 48D of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the broadband Internet access credit under section 48D of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 48D of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 48D of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 48D of such Code.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2008.

PART IX—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

SEC. 1281. CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE.

(a) FINDINGS.—Congress finds as follows:

(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

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

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

(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

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

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

(B) shall have no force or effect with respect to any ownership change after such date.

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

(A) is pursuant to a written binding contract entered into on or before such date, or

(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.

Subtitle D—Manufacturing Recovery Provisions

SEC. 1301. TEMPORARY EXPANSION OF AVAILABILITY OF INDUSTRIAL DEVELOPMENT BONDS TO FACILITIES MANUFACTURING INTANGIBLE PROPERTY.

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

(1) by striking ''For purposes of this paragraph, the term'' and inserting ''For purposes of this paragraph—

''(i) IN GENERAL.—The term'', and

(2) by striking the last sentence and inserting the following new clauses:

''(ii) CERTAIN FACILITIES INCLUDED.—Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

''(I) such facilities are located on the same site as the manufacturing facility, and

''(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

''(iii) SPECIAL RULES FOR BONDS ISSUED IN 2009 AND 2010.—In the case of any issue made after the date of enactment of this clause

and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

''(I) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

''(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.''.

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

SEC. 1302. CREDIT FOR INVESTMENT IN ADVANCED ENERGY FACILITIES.

(a) IN GENERAL.—Section 46 (relating to amount of credit) is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4), and by adding at the end the following new paragraph:

''(5) the qualifying advanced energy project credit.''.

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

''SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

''(b) QUALIFIED INVESTMENT.—

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

''(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer after October 31, 2008, or

''(ii) which is acquired by the taxpayer if the original use of such eligible property commences with the taxpayer after October 31, 2008, and

''(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

''(2) SPECIAL RULE FOR CERTAIN SUBSIDIZED PROPERTY.—Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

''(3) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

''(4) LIMITATION.—The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

''(c) DEFINITIONS.—

''(1) QUALIFYING ADVANCED ENERGY PROJECT.—

''(A) IN GENERAL.—The term 'qualifying advanced energy project' means a project—

''(i) which re-equips, expands, or establishes a manufacturing facility for the production of property which is—

''(I) designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

''(II) designed to manufacture fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

''(III) designed to manufacture electric grids to support the transmission of intermittent sources of renewable energy,

''(IV) designed to capture and sequester carbon dioxide emissions, or

''(V) designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies), and

''(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

''(B) EXCEPTION.—Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

''(2) ELIGIBLE PROPERTY.—The term 'eligible property' means any property which is part of a qualifying advanced energy project and is necessary for the production of property described in paragraph (1)(A)(i).

''(d) QUALIFYING ADVANCED ENERGY PROJECT PROGRAM.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

''(B) LIMITATION.—The total amount of credits that may be allocated under the program shall not exceed $2,000,000,000.

''(2) CERTIFICATION.—

''(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1).

''(B) TIME TO MEET CRITERIA FOR CERTIFICATION.—Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

''(C) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 5 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period then the certification shall no longer be valid.

''(3) SELECTION CRITERIA.—In determining which qualifying advanced energy projects to certify under this section, the Secretary shall take into consideration only those projects where there is a reasonable expectation of commercial viability.

''(4) REVIEW AND REDISTRIBUTION.—

''(A) REVIEW.—Not later than 6 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of the date which is 6 years after the date of enactment of this section.

''(B) REDISTRIBUTION.—The Secretary may reallocate credits awarded under this section if the Secretary determines that—

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

''(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

''(C) REALLOCATION.—If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

''(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

''(e) DENIAL OF DOUBLE BENEFIT.—A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding after clause (iv) the following new clause:

''(v) the basis of any property which is part of a qualifying advanced energy project under section 48C.''.

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48B the following new item:

''48C. Qualifying advanced energy project credit.''.

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

Subtitle E—Economic Recovery Tools

SEC. 1401. RECOVERY ZONE BONDS.

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

''PART III—RECOVERY ZONE BONDS

''Sec. 1400U–1. Allocation of recovery zone bonds.

''Sec. 1400U–2. Recovery zone economic development bonds.

''Sec. 1400U–3. Recovery zone facility bonds.

''SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.

''(a) ALLOCATIONS.—

''(1) IN GENERAL.—The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States—

''(A) by allocating 1 percent of each such limitation to each State, and

''(B) by allocating the remainder of each such limitation among the States in the proportion that each State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

''(2) 2008 STATE EMPLOYMENT DECLINE.—For purposes of this subsection, the term '2008 State employment decline' means, with respect to any State, the excess (if any) of—

''(A) the number of individuals employed in such State determined for December 2007, over

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

''(3) ALLOCATIONS BY STATES.—

''(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion the each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State.

''(B) LARGE MUNICIPALITIES.—For purposes of subparagraph (A), the term 'large municipality' means a municipality with a population of more than 100,000.

''(C) DETERMINATION OF LOCAL EMPLOYMENT DECLINES.—For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

''(4) NATIONAL LIMITATIONS.—

''(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—There is a national recovery zone economic development bond limitation of $10,000,000,000.

''(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of $15,000,000,000.

''(b) RECOVERY ZONE.—For purposes of this part, the term 'recovery zone' means—

''(1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress, and

''(2) any area for which a designation as an empowerment zone or renewal community is in effect.

''SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

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

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

''(2) subsection (b) of such section shall be applied by substituting '40 percent' for '35 percent'.

''(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

''(1) IN GENERAL.—For purposes of this section, the term 'recovery zone economic development bond' means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

''(A) 100 percent of the available project proceeds (as defined in section 54A) of such issue are to be used for one or more qualified economic development purposes, and

''(B) the issuer designates such bond for purposes of this section.

''(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

''(c) QUALIFIED ECONOMIC DEVELOPMENT PURPOSE.—For purposes of this section, the term 'qualified economic development purpose' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

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

''(2) expenditures for public infrastructure and construction of public facilities, and

''(3) expenditures for job training and educational programs.

''SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.

''(a) IN GENERAL.—For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any recovery zone facility bond.

''(b) RECOVERY ZONE FACILITY BOND.—

''(1) IN GENERAL.—For purposes of this section, the term 'recovery zone facility bond' means any bond issued as part of an issue if—

''(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

''(B) such bond is issued before January 1, 2011, and

''(C) the issuer designates such bond for purposes of this section.

''(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

''(c) RECOVERY ZONE PROPERTY.—For purposes of this section—

''(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—

''(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the recovery zone took effect,

''(B) the original use of which in the recovery zone commences with the taxpayer, and

''(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

''(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except that—

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

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

''(3) SPECIAL RULES FOR SUBSTANTIAL RENOVATIONS AND SALE-LEASEBACK.—Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

''(d) NONAPPLICATION OF CERTAIN RULES.—Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.''.

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

''PART III. RECOVERY ZONE BONDS.''.

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

SEC. 1402. TRIBAL ECONOMIC DEVELOPMENT BONDS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end the following new subsection:

''(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

''(1) ALLOCATION OF LIMITATION.—

''(A) IN GENERAL.—The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

''(B) NATIONAL LIMITATION.—There is a national tribal economic development bond limitation of $2,000,000,000.

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

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

''(B) the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141, and

''(C) section 146 shall not apply.

''(3) TRIBAL ECONOMIC DEVELOPMENT BOND.—

''(A) IN GENERAL.—For purposes of this section, the term 'tribal economic development bond' means any bond issued by an Indian tribal government—

''(i) the interest on which would be exempt from tax under section 103 if issued by a State or local government, and

''(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

''(B) EXCEPTIONS.—The term tribal economic development bond shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

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

''(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

''(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1).''.

(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the study conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

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

SEC. 1403. MODIFICATIONS TO NEW MARKETS TAX CREDIT.

(a) INCREASE IN NATIONAL LIMITATION.—

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

(A) by striking ''and'' at the end of subparagraph (C),

(B) by striking '', 2007, 2008, and 2009.'' in subparagraph (D), and inserting ''and 2007,'', and

(C) by adding at the end the following new subparagraphs:

''(E) $5,000,000,000 for 2008, and

''(F) $5,000,000,000 for 2009.''.

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

(A) submitted an allocation application with respect to calendar year 2008, and

(B)(i) did not receive an allocation for such calendar year, or

(ii) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.

(b) ALTERNATIVE MINIMUM TAX RELIEF.—

(1) IN GENERAL.—Section 38(c)(4)(B) is amended by redesignating clauses (v) through (viii) as clauses (vi) through (ix), respectively, and by inserting after clause (iv) the following new clause:

''(v) the credit determined under section 45D to the extent that such credit is attributable to a qualified equity investment which is designated as such under section 45D(b)(1)(C) pursuant to an allocation of the

new markets tax credit limitation for calendar year 2009,''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to credits determined under section 45D of the Internal Revenue Code of 1986 in taxable years ending after the date of the enactment of this Act, and to carrybacks of such credits.

Subtitle F—Infrastructure Financing Tools

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

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

(a) IN GENERAL.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

''(7) DE MINIMIS EXCEPTION FOR BONDS ISSUED DURING 2009 OR 2010.—

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

''(B) LIMITATION.—The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

''(C) REFUNDINGS.—For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).''.

(b) TREATMENT AS FINANCIAL INSTITUTION PREFERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is amended by adding at the end the following: ''That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION TO TAX-EXEMPT INTEREST EXPENSE ALLOCATION RULES FOR FINANCIAL INSTITUTIONS.

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

''(G) SPECIAL RULES FOR OBLIGATIONS ISSUED DURING 2009 AND 2010.—

''(i) INCREASE IN LIMITATION.—In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting '$30,000,000' for '$10,000,000'.

''(ii) QUALIFIED 501(c)(3) BONDS TREATED AS ISSUED BY EXEMPT ORGANIZATION.—In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

''(iii) SPECIAL RULE FOR QUALIFIED FINANCINGS.—In the case of a qualified financing issue issued during 2009 or 2010—

''(I) subparagraph (F) shall not apply, and

''(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue which is issued by the qualified borrower with respect to which such portion relates).

''(iv) QUALIFIED FINANCING ISSUE.—For purposes of this subparagraph, the term 'qualified financing issue' means any composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to 1 or more ultimate borrowers each of whom is a qualified borrower.

''(v) QUALIFIED PORTION.—For purposes of this subparagraph, the term 'qualified portion' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

''(vi) QUALIFIED BORROWER.—For purposes of this subparagraph, the term 'qualified borrower' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT BONDS.

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

''(vi) EXCEPTION FOR BONDS ISSUED IN 2009 AND 2010.—For purposes of clause (i), the term 'private activity bond' shall not include any bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).''.

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

''(iv) TAX EXEMPT INTEREST ON BONDS ISSUED IN 2009 AND 2010.—Clause (i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1504. MODIFICATION TO HIGH SPEED INTERCITY RAIL FACILITY BONDS.

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

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

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

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

Subsection (b) of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking ''December 31, 2010'' and inserting ''December 31, 2011''.

PART III—TAX CREDIT BONDS FOR SCHOOLS

SEC. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.

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

''SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.

''(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—For purposes of this subchapter, the term 'qualified school construction bond' means any bond issued as part of an issue if—

''(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

''(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

''(3) the issuer designates such bond for purposes of this section.

''(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

''(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

''(1) $5,000,000,000 for 2009,

''(2) $5,000,000,000 for 2010, and

''(3) except as provided in subsection (e), zero after 2010.

''(d) LIMITATION ALLOCATED AMONG STATES.—

''(1) IN GENERAL.—The limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective numbers of children in each State who have attained age 5 but not age 18 for the most recent fiscal year ending before such calendar year. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to issuers within such State.

''(2) MINIMUM ALLOCATIONS TO STATES.—

''(A) IN GENERAL.—The Secretary shall adjust the allocations under this subsection for any calendar year for each State to the extent necessary to ensure that the amount allocated to such State under this subsection for such year is not less than an amount equal to such State's adjusted minimum percentage of the amount to be allocated under paragraph (1) for the calendar year.

''(B) MINIMUM PERCENTAGE.—A State's minimum percentage for any calendar year is equal to the product of—

''(i) the quotient of—

''(I) the amount the State is eligible to receive under section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(d)) for the most recent fiscal year ending before such calendar year, divided by

''(II) the amount all States are eligible to receive under section 1124 of such Act (20 U.S.C. 6333) for such fiscal year, multiplied by

''(ii) 100.

''(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

''(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In addition to the amounts otherwise allocated under this subsection, $200,000,000 for calendar year 2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary

of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

''(e) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

''(1) the amount allocated under subsection (d) to any State, exceeds

''(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

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

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d) is amended by striking ''or'' at the end of subparagraph (C), by inserting ''or'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) a qualified school construction bond,''.

(2) Subparagraph (C) of section 54A(d)(2) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).''.

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 54F. Qualified school construction bonds.''.

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

SEC. 1522. EXTENSION AND EXPANSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Section 54E(c)(1) is amended by striking ''and 2009'' and inserting ''and $1,400,000,000 for 2009 and 2010''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

PART IV—BUILD AMERICA BONDS

SEC. 1531. BUILD AMERICA BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:

"Subpart J—Build America Bonds

''Sec. 54AA. Build America bonds.

"SEC. 54AA. BUILD AMERICA BONDS.

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

''(b) AMOUNT OF CREDIT.—The amount of the credit determined under this subsection with respect to any interest payment date for a build America bond is 35 percent of the amount of interest payable by the issuer with respect to such date.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—

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

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

''(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

''(d) BUILD AMERICA BOND.—

''(1) IN GENERAL.—For purposes of this section, the term 'build America bond' means any obligation (other than a private activity bond) if—

''(A) the interest on such obligation would (but for this section) be excludable from gross income under section 103,

''(B) such obligation is issued before January 1, 2012, and

''(C) the issuer makes an irrevocable election to have this section apply.

''(2) APPLICABLE RULES.—For purposes of applying paragraph (1)—

''(A) a build America bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

''(B) the yield on a build America bond shall be determined without regard to the credit allowed under subsection (a), and

''(C) a bond shall not be treated as a build America bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

''(e) INTEREST PAYMENT DATE.—For purposes of this section, the term 'interest payment date' means any date on which the holder of record of the build America bond is entitled to a payment of interest under such bond.

''(f) SPECIAL RULES.—

''(1) INTEREST ON BUILD AMERICA BONDS INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.—For purposes of this title, interest on any build America bond shall be includible in gross income.

''(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

''(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED BEFORE 2011.—In the case of a qualified bond issued before January 1, 2011—

''(1) ISSUER ALLOWED REFUNDABLE CREDIT.—In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6431.

''(2) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' means any build America bond issued as part of an issue if—

''(A) 100 percent of the available project proceeds (as defined in section 54A) of such issue are to be used for capital expenditures, and

''(B) the issuer makes an irrevocable election to have this subsection apply.

''(h) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section and section 6431.''.

(b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE 2011.—Subchapter B of chapter 65 is amended by adding at the end the following new section:

"SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

''(a) IN GENERAL.—In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

''(b) PAYMENT OF CREDIT.—The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) 35 percent of the interest payable under such bond on such date.

''(c) APPLICATION OF ARBITRAGE RULES.—For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

''(d) INTEREST PAYMENT DATE.—For purposes of this subsection, the term 'interest payment date' means each date on which interest is payable by the issuer under the terms of the bond.

''(e) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' has the meaning given such term in section 54AA(g).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1324(b)(2) of title 31, United States Code, is amended by striking ''or 6428'' and inserting ''6428, or 6431,''.

(2) Section 54A(c)(1)(B) is amended by striking ''subpart C'' and inserting ''subparts C and J''.

(3) Sections 54(c)(2), 1397E(c)(2), and 1400N(l)(3)(B) are each amended by striking ''and I'' and inserting '', I, and J''.

(4) Section 6401(b)(1) is amended by striking ''and I'' and inserting ''I, and J''.

(5) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Subpart J. Build America bonds.''.

(6) The table of section for subchapter B of chapter 65 is amended by adding at the end the following new item:

''Sec. 6431. Credit for qualified bonds allowed to issuer.''.

(d) TRANSITIONAL COORDINATION WITH STATE LAW.—Except as otherwise provided by a State after the date of the enactment of this Act, the interest on any build America bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax.

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

Subtitle G—Economic Recovery Payments to Certain Individuals

SEC. 1601. ECONOMIC RECOVERY PAYMENT TO RECIPIENTS OF SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, RAILROAD RETIREMENT BENEFITS, AND VETERANS DISABILITY COMPENSATION OR PENSION BENEFITS.

(a) AUTHORITY TO MAKE PAYMENTS.—

(1) ELIGIBILITY.—

(A) IN GENERAL.—Subject to paragraph (5)(B), the Secretary of the Treasury shall make a $300 payment to each individual who, for any month during the 3-month period ending with the month which ends prior to the month that includes the date of the enactment of this Act, is entitled to a benefit payment described in clause (i), (ii), or (iii) of subparagraph (B) or is eligible for a SSI cash benefit described in subparagraph (C).

(B) BENEFIT PAYMENT DESCRIBED.—For purposes of subparagraph (A):

(i) TITLE II BENEFIT.—A benefit payment described in this clause is a monthly insurance benefit payable (without regard to sections 202(j)(1) and 223(b) of the Social Security Act (42 U.S.C. 402(j)(1), 423(b)) under—

(I) section 202(a) of such Act (42 U.S.C. 402(a));

(II) section 202(b) of such Act (42 U.S.C. 402(b));

(III) section 202(c) of such Act (42 U.S.C. 402(c));

(IV) section 202(d)(1)(B)(ii) of such Act (42 U.S.C. 402(d)(1)(B)(ii));

(V) section 202(e) of such Act (42 U.S.C. 402(e));

(VI) section 202(f) of such Act (42 U.S.C. 402(f));

(VII) section 202(g) of such Act (42 U.S.C. 402(g));

(VIII) section 202(h) of such Act (42 U.S.C. 402(h));

(IX) section 223(a) of such Act (42 U.S.C. 423(a));

(X) section 227 of such Act (42 U.S.C. 427); or

(XI) section 228 of such Act (42 U.S.C. 428).

(ii) RAILROAD RETIREMENT BENEFIT.—A benefit payment described in this clause is a monthly annuity or pension payment payable (without regard to section 5(a)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231d(a)(ii)) under—

(I) section 2(a)(1) of such Act (45 U.S.C. 231a(a)(1));

(II) section 2(c) of such Act (45 U.S.C. 231a(c));

(III) section 2(d)(1)(i) of such Act (45 U.S.C. 231a(d)(1)(i));

(IV) section 2(d)(1)(ii) of such Act (45 U.S.C. 231a(d)(1)(ii));

(V) section 2(d)(1)(iii)(C) of such Act to an adult disabled child (45 U.S.C. 231a(d)(1)(iii)(C));

(VI) section 2(d)(1)(iv) of such Act (45 U.S.C. 231a(d)(1)(iv));

(VII) section 2(d)(1)(v) of such Act (45 U.S.C. 231a(d)(1)(v)); or

(VIII) section 7(b)(2) of such Act (45 U.S.C. 231f(b)(2)) with respect to any of the benefit payments described in clause (i) of this subparagraph.

(iii) VETERANS BENEFIT.—A benefit payment described in this clause is a compensation or pension payment payable under—

(I) section 1110, 1117, 1121, 1131, 1141, or 1151 of title 38, United States Code;

(II) section 1310, 1312, 1313, 1315, 1316, or 1318 of title 38, United States Code;

(III) section 1513, 1521, 1533, 1536, 1537, 1541, 1542, or 1562 of title 38, United States Code; or

(IV) section 1805, 1815, or 1821 of title 38, United States Code,

to a veteran, surviving spouse, child, or parent as described in paragraph (2), (3), (4)(A)(ii), or (5) of section 101, title 38, United States Code, who received that benefit during any month within the 3 month period ending with the month which ends prior to the month that includes the date of the enactment of this Act.

(C) SSI CASH BENEFIT DESCRIBED.—A SSI cash benefit described in this subparagraph is a cash benefit payable under section 1611 (other than under subsection (e)(1)(B) of such section) or 1619(a) of the Social Security Act (42 U.S.C. 1382, 1382h).

(2) REQUIREMENT.—A payment shall be made under paragraph (1) only to individuals who reside in 1 of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands. For purposes of the preceding sentence, the determination of the individual's residence shall be based on the current address of record under a program specified in paragraph (1).

(3) NO DOUBLE PAYMENTS.—An individual shall be paid only 1 payment under this section, regardless of whether the individual is entitled to, or eligible for, more than 1 benefit or cash payment described in paragraph (1).

(4) LIMITATION.—A payment under this section shall not be made—

(A) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(i) or paragraph (1)(B)(ii)(VIII) if, for the most recent month of such individual's entitlement in the 3-month period described in paragraph (1), such individual's benefit under such paragraph was not payable by reason of subsection (x) or (y) of section 202 the Social Security Act (42 U.S.C. 402) or section 1129A of such Act (42 U.S.C. 1320a-8a);

(B) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(iii) if, for the most recent month of such individual's entitlement in the 3 month period described in paragraph (1), such individual's benefit under such paragraph was not payable, or was reduced, by reason of section 1505, 5313, or 5313B of title 38, United States Code;

(C) in the case of an individual entitled to a benefit specified in paragraph (1)(C) if, for such most recent month, such individual's benefit under such paragraph was not payable by reason of subsection (e)(1)(A) or (e)(4) of section 1611 (42 U.S.C. 1382) or section 1129A of such Act (42 U.S.C. 1320a-8a); or

(D) in the case of any individual whose date of death occurs before the date on which the individual is certified under subsection (b) to receive a payment under this section.

(5) TIMING AND MANNER OF PAYMENTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall commence making payments under this section at the earliest practicable date but in no event later than 120 days after the date of enactment of this Act. The Secretary of the Treasury may make any payment electronically to an individual in such manner as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of paragraph (1).

(B) DEADLINE.—No payments shall be made under this section after December 31, 2010, regardless of any determinations of entitlement to, or eligibility for, such payments made after such date.

(b) IDENTIFICATION OF RECIPIENTS.—The Commissioner of Social Security, the Railroad Retirement Board, and the Secretary of Veterans Affairs shall certify the individuals entitled to receive payments under this section and provide the Secretary of the Treasury with the information needed to disburse such payments. A certification of an individual shall be unaffected by any subsequent determination or redetermination of the individual's entitlement to, or eligibility for, a benefit specified in subparagraph (B) or (C) of subsection (a)(1).

(c) TREATMENT OF PAYMENTS.—

(1) PAYMENT TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income and shall not be regarded as a resource for the month of receipt and the following 9 months, for purposes of determining the eligibility of the recipient (or the recipient's spouse or family) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(2) PAYMENT NOT CONSIDERED INCOME FOR PURPOSES OF TAXATION.—A payment under subsection (a) shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

(3) PAYMENTS PROTECTED FROM ASSIGNMENT.—The provisions of sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407, 1383(d)(1)), section 14(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231m(a)), and section 5301 of title 38, United States Code, shall apply to any payment made under subsection (a) as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of subsection (a)(1).

(4) PAYMENTS SUBJECT TO OFFSET.—Notwithstanding paragraph (3), for purposes of section 3716 of title 31, United States Code, any payment made under this section shall not be considered a benefit payment or cash benefit made under the applicable program described in subparagraph (B) or (C) of subsection (a)(1) and all amounts paid shall be subject to offset to collect delinquent debts.

(d) PAYMENT TO REPRESENTATIVE PAYEES AND FIDUCIARIES.—

(1) IN GENERAL.—In any case in which an individual who is entitled to a payment under subsection (a) and whose benefit payment or cash benefit described in paragraph (1) of that subsection is paid to a representative payee or fiduciary, the payment under subsection (a) shall be made to the individual's representative payee or fiduciary and the entire payment shall be used only for the benefit of the individual who is entitled to the payment.

(2) APPLICABILITY.—

(A) PAYMENT ON THE BASIS OF A TITLE II OR SSI BENEFIT.—Section 1129(a)(3) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(i) or (1)(C) of subsection (a) in the same manner as such section applies to a payment under title II or XVI of such Act.

(B) PAYMENT ON THE BASIS OF A RAILROAD RETIREMENT BENEFIT.—Section 13 of the Railroad Retirement Act (45 U.S.C. 2311) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(ii) of subsection (a) in the same manner as such section applies to a payment under such Act.

(C) PAYMENT ON THE BASIS OF A VETERANS BENEFIT.—Sections 5502, 6106, and 6108 of title 38, United States Code, shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(iii) of subsection (a) in the same manner as those sections apply to a payment under that title.

(e) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, the following sums are appropriated for the period of fiscal years 2009 and 2010 to carry out this section:

(1) For the Secretary of the Treasury—

(A) such sums as may be necessary to make payments under this section; and

(B) $57,000,000 for administrative costs incurred in carrying out this section and section 36A of the Internal Revenue Code of 1986 (as added by this Act).

(2) For the Commissioner of Social Security, $90,000,000 for the Social Security Administration's Limitation on Administrative Expenses for costs incurred in carrying out this section.

(3) For the Railroad Retirement Board, $1,000,000 for administrative costs incurred in carrying out this section.

(4) For the Secretary of Veterans Affairs, $100,000 for the Information Systems Technology account and $7,100,000 for the General Operating Expenses account for administrative costs incurred in carrying out this section.

Subtitle H—Trade Adjustment Assistance

SEC. 1701. TEMPORARY EXTENSION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) ASSISTANCE FOR WORKERS.—

(1) IN GENERAL.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking ''December 31, 2007'' and inserting ''December 31, 2010''.

(2) ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE.—Section 246(b)(1) of the Trade Act of 1974 (19 U.S.C. 2318(b)(1)) is amended by striking ''5 years'' and inserting ''7 years''.

(b) ASSISTANCE FOR FIRMS.—Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is

amended by striking ''2007, and $4,000,000 for the 3-month period beginning on October 1, 2007,'' and inserting ''December 31, 2010''.

(c) ASSISTANCE FOR FARMERS.—Section 298(a) of the Trade Act of 1974 (19 U.S.C. 2401g(a)) is amended by striking ''through 2007'' and all that follows through the end period and inserting ''through December 31, 2010 to carry out the purposes of this chapter.''.

(d) EXTENSION OF TERMINATION DATES.—Section 285 of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended by striking ''December 31, 2007'' each place it appears and inserting ''December 31, 2010''.

(e) SENSE OF THE SENATE REGARDING ADJUSTMENT ASSISTANCE FOR COMMUNITIES.—It is the sense of the Senate that title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) should be amended to assist any community impacted by trade with economic adjustment through—

(1) the coordination of efforts by State and local governments and economic organizations;

(2) the coordination of Federal, State, and local resources;

(3) the creation of community-based development strategies; and

(4) the development and provision of training programs.

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as of January 1, 2008.

Subtitle I—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

SEC. 1801. PROHIBITION ON COLLECTION OF CERTAIN PAYMENTS MADE UNDER THE CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000.

(a) IN GENERAL.—Notwithstanding any other provision of law, neither the Secretary of Homeland Security nor any other person may—

(1) require repayment of, or attempt in any other way to recoup, any payments described in subsection (b); or

(2) offset any past, current, or future distributions of antidumping or countervailing duties assessed with respect to imports from countries that are not parties to the North American Free Trade Agreement in an attempt to recoup any payments described in subsection (b).

(b) PAYMENTS DESCRIBED.—Payments described in this subsection are payments of antidumping or countervailing duties made pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c; repealed by subtitle F of title VII of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 154))) that were—

(1) assessed and paid on imports of goods from countries that are parties to the North American Free Trade Agreement; and

(2) distributed on or after January 1, 2001, and before January 1, 2006.

(c) PAYMENT OF FUNDS COLLECTED OR WITHHELD.—Not later than the date that is 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall—

(1) refund any repayments, or any other recoupment, of payments described in subsection (b); and

(2) fully distribute any antidumping or countervailing duties that the U.S. Customs and Border Protection is withholding as an offset as described in subsection (a)(2).

(d) LIMITATION.—Nothing in this section shall be construed to prevent the Secretary of Homeland Security, or any other person, from requiring repayment of, or attempting to otherwise recoup, any payments described in subsection (b) as a result of—

(1) a finding of false statements or other misconduct by a recipient of such a payment; or

(2) the reliquidation of an entry with respect to which such a payment was made.

Subtitle J—Other Provisions

SEC. 1901. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986).

SEC. 1902. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting ''$12,140,000,000,000''.

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

SEC. 2000. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Assistance for Unemployed Workers and Struggling Families Act''.

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

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

Sec. 2000. Short title; table of contents.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.

Sec. 2002. Increase in unemployment compensation benefits.

Sec. 2003. Unemployment compensation modernization.

Sec. 2004. Temporary assistance for States with advances.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.

Sec. 2102. Extension of TANF supplemental grants.

Sec. 2103. Clarification of authority of states to use tanf funds carried over from prior years to provide tanf benefits and services.

Sec. 2104. Temporary reinstatement of authority to provide Federal matching payments for State spending of child support incentive payments.

Subtitle A—Unemployment Insurance

SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) IN GENERAL.—Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note), as amended by section 4 of the Unemployment Compensation Extension Act of 2008 (Public Law 110-449; 122 Stat. 5015), is amended—

(1) by striking ''March 31, 2009'' each place it appears and inserting ''December 31, 2009'';

(2) in the heading for subsection (b)(2), by striking ''MARCH 31, 2009'' and inserting ''DECEMBER 31, 2009''; and

(3) in subsection (b)(3), by striking ''August 27, 2009'' and inserting ''May 31, 2010''.

(b) FINANCING PROVISIONS.—Section 4004 of such Act is amended by adding at the end the following:

''(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

''(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act; and

''(2) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.''.

SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the ''Secretary''). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

(e) APPLICABILITY.—

(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

(A) beginning after the date on which such agreement is entered into; and

(B) ending before January 1, 2010.

(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JANUARY 1, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after June 30, 2010.

(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2356) shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—A State that enters into an agreement under this section shall disregard the monthly equivalent of $25 per week for any individual who receives additional compensation under subsection (b)(1) in considering the amount of income of the individual for any purposes under the Medicaid program under title XIX of the Social Security Act and the State Children's Health Insurance Program under title XXI of such Act.

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

(1) the terms ''compensation'', ''regular compensation'', ''benefit year'', ''State'', ''State agency'', ''State law'', and ''week'' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);

(2) the term ''emergency unemployment compensation'' means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353); and

(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970); and

(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary.

SEC. 2003. UNEMPLOYMENT COMPENSATION MODERNIZATION.

(a) IN GENERAL.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

''Special Transfers for Modernization

''(f)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter 'incentive payments') to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

''(B) The maximum incentive payment allowable under this subsection with respect to any State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying $7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

''(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State—

''(i) one-third shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (2); and

''(ii) the remainder shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (3).

''(2) The State law of a State meets the requirements of this paragraph if such State law—

''(A) uses a base period that includes the most recently completed calendar quarter before the start of the benefit year for purposes of determining eligibility for unemployment compensation; or

''(B) provides that, in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter.

''(3) The State law of a State meets the requirements of this paragraph if such State law includes provisions to carry out at least 2 of the following subparagraphs:

''(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time (and not full-time) work, except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual's base period do not include part-time work.

''(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term 'compelling family reason' means the following:

''(i) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the Secretary of Labor).

''(ii) The illness or disability of a member of the individual's immediate family (as defined by the Secretary of Labor).

''(iii) The need for the individual to accompany such individual's spouse—

''(I) to a place from which it is impractical for such individual to commute; and

''(II) due to a change in location of the spouse's employment.

''(C) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998. Such programs shall prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation. The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to the individual's average

weekly benefit amount (including dependents' allowances) for the most recent benefit year, and the total amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

''(D) Dependents' allowances are provided, in the case of any individual who is entitled to receive regular unemployment compensation and who has any dependents (as defined by State law), in an amount equal to at least $15 per dependent per week, subject to any aggregate limitation on such allowances which the State law may establish (but which aggregate limitation on the total allowance for dependents paid to an individual may not be less than $50 for each week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less).

''(4)(A) Any State seeking an incentive payment under this subsection shall submit an application therefor at such time, in such manner, and complete with such information as the Secretary of Labor may within 60 days after the date of the enactment of this subsection prescribe (whether by regulation or otherwise), including information relating to compliance with the requirements of paragraph (2) or (3), as well as how the State intends to use the incentive payment to improve or strengthen the State's unemployment compensation program. The Secretary of Labor shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements of paragraph (2) or (3) (or both).

''(B)(i) If the Secretary of Labor finds that the State law provisions (disregarding any State law provisions which are not then currently in effect as permanent law or which are subject to discontinuation) meet the requirements of paragraph (2) or (3), as the case may be, the Secretary of Labor shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the incentive payment to be transferred to the State account pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer within 7 days after receiving such certification.

''(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

''(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not otherwise eligible for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.

''(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

''(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2010. In the case of a State in which the first day of the first regularly scheduled session of the State legislature beginning after the date of enactment of this subsection begins after December 31, 2010, the preceding sentence shall be applied by substituting 'October 1, 2011' for 'October 1, 2010' .

''(5)(A) Except as provided in subparagraph (B), any amount transferred to the account of a State under this subsection may be used by such State only in the payment of cash benefits to individuals with respect to their unemployment (including for dependents' allowances and for unemployment compensation under paragraph (3)(C)), exclusive of expenses of administration.

''(B) A State may, subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to 'subsections (a) and (b)' in subparagraph (D) thereof to include this subsection), use any amount transferred to the account of such State under this subsection for the administration of its unemployment compensation law and public employment offices.

''(6) Out of any money in the Federal unemployment account not otherwise appropriated, the Secretary of the Treasury shall reserve $7,000,000,000 for incentive payments under this subsection. Any amount so reserved shall not be taken into account for purposes of any determination under section 902, 910, or 1203 of the amount in the Federal unemployment account as of any given time. Any amount so reserved for which the Secretary of the Treasury has not received a certification under paragraph (4)(B) by the deadline described in paragraph (4)(C)(iii) shall, upon the close of fiscal year 2011, become unrestricted as to use as part of the Federal unemployment account.

''(7) For purposes of this subsection, the terms 'benefit year', 'base period', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

''Special Transfer in Fiscal Year 2009 for Administration

''(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).

''(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying $500,000,000 by the same ratio as determined under subsection (f)(1)(B) with respect to such State.

''(3) Any amount transferred to the account of a State as a result of the enactment of this subsection may be used by the State agency of such State only in the payment of expenses incurred by it for—

''(A) the administration of the provisions of its State law carrying out the purposes of subsection (f)(2) or any subparagraph of subsection (f)(3);

''(B) improved outreach to individuals who might be eligible for regular unemployment compensation by virtue of any provisions of the State law which are described in subparagraph (A);

''(C) the improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation; and

''(D) staff-assisted reemployment services for unemployment compensation claimants.''.

(b) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

SEC. 2004. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.

Section 1202(b) of the Social Security Act (42 U.S.C. 1322(b)) is amended by adding at the end the following new paragraph:

''(10)(A) With respect to the period beginning on the date of enactment of this paragraph and ending on December 31, 2010—

''(i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and

''(ii) no interest shall accrue on any advance or advances made under section 1201 to a State during such period.

''(B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the period described in such subparagraph or on the accrual of interest under this subsection after such period.''.

Subtitle B—Assistance for Vulnerable Individuals

SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.

(a) TEMPORARY FUND.—

(1) IN GENERAL.—Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

''(c) EMERGENCY FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund which shall be known as the 'Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs' (in this subsection referred to as the 'Emergency Fund').

''(2) DEPOSITS INTO FUND.—

''(A) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2009, $3,000,000,000 for payment to the Emergency Fund.

''(B) AVAILABILITY AND USE OF FUNDS.—The amounts appropriated to the Emergency Fund under subparagraph (A) shall remain available through fiscal year 2010 and shall be used to make grants to States in each of fiscal years 2009 and 2010 in accordance with the requirements of paragraph (3).

''(C) LIMITATION.—In no case may the Secretary make a grant from the Emergency Fund for a fiscal year after fiscal year 2010.

''(3) GRANTS.—

''(A) GRANT RELATED TO CASELOAD INCREASES.—

''(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

''(I) requests a grant under this subparagraph for the quarter; and

''(II) meets the requirement of clause (ii) for the quarter.

''(ii) CASELOAD INCREASE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the average monthly assistance caseload of the State for the quarter exceeds the average monthly assistance caseload of the State for the corresponding quarter in the emergency fund base year of the State.

''(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be 80 percent of the amount (if any) by which the total expenditures of the State for basic assistance (as defined by the Secretary) in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total expenditures of the State for such assistance for the corresponding quarter in the emergency fund base year of the State.

''(B) GRANT RELATED TO INCREASED EXPENDITURES FOR NON-RECURRENT SHORT TERM BENEFITS.—

''(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

''(I) requests a grant under this subparagraph for the quarter; and

''(II) meets the requirement of clause (ii) for the quarter.

''(ii) NON-RECURRENT SHORT TERM EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for non-recurrent short term benefits in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total such expenditures of the State for non-recurrent short term benefits in the corresponding quarter in the emergency fund base year of the State.

''(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

''(C) GRANT RELATED TO INCREASED EXPENDITURES FOR SUBSIDIZED EMPLOYMENT.—

''(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

''(I) requests a grant under this subparagraph for the quarter; and

''(II) meets the requirement of clause (ii) for the quarter.

''(ii) SUBSIDIZED EMPLOYMENT EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for subsidized employment in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total of such expenditures of the State in the corresponding quarter in the emergency fund base year of the State.

''(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

''(4) AUTHORITY TO MAKE NECESSARY ADJUSTMENTS TO DATA AND COLLECT NEEDED DATA.—In determining the size of the caseload of a State and the expenditures of a State for basic assistance, non-recurrent short-term benefits, and subsidized employment, during any period for which the State requests funds under this subsection, and during the emergency fund base year of the State, the Secretary may make appropriate adjustments to the data to ensure that the data reflect expenditures under the State program funded under this part and qualified State expenditures. The Secretary may develop a mechanism for collecting expenditure data, including procedures which allow States to make reasonable estimates, and may set deadlines for making revisions to the data.

''(5) LIMITATION.—The total amount payable to a single State under subsection (b) and this subsection for a fiscal year shall not exceed 25 percent of the State family assistance grant.

''(6) LIMITATIONS ON USE OF FUNDS.—A State to which an amount is paid under this subsection may use the amount only as authorized by section 404.

''(7) TIMING OF IMPLEMENTATION.—The Secretary shall implement this subsection as quickly as reasonably possible, pursuant to appropriate guidance to States.

''(8) DEFINITIONS.—In this subsection:

''(A) AVERAGE MONTHLY ASSISTANCE CASELOAD DEFINED.—The term 'average monthly assistance caseload' means, with respect to a State and a quarter, the number of families receiving assistance during the quarter under the State program funded under this part or as qualified State expenditures, subject to adjustment under paragraph (4).

''(B) EMERGENCY FUND BASE YEAR.—

''(i) IN GENERAL.—The term 'emergency fund base year' means, with respect to a State and a category described in clause (ii), whichever of fiscal year 2007 or 2008 is the fiscal year in which the amount described by the category with respect to the State is the lesser.

''(ii) CATEGORIES DESCRIBED.—The categories described in this clause are the following:

''(I) The average monthly assistance caseload of the State.

''(II) The total expenditures of the State for non-recurrent short term benefits, whether under the State program funded under this part or as qualified State expenditures.

''(III) The total expenditures of the State for subsidized employment, whether under the State program funded under this part or as qualified State expenditures.

''(C) QUALIFIED STATE EXPENDITURES.—The term 'qualified State expenditures' has the meaning given the term in section 409(a)(7).''.

(2) REPEAL.—Effective October 1, 2010, subsection (c) of section 403 of the Social Security Act (42 U.S.C. 603) (as added by paragraph (1)) is repealed.

(b) TEMPORARY MODIFICATION OF CASELOAD REDUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting ''(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 403(c)(8)(B), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007))'' before ''under the State''.

(c) DISREGARD FROM LIMITATION ON TOTAL PAYMENTS TO TERRITORIES.—Section 1108(a)(2) of the Social Security Act (42 U.S.C. 1308(a)(2)) is amended by inserting ''403(c)(3),'' after ''403(a)(5),''.

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

SEC. 2102. EXTENSION OF TANF SUPPLEMENTAL GRANTS.

(a) EXTENSION THROUGH FISCAL YEAR 2010.—Section 7101(a) of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 135), as amended by section 301(a) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), is amended by striking ''fiscal year 2009'' and inserting ''fiscal year 2010''.

(b) CONFORMING AMENDMENT.—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended to read as follows:

''(ii) subparagraph (G) shall be applied as if 'fiscal year 2010' were substituted for 'fiscal year 2001'; and''.

SEC. 2103. CLARIFICATION OF AUTHORITY OF STATES TO USE TANF FUNDS CARRIED OVER FROM PRIOR YEARS TO PROVIDE TANF BENEFITS AND SERVICES.

Section 404(e) of the Social Security Act (42 U.S.C. 604(e)) is amended to read as follows:

''(e) AUTHORITY TO CARRY OVER CERTAIN AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE CONTINGENCIES.—A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.''.

SEC. 2104. TEMPORARY REINSTATEMENT OF AUTHORITY TO PROVIDE FEDERAL MATCHING PAYMENTS FOR STATE SPENDING OF CHILD SUPPORT INCENTIVE PAYMENTS.

During the period that begins on October 1, 2008, and ends on December 31, 2010, section 455(a)(1) of the Social Security Act (42 U.S.C. 655(a)(1)) shall be applied without regard to the amendment made by section 7309(a) of the Deficit Reduction Act of 2005 (Public Law 109–171, 120 Stat. 147).

TITLE III—HEALTH INSURANCE ASSISTANCE

SEC. 3000. TABLE OF CONTENTS OF TITLE.

The table of contents for this title is as follows:

TITLE III—HEALTH INSURANCE ASSISTANCE

Sec. 3000. Table of contents of title.

Subtitle A—Premium Subsidies for COBRA Continuation Coverage for Unemployed Workers

Sec. 3001. Premium assistance for COBRA benefits.<Q P='02'>

Subtitle B—Transitional Medical Assistance (TMA)

Sec. 3101. Extension of transitional medical assistance (TMA).

Subtitle C—Extension of the Qualified Individual (QI) Program

Sec. 3201. Extension of the qualifying individual (QI) program.

Subtitle D—Other Provisions

Sec. 3301. Premiums and cost sharing protections under Medicaid, eligibility determinations under Medicaid and CHIP, and protection of certain Indian property from Medicaid estate recovery.

Sec. 3302. Rules applicable under Medicaid and CHIP to managed care entities with respect to Indian enrollees and Indian health care providers and Indian managed care entities.

Sec. 3303. Consultation on Medicaid, CHIP, and other health care programs funded under the Social Security Act involving Indian Health Programs and Urban Indian Organizations.

Sec. 3304. Application of prompt pay requirements to nursing facilities.

Sec. 3305. Period of application; sunset.

Subtitle A—Premium Subsidies for COBRA Continuation Coverage for Unemployed Workers

SEC. 3001. PREMIUM ASSISTANCE FOR COBRA BENEFITS.

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

Sec. 3001. Premium assistance for COBRA benefits.

(b) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR UNEMPLOYED WORKERS AND THEIR FAMILIES.—

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a month of coverage beginning after the date of the enactment of the Act for COBRA continuation coverage with respect to any assistance eligible individual, such individual shall be treated for purposes of any COBRA continuation provision as having paid the amount of such premium if such individual pays 35 percent of the amount of such premium (as determined without regard to this subsection).

(B) PLAN ENROLLMENT OPTION.—

(i) IN GENERAL.—Notwithstanding the COBRA continuation provisions, an assistance eligible individual may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by the employer involved, or the employee organization involved (including, for this purpose, a joint board of trustees of a multiemployer trust affiliated with one or

more multiemployer plans), that is different than coverage under the plan in which such individual was enrolled at the time the qualifying event occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

(ii) REQUIREMENTS.—An assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

(I) the employer involved has made a determination that such employer will permit assistance eligible individuals to enroll in different coverage as provided for this subparagraph;

(II) the premium for such different coverage does not exceed the premium for coverage in which the individual was enrolled at the time the qualifying event occurred;

(III) the different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time at which such election is made; and

(IV) the different coverage is not—

(aa) coverage that provides only dental, vision, counseling, or referral services (or a combination of such services);

(bb) a health flexible spending account or health reimbursement arrangement; or

(cc) coverage that provides coverage for services or treatments furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

(C) PREMIUM REIMBURSEMENT.—For provisions providing the balance of such premium, see section 6432 of the Internal Revenue Code of 1986, as added by paragraph (12).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual for months of coverage beginning on or after the earlier of—

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only dental, vision, counseling, or referral services (or a combination thereof), coverage under a health reimbursement arrangement or a health flexible spending arrangement, or coverage of treatment that is furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act; or

(ii) the earliest of—

(I) the date which is 9 months after the first day of first month that paragraph (1)(A) applies with respect to such individual,

(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or

(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

(C) NOTIFICATION REQUIREMENT.—An assistance eligible individual shall notify in writing the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of subparagraph (A)(i). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term ''assistance eligible individual'' means any qualified beneficiary if—

(A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,

(B) such qualified beneficiary elects such coverage, and

(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—Notwithstanding section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section 2205(a) of the Public Health Service Act, and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who is a qualified beneficiary described in paragraph (3)(A) as of the date of the enactment of this Act and has not made the election referred to in paragraph (3)(B) as of such date, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the 60-day period commencing with the date on which the notification required under paragraph (7)(C) is provided to such individual.

(B) COMMENCEMENT OF COVERAGE; NO REACHBACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

(i) shall commence on the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

(C) PREEXISTING CONDITIONS.—With respect to a qualified beneficiary who elects COBRA continuation coverage pursuant to subparagraph (A), the period—

(i) beginning on the date of the qualifying event, and

(ii) ending with the day before the date of the enactment of this Act,

shall be disregarded for purposes of determining the 63-day periods referred to in section 701)(2) of the Employee Retirement Income Security Act of 1974, section 9801(c)(2) of the Internal Revenue Code of 1986, and section 2701(c)(2) of the Public Health Service Act.

(5) EXPEDITED REVIEW OF DENIALS OF PREMIUM ASSISTANCE.—In any case in which an individual requests treatment as an assistance eligible individual and is denied such treatment by the group health plan by reason of such individual's ineligibility for COBRA continuation coverage, the Secretary of Labor (or the Secretary of Health and Human services in connection with COBRA continuation coverage which is provided other than pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974), in consultation with the Secretary of the Treasury, shall provide for expedited review of such denial. An individual shall be entitled to such review upon application to such Secretary in such form and manner as shall be provided by such Secretary. Such Secretary shall make a determination regarding such individual's eligibility within 10 business days after receipt of such individual's application for review under this paragraph.

(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Notwithstanding any other provision of law, any premium reduction with respect to an assistance eligible individual under this subsection shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law or the law of any State or political subdivision thereof.

(7) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb-6(4)), or section 8905a(f)(2)(A) of title 5, United States Code, with respect to individuals who, during the period described in paragraph (3)(A), become entitled to elect COBRA continuation coverage, such notices shall include an additional notification to the recipient of—

(I) the availability of premium reduction with respect to such coverage under this subsection; and

(II) the option to enroll in different coverage if an employer that permits assistance eligible individuals to elect enrollment in different coverage (as described in paragraph (1)(B)).

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in coordination with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium reduction under this subsection,

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

(iii) a description of the extended election period provided for in paragraph (4)(A),

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act and the penalty provided for failure to so notify the plan,

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium; and

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

(C) NOTICE RELATING TO RETROACTIVE COVERAGE.—In the case of an individual described in paragraph (3)(A) who has elected COBRA continuation coverage as of the date of enactment of this Act or an individual described in paragraph (4)(A), the administrator of the group health plan (or other person) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A).

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph.

(8) SAFEGUARDS.—The Secretary of the Treasury shall provide such rules, procedures, regulations, and other guidance as may be necessary and appropriate to prevent fraud and abuse under this subsection.

(9) OUTREACH.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium reduction provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including enrollment, shall also be made available on website of the Departments of Labor, Treasury, and Health and Human Services.

(10) DEFINITIONS.—For purposes of this subsection—

(A) ADMINISTRATOR.—The term ''administrator'' has the meaning given such term in section 3(16) of the Employee Retirement Income Security Act of 1974

(B) COBRA CONTINUATION COVERAGE.—The term ''COBRA continuation coverage'' means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or section 8905a of title 5, United States Code, or under a State program that provides continuation coverage comparable to such continuation coverage. Such term does not include coverage under a health flexible spending arrangement.

(C) COBRA CONTINUATION PROVISION.—The term ''COBRA continuation provision'' means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term ''covered employee'' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term ''qualified beneficiary'' has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term ''group health plan'' has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) REPORTS.—

(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—

(i) the number of individuals provided such assistance as of the date of the report; and

(ii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with such assistance as of the date of the report.

(B) FINAL REPORT.—As soon as practicable after the last period of COBRA continuation coverage for which premium reduction is provided under this section, the Secretary of the Treasury shall submit a final report to each Committee referred to in subparagraph (A) that includes—

(i) the number of individuals provided premium reduction under this section;

(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

(iii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction under this section.

(12) COBRA PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 6432. COBRA PREMIUM ASSISTANCE.

''(a) IN GENERAL.—The person to whom premiums are payable under COBRA continuation coverage shall be reimbursed for the amount of premiums not paid by plan beneficiaries by reason of section 3001(b) of the American Recovery and Reinvestment Act of 2009. Such amount shall be treated as a credit against the requirement of such person to make deposits of payroll taxes and the liability of such person for payroll taxes. To the extent that such amount exceeds the amount of such taxes, the Secretary shall pay to such person the amount of such excess. No payment may be made under this subsection to a person with respect to any assistance eligible individual until after such person has received the reduced premium from such individual required under section 3001(a)(1)(A) of such Act.

''(b) PAYROLL TAXES.—For purposes of this section, the term 'payroll taxes' means—

''(1) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding),

''(2) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

''(3) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

''(c) TREATMENT OF CREDIT.—Except as otherwise provided by the Secretary, the credit described in subsection (a) shall be applied as though the employer had paid to the Secretary, on the day that the qualified beneficiary's premium payment is received, an amount equal to such credit.

''(d) TREATMENT OF PAYMENT.—For purposes of section 1324(b)(2) of title 31, United States Code, any payment under this subsection shall be treated in the same manner as a refund of the credit under section 35.

''(e) REPORTING.—

''(1) IN GENERAL.—Each person entitled to reimbursement under subsection (a) for any period shall submit such reports as the Secretary may require, including—

''(A) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a), and

''(B) a report of the amount of payroll taxes offset under subsection (a) for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a).

''(2) TIMING OF REPORTS RELATING TO AMOUNT OF PAYROLL TAXES.—Reports required under paragraph (1)(B) shall be submitted at the same time as deposits of taxes imposed by chapters 21, 22, and 24 or at such time as is specified by the Secretary.

''(f) REGULATIONS.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including the requirement to report information or the establishment of other methods for verifying the correct amounts of payments and credits under this section, and the application of this section to group health plans which are multiemployer plans.''.

(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount transferred or appropriated to any fund under the Social Security Act, section 6432 of the Internal Revenue Code of 1986 shall not be taken into account.

(C) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 6432. COBRA premium assistance.''.

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.

(E) SPECIAL RULE.—

(i) IN GENERAL.—In the case of an assistance eligible individual who pays the full premium amount required for COBRA continuation coverage for any month during the 60-day period beginning on the first day of the first month after the date of enactment of this Act, the person to whom such payment is made shall—

(I) make a reimbursement payment to such individual for the amount of such premium paid in excess of the amount required to be paid under subsection (b)(1)(A); or

(II) provide credit to the individual for such amount in a manner that reduces one or more subsequent premium payments that the individual is required to pay under such subsection for the coverage involved.

(ii) REIMBURSING EMPLOYER.—A person to which clause (i) applies shall be reimbursed as provided for in section 6432 of the Internal Revenue Code of 1986 for any payment made, or credit provided, to the employee under such clause.

(iii) PAYMENT OR CREDITS.—Unless it is reasonable to believe that the credit for the excess payment in clause (i)(II) will be used by the assistance eligible individual within 180 days of the date on which the person receives from the individual the payment of the full premium amount, a person to which clause (i) applies shall make the payment required under such clause to the individual within 60 days of such payment of the full premium amount. If, as of any day within the 180-day period, it is no longer reasonable to believe that the credit will be used during that period, payment equal to the remainder of the credit outstanding shall be made to the individual within 60 days of such day.

(13) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE.

''(a) IN GENERAL.—Any person required to notify a group health plan under section 3001(a)(2)(C) of the American Recovery and Reinvestment Act of 2009 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of 110 percent of the premium reduction provided under such section after termination of eligibility under such subsection.

''(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68 of such Code is amended by adding at the end the following new item:

''Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to failures occurring after the date of the enactment of this Act.

(14) COORDINATION WITH HCTC.—

(A) IN GENERAL.—Subsection (g) of section 35 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

''(9) COBRA PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3001(a) of the American Recovery and Reinvestment Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139B the following new section:

''SEC. 139C. COBRA PREMIUM ASSISTANCE.

''In the case of an assistance eligible individual (as defined in section 3001 of the American Recovery and Reinvestment Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.''.

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139B the following new item:

''Sec. 139C. COBRA premium assistance.''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle B—Transitional Medical Assistance (TMA)

SEC. 3101. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

(a) 18-MONTH EXTENSION.—

(1) IN GENERAL.—Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking ''September 30, 2003'' and inserting ''December 31, 2010''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on July 1, 2009.

(b) STATE OPTION OF INITIAL 12-MONTH ELIGIBILITY.—Section 1925 of the Social Security Act (42 U.S.C. 1396r–6) is amended—

(1) in subsection (a)(1), by inserting ''but subject to paragraph (5)'' after ''Notwithstanding any other provision of this title'';

(2) by adding at the end of subsection (a) the following:

''(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY PERIOD.—A State may elect to treat any reference in this subsection to a 6-month period (or 6 months) as a reference to a 12-month period (or 12 months). In the case of such an election, subsection (b) shall not apply.''; and

(3) in subsection (b)(1), by inserting ''but subject to subsection (a)(5)'' after ''Notwithstanding any other provision of this title''.

(c) REMOVAL OF REQUIREMENT FOR PREVIOUS RECEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)), as amended by subsection (b)(1), is further amended—

(1) by inserting ''subparagraph (B) and'' before ''paragraph (5)'';

(2) by redesignating the matter after ''REQUIREMENT.—'' as a subparagraph (A) with the heading ''IN GENERAL.—'' and with the same indentation as subparagraph (B) (as added by paragraph (3)); and

(3) by adding at the end the following:

''(B) STATE OPTION TO WAIVE REQUIREMENT FOR 3 MONTHS BEFORE RECEIPT OF MEDICAL ASSISTANCE.—A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than 3 months during the 6 immediately preceding months described in such subparagraph.''.

(d) CMS REPORT ON ENROLLMENT AND PARTICIPATION RATES UNDER TMA.—Section 1925 of such Act (42 U.S.C. 1396r–6), as amended by this section, is further amended by adding at the end the following new subsection:

''(g) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—

''(1) COLLECTION OF INFORMATION FROM STATES.—Each State shall collect and submit to the Secretary (and make publicly available), in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults and children under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI. Such information shall be submitted at the same time and frequency in which other enrollment information under this title is submitted to the Secretary.

''(2) ANNUAL REPORTS TO CONGRESS.—Using the information submitted under paragraph (1), the Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.''.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.

Subtitle C—Extension of the Qualified Individual (QI) Program

SEC. 3201. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking ''December 2009'' and inserting ''December 2010''.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking ''and'' at the end of subparagraph (K);

(B) in subparagraph (L), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(M) for the period that begins on January 1, 2010, and ends on September 30, 2010, the total allocation amount is $412,500,000; and

''(N) for the period that begins on October 1, 2010, and ends on December 31, 2010, the total allocation amount is $150,000,000.''; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking ''or (L)'' and inserting ''(L), or (N)''.

Subtitle D—Other Provisions

SEC. 3301. PREMIUMS AND COST SHARING PROTECTIONS UNDER MEDICAID, ELIGIBILITY DETERMINATIONS UNDER MEDICAID AND CHIP, AND PROTECTION OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.

(a) PREMIUMS AND COST SHARING PROTECTION UNDER MEDICAID.—

(1) IN GENERAL.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking ''and (i)'' and inserting '', (i), and (j)''; and

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

''(j) NO PREMIUMS OR COST SHARING FOR INDIANS FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CONTRACT HEALTH SERVICES.—

''(1) NO COST SHARING FOR ITEMS OR SERVICES FURNISHED TO INDIANS THROUGH INDIAN HEALTH PROGRAMS.—

''(A) IN GENERAL.—No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services for which payment may be made under this title.

''(B) NO REDUCTION IN AMOUNT OF PAYMENT TO INDIAN HEALTH PROVIDERS.—Payment due under this title to the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or a health care provider through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under such title, may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian but for the operation of subparagraph (A).

''(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this title who is an Indian.''.

(2) CONFORMING AMENDMENT.—Section 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

''(vi) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.''; and

(B) in subparagraph (B), by adding at the end the following new clause:

''(ix) Items and services furnished to an Indian directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.''.

(b) TREATMENT OF CERTAIN PROPERTY FROM RESOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

(1) MEDICAID.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

''(dd) Notwithstanding any other requirement of this title or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an

individual who is an Indian for medical assistance under this title:

''(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

''(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

''(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

''(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) by redesignating subparagraphs (B) through (E), as subparagraphs (C) through (F), respectively; and

(B) by inserting after subparagraph (A), the following new subparagraph:

''(B) Section 1902(dd) (relating to disregard of certain property for purposes of making eligibility determinations).''.

(c) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Section 1917(b)(3) of the Social Security Act (42 U.S.C. 1396p(b)(3)) is amended—

(1) by inserting ''(A)'' after ''(3)''; and

(2) by adding at the end the following new subparagraph:

''(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this title for Indians.''.

SEC. 3302. RULES APPLICABLE UNDER MEDICAID AND CHIP TO MANAGED CARE ENTITIES WITH RESPECT TO INDIAN ENROLLEES AND INDIAN HEALTH CARE PROVIDERS AND INDIAN MANAGED CARE ENTITIES.

(a) IN GENERAL.—Section 1932 of the Social Security Act (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

''(h) SPECIAL RULES WITH RESPECT TO INDIAN ENROLLEES, INDIAN HEALTH CARE PROVIDERS, AND INDIAN MANAGED CARE ENTITIES.—

''(1) ENROLLEE OPTION TO SELECT AN INDIAN HEALTH CARE PROVIDER AS PRIMARY CARE PROVIDER.—In the case of a non-Indian Medicaid managed care entity that—

''(A) has an Indian enrolled with the entity; and

''(B) has an Indian health care provider that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Indian health care provider and the Indian health care provider has the capacity to provide primary care services to such Indian, the contract with the entity under section 1903(m) or under section 1905(t)(3) shall require, as a condition of receiving payment under such contract, that the Indian shall be allowed to choose such Indian health care provider as the Indian's primary care provider under the entity.

''(2) ASSURANCE OF PAYMENT TO INDIAN HEALTH CARE PROVIDERS FOR PROVISION OF COVERED SERVICES.—Each contract with a managed care entity under section 1903(m) or under section 1905(t)(3) shall require any such entity, as a condition of receiving payment under such contract, to satisfy the following requirements:

''(A) DEMONSTRATION OF ACCESS TO INDIAN HEALTH CARE PROVIDERS AND APPLICATION OF ALTERNATIVE PAYMENT ARRANGEMENTS.—Subject to subparagraph (C), to—

''(i) demonstrate that the number of Indian health care providers that are participating providers with respect to such entity are sufficient to ensure timely access to covered Medicaid managed care services for those Indian enrollees who are eligible to receive services from such providers; and

''(ii) agree to pay Indian health care providers, whether such providers are participating or nonparticipating providers with respect to the entity, for covered Medicaid managed care services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

''(B) PROMPT PAYMENT.—To agree to make prompt payment (consistent with rule for prompt payment of providers under section 1932(f)) to Indian health care providers that are participating providers with respect to such entity or, in the case of an entity to which subparagraph (A)(ii) or (C) applies, that the entity is required to pay in accordance with that subparagraph.

''(C) APPLICATION OF SPECIAL PAYMENT REQUIREMENTS FOR FEDERALLY-QUALIFIED HEALTH CENTERS AND FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—

''(i) FEDERALLY-QUALIFIED HEALTH CENTERS.—

''(I) MANAGED CARE ENTITY PAYMENT REQUIREMENT.—To agree to pay any Indian health care provider that is a federally-qualified health center under this title but not a participating provider with respect to the entity, for the provision of covered Medicaid managed care services by such provider to an Indian enrollee of the entity at a rate equal to the amount of payment that the entity would pay a federally-qualified health center that is a participating provider with respect to the entity but is not an Indian health care provider for such services.

''(II) CONTINUED APPLICATION OF STATE REQUIREMENT TO MAKE SUPPLEMENTAL PAYMENT.—Nothing in subclause (I) or subparagraph (A) or (B) shall be construed as waiving the application of section 1902(bb)(5) regarding the State plan requirement to make any supplemental payment due under such section to a federally-qualified health center for services furnished by such center to an enrollee of a managed care entity (regardless of whether the federally-qualified health center is or is not a participating provider with the entity).

''(ii) PAYMENT RATE FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—If the amount paid by a managed care entity to an Indian health care provider that is not a federally-qualified health center for services provided by the provider to an Indian enrollee with the managed care entity is less than the rate that applies to the provision of such services by the provider under the State plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services.

''(D) CONSTRUCTION.—Nothing in this paragraph shall be construed as waiving the application of section 1902(a)(30)(A) (relating to application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

''(3) SPECIAL RULE FOR ENROLLMENT FOR INDIAN MANAGED CARE ENTITIES.—Regarding the application of a Medicaid managed care program to Indian Medicaid managed care entities, an Indian Medicaid managed care entity may restrict enrollment under such program to Indians and to members of specific Tribes in the same manner as Indian Health Programs may restrict the delivery of services to such Indians and tribal members.

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) INDIAN HEALTH CARE PROVIDER.—The term 'Indian health care provider' means an Indian Health Program or an Urban Indian Organization.

''(B) INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'Indian Medicaid managed care entity' means a managed care entity that is controlled (within the meaning of the last sentence of section 1903(m)(1)(C)) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

''(C) NON-INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'non-Indian Medicaid managed care entity' means a managed care entity that is not an Indian Medicaid managed care entity.

''(D) COVERED MEDICAID MANAGED CARE SERVICES.—The term 'covered Medicaid managed care services' means, with respect to an individual enrolled with a managed care entity, items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

''(E) MEDICAID MANAGED CARE PROGRAM.—The term 'Medicaid managed care program' means a program under sections 1903(m), 1905(t), and 1932 and includes a managed care program operating under a waiver under section 1915(b) or 1115 or otherwise.''.

(b) APPLICATION TO CHIP.—Subject to section __013(d), section 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)) is amended by adding at the end the following new subparagraph:

''(E) Subsections (a)(2)(C) and (h) of section 1932.''.

SEC. 3303. CONSULTATION ON MEDICAID, CHIP, AND OTHER HEALTH CARE PROGRAMS FUNDED UNDER THE SOCIAL SECURITY ACT INVOLVING INDIAN HEALTH PROGRAMS AND URBAN INDIAN ORGANIZATIONS.

(a) CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG).—The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in

accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.

(b) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

(1) MEDICAID STATE PLAN AMENDMENT.—Subject to subsection (d), section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (70), by striking ''and'' at the end;

(B) in paragraph (71), by striking the period at the end and inserting ''; and''; and

(C) by inserting after paragraph (71), the following new paragraph:

''(72) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

''(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

''(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this title.''.

(2) APPLICATION TO CHIP.—Subject to subsection (d), section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by section 3302(b)(2), is amended—

(A) by redesignating subparagraphs (B) through (E) as subparagraphs (C) through (F), respectively; and

(B) by inserting after subparagraph (A), the following new subparagraph:

''(B) Section 1902(a)(72) (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).''.

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services or by any State with respect to the provision of health care to Indians.

(d) CONTINGENCY RULE.—If the Children's Health Insurance Program Reauthorization Act of 2009 (in this subsection referred to as ''CHIPRA'') has been enacted as of the date of enactment of this Act, the following shall apply:

(1) Subparagraph (I) of section 2107(e) of the Social Security Act (as redesignated by CHIPRA) is redesignated as subparagraph (K) and the subparagraph (E) added to section 2107(e) of the Social Security Act by section 3302(b) is redesignated as subparagraph (J).

(2) Subparagraphs (D) through (H) of section 2107(e) of the Social Security Act (as added and redesignated by CHIPRA) are redesignated as subparagraphs (E) through (I), respectively and the subparagraph (B) of section 2107(e) of the Social Security Act added by subsection (b)(2) of this section is redesignated as subparagraph (D) and amended by striking ''1902(a)(72)'' and inserting ''1902(a)(73)''.

(3) Section 1902(a) of the Social Security Act (as amended by CHIPRA) is amended by striking ''and'' at the end of paragraph (71), by striking the period at the end of the paragraph (72) added by CHIPRA and inserting ''; and'' and by redesignated the paragraph (72) added to such section by subsection (b)(1) of this section as paragraph (73).

SEC. 3304. APPLICATION OF PROMPT PAY REQUIREMENTS TO NURSING FACILITIES.

Section 1902(a)(37)(A) of the Social Security Act (42 U.S.C. 1396a(a)(37)(A)) is amended by inserting '', or by nursing facilities,'' after ''health facilities''

SEC. 3305. PERIOD OF APPLICATION; SUNSET.

This subtitle and the amendments made by this subtitle shall be in effect only during the period that begins on April 1, 2009, and ends on December 31, 2010. On and after January 1, 2011, the Social Security Act shall be applied as if this subtitle and the amendments made by this subtitle had not been enacted.

TITLE IV—HEALTH INFORMATION TECHNOLOGY

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title may be cited as the ''Medicare and Medicaid Health Information Technology for Economic and Clinical Health Act'' or the ''M-HITECH Act''.

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

TITLE IV—HEALTH INFORMATION TECHNOLOGY

Sec. 4001. Short title; table of contents of title.

Subtitle A—Medicare Program

Sec. 4201. Incentives for eligible professionals.
Sec. 4202. Incentives for hospitals.
Sec. 4203. Premium hold harmless and implementation funding.
Sec. 4204. Non-application of phased-out indirect medical education (IME) adjustment factor for fiscal year 2009.
Sec. 4205. Study on application of EHR payment incentives for providers not receiving other incentive payments.
Sec. 4206. Study on availability of open source health information technology systems.

Subtitle B—Medicaid Funding

Sec. 4211. Medicaid provider EHR adoption and operation payments; implementation funding.

Subtitle A—Medicare Program

SEC. 4201. INCENTIVES FOR ELIGIBLE PROFESSIONALS.

(a) INCENTIVE PAYMENTS.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new subsection:

''(o) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(1) INCENTIVE PAYMENTS.—

''(A) IN GENERAL.—

''(i) IN GENERAL.—Subject to clause (ii) and the succeeding subparagraphs of this paragraph, with respect to covered professional services furnished by an eligible professional during a payment year (as defined in subparagraph (E)), if the eligible professional is a meaningful EHR user (as determined under paragraph (2)) for the reporting period with respect to such year, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.

''(ii) NO INCENTIVE PAYMENTS WITH RESPECT TO YEARS AFTER 2015.—No incentive payments may be made under this subsection with respect to a year after 2015.

''(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

''(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

''(ii) AMOUNT.—Subject to clauses (iii) through (v), the applicable amount specified in this subparagraph for an eligible professional is as follows:

''(I) For the first payment year for such professional, $15,000 (or, if the first payment year for such eligible professional is 2011 or 2012, $18,000).

''(II) For the second payment year for such professional, $12,000.

''(III) For the third payment year for such professional, $8,000.

''(IV) For the fourth payment year for such professional, $4,000.

''(V) For the fifth payment year for such professional, $2,000.

''(VI) For any succeeding payment year for such professional, $0.

''(iii) PHASE DOWN FOR ELIGIBLE PROFESSIONALS FIRST ADOPTING EHR IN 2014.—If the first payment year for an eligible professional is 2014, then the amount specified in this subparagraph for a payment year for such professional is the same as the amount specified in clause (ii) for such payment year for an eligible professional whose first payment year is 2013.

''(iv) INCREASE FOR CERTAIN RURAL ELIGIBLE PROFESSIONALS.—In the case of an eligible professional who predominantly furnishes services under this part in a rural area that is designated by the Secretary (under section 332(a)(1)(A) of the Public Health Service Act) as a health professional shortage area, the amount that would otherwise apply for a payment year for such professional under subclauses (I) through (V) of clause (ii) shall be increased by 25 percent. In implementing the preceding sentence, the Secretary may, as determined appropriate, apply provisions of subsections (m) and (u) of section 1833 in a similar manner as such provisions apply under such subsection.

''(v) NO INCENTIVE PAYMENT IF FIRST ADOPTING AFTER 2014.—If the first payment year for an eligible professional is after 2014 then the applicable amount specified in this subparagraph for such professional for such year and any subsequent year shall be $0.

''(C) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—

''(i) IN GENERAL.—No incentive payment may be made under this paragraph in the case of a hospital-based eligible professional.

''(ii) HOSPITAL-BASED ELIGIBLE PROFESSIONAL.—For purposes of clause (i), the term 'hospital-based eligible professional' means, with respect to covered professional services furnished by an eligible professional during the reporting period for a payment year, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient

or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital.

''(D) PAYMENT.—

''(i) FORM OF PAYMENT.—The payment under this paragraph may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

''(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

''(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. In doing so, the Secretary may deem satisfaction of State requirements for such meaningful use for a payment year under title XIX to be sufficient to qualify as meaningful use under this subsection and subsection (a)(7) and vice versa. The Secretary may also adjust the reporting periods under such title and such subsections in order to carry out this clause.

''(E) PAYMENT YEAR DEFINED.—

''(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a year beginning with 2011.

''(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to covered professional services furnished by an eligible professional, the first year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', 'fourth payment year', and 'fifth payment year' mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

''(2) MEANINGFUL EHR USER.—

''(A) IN GENERAL.—For purposes of paragraph (1), an eligible professional shall be treated as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (a)(7), for a reporting period under such subsection for a year) if each of the following requirements is met:

''(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.

''(ii) INFORMATION EXCHANGE.—The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

''(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i). The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

''(B) REPORTING ON MEASURES.—

''(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

''(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

''(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

''(ii) LIMITATION.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

''(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

''(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

''(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

''(I) an attestation;

''(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

''(III) a survey response;

''(IV) reporting under subparagraph (A)(iii); and

''(V) other means specified by the Secretary.

''(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

''(3) APPLICATION.—

''(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

''(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

''(C) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (a)(7), including the determination of a meaningful EHR user under paragraph (2), a limitation under paragraph (1)(B), and the exception under subsection (a)(7)(B).

''(D) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).

''(4) CERTIFIED EHR TECHNOLOGY DEFINED.—For purposes of this section, the term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

''(5) DEFINITIONS.—For purposes of this subsection:

''(A) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

''(B) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

''(C) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.''.

(b) INCENTIVE PAYMENT ADJUSTMENT.—Section 1848(a) of the Social Security Act (42 U.S.C. 1395w–4(a)) is amended by adding at the end the following new paragraph:

''(7) INCENTIVES FOR MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(A) ADJUSTMENT.—

''(i) IN GENERAL.—Subject to subparagraphs (B) and (D), with respect to covered professional services furnished by an eligible professional during 2015 or any subsequent payment year, if the eligible professional is not a meaningful EHR user (as determined under subsection (o)(2)) for a reporting period for the year, the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after application of paragraph (3) but without regard to this paragraph).

''(ii) APPLICABLE PERCENT.—Subject to clause (iii), for purposes of clause (i), the term 'applicable percent' means—

''(I) for 2015, 99 percent (or, in the case of an eligible professional who was subject to the application of the payment adjustment under section 1848(a)(5) for 2014, 98 percent);

''(II) for 2016, 98 percent; and

''(III) for 2017 and each subsequent year, 97 percent.

''(iii) AUTHORITY TO DECREASE APPLICABLE PERCENTAGE FOR 2018 AND SUBSEQUENT YEARS.—For 2018 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

''(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a

meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

''(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

''(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (o)(1)(C)(ii)).

''(E) DEFINITIONS.—For purposes of this paragraph:

''(i) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

''(ii) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

''(iii) REPORTING PERIOD.—The term 'reporting period' means, with respect to a year, a period specified by the Secretary.''.

(c) APPLICATION TO CERTAIN MA-AFFILIATED ELIGIBLE PROFESSIONALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended by adding at the end the following new subsection:

''(l) APPLICATION OF ELIGIBLE PROFESSIONAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(1) IN GENERAL.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1848(o) and 1848(a)(7) shall apply with respect to eligible professionals described in paragraph (2) of the organization who the organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

''(2) ELIGIBLE PROFESSIONAL DESCRIBED.—With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1848(o)) who—

''(A)(i) is employed by the organization; or

''(ii)(I) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services to enrollees of such organization; and

''(II) furnishes at least 75 percent of the professional services of the eligible professional to enrollees of the organization; and

''(B) furnishes, on average, at least 20 hours per week of patient care services.

''(3) ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS.—

''(A) IN GENERAL.—In applying section 1848(o) under paragraph (1), instead of the additional payment amount under section 1848(o)(1)(A) and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.

''(B) AVOIDING DUPLICATION OF PAYMENTS.—

''(i) IN GENERAL.—If an eligible professional described in paragraph (2) is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive shall be made only under such section and not under this subsection.

''(ii) METHODS.—In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

''(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A); and

''(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

''(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.

''(D) CAP FOR ECONOMIES OF SCALE.—In no case may an incentive payment be made under this subsection, including under subparagraph (A), to a qualifying MA organization with respect to more than 5,000 eligible professionals of the organization.

''(4) PAYMENT ADJUSTMENT.—

''(A) IN GENERAL.—In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

''(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

''(i) a percentage equal to 100 percent reduced by the applicable percent (under section 1848(a)(7)(A)(ii)) for the year; and

''(ii) a percentage equal to the Secretary's estimate of the proportion for the year, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for physicians' services.

''(C) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible professionals of the organization are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of all eligible professionals of the organization that are not meaningful EHR users for such year. If the number of eligible professionals of the organization that are not meaningful EHR users for such year exceeds 5,000, such number shall be reduced to 5,000 for purposes of determining the proportion under the preceding sentence.

''(5) QUALIFYING MA ORGANIZATION DEFINED.—In this subsection and subsection (m), the term 'qualifying MA organization' means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).

''(6) MEANINGFUL EHR USER ATTESTATION.—For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying—

''(A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and

''(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.

''(7) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of—

''(A) each qualifying MA organization receiving an incentive payment under this subsection for eligible professionals of the organization; and

''(B) the eligible professionals of such organization for which such incentive payment is based.''.

(d) CONFORMING AMENDMENTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (a)(1)(A), by striking ''and (i)'' and inserting ''(i), and (l)'';

(2) in subsection (c)—

(A) in paragraph (1)(D)(i), by striking ''section 1886(h)'' and inserting ''sections 1848(o) and 1886(h)''; and

(B) in paragraph (6)(A), by inserting after ''under part B,'' the following: ''excluding expenditures attributable to subsections (a)(7) and (o) of section 1848,''; and

(3) in subsection (f), by inserting ''and for payments under subsection (l)'' after ''with the organization''.

(e) CONFORMING AMENDMENTS TO E-PRESCRIBING.—

(1) Section 1848(a)(5)(A) of the Social Security Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—

(A) in clause (i), by striking ''or any subsequent year'' and inserting '', 2013, or 2014''; and

(B) in clause (ii), by striking ''and each subsequent year''.

(2) Section 1848(m)(2) of such Act (42 U.S.C. 1395w–4(m)(2)) is amended—

(A) in subparagraph (A), by striking ''For 2009'' and inserting ''Subject to subparagraph (D), for 2009''; and

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

''(D) LIMITATION WITH RESPECT TO EHR INCENTIVE PAYMENTS.—The provisions of this paragraph shall not apply to an eligible professional (or, in the case of a group practice under paragraph (3)(C), to the group practice) if, for the reporting period the eligible professional (or group practice) receives an incentive payment under subsection (o)(1)(A) with respect to a certified EHR technology (as defined in subsection (o)(4)) that has the capability of electronic prescribing.''.

(f) PROVIDING ASSISTANCE TO ELIGIBLE PROFESSIONALS AND CERTAIN HOSPITALS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide assistance to eligible professionals (as defined in section 1848(o)(5), as added by subsection (a)), Medicaid providers (as defined in section 1903(t)(2) of such Act, as added by section 4211(a)), and eligible hospitals (as defined in section 1886(n)(6)(A) of such Act, as added by section 4202(a)) located in rural or other medically underserved areas to successfully choose, implement, and use certified EHR technology (as defined in section 1848(o)(4) of the Social Security Act, as added by section 4201(a)).

(2) USE OF ENTITIES WITH EXPERTISE.—To the extent practicable, the Secretary shall provide such assistance through entities that have expertise in the choice, implementation, and use of such certified EHR technology.

SEC. 4202. INCENTIVES FOR HOSPITALS.

(a) INCENTIVE PAYMENT.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

''(n) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for the reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

''(2) PAYMENT AMOUNT.—

''(A) IN GENERAL.—Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

''(i) INITIAL AMOUNT.—The sum of—

''(I) the base amount specified in subparagraph (B); plus

''(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

''(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the hospital for a period selected by the Secretary with respect to such payment year.

''(iii) TRANSITION FACTOR.—The transition factor specified in subparagraph (E) for the hospital for the payment year.

''(B) BASE AMOUNT.—The base amount specified in this subparagraph is $2,000,000.

''(C) DISCHARGE RELATED AMOUNT.—The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, based upon total discharges (regardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

''(i) For the 1,150th through the 9,200nd discharge, $200.

''(ii) For the 9,201st through the 13,800th discharge, 50 percent of the amount specified in clause (i).

''(iii) For the 13,801st through the 23,000th discharge, 30 percent of the amount specified in clause (i).

''(D) MEDICARE SHARE.—The Medicare share specified under this subparagraph for a hospital for a period selected by the Secretary for a payment year is equal to the fraction—

''(i) the numerator of which is the sum (for such period and with respect to the hospital) of—

''(I) the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and

''(II) the number of inpatient-bed-days (as so established) which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and

''(ii) the denominator of which is the product of—

''(I) the total number of inpatient-bed-days with respect to the hospital during such period; and

''(II) the total amount of the hospital's charges during such period, not including any charges that are attributable to charity care (as such term is used for purposes of hospital cost reporting under this title), divided by the total amount of the hospital's charges during such period.

Insofar as the Secretary determines that data are not available on charity care necessary to calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

''(E) TRANSITION FACTOR SPECIFIED.—

''(i) IN GENERAL.—Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

''(I) For the first payment year for such hospital, 1.

''(II) For the second payment year for such hospital, ¾.

''(III) For the third payment year for such hospital, ½.

''(IV) For the fourth payment year for such hospital, ¼.

''(V) For any succeeding payment year for such hospital, 0.

''(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

''(F) FORM OF PAYMENT.—The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

''(G) PAYMENT YEAR DEFINED.—

''(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a fiscal year beginning with fiscal year 2011.

''(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', and 'fourth payment year' mean, with respect to an eligible hospital, each successive year immediately following the first payment year for that hospital.

''(3) MEANINGFUL EHR USER.—

''(A) IN GENERAL.—For purposes of paragraph (1), an eligible hospital shall be treated as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (b)(3)(B)(ix), for a reporting period under such subsection for a fiscal year) if each of the following requirements are met:

''(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the hospital is using certified EHR technology in a meaningful manner.

''(ii) INFORMATION EXCHANGE.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

''(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

''(B) REPORTING ON MEASURES.—

''(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

''(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

''(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

''(ii) LIMITATIONS.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

''(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

''(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

''(i) IN GENERAL.—A hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

''(I) an attestation;

''(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

''(III) a survey response;

''(IV) reporting under subparagraph (A)(iii); and

''(V) other means specified by the Secretary.

''(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

''(4) APPLICATION.—

''(A) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (b)(3)(B)(ix), including the determination of a meaningful EHR user under paragraph (3), determination of measures applicable to services furnished

by eligible hospitals under this subsection, and the exception under subsection (b)(3)(B)(ix)(II).

''(B) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names of the eligible hospitals that are meaningful EHR users under this subsection or subsection (b)(3)(B)(ix) and other relevant data as determined appropriate by the Secretary. The Secretary shall ensure that a hospital has the opportunity to review the other relevant data that are to be made public with respect to the hospital prior to such data being made public.

''(5) CERTIFIED EHR TECHNOLOGY DEFINED.—The term 'certified EHR technology' has the meaning given such term in section 1848(o)(4).

''(6) DEFINITIONS.—For purposes of this subsection:

''(A) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means—

''(i) a subsection (d) hospital; and

''(ii) a critical access hospital (as defined in section 1861(mm)(1)).

''(B) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.''.

(b) INCENTIVE MARKET BASKET ADJUSTMENT.—

(1) IN GENERAL.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (viii)(I), by inserting ''(or, beginning with fiscal year 2016, by one-quarter)'' after ''2.0 percentage points''; and

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

''(ix)(I) For purposes of clause (i) for fiscal year 2015 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for the reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33⅓ percent for fiscal year 2015, 66⅔ percent for fiscal year 2016, and 100 percent for fiscal year 2017 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year.

''(II) The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause (I) with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subclause for more than 5 years.

''(III) For fiscal year 2015 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1814(b)(3) shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user (as defined in subsection (n)(3)) in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The State shall report to the Secretary the methodology it will use to make the payment adjustment under the previous sentence.

''(IV) For purposes of this clause, the term 'reporting period' means, with respect to a fiscal year, any period (or periods), with respect to the fiscal year, as specified by the Secretary.''.

(2) CRITICAL ACCESS HOSPITALS.—Section 1814(l) of the Social Security Act (42 U.S.C. 1395f(l)) is amended—

(A) in subparagraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (3)''; and

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

''(3)(A) Subject to subparagraph (B), for fiscal year 2015 and each subsequent fiscal year, in the case of a critical access hospital that is not a meaningful EHR user (as defined in section 1886(n)(3)) for the reporting period for such fiscal year, paragraph (1) shall be applied by substituting the applicable percent under subparagraph (C) for the percent described in such paragraph (1).

''(B) The Secretary may, on a case-by-case basis, exempt a critical access hospital from the application of subparagraph (A) with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subparagraph for more than 5 years.

''(C) The percent described in this subparagraph is—

''(i) for fiscal year 2015, 100.66 percent;

''(ii) for fiscal year 2016, 100.33 percent; and

''(iii) for fiscal year 2017 and each subsequent fiscal year, 100 percent.''.

(c) APPLICATION TO CERTAIN MA-AFFILIATED ELIGIBLE HOSPITALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w-23), as amended by section 4201(c), is further amended by adding at the end the following new subsection:

''(m) APPLICATION OF ELIGIBLE HOSPITAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(1) APPLICATION.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1814(l)(3), 1886(n), and 1886(b)(3)(B)(ix) shall apply with respect to eligible hospitals described in paragraph (2) of the organization which the organization attests under subsection (l)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

''(2) ELIGIBLE HOSPITAL DESCRIBED.—With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital (as defined in section 1886(n)(6)(A)) that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

''(3) ELIGIBLE HOSPITAL INCENTIVE PAYMENTS.—

''(A) IN GENERAL.—In applying section 1886(n)(2) under paragraph (1), instead of the additional payment amount under section 1886(n)(2), there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under part A instead of this part. In implementing the previous sentence, the Secretary—

''(i) shall, insofar as data to determine the discharge related amount under section 1886(n)(2)(C) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such discharge related amount as the Secretary determines appropriate; and

''(ii) shall, insofar as data to determine the medicare share described in section 1886(n)(2)(D) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such share, which data and methodology may include use of the inpatient bed days (or discharges) with respect to an eligible hospital during the appropriate period which are attributable to both individuals for whom payment may be made under part A or individuals enrolled in an MA plan under a Medicare Advantage organization under this part as a proportion of the total number of patient-bed-days (or discharges) with respect to such hospital during such period.

''(B) AVOIDING DUPLICATION OF PAYMENTS.—

''(i) IN GENERAL.—In the case of a hospital that for a payment year is an eligible hospital described in paragraph (2) and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1886(n) and not under this subsection.

''(ii) METHODS.—In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

''(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1886(n); and

''(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

''(4) PAYMENT ADJUSTMENT.—

''(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(l)(5)), if, according to the attestation of the organization submitted under subsection (l)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in subparagraph (B) for such period of the payment amount otherwise provided under this section for such period.

''(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

''(i) the number of the percentage point reduction effected under section 1886(b)(3)(B)(ix)(I) for the period; and

''(ii) the Medicare hospital expenditure proportion specified in subparagraph (C) for the year.

''(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

''(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account

the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.

''(5) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, —

''(A) a list of the names, business addresses, and business phone numbers of each qualifying MA organization receiving an incentive payment under this subsection for eligible hospitals described in paragraph (2); and

''(B) a list of the names of the eligible hospitals for which such incentive payment is based.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting '', subject to section 1886(d)(3)(B)(ix)(III),'' after ''then''; and

(B) by adding at the end the following: ''For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (b)(3)(B)(ix) or (n) of section 1886.''.

(2) Section 1851(i)(1) of the Social Security Act (42 U.S.C. 1395w–21(i)(1)) is amended by striking ''and 1886(h)(3)(D)'' and inserting ''1886(h)(3)(D), and 1853(m)''.

(3) Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4311(d)(1), is amended—

(A) in subsection (c)—

(i) in paragraph (1)(D)(i), by striking ''1848(o)'' and inserting '', 1848(o), and 1886(n)''; and

(ii) in paragraph (6)(A), by inserting ''and subsections (b)(3)(B)(ix) and (n) of section 1886'' after ''section 1848''; and

(B) in subsection (f), by inserting ''and subsection (m)'' after ''under subsection (l)''.

SEC. 4203. PREMIUM HOLD HARMLESS AND IMPLEMENTATION FUNDING.

(a) PREMIUM HOLD HARMLESS.—

(1) IN GENERAL.—Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: ''In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).''.

(2) PAYMENT.—Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended—

(A) in paragraph (2), by striking the period at the end and inserting ''; plus''; and

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

''(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).''.

(b) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $100,000,000 for each of fiscal years 2009 through 2015 and $45,000,000 for each succeeding fiscal year through fiscal year 2018, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

SEC. 4204. NON-APPLICATION OF PHASED-OUT INDIRECT MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR FISCAL YEAR 2009.

(a) IN GENERAL.—Section 412.322 of title 42, Code of Federal Regulations, shall be applied without regard to paragraph (c) of such section, and the Secretary of Health and Human Services shall recompute payments for discharges occurring on or after October 1, 2008, as if such paragraph had never been in effect.

(b) NO EFFECT ON SUBSEQUENT YEARS.—Nothing in subsection (a) shall be construed as having any effect on the application of paragraph (d) of section 412.322 of title 42, Code of Federal Regulations.

SEC. 4205. STUDY ON APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 1848(o)(4) of the Social Security Act, as added by section 4311(a)) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XVIII or XIX of such Act, or otherwise, for such purposes.

(2) DETAILS OF STUDY.—Such study shall include an examination of—

(A) the adoption rates of certified EHR technology (as so defined) by such health care providers;

(B) the clinical utility of such technology by such health care providers;

(C) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;

(D) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, title XVIII or XIX of the Social Security Act, or otherwise;

(E) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

(F) any other issues the Secretary deems to be appropriate.

(b) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).

SEC. 4206. STUDY ON AVAILABILITY OF OPEN SOURCE HEALTH INFORMATION TECHNOLOGY SYSTEMS.

(a) IN GENERAL.—

(1) STUDY.—The Secretary of Health and Human Services shall, in consultation with the Under Secretary for Health of the Veterans Health Administration, the Director of the Indian Health Service, the Secretary of Defense, the Director of the Agency for Healthcare Research and Quality, the Administrator of the Health Resources and Services Administration, and the Chairman of the Federal Communications Commission, conduct a study on—

(A) the current availability of open source health information technology systems to Federal safety net providers (including small, rural providers);

(B) the total cost of ownership of such systems in comparison to the cost of proprietary commercial products available;

(C) the ability of such systems to respond to the needs of, and be applied to, various populations (including children and disabled individuals); and

(D) the capacity of such systems to facilitate interoperability.

(2) CONSIDERATIONS.—In conducting the study under paragraph (1), the Secretary of Health and Human Services shall take into account the circumstances of smaller health care providers, health care providers located in rural or other medically underserved areas, and safety net providers that deliver a significant level of health care to uninsured individuals, Medicaid beneficiaries, SCHIP beneficiaries, and other vulnerable individuals.

(b) REPORT.—Not later than October 1, 2010, the Secretary of Health and Human Services shall submit to Congress a report on the findings and the conclusions of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

Subtitle B—Medicaid Funding

SEC. 4211. MEDICAID PROVIDER EHR ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking ''and'' at the end of subparagraph (D);

(B) by striking ''plus'' at the end of subparagraph (E) and inserting ''and''; and

(C) by adding at the end the following new subparagraph:

''(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

''(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus''; and

(2) by inserting after subsection (s) the following new subsection:

''(t)(1)(A) For purposes of subsection (a)(3)(F), the payments for certified EHR technology (and support services including maintenance that is for, or is necessary for the operation of, such technology) by Medicaid providers described in this paragraph are payments made by the State in accordance with this subsection of the applicable percent of the net allowable costs of Medicaid providers (as defined in paragraph (2)) for such technology (and support services).

''(B) For purposes of subparagraph (A), the term 'applicable percent' means—

''(i) in the case of a Medicaid provider described in paragraph (2)(A), 85 percent;

''(ii) in the case of a Medicaid provider described in clause (i) or (ii) of paragraph (2)(B), 100 percent; and

''(iii) in the case of a Medicaid provider described in clause (iii) of paragraph (2)(B), a percent specified by the Secretary, but not less than 85 percent.

''(2) In this subsection and subsection (a)(3)(F), the term 'Medicaid provider' means—

''(A) an eligible professional (as defined in paragraph (3)(B)) who is not hospital-based and has at least 30 percent of the professional's patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals who are receiving medical assistance under this title; and

''(B)(i) a children's hospital, (ii) an acute-care hospital that is not described in clause (i) and that has at least 10 percent of the hospital's patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals who are receiving medical assistance under this title, or (iii) a Federally-qualified health center or rural health clinic that has at least 30 percent of the center's or clinic's patient volume (as estimated in accordance with

standards established by the Secretary) attributable to individuals who are receiving medical assistance under this title.

An eligible professional shall not qualify as a Medicaid provider under this subsection unless the professional has waived, in a manner specified by the Secretary, any right to payment under section 1848(o) with respect to the adoption or support of certified EHR technology by the eligible professional. In applying clauses (ii) and (iii) of subparagraph (B), the standards established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

''(3) In this subsection and subsection (a)(3)(F):

''(A) The term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

''(B) The term 'eligible professional' means a physician as defined in paragraphs (1) and (2) of section 1861(r), and includes a nurse mid-wife and a nurse practitioner.

''(C) The term 'hospital-based' means, with respect to an eligible professional, a professional (such as a pathologist, anesthesiologist, or emergency physician) who furnishes substantially all of the individual's professional services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital.

''(4)(A) The term 'allowable costs' means, with respect to certified EHR technology of a Medicaid provider, costs of such technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) as determined by the Secretary to be reasonable.

''(B) The term 'net allowable costs' means allowable costs reduced by any payment that is made to the Medicaid provider involved from any other source that is directly attributable to payment for certified EHR technology or services described in subparagraph (A).

''(C) In no case shall—

''(i) the aggregate allowable costs under this subsection (covering one or more years) with respect to a Medicaid provider described in paragraph (2)(A) for purchase and initial implementation of certified EHR technology (and services described in subparagraph (A)) exceed $25,000 or include costs over a period of longer than 5 years;

''(ii) for costs not described in clause (i) relating to the operation, maintenance, or use of certified EHR technology, the annual allowable costs under this subsection with respect to such a Medicaid provider for costs not described in clause (i) for any year exceed $10,000;

''(iii) payment described in paragraph (1) for costs described in clause (ii) be made with respect to such a Medicaid provider over a period of more than 5 years;

''(iv) the aggregate allowable costs under this subsection with respect to such a Medicaid provider for all costs exceed $75,000; or

''(v) the allowable costs, whether for purchase and initial implementation, maintenance, or otherwise, for a Medicaid provider described in paragraph (2)(B)(iii) exceed such aggregate or annual limitation as the Secretary shall establish, based on an amount determined by the Secretary as being adequate to adopt and maintain certified EHR technology, consistent with paragraph (6).

''(5) Payments described in paragraph (1) are not in accordance with this subsection unless the following requirements are met:

''(A) The State provides assurances satisfactory to the Secretary that amounts received under subsection (a)(3)(F) with respect to costs of a Medicaid provider are paid directly to such provider without any deduction or rebate.

''(B) Such Medicaid provider is responsible for payment of the costs described in such paragraph that are not provided under this title.

''(C) With respect to payments to such Medicaid provider for costs other than costs related to the initial adoption of certified EHR technology, the Medicaid provider demonstrates meaningful use of certified EHR technology through a means that is approved by the State and acceptable to the Secretary, and that may be based upon the methodologies applied under section 1848(o) or 1886(n). In establishing such means, which may include the reporting of clinical quality measures to the State, the State shall ensure that populations with unique needs, such as children, are appropriately addressed.

''(D) To the extent specified by the Secretary, the certified EHR technology is compatible with State or Federal administrative management systems.

''(6)(A) In no case shall the payments described in paragraph (1), with respect to a hospital, exceed in the aggregate the product of—

''(i) the overall hospital EHR amount for the hospital computed under subparagraph (B); and

''(ii) the Medicaid share for such hospital computed under subparagraph (C).

''(B) For purposes of this paragraph, the overall hospital EHR amount, with respect to a hospital, is the sum of the applicable amounts specified in section 1886(n)(2)(A) for such hospital for the first 4 payment years (as estimated by the Secretary) determined as if the Medicare share specified in clause (ii) of such section were 1. The Secretary shall publish in the Federal Register the overall hospital EHR amount for each hospital eligible for payments under this subsection. In computing amounts under clause (ii) for payment years after the first payment year, the Secretary shall assume that in subsequent payment years discharges increase at the average annual rate of growth of the most recent three years for which discharge data are available.

''(C) The Medicaid share computed under this subparagraph, for a hospital for a period specified by the Secretary, shall be calculated in the same manner as the Medicare share under section 1886(n)(2)(D) for such a hospital and period, except that there shall be substituted for the numerator under clause (i) of such section the amount that is equal to the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals who are receiving medical assistance under this title and who are not described in section 1886(n)(2)(D)(i). In computing inpatient-bed-days under the previous sentence, the Secretary shall take into account inpatient-bed-days attributable to inpatient-bed-days that are paid for individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

''(7) With respect to health care providers other than hospitals, the Secretary shall establish and implement a detailed process to ensure coordination of the different programs for payment of such health care providers for adoption or use of health information technology (including certified EHR technology), as well as payments for such health care providers provided under this title or title XVIII, to assure no duplication of funding. The Secretary shall promulgate regulations to carry out the preceding sentence.

''(8) In carrying out paragraph (5)(C), the State and Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XVIII. In doing so, the Secretary may deem satisfaction of requirements for such meaningful use for a payment year under title XVIII to be sufficient to qualify as meaningful use under this subsection. The Secretary may also specify the reporting periods under this subsection in order to carry out this paragraph.

''(9) In order to be provided Federal financial participation under subsection (a)(3)(F)(ii), a State must demonstrate to the satisfaction of the Secretary, that the State—

''(A) is using the funds provided for the purposes of administering payments under this subsection, including tracking of meaningful use by Medicaid providers;

''(B) is conducting adequate oversight of the program under this subsection, including routine tracking of meaningful use attestations and reporting mechanisms; and

''(C) is pursuing initiatives to encourage the adoption of certified EHR technology to promote health care quality and the exchange of health care information under this title, subject to applicable laws and regulations governing such exchange.

''(10) The Secretary shall periodically submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on status, progress, and oversight of payments under paragraph (1).''.

(b) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $40,000,000 for each of fiscal years 2009 through 2015 and $20,000,000 for each succeeding fiscal year through fiscal year 2018, which shall be available for purposes of carrying out the provisions of (and the amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

(c) HHS REPORT ON IMPLEMENTATION OF DETAILED PROCESS TO ASSURE NO DUPLICATION OF FUNDING.—Not later than July 1, 2012, the Secretary of Health and Human Services shall submit to Congress a report on the establishment and implementation of the detailed process under section 1903(t)(7) of the Social Security Act, as added by subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

TITLE V—STATE FISCAL RELIEF

SEC. 5000. PURPOSES; TABLE OF CONTENTS.

(a) PURPOSES.—The purposes of this title are as follows:

(1) To provide fiscal relief to States in a period of economic downturn.

(2) To protect and maintain State Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services, and to prevent constrictions of income eligibility requirements for such programs, but not to promote increases in such requirements.

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

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.

Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Extension and update of special rule for increase of Medicaid DSH allotments for low DSH States.
Sec. 5003. Payment of Medicare liability to States as a result of the Special Disability Workload Project.
Sec. 5004. Funding for the Department of Health and Human Services Office of the Inspector General.
Sec. 5005. GAO study and report regarding State needs during periods of national economic downturn.

SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.

(a) PERMITTING MAINTENANCE OF FMAP.—Subject to subsections (e), (f), and (g), if the FMAP determined without regard to this section for a State for—

(1) fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State's FMAP for fiscal year 2009, before the application of this section;

(2) fiscal year 2010 is less than the FMAP as so determined for fiscal year 2008 or fiscal year 2009 (after the application of paragraph (1)), the greater of such FMAP for the State for fiscal year 2008 or fiscal year 2009 shall be substituted for the State's FMAP for fiscal year 2010, before the application of this section; and

(3) fiscal year 2011 is less than the FMAP as so determined for fiscal year 2008, fiscal year 2009 (after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), the greatest of such FMAP for the State for fiscal year 2008, fiscal year 2009, or fiscal year 2010 shall be substituted for the State's FMAP for fiscal year 2011, before the application of this section, but only for the first calendar quarter in fiscal year 2011.

(b) GENERAL 7.6 PERCENTAGE POINT INCREASE.—Subject to subsections (e), (f), and (g), for each State for calendar quarters during the recession adjustment period (as defined in subsection (h)(2)) , the FMAP (after the application of subsection (a)) shall be increased (without regard to any limitation otherwise specified in section 1905(b) of the Social Security Act) by 7.6 percentage points.

(c) ADDITIONAL RELIEF BASED ON INCREASE IN UNEMPLOYMENT.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g), if a State is a qualifying State under paragraph (2) for a calendar quarter occurring during the recession adjustment period, the FMAP for the State shall be further increased by the number of percentage points equal to the product of the State percentage applicable for the State under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) after the application of subsections (a) and (b) and the applicable percent determined in paragraph (3) for the calendar quarter (or, if greater, for a previous such calendar quarter, subject to paragraph (4)) .

(2) QUALIFYING CRITERIA.—

(A) IN GENERAL.—For purposes of paragraph (1), a State qualifies for additional relief under this subsection for a calendar quarter occurring during the recession adjustment period if the State is 1 of the 50 States or the District of Columbia and the State satisfies any of the following criteria for the quarter:

(i) An increase of at least 1.5 percentage points, but less than 2.5 percentage points, in the average monthly unemployment rate, seasonally adjusted, for the State or District, as determined by comparing months in the most recent previous 3-consecutive month period for which data are available for the State or District to the lowest average monthly unemployment rate, seasonally adjusted, for the State or District for any 3-consecutive-month period preceding that period and beginning on or after January 1, 2006 (based on the most recently available monthly publications of the Bureau of Labor Statistics of the Department of Labor).

(ii) An increase of at least 2.5 percentage points, but less than 3.5 percentage points, in the average monthly unemployment rate, seasonally adjusted, for the State or District (as so determined).

(iii) An increase of at least 3.5 percentage points for the State or District, in the average monthly unemployment rate, seasonally adjusted, for the State or District (as so determined).

(B) MAINTENANCE OF STATUS.—If a State qualifies for additional relief under this subsection for a calendar quarter, it shall be deemed to have qualified for such relief for each subsequent calendar quarter ending before July 1, 2010.

(3) APPLICABLE PERCENT.—For purposes of paragraph (1), the applicable percent is—

(A) 2.5 percent, if the State satisfies the criteria described in paragraph (2)(A)(i) for the calendar quarter;

(B) 4.5 percent if the State satisfies the criteria described in paragraph (2)(A)(ii) for the calendar quarter; and

(C) 6.5 percent if the State satisfies the criteria described in paragraph (2)(A)(iii) for the calendar quarter.

(4) MAINTENANCE OF HIGHER PERCENTAGE REDUCTION FOR PERIOD AFTER LOWER PERCENTAGE DEDUCTION WOULD OTHERWISE TAKE EFFECT.—

(A) HOLD HARMLESS PERIOD.—If the percentage reduction applied to a State under paragraph (3) for any calendar quarter in the recession adjustment period beginning on or after January 1, 2009, and ending before July 1, 2010, (determined without regard to this paragraph) is less than the percentage reduction applied for the preceding quarter (as so determined), the higher percentage reduction shall continue in effect for each subsequent calendar quarter ending before July 1, 2010.

(B) NOTICE OF DECREASE IN PERCENTAGE REDUCTION.—The Secretary shall notify a State at least 3 months prior to applying any lower percentage reduction to the State under paragraph (3).

(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Subject to subsections (f) and (g), with respect to entire fiscal years occurring during the recession adjustment period and with respect to fiscal years only a portion of which occurs during such period (and in proportion to the portion of the fiscal year that occurs during such period), the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 6 U.S.C. 1308) shall each be increased by 15.2 percent.

(e) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this section shall apply for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(1) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4);

(2) payments under title IV of such Act (42 U.S.C. 601 et seq.) (except that the increases under subsections (a) and (b) shall apply to payments under part E of title IV of such Act (42 U.S.C. 670 et seq.));

(3) payments under title XXI of such Act (42 U.S.C. 1397aa et seq.);

(4) any payments under title XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)); or

(5) any payments under title XIX of such Act that are attributable to expenditures for medical assistance provided to individuals made eligible under a State plan under title XIX of the Social Security Act (including under any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) because of income standards (expressed as a percentage of the poverty line) for eligibility for medical assistance that are higher than the income standards (as so expressed) for such eligibility as in effect on July 1, 2008.

(f) STATE INELIGIBILITY.—

(1) MAINTENANCE OF ELIGIBILITY REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—Subject to subparagraph (C), a State that has restricted eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after July 1, 2008, is no longer ineligible under subparagraph (A) beginning with the first calendar quarter in which the State has reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(C) SPECIAL RULES.—A State shall not be ineligible under subparagraph (A)—

(i) for the calendar quarters before July 1, 2009, on the basis of a restriction that was applied after July 1, 2008, and before the date of the enactment of this Act, if the State prior to July 1, 2009, has reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008; or

(ii) on the basis of a restriction that was directed to be made under State law as of July 1, 2008, and would have been in effect as of such date, but for a delay in the request for, and approval of, a waiver under section 1115 of such Act with respect to such restriction.

(2) COMPLIANCE WITH PROMPT PAY REQUIREMENTS.—No State shall be eligible for an increased FMAP rate as provided under this section for any claim submitted by a provider subject to the terms of section 1902(a)(37)(A) of the Social Security Act (42 U.S.C. 1396a(a)(37)(A)) during any period in which that State has failed to pay claims in accordance with section 1902(a)(37)(A) of such Act. Each State shall report to the Secretary, no later than 30 days following the 1st day of the month, its compliance with the requirements of section 1902(a)(37)(A) of the Social Security Act as they pertain to claims made for covered services during the preceding month.

(3) NO WAIVER AUTHORITY.—The Secretary may not waive the application of this subsection or subsection (g) under section 1115 of the Social Security Act or otherwise.

(g) REQUIREMENTS.—

(1) IN GENERAL.—A State may not deposit or credit the additional Federal funds paid to

the State as a result of this section to any reserve or rainy day fund maintained by the State.

(2) STATE REPORTS.—Each State that is paid additional Federal funds as a result of this section shall, not later than September 30, 2011, submit a report to the Secretary, in such form and such manner as the Secretary shall determine, regarding how the additional Federal funds were expended.

(3) ADDITIONAL REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay for quarters during the recession adjustment period a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923, than the respective percentage that would have been required by the State under such plan on September 30, 2008, prior to application of this section.

(h) DEFINITIONS.—In this section, except as otherwise provided:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), as determined without regard to this section except as otherwise specified.

(2) POVERTY LINE.—The term ''poverty line'' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

(3) RECESSION ADJUSTMENT PERIOD.—The term ''recession adjustment period'' means the period beginning on October 1, 2008, and ending on December 31, 2010.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(5) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(i) SUNSET.—This section shall not apply to items and services furnished after the end of the recession adjustment period.

SEC. 5002. EXTENSION AND UPDATE OF SPECIAL RULE FOR INCREASE OF MEDICAID DSH ALLOTMENTS FOR LOW DSH STATES.

Section 1923(f)(5) of the Social Security Act (42 U.S.C. 1396r–4(f)(5)) is amended—

(1) in subparagraph (B)—

(A) in the subparagraph heading, by striking ''YEAR 2004 AND SUBSEQUENT FISCAL YEARS'' and inserting ''YEARS 2004 THROUGH 2008'';

(B) in clause (i), by inserting ''and'' after the semicolon;

(C) in clause (ii), by striking ''; and'' and inserting a period; and

(D) by striking clause (iii); and

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

''(C) FOR FISCAL YEAR 2009 AND SUBSEQUENT FISCAL YEARS.—In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2006, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2009, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

''(i) fiscal year 2009, shall be the DSH allotment for the State for fiscal year 2008 increased by 16 percent;

''(ii) fiscal year 2010, shall be the DSH allotment for the State for fiscal year 2009 increased by 16 percent;

''(iii) fiscal year 2011 for the period ending on December 31, 2010, shall be ¼ of the DSH allotment for the State for fiscal year 2010 increased by 16 percent;

''(iv) fiscal year 2011 for the period beginning on January 1, 2011, and ending on September 30, 2011, shall be ¾ of the DSH allotment that would have been determined under this subsection for the State for fiscal year 2011 if this subparagraph had not been enacted;

''(v) fiscal year 2012, shall be the DSH allotment that would have been determined under this subsection for the State for fiscal year 2012 if this subparagraph had not been enacted; and

''(vi) fiscal year 2013 and any subsequent fiscal year, shall be the DSH allotment for the State for the previous fiscal year subject to an increase for inflation as provided in paragraph (3)(A).''.

SEC. 5003. PAYMENT OF MEDICARE LIABILITY TO STATES AS A RESULT OF THE SPECIAL DISABILITY WORKLOAD PROJECT.

(a) IN GENERAL.—The Secretary, in consultation with the Commissioner, shall work with each State to reach an agreement, not later than 3 months after the date of enactment of this Act, on the amount of a payment for the State related to the Medicare program liability as a result of the Special Disability Workload project, subject to the requirements of subsection (c).

(b) PAYMENTS.—

(1) DEADLINE FOR MAKING PAYMENTS.—Not later than 30 days after reaching an agreement with a State under subsection (a), the Secretary shall pay the State, from the amounts appropriated under paragraph (2), the payment agreed to for the State.

(2) APPROPRIATION.—Out of any money in the Treasury not otherwise appropriated, there is appropriated $3,000,000,000 for fiscal year 2009 for making payments to States under paragraph (1).

(3) LIMITATIONS.—In no case may—

(A) the aggregate amount of payments made by the Secretary to States under paragraph (1) exceed $3,000,000,000; or

(B) any payments be provided by the Secretary under this section after the first day of the first month that begins 4 months after the date of enactment of this Act.

(c) REQUIREMENTS.—The requirements of this subsection are the following:

(1) FEDERAL DATA USED TO DETERMINE AMOUNT OF PAYMENTS.—The amount of the payment under subsection (a) for each State is determined on the basis of the most recent Federal data available, including the use of proxies and reasonable estimates as necessary, for determining expeditiously the amount of the payment that shall be made to each State that enters into an agreement under this section. The payment methodology shall consider the following factors:

(A) The number of SDW cases found to have been eligible for benefits under the Medicare program and the month of the initial Medicare program eligibility for such cases.

(B) The applicable non-Federal share of expenditures made by a State under the Medicaid program during the time period for SDW cases.

(C) Such other factors as the Secretary and the Commissioner, in consultation with the States, determine appropriate.

(2) CONDITIONS FOR PAYMENTS.—A State shall not receive a payment under this section unless the State—

(A) waives the right to file a civil action (or to be a party to any action) in any Federal or State court in which the relief sought includes a payment from the United States to the State related to the Medicare liability under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as a result of the Special Disability Workload project; and

(B) releases the United States from any further claims for reimbursement of State expenditures as a result of the Special Disability Workload project.

(3) NO INDIVIDUAL STATE CLAIMS DATA REQUIRED.—No State shall be required to submit individual claims evidencing payment under the Medicaid program as a condition for receiving a payment under this section.

(4) INELIGIBLE STATES.—No State that is a party to a civil action in any Federal or State court in which the relief sought includes a payment from the United States to the State related to the Medicare liability under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as a result of the Special Disability Workload project shall be eligible to receive a payment under this section while such an action is pending or if such an action is resolved in favor of the State.

(d) DEFINITIONS.—In this section:

(1) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of Social Security.

(2) MEDICAID PROGRAM.—The term ''Medicaid program'' means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396a et seq.) and includes medical assistance provided under any waiver of that program approved under section 1115 or 1915 of such Act (42 U.S.C. 1315, 1396n) or otherwise.

(3) MEDICARE PROGRAM.—The term ''Medicare program'' means the program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(5) SDW CASE.—The term ''SDW case'' means a case in the Special Disability Workload project involving an individual determined by the Commissioner to have been eligible for benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) for a period during which such benefits were not provided to the individual and who was, during all or part of such period, enrolled in a State Medicaid program.

(6) SPECIAL DISABILITY WORKLOAD PROJECT.—The term ''Special Disability Workload project'' means the project described in the 2008 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, H.R. Doc. No. 110-104, 110th Cong. (2008).

(7) STATE.—The term ''State'' means each of the 50 States and the District of Columbia.

SEC. 5004. FUNDING FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE INSPECTOR GENERAL.

For purposes of ensuring the proper expenditure of Federal funds under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), there is appropriated to the Office of the Inspector General of the Department of Health and Human Services, out of any money in the Treasury not otherwise appropriated and without further appropriation, $31,250,000 for the recession adjustment period (as defined in section 5001(h)(3)). Amounts appropriated under this section shall remain available for expenditure until expended and shall be in addition to any other amounts appropriated or made available to such Office for such purposes.

SEC. 5005. GAO STUDY AND REPORT REGARDING STATE NEEDS DURING PERIODS OF NATIONAL ECONOMIC DOWNTURN.

(a) IN GENERAL.—The Comptroller General of the United States shall study the period of national economic downturn in effect on the date of enactment of this Act, as well as previous periods of national economic downturn since 1974, for the purpose of developing recommendations for addressing the needs of States during such periods. As part of such analysis, the Comptroller General shall study the past and projected effects of temporary increases in the Federal medical assistance percentage under the Medicaid program with respect to such periods.

(b) REPORT.—Not later than April 1, 2011, the Comptroller General of the United States shall submit a report to the appropriate committees of Congress on the results of the study conducted under paragraph (1). Such report shall include the following:

(1) Such recommendations as the Comptroller General determines appropriate for modifying the national economic downturn assistance formula for temporary adjustment of the Federal medical assistance percentage under Medicaid (also referred to as a ''countercyclical FMAP'') described in GAO report number GAO–07–97 to improve the effectiveness of the application of such percentage in addressing the needs of States during periods of national economic downturn, including recommendations for—

(A) improvements to the factors that would begin and end the application of such percentage;

(B) how the determination of the amount of such percentage could be adjusted to address State and regional economic variations during such periods; and

(C) how the determination of the amount of such percentage could be adjusted to be more responsive to actual Medicaid costs incurred by States during such periods.

(2) An analysis of the impact on States during such periods of—

(A) declines in private health benefits coverage;

(B) declines in State revenues; and

(C) caseload maintenance and growth under Medicaid, the State Children's Health Insurance Program, or any other publicly-funded programs to provide health benefits coverage for State residents.

(3) Identification of, and recommendations for addressing, the effects on States of any other specific economic indicators that the Comptroller General determines appropriate.

CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009

On Thursday, January 29, 2009, the Senate passed H.R. 2, as amended, as follows:

H.R. 2

Resolved, That the bill from the House of Representatives (H.R. 2) entitled ''An Act to amend title XXI of the Social Security Act to extend and improve the Children's Health Insurance Program, and for other purposes.'', do pass with the following amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Children's Health Insurance Program Reauthorization Act of 2009''.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) REFERENCES TO CHIP; MEDICAID; SECRETARY.—In this Act:

(1) CHIP.—The term ''CHIP'' means the State Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(2) MEDICAID.—The term ''Medicaid'' means the program for medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

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

Sec. 1. Short title; amendments to Social Security Act; references; table of contents.
Sec. 2. Purpose.
Sec. 3. General effective date; exception for State legislation; contingent effective date; reliance on law.

TITLE I—FINANCING

Subtitle A—Funding

Sec. 101. Extension of CHIP.
Sec. 102. Allotments for States and territories for fiscal years 2009 through 2013.
Sec. 103. Child Enrollment Contingency Fund.
Sec. 104. CHIP performance bonus payment to offset additional enrollment costs resulting from enrollment and retention efforts.
Sec. 105. Two-year initial availability of CHIP allotments.
Sec. 106. Redistribution of unused allotments.
Sec. 107. Option for qualifying States to receive the enhanced portion of the CHIP matching rate for Medicaid coverage of certain children.
Sec. 108. One-time appropriation.
Sec. 109. Improving funding for the territories under CHIP and Medicaid.

Subtitle B—Focus on Low-Income Children and Pregnant Women

Sec. 111. State option to cover low-income pregnant women under CHIP through a State plan amendment.
Sec. 112. Phase-out of coverage for nonpregnant childless adults under CHIP; conditions for coverage of parents.
Sec. 113. Elimination of counting Medicaid child presumptive eligibility costs against title XXI allotment.
Sec. 114. Limitation on matching rate for States that propose to cover children with effective family income that exceeds 300 percent of the poverty line.
Sec. 115. State authority under Medicaid.

TITLE II—OUTREACH AND ENROLLMENT

Subtitle A—Outreach and Enrollment Activities

Sec. 201. Grants and enhanced administrative funding for outreach and enrollment.
Sec. 202. Increased outreach and enrollment of Indians.
Sec. 203. State option to rely on findings from an Express Lane agency to conduct simplified eligibility determinations.

Subtitle B—Reducing Barriers to Enrollment

Sec. 211. Verification of declaration of citizenship or nationality for purposes of eligibility for Medicaid and CHIP.
Sec. 212. Reducing administrative barriers to enrollment.
Sec. 213. Model of Interstate coordinated enrollment and coverage process.
Sec. 214. Permitting States to ensure coverage without a 5-year delay of certain children and pregnant women under the Medicaid program and CHIP.

TITLE III—REDUCING BARRIERS TO PROVIDING PREMIUM ASSISTANCE

Subtitle A—Additional State Option for Providing Premium Assistance

Sec. 301. Additional State option for providing premium assistance.
Sec. 302. Outreach, education, and enrollment assistance.

Subtitle B—Coordinating Premium Assistance With Private Coverage

Sec. 311. Special enrollment period under group health plans in case of termination of Medicaid or CHIP coverage or eligibility for assistance in purchase of employment-based coverage; coordination of coverage.

TITLE IV—STRENGTHENING QUALITY OF CARE AND HEALTH OUTCOMES

Sec. 401. Child health quality improvement activities for children enrolled in Medicaid or CHIP.
Sec. 402. Improved availability of public information regarding enrollment of children in CHIP and Medicaid.
Sec. 403. Application of certain managed care quality safeguards to CHIP.

TITLE V—IMPROVING ACCESS TO BENEFITS

Sec. 501. Dental benefits.
Sec. 502. Mental health parity in CHIP plans.
Sec. 503. Application of prospective payment system for services provided by Federally-qualified health centers and rural health clinics.
Sec. 504. Premium grace period.
Sec. 505. Clarification of coverage of services provided through school-based health centers.
Sec. 506. Medicaid and CHIP Payment and Access Commission.

TITLE VI—PROGRAM INTEGRITY AND OTHER MISCELLANEOUS PROVISIONS

Subtitle A—Program Integrity and Data Collection

Sec. 601. Payment error rate measurement (''PERM'').
Sec. 602. Improving data collection.
Sec. 603. Updated Federal evaluation of CHIP.
Sec. 604. Access to records for IG and GAO audits and evaluations.
Sec. 605. No Federal funding for illegal aliens; disallowance for unauthorized expenditures.

Subtitle B—Miscellaneous Health Provisions

Sec. 611. Deficit Reduction Act technical corrections.
Sec. 612. References to title XXI.
Sec. 613. Prohibiting initiation of new health opportunity account demonstration programs.
Sec. 614. Adjustment in computation of Medicaid FMAP to disregard an extraordinary employer pension contribution.
Sec. 615. Clarification treatment of regional medical center.
Sec. 616. Extension of Medicaid DSH allotments for Tennessee and Hawaii.
Sec. 617. GAO report on Medicaid managed care payment rates.

Subtitle C—Other Provisions

Sec. 621. Outreach regarding health insurance options available to children.
Sec. 622. Sense of the Senate regarding access to affordable and meaningful health insurance coverage.

TITLE VII—REVENUE PROVISIONS

Sec. 701. Increase in excise tax rate on tobacco products.
Sec. 702. Administrative improvements.
Sec. 703. Treasury study concerning magnitude of tobacco smuggling in the United States.

Sec. 704. Time for payment of corporate estimated taxes.

SEC. 2. PURPOSE.

It is the purpose of this Act to provide dependable and stable funding for children's health insurance under titles XXI and XIX of the Social Security Act in order to enroll all six million uninsured children who are eligible, but not enrolled, for coverage today through such titles.

SEC. 3. GENERAL EFFECTIVE DATE; EXCEPTION FOR STATE LEGISLATION; CONTINGENT EFFECTIVE DATE; RELIANCE ON LAW.

(a) GENERAL EFFECTIVE DATE.—Unless otherwise provided in this Act, subject to subsections (b) through (d), this Act (and the amendments made by this Act) shall take effect on April 1, 2009, and shall apply to child health assistance and medical assistance provided on or after that date.

(b) EXCEPTION FOR STATE LEGISLATION.—In the case of a State plan under title XIX or State child health plan under XXI of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for the respective plan to meet one or more additional requirements imposed by amendments made by this Act, the respective plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

(c) COORDINATION OF CHIP FUNDING FOR FISCAL YEAR 2009.—Notwithstanding any other provision of law, insofar as funds have been appropriated under section 2104(a)(11), 2104(k), or 2104(l) of the Social Security Act, as amended by section 201 of Public Law 110–173, to provide allotments to States under CHIP for fiscal year 2009—

(1) any amounts that are so appropriated that are not so allotted and obligated before April 1, 2009 are rescinded; and

(2) any amount provided for CHIP allotments to a State under this Act (and the amendments made by this Act) for such fiscal year shall be reduced by the amount of such appropriations so allotted and obligated before such date.

(d) RELIANCE ON LAW.—With respect to amendments made by this Act (other than title VII) that become effective as of a date—

(1) such amendments are effective as of such date whether or not regulations implementing such amendments have been issued; and

(2) Federal financial participation for medical assistance or child health assistance furnished under title XIX or XXI, respectively, of the Social Security Act on or after such date by a State in good faith reliance on such amendments before the date of promulgation of final regulations, if any, to carry out such amendments (or before the date of guidance, if any, regarding the implementation of such amendments) shall not be denied on the basis of the State's failure to comply with such regulations or guidance.

TITLE I—FINANCING

Subtitle A—Funding

SEC. 101. EXTENSION OF CHIP.

Section 2104(a) (42 U.S.C. 1397dd(a)) is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) by amending paragraph (11), by striking ''each of fiscal years 2008 and 2009'' and inserting ''fiscal year 2008''; and

(3) by adding at the end the following new paragraphs:

''(12) for fiscal year 2009, $10,562,000,000;

''(13) for fiscal year 2010, $12,520,000,000;

''(14) for fiscal year 2011, $13,459,000,000;

''(15) for fiscal year 2012, $14,982,000,000; and

''(16) for fiscal year 2013, for purposes of making 2 semi-annual allotments—

''(A) $2,850,000,000 for the period beginning on October 1, 2012, and ending on March 31, 2013, and

''(B) $2,850,000,000 for the period beginning on April 1, 2013, and ending on September 30, 2013.''.

SEC. 102. ALLOTMENTS FOR STATES AND TERRITORIES FOR FISCAL YEARS 2009 THROUGH 2013.

Section 2104 (42 U.S.C. 1397dd) is amended—

(1) in subsection (b)(1), by striking ''subsection (d)'' and inserting ''subsections (d) and (m)'';

(2) in subsection (c)(1), by striking ''subsection (d)'' and inserting ''subsections (d) and (m)(4)''; and

(3) by adding at the end the following new subsection:

''(m) ALLOTMENTS FOR FISCAL YEARS 2009 THROUGH 2013.—

''(1) FOR FISCAL YEAR 2009.—

''(A) FOR THE 50 STATES AND THE DISTRICT OF COLUMBIA.—Subject to the succeeding provisions of this paragraph and paragraph (4), the Secretary shall allot for fiscal year 2009 from the amount made available under subsection (a)(12), to each of the 50 States and the District of Columbia 110 percent of the highest of the following amounts for such State or District:

''(i) The total Federal payments to the State under this title for fiscal year 2008, multiplied by the allotment increase factor determined under paragraph (5) for fiscal year 2009.

''(ii) The amount allotted to the State for fiscal year 2008 under subsection (b), multiplied by the allotment increase factor determined under paragraph (5) for fiscal year 2009.

''(iii) The projected total Federal payments to the State under this title for fiscal year 2009, as determined on the basis of the February 2009 projections certified by the State to the Secretary by not later than March 31, 2009.

''(B) FOR THE COMMONWEALTHS AND TERRITORIES.—Subject to the succeeding provisions of this paragraph and paragraph (4), the Secretary shall allot for fiscal year 2009 from the amount made available under subsection (a)(12) to each of the commonwealths and territories described in subsection (c)(3) an amount equal to the highest amount of Federal payments to the commonwealth or territory under this title for any fiscal year occurring during the period of fiscal years 1999 through 2008, multiplied by the allotment increase factor determined under paragraph (5) for fiscal year 2009, except that subparagraph (B) thereof shall be applied by substituting 'the United States' for 'the State'.

''(C) ADJUSTMENT FOR QUALIFYING STATES.—In the case of a qualifying State described in paragraph (2) of section 2105(g), the Secretary shall permit the State to submit a revised projection described in subparagraph (A)(iii) in order to take into account changes in such projections attributable to the application of paragraph (4) of such section.

''(2) FOR FISCAL YEARS 2010 THROUGH 2012.—

''(A) IN GENERAL.—Subject to paragraphs (4) and (6), from the amount made available under paragraphs (13) through (15) of subsection (a) for each of fiscal years 2010 through 2012, respectively, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for each such fiscal year as follows:

''(i) GROWTH FACTOR UPDATE FOR FISCAL YEAR 2010.—For fiscal year 2010, the allotment of the State is equal to the sum of—

''(I) the amount of the State allotment under paragraph (1) for fiscal year 2009; and

''(II) the amount of any payments made to the State under subsection (k), (l), or (n) for fiscal year 2009,

multiplied by the allotment increase factor under paragraph (5) for fiscal year 2010.

''(ii) REBASING IN FISCAL YEAR 2011.—For fiscal year 2011, the allotment of the State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State in fiscal year 2010 (including payments made to the State under subsection (n) for fiscal year 2010 as well as amounts redistributed to the State in fiscal year 2010), multiplied by the allotment increase factor under paragraph (5) for fiscal year 2011.

''(iii) GROWTH FACTOR UPDATE FOR FISCAL YEAR 2012.—For fiscal year 2012, the allotment of the State is equal to the sum of—

''(I) the amount of the State allotment under clause (ii) for fiscal year 2011; and

''(II) the amount of any payments made to the State under subsection (n) for fiscal year 2011,

multiplied by the allotment increase factor under paragraph (5) for fiscal year 2012.

''(3) FOR FISCAL YEAR 2013.—

''(A) FIRST HALF.—Subject to paragraphs (4) and (6), from the amount made available under subparagraph (A) of paragraph (16) of subsection (a) for the semi-annual period described in such paragraph, increased by the amount of the appropriation for such period under section 108 of the Children's Health Insurance Program Reauthorization Act of 2009, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for such semi-annual period in an amount equal to the first half ratio (described in subparagraph (D)) of the amount described in subparagraph (C).

''(B) SECOND HALF.—Subject to paragraphs (4) and (6), from the amount made available under subparagraph (B) of paragraph (16) of subsection (a) for the semi-annual period described in such paragraph, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for such semi-annual period in an amount equal to the amount made available under such subparagraph, multiplied by the ratio of—

''(i) the amount of the allotment to such State under subparagraph (A); to

''(ii) the total of the amount of all of the allotments made available under such subparagraph.

''(C) FULL YEAR AMOUNT BASED ON REBASED AMOUNT.—The amount described in this subparagraph for a State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State in fiscal year 2012 (including payments made to the State under subsection (n) for fiscal year 2012 as well as amounts redistributed to the State in fiscal year 2012), multiplied by the allotment increase factor under paragraph (5) for fiscal year 2013.

''(D) FIRST HALF RATIO.—The first half ratio described in this subparagraph is the ratio of—

''(i) the sum of—

''(I) the amount made available under subsection (a)(16)(A); and

''(II) the amount of the appropriation for such period under section 108 of the Children's Health Insurance Program Reauthorization Act of 2009; to

''(ii) the sum of the—

''(I) amount described in clause (i); and

''(II) the amount made available under subsection (a)(16)(B).

''(4) PRORATION RULE.—If, after the application of this subsection without regard to this paragraph, the sum of the allotments determined under paragraph (1), (2), or (3) for a fiscal year (or, in the case of fiscal year 2013, for a semi-annual period in such fiscal year) exceeds the amount available under subsection (a) for such fiscal year or period, the Secretary shall reduce each allotment for any State under such paragraph for such fiscal year or period on a proportional basis.

''(5) ALLOTMENT INCREASE FACTOR.—The allotment increase factor under this paragraph for

a fiscal year is equal to the product of the following:

''(A) PER CAPITA HEALTH CARE GROWTH FACTOR.—1 plus the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary before the beginning of the fiscal year.

''(B) CHILD POPULATION GROWTH FACTOR.—1 plus the percentage increase (if any) in the population of children in the State from July 1 in the previous fiscal year to July 1 in the fiscal year involved, as determined by the Secretary based on the most recent published estimates of the Bureau of the Census before the beginning of the fiscal year involved, plus 1 percentage point.

''(6) INCREASE IN ALLOTMENT TO ACCOUNT FOR APPROVED PROGRAM EXPANSIONS.—In the case of one of the 50 States or the District of Columbia that—

''(A) has submitted to the Secretary, and has approved by the Secretary, a State plan amendment or waiver request relating to an expansion of eligibility for children or benefits under this title that becomes effective for a fiscal year (beginning with fiscal year 2010 and ending with fiscal year 2013); and

''(B) has submitted to the Secretary, before the August 31 preceding the beginning of the fiscal year, a request for an expansion allotment adjustment under this paragraph for such fiscal year that specifies—

''(i) the additional expenditures that are attributable to the eligibility or benefit expansion provided under the amendment or waiver described in subparagraph (A), as certified by the State and submitted to the Secretary by not later than August 31 preceding the beginning of the fiscal year; and

''(ii) the extent to which such additional expenditures are projected to exceed the allotment of the State or District for the year,

subject to paragraph (4), the amount of the allotment of the State or District under this subsection for such fiscal year shall be increased by the excess amount described in subparagraph (B)(i). A State or District may only obtain an increase under this paragraph for an allotment for fiscal year 2010 or fiscal year 2012.

''(7) AVAILABILITY OF AMOUNTS FOR SEMI-ANNUAL PERIODS IN FISCAL YEAR 2013.—Each semi-annual allotment made under paragraph (3) for a period in fiscal year 2013 shall remain available for expenditure under this title for periods after the end of such fiscal year in the same manner as if the allotment had been made available for the entire fiscal year.''.

SEC. 103. CHILD ENROLLMENT CONTINGENCY FUND.

Section 2104 (42 U.S.C. 1397dd), as amended by section 102, is amended by adding at the end the following new subsection:

''(n) CHILD ENROLLMENT CONTINGENCY FUND.—

''(1) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a fund which shall be known as the 'Child Enrollment Contingency Fund' (in this subsection referred to as the 'Fund'). Amounts in the Fund shall be available without further appropriations for payments under this subsection.

''(2) DEPOSITS INTO FUND.—

''(A) INITIAL AND SUBSEQUENT APPROPRIATIONS.—Subject to subparagraphs (B) and (D), out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Fund—

''(i) for fiscal year 2009, an amount equal to 20 percent of the amount made available under paragraph (12) of subsection (a) for the fiscal year; and

''(ii) for each of fiscal years 2010 through 2012 (and for each of the semi-annual allotment periods for fiscal year 2013), such sums as are necessary for making payments to eligible States for such fiscal year or period, but not in excess of the aggregate cap described in subparagraph (B).

''(B) AGGREGATE CAP.—The total amount available for payment from the Fund for each of fiscal years 2010 through 2012 (and for each of the semi-annual allotment periods for fiscal year 2013), taking into account deposits made under subparagraph (C), shall not exceed 20 percent of the amount made available under subsection (a) for the fiscal year or period.

''(C) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(D) AVAILABILITY OF EXCESS FUNDS FOR PERFORMANCE BONUSES.—Any amounts in excess of the aggregate cap described in subparagraph (B) for a fiscal year or period shall be made available for purposes of carrying out section 2105(a)(3) for any succeeding fiscal year and the Secretary of the Treasury shall reduce the amount in the Fund by the amount so made available.

''(3) CHILD ENROLLMENT CONTINGENCY FUND PAYMENTS.—

''(A) IN GENERAL.—If a State's expenditures under this title in fiscal year 2009, fiscal year 2010, fiscal year 2011, fiscal year 2012, or a semi-annual allotment period for fiscal year 2013, exceed the total amount of allotments available under this section to the State in the fiscal year or period (determined without regard to any redistribution it receives under subsection (f) that is available for expenditure during such fiscal year or period, but including any carryover from a previous fiscal year) and if the average monthly unduplicated number of children enrolled under the State plan under this title (including children receiving health care coverage through funds under this title pursuant to a waiver under section 1115) during such fiscal year or period exceeds its target average number of such enrollees (as determined under subparagraph (B)) for that fiscal year or period, subject to subparagraph (D), the Secretary shall pay to the State from the Fund an amount equal to the product of—

''(i) the amount by which such average monthly caseload exceeds such target number of enrollees; and

''(ii) the projected per capita expenditures under the State child health plan (as determined under subparagraph (C) for the fiscal year), multiplied by the enhanced FMAP (as defined in section 2105(b)) for the State and fiscal year involved (or in which the period occurs).

''(B) TARGET AVERAGE NUMBER OF CHILD ENROLLEES.—In this paragraph, the target average number of child enrollees for a State—

''(i) for fiscal year 2009 is equal to the monthly average unduplicated number of children enrolled in the State child health plan under this title (including such children receiving health care coverage through funds under this title pursuant to a waiver under section 1115) during fiscal year 2008 increased by the population growth for children in that State for the year ending on June 30, 2007 (as estimated by the Bureau of the Census) plus 1 percentage point; or

''(ii) for a subsequent fiscal year (or semi-annual period occurring in a fiscal year) is equal to the target average number of child enrollees for the State for the previous fiscal year increased by the child population growth factor described in subsection (m)(5)(B) for the State for the prior fiscal year.

''(C) PROJECTED PER CAPITA EXPENDITURES.—For purposes of subparagraph (A)(ii), the projected per capita expenditures under a State child health plan—

''(i) for fiscal year 2009 is equal to the average per capita expenditures (including both State and Federal financial participation) under such plan for the targeted low-income children counted in the average monthly caseload for purposes of this paragraph during fiscal year 2008, increased by the annual percentage increase in the projected per capita amount of National Health Expenditures (as estimated by the Secretary) for 2009; or

''(ii) for a subsequent fiscal year (or semi-annual period occurring in a fiscal year) is equal to the projected per capita expenditures under such plan for the previous fiscal year (as determined under clause (i) or this clause) increased by the annual percentage increase in the projected per capita amount of National Health Expenditures (as estimated by the Secretary) for the year in which such subsequent fiscal year ends.

''(D) PRORATION RULE.—If the amounts available for payment from the Fund for a fiscal year or period are less than the total amount of payments determined under subparagraph (A) for the fiscal year or period, the amount to be paid under such subparagraph to each eligible State shall be reduced proportionally.

''(E) TIMELY PAYMENT; RECONCILIATION.—Payment under this paragraph for a fiscal year or period shall be made before the end of the fiscal year or period based upon the most recent data for expenditures and enrollment and the provisions of subsection (e) of section 2105 shall apply to payments under this subsection in the same manner as they apply to payments under such section.

''(F) CONTINUED REPORTING.—For purposes of this paragraph and subsection (f), the State shall submit to the Secretary the State's projected Federal expenditures, even if the amount of such expenditures exceeds the total amount of allotments available to the State in such fiscal year or period.

''(G) APPLICATION TO COMMONWEALTHS AND TERRITORIES.—No payment shall be made under this paragraph to a commonwealth or territory described in subsection (c)(3) until such time as the Secretary determines that there are in effect methods, satisfactory to the Secretary, for the collection and reporting of reliable data regarding the enrollment of children described in subparagraphs (A) and (B) in order to accurately determine the commonwealth's or territory's eligibility for, and amount of payment, under this paragraph.''.

SEC. 104. CHIP PERFORMANCE BONUS PAYMENT TO OFFSET ADDITIONAL ENROLLMENT COSTS RESULTING FROM ENROLLMENT AND RETENTION EFFORTS.

Section 2105(a) (42 U.S.C. 1397ee(a)) is amended by adding at the end the following new paragraphs:

''(3) PERFORMANCE BONUS PAYMENT TO OFFSET ADDITIONAL MEDICAID AND CHIP CHILD ENROLLMENT COSTS RESULTING FROM ENROLLMENT AND RETENTION EFFORTS.—

''(A) IN GENERAL.—In addition to the payments made under paragraph (1), for each fiscal year (beginning with fiscal year 2009 and ending with fiscal year 2013), the Secretary shall pay from amounts made available under subparagraph (E), to each State that meets the condition under paragraph (4) for the fiscal year, an amount equal to the amount described in subparagraph (B) for the State and fiscal year. The payment under this paragraph shall be made, to a State for a fiscal year, as a single payment not later than the last day of the first calendar quarter of the following fiscal year.

''(B) AMOUNT FOR ABOVE BASELINE MEDICAID CHILD ENROLLMENT COSTS.—Subject to subparagraph (E), the amount described in this subparagraph for a State for a fiscal year is equal to the sum of the following amounts:

''(i) FIRST TIER ABOVE BASELINE MEDICAID ENROLLEES.—An amount equal to the number of first tier above baseline child enrollees (as determined under subparagraph (C)(i)) under title XIX for the State and fiscal year, multiplied by

15 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under title XIX.

''(ii) SECOND TIER ABOVE BASELINE MEDICAID ENROLLEES.—An amount equal to the number of second tier above baseline child enrollees (as determined under subparagraph (C)(ii)) under title XIX for the State and fiscal year, multiplied by 62.5 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under title XIX.

''(C) NUMBER OF FIRST AND SECOND TIER ABOVE BASELINE CHILD ENROLLEES; BASELINE NUMBER OF CHILD ENROLLEES.—For purposes of this paragraph:

''(i) FIRST TIER ABOVE BASELINE CHILD ENROLLEES.—The number of first tier above baseline child enrollees for a State for a fiscal year under title XIX is equal to the number (if any, as determined by the Secretary) by which—

''(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (F)) enrolled during the fiscal year under the State plan under title XIX, respectively; exceeds

''(II) the baseline number of enrollees described in clause (iii) for the State and fiscal year under title XIX, respectively;

but not to exceed 10 percent of the baseline number of enrollees described in subclause (II).

''(ii) SECOND TIER ABOVE BASELINE CHILD ENROLLEES.—The number of second tier above baseline child enrollees for a State for a fiscal year under title XIX is equal to the number (if any, as determined by the Secretary) by which—

''(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (F)) enrolled during the fiscal year under title XIX as described in clause (i)(I); exceeds

''(II) the sum of the baseline number of child enrollees described in clause (iii) for the State and fiscal year under title XIX, as described in clause (i)(II), and the maximum number of first tier above baseline child enrollees for the State and fiscal year under title XIX, as determined under clause (i).

''(iii) BASELINE NUMBER OF CHILD ENROLLEES.—Subject to subparagraph (H), the baseline number of child enrollees for a State under title XIX—

''(I) for fiscal year 2009 is equal to the monthly average unduplicated number of qualifying children enrolled in the State plan under title XIX during fiscal year 2007 increased by the population growth for children in that State from 2007 to 2008 (as estimated by the Bureau of the Census) plus 4 percentage points, and further increased by the population growth for children in that State from 2008 to 2009 (as estimated by the Bureau of the Census) plus 4 percentage points;

''(II) for each of fiscal years 2010, 2011, and 2012, is equal to the baseline number of child enrollees for the State for the previous fiscal year under title XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 3.5 percentage points;

''(III) for each of fiscal years 2013, 2014, and 2015, is equal to the baseline number of child enrollees for the State for the previous fiscal year under title XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 3 percentage points; and

''(IV) for a subsequent fiscal year is equal to the baseline number of child enrollees for the State for the previous fiscal year under title XIX, increased by the population growth for children in that State from the calendar year in which the fiscal year involved begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 2 percentage points.

''(D) PROJECTED PER CAPITA STATE MEDICAID EXPENDITURES.—For purposes of subparagraph (B), the projected per capita State Medicaid expenditures for a State and fiscal year under title XIX is equal to the average per capita expenditures (including both State and Federal financial participation) for children under the State plan under such title, including under waivers but not including such children eligible for assistance by virtue of the receipt of benefits under title XVI, for the most recent fiscal year for which actual data are available (as determined by the Secretary), increased (for each subsequent fiscal year up to and including the fiscal year involved) by the annual percentage increase in per capita amount of National Health Expenditures (as estimated by the Secretary) for the calendar year in which the respective subsequent fiscal year ends and multiplied by a State matching percentage equal to 100 percent minus the Federal medical assistance percentage (as defined in section 1905(b)) for the fiscal year involved.

''(E) AMOUNTS AVAILABLE FOR PAYMENTS.—

''(i) INITIAL APPROPRIATION.—Out of any money in the Treasury not otherwise appropriated, there are appropriated $3,225,000,000 for fiscal year 2009 for making payments under this paragraph, to be available until expended.

''(ii) TRANSFERS.—Notwithstanding any other provision of this title, the following amounts shall also be available, without fiscal year limitation, for making payments under this paragraph:

''(I) UNOBLIGATED NATIONAL ALLOTMENT.—

''(aa) FISCAL YEARS 2009 THROUGH 2012.—As of December 31 of fiscal year 2009, and as of December 31 of each succeeding fiscal year through fiscal year 2012, the portion, if any, of the amount appropriated under subsection (a) for such fiscal year that is unobligated for allotment to a State under subsection (m) for such fiscal year or set aside under subsection (a)(3) or (b)(2) of section 2111 for such fiscal year.

''(bb) FIRST HALF OF FISCAL YEAR 2013.—As of December 31 of fiscal year 2013, the portion, if any, of the sum of the amounts appropriated under subsection (a)(16)(A) and under section 108 of the Children's Health Insurance Reauthorization Act of 2009 for the period beginning on October 1, 2012, and ending on March 31, 2013, that is unobligated for allotment to a State under subsection (m) for such fiscal year or set aside under subsection (b)(2) of section 2111 for such fiscal year.

''(cc) SECOND HALF OF FISCAL YEAR 2013.—As of June 30 of fiscal year 2013, the portion, if any, of the amount appropriated under subsection (a)(16)(B) for the period beginning on April 1, 2013, and ending on September 30, 2013, that is unobligated for allotment to a State under subsection (m) for such fiscal year or set aside under subsection (b)(2) of section 2111 for such fiscal year.

''(II) UNEXPENDED ALLOTMENTS NOT USED FOR REDISTRIBUTION.—As of November 15 of each of fiscal years 2010 through 2013, the total amount of allotments made to States under section 2104 for the second preceding fiscal year (third preceding fiscal year in the case of the fiscal year 2006, 2007, and 2008 allotments) that is not expended or redistributed under section 2104(f) during the period in which such allotments are available for obligation.

''(III) EXCESS CHILD ENROLLMENT CONTINGENCY FUNDS.—As of October 1 of each of fiscal years 2010 through 2013, any amount in excess of the aggregate cap applicable to the Child Enrollment Contingency Fund for the fiscal year under section 2104(n).

''(IV) UNEXPENDED TRANSITIONAL COVERAGE BLOCK GRANT FOR NONPREGNANT CHILDLESS ADULTS.—As of October 1, 2011, any amounts set aside under section 2111(a)(3) that are not expended by September 30, 2011.

''(iii) PROPORTIONAL REDUCTION.—If the sum of the amounts otherwise payable under this paragraph for a fiscal year exceeds the amount available for the fiscal year under this subparagraph, the amount to be paid under this paragraph to each State shall be reduced proportionally.

''(F) QUALIFYING CHILDREN DEFINED.—

''(i) IN GENERAL.—For purposes of this subsection, subject to clauses (ii) and (iii), the term 'qualifying children' means children who meet the eligibility criteria (including income, categorical eligibility, age, and immigration status criteria) in effect as of July 1, 2008, for enrollment under title XIX, taking into account criteria applied as of such date under title XIX pursuant to a waiver under section 1115.

''(ii) LIMITATION.—A child described in clause (i) who is provided medical assistance during a presumptive eligibility period under section 1920A shall be considered to be a 'qualifying child' only if the child is determined to be eligible for medical assistance under title XIX.

''(iii) EXCLUSION.—Such term does not include any children for whom the State has made an election to provide medical assistance under paragraph (4) of section 1903(v).

''(G) APPLICATION TO COMMONWEALTHS AND TERRITORIES.—The provisions of subparagraph (G) of section 2104(n)(3) shall apply with respect to payment under this paragraph in the same manner as such provisions apply to payment under such section.

''(H) APPLICATION TO STATES THAT IMPLEMENT A MEDICAID EXPANSION FOR CHILDREN AFTER FISCAL YEAR 2008.—In the case of a State that provides coverage under section 115 of the Children's Health Insurance Program Reauthorization Act of 2009 for any fiscal year after fiscal year 2008—

''(i) any child enrolled in the State plan under title XIX through the application of such an election shall be disregarded from the determination for the State of the monthly average unduplicated number of qualifying children enrolled in such plan during the first 3 fiscal years in which such an election is in effect; and

''(ii) in determining the baseline number of child enrollees for the State for any fiscal year subsequent to such first 3 fiscal years, the baseline number of child enrollees for the State under title XIX for the third of such fiscal years shall be the monthly average unduplicated number of qualifying children enrolled in the State plan under title XIX for such third fiscal year.

''(4) ENROLLMENT AND RETENTION PROVISIONS FOR CHILDREN.—For purposes of paragraph (3)(A), a State meets the condition of this paragraph for a fiscal year if it is implementing at least 5 of the following enrollment and retention provisions (treating each subparagraph as a separate enrollment and retention provision) throughout the entire fiscal year:

''(A) CONTINUOUS ELIGIBILITY.—The State has elected the option of continuous eligibility for a full 12 months for all children described in section 1902(e)(12) under title XIX under 19 years of age, as well as applying such policy under its State child health plan under this title.

''(B) LIBERALIZATION OF ASSET REQUIREMENTS.—The State meets the requirement specified in either of the following clauses:

''(i) ELIMINATION OF ASSET TEST.—The State does not apply any asset or resource test for eligibility for children under title XIX or this title.

''(ii) ADMINISTRATIVE VERIFICATION OF ASSETS.—The State—

''(I) permits a parent or caretaker relative who is applying on behalf of a child for medical assistance under title XIX or child health assistance under this title to declare and certify by signature under penalty of perjury information relating to family assets for purposes of determining and redetermining financial eligibility; and

''(II) takes steps to verify assets through means other than by requiring documentation

from parents and applicants except in individual cases of discrepancies or where otherwise justified.

''(C) ELIMINATION OF IN-PERSON INTERVIEW REQUIREMENT.—The State does not require an application of a child for medical assistance under title XIX (or for child health assistance under this title), including an application for renewal of such assistance, to be made in person nor does the State require a face-to-face interview, unless there are discrepancies or individual circumstances justifying an in-person application or face-to-face interview.

''(D) USE OF JOINT APPLICATION FOR MEDICAID AND CHIP.—The application form and supplemental forms (if any) and information verification process is the same for purposes of establishing and renewing eligibility for children for medical assistance under title XIX and child health assistance under this title.

''(E) AUTOMATIC RENEWAL (USE OF ADMINISTRATIVE RENEWAL).—

''(i) IN GENERAL.—The State provides, in the case of renewal of a child's eligibility for medical assistance under title XIX or child health assistance under this title, a pre-printed form completed by the State based on the information available to the State and notice to the parent or caretaker relative of the child that eligibility of the child will be renewed and continued based on such information unless the State is provided other information. Nothing in this clause shall be construed as preventing a State from verifying, through electronic and other means, the information so provided.

''(ii) SATISFACTION THROUGH DEMONSTRATED USE OF EX PARTE PROCESS.—A State shall be treated as satisfying the requirement of clause (i) if renewal of eligibility of children under title XIX or this title is determined without any requirement for an in-person interview, unless sufficient information is not in the State's possession and cannot be acquired from other sources (including other State agencies) without the participation of the applicant or the applicant's parent or caretaker relative.

''(F) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State is implementing section 1920A under title XIX as well as, pursuant to section 2107(e)(1), under this title.

''(G) EXPRESS LANE.—The State is implementing the option described in section 1902(e)(13) under title XIX as well as, pursuant to section 2107(e)(1), under this title.

''(H) PREMIUM ASSISTANCE SUBSIDIES.—The State is implementing the option of providing premium assistance subsidies under section 2105(c)(10) or section 1906A.''.

SEC. 105. TWO-YEAR INITIAL AVAILABILITY OF CHIP ALLOTMENTS.

Section 2104(e) (42 U.S.C. 1397dd(e)) is amended to read as follows:

''(e) AVAILABILITY OF AMOUNTS ALLOTTED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), amounts allotted to a State pursuant to this section—

''(A) for each of fiscal years 1998 through 2008, shall remain available for expenditure by the State through the end of the second succeeding fiscal year; and

''(B) for fiscal year 2009 and each fiscal year thereafter, shall remain available for expenditure by the State through the end of the succeeding fiscal year.

''(2) AVAILABILITY OF AMOUNTS REDISTRIBUTED.—Amounts redistributed to a State under subsection (f) shall be available for expenditure by the State through the end of the fiscal year in which they are redistributed.''.

SEC. 106. REDISTRIBUTION OF UNUSED ALLOTMENTS.

(a) BEGINNING WITH FISCAL YEAR 2007.—

(1) IN GENERAL.—Section 2104(f) (42 U.S.C. 1397dd(f)) is amended—

(A) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'';

(B) by striking ''States that have fully expended the amount of their allotments under this section.'' and inserting ''States that the Secretary determines with respect to the fiscal year for which unused allotments are available for redistribution under this subsection, are shortfall States described in paragraph (2) for such fiscal year, but not to exceed the amount of the shortfall described in paragraph (2)(A) for each such State (as may be adjusted under paragraph (2)(C)).''; and

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

''(2) SHORTFALL STATES DESCRIBED.—

''(A) IN GENERAL.—For purposes of paragraph (1), with respect to a fiscal year, a shortfall State described in this subparagraph is a State with a State child health plan approved under this title for which the Secretary estimates on the basis of the most recent data available to the Secretary, that the projected expenditures under such plan for the State for the fiscal year will exceed the sum of—

''(i) the amount of the State's allotments for any preceding fiscal years that remains available for expenditure and that will not be expended by the end of the immediately preceding fiscal year;

''(ii) the amount (if any) of the child enrollment contingency fund payment under subsection (n); and

''(iii) the amount of the State's allotment for the fiscal year.

''(B) PRORATION RULE.—If the amounts available for redistribution under paragraph (1) for a fiscal year are less than the total amounts of the estimated shortfalls determined for the year under subparagraph (A), the amount to be redistributed under such paragraph for each shortfall State shall be reduced proportionally.

''(C) RETROSPECTIVE ADJUSTMENT.—The Secretary may adjust the estimates and determinations made under paragraph (1) and this paragraph with respect to a fiscal year as necessary on the basis of the amounts reported by States not later than November 30 of the succeeding fiscal year, as approved by the Secretary.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to redistribution of allotments made for fiscal year 2007 and subsequent fiscal years.

(b) REDISTRIBUTION OF UNUSED ALLOTMENTS FOR FISCAL YEAR 2006.—Section 2104(k) (42 U.S.C. 1397dd(k)) is amended—

(1) in the subsection heading, by striking ''THE FIRST 2 QUARTERS OF'';

(2) in paragraph (1), by striking ''the first 2 quarters of''; and

(3) in paragraph (6)—

(A) by striking ''the first 2 quarters of''; and

(B) by striking ''March 31'' and inserting ''September 30''.

SEC. 107. OPTION FOR QUALIFYING STATES TO RECEIVE THE ENHANCED PORTION OF THE CHIP MATCHING RATE FOR MEDICAID COVERAGE OF CERTAIN CHILDREN.

(a) IN GENERAL.—Section 2105(g) (42 U.S.C. 1397ee(g)) is amended—

(1) in paragraph (1)(A), as amended by section 201(b)(1) of Public Law 110–173—

(A) by inserting ''subject to paragraph (4),'' after ''Notwithstanding any other provision of law,''; and

(B) by striking ''2008, or 2009'' and inserting ''or 2008''; and

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

''(4) OPTION FOR ALLOTMENTS FOR FISCAL YEARS 2009 THROUGH 2013.—

''(A) PAYMENT OF ENHANCED PORTION OF MATCHING RATE FOR CERTAIN EXPENDITURES.—In the case of expenditures described in subparagraph (B), a qualifying State (as defined in paragraph (2)) may elect to be paid from the State's allotment made under section 2104 for any of fiscal years 2009 through 2013 (insofar as the allotment is available to the State under subsections (e) and (m) of such section) an amount each quarter equal to the additional amount that would have been paid to the State under title XIX with respect to such expenditures if the enhanced FMAP (as determined under subsection (b)) had been substituted for the Federal medical assistance percentage (as defined in section 1905(b)).

''(B) EXPENDITURES DESCRIBED.—For purposes of subparagraph (A), the expenditures described in this subparagraph are expenditures made after the date of the enactment of this paragraph and during the period in which funds are available to the qualifying State for use under subparagraph (A), for the provision of medical assistance to individuals residing in the State who are eligible for medical assistance under the State plan under title XIX or under a waiver of such plan and who have not attained age 19 (or, if a State has so elected under the State plan under title XIX, age 20 or 21), and whose family income equals or exceeds 133 percent of the poverty line but does not exceed the Medicaid applicable income level.''.

(b) REPEAL OF LIMITATION ON AVAILABILITY OF FISCAL YEAR 2009 ALLOTMENTS.—Paragraph (2) of section 201(b) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) is repealed.

SEC. 108. ONE-TIME APPROPRIATION.

There is appropriated to the Secretary, out of any money in the Treasury not otherwise appropriated, $11,706,000,000 to accompany the allotment made for the period beginning on October 1, 2012, and ending on March 31, 2013, under section 2104(a)(16)(A) of the Social Security Act (42 U.S.C. 1397dd(a)(16)(A)) (as added by section 101), to remain available until expended. Such amount shall be used to provide allotments to States under paragraph (3) of section 2104(m) of the Social Security Act (42 U.S.C. 1397dd(i)), as added by section 102, for the first 6 months of fiscal year 2013 in the same manner as allotments are provided under subsection (a)(16)(A) of such section 2104 and subject to the same terms and conditions as apply to the allotments provided from such subsection (a)(16)(A).

SEC. 109. IMPROVING FUNDING FOR THE TERRITORIES UNDER CHIP AND MEDICAID.

Section 1108(g) (42 U.S.C. 1308(g)) is amended by adding at the end the following new paragraph:

''(4) EXCLUSION OF CERTAIN EXPENDITURES FROM PAYMENT LIMITS.—With respect to fiscal years beginning with fiscal year 2009, if Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa qualify for a payment under subparagraph (A)(i), (B), or (F) of section 1903(a)(3) for a calendar quarter of such fiscal year, the payment shall not be taken into account in applying subsection (f) (as increased in accordance with paragraphs (1), (2), and (3) of this subsection) to such commonwealth or territory for such fiscal year.''.

Subtitle B—Focus on Low-Income Children and Pregnant Women

SEC. 111. STATE OPTION TO COVER LOW-INCOME PREGNANT WOMEN UNDER CHIP THROUGH A STATE PLAN AMENDMENT.

(a) IN GENERAL.—Title XXI (42 U.S.C. 1397aa et seq.), as amended by section 112(a), is amended by adding at the end the following new section:

''SEC. 2112. OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN THROUGH A STATE PLAN AMENDMENT.

''(a) IN GENERAL.—Subject to the succeeding provisions of this section, a State may elect through an amendment to its State child health plan under section 2102 to provide pregnancy-related assistance under such plan for targeted low-income pregnant women.

''(b) CONDITIONS.—A State may only elect the option under subsection (a) if the following conditions are satisfied:

''(1) MINIMUM INCOME ELIGIBILITY LEVELS FOR PREGNANT WOMEN AND CHILDREN.—The State has established an income eligibility level—

''(A) for pregnant women under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), or (l)(1)(A) of section 1902 that is at least 185 percent (or such higher percent as the State has in effect with regard to pregnant women under this title) of the poverty line applicable to a family of the size involved, but in no case lower than the percent in effect under any such subsection as of July 1, 2008; and

''(B) for children under 19 years of age under this title (or title XIX) that is at least 200 percent of the poverty line applicable to a family of the size involved.

''(2) NO CHIP INCOME ELIGIBILITY LEVEL FOR PREGNANT WOMEN LOWER THAN THE STATE'S MEDICAID LEVEL.—The State does not apply an effective income level for pregnant women under the State plan amendment that is lower than the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) specified under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), or (l)(1)(A) of section 1902, on the date of enactment of this paragraph to be eligible for medical assistance as a pregnant woman.

''(3) NO COVERAGE FOR HIGHER INCOME PREGNANT WOMEN WITHOUT COVERING LOWER INCOME PREGNANT WOMEN.—The State does not provide coverage for pregnant women with higher family income without covering pregnant women with a lower family income.

''(4) APPLICATION OF REQUIREMENTS FOR COVERAGE OF TARGETED LOW-INCOME CHILDREN.—The State provides pregnancy-related assistance for targeted low-income pregnant women in the same manner, and subject to the same requirements, as the State provides child health assistance for targeted low-income children under the State child health plan, and in addition to providing child health assistance for such women.

''(5) NO PREEXISTING CONDITION EXCLUSION OR WAITING PERIOD.—The State does not apply any exclusion of benefits for pregnancy-related assistance based on any preexisting condition or any waiting period (including any waiting period imposed to carry out section 2102(b)(3)(C)) for receipt of such assistance.

''(6) APPLICATION OF COST-SHARING PROTECTION.—The State provides pregnancy-related assistance to a targeted low-income woman consistent with the cost-sharing protections under section 2103(e) and applies the limitation on total annual aggregate cost sharing imposed under paragraph (3)(B) of such section to the family of such a woman.

''(7) NO WAITING LIST FOR CHILDREN.—The State does not impose, with respect to the enrollment under the State child health plan of targeted low-income children during the quarter, any enrollment cap or other numerical limitation on enrollment, any waiting list, any procedures designed to delay the consideration of applications for enrollment, or similar limitation with respect to enrollment.

''(c) OPTION TO PROVIDE PRESUMPTIVE ELIGIBILITY.—A State that elects the option under subsection (a) and satisfies the conditions described in subsection (b) may elect to apply section 1920 (relating to presumptive eligibility for pregnant women) to the State child health plan in the same manner as such section applies to the State plan under title XIX.

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

''(1) PREGNANCY-RELATED ASSISTANCE.—The term 'pregnancy-related assistance' has the meaning given the term 'child health assistance' in section 2110(a) with respect to an individual during the period described in paragraph (2)(A).

''(2) TARGETED LOW-INCOME PREGNANT WOMAN.—The term 'targeted low-income pregnant woman' means an individual—

''(A) during pregnancy and through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends;

''(B) whose family income exceeds 185 percent (or, if higher, the percent applied under subsection (b)(1)(A)) of the poverty line applicable to a family of the size involved, but does not exceed the income eligibility level established under the State child health plan under this title for a targeted low-income child; and

''(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 2110(b) in the same manner as a child applying for child health assistance would have to satisfy such requirements.

''(e) AUTOMATIC ENROLLMENT FOR CHILDREN BORN TO WOMEN RECEIVING PREGNANCY-RELATED ASSISTANCE.—If a child is born to a targeted low-income pregnant woman who was receiving pregnancy-related assistance under this section on the date of the child's birth, the child shall be deemed to have applied for child health assistance under the State child health plan and to have been found eligible for such assistance under such plan or to have applied for medical assistance under title XIX and to have been found eligible for such assistance under such title, as appropriate, on the date of such birth and to remain eligible for such assistance until the child attains 1 year of age. During the period in which a child is deemed under the preceding sentence to be eligible for child health or medical assistance, the child health or medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).

''(f) STATES PROVIDING ASSISTANCE THROUGH OTHER OPTIONS.—

''(1) CONTINUATION OF OTHER OPTIONS FOR PROVIDING ASSISTANCE.—The option to provide assistance in accordance with the preceding subsections of this section shall not limit any other option for a State to provide—

''(A) child health assistance through the application of sections 457.10, 457.350(b)(2), 457.622(c)(5), and 457.626(a)(3) of title 42, Code of Federal Regulations (as in effect after the final rule adopted by the Secretary and set forth at 67 Fed. Reg. 61956–61974 (October 2, 2002)), or

''(B) pregnancy-related services through the application of any waiver authority (as in effect on June 1, 2008).

''(2) CLARIFICATION OF AUTHORITY TO PROVIDE POSTPARTUM SERVICES.—Any State that provides child health assistance under any authority described in paragraph (1) may continue to provide such assistance, as well as postpartum services, through the end of the month in which the 60-day period (beginning on the last day of the pregnancy) ends, in the same manner as such assistance and postpartum services would be provided if provided under the State plan under title XIX, but only if the mother would otherwise satisfy the eligibility requirements that apply under the State child health plan (other than with respect to age) during such period.

''(3) NO INFERENCE.—Nothing in this subsection shall be construed—

''(A) to infer congressional intent regarding the legality or illegality of the content of the sections specified in paragraph (1)(A); or

''(B) to modify the authority to provide pregnancy-related services under a waiver specified in paragraph (1)(B).''.

(b) ADDITIONAL CONFORMING AMENDMENTS.—

(1) NO COST SHARING FOR PREGNANCY-RELATED BENEFITS.—Section 2103(e)(2) (42 U.S.C. 1397cc(e)(2)) is amended—

(A) in the heading, by inserting ''**OR PREGNANCY-RELATED ASSISTANCE**'' after ''**PREVENTIVE SERVICES**''; and

(B) by inserting before the period at the end the following: ''or for pregnancy-related assistance''.

(2) NO WAITING PERIOD.—Section 2102(b)(1)(B) (42 U.S.C. 1397bb(b)(1)(B)) is amended—

(A) in clause (i), by striking '', and'' at the end and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new clause:

''(iii) may not apply a waiting period (including a waiting period to carry out paragraph (3)(C)) in the case of a targeted low-income pregnant woman provided pregnancy-related assistance under section 2112.''.

SEC. 112. PHASE-OUT OF COVERAGE FOR NONPREGNANT CHILDLESS ADULTS UNDER CHIP; CONDITIONS FOR COVERAGE OF PARENTS.

(a) PHASE-OUT RULES.—

(1) IN GENERAL.—Title XXI (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following new section:

''SEC. 2111. PHASE-OUT OF COVERAGE FOR NONPREGNANT CHILDLESS ADULTS; CONDITIONS FOR COVERAGE OF PARENTS.

''(a) TERMINATION OF COVERAGE FOR NONPREGNANT CHILDLESS ADULTS.—

''(1) NO NEW CHIP WAIVERS; AUTOMATIC EXTENSIONS AT STATE OPTION THROUGH 2009.—Notwithstanding section 1115 or any other provision of this title, except as provided in this subsection—

''(A) the Secretary shall not on or after the date of the enactment of the Children's Health Insurance Program Reauthorization Act of 2009, approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this title to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult; and

''(B) notwithstanding the terms and conditions of an applicable existing waiver, the provisions of paragraph (2) shall apply for purposes of any period beginning on or after January 1, 2010, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this title.

''(2) TERMINATION OF CHIP COVERAGE UNDER APPLICABLE EXISTING WAIVERS AT THE END OF 2009.—

''(A) IN GENERAL.—No funds shall be available under this title for child health assistance or other health benefits coverage that is provided to a nonpregnant childless adult under an applicable existing waiver after December 31, 2009.

''(B) EXTENSION UPON STATE REQUEST.—If an applicable existing waiver described in subparagraph (A) would otherwise expire before January 1, 2010, notwithstanding the requirements of subsections (e) and (f) of section 1115, a State may submit, not later than September 30, 2009, a request to the Secretary for an extension of the waiver. The Secretary shall approve a request for an extension of an applicable existing waiver submitted pursuant to this subparagraph, but only through December 31, 2009.

''(C) APPLICATION OF ENHANCED FMAP.—The enhanced FMAP determined under section 2105(b) shall apply to expenditures under an applicable existing waiver for the provision of child health assistance or other health benefits coverage to a nonpregnant childless adult during the period beginning on the date of the enactment of this subsection and ending on December 31, 2009.

''(3) STATE OPTION TO APPLY FOR MEDICAID WAIVER TO CONTINUE COVERAGE FOR NONPREGNANT CHILDLESS ADULTS.—

''(A) IN GENERAL.—Each State for which coverage under an applicable existing waiver is terminated under paragraph (2)(A) may submit, not later than September 30, 2009, an application to the Secretary for a waiver under section 1115 of the State plan under title XIX to provide medical assistance to a nonpregnant childless adult whose coverage is so terminated (in this subsection referred to as a 'Medicaid nonpregnant childless adults waiver').

''(B) DEADLINE FOR APPROVAL.—The Secretary shall make a decision to approve or deny an application for a Medicaid nonpregnant

childless adults waiver submitted under subparagraph (A) within 90 days of the date of the submission of the application. If no decision has been made by the Secretary as of December 31, 2009, on the application of a State for a Medicaid nonpregnant childless adults waiver that was submitted to the Secretary by September 30, 2009, the application shall be deemed approved.

''(C) STANDARD FOR BUDGET NEUTRALITY.—The budget neutrality requirement applicable with respect to expenditures for medical assistance under a Medicaid nonpregnant childless adults waiver shall—

''(i) in the case of fiscal year 2010, allow expenditures for medical assistance under title XIX for all such adults to not exceed the total amount of payments made to the State under paragraph (2)(B) for fiscal year 2009, increased by the percentage increase (if any) in the projected nominal per capita amount of National Health Expenditures for 2010 over 2009, as most recently published by the Secretary; and

''(ii) in the case of any succeeding fiscal year, allow such expenditures to not exceed the amount in effect under this subparagraph for the preceding fiscal year, increased by the percentage increase (if any) in the projected nominal per capita amount of National Health Expenditures for the calendar year that begins during the year involved over the preceding calendar year, as most recently published by the Secretary.

''(b) RULES AND CONDITIONS FOR COVERAGE OF PARENTS OF TARGETED LOW-INCOME CHILDREN.—

''(1) TWO-YEAR PERIOD; AUTOMATIC EXTENSION AT STATE OPTION THROUGH FISCAL YEAR 2011.—

''(A) NO NEW CHIP WAIVERS.—Notwithstanding section 1115 or any other provision of this title, except as provided in this subsection—

''(i) the Secretary shall not on or after the date of the enactment of the Children's Health Insurance Program Reauthorization Act of 2009 approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this title to be used to provide child health assistance or other health benefits coverage to a parent of a targeted low-income child; and

''(ii) notwithstanding the terms and conditions of an applicable existing waiver, the provisions of paragraphs (2) and (3) shall apply for purposes of any fiscal year beginning on or after October 1, 2011, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this title.

''(B) EXTENSION UPON STATE REQUEST.—If an applicable existing waiver described in subparagraph (A) would otherwise expire before October 1, 2011, and the State requests an extension of such waiver, the Secretary shall grant such an extension, but only, subject to paragraph (2)(A), through September 30, 2011.

''(C) APPLICATION OF ENHANCED FMAP.—The enhanced FMAP determined under section 2105(b) shall apply to expenditures under an applicable existing waiver for the provision of child health assistance or other health benefits coverage to a parent of a targeted low-income child during the third and fourth quarters of fiscal year 2009 and during fiscal years 2010 and 2011.

''(2) RULES FOR FISCAL YEARS 2012 THROUGH 2013.—

''(A) PAYMENTS FOR COVERAGE LIMITED TO BLOCK GRANT FUNDED FROM STATE ALLOTMENT.—Any State that provides child health assistance or health benefits coverage under an applicable existing waiver for a parent of a targeted low-income child may elect to continue to provide such assistance or coverage through fiscal year 2012 or 2013, subject to the same terms and conditions that applied under the applicable existing waiver, unless otherwise modified in subparagraph (B).

''(B) TERMS AND CONDITIONS.—

''(i) BLOCK GRANT SET ASIDE FROM STATE ALLOTMENT.—If the State makes an election under subparagraph (A), the Secretary shall set aside for the State for each such fiscal year an amount equal to the Federal share of 110 percent of the State's projected expenditures under the applicable existing waiver for providing child health assistance or health benefits coverage to all parents of targeted low-income children enrolled under such waiver for the fiscal year (as certified by the State and submitted to the Secretary by not later than August 31 of the preceding fiscal year). In the case of fiscal year 2013, the set aside for any State shall be computed separately for each period described in subparagraphs (A) and (B) of section 2104(a)(16) and any reduction in the allotment for either such period under section 2104(m)(4) shall be allocated on a pro rata basis to such set aside.

''(ii) PAYMENTS FROM BLOCK GRANT.—The Secretary shall pay the State from the amount set aside under clause (i) for the fiscal year, an amount for each quarter of such fiscal year equal to the applicable percentage determined under clause (iii) or (iv) for expenditures in the quarter for providing child health assistance or other health benefits coverage to a parent of a targeted low-income child.

''(iii) ENHANCED FMAP ONLY IN FISCAL YEAR 2012 FOR STATES WITH SIGNIFICANT CHILD OUTREACH OR THAT ACHIEVE CHILD COVERAGE BENCHMARKS; FMAP FOR ANY OTHER STATES.—For purposes of clause (ii), the applicable percentage for any quarter of fiscal year 2012 is equal to—

''(I) the enhanced FMAP determined under section 2105(b) in the case of a State that meets the outreach or coverage benchmarks described in any of subparagraph (A), (B), or (C) of paragraph (3) for fiscal year 2011; or

''(II) the Federal medical assistance percentage (as determined under section 1905(b) without regard to clause (4) of such section) in the case of any other State.

''(iv) AMOUNT OF FEDERAL MATCHING PAYMENT IN 2013.—For purposes of clause (ii), the applicable percentage for any quarter of fiscal year 2013 is equal to—

''(I) the REMAP percentage if—

''(aa) the applicable percentage for the State under clause (iii) was the enhanced FMAP for fiscal year 2012; and

''(bb) the State met either of the coverage benchmarks described in subparagraph (B) or (C) of paragraph (3) for fiscal year 2012; or

''(II) the Federal medical assistance percentage (as so determined) in the case of any State to which subclause (I) does not apply.

For purposes of subclause (I), the REMAP percentage is the percentage which is the sum of such Federal medical assistance percentage and a number of percentage points equal to one-half of the difference between such Federal medical assistance percentage and such enhanced FMAP.

''(v) NO FEDERAL PAYMENTS OTHER THAN FROM BLOCK GRANT SET ASIDE.—No payments shall be made to a State for expenditures described in clause (ii) after the total amount set aside under clause (i) for a fiscal year has been paid to the State.

''(vi) NO INCREASE IN INCOME ELIGIBILITY LEVEL FOR PARENTS.—No payments shall be made to a State from the amount set aside under clause (i) for a fiscal year for expenditures for providing child health assistance or health benefits coverage to a parent of a targeted low-income child whose family income exceeds the income eligibility level applied under the applicable existing waiver to parents of targeted low-income children on the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009.

''(3) OUTREACH OR COVERAGE BENCHMARKS.—For purposes of paragraph (2), the outreach or coverage benchmarks described in this paragraph are as follows:

''(A) SIGNIFICANT CHILD OUTREACH CAMPAIGN.—The State—

''(i) was awarded a grant under section 2113 for fiscal year 2011;

''(ii) implemented 1 or more of the enrollment and retention provisions described in section 2105(a)(4) for such fiscal year; or

''(iii) has submitted a specific plan for outreach for such fiscal year.

''(B) HIGH-PERFORMING STATE.—The State, on the basis of the most timely and accurate published estimates of the Bureau of the Census, ranks in the lowest ⅓ of States in terms of the State's percentage of low-income children without health insurance.

''(C) STATE INCREASING ENROLLMENT OF LOW-INCOME CHILDREN.—The State qualified for a performance bonus payment under section 2105(a)(3)(B) for the most recent fiscal year applicable under such section.

''(4) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as prohibiting a State from submitting an application to the Secretary for a waiver under section 1115 of the State plan under title XIX to provide medical assistance to a parent of a targeted low-income child that was provided child health assistance or health benefits coverage under an applicable existing waiver.

''(c) APPLICABLE EXISTING WAIVER.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable existing waiver' means a waiver, experimental, pilot, or demonstration project under section 1115, grandfathered under section 6102(c)(3) of the Deficit Reduction Act of 2005, or otherwise conducted under authority that—

''(A) would allow funds made available under this title to be used to provide child health assistance or other health benefits coverage to—

''(i) a parent of a targeted low-income child;

''(ii) a nonpregnant childless adult; or

''(iii) individuals described in both clauses (i) and (ii); and

''(B) was in effect during fiscal year 2009.

''(2) DEFINITIONS.—

''(A) PARENT.—The term 'parent' includes a caretaker relative (as such term is used in carrying out section 1931) and a legal guardian.

''(B) NONPREGNANT CHILDLESS ADULT.—The term 'nonpregnant childless adult' has the meaning given such term by section 2107(f).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 2107(f) (42 U.S.C. 1397gg(f)) is amended—

(i) by striking '', the Secretary'' and inserting ''.

''(1) The Secretary'';

(ii) in the first sentence, by inserting ''or a parent (as defined in section 2111(c)(2)(A)), who is not pregnant, of a targeted low-income child'' before the period;

(iii) by striking the second sentence; and

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

''(2) The Secretary may not approve, extend, renew, or amend a waiver, experimental, pilot, or demonstration project with respect to a State after the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009 that would waive or modify the requirements of section 2111.''.

(B) Section 6102(c) of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 131) is amended by striking ''Nothing'' and inserting ''Subject to section 2111 of the Social Security Act, as added by section 112 of the Children's Health Insurance Program Reauthorization Act of 2009, nothing''.

(b) GAO STUDY AND REPORT.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of whether—

(A) the coverage of a parent, a caretaker relative (as such term is used in carrying out section 1931), or a legal guardian of a targeted low-income child under a State health plan under title XXI of the Social Security Act increases the enrollment of, or the quality of care for, children, and

(B) such parents, relatives, and legal guardians who enroll in such a plan are more likely to enroll their children in such a plan or in a State plan under title XIX of such Act.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall report the results of the study to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives, including recommendations (if any) for changes in legislation.

SEC. 113. ELIMINATION OF COUNTING MEDICAID CHILD PRESUMPTIVE ELIGIBILITY COSTS AGAINST TITLE XXI ALLOTMENT.

(a) IN GENERAL.—Section 2105(a)(1) (42 U.S.C. 1397ee(a)(1)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''(or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)))''; and

(2) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) [reserved]''.

(b) AMENDMENTS TO MEDICAID.—

(1) ELIGIBILITY OF A NEWBORN.—Section 1902(e)(4) (42 U.S.C. 1396a(e)(4)) is amended in the first sentence by striking ''so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance''.

(2) APPLICATION OF QUALIFIED ENTITIES TO PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN UNDER MEDICAID.—Section 1920(b) (42 U.S.C. 1396r–1(b)) is amended by adding after paragraph (2) the following flush sentence:

''The term 'qualified provider' also includes a qualified entity, as defined in section 1920A(b)(3).''.

SEC. 114. LIMITATION ON MATCHING RATE FOR STATES THAT PROPOSE TO COVER CHILDREN WITH EFFECTIVE FAMILY INCOME THAT EXCEEDS 300 PERCENT OF THE POVERTY LINE.

(a) FMAP APPLIED TO EXPENDITURES.—Section 2105(c) (42 U.S.C. 1397ee(c)) is amended by adding at the end the following new paragraph:

''(8) LIMITATION ON MATCHING RATE FOR EXPENDITURES FOR CHILD HEALTH ASSISTANCE PROVIDED TO CHILDREN WHOSE EFFECTIVE FAMILY INCOME EXCEEDS 300 PERCENT OF THE POVERTY LINE.—

''(A) FMAP APPLIED TO EXPENDITURES.—Except as provided in subparagraph (B), for fiscal years beginning with fiscal year 2009, the Federal medical assistance percentage (as determined under section 1905(b) without regard to clause (4) of such section) shall be substituted for the enhanced FMAP under subsection (a)(1) with respect to any expenditures for providing child health assistance or health benefits coverage for a targeted low-income child whose effective family income would exceed 300 percent of the poverty line but for the application of a general exclusion of a block of income that is not determined by type of expense or type of income.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any State that, on the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009, has an approved State plan amendment or waiver to provide, or has enacted a State law to submit a State plan amendment to provide, expenditures described in such subparagraph under the State child health plan.''.

(b) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed as—

(1) changing any income eligibility level for children under title XXI of the Social Security Act; or

(2) changing the flexibility provided States under such title to establish the income eligibility level for targeted low-income children under a State child health plan and the methodologies used by the State to determine income or assets under such plan.

SEC. 115. STATE AUTHORITY UNDER MEDICAID.

Notwithstanding any other provision of law, including the fourth sentence of subsection (b) of section 1905 of the Social Security Act (42 U.S.C. 1396d) or subsection (u) of such section, at State option, the Secretary shall provide the State with the Federal medical assistance percentage determined for the State for Medicaid with respect to expenditures described in section 1905(u)(2)(A) of such Act or otherwise made to provide medical assistance under Medicaid to a child who could be covered by the State under CHIP.

TITLE II—OUTREACH AND ENROLLMENT

Subtitle A—Outreach and Enrollment Activities

SEC. 201. GRANTS AND ENHANCED ADMINISTRATIVE FUNDING FOR OUTREACH AND ENROLLMENT.

(a) GRANTS.—Title XXI (42 U.S.C. 1397aa et seq.), as amended by section 111, is amended by adding at the end the following:

"SEC. 2113. GRANTS TO IMPROVE OUTREACH AND ENROLLMENT.

''(a) OUTREACH AND ENROLLMENT GRANTS; NATIONAL CAMPAIGN.—

''(1) IN GENERAL.—From the amounts appropriated under subsection (g), subject to paragraph (2), the Secretary shall award grants to eligible entities during the period of fiscal years 2009 through 2013 to conduct outreach and enrollment efforts that are designed to increase the enrollment and participation of eligible children under this title and title XIX.

''(2) TEN PERCENT SET ASIDE FOR NATIONAL ENROLLMENT CAMPAIGN.—An amount equal to 10 percent of such amounts shall be used by the Secretary for expenditures during such period to carry out a national enrollment campaign in accordance with subsection (h).

''(b) PRIORITY FOR AWARD OF GRANTS.—

''(1) IN GENERAL.—In awarding grants under subsection (a), the Secretary shall give priority to eligible entities that—

''(A) propose to target geographic areas with high rates of—

''(i) eligible but unenrolled children, including such children who reside in rural areas; or

''(ii) racial and ethnic minorities and health disparity populations, including those proposals that address cultural and linguistic barriers to enrollment; and

''(B) submit the most demonstrable evidence required under paragraphs (1) and (2) of subsection (c).

''(2) TEN PERCENT SET ASIDE FOR OUTREACH TO INDIAN CHILDREN.—An amount equal to 10 percent of the funds appropriated under subsection (g) shall be used by the Secretary to award grants to Indian Health Service providers and urban Indian organizations receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.) for outreach to, and enrollment of, children who are Indians.

''(c) APPLICATION.—An eligible entity that desires to receive a grant under subsection (a) shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide. Such application shall include—

''(1) evidence demonstrating that the entity includes members who have access to, and credibility with, ethnic or low-income populations in the communities in which activities funded under the grant are to be conducted;

''(2) evidence demonstrating that the entity has the ability to address barriers to enrollment, such as lack of awareness of eligibility, stigma concerns and punitive fears associated with receipt of benefits, and other cultural barriers to applying for and receiving child health assistance or medical assistance;

''(3) specific quality or outcomes performance measures to evaluate the effectiveness of activities funded by a grant awarded under this section; and

''(4) an assurance that the eligible entity shall—

''(A) conduct an assessment of the effectiveness of such activities against the performance measures;

''(B) cooperate with the collection and reporting of enrollment data and other information in order for the Secretary to conduct such assessments; and

''(C) in the case of an eligible entity that is not the State, provide the State with enrollment data and other information as necessary for the State to make necessary projections of eligible children and pregnant women.

''(d) DISSEMINATION OF ENROLLMENT DATA AND INFORMATION DETERMINED FROM EFFECTIVENESS ASSESSMENTS; ANNUAL REPORT.—The Secretary shall—

''(1) make publicly available the enrollment data and information collected and reported in accordance with subsection (c)(4)(B); and

''(2) submit an annual report to Congress on the outreach and enrollment activities conducted with funds appropriated under this section.

''(e) MAINTENANCE OF EFFORT FOR STATES AWARDED GRANTS; NO MATCH REQUIRED FOR ANY ELIGIBLE ENTITY AWARDED A GRANT.—

''(1) STATE MAINTENANCE OF EFFORT.—In the case of a State that is awarded a grant under this section, the State share of funds expended for outreach and enrollment activities under the State child health plan shall not be less than the State share of such funds expended in the fiscal year preceding the first fiscal year for which the grant is awarded.

''(2) NO MATCHING REQUIREMENT.—No eligible entity awarded a grant under subsection (a) shall be required to provide any matching funds as a condition for receiving the grant.

''(f) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means any of the following:

''(A) A State with an approved child health plan under this title.

''(B) A local government.

''(C) An Indian tribe or tribal consortium, a tribal organization, an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.), or an Indian Health Service provider.

''(D) A Federal health safety net organization.

''(E) A national, State, local, or community-based public or nonprofit private organization, including organizations that use community health workers or community-based doula programs.

''(F) A faith-based organization or consortia, to the extent that a grant awarded to such an entity is consistent with the requirements of section 1955 of the Public Health Service Act (42 U.S.C. 300x–65) relating to a grant award to nongovernmental entities.

''(G) An elementary or secondary school.

''(2) FEDERAL HEALTH SAFETY NET ORGANIZATION.—The term 'Federal health safety net organization' means—

''(A) a Federally-qualified health center (as defined in section 1905(l)(2)(B));

''(B) a hospital defined as a disproportionate share hospital for purposes of section 1923;

''(C) a covered entity described in section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)); and

''(D) any other entity or consortium that serves children under a federally funded program, including the special supplemental nutrition program for women, infants, and children (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), the school lunch program established under the Richard B. Russell National School Lunch Act, and an elementary or secondary school.

''(3) INDIANS; INDIAN TRIBE; TRIBAL ORGANIZATION; URBAN INDIAN ORGANIZATION.—The terms 'Indian', 'Indian tribe', 'tribal organization', and 'urban Indian organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

''(4) COMMUNITY HEALTH WORKER.—The term 'community health worker' means an individual who promotes health or nutrition within the community in which the individual resides—

''(A) by serving as a liaison between communities and health care agencies;

''(B) by providing guidance and social assistance to community residents;

''(C) by enhancing community residents' ability to effectively communicate with health care providers;

''(D) by providing culturally and linguistically appropriate health or nutrition education;

''(E) by advocating for individual and community health or nutrition needs; and

''(F) by providing referral and followup services.

''(g) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, $100,000,000 for the period of fiscal years 2009 through 2013, for the purpose of awarding grants under this section. Amounts appropriated and paid under the authority of this section shall be in addition to amounts appropriated under section 2104 and paid to States in accordance with section 2105, including with respect to expenditures for outreach activities in accordance with subsections (a)(1)(D)(iii) and (c)(2)(C) of that section.

''(h) NATIONAL ENROLLMENT CAMPAIGN.—From the amounts made available under subsection (a)(2), the Secretary shall develop and implement a national enrollment campaign to improve the enrollment of underserved child populations in the programs established under this title and title XIX. Such campaign may include—

''(1) the establishment of partnerships with the Secretary of Education and the Secretary of Agriculture to develop national campaigns to link the eligibility and enrollment systems for the assistance programs each Secretary administers that often serve the same children;

''(2) the integration of information about the programs established under this title and title XIX in public health awareness campaigns administered by the Secretary;

''(3) increased financial and technical support for enrollment hotlines maintained by the Secretary to ensure that all States participate in such hotlines;

''(4) the establishment of joint public awareness outreach initiatives with the Secretary of Education and the Secretary of Labor regarding the importance of health insurance to building strong communities and the economy;

''(5) the development of special outreach materials for Native Americans or for individuals with limited English proficiency; and

''(6) such other outreach initiatives as the Secretary determines would increase public awareness of the programs under this title and title XIX.''.

(b) ENHANCED ADMINISTRATIVE FUNDING FOR TRANSLATION OR INTERPRETATION SERVICES UNDER CHIP AND MEDICAID.—

(1) CHIP.—Section 2105(a)(1) (42 U.S.C. 1397ee(a)(1)), as amended by section 113, is amended—

(A) in the matter preceding subparagraph (A), by inserting ''(or, in the case of expenditures described in subparagraph (D)(iv), the higher of 75 percent or the sum of the enhanced FMAP plus 5 percentage points)'' after ''enhanced FMAP''; and

(B) in subparagraph (D)—

(i) in clause (iii), by striking ''and'' at the end;

(ii) by redesignating clause (iv) as clause (v); and

(iii) by inserting after clause (iii) the following new clause:

''(iv) for translation or interpretation services in connection with the enrollment of, retention of, and use of services under this title by, individuals for whom English is not their primary language (as found necessary by the Secretary for the proper and efficient administration of the State plan); and''.

(2) MEDICAID.—

(A) USE OF MEDICAID FUNDS.—Section 1903(a)(2) (42 U.S.C. 1396b(a)(2)) is amended by adding at the end the following new subparagraph:

''(E) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to translation or interpretation services in connection with the enrollment of, retention of, and use of services under this title by, children of families for whom English is not the primary language; plus''.

(B) USE OF COMMUNITY HEALTH WORKERS FOR OUTREACH ACTIVITIES.—

(i) IN GENERAL.—Section 2102(c)(1) of such Act (42 U.S.C. 1397bb(c)(1)) is amended by inserting ''(through community health workers and others)'' after ''Outreach''.

(ii) IN FEDERAL EVALUATION.—Section 2108(c)(3)(B) of such Act (42 U.S.C. 1397hh(c)(3)(B)) is amended by inserting ''(such as through community health workers and others)'' after ''including practices''.

SEC. 202. INCREASED OUTREACH AND ENROLLMENT OF INDIANS.

(a) IN GENERAL.—Section 1139 (42 U.S.C. 1320b–9) is amended to read as follows:

''SEC. 1139. IMPROVED ACCESS TO, AND DELIVERY OF, HEALTH CARE FOR INDIANS UNDER TITLES XIX AND XXI.

''(a) AGREEMENTS WITH STATES FOR MEDICAID AND CHIP OUTREACH ON OR NEAR RESERVATIONS TO INCREASE THE ENROLLMENT OF INDIANS IN THOSE PROGRAMS.—

''(1) IN GENERAL.—In order to improve the access of Indians residing on or near a reservation to obtain benefits under the Medicaid and State children's health insurance programs established under titles XIX and XXI, the Secretary shall encourage the State to take steps to provide for enrollment on or near the reservation. Such steps may include outreach efforts such as the outstationing of eligibility workers, entering into agreements with the Indian Health Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations to provide outreach, education regarding eligibility and benefits, enrollment, and translation services when such services are appropriate.

''(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed as affecting arrangements entered into between States and the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations for such Service, Tribes, or Organizations to conduct administrative activities under such titles.

''(b) REQUIREMENT TO FACILITATE COOPERATION.—The Secretary, acting through the Centers for Medicare & Medicaid Services, shall take such steps as are necessary to facilitate cooperation with, and agreements between, States and the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations with respect to the provision of health care items and services to Indians under the programs established under title XIX or XXI.

''(c) DEFINITION OF INDIAN; INDIAN TRIBE; INDIAN HEALTH PROGRAM; TRIBAL ORGANIZATION; URBAN INDIAN ORGANIZATION.—In this section, the terms 'Indian', 'Indian Tribe', 'Indian Health Program', 'Tribal Organization', and 'Urban Indian Organization' have the meanings given those terms in section 4 of the Indian Health Care Improvement Act.''.

(b) NONAPPLICATION OF 10 PERCENT LIMIT ON OUTREACH AND CERTAIN OTHER EXPENDITURES.—Section 2105(c)(2) (42 U.S.C. 1397ee(c)(2)) is amended by adding at the end the following:

''(C) NONAPPLICATION TO CERTAIN EXPENDITURES.—The limitation under subparagraph (A) shall not apply with respect to the following expenditures:

''(i) EXPENDITURES TO INCREASE OUTREACH TO, AND THE ENROLLMENT OF, INDIAN CHILDREN UNDER THIS TITLE AND TITLE XIX.—Expenditures for outreach activities to families of Indian children likely to be eligible for child health assistance under the plan or medical assistance under the State plan under title XIX (or under a waiver of such plan), to inform such families of the availability of, and to assist them in enrolling their children in, such plans, including such activities conducted under grants, contracts, or agreements entered into under section 1139(a).''.

SEC. 203. STATE OPTION TO RELY ON FINDINGS FROM AN EXPRESS LANE AGENCY TO CONDUCT SIMPLIFIED ELIGIBILITY DETERMINATIONS.

(a) APPLICATION UNDER MEDICAID AND CHIP PROGRAMS.—

(1) MEDICAID.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding at the end the following:

''(13) EXPRESS LANE OPTION.—

''(A) IN GENERAL.—

''(i) OPTION TO USE A FINDING FROM AN EXPRESS LANE AGENCY.—At the option of the State, the State plan may provide that in determining eligibility under this title for a child (as defined in subparagraph (G)), the State may rely on a finding made within a reasonable period (as determined by the State) from an Express Lane agency (as defined in subparagraph (F)) when it determines whether a child satisfies one or more components of eligibility for medical assistance under this title. The State may rely on a finding from an Express Lane agency notwithstanding sections 1902(a)(46)(B) and 1137(d) or any differences in budget unit, disregard, deeming or other methodology, if the following requirements are met:

''(I) PROHIBITION ON DETERMINING CHILDREN INELIGIBLE FOR COVERAGE.—If a finding from an Express Lane agency would result in a determination that a child does not satisfy an eligibility requirement for medical assistance under this title and for child health assistance under title XXI, the State shall determine eligibility for assistance using its regular procedures.

''(II) NOTICE REQUIREMENT.—For any child who is found eligible for medical assistance under the State plan under this title or child health assistance under title XXI and who is subject to premiums based on an Express Lane agency's finding of such child's income level, the State shall provide notice that the child may qualify for lower premium payments if evaluated by the State using its regular policies and of the procedures for requesting such an evaluation.

''(III) COMPLIANCE WITH SCREEN AND ENROLL REQUIREMENT.—The State shall satisfy the requirements under subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll) before enrolling a child in child health assistance under title XXI. At its option, the State may fulfill such requirements in accordance with either option provided under subparagraph (C) of this paragraph.

''(IV) VERIFICATION OF CITIZENSHIP OR NATIONALITY STATUS.—The State shall satisfy the requirements of section 1902(a)(46)(B) or 2105(c)(9), as applicable for verifications of citizenship or nationality status.

''(V) CODING.—The State meets the requirements of subparagraph (E).

''(ii) OPTION TO APPLY TO RENEWALS AND REDETERMINATIONS.—The State may apply the provisions of this paragraph when conducting initial determinations of eligibility, redeterminations of eligibility, or both, as described in the State plan.

''(B) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed—

''(i) to limit or prohibit a State from taking any actions otherwise permitted under this title or title XXI in determining eligibility for or enrolling children into medical assistance under this title or child health assistance under title XXI; or

''(ii) to modify the limitations in section 1902(a)(5) concerning the agencies that may make a determination of eligibility for medical assistance under this title.

''(C) OPTIONS FOR SATISFYING THE SCREEN AND ENROLL REQUIREMENT.—

''(i) IN GENERAL.—With respect to a child whose eligibility for medical assistance under this title or for child health assistance under title XXI has been evaluated by a State agency using an income finding from an Express Lane agency, a State may carry out its duties under subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll) in accordance with either clause (ii) or clause (iii).

''(ii) ESTABLISHING A SCREENING THRESHOLD.—

''(I) IN GENERAL.—Under this clause, the State establishes a screening threshold set as a percentage of the Federal poverty level that exceeds the highest income threshold applicable under this title to the child by a minimum of 30 percentage points or, at State option, a higher number of percentage points that reflects the value (as determined by the State and described in the State plan) of any differences between income methodologies used by the program administered by the Express Lane agency and the methodologies used by the State in determining eligibility for medical assistance under this title.

''(II) CHILDREN WITH INCOME NOT ABOVE THRESHOLD.—If the income of a child does not exceed the screening threshold, the child is deemed to satisfy the income eligibility criteria for medical assistance under this title regardless of whether such child would otherwise satisfy such criteria.

''(III) CHILDREN WITH INCOME ABOVE THRESHOLD.—If the income of a child exceeds the screening threshold, the child shall be considered to have an income above the Medicaid applicable income level described in section 2110(b)(4) and to satisfy the requirement under section 2110(b)(1)(C) (relating to the requirement that CHIP matching funds be used only for children not eligible for Medicaid). If such a child is enrolled in child health assistance under title XXI, the State shall provide the parent, guardian, or custodial relative with the following:

''(aa) Notice that the child may be eligible to receive medical assistance under the State plan under this title if evaluated for such assistance under the State's regular procedures and notice of the process through which a parent, guardian, or custodial relative can request that the State evaluate the child's eligibility for medical assistance under this title using such regular procedures.

''(bb) A description of differences between the medical assistance provided under this title and child health assistance under title XXI, including differences in cost-sharing requirements and covered benefits.

''(iii) TEMPORARY ENROLLMENT IN CHIP PENDING SCREEN AND ENROLL.—

''(I) IN GENERAL.—Under this clause, a State enrolls a child in child health assistance under title XXI for a temporary period if the child appears eligible for such assistance based on an income finding by an Express Lane agency.

''(II) DETERMINATION OF ELIGIBILITY.—During such temporary enrollment period, the State shall determine the child's eligibility for child health assistance under title XXI or for medical assistance under this title in accordance with this clause.

''(III) PROMPT FOLLOW UP.—In making such a determination, the State shall take prompt action to determine whether the child should be enrolled in medical assistance under this title or child health assistance under title XXI pursuant to subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll).

''(IV) REQUIREMENT FOR SIMPLIFIED DETERMINATION.—In making such a determination, the State shall use procedures that, to the maximum feasible extent, reduce the burden imposed on the individual of such determination. Such procedures may not require the child's parent, guardian, or custodial relative to provide or verify information that already has been provided to the State agency by an Express Lane agency or another source of information unless the State agency has reason to believe the information is erroneous.

''(V) AVAILABILITY OF CHIP MATCHING FUNDS DURING TEMPORARY ENROLLMENT PERIOD.—Medical assistance for items and services that are provided to a child enrolled in title XXI during a temporary enrollment period under this clause shall be treated as child health assistance under such title.

''(D) OPTION FOR AUTOMATIC ENROLLMENT.—

''(i) IN GENERAL.—The State may initiate and determine eligibility for medical assistance under the State Medicaid plan or for child health assistance under the State CHIP plan without a program application from, or on behalf of, the child based on data obtained from sources other than the child (or the child's family), but a child can only be automatically enrolled in the State Medicaid plan or the State CHIP plan if the child or the family affirmatively consents to being enrolled through affirmation in writing, by telephone, orally, through electronic signature, or through any other means specified by the Secretary or by signature on an Express Lane agency application, if the requirement of clause (ii) is met.

''(ii) INFORMATION REQUIREMENT.—The requirement of this clause is that the State informs the parent, guardian, or custodial relative of the child of the services that will be covered, appropriate methods for using such services, premium or other cost sharing charges (if any) that apply, medical support obligations (under section 1912(a)) created by enrollment (if applicable), and the actions the parent, guardian, or relative must take to maintain enrollment and renew coverage.

''(E) CODING; APPLICATION TO ENROLLMENT ERROR RATES.—

''(i) IN GENERAL.—For purposes of subparagraph (A)(iv), the requirement of this subparagraph for a State is that the State agrees to—

''(I) assign such codes as the Secretary shall require to the children who are enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency for the duration of the State's election under this paragraph;

''(II) annually provide the Secretary with a statistically valid sample (that is approved by Secretary) of the children enrolled in such plans through reliance on such a finding by conducting a full Medicaid eligibility review of the children identified for such sample for purposes of determining an eligibility error rate (as described in clause (iv)) with respect to the enrollment of such children (and shall not include such children in any data or samples used for purposes of complying with a Medicaid Eligibility Quality Control (MEQC) review or a payment error rate measurement (PERM) requirement);

''(III) submit the error rate determined under subclause (II) to the Secretary;

''(IV) if such error rate exceeds 3 percent for either of the first 2 fiscal years in which the State elects to apply this paragraph, demonstrate to the satisfaction of the Secretary the specific corrective actions implemented by the State to improve upon such error rate; and

''(V) if such error rate exceeds 3 percent for any fiscal year in which the State elects to apply this paragraph, a reduction in the amount otherwise payable to the State under section 1903(a) for quarters for that fiscal year, equal to the total amount of erroneous excess payments determined for the fiscal year only with respect to the children included in the sample for the fiscal year that are in excess of a 3 percent error rate with respect to such children.

''(ii) NO PUNITIVE ACTION BASED ON ERROR RATE.—The Secretary shall not apply the error rate derived from the sample under clause (i) to the entire population of children enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency, or to the population of children enrolled in such plans on the basis of the State's regular procedures for determining eligibility, or penalize the State on the basis of such error rate in any manner other than the reduction of payments provided for under clause (i)(V).

''(iii) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as relieving a State that elects to apply this paragraph from being subject to a penalty under section 1903(u), for payments made under the State Medicaid plan with respect to ineligible individuals and families that are determined to exceed the error rate permitted under that section (as determined without regard to the error rate determined under clause (i)(II)).

''(iv) ERROR RATE DEFINED.—In this subparagraph, the term 'error rate' means the rate of erroneous excess payments for medical assistance (as defined in section 1903(u)(1)(D)) for the period involved, except that such payments shall be limited to individuals for which eligibility determinations are made under this paragraph and except that in applying this paragraph under title XXI, there shall be substituted for references to provisions of this title corresponding provisions within title XXI.

''(F) EXPRESS LANE AGENCY.—

''(i) IN GENERAL.—In this paragraph, the term 'Express Lane agency' means a public agency that—

''(I) is determined by the State Medicaid agency or the State CHIP agency (as applicable) to be capable of making the determinations of one or more eligibility requirements described in subparagraph (A)(i);

''(II) is identified in the State Medicaid plan or the State CHIP plan; and

''(III) notifies the child's family—

''(aa) of the information which shall be disclosed in accordance with this paragraph;

''(bb) that the information disclosed will be used solely for purposes of determining eligibility for medical assistance under the State Medicaid plan or for child health assistance under the State CHIP plan; and

''(cc) that the family may elect to not have the information disclosed for such purposes; and

''(IV) enters into, or is subject to, an interagency agreement to limit the disclosure and use of the information disclosed.

''(ii) INCLUSION OF SPECIFIC PUBLIC AGENCIES.—Such term includes the following:

''(I) A public agency that determines eligibility for assistance under any of the following:

''(aa) The temporary assistance for needy families program funded under part A of title IV.

''(bb) A State program funded under part D of title IV.

''(cc) The State Medicaid plan.

''(dd) The State CHIP plan.

''(ee) The Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

''(ff) The Head Start Act (42 U.S.C. 9801 et seq.).

''(gg) The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(hh) The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(ii) The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

''(jj) The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.).

''(kk) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

''(ll) The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

''(II) A State-specified governmental agency that has fiscal liability or legal responsibility for the accuracy of the eligibility determination findings relied on by the State.

''(III) A public agency that is subject to an interagency agreement limiting the disclosure and use of the information disclosed for purposes of determining eligibility under the State Medicaid plan or the State CHIP plan.

''(iii) EXCLUSIONS.—Such term does not include an agency that determines eligibility for a program established under the Social Services Block Grant established under title XX or a private, for-profit organization.

''(iv) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

''(I) exempting a State Medicaid agency from complying with the requirements of section 1902(a)(4) relating to merit-based personnel standards for employees of the State Medicaid agency and safeguards against conflicts of interest); or

''(II) authorizing a State Medicaid agency that elects to use Express Lane agencies under this subparagraph to use the Express Lane option to avoid complying with such requirements for purposes of making eligibility determinations under the State Medicaid plan.

''(v) ADDITIONAL DEFINITIONS.—In this paragraph:

''(I) STATE.—The term 'State' means 1 of the 50 States or the District of Columbia.

''(II) STATE CHIP AGENCY.—The term 'State CHIP agency' means the State agency responsible for administering the State CHIP plan.

''(III) STATE CHIP PLAN.—The term 'State CHIP plan' means the State child health plan established under title XXI and includes any waiver of such plan.

''(IV) STATE MEDICAID AGENCY.—The term 'State Medicaid agency' means the State agency responsible for administering the State Medicaid plan.

''(V) STATE MEDICAID PLAN.—The term 'State Medicaid plan' means the State plan established under title XIX and includes any waiver of such plan.

''(G) CHILD DEFINED.—For purposes of this paragraph, the term 'child' means an individual under 19 years of age, or, at the option of a State, such higher age, not to exceed 21 years of age, as the State may elect.

''(H) STATE OPTION TO RELY ON STATE INCOME TAX DATA OR RETURN.—At the option of the State, a finding from an Express Lane agency may include gross income or adjusted gross income shown by State income tax records or returns.

''(I) APPLICATION.—This paragraph shall not apply with respect to eligibility determinations made after September 30, 2013.''.

(2) CHIP.—Section 2107(e)(1) (42 U.S.C. 1397gg(e)(1)) is amended by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following new subparagraph:

''(B) Section 1902(e)(13) (relating to the State option to rely on findings from an Express Lane agency to help evaluate a child's eligibility for medical assistance).''.

(b) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct, by grant, contract, or interagency agreement, a comprehensive, independent evaluation of the option provided under the amendments made by subsection (a). Such evaluation shall include an analysis of the effectiveness of the option, and shall include—

(A) obtaining a statistically valid sample of the children who were enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency and determining the percentage of children who were erroneously enrolled in such plans;

(B) determining whether enrolling children in such plans through reliance on a finding made by an Express Lane agency improves the ability of a State to identify and enroll low-income, uninsured children who are eligible but not enrolled in such plans;

(C) evaluating the administrative costs or savings related to identifying and enrolling children in such plans through reliance on such findings, and the extent to which such costs differ from the costs that the State otherwise would have incurred to identify and enroll low-income, uninsured children who are eligible but not enrolled in such plans; and

(D) any recommendations for legislative or administrative changes that would improve the effectiveness of enrolling children in such plans through reliance on such findings.

(2) REPORT TO CONGRESS.—Not later than September 30, 2012, the Secretary shall submit a report to Congress on the results of the evaluation under paragraph (1).

(3) FUNDING.—

(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out the evaluation under this subsection $5,000,000 for the period of fiscal years 2009 through 2012.

(B) BUDGET AUTHORITY.—Subparagraph (A) constitutes budget authority in advance of appropriations Act and represents the obligation of the Federal Government to provide for the payment of such amount to conduct the evaluation under this subsection.

(c) ELECTRONIC TRANSMISSION OF INFORMATION.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

''(dd) ELECTRONIC TRANSMISSION OF INFORMATION.—If the State agency determining eligibility for medical assistance under this title or child health assistance under title XXI verifies an element of eligibility based on information from an Express Lane Agency (as defined in subsection (e)(13)(F)), or from another public agency, then the applicant's signature under penalty of perjury shall not be required as to such element. Any signature requirement for an application for medical assistance may be satisfied through an electronic signature, as defined in section 1710(1) of the Government Paperwork Elimination Act (44 U.S.C. 3504 note). The requirements of subparagraphs (A) and (B) of section 1137(d)(2) may be met through evidence in digital or electronic form.''.

(d) AUTHORIZATION OF INFORMATION DISCLOSURE.—

(1) IN GENERAL.—Title XIX is amended by adding at the end the following new section:

''SEC. 1942. AUTHORIZATION TO RECEIVE RELEVANT INFORMATION.

''(a) IN GENERAL.—Notwithstanding any other provision of law, a Federal or State agency or private entity in possession of the sources of data directly relevant to eligibility determinations under this title (including eligibility files maintained by Express Lane agencies described in section 1902(e)(13)(F), information described in paragraph (2) or (3) of section 1137(a), vital records information about births in any State, and information described in sections 453(i) and 1902(a)(25)(I)) is authorized to convey such data or information to the State agency administering the State plan under this title, to the extent such conveyance meets the requirements of subsection (b).

''(b) REQUIREMENTS FOR CONVEYANCE.—Data or information may be conveyed pursuant to subsection (a) only if the following requirements are met:

''(1) The individual whose circumstances are described in the data or information (or such individual's parent, guardian, caretaker relative, or authorized representative) has either provided advance consent to disclosure or has not objected to disclosure after receiving advance notice of disclosure and a reasonable opportunity to object.

''(2) Such data or information are used solely for the purposes of—

''(A) identifying individuals who are eligible or potentially eligible for medical assistance under this title and enrolling or attempting to enroll such individuals in the State plan; and

''(B) verifying the eligibility of individuals for medical assistance under the State plan.

''(3) An interagency or other agreement, consistent with standards developed by the Secretary—

''(A) prevents the unauthorized use, disclosure, or modification of such data and otherwise meets applicable Federal requirements safeguarding privacy and data security; and

''(B) requires the State agency administering the State plan to use the data and information obtained under this section to seek to enroll individuals in the plan.

''(c) PENALTIES FOR IMPROPER DISCLOSURE.—

''(1) CIVIL MONEY PENALTY.—A private entity described in the subsection (a) that publishes, discloses, or makes known in any manner, or to any extent not authorized by Federal law, any information obtained under this section is subject to a civil money penalty in an amount equal to $10,000 for each such unauthorized publication or disclosure. The provisions of section 1128A (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

''(2) CRIMINAL PENALTY.—A private entity described in the subsection (a) that willfully publishes, discloses, or makes known in any manner, or to any extent not authorized by Federal law, any information obtained under this section shall be fined not more than $10,000 or imprisoned not more than 1 year, or both, for each such unauthorized publication or disclosure.

''(d) RULE OF CONSTRUCTION.—The limitations and requirements that apply to disclosure pursuant to this section shall not be construed to prohibit the conveyance or disclosure of data or information otherwise permitted under Federal law (without regard to this section).''.

(2) CONFORMING AMENDMENT TO TITLE XXI.—Section 2107(e)(1) (42 U.S.C. 1397gg(e)(1)), as amended by subsection (a)(2), is amended by adding at the end the following new subparagraph:

''(F) Section 1942 (relating to authorization to receive data directly relevant to eligibility determinations).''.

(3) CONFORMING AMENDMENT TO PROVIDE ACCESS TO DATA ABOUT ENROLLMENT IN INSURANCE FOR PURPOSES OF EVALUATING APPLICATIONS AND FOR CHIP.—Section 1902(a)(25)(I)(i) (42 U.S.C. 1396a(a)(25)(I)(i)) is amended—

(A) by inserting ''(and, at State option, individuals who apply or whose eligibility for medical assistance is being evaluated in accordance with section 1902(e)(13)(D))'' after ''with respect to individuals who are eligible''; and

(B) by inserting ''under this title (and, at State option, child health assistance under title XXI)'' after ''the State plan''.

(e) AUTHORIZATION FOR STATES ELECTING EXPRESS LANE OPTION TO RECEIVE CERTAIN DATA DIRECTLY RELEVANT TO DETERMINING ELIGIBILITY AND CORRECT AMOUNT OF ASSISTANCE.—The Secretary shall enter into such agreements as are necessary to permit a State that elects the Express Lane option under section 1902(e)(13) of the Social Security Act to receive data directly relevant to eligibility determinations and determining the correct amount of benefits under a State child health plan under CHIP or a State plan under Medicaid from the following:

(1) The National Directory of New Hires established under section 453(i) of the Social Security Act (42 U.S.C. 653(i)).

(2) Data regarding enrollment in insurance that may help to facilitate outreach and enrollment under the State Medicaid plan, the State CHIP plan, and such other programs as the Secretary may specify.

(f) EFFECTIVE DATE.—The amendments made by this section are effective on the date of the enactment of this Act.

Subtitle B—Reducing Barriers to Enrollment

SEC. 211. VERIFICATION OF DECLARATION OF CITIZENSHIP OR NATIONALITY FOR PURPOSES OF ELIGIBILITY FOR MEDICAID AND CHIP.

(a) ALTERNATIVE STATE PROCESS FOR VERIFICATION OF DECLARATION OF CITIZENSHIP OR NATIONALITY FOR PURPOSES OF ELIGIBILITY FOR MEDICAID.—

(1) ALTERNATIVE TO DOCUMENTATION REQUIREMENT.—

(A) IN GENERAL.—Section 1902 (42 U.S.C. 1396a), as amended by section 203(c), is amended—

(i) in subsection (a)(46)—

(I) by inserting ''(A)'' after ''(46)'';

(II) by adding ''and'' after the semicolon; and

(III) by adding at the end the following new subparagraph:

''(B) provide, with respect to an individual declaring to be a citizen or national of the United States for purposes of establishing eligibility under this title, that the State shall satisfy the requirements of—

''(i) section 1903(x); or

''(ii) subsection (ee);''; and

(ii) by adding at the end the following new subsection:

''(ee)(1) For purposes of subsection (a)(46)(B)(ii), the requirements of this subsection with respect to an individual declaring to be a citizen or national of the United States for purposes of establishing eligibility under this title, are, in lieu of requiring the individual to present satisfactory documentary evidence of citizenship or nationality under section 1903(x) (if the individual is not described in paragraph (2) of that section), as follows:

''(A) The State submits the name and social security number of the individual to the Commissioner of Social Security as part of the program established under paragraph (2).

''(B) If the State receives notice from the Commissioner of Social Security that the name or social security number, or the declaration of citizenship or nationality, of the individual is inconsistent with information in the records maintained by the Commissioner—

''(i) the State makes a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors, by contacting the individual to confirm the accuracy of the name or social security number submitted or declaration of citizenship or nationality and by taking such additional actions as the Secretary, through regulation or other guidance, or the State may identify, and continues to provide the individual with medical assistance while making such effort; and

''(ii) in the case such inconsistency is not resolved under clause (i), the State—

''(I) notifies the individual of such fact;

''(II) provides the individual with a period of 90 days from the date on which the notice required under subclause (I) is received by the individual to either present satisfactory documentary evidence of citizenship or nationality (as defined in section 1903(x)(3)) or resolve the inconsistency with the Commissioner of Social Security (and continues to provide the individual with medical assistance during such 90-day period); and

''(III) disenrolls the individual from the State plan under this title within 30 days after the end of such 90-day period if no such documentary evidence is presented or if such inconsistency is not resolved.

''(2)(A) Each State electing to satisfy the requirements of this subsection for purposes of section 1902(a)(46)(B) shall establish a program under which the State submits at least monthly to the Commissioner of Social Security for comparison of the name and social security number, of each individual newly enrolled in the State plan under this title that month who is not described in section 1903(x)(2) and who declares to be a United States citizen or national, with information in records maintained by the Commissioner.

''(B) In establishing the State program under this paragraph, the State may enter into an agreement with the Commissioner of Social Security—

''(i) to provide, through an on-line system or otherwise, for the electronic submission of, and response to, the information submitted under subparagraph (A) for an individual enrolled in the State plan under this title who declares to be citizen or national on at least a monthly basis; or

''(ii) to provide for a determination of the consistency of the information submitted with the information maintained in the records of the Commissioner through such other method as agreed to by the State and the Commissioner and approved by the Secretary, provided that such method is no more burdensome for individuals to comply with than any burdens that may apply under a method described in clause (i).

''(C) The program established under this paragraph shall provide that, in the case of any individual who is required to submit a social security number to the State under subparagraph (A) and who is unable to provide the State with such number, shall be provided with at least the reasonable opportunity to present satisfactory documentary evidence of citizenship or nationality (as defined in section 1903(x)(3)) as is provided under clauses (i) and (ii) of section 1137(d)(4)(A) to an individual for the submittal to the State of evidence indicating a satisfactory immigration status.

''(3)(A) The State agency implementing the plan approved under this title shall, at such times and in such form as the Secretary may specify, provide information on the percentage each month that the inconsistent submissions bears to the total submissions made for comparison for such month. For purposes of this subparagraph, a name, social security number, or declaration of citizenship or nationality of an individual shall be treated as inconsistent and included in the determination of such percentage only if—

''(i) the information submitted by the individual is not consistent with information in records maintained by the Commissioner of Social Security;

''(ii) the inconsistency is not resolved by the State;

''(iii) the individual was provided with a reasonable period of time to resolve the inconsistency with the Commissioner of Social Security or provide satisfactory documentation of citizenship status and did not successfully resolve such inconsistency; and

''(iv) payment has been made for an item or service furnished to the individual under this title.

''(B) If, for any fiscal year, the average monthly percentage determined under subparagraph (A) is greater than 3 percent—

''(i) the State shall develop and adopt a corrective plan to review its procedures for verifying the identities of individuals seeking to enroll in the State plan under this title and to identify and implement changes in such procedures to improve their accuracy; and

''(ii) pay to the Secretary an amount equal to the amount which bears the same ratio to the total payments under the State plan for the fiscal year for providing medical assistance to individuals who provided inconsistent information as the number of individuals with inconsistent information in excess of 3 percent of such total submitted bears to the total number of individuals with inconsistent information.

''(C) The Secretary may waive, in certain limited cases, all or part of the payment under subparagraph (B)(ii) if the State is unable to reach the allowable error rate despite a good faith effort by such State.

''(D) Subparagraphs (A) and (B) shall not apply to a State for a fiscal year if there is an agreement described in paragraph (2)(B) in effect as of the close of the fiscal year that provides for the submission on a real-time basis of the information described in such paragraph.

''(4) Nothing in this subsection shall affect the rights of any individual under this title to appeal any disenrollment from a State plan.''.

(B) COSTS OF IMPLEMENTING AND MAINTAINING SYSTEM.—Section 1903(a)(3) (42 U.S.C. 1396b(a)(3)) is amended—

(i) by striking ''plus'' at the end of subparagraph (E) and inserting ''and'', and

(ii) by adding at the end the following new subparagraph:

''(F)(i) 90 percent of the sums expended during the quarter as are attributable to the design, development, or installation of such mechanized verification and information retrieval systems as the Secretary determines are necessary to implement section 1902(ee) (including a system described in paragraph (2)(B) thereof), and

''(ii) 75 percent of the sums expended during the quarter as are attributable to the operation of systems to which clause (i) applies, plus''.

(2) LIMITATION ON WAIVER AUTHORITY.—Notwithstanding any provision of section 1115 of the Social Security Act (42 U.S.C. 1315), or any other provision of law, the Secretary may not waive the requirements of section 1902(a)(46)(B) of such Act (42 U.S.C. 1396a(a)(46)(B)) with respect to a State.

(3) CONFORMING AMENDMENTS.—Section 1903 (42 U.S.C. 1396b) is amended—

(A) in subsection (i)(22), by striking ''subsection (x)'' and inserting ''section 1902(a)(46)(B)''; and

(B) in subsection (x)(1), by striking ''subsection (i)(22)'' and inserting ''section 1902(a)(46)(B)(i)''.

(4) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Commissioner of Social Security $5,000,000 to remain available until expended to carry out the Commissioner's responsibilities under section 1902(ee) of the Social Security Act, as added by subsection (a).

(b) CLARIFICATION OF REQUIREMENTS RELATING TO PRESENTATION OF SATISFACTORY DOCUMENTARY EVIDENCE OF CITIZENSHIP OR NATIONALITY.—

(1) ACCEPTANCE OF DOCUMENTARY EVIDENCE ISSUED BY A FEDERALLY RECOGNIZED INDIAN TRIBE.—Section 1903(x)(3)(B) (42 U.S.C. 1396b(x)(3)(B)) is amended—

(A) by redesignating clause (v) as clause (vi); and

(B) by inserting after clause (iv), the following new clause:

''(v)(I) Except as provided in subclause (II), a document issued by a federally recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe (such as a tribal enrollment card or certificate of degree of Indian blood).

''(II) With respect to those federally recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection.''.

(2) REQUIREMENT TO PROVIDE REASONABLE OPPORTUNITY TO PRESENT SATISFACTORY DOCUMENTARY EVIDENCE.—Section 1903(x) (42 U.S.C. 1396b(x)) is amended by adding at the end the following new paragraph:

''(4) In the case of an individual declaring to be a citizen or national of the United States with respect to whom a State requires the presentation of satisfactory documentary evidence

of citizenship or nationality under section 1902(a)(46)(B)(i), the individual shall be provided at least the reasonable opportunity to present satisfactory documentary evidence of citizenship or nationality under this subsection as is provided under clauses (i) and (ii) of section 1137(d)(4)(A) to an individual for the submittal to the State of evidence indicating a satisfactory immigration status.''.

(3) CHILDREN BORN IN THE UNITED STATES TO MOTHERS ELIGIBLE FOR MEDICAID.—

(A) CLARIFICATION OF RULES.—Section 1903(x) (42 U.S.C. 1396b(x)), as amended by paragraph (2), is amended—

(i) in paragraph (2)—

(I) in subparagraph (C), by striking ''or'' at the end;

(II) by redesignating subparagraph (D) as subparagraph (E); and

(III) by inserting after subparagraph (C) the following new subparagraph:

''(D) pursuant to the application of section 1902(e)(4) (and, in the case of an individual who is eligible for medical assistance on such basis, the individual shall be deemed to have provided satisfactory documentary evidence of citizenship or nationality and shall not be required to provide further documentary evidence on any date that occurs during or after the period in which the individual is eligible for medical assistance on such basis); or''; and

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

''(5) Nothing in subparagraph (A) or (B) of section 1902(a)(46), the preceding paragraphs of this subsection, or the Deficit Reduction Act of 2005, including section 6036 of such Act, shall be construed as changing the requirement of section 1902(e)(4) that a child born in the United States to an alien mother for whom medical assistance for the delivery of such child is available as treatment of an emergency medical condition pursuant to subsection (v) shall be deemed eligible for medical assistance during the first year of such child's life.''.

(B) STATE REQUIREMENT TO ISSUE SEPARATE IDENTIFICATION NUMBER.—Section 1902(e)(4) (42 U.S.C. 1396a(e)(4)) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, in the case of a child who is born in the United States to an alien mother for whom medical assistance for the delivery of the child is made available pursuant to section 1903(v), the State immediately shall issue a separate identification number for the child upon notification by the facility at which such delivery occurred of the child's birth.''.

(4) TECHNICAL AMENDMENTS.—Section 1903(x)(2) (42 U.S.C. 1396b(x)) is amended—

(A) in subparagraph (B)—

(i) by realigning the left margin of the matter preceding clause (i) 2 ems to the left; and

(ii) by realigning the left margins of clauses (i) and (ii), respectively, 2 ems to the left; and

(B) in subparagraph (C)—

(i) by realigning the left margin of the matter preceding clause (i) 2 ems to the left; and

(ii) by realigning the left margins of clauses (i) and (ii), respectively, 2 ems to the left.

(c) APPLICATION OF DOCUMENTATION SYSTEM TO CHIP.—

(1) IN GENERAL.—Section 2105(c) (42 U.S.C. 1397ee(c)), as amended by section 114(a), is amended by adding at the end the following new paragraph:

''(9) CITIZENSHIP DOCUMENTATION REQUIREMENTS.—

''(A) IN GENERAL.—No payment may be made under this section with respect to an individual who has, or is, declared to be a citizen or national of the United States for purposes of establishing eligibility under this title unless the State meets the requirements of section 1902(a)(46)(B) with respect to the individual.

''(B) ENHANCED PAYMENTS.—Notwithstanding subsection (b), the enhanced FMAP with respect to payments under subsection (a) for expenditures described in clause (i) or (ii) of section 1903(a)(3)(F) necessary to comply with subparagraph (A) shall in no event be less than 90 percent and 75 percent, respectively.''.

(2) NONAPPLICATION OF ADMINISTRATIVE EXPENDITURES CAP.—Section 2105(c)(2)(C) (42 U.S.C. 1397ee(c)(2)(C)), as amended by section 202(b), is amended by adding at the end the following:

''(ii) EXPENDITURES TO COMPLY WITH CITIZENSHIP OR NATIONALITY VERIFICATION REQUIREMENTS.—Expenditures necessary for the State to comply with paragraph (9)(A).''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall take effect on January 1, 2010.

(B) TECHNICAL AMENDMENTS.—The amendments made by—

(i) paragraphs (1), (2), and (3) of subsection (b) shall take effect as if included in the enactment of section 6036 of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 80); and

(ii) paragraph (4) of subsection (b) shall take effect as if included in the enactment of section 405 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432; 120 Stat. 2996).

(2) RESTORATION OF ELIGIBILITY.—In the case of an individual who, during the period that began on July 1, 2006, and ends on October 1, 2009, was determined to be ineligible for medical assistance under a State Medicaid plan, including any waiver of such plan, solely as a result of the application of subsections (i)(22) and (x) of section 1903 of the Social Security Act (as in effect during such period), but who would have been determined eligible for such assistance if such subsections, as amended by subsection (b), had applied to the individual, a State may deem the individual to be eligible for such assistance as of the date that the individual was determined to be ineligible for such medical assistance on such basis.

(3) SPECIAL TRANSITION RULE FOR INDIANS.—During the period that begins on July 1, 2006, and ends on the effective date of final regulations issued under subclause (II) of section 1903(x)(3)(B)(v) of the Social Security Act (42 U.S.C. 1396b(x)(3)(B)(v)) (as added by subsection (b)(1)(B)), an individual who is a member of a federally-recognized Indian tribe described in subclause (II) of that section who presents a document described in subclause (I) of such section that is issued by such Indian tribe, shall be deemed to have presented satisfactory evidence of citizenship or nationality for purposes of satisfying the requirement of subsection (x) of section 1903 of such Act.

SEC. 212. REDUCING ADMINISTRATIVE BARRIERS TO ENROLLMENT.

Section 2102(b) (42 U.S.C. 1397bb(b)) is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph:

''(4) REDUCTION OF ADMINISTRATIVE BARRIERS TO ENROLLMENT.—

''(A) IN GENERAL.—Subject to subparagraph (B), the plan shall include a description of the procedures used to reduce administrative barriers to the enrollment of children and pregnant women who are eligible for medical assistance under title XIX or for child health assistance or health benefits coverage under this title. Such procedures shall be established and revised as often as the State determines appropriate to take into account the most recent information available to the State identifying such barriers.

''(B) DEEMED COMPLIANCE IF JOINT APPLICATION AND RENEWAL PROCESS THAT PERMITS APPLICATION OTHER THAN IN PERSON.—A State shall be deemed to comply with subparagraph (A) if the State's application and renewal forms and supplemental forms (if any) and information verification process is the same for purposes of establishing and renewing eligibility for children and pregnant women for medical assistance under title XIX and child health assistance under this title, and such process does not require an application to be made in person or a face-to-face interview.''.

SEC. 213. MODEL OF INTERSTATE COORDINATED ENROLLMENT AND COVERAGE PROCESS.

(a) IN GENERAL.—In order to assure continuity of coverage of low-income children under the Medicaid program and the State Children's Health Insurance Program (CHIP), not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with State Medicaid and CHIP directors and organizations representing program beneficiaries, shall develop a model process for the coordination of the enrollment, retention, and coverage under such programs of children who, because of migration of families, emergency evacuations, natural or other disasters, public health emergencies, educational needs, or otherwise, frequently change their State of residency or otherwise are temporarily located outside of the State of their residency.

(b) REPORT TO CONGRESS.—After development of such model process, the Secretary of Health and Human Services shall submit to Congress a report describing additional steps or authority needed to make further improvements to coordinate the enrollment, retention, and coverage under CHIP and Medicaid of children described in subsection (a).

SEC. 214. PERMITTING STATES TO ENSURE COVERAGE WITHOUT A 5-YEAR DELAY OF CERTAIN CHILDREN AND PREGNANT WOMEN UNDER THE MEDICAID PROGRAM AND CHIP.

(a) MEDICAID PROGRAM.—Section 1903(v) (42 U.S.C. 1396b(v)) is amended—

(1) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

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

''(4)(A) A State may elect (in a plan amendment under this title) to provide medical assistance under this title, notwithstanding sections 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to children and pregnant women who are lawfully residing in the United States (including battered individuals described in section 431(c) of such Act) and who are otherwise eligible for such assistance, within either or both of the following eligibility categories:

''(i) PREGNANT WOMEN.—Women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).

''(ii) CHILDREN.—Individuals under 21 years of age, including optional targeted low-income children described in section 1905(u)(2)(B).

''(B) In the case of a State that has elected to provide medical assistance to a category of aliens under subparagraph (A), no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.

''(C) As part of the State's ongoing eligibility redetermination requirements and procedures for an individual provided medical assistance as a result of an election by the State under subparagraph (A), a State shall verify that the individual continues to lawfully reside in the United States using the documentation presented to the State by the individual on initial enrollment. If the State cannot successfully verify that the individual is lawfully residing in the United States in this manner, it shall require that the individual provide the State with further documentation or other evidence to verify that the individual is lawfully residing in the United States.''.

(b) CHIP.—Section 2107(e)(1) (42 U.S.C. 1397gg(e)(1)), as amended by sections 203(a)(2)

and 203(d)(2), is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively and by inserting after subparagraph (D) the following new subparagraph:

''(E) Paragraph (4) of section 1903(v) (relating to optional coverage of categories of lawfully residing immigrant children or pregnant women), but only if the State has elected to apply such paragraph with respect to such category of children or pregnant women under title XIX.''.

TITLE III—REDUCING BARRIERS TO PROVIDING PREMIUM ASSISTANCE

Subtitle A—Additional State Option for Providing Premium Assistance

SEC. 301. ADDITIONAL STATE OPTION FOR PROVIDING PREMIUM ASSISTANCE.

(a) CHIP.—

(1) IN GENERAL.—Section 2105(c) (42 U.S.C. 1397ee(c)), as amended by sections 114(a) and 211(c), is amended by adding at the end the following:

''(10) STATE OPTION TO OFFER PREMIUM ASSISTANCE.—

''(A) IN GENERAL.—A State may elect to offer a premium assistance subsidy (as defined in subparagraph (C)) for qualified employer-sponsored coverage (as defined in subparagraph (B)) to all targeted low-income children who are eligible for child health assistance under the plan and have access to such coverage in accordance with the requirements of this paragraph. No subsidy shall be provided to a targeted low-income child under this paragraph unless the child (or the child's parent) voluntarily elects to receive such a subsidy. A State may not require such an election as a condition of receipt of child health assistance.

''(B) QUALIFIED EMPLOYER-SPONSORED COVERAGE.—

''(i) IN GENERAL.—Subject to clause (ii), in this paragraph, the term 'qualified employer-sponsored coverage' means a group health plan or health insurance coverage offered through an employer—

''(I) that qualifies as creditable coverage as a group health plan under section 2701(c)(1) of the Public Health Service Act;

''(II) for which the employer contribution toward any premium for such coverage is at least 40 percent; and

''(III) that is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification for purposes of paragraph (3)(A)(ii) of section 105(h) of the Internal Revenue Code of 1986 (but determined without regard to clause (i) of subparagraph (B) of such paragraph).

''(ii) EXCEPTION.—Such term does not include coverage consisting of—

''(I) benefits provided under a health flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986); or

''(II) a high deductible health plan (as defined in section 223(c)(2) of such Code), without regard to whether the plan is purchased in conjunction with a health savings account (as defined under section 223(d) of such Code).

''(C) PREMIUM ASSISTANCE SUBSIDY.—

''(i) IN GENERAL.—In this paragraph, the term 'premium assistance subsidy' means, with respect to a targeted low-income child, the amount equal to the difference between the employee contribution required for enrollment only of the employee under qualified employer-sponsored coverage and the employee contribution required for enrollment of the employee and the child in such coverage, less any applicable premium cost-sharing applied under the State child health plan (subject to the limitations imposed under section 2103(e), including the requirement to count the total amount of the employee contribution required for enrollment of the employee and the child in such coverage toward the annual aggregate cost-sharing limit applied under paragraph (3)(B) of such section).

''(ii) STATE PAYMENT OPTION.—A State may provide a premium assistance subsidy either as reimbursement to an employee for out-of-pocket expenditures or, subject to clause (iii), directly to the employee's employer.

''(iii) EMPLOYER OPT-OUT.—An employer may notify a State that it elects to opt-out of being directly paid a premium assistance subsidy on behalf of an employee. In the event of such a notification, an employer shall withhold the total amount of the employee contribution required for enrollment of the employee and the child in the qualified employer-sponsored coverage and the State shall pay the premium assistance subsidy directly to the employee.

''(iv) TREATMENT AS CHILD HEALTH ASSISTANCE.—Expenditures for the provision of premium assistance subsidies shall be considered child health assistance described in paragraph (1)(C) of subsection (a) for purposes of making payments under that subsection.

''(D) APPLICATION OF SECONDARY PAYOR RULES.—The State shall be a secondary payor for any items or services provided under the qualified employer-sponsored coverage for which the State provides child health assistance under the State child health plan.

''(E) REQUIREMENT TO PROVIDE SUPPLEMENTAL COVERAGE FOR BENEFITS AND COST-SHARING PROTECTION PROVIDED UNDER THE STATE CHILD HEALTH PLAN.—

''(i) IN GENERAL.—Notwithstanding section 2110(b)(1)(C), the State shall provide for each targeted low-income child enrolled in qualified employer-sponsored coverage, supplemental coverage consisting of—

''(I) items or services that are not covered, or are only partially covered, under the qualified employer-sponsored coverage; and

''(II) cost-sharing protection consistent with section 2103(e).

''(ii) RECORD KEEPING REQUIREMENTS.—For purposes of carrying out clause (i), a State may elect to directly pay out-of-pocket expenditures for cost-sharing imposed under the qualified employer-sponsored coverage and collect or not collect all or any portion of such expenditures from the parent of the child.

''(F) APPLICATION OF WAITING PERIOD IMPOSED UNDER THE STATE.—Any waiting period imposed under the State child health plan prior to the provision of child health assistance to a targeted low-income child under the State plan shall apply to the same extent to the provision of a premium assistance subsidy for the child under this paragraph.

''(G) OPT-OUT PERMITTED FOR ANY MONTH.—A State shall establish a process for permitting the parent of a targeted low-income child receiving a premium assistance subsidy to disenroll the child from the qualified employer-sponsored coverage and enroll the child in, and receive child health assistance under, the State child health plan, effective on the first day of any month for which the child is eligible for such assistance and in a manner that ensures continuity of coverage for the child.

''(H) APPLICATION TO PARENTS.—If a State provides child health assistance or health benefits coverage to parents of a targeted low-income child in accordance with section 2111(b), the State may elect to offer a premium assistance subsidy to a parent of a targeted low-income child who is eligible for such a subsidy under this paragraph in the same manner as the State offers such a subsidy for the enrollment of the child in qualified employer-sponsored coverage, except that—

''(i) the amount of the premium assistance subsidy shall be increased to take into account the cost of the enrollment of the parent in the qualified employer-sponsored coverage or, at the option of the State if the State determines it cost-effective, the cost of the enrollment of the child's family in such coverage; and

''(ii) any reference in this paragraph to a child is deemed to include a reference to the parent or, if applicable under clause (i), the family of the child.

''(I) ADDITIONAL STATE OPTION FOR PROVIDING PREMIUM ASSISTANCE.—

''(i) IN GENERAL.—A State may establish an employer-family premium assistance purchasing pool for employers with less than 250 employees who have at least 1 employee who is a pregnant woman eligible for assistance under the State child health plan (including through the application of an option described in section 2112(f)) or a member of a family with at least 1 targeted low-income child and to provide a premium assistance subsidy under this paragraph for enrollment in coverage made available through such pool.

''(ii) ACCESS TO CHOICE OF COVERAGE.—A State that elects the option under clause (i) shall identify and offer access to not less than 2 private health plans that are health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in section 2103(b) or benchmark-equivalent coverage that meets the requirements of section 2103(a)(2) for employees described in clause (i).

''(iii) CLARIFICATION OF PAYMENT FOR ADMINISTRATIVE EXPENDITURES.—Nothing in this subparagraph shall be construed as permitting payment under this section for administrative expenditures attributable to the establishment or operation of such pool, except to the extent that such payment would otherwise be permitted under this title.

''(J) NO EFFECT ON PREMIUM ASSISTANCE WAIVER PROGRAMS.—Nothing in this paragraph shall be construed as limiting the authority of a State to offer premium assistance under section 1906 or 1906A, a waiver described in paragraph (2)(B) or (3), a waiver approved under section 1115, or other authority in effect prior to the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009.

''(K) NOTICE OF AVAILABILITY.—If a State elects to provide premium assistance subsidies in accordance with this paragraph, the State shall—

''(i) include on any application or enrollment form for child health assistance a notice of the availability of premium assistance subsidies for the enrollment of targeted low-income children in qualified employer-sponsored coverage;

''(ii) provide, as part of the application and enrollment process under the State child health plan, information describing the availability of such subsidies and how to elect to obtain such a subsidy; and

''(iii) establish such other procedures as the State determines necessary to ensure that parents are fully informed of the choices for receiving child health assistance under the State child health plan or through the receipt of premium assistance subsidies.

''(L) APPLICATION TO QUALIFIED EMPLOYER-SPONSORED BENCHMARK COVERAGE.—If a group health plan or health insurance coverage offered through an employer is certified by an actuary as health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in section 2103(b) or benchmark-equivalent coverage that meets the requirements of section 2103(a)(2), the State may provide premium assistance subsidies for enrollment of targeted low-income children in such group health plan or health insurance coverage in the same manner as such subsidies are provided under this paragraph for enrollment in qualified employer-sponsored coverage, but without regard to the requirement to provide supplemental coverage for benefits and cost-sharing protection provided under the State child health plan under subparagraph (E).

''(M) SATISFACTION OF COST-EFFECTIVENESS TEST.—Premium assistance subsidies for qualified employer-sponsored coverage offered under this paragraph shall be deemed to meet the requirement of subparagraph (A) of paragraph (3).

''(N) COORDINATION WITH MEDICAID.—In the case of a targeted low-income child who receives child health assistance through a State plan under title XIX and who voluntarily elects to receive a premium assistance subsidy under this

section, the provisions of section 1906A shall apply and shall supersede any other provisions of this paragraph that are inconsistent with such section.''.

(2) DETERMINATION OF COST-EFFECTIVENESS FOR PREMIUM ASSISTANCE OR PURCHASE OF FAMILY COVERAGE.—

(A) IN GENERAL.—Section 2105(c)(3)(A) (42 U.S.C. 1397ee(c)(3)(A)) is amended by striking ''relative to'' and all that follows through the comma and inserting ''relative to

''(i) the amount of expenditures under the State child health plan, including administrative expenditures, that the State would have made to provide comparable coverage of the targeted low-income child involved or the family involved (as applicable); or

''(ii) the aggregate amount of expenditures that the State would have made under the State child health plan, including administrative expenditures, for providing coverage under such plan for all such children or families.''.

(B) NONAPPLICATION TO PREVIOUSLY APPROVED COVERAGE.—The amendment made by subparagraph (A) shall not apply to coverage the purchase of which has been approved by the Secretary under section 2105(c)(3) of the Social Security Act prior to the date of enactment of this Act.

(b) MEDICAID.—Title XIX is amended by inserting after section 1906 the following new section:

''PREMIUM ASSISTANCE OPTION FOR CHILDREN

''SEC. 1906A. (a) IN GENERAL.—A State may elect to offer a premium assistance subsidy (as defined in subsection (c)) for qualified employer-sponsored coverage (as defined in subsection (b)) to all individuals under age 19 who are entitled to medical assistance under this title (and to the parent of such an individual) who have access to such coverage if the State meets the requirements of this section.

''(b) QUALIFIED EMPLOYER-SPONSORED COVERAGE.—

''(1) IN GENERAL.—Subject to paragraph (2)), in this paragraph, the term 'qualified employer-sponsored coverage' means a group health plan or health insurance coverage offered through an employer—

''(A) that qualifies as creditable coverage as a group health plan under section 2701(c)(1) of the Public Health Service Act;

''(B) for which the employer contribution toward any premium for such coverage is at least 40 percent; and

''(C) that is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification for purposes of paragraph (3)(A)(ii) of section 105(h) of the Internal Revenue Code of 1986 (but determined without regard to clause (i) of subparagraph (B) of such paragraph).

''(2) EXCEPTION.—Such term does not include coverage consisting of—

''(A) benefits provided under a health flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986); or

''(B) a high deductible health plan (as defined in section 223(c)(2) of such Code), without regard to whether the plan is purchased in conjunction with a health savings account (as defined under section 223(d) of such Code).

''(3) TREATMENT AS THIRD PARTY LIABILITY.—The State shall treat the coverage provided under qualified employer-sponsored coverage as a third party liability under section 1902(a)(25).

''(c) PREMIUM ASSISTANCE SUBSIDY.—In this section, the term 'premium assistance subsidy' means the amount of the employee contribution for enrollment in the qualified employer-sponsored coverage by the individual under age 19 or by the individual's family. Premium assistance subsidies under this section shall be considered, for purposes of section 1903(a), to be a payment for medical assistance.

''(d) VOLUNTARY PARTICIPATION.—

''(1) EMPLOYERS.—Participation by an employer in a premium assistance subsidy offered by a State under this section shall be voluntary. An employer may notify a State that it elects to opt-out of being directly paid a premium assistance subsidy on behalf of an employee.

''(2) BENEFICIARIES.—No subsidy shall be provided to an individual under age 19 under this section unless the individual (or the individual's parent) voluntarily elects to receive such a subsidy. A State may not require such an election as a condition of receipt of medical assistance. State may not require, as a condition of an individual under age 19 (or the individual's parent) being or remaining eligible for medical assistance under this title, apply for enrollment in qualified employer-sponsored coverage under this section.

''(3) OPT-OUT PERMITTED FOR ANY MONTH.—A State shall establish a process for permitting the parent of an individual under age 19 receiving a premium assistance subsidy to disenroll the individual from the qualified employer-sponsored coverage.

''(e) REQUIREMENT TO PAY PREMIUMS AND COST-SHARING AND PROVIDE SUPPLEMENTAL COVERAGE.—In the case of the participation of an individual under age 19 (or the individual's parent) in a premium assistance subsidy under this section for qualified employer-sponsored coverage, the State shall provide for payment of all enrollee premiums for enrollment in such coverage and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this title (exceeding the amount otherwise permitted under section 1916 or, if applicable, section 1916A). The fact that an individual under age 19 (or a parent) elects to enroll in qualified employer-sponsored coverage under this section shall not change the individual's (or parent's) eligibility for medical assistance under the State plan, except insofar as section 1902(a)(25) provides that payments for such assistance shall first be made under such coverage.''.

(c) GAO STUDY AND REPORT.—Not later than January 1, 2010, the Comptroller General of the United States shall study cost and coverage issues relating to any State premium assistance programs for which Federal matching payments are made under title XIX or XXI of the Social Security Act, including under waiver authority, and shall submit a report to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives on the results of such study.

SEC. 302. OUTREACH, EDUCATION, AND ENROLLMENT ASSISTANCE.

(a) REQUIREMENT TO INCLUDE DESCRIPTION OF OUTREACH, EDUCATION, AND ENROLLMENT EFFORTS RELATED TO PREMIUM ASSISTANCE SUBSIDIES IN STATE CHILD HEALTH PLAN.—Section 2102(c) (42 U.S.C. 1397bb(c)) is amended by adding at the end the following new paragraph:

''(3) PREMIUM ASSISTANCE SUBSIDIES.—In the case of a State that provides for premium assistance subsidies under the State child health plan in accordance with paragraph (2)(B), (3), or (10) of section 2105(c), or a waiver approved under section 1115, outreach, education, and enrollment assistance for families of children likely to be eligible for such subsidies, to inform such families of the availability of, and to assist them in enrolling their children in, such subsidies, and for employers likely to provide coverage that is eligible for such subsidies, including the specific, significant resources the State intends to apply to educate employers about the availability of premium assistance subsidies under the State child health plan.''.

(b) NONAPPLICATION OF 10 PERCENT LIMIT ON OUTREACH AND CERTAIN OTHER EXPENDITURES.—Section 2105(c)(2)(C) (42 U.S.C. 1397ee(c)(2)(C)), as amended by section 211(c)(2), is amended by adding at the end the following new clause:

''(iii) EXPENDITURES FOR OUTREACH TO INCREASE THE ENROLLMENT OF CHILDREN UNDER THIS TITLE AND TITLE xix THROUGH PREMIUM ASSISTANCE SUBSIDIES.—Expenditures for outreach activities to families of children likely to be eligible for premium assistance subsidies in accordance with paragraph (2)(B), (3), or (10), or a waiver approved under section 1115, to inform such families of the availability of, and to assist them in enrolling their children in, such subsidies, and to employers likely to provide qualified employer-sponsored coverage (as defined in subparagraph (B) of such paragraph), but not to exceed an amount equal to 1.25 percent of the maximum amount permitted to be expended under subparagraph (A) for items described in subsection (a)(1)(D).''.

Subtitle B—Coordinating Premium Assistance With Private Coverage

SEC. 311. SPECIAL ENROLLMENT PERIOD UNDER GROUP HEALTH PLANS IN CASE OF TERMINATION OF MEDICAID OR CHIP COVERAGE OR ELIGIBILITY FOR ASSISTANCE IN PURCHASE OF EMPLOYMENT-BASED COVERAGE; COORDINATION OF COVERAGE.

(a) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—Section 9801(f) of the Internal Revenue Code of 1986 (relating to special enrollment periods) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES RELATING TO MEDICAID AND CHIP.—

''(A) IN GENERAL.—A group health plan shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

''(i) TERMINATION OF MEDICAID OR CHIP COVERAGE.—The employee or dependent is covered under a Medicaid plan under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act and coverage of the employee or dependent under such a plan is terminated as a result of loss of eligibility for such coverage and the employee requests coverage under the group health plan not later than 60 days after the date of termination of such coverage.

''(ii) ELIGIBILITY FOR EMPLOYMENT ASSISTANCE UNDER MEDICAID OR CHIP.—The employee or dependent becomes eligible for assistance, with respect to coverage under the group health plan under such Medicaid plan or State child health plan (including under any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health plan not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance.

''(B) EMPLOYEE OUTREACH AND DISCLOSURE.—

''(i) OUTREACH TO EMPLOYEES REGARDING AVAILABILITY OF MEDICAID AND CHIP COVERAGE.—

''(I) IN GENERAL.—Each employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act, or child health assistance under a State child health plan under title XXI of such Act, in the form of premium assistance for the purchase of coverage under a group health plan, shall provide to each employee a written notice informing the employee of potential opportunities then currently available in the State in which the employee resides for premium assistance under such plans for health coverage of the employee or the employee's dependents. For purposes of compliance with this clause, the employer may use any State-specific model notice developed in accordance with section 701(f)(3)(B)(i)(II) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(f)(3)(B)(i)(II)).

''(II) OPTION TO PROVIDE CONCURRENT WITH PROVISION OF PLAN MATERIALS TO EMPLOYEE.—

An employer may provide the model notice applicable to the State in which an employee resides concurrent with the furnishing of materials notifying the employee of health plan eligibility, concurrent with materials provided to the employee in connection with an open season or election process conducted under the plan, or concurrent with the furnishing of the summary plan description as provided in section 104(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024).

''(ii) DISCLOSURE ABOUT GROUP HEALTH PLAN BENEFITS TO STATES FOR MEDICAID AND CHIP ELIGIBLE INDIVIDUALS.—In the case of a participant or beneficiary of a group health plan who is covered under a Medicaid plan of a State under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act, the plan administrator of the group health plan shall disclose to the State, upon request, information about the benefits available under the group health plan in sufficient specificity, as determined under regulations of the Secretary of Health and Human Services in consultation with the Secretary that require use of the model coverage coordination disclosure form developed under section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009, so as to permit the State to make a determination (under paragraph (2)(B), (3), or (10) of section 2105(c) of the Social Security Act or otherwise) concerning the cost-effectiveness of the State providing medical or child health assistance through premium assistance for the purchase of coverage under such group health plan and in order for the State to provide supplemental benefits required under paragraph (10)(E) of such section or other authority.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT.—

(A) IN GENERAL.—Section 701(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(f)) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES FOR APPLICATION IN CASE OF MEDICAID AND CHIP.—

''(A) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

''(i) TERMINATION OF MEDICAID OR CHIP COVERAGE.—The employee or dependent is covered under a Medicaid plan under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act and coverage of the employee or dependent under such a plan is terminated as a result of loss of eligibility for such coverage and the employee requests coverage under the group health plan (or health insurance coverage) not later than 60 days after the date of termination of such coverage.

''(ii) ELIGIBILITY FOR EMPLOYMENT ASSISTANCE UNDER MEDICAID OR CHIP.—The employee or dependent becomes eligible for assistance, with respect to coverage under the group health plan or health insurance coverage, under such Medicaid plan or State child health plan (including under any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health plan or health insurance coverage not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance.

''(B) COORDINATION WITH MEDICAID AND CHIP.—

''(i) OUTREACH TO EMPLOYEES REGARDING AVAILABILITY OF MEDICAID AND CHIP COVERAGE.—

''(I) IN GENERAL.—Each employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act, or child health assistance under a State child health plan under title XXI of such Act, in the form of premium assistance for the purchase of coverage under a group health plan, shall provide to each employee a written notice informing the employee of potential opportunities then currently available in the State in which the employee resides for premium assistance under such plans for health coverage of the employee or the employee's dependents.

''(II) MODEL NOTICE.—Not later than 1 year after the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009, the Secretary and the Secretary of Health and Human Services, in consultation with Directors of State Medicaid agencies under title XIX of the Social Security Act and Directors of State CHIP agencies under title XXI of such Act, shall jointly develop national and State-specific model notices for purposes of subparagraph (A). The Secretary shall provide employers with such model notices so as to enable employers to timely comply with the requirements of subparagraph (A). Such model notices shall include information regarding how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for such premium assistance, including how to apply for such assistance.

''(III) OPTION TO PROVIDE CONCURRENT WITH PROVISION OF PLAN MATERIALS TO EMPLOYEE.—An employer may provide the model notice applicable to the State in which an employee resides concurrent with the furnishing of materials notifying the employee of health plan eligibility, concurrent with materials provided to the employee in connection with an open season or election process conducted under the plan, or concurrent with the furnishing of the summary plan description as provided in section 104(b).

''(ii) DISCLOSURE ABOUT GROUP HEALTH PLAN BENEFITS TO STATES FOR MEDICAID AND CHIP ELIGIBLE INDIVIDUALS.—In the case of a participant or beneficiary of a group health plan who is covered under a Medicaid plan of a State under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act, the plan administrator of the group health plan shall disclose to the State, upon request, information about the benefits available under the group health plan in sufficient specificity, as determined under regulations of the Secretary of Health and Human Services in consultation with the Secretary that require use of the model coverage coordination disclosure form developed under section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009, so as to permit the State to make a determination (under paragraph (2)(B), (3), or (10) of section 2105(c) of the Social Security Act or otherwise) concerning the cost-effectiveness of the State providing medical or child health assistance through premium assistance for the purchase of coverage under such group health plan and in order for the State to provide supplemental benefits required under paragraph (10)(E) of such section or other authority.''.

(B) CONFORMING AMENDMENT.—Section 102(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022(b)) is amended—

(i) by striking ''and the remedies'' and inserting '', the remedies''; and

(ii) by inserting before the period the following: '', and if the employer so elects for purposes of complying with section 701(f)(3)(B)(i), the model notice applicable to the State in which the participants and beneficiaries reside''.

(C) WORKING GROUP TO DEVELOP MODEL COVERAGE COORDINATION DISCLOSURE FORM.—

(i) MEDICAID, CHIP, AND EMPLOYER-SPONSORED COVERAGE COORDINATION WORKING GROUP.—

(I) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Labor shall jointly establish a Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group (in this subparagraph referred to as the ''Working Group''). The purpose of the Working Group shall be to develop the model coverage coordination disclosure form described in subclause (II) and to identify the impediments to the effective coordination of coverage available to families that include employees of employers that maintain group health plans and members who are eligible for medical assistance under title XIX of the Social Security Act or child health assistance or other health benefits coverage under title XXI of such Act.

(II) MODEL COVERAGE COORDINATION DISCLOSURE FORM DESCRIBED.—The model form described in this subclause is a form for plan administrators of group health plans to complete for purposes of permitting a State to determine the availability and cost-effectiveness of the coverage available under such plans to employees who have family members who are eligible for premium assistance offered under a State plan under title XIX or XXI of such Act and to allow for coordination of coverage for enrollees of such plans. Such form shall provide the following information in addition to such other information as the Working Group determines appropriate:

(aa) A determination of whether the employee is eligible for coverage under the group health plan.

(bb) The name and contract information of the plan administrator of the group health plan.

(cc) The benefits offered under the plan.

(dd) The premiums and cost-sharing required under the plan.

(ee) Any other information relevant to coverage under the plan.

(ii) MEMBERSHIP.—The Working Group shall consist of not more than 30 members and shall be composed of representatives of—

(I) the Department of Labor;

(II) the Department of Health and Human Services;

(III) State directors of the Medicaid program under title XIX of the Social Security Act;

(IV) State directors of the State Children's Health Insurance Program under title XXI of the Social Security Act;

(V) employers, including owners of small businesses and their trade or industry representatives and certified human resource and payroll professionals;

(VI) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974);

(VII) health insurance issuers; and

(VIII) children and other beneficiaries of medical assistance under title XIX of the Social Security Act or child health assistance or other health benefits coverage under title XXI of such Act.

(iii) COMPENSATION.—The members of the Working Group shall serve without compensation.

(iv) ADMINISTRATIVE SUPPORT.—The Department of Health and Human Services and the Department of Labor shall jointly provide appropriate administrative support to the Working Group, including technical assistance. The Working Group may use the services and facilities of either such Department, with or without reimbursement, as jointly determined by such Departments.

(v) REPORT.—

(I) REPORT BY WORKING GROUP TO THE SECRETARIES.—Not later than 18 months after the date of the enactment of this Act, the Working Group shall submit to the Secretary of Labor and the Secretary of Health and Human Services the model form described in clause (i)(II) along with a report containing recommendations for appropriate measures to address the impediments to the effective coordination of coverage between group health plans and the State plans under titles XIX and XXI of the Social Security Act.

(II) REPORT BY SECRETARIES TO THE CONGRESS.—Not later than 2 months after receipt of the report pursuant to subclause (I), the Secretaries shall jointly submit a report to each House of the Congress regarding the recommendations contained in the report under such subclause.

(vi) TERMINATION.—The Working Group shall terminate 30 days after the date of the issuance of its report under clause (v).

(D) EFFECTIVE DATES.—The Secretary of Labor and the Secretary of Health and Human Services shall develop the initial model notices under section 701(f)(3)(B)(i)(II) of the Employee Retirement Income Security Act of 1974, and the Secretary of Labor shall provide such notices to employers, not later than the date that is 1 year after the date of enactment of this Act, and each employer shall provide the initial annual notices to such employer's employees beginning with the first plan year that begins after the date on which such initial model notices are first issued. The model coverage coordination disclosure form developed under subparagraph (C) shall apply with respect to requests made by States beginning with the first plan year that begins after the date on which such model coverage coordination disclosure form is first issued.

(E) ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(i) in subsection (a)(6), by striking ''or (8)'' and inserting ''(8), or (9)''; and

(ii) in subsection (c), by redesignating paragraph (9) as paragraph (10), and by inserting after paragraph (8) the following:

''(9)(A) The Secretary may assess a civil penalty against any employer of up to $100 a day from the date of the employer's failure to meet the notice requirement of section 701(f)(3)(B)(i)(I). For purposes of this subparagraph, each violation with respect to any single employee shall be treated as a separate violation.

''(B) The Secretary may assess a civil penalty against any plan administrator of up to $100 a day from the date of the plan administrator's failure to timely provide to any State the information required to be disclosed under section 701(f)(3)(B)(ii). For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.''.

(2) AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.—Section 2701(f) of the Public Health Service Act (42 U.S.C. 300gg(f)) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES FOR APPLICATION IN CASE OF MEDICAID AND CHIP.—

''(A) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

''(i) TERMINATION OF MEDICAID OR CHIP COVERAGE.—The employee or dependent is covered under a Medicaid plan under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act and coverage of the employee or dependent under such a plan is terminated as a result of loss of eligibility for such coverage and the employee requests coverage under the group health plan (or health insurance coverage) not later than 60 days after the date of termination of such coverage.

''(ii) ELIGIBILITY FOR EMPLOYMENT ASSISTANCE UNDER MEDICAID OR CHIP.—The employee or dependent becomes eligible for assistance, with respect to coverage under the group health plan or health insurance coverage, under such Medicaid plan or State child health plan (including under any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health plan or health insurance coverage not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance.

''(B) COORDINATION WITH MEDICAID AND CHIP.—

''(i) OUTREACH TO EMPLOYEES REGARDING AVAILABILITY OF MEDICAID AND CHIP COVERAGE.—

''(I) IN GENERAL.—Each employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act, or child health assistance under a State child health plan under title XXI of such Act, in the form of premium assistance for the purchase of coverage under a group health plan, shall provide to each employee a written notice informing the employee of potential opportunities then currently available in the State in which the employee resides for premium assistance under such plans for health coverage of the employee or the employee's dependents. For purposes of compliance with this subclause, the employer may use any State-specific model notice developed in accordance with section 701(f)(3)(B)(i)(II) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(f)(3)(B)(i)(II)).

''(II) OPTION TO PROVIDE CONCURRENT WITH PROVISION OF PLAN MATERIALS TO EMPLOYEE.—An employer may provide the model notice applicable to the State in which an employee resides concurrent with the furnishing of materials notifying the employee of health plan eligibility, concurrent with materials provided to the employee in connection with an open season or election process conducted under the plan, or concurrent with the furnishing of the summary plan description as provided in section 104(b) of the Employee Retirement Income Security Act of 1974.

''(ii) DISCLOSURE ABOUT GROUP HEALTH PLAN BENEFITS TO STATES FOR MEDICAID AND CHIP ELIGIBLE INDIVIDUALS.—In the case of an enrollee in a group health plan who is covered under a Medicaid plan of a State under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act, the plan administrator of the group health plan shall disclose to the State, upon request, information about the benefits available under the group health plan in sufficient specificity, as determined under regulations of the Secretary of Health and Human Services in consultation with the Secretary that require use of the model coverage coordination disclosure form developed under section 311(b)(1)(C) of the Children's Health Insurance Reauthorization Act of 2009, so as to permit the State to make a determination (under paragraph (2)(B), (3), or (10) of section 2105(c) of the Social Security Act or otherwise) concerning the cost-effectiveness of the State providing medical or child health assistance through premium assistance for the purchase of coverage under such group health plan and in order for the State to provide supplemental benefits required under paragraph (10)(E) of such section or other authority.''.

TITLE IV—STRENGTHENING QUALITY OF CARE AND HEALTH OUTCOMES

SEC. 401. CHILD HEALTH QUALITY IMPROVEMENT ACTIVITIES FOR CHILDREN ENROLLED IN MEDICAID OR CHIP.

(a) DEVELOPMENT OF CHILD HEALTH QUALITY MEASURES FOR CHILDREN ENROLLED IN MEDICAID OR CHIP.—Title XI (42 U.S.C. 1301 et seq.) is amended by inserting after section 1139 the following new section:

''SEC. 1139A. CHILD HEALTH QUALITY MEASURES.

''(a) DEVELOPMENT OF AN INITIAL CORE SET OF HEALTH CARE QUALITY MEASURES FOR CHILDREN ENROLLED IN MEDICAID OR CHIP.—

''(1) IN GENERAL.—Not later than January 1, 2010, the Secretary shall identify and publish for general comment an initial, recommended core set of child health quality measures for use by State programs administered under titles XIX and XXI, health insurance issuers and managed care entities that enter into contracts with such programs, and providers of items and services under such programs.

''(2) IDENTIFICATION OF INITIAL CORE MEASURES.—In consultation with the individuals and entities described in subsection (b)(3), the Secretary shall identify existing quality of care measures for children that are in use under public and privately sponsored health care coverage arrangements, or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time.

''(3) RECOMMENDATIONS AND DISSEMINATION.—Based on such existing and identified measures, the Secretary shall publish an initial core set of child health quality measures that includes (but is not limited to) the following:

''(A) The duration of children's health insurance coverage over a 12-month time period.

''(B) The availability and effectiveness of a full range of—

''(i) preventive services, treatments, and services for acute conditions, including services to promote healthy birth, prevent and treat premature birth, and detect the presence or risk of physical or mental conditions that could adversely affect growth and development; and

''(ii) treatments to correct or ameliorate the effects of physical and mental conditions, including chronic conditions, in infants, young children, school-age children, and adolescents.

''(C) The availability of care in a range of ambulatory and inpatient health care settings in which such care is furnished.

''(D) The types of measures that, taken together, can be used to estimate the overall national quality of health care for children, including children with special needs, and to perform comparative analyses of pediatric health care quality and racial, ethnic, and socioeconomic disparities in child health and health care for children.

''(4) ENCOURAGE VOLUNTARY AND STANDARDIZED REPORTING.—Not later than 2 years after the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009, the Secretary, in consultation with States, shall develop a standardized format for reporting information and procedures and approaches that encourage States to use the initial core measurement set to voluntarily report information regarding the quality of pediatric health care under titles XIX and XXI.

''(5) ADOPTION OF BEST PRACTICES IN IMPLEMENTING QUALITY PROGRAMS.—The Secretary shall disseminate information to States regarding best practices among States with respect to measuring and reporting on the quality of health care for children, and shall facilitate the adoption of such best practices. In developing best practices approaches, the Secretary shall give particular attention to State measurement techniques that ensure the timeliness and accuracy of provider reporting, encourage provider reporting compliance, encourage successful quality improvement strategies, and improve efficiency in data collection using health information technology.

''(6) REPORTS TO CONGRESS.—Not later than January 1, 2011, and every 3 years thereafter, the Secretary shall report to Congress on—

''(A) the status of the Secretary's efforts to improve—

''(i) quality related to the duration and stability of health insurance coverage for children under titles XIX and XXI;

''(ii) the quality of children's health care under such titles, including preventive health services, health care for acute conditions, chronic health care, and health services to ameliorate the effects of physical and mental conditions and to aid in growth and development of infants, young children, school-age children, and adolescents with special health care needs; and

''(iii) the quality of children's health care under such titles across the domains of quality, including clinical quality, health care safety, family experience with health care, health care in the most integrated setting, and elimination of racial, ethnic, and socioeconomic disparities in health and health care;

''(B) the status of voluntary reporting by States under titles XIX and XXI, utilizing the initial core quality measurement set; and

''(C) any recommendations for legislative changes needed to improve the quality of care provided to children under titles XIX and XXI, including recommendations for quality reporting by States.

''(7) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States to assist them in adopting and utilizing core child health quality measures in administering the State plans under titles XIX and XXI.

''(8) DEFINITION OF CORE SET.—In this section, the term 'core set' means a group of valid, reliable, and evidence-based quality measures that, taken together—

''(A) provide information regarding the quality of health coverage and health care for children;

''(B) address the needs of children throughout the developmental age span; and

''(C) allow purchasers, families, and health care providers to understand the quality of care in relation to the preventive needs of children, treatments aimed at managing and resolving acute conditions, and diagnostic and treatment services whose purpose is to correct or ameliorate physical, mental, or developmental conditions that could, if untreated or poorly treated, become chronic.

''(b) ADVANCING AND IMPROVING PEDIATRIC QUALITY MEASURES.—

''(1) ESTABLISHMENT OF PEDIATRIC QUALITY MEASURES PROGRAM.—Not later than January 1, 2011, the Secretary shall establish a pediatric quality measures program to—

''(A) improve and strengthen the initial core child health care quality measures established by the Secretary under subsection (a);

''(B) expand on existing pediatric quality measures used by public and private health care purchasers and advance the development of such new and emerging quality measures; and

''(C) increase the portfolio of evidence-based, consensus pediatric quality measures available to public and private purchasers of children's health care services, providers, and consumers.

''(2) EVIDENCE-BASED MEASURES.—The measures developed under the pediatric quality measures program shall, at a minimum, be—

''(A) evidence-based and, where appropriate, risk adjusted;

''(B) designed to identify and eliminate racial and ethnic disparities in child health and the provision of health care;

''(C) designed to ensure that the data required for such measures is collected and reported in a standard format that permits comparison of quality and data at a State, plan, and provider level;

''(D) periodically updated; and

''(E) responsive to the child health needs, services, and domains of health care quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A).

''(3) PROCESS FOR PEDIATRIC QUALITY MEASURES PROGRAM.—In identifying gaps in existing pediatric quality measures and establishing priorities for development and advancement of such measures, the Secretary shall consult with—

''(A) States;

''(B) pediatricians, children's hospitals, and other primary and specialized pediatric health care professionals (including members of the allied health professions) who specialize in the care and treatment of children, particularly children with special physical, mental, and developmental health care needs;

''(C) dental professionals, including pediatric dental professionals;

''(D) health care providers that furnish primary health care to children and families who live in urban and rural medically underserved communities or who are members of distinct population sub-groups at heightened risk for poor health outcomes;

''(E) national organizations representing children, including children with disabilities and children with chronic conditions;

''(F) national organizations representing consumers and purchasers of children's health care;

''(G) national organizations and individuals with expertise in pediatric health quality measurement; and

''(H) voluntary consensus standards setting organizations and other organizations involved in the advancement of evidence-based measures of health care.

''(4) DEVELOPING, VALIDATING, AND TESTING A PORTFOLIO OF PEDIATRIC QUALITY MEASURES.—As part of the program to advance pediatric quality measures, the Secretary shall—

''(A) award grants and contracts for the development, testing, and validation of new, emerging, and innovative evidence-based measures for children's health care services across the domains of quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A); and

''(B) award grants and contracts for—

''(i) the development of consensus on evidence-based measures for children's health care services;

''(ii) the dissemination of such measures to public and private purchasers of health care for children; and

''(iii) the updating of such measures as necessary.

''(5) REVISING, STRENGTHENING, AND IMPROVING INITIAL CORE MEASURES.—Beginning no later than January 1, 2013, and annually thereafter, the Secretary shall publish recommended changes to the core measures described in subsection (a) that shall reflect the testing, validation, and consensus process for the development of pediatric quality measures described in subsection paragraphs (1) through (4).

''(6) DEFINITION OF PEDIATRIC QUALITY MEASURE.—In this subsection, the term 'pediatric quality measure' means a measurement of clinical care that is capable of being examined through the collection and analysis of relevant information, that is developed in order to assess 1 or more aspects of pediatric health care quality in various institutional and ambulatory health care settings, including the structure of the clinical care system, the process of care, the outcome of care, or patient experiences in care.

''(7) CONSTRUCTION.—Nothing in this section shall be construed as supporting the restriction of coverage, under title XIX or XXI or otherwise, to only those services that are evidence-based.

''(c) ANNUAL STATE REPORTS REGARDING STATE-SPECIFIC QUALITY OF CARE MEASURES APPLIED UNDER MEDICAID OR CHIP.—

''(1) ANNUAL STATE REPORTS.—Each State with a State plan approved under title XIX or a State child health plan approved under title XXI shall annually report to the Secretary on the—

''(A) State-specific child health quality measures applied by the States under such plans, including measures described in subparagraphs (A) and (B) of subsection (a)(6); and

''(B) State-specific information on the quality of health care furnished to children under such plans, including information collected through external quality reviews of managed care organizations under section 1932 of the Social Security Act (42 U.S.C. 1396u–4) and benchmark plans under sections 1937 and 2103 of such Act (42 U.S.C. 1396u–7, 1397cc).

''(2) PUBLICATION.—Not later than September 30, 2010, and annually thereafter, the Secretary shall collect, analyze, and make publicly available the information reported by States under paragraph (1).

''(d) DEMONSTRATION PROJECTS FOR IMPROVING THE QUALITY OF CHILDREN'S HEALTH CARE AND THE USE OF HEALTH INFORMATION TECHNOLOGY.—

''(1) IN GENERAL.—During the period of fiscal years 2009 through 2013, the Secretary shall award not more than 10 grants to States and child health providers to conduct demonstration projects to evaluate promising ideas for improving the quality of children's health care provided under title XIX or XXI, including projects to—

''(A) experiment with, and evaluate the use of, new measures of the quality of children's health care under such titles (including testing the validity and suitability for reporting of such measures);

''(B) promote the use of health information technology in care delivery for children under such titles;

''(C) evaluate provider-based models which improve the delivery of children's health care services under such titles, including care management for children with chronic conditions and the use of evidence-based approaches to improve the effectiveness, safety, and efficiency of health care services for children; or

''(D) demonstrate the impact of the model electronic health record format for children developed and disseminated under subsection (f) on improving pediatric health, including the effects of chronic childhood health conditions, and pediatric health care quality as well as reducing health care costs.

''(2) REQUIREMENTS.—In awarding grants under this subsection, the Secretary shall ensure that—

''(A) only 1 demonstration project funded under a grant awarded under this subsection shall be conducted in a State; and

''(B) demonstration projects funded under grants awarded under this subsection shall be conducted evenly between States with large urban areas and States with large rural areas.

''(3) AUTHORITY FOR MULTISTATE PROJECTS.—A demonstration project conducted with a grant awarded under this subsection may be conducted on a multistate basis, as needed.

''(4) FUNDING.—$20,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

''(e) CHILDHOOD OBESITY DEMONSTRATION PROJECT.—

''(1) AUTHORITY TO CONDUCT DEMONSTRATION.—The Secretary, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall conduct a demonstration project to develop a comprehensive and systematic model for reducing childhood obesity by awarding grants to eligible entities to carry out such project. Such model shall—

''(A) identify, through self-assessment, behavioral risk factors for obesity among children;

''(B) identify, through self-assessment, needed clinical preventive and screening benefits among those children identified as target individuals on the basis of such risk factors;

''(C) provide ongoing support to such target individuals and their families to reduce risk factors and promote the appropriate use of preventive and screening benefits; and

''(D) be designed to improve health outcomes, satisfaction, quality of life, and appropriate use of items and services for which medical assistance is available under title XIX or child health assistance is available under title XXI among such target individuals.

''(2) ELIGIBILITY ENTITIES.—For purposes of this subsection, an eligible entity is any of the following:

''(A) A city, county, or Indian tribe.

''(B) A local or tribal educational agency.

''(C) An accredited university, college, or community college.

''(D) A Federally-qualified health center.

''(E) A local health department.

''(F) A health care provider.

''(G) A community-based organization.

''(H) Any other entity determined appropriate by the Secretary, including a consortia or partnership of entities described in any of subparagraphs (A) through (G).

''(3) USE OF FUNDS.—An eligible entity awarded a grant under this subsection shall use the funds made available under the grant to—

''(A) carry out community-based activities related to reducing childhood obesity, including by—

''(i) forming partnerships with entities, including schools and other facilities providing recreational services, to establish programs for after school and weekend community activities that are designed to reduce childhood obesity;

''(ii) forming partnerships with daycare facilities to establish programs that promote healthy eating behaviors and physical activity; and

''(iii) developing and evaluating community educational activities targeting good nutrition and promoting healthy eating behaviors;

''(B) carry out age-appropriate school-based activities that are designed to reduce childhood obesity, including by—

''(i) developing and testing educational curricula and intervention programs designed to promote healthy eating behaviors and habits in youth, which may include—

''(I) after hours physical activity programs; and

''(II) science-based interventions with multiple components to prevent eating disorders including nutritional content, understanding and responding to hunger and satiety, positive body image development, positive self-esteem development, and learning life skills (such as stress management, communication skills, problem-solving and decisionmaking skills), as well as consideration of cultural and developmental issues, and the role of family, school, and community;

''(ii) providing education and training to educational professionals regarding how to promote a healthy lifestyle and a healthy school environment for children;

''(iii) planning and implementing a healthy lifestyle curriculum or program with an emphasis on healthy eating behaviors and physical activity; and

''(iv) planning and implementing healthy lifestyle classes or programs for parents or guardians, with an emphasis on healthy eating behaviors and physical activity for children;

''(C) carry out educational, counseling, promotional, and training activities through the local health care delivery systems including by—

''(i) promoting healthy eating behaviors and physical activity services to treat or prevent eating disorders, being overweight, and obesity;

''(ii) providing patient education and counseling to increase physical activity and promote healthy eating behaviors;

''(iii) training health professionals on how to identify and treat obese and overweight individuals which may include nutrition and physical activity counseling; and

''(iv) providing community education by a health professional on good nutrition and physical activity to develop a better understanding of the relationship between diet, physical activity, and eating disorders, obesity, or being overweight; and

''(D) provide, through qualified health professionals, training and supervision for community health workers to—

''(i) educate families regarding the relationship between nutrition, eating habits, physical activity, and obesity;

''(ii) educate families about effective strategies to improve nutrition, establish healthy eating patterns, and establish appropriate levels of physical activity; and

''(iii) educate and guide parents regarding the ability to model and communicate positive health behaviors.

''(4) PRIORITY.—In awarding grants under paragraph (1), the Secretary shall give priority to awarding grants to eligible entities—

''(A) that demonstrate that they have previously applied successfully for funds to carry out activities that seek to promote individual and community health and to prevent the incidence of chronic disease and that can cite published and peer-reviewed research demonstrating that the activities that the entities propose to carry out with funds made available under the grant are effective;

''(B) that will carry out programs or activities that seek to accomplish a goal or goals set by the State in the Healthy People 2010 plan of the State;

''(C) that provide non-Federal contributions, either in cash or in-kind, to the costs of funding activities under the grants;

''(D) that develop comprehensive plans that include a strategy for extending program activities developed under grants in the years following the fiscal years for which they receive grants under this subsection;

''(E) located in communities that are medically underserved, as determined by the Secretary;

''(F) located in areas in which the average poverty rate is at least 150 percent or higher of the average poverty rate in the State involved, as determined by the Secretary; and

''(G) that submit plans that exhibit multisectoral, cooperative conduct that includes the involvement of a broad range of stakeholders, including—

''(i) community-based organizations;

''(ii) local governments;

''(iii) local educational agencies;

''(iv) the private sector;

''(v) State or local departments of health;

''(vi) accredited colleges, universities, and community colleges;

''(vii) health care providers;

''(viii) State and local departments of transportation and city planning; and

''(ix) other entities determined appropriate by the Secretary.

''(5) PROGRAM DESIGN.—

''(A) INITIAL DESIGN.—Not later than 1 year after the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009, the Secretary shall design the demonstration project. The demonstration should draw upon promising, innovative models and incentives to reduce behavioral risk factors. The Administrator of the Centers for Medicare & Medicaid Services shall consult with the Director of the Centers for Disease Control and Prevention, the Director of the Office of Minority Health, the heads of other agencies in the Department of Health and Human Services, and such professional organizations, as the Secretary determines to be appropriate, on the design, conduct, and evaluation of the demonstration.

''(B) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009, the Secretary shall award 1 grant that is specifically designed to determine whether programs similar to programs to be conducted by other grantees under this subsection should be implemented with respect to the general population of children who are eligible for child health assistance under State child health plans under title XXI in order to reduce the incidence of childhood obesity among such population.

''(6) REPORT TO CONGRESS.—Not later than 3 years after the date the Secretary implements the demonstration project under this subsection, the Secretary shall submit to Congress a report that describes the project, evaluates the effectiveness and cost effectiveness of the project, evaluates the beneficiary satisfaction under the project, and includes any such other information as the Secretary determines to be appropriate.

''(7) DEFINITIONS.—In this subsection:

''(A) FEDERALLY-QUALIFIED HEALTH CENTER.—The term 'Federally-qualified health center' has the meaning given that term in section 1905(l)(2)(B).

''(B) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

''(C) SELF-ASSESSMENT.—The term 'self-assessment' means a form that—

''(i) includes questions regarding—

''(I) behavioral risk factors;

''(II) needed preventive and screening services; and

''(III) target individuals' preferences for receiving follow-up information;

''(ii) is assessed using such computer generated assessment programs; and

''(iii) allows for the provision of such ongoing support to the individual as the Secretary determines appropriate.

''(D) ONGOING SUPPORT.—The term 'ongoing support' means—

''(i) to provide any target individual with information, feedback, health coaching, and recommendations regarding—

''(I) the results of a self-assessment given to the individual;

''(II) behavior modification based on the self-assessment; and

''(III) any need for clinical preventive and screening services or treatment including medical nutrition therapy;

''(ii) to provide any target individual with referrals to community resources and programs available to assist the target individual in reducing health risks; and

''(iii) to provide the information described in clause (i) to a health care provider, if designated by the target individual to receive such information.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $25,000,000 for the period of fiscal years 2009 through 2013.

''(f) DEVELOPMENT OF MODEL ELECTRONIC HEALTH RECORD FORMAT FOR CHILDREN ENROLLED IN MEDICAID OR CHIP.—

''(1) IN GENERAL.—Not later than January 1, 2010, the Secretary shall establish a program to encourage the development and dissemination of a model electronic health record format for children enrolled in the State plan under title XIX or the State child health plan under title XXI that is—

''(A) subject to State laws, accessible to parents, caregivers, and other consumers for the sole purpose of demonstrating compliance with school or leisure activity requirements, such as appropriate immunizations or physicals;

''(B) designed to allow interoperable exchanges that conform with Federal and State privacy and security requirements;

''(C) structured in a manner that permits parents and caregivers to view and understand the extent to which the care their children receive is clinically appropriate and of high quality; and

''(D) capable of being incorporated into, and otherwise compatible with, other standards developed for electronic health records.

''(2) FUNDING.—$5,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

''(g) STUDY OF PEDIATRIC HEALTH AND HEALTH CARE QUALITY MEASURES.—

''(1) IN GENERAL.—Not later than July 1, 2010, the Institute of Medicine shall study and report to Congress on the extent and quality of efforts to measure child health status and the quality of health care for children across the age span and in relation to preventive care, treatments for acute conditions, and treatments aimed at ameliorating or correcting physical, mental, and developmental conditions in children. In conducting such study and preparing such report, the Institute of Medicine shall—

''(A) consider all of the major national population-based reporting systems sponsored by the Federal Government that are currently in place, including reporting requirements under Federal grant programs and national population surveys and estimates conducted directly by the Federal Government;

''(B) identify the information regarding child health and health care quality that each system

is designed to capture and generate, the study and reporting periods covered by each system, and the extent to which the information so generated is made widely available through publication;

''(C) identify gaps in knowledge related to children's health status, health disparities among subgroups of children, the effects of social conditions on children's health status and use and effectiveness of health care, and the relationship between child health status and family income, family stability and preservation, and children's school readiness and educational achievement and attainment; and

''(D) make recommendations regarding improving and strengthening the timeliness, quality, and public transparency and accessibility of information about child health and health care quality.

''(2) FUNDING.—Up to $1,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

''(h) RULE OF CONSTRUCTION.—Notwithstanding any other provision in this section, no evidence based quality measure developed, published, or used as a basis of measurement or reporting under this section may be used to establish an irrebuttable presumption regarding either the medical necessity of care or the maximum permissible coverage for any individual child who is eligible for and receiving medical assistance under title XIX or child health assistance under title XXI.

''(i) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2009 through 2013, $45,000,000 for the purpose of carrying out this section (other than subsection (e)). Funds appropriated under this subsection shall remain available until expended.''.

(b) INCREASED MATCHING RATE ''FOR COLLECTING AND REPORTING ON CHILD HEALTH MEASURES.—Section 1903(a)(3)(A) (42 U.S.C. 1396b(a)(3)(A)), is amended—

(1) by striking ''and'' at the end of clause (i); and

(2) by adding at the end the following new clause:

''(iii) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b)) of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such developments or modifications of systems of the type described in clause (i) as are necessary for the efficient collection and reporting on child health measures; and''.

SEC. 402. IMPROVED AVAILABILITY OF PUBLIC INFORMATION REGARDING ENROLLMENT OF CHILDREN IN CHIP AND MEDICAID.

(a) INCLUSION OF PROCESS AND ACCESS MEASURES IN ANNUAL STATE REPORTS.—Section 2108 (42 U.S.C. 1397hh) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking ''The State'' and inserting ''Subject to subsection (e), the State''; and

(2) by adding at the end the following new subsection:

''(e) INFORMATION REQUIRED FOR INCLUSION IN STATE ANNUAL REPORT.—The State shall include the following information in the annual report required under subsection (a):

''(1) Eligibility criteria, enrollment, and retention data (including data with respect to continuity of coverage or duration of benefits).

''(2) Data regarding the extent to which the State uses process measures with respect to determining the eligibility of children under the State child health plan, including measures such as 12-month continuous eligibility, self-declaration of income for applications or renewals, or presumptive eligibility.

''(3) Data regarding denials of eligibility and redeterminations of eligibility.

''(4) Data regarding access to primary and specialty services, access to networks of care, and care coordination provided under the State child health plan, using quality care and consumer satisfaction measures included in the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey.

''(5) If the State provides child health assistance in the form of premium assistance for the purchase of coverage under a group health plan, data regarding the provision of such assistance, including the extent to which employer-sponsored health insurance coverage is available for children eligible for child health assistance under the State child health plan, the range of the monthly amount of such assistance provided on behalf of a child or family, the number of children or families provided such assistance on a monthly basis, the income of the children or families provided such assistance, the benefits and cost-sharing protection provided under the State child health plan to supplement the coverage purchased with such premium assistance, the effective strategies the State engages in to reduce any administrative barriers to the provision of such assistance, and, the effects, if any, of the provision of such assistance on preventing the coverage provided under the State child health plan from substituting for coverage provided under employer-sponsored health insurance offered in the State.

''(6) To the extent applicable, a description of any State activities that are designed to reduce the number of uncovered children in the State, including through a State health insurance connector program or support for innovative private health coverage initiatives.''.

(b) STANDARDIZED REPORTING FORMAT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall specify a standardized format for States to use for reporting the information required under section 2108(e) of the Social Security Act, as added by subsection (a)(2).

(2) TRANSITION PERIOD FOR STATES.—Each State that is required to submit a report under subsection (a) of section 2108 of the Social Security Act that includes the information required under subsection (e) of such section may use up to 3 reporting periods to transition to the reporting of such information in accordance with the standardized format specified by the Secretary under paragraph (1).

(c) ADDITIONAL FUNDING FOR THE SECRETARY TO IMPROVE TIMELINESS OF DATA REPORTING AND ANALYSIS FOR PURPOSES OF DETERMINING ENROLLMENT INCREASES UNDER MEDICAID AND CHIP.—

(1) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, $5,000,000 to the Secretary for fiscal year 2009 for the purpose of improving the timeliness of the data reported and analyzed from the Medicaid Statistical Information System (MSIS) for purposes of providing more timely data on enrollment and eligibility of children under Medicaid and CHIP and to provide guidance to States with respect to any new reporting requirements related to such improvements. Amounts appropriated under this paragraph shall remain available until expended.

(2) REQUIREMENTS.—The improvements made by the Secretary under paragraph (1) shall be designed and implemented (including with respect to any necessary guidance for States to report such information in a complete and expeditious manner) so that, beginning no later than October 1, 2009, data regarding the enrollment of low-income children (as defined in section 2110(c)(4) of the Social Security Act (42 U.S.C. 1397jj(c)(4)) of a State enrolled in the State plan under Medicaid or the State child health plan under CHIP with respect to a fiscal year shall be collected and analyzed by the Secretary within 6 months of submission.

(d) GAO STUDY AND REPORT ON ACCESS TO PRIMARY AND SPECIALITY SERVICES.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of children's access to primary and specialty services under Medicaid and CHIP, including—

(A) the extent to which providers are willing to treat children eligible for such programs;

(B) information on such children's access to networks of care;

(C) geographic availability of primary and specialty services under such programs;

(D) the extent to which care coordination is provided for children's care under Medicaid and CHIP; and

(E) as appropriate, information on the degree of availability of services for children under such programs.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives on the study conducted under paragraph (1) that includes recommendations for such Federal and State legislative and administrative changes as the Comptroller General determines are necessary to address any barriers to access to children's care under Medicaid and CHIP that may exist.

SEC. 403. APPLICATION OF CERTAIN MANAGED CARE QUALITY SAFEGUARDS TO CHIP.

(a) IN GENERAL.—Section 2103(f) of Social Security Act (42 U.S.C. 1397bb(f)) is amended by adding at the end the following new paragraph:

''(3) COMPLIANCE WITH MANAGED CARE REQUIREMENTS.—The State child health plan shall provide for the application of subsections (a)(4), (a)(5), (b), (c), (d), and (e) of section 1932 (relating to requirements for managed care) to coverage, State agencies, enrollment brokers, managed care entities, and managed care organizations under this title in the same manner as such subsections apply to coverage and such entities and organizations under title XIX.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contract years for health plans beginning on or after July 1, 2009.

TITLE V—IMPROVING ACCESS TO BENEFITS

SEC. 501. DENTAL BENEFITS.

(a) COVERAGE.—

(1) IN GENERAL.—Section 2103 (42 U.S.C. 1397cc) is amended—

(A) in subsection (a)—

(i) in the matter before paragraph (1), by striking ''subsection (c)(5)'' and inserting ''paragraphs (5) and (7) of subsection (c)''; and

(ii) in paragraph (1), by inserting ''at least'' after ''that is''; and

(B) in subsection (c)—

(i) by redesignating paragraph (5) as paragraph (7); and

(ii) by inserting after paragraph (4), the following:

''(5) DENTAL BENEFITS.—

''(A) IN GENERAL.—The child health assistance provided to a targeted low-income child shall include coverage of dental services necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions.

''(B) PERMITTING USE OF DENTAL BENCHMARK PLANS BY CERTAIN STATES.—A State may elect to meet the requirement of subparagraph (A) through dental coverage that is equivalent to a benchmark dental benefit package described in subparagraph (C).

''(C) BENCHMARK DENTAL BENEFIT PACKAGES.—The benchmark dental benefit packages are as follows:

''(i) FEHBP CHILDREN'S DENTAL COVERAGE.—A dental benefits plan under chapter 89A of title 5, United States Code, that has been selected most frequently by employees seeking dependent coverage, among such plans that provide such dependent coverage, in either of the previous 2 plan years.

''(ii) STATE EMPLOYEE DEPENDENT DENTAL COVERAGE.—A dental benefits plan that is offered and generally available to State employees

in the State involved and that has been selected most frequently by employees seeking dependent coverage, among such plans that provide such dependent coverage, in either of the previous 2 plan years.

''(iii) COVERAGE OFFERED THROUGH COMMERCIAL DENTAL PLAN.—A dental benefits plan that has the largest insured commercial, non-medicaid enrollment of dependent covered lives of such plans that is offered in the State involved.''.

(2) ASSURING ACCESS TO CARE.—Section 2102(a)(7)(B) (42 U.S.C. 1397bb(c)(2)) is amended by inserting ''and services described in section 2103(c)(5)'' after ''emergency services''.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to coverage of items and services furnished on or after October 1, 2009.

(b) STATE OPTION TO PROVIDE DENTAL-ONLY SUPPLEMENTAL COVERAGE.—

(1) IN GENERAL.—Section 2110(b) (42 U.S.C. 1397jj(b)) is amended—

(A) in paragraph (1)(C), by inserting '', subject to paragraph (5),'' after ''under title XIX or''; and

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

''(5) OPTION FOR STATES WITH A SEPARATE CHIP PROGRAM TO PROVIDE DENTAL-ONLY SUPPLEMENTAL COVERAGE.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in the case of any child who is enrolled in a group health plan or health insurance coverage offered through an employer who would, but for the application of paragraph (1)(C), satisfy the requirements for being a targeted low-income child under a State child health plan that is implemented under this title, a State may waive the application of such paragraph to the child in order to provide—

''(i) dental coverage consistent with the requirements of subsection (c)(5) of section 2103; or

''(ii) cost-sharing protection for dental coverage consistent with such requirements and the requirements of subsection (e)(3)(B) of such section.

''(B) LIMITATION.—A State may limit the application of a waiver of paragraph (1)(C) to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the maximum income level otherwise established for other children under the State child health plan.

''(C) CONDITIONS.—A State may not offer dental-only supplemental coverage under this paragraph unless the State satisfies the following conditions:

''(i) INCOME ELIGIBILITY.—The State child health plan under this title—

''(I) has the highest income eligibility standard permitted under this title (or a waiver) as of January 1, 2009;

''(II) does not limit the acceptance of applications for children or impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan; and

''(III) provides benefits to all children in the State who apply for and meet eligibility standards.

''(ii) NO MORE FAVORABLE TREATMENT.—The State child health plan may not provide more favorable dental coverage or cost-sharing protection for dental coverage to children provided dental-only supplemental coverage under this paragraph than the dental coverage and cost-sharing protection for dental coverage provided to targeted low-income children who are eligible for the full range of child health assistance provided under the State child health plan.''.

(2) STATE OPTION TO WAIVE WAITING PERIOD.—Section 2102(b)(1)(B) (42 U.S.C. 1397bb(b)(1)(B)), as amended by section 111(b)(2), is amended—

(A) in clause (ii), by striking ''and'' at the end;

(B) in clause (iii), by striking the period and inserting ''; and''; and

(C) by adding at the end the following new clause:

''(iv) at State option, may not apply a waiting period in the case of a child provided dental-only supplemental coverage under section 2110(b)(5).''.

(c) DENTAL EDUCATION FOR PARENTS OF NEWBORNS.—The Secretary shall develop and implement, through entities that fund or provide perinatal care services to targeted low-income children under a State child health plan under title XXI of the Social Security Act, a program to deliver oral health educational materials that inform new parents about risks for, and prevention of, early childhood caries and the need for a dental visit within their newborn's first year of life.

(d) PROVISION OF DENTAL SERVICES THROUGH FQHCS.—

(1) MEDICAID.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(A) by striking ''and'' at the end of paragraph (70);

(B) by striking the period at the end of paragraph (71) and inserting ''; and''; and

(C) by inserting after paragraph (71) the following new paragraph:

''(72) provide that the State will not prevent a Federally-qualified health center from entering into contractual relationships with private practice dental providers in the provision of Federally-qualified health center services.''.

(2) CHIP.—Section 2107(e)(1) (42 U.S.C. 1397g(e)(1)), as amended by subsections (a)(2) and (d)(2) of section 203, is amended by inserting after subparagraph (B) the following new subparagraph (and redesignating the succeeding subparagraphs accordingly):

''(C) Section 1902(a)(72) (relating to limiting FQHC contracting for provision of dental services).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 2009.

(e) REPORTING INFORMATION ON DENTAL HEALTH.—

(1) MEDICAID.—Section 1902(a)(43)(D)(iii) (42 U.S.C. 1396a(a)(43)(D)(iii)) is amended by inserting ''and other information relating to the provision of dental services to such children described in section 2108(e)'' after ''receiving dental services,''.

(2) CHIP.—Section 2108 (42 U.S.C. 1397hh) is amended by adding at the end the following new subsection:

''(e) INFORMATION ON DENTAL CARE FOR CHILDREN.—

''(1) IN GENERAL.—Each annual report under subsection (a) shall include the following information with respect to care and services described in section 1905(r)(3) provided to targeted low-income children enrolled in the State child health plan under this title at any time during the year involved:

''(A) The number of enrolled children by age grouping used for reporting purposes under section 1902(a)(43).

''(B) For children within each such age grouping, information of the type contained in questions 12(a)–(c) of CMS Form 416 (that consists of the number of enrolled targeted low income children who receive any, preventive, or restorative dental care under the State plan).

''(C) For the age grouping that includes children 8 years of age, the number of such children who have received a protective sealant on at least one permanent molar tooth.

''(2) INCLUSION OF INFORMATION ON ENROLLEES IN MANAGED CARE PLANS.—The information under paragraph (1) shall include information on children who are enrolled in managed care plans and other private health plans and contracts with such plans under this title shall provide for the reporting of such information by such plans to the State.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall be effective for annual reports submitted for years beginning after date of enactment.

(f) IMPROVED ACCESSIBILITY OF DENTAL PROVIDER INFORMATION TO ENROLLEES UNDER MEDICAID AND CHIP.—The Secretary shall—

(1) work with States, pediatric dentists, and other dental providers (including providers that are, or are affiliated with, a school of dentistry) to include, not later than 6 months after the date of the enactment of this Act, on the Insure Kids Now website (http://www.insurekidsnow.gov/) and hotline (1–877–KIDS–NOW) (or on any successor websites or hotlines) a current and accurate list of all such dentists and providers within each State that provide dental services to children enrolled in the State plan (or waiver) under Medicaid or the State child health plan (or waiver) under CHIP, and shall ensure that such list is updated at least quarterly; and

(2) work with States to include, not later than 6 months after the date of the enactment of this Act, a description of the dental services provided under each State plan (or waiver) under Medicaid and each State child health plan (or waiver) under CHIP on such Insure Kids Now website, and shall ensure that such list is updated at least annually.

(g) INCLUSION OF STATUS OF EFFORTS TO IMPROVE DENTAL CARE IN REPORTS ON THE QUALITY OF CHILDREN'S HEALTH CARE UNDER MEDICAID AND CHIP.—Section 1139A(a), as added by section 401(a), is amended—

(1) in paragraph (3)(B)(ii), by inserting ''and, with respect to dental care, conditions requiring the restoration of teeth, relief of pain and infection, and maintenance of dental health'' after ''chronic conditions''; and

(2) in paragraph (6)(A)(ii), by inserting ''dental care,'' after ''preventive health services,''.

(h) GAO STUDY AND REPORT.—

(1) STUDY.—The Comptroller General of the United States shall provide for a study that examines—

(A) access to dental services by children in underserved areas;

(B) children's access to oral health care, including preventive and restorative services, under Medicaid and CHIP, including—

(i) the extent to which dental providers are willing to treat children eligible for such programs;

(ii) information on such children's access to networks of care, including such networks that serve special needs children; and

(iii) geographic availability of oral health care, including preventive and restorative services, under such programs; and

(C) the feasibility and appropriateness of using qualified mid-level dental health providers, in coordination with dentists, to improve access for children to oral health services and public health overall.

(2) REPORT.—Not later than 18 months year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations for such Federal and State legislative and administrative changes as the Comptroller General determines are necessary to address any barriers to access to oral health care, including preventive and restorative services, under Medicaid and CHIP that may exist.

SEC. 502. MENTAL HEALTH PARITY IN CHIP PLANS.

(a) ASSURANCE OF PARITY.—Section 2103(c) (42 U.S.C. 1397cc(c)), as amended by section 501(a)(1)(B), is amended by inserting after paragraph (5), the following:

''(6) MENTAL HEALTH SERVICES PARITY.—

''(A) IN GENERAL.—In the case of a State child health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan shall ensure that the financial requirements and treatment limitations applicable to such mental health or substance use disorder benefits comply with the requirements of section 2705(a) of the Public Health Service Act in the same manner as such requirements apply to a group health plan.

''(B) DEEMED COMPLIANCE.—To the extent that a State child health plan includes coverage with respect to an individual described in section 1905(a)(4)(B) and covered under the State plan under section 1902(a)(10)(A) of the services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnostic, and treatment services defined in section 1905(r)) and provided in accordance with section 1902(a)(43), such plan shall be deemed to satisfy the requirements of subparagraph (A).''.

(b) CONFORMING AMENDMENTS.—Section 2103 (42 U.S.C. 1397cc) is amended—

(1) in subsection (a), as amended by section 501(a)(1)(A)(i), in the matter preceding paragraph (1), by inserting '', (6),'' after ''(5)''; and

(2) in subsection (c)(2), by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

SEC. 503. APPLICATION OF PROSPECTIVE PAYMENT SYSTEM FOR SERVICES PROVIDED BY FEDERALLY-QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.

(a) APPLICATION OF PROSPECTIVE PAYMENT SYSTEM.—

(1) IN GENERAL.—Section 2107(e)(1) (42 U.S.C. 1397gg(e)(1)), as amended by section 501(c)(2) is amended by inserting after subparagraph (C) the following new subparagraph (and redesignating the succeeding subparagraphs accordingly):

''(D) Section 1902(bb) (relating to payment for services provided by Federally-qualified health centers and rural health clinics).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services provided on or after October 1, 2009.

(b) TRANSITION GRANTS.—

(1) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary for fiscal year 2009, $5,000,000, to remain available until expended, for the purpose of awarding grants to States with State child health plans under CHIP that are operated separately from the State Medicaid plan under title XIX of the Social Security Act (including any waiver of such plan), or in combination with the State Medicaid plan, for expenditures related to transitioning to compliance with the requirement of section 2107(e)(1)(D) of the Social Security Act (as added by subsection (a)) to apply the prospective payment system established under section 1902(bb) of the such Act (42 U.S.C. 1396a(bb)) to services provided by Federally-qualified health centers and rural health clinics.

(2) MONITORING AND REPORT.—The Secretary shall monitor the impact of the application of such prospective payment system on the States described in paragraph (1) and, not later than October 1, 2011, shall report to Congress on any effect on access to benefits, provider payment rates, or scope of benefits offered by such States as a result of the application of such payment system.

SEC. 504. PREMIUM GRACE PERIOD.

(a) IN GENERAL.—Section 2103(e)(3) (42 U.S.C. 1397cc(e)(3)) is amended by adding at the end the following new subparagraph:

''(C) PREMIUM GRACE PERIOD.—The State child health plan—

''(i) shall afford individuals enrolled under the plan a grace period of at least 30 days from the beginning of a new coverage period to make premium payments before the individual's coverage under the plan may be terminated; and

''(ii) shall provide to such an individual, not later than 7 days after the first day of such grace period, notice—

''(I) that failure to make a premium payment within the grace period will result in termination of coverage under the State child health plan; and

''(II) of the individual's right to challenge the proposed termination pursuant to the applicable Federal regulations.

For purposes of clause (i), the term 'new coverage period' means the month immediately following the last month for which the premium has been paid.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to new coverage periods beginning on or after the date of the enactment of this Act.

SEC. 505. CLARIFICATION OF COVERAGE OF SERVICES PROVIDED THROUGH SCHOOL-BASED HEALTH CENTERS.

(a) IN GENERAL.—Section 2103(c) (42 U.S.C. 1397cc(c)), as amended by section 501(a)(1)(B), is amended by adding at the end the following new paragraph:

''(8) AVAILABILITY OF COVERAGE FOR ITEMS AND SERVICES FURNISHED THROUGH SCHOOL-BASED HEALTH CENTERS.—Nothing in this title shall be construed as limiting a State's ability to provide child health assistance for covered items and services that are furnished through school-based health centers (as defined in section 2110(c)(9)).''.

(b) DEFINITION.—Section 2110(c) (42 U.S.C. 1397jj) is amended by adding at the end the following:

''(9) SCHOOL-BASED HEALTH CENTER.—

''(A) IN GENERAL.—The term 'school-based health center' means a health clinic that—

''(i) is located in or near a school facility of a school district or board or of an Indian tribe or tribal organization;

''(ii) is organized through school, community, and health provider relationships;

''(iii) is administered by a sponsoring facility;

''(iv) provides through health professionals primary health services to children in accordance with State and local law, including laws relating to licensure and certification; and

''(v) satisfies such other requirements as a State may establish for the operation of such a clinic.

''(B) SPONSORING FACILITY.—For purposes of subparagraph (A)(iii), the term 'sponsoring facility' includes any of the following:

''(i) A hospital.

''(ii) A public health department.

''(iii) A community health center.

''(iv) A nonprofit health care agency.

''(v) A school or school system.

''(vi) A program administered by the Indian Health Service or the Bureau of Indian Affairs or operated by an Indian tribe or a tribal organization.''.

SEC. 506. MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION.

(a) IN GENERAL.—Title XIX (42 U.S.C. 1396 et seq.) is amended by inserting before section 1901 the following new section:

''MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION

''SEC. 1900. (a) ESTABLISHMENT.—There is hereby established the Medicaid and CHIP Payment and Access Commission (in this section referred to as 'MACPAC').

''(b) DUTIES.—

''(1) REVIEW OF ACCESS POLICIES AND ANNUAL REPORTS.—MACPAC shall—

''(A) review policies of the Medicaid program established under this title (in this section referred to as 'Medicaid') and the State Children's Health Insurance Program established under title XXI (in this section referred to as 'CHIP') affecting children's access to covered items and services, including topics described in paragraph (2);

''(B) make recommendations to Congress concerning such access policies;

''(C) by not later than March 1 of each year (beginning with 2010), submit a report to Congress containing the results of such reviews and MACPAC's recommendations concerning such policies; and

''(D) by not later than June 1 of each year (beginning with 2010), submit a report to Congress containing an examination of issues affecting Medicaid and CHIP, including the implications of changes in health care delivery in the United States and in the market for health care services on such programs.

''(2) SPECIFIC TOPICS TO BE REVIEWED.—Specifically, MACPAC shall review and assess the following:

''(A) MEDICAID AND CHIP PAYMENT POLICIES.—Payment policies under Medicaid and CHIP, including—

''(i) the factors affecting expenditures for items and services in different sectors, including the process for updating hospital, skilled nursing facility, physician, Federally-qualified health center, rural health center, and other fees;

''(ii) payment methodologies; and

''(iii) the relationship of such factors and methodologies to access and quality of care for Medicaid and CHIP beneficiaries.

''(B) INTERACTION OF MEDICAID AND CHIP PAYMENT POLICIES WITH HEALTH CARE DELIVERY GENERALLY.—The effect of Medicaid and CHIP payment policies on access to items and services for children and other Medicaid and CHIP populations other than under this title or title XXI and the implications of changes in health care delivery in the United States and in the general market for health care items and services on Medicaid and CHIP.

''(C) OTHER ACCESS POLICIES.—The effect of other Medicaid and CHIP policies on access to covered items and services, including policies relating to transportation and language barriers.

''(3) CREATION OF EARLY-WARNING SYSTEM.—MACPAC shall create an early-warning system to identify provider shortage areas or any other problems that threaten access to care or the health care status of Medicaid and CHIP beneficiaries.

''(4) COMMENTS ON CERTAIN SECRETARIAL REPORTS.—If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to access policies, including with respect to payment policies, under Medicaid or CHIP, the Secretary shall transmit a copy of the report to MACPAC. MACPAC shall review the report and, not later than 6 months after the date of submittal of the Secretary's report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as MACPAC deems appropriate.

''(5) AGENDA AND ADDITIONAL REVIEWS.—MACPAC shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding MACPAC's agenda and progress towards achieving the agenda. MACPAC may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this title or title XXI as may be requested by such chairmen and members and as MACPAC deems appropriate.

''(6) AVAILABILITY OF REPORTS.—MACPAC shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

''(7) APPROPRIATE COMMITTEE OF CONGRESS.—For purposes of this section, the term 'appropriate committees of Congress' means the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

''(8) VOTING AND REPORTING REQUIREMENTS.—With respect to each recommendation contained in a report submitted under paragraph (1), each member of MACPAC shall vote on the recommendation, and MACPAC shall include, by member, the results of that vote in the report containing the recommendation.

''(9) EXAMINATION OF BUDGET CONSEQUENCES.—Before making any recommendations, MACPAC shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities.

''(c) MEMBERSHIP.—

''(1) NUMBER AND APPOINTMENT.—MACPAC shall be composed of 17 members appointed by the Comptroller General of the United States.

''(2) QUALIFICATIONS.—

''(A) IN GENERAL.—The membership of MACPAC shall include individuals who have had direct experience as enrollees or parents of enrollees in Medicaid or CHIP and individuals with national recognition for their expertise in Federal safety net health programs, health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, health information technology, pediatric physicians, dentists, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

''(B) INCLUSION.—The membership of MACPAC shall include (but not be limited to) physicians and other health professionals, employers, third-party payers, and individuals with expertise in the delivery of health services. Such membership shall also include consumers representing children, pregnant women, the elderly, and individuals with disabilities, current or former representatives of State agencies responsible for administering Medicaid, and current or former representatives of State agencies responsible for administering CHIP.

''(C) MAJORITY NONPROVIDERS.—Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under Medicaid or CHIP shall not constitute a majority of the membership of MACPAC.

''(D) ETHICAL DISCLOSURE.—The Comptroller General of the United States shall establish a system for public disclosure by members of MACPAC of financial and other potential conflicts of interest relating to such members. Members of MACPAC shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

''(3) TERMS.—

''(A) IN GENERAL.—The terms of members of MACPAC shall be for 3 years except that the Comptroller General of the United States shall designate staggered terms for the members first appointed.

''(B) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in MACPAC shall be filled in the manner in which the original appointment was made.

''(4) COMPENSATION.—While serving on the business of MACPAC (including travel time), a member of MACPAC shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of MACPAC. Physicians serving as personnel of MACPAC may be provided a physician comparability allowance by MACPAC in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to MACPAC in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of MACPAC) and employment benefits, rights, and privileges, all personnel of MACPAC shall be treated as if they were employees of the United States Senate.

''(5) CHAIRMAN; VICE CHAIRMAN.—The Comptroller General of the United States shall designate a member of MACPAC, at the time of appointment of the member as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General of the United States may designate another member for the remainder of that member's term.

''(6) MEETINGS.—MACPAC shall meet at the call of the Chairman.

''(d) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—Subject to such review as the Comptroller General of the United States deems necessary to assure the efficient administration of MACPAC, MACPAC may—

''(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General of the United States) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

''(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

''(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of MACPAC (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

''(4) make advance, progress, and other payments which relate to the work of MACPAC;

''(5) provide transportation and subsistence for persons serving without compensation; and

''(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of MACPAC.

''(e) POWERS.—

''(1) OBTAINING OFFICIAL DATA.—MACPAC may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to MACPAC on an agreed upon schedule.

''(2) DATA COLLECTION.—In order to carry out its functions, MACPAC shall—

''(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section;

''(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate; and

''(C) adopt procedures allowing any interested party to submit information for MACPAC's use in making reports and recommendations.

''(3) ACCESS OF GAO TO INFORMATION.—The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and nonproprietary data of MACPAC, immediately upon request.

''(4) PERIODIC AUDIT.—MACPAC shall be subject to periodic audit by the Comptroller General of the United States.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) REQUEST FOR APPROPRIATIONS.—MACPAC shall submit requests for appropriations in the same manner as the Comptroller General of the United States submits requests for appropriations, but amounts appropriated for MACPAC shall be separate from amounts appropriated for the Comptroller General of the United States.

''(2) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.''.

(b) DEADLINE FOR INITIAL APPOINTMENTS.—Not later than January 1, 2010, the Comptroller General of the United States shall appoint the initial members of the Medicaid and CHIP Payment and Access Commission established under section 1900 of the Social Security Act (as added by subsection (a)).

(c) ANNUAL REPORT ON MEDICAID.—Not later than January 1, 2010, and annually thereafter, the Secretary, in consultation with the Secretary of the Treasury, the Secretary of Labor, and the States (as defined for purposes of Medicaid), shall submit an annual report to Congress on the financial status of, enrollment in, and spending trends for, Medicaid for the fiscal year ending on September 30 of the preceding year.

TITLE VI—PROGRAM INTEGRITY AND OTHER MISCELLANEOUS PROVISIONS

Subtitle A—Program Integrity and Data Collection

SEC. 601. PAYMENT ERROR RATE MEASUREMENT (''PERM'').

(a) EXPENDITURES RELATED TO COMPLIANCE WITH REQUIREMENTS.—

(1) ENHANCED PAYMENTS.—Section 2105(c) (42 U.S.C. 1397ee(c)), as amended by section 301(a), is amended by adding at the end the following new paragraph:

''(11) ENHANCED PAYMENTS.—Notwithstanding subsection (b), the enhanced FMAP with respect to payments under subsection (a) for expenditures related to the administration of the payment error rate measurement (PERM) requirements applicable to the State child health plan in accordance with the Improper Payments Information Act of 2002 and parts 431 and 457 of title 42, Code of Federal Regulations (or any related or successor guidance or regulations) shall in no event be less than 90 percent.''.

(2) EXCLUSION OF FROM CAP ON ADMINISTRATIVE EXPENDITURES.—Section 2105(c)(2)(C) (42 U.S.C. 1397ee(c)(2)C)), as amended by section 302(b)), is amended by adding at the end the following:

''(iv) PAYMENT ERROR RATE MEASUREMENT (PERM) EXPENDITURES.—Expenditures related to the administration of the payment error rate measurement (PERM) requirements applicable to the State child health plan in accordance with the Improper Payments Information Act of 2002 and parts 431 and 457 of title 42, Code of Federal Regulations (or any related or successor guidance or regulations).''.

(b) FINAL RULE REQUIRED TO BE IN EFFECT FOR ALL STATES.—Notwithstanding parts 431 and 457 of title 42, Code of Federal Regulations (as in effect on the date of enactment of this Act), the Secretary shall not calculate or publish any national or State-specific error rate based on the application of the payment error rate measurement (in this section referred to as ''PERM'') requirements to CHIP until after the date that is 6 months after the date on which a new final rule (in this section referred to as the ''new final rule'') promulgated after the date of the enactment of this Act and implementing such requirements in accordance with the requirements of subsection (c) is in effect for all States. Any calculation of a national error rate or a State specific error rate after such new final rule in effect for all States may only be inclusive of errors, as defined in such new final rule or in guidance issued within a reasonable time frame after the effective date for such new final rule that includes detailed guidance for the specific methodology for error determinations.

(c) REQUIREMENTS FOR NEW FINAL RULE.—For purposes of subsection (b), the requirements of this subsection are that the new final rule implementing the PERM requirements shall—

(1) include—

(A) clearly defined criteria for errors for both States and providers;

(B) a clearly defined process for appealing error determinations by—

(i) review contractors; or

(ii) the agency and personnel described in section 431.974(a)(2) of title 42, Code of Federal Regulations, as in effect on September 1, 2007, responsible for the development, direction, implementation, and evaluation of eligibility reviews and associated activities; and

(C) clearly defined responsibilities and deadlines for States in implementing any corrective action plans; and

(2) provide that the payment error rate determined for a State shall not take into account payment errors resulting from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements for such process applicable under regulations promulgated by the Secretary or otherwise approved by the Secretary.

(d) OPTION FOR APPLICATION OF DATA FOR STATES IN FIRST APPLICATION CYCLE UNDER THE INTERIM FINAL RULE.—After the new final rule implementing the PERM requirements in accordance with the requirements of subsection (c) is in effect for all States, a State for which the PERM requirements were first in effect under an interim final rule for fiscal year 2007 or under a final rule for fiscal year 2008 may elect to accept any payment error rate determined in whole or in part for the State on the basis of data for that fiscal year or may elect to not have any payment error rate determined on the basis of such data and, instead, shall be treated as if fiscal year 2010 or fiscal year 2011 were the first fiscal year for which the PERM requirements apply to the State.

(e) HARMONIZATION OF MEQC AND PERM.—

(1) REDUCTION OF REDUNDANCIES.—The Secretary shall review the Medicaid Eligibility Quality Control (in this subsection referred to as the ''MEQC'') requirements with the PERM requirements and coordinate consistent implementation of both sets of requirements, while reducing redundancies.

(2) STATE OPTION TO APPLY PERM DATA.—A State may elect, for purposes of determining the erroneous excess payments for medical assistance ratio applicable to the State for a fiscal year under section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) to substitute data resulting from the application of the PERM requirements to the State after the new final rule implementing such requirements is in effect for all States for data obtained from the application of the MEQC requirements to the State with respect to a fiscal year.

(3) STATE OPTION TO APPLY MEQC DATA.—For purposes of satisfying the requirements of subpart Q of part 431 of title 42, Code of Federal Regulations, relating to Medicaid eligibility reviews, a State may elect to substitute data obtained through MEQC reviews conducted in accordance with section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) for data required for purposes of PERM requirements, but only if the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the States.

(f) IDENTIFICATION OF IMPROVED STATE-SPECIFIC SAMPLE SIZES.—The Secretary shall establish State-specific sample sizes for application of the PERM requirements with respect to State child health plans for fiscal years beginning with the first fiscal year that begins on or after the date on which the new final rule is in effect for all States, on the basis of such information as the Secretary determines appropriate. In establishing such sample sizes, the Secretary shall, to the greatest extent practicable—

(1) minimize the administrative cost burden on States under Medicaid and CHIP; and

(2) maintain State flexibility to manage such programs.

(g) TIME FOR PROMULGATION OF FINAL RULE.—The final rule implementing the PERM requirements under subsection (b) shall be promulgated not later than 6 months after the date of enactment of this Act.

SEC. 602. IMPROVING DATA COLLECTION.

(a) INCREASED APPROPRIATION.—Section 2109(b)(2) (42 U.S.C. 1397ii(b)(2)) is amended by striking ''$10,000,000 for fiscal year 2000'' and inserting ''$20,000,000 for fiscal year 2009''.

(b) USE OF ADDITIONAL FUNDS.—Section 2109(b) (42 U.S.C. 1397ii(b)), as amended by subsection (a), is amended—

(1) by redesignating paragraph (2) as paragraph (4); and

(2) by inserting after paragraph (1), the following new paragraphs:

''(2) ADDITIONAL REQUIREMENTS.—In addition to making the adjustments required to produce the data described in paragraph (1), with respect to data collection occurring for fiscal years beginning with fiscal year 2009, in appropriate consultation with the Secretary of Health and Human Services, the Secretary of Commerce shall do the following:

''(A) Make appropriate adjustments to the Current Population Survey to develop more accurate State-specific estimates of the number of children enrolled in health coverage under title XIX or this title.

''(B) Make appropriate adjustments to the Current Population Survey to improve the survey estimates used to determine the child population growth factor under section 2104(m)(5)(B) and any other data necessary for carrying out this title.

''(C) Include health insurance survey information in the American Community Survey related to children.

''(D) Assess whether American Community Survey estimates, once such survey data are first available, produce more reliable estimates than the Current Population Survey with respect to the purposes described in subparagraph (B).

''(E) On the basis of the assessment required under subparagraph (D), recommend to the Secretary of Health and Human Services whether American Community Survey estimates should be used in lieu of, or in some combination with, Current Population Survey estimates for the purposes described in subparagraph (B).

''(F) Continue making the adjustments described in the last sentence of paragraph (1) with respect to expansion of the sample size used in State sampling units, the number of sampling units in a State, and using an appropriate verification element.

''(3) AUTHORITY FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES TO TRANSITION TO THE USE OF ALL, OR SOME COMBINATION OF, ACS ESTIMATES UPON RECOMMENDATION OF THE SECRETARY OF COMMERCE.—If, on the basis of the assessment required under paragraph (2)(D), the Secretary of Commerce recommends to the Secretary of Health and Human Services that American Community Survey estimates should be used in lieu of, or in some combination with, Current Population Survey estimates for the purposes described in paragraph (2)(B), the Secretary of Health and Human Services, in consultation with the States, may provide for a period during which the Secretary may transition from carrying out such purposes through the use of Current Population Survey estimates to the use of American Community Survey estimates (in lieu of, or in combination with the Current Population Survey estimates, as recommended), provided that any such transition is implemented in a manner that is designed to avoid adverse impacts upon States with approved State child health plans under this title.''.

SEC. 603. UPDATED FEDERAL EVALUATION OF CHIP.

Section 2108(c) (42 U.S.C. 1397hh(c)) is amended by striking paragraph (5) and inserting the following:

''(5) SUBSEQUENT EVALUATION USING UPDATED INFORMATION.—

''(A) IN GENERAL.—The Secretary, directly or through contracts or interagency agreements, shall conduct an independent subsequent evaluation of 10 States with approved child health plans.

''(B) SELECTION OF STATES AND MATTERS INCLUDED.—Paragraphs (2) and (3) shall apply to such subsequent evaluation in the same manner as such provisions apply to the evaluation conducted under paragraph (1).

''(C) SUBMISSION TO CONGRESS.—Not later than December 31, 2011, the Secretary shall submit to Congress the results of the evaluation conducted under this paragraph.

''(D) FUNDING.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2010 for the purpose of conducting the evaluation authorized under this paragraph. Amounts appropriated under this subparagraph shall remain available for expenditure through fiscal year 2012.''.

SEC. 604. ACCESS TO RECORDS FOR IG AND GAO AUDITS AND EVALUATIONS.

Section 2108(d) (42 U.S.C. 1397hh(d)) is amended to read as follows:

''(d) ACCESS TO RECORDS FOR IG AND GAO AUDITS AND EVALUATIONS.—For the purpose of evaluating and auditing the program established under this title, or title XIX, the Secretary, the Office of Inspector General, and the Comptroller General shall have access to any books, accounts, records, correspondence, and other documents that are related to the expenditure of Federal funds under this title and that are in the possession, custody, or control of States receiving Federal funds under this title or political subdivisions thereof, or any grantee or contractor of such States or political subdivisions.''.

SEC. 605. NO FEDERAL FUNDING FOR ILLEGAL ALIENS; DISALLOWANCE FOR UNAUTHORIZED EXPENDITURES.

Nothing in this Act allows Federal payment for individuals who are not legal residents. Titles XI, XIX, and XXI of the Social Security Act provide for the disallowance of Federal financial participation for erroneous expenditures under Medicaid and under CHIP, respectively.

Subtitle B—Miscellaneous Health Provisions

SEC. 611. DEFICIT REDUCTION ACT TECHNICAL CORRECTIONS.

(a) CLARIFICATION OF REQUIREMENT TO PROVIDE EPSDT SERVICES FOR ALL CHILDREN IN BENCHMARK BENEFIT PACKAGES UNDER MEDICAID.—Section 1937(a)(1) (42 U.S.C. 1396u–7(a)(1)), as inserted by section 6044(a) of the Deficit Reduction Act of 2005 (Public Law 109–171, 120 Stat. 88), is amended—

(1) in subparagraph (A)—

(A) in the matter before clause (i)—

(i) by striking ''Notwithstanding any other provision of this title'' and inserting ''Notwithstanding section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability) and any other provision of this title which would be directly contrary to the authority under this section and subject to subsection (E)''; and

(ii) by striking ''enrollment in coverage that provides'' and inserting ''coverage that'';

(B) in clause (i), by inserting ''provides'' after ''(i)''; and

(C) by striking clause (ii) and inserting the following:

''(ii) for any individual described in section 1905(a)(4)(B) who is eligible under the State plan in accordance with paragraphs (10) and (17) of section 1902(a), consists of the items and services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnostic, and treatment services defined in section 1905(r)) and provided in accordance with the requirements of section 1902(a)(43).'';

(2) in subparagraph (C)—

*(A) in the heading, by striking ''**WRAP-AROUND**'' and inserting ''**ADDITIONAL**''; and*

(B) by striking ''wrap-around or''; and

(3) by adding at the end the following new subparagraph:

''(E) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

''(i) requiring a State to offer all or any of the items and services required by subparagraph (A)(ii) through an issuer of benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2);

''(ii) preventing a State from offering all or any of the items and services required by subparagraph (A)(ii) through an issuer of benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); or

''(iii) affecting a child's entitlement to care and services described in subsections (a)(4)(B) and (r) of section 1905 and provided in accordance with section 1902(a)(43) whether provided through benchmark coverage, benchmark equivalent coverage, or otherwise.''.

(b) CORRECTION OF REFERENCE TO CHILDREN IN FOSTER CARE RECEIVING CHILD WELFARE SERVICES.—Section 1937(a)(2)(B)(viii) (42 U.S.C. 1396u–7(a)(2)(B)(viii)), as inserted by section 6044(a) of the Deficit Reduction Act of 2005, is amended by striking ''aid or assistance is made available under part B of title IV to children in foster care and individuals'' and inserting ''child welfare services are made available under part B of title IV on the basis of being a child in foster care or''.

(c) TRANSPARENCY.—Section 1937 (42 U.S.C. 1396u–7), as inserted by section 6044(a) of the Deficit Reduction Act of 2005, is amended by adding at the end the following:

''(c) PUBLICATION OF PROVISIONS AFFECTED.—With respect to a State plan amendment to provide benchmark benefits in accordance with subsections (a) and (b) that is approved by the Secretary, the Secretary shall publish on the Internet website of the Centers for Medicare & Medicaid Services, a list of the provisions of this title that the Secretary has determined do not apply in order to enable the State to carry out the plan amendment and the reason for each such determination on the date such approval is made, and shall publish such list in the Federal Register and not later than 30 days after such date of approval.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) of this section shall take effect as if included in the amendment made by section 6044(a) of the Deficit Reduction Act of 2005.

SEC. 612. REFERENCES TO TITLE XXI.

Section 704 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, as enacted into law by division B of Public Law 106–113 (113 Stat. 1501A–402) is repealed.

SEC. 613. PROHIBITING INITIATION OF NEW HEALTH OPPORTUNITY ACCOUNT DEMONSTRATION PROGRAMS.

After the date of the enactment of this Act, the Secretary of Health and Human Services may not approve any new demonstration programs under section 1938 of the Social Security Act (42 U.S.C. 1396u–8).

SEC. 614. ADJUSTMENT IN COMPUTATION OF MEDICAID FMAP TO DISREGARD AN EXTRAORDINARY EMPLOYER PENSION CONTRIBUTION.

(a) IN GENERAL.—Only for purposes of computing the FMAP (as defined in subsection (e)) for a State for a fiscal year (beginning with fiscal year 2006) and applying the FMAP under title XIX of the Social Security Act, any significantly disproportionate employer pension or insurance fund contribution described in subsection (b) shall be disregarded in computing the per capita income of such State, but shall not be disregarded in computing the per capita income for the continental United States (and Alaska) and Hawaii.

(b) SIGNIFICANTLY DISPROPORTIONATE EMPLOYER PENSION AND INSURANCE FUND CONTRIBUTION.—

(1) IN GENERAL.—For purposes of this section, a significantly disproportionate employer pension and insurance fund contribution described in this subsection with respect to a State is any identifiable employer contribution towards pension or other employee insurance funds that is estimated to accrue to residents of such State for a calendar year (beginning with calendar year 2003) if the increase in the amount so estimated exceeds 25 percent of the total increase in personal income in that State for the year involved.

(2) DATA TO BE USED.—For estimating and adjustment a FMAP already calculated as of the date of the enactment of this Act for a State with a significantly disproportionate employer pension and insurance fund contribution, the Secretary shall use the personal income data set originally used in calculating such FMAP.

(3) SPECIAL ADJUSTMENT FOR NEGATIVE GROWTH.—If in any calendar year the total personal income growth in a State is negative, an employer pension and insurance fund contribution for the purposes of calculating the State's FMAP for a calendar year shall not exceed 125 percent of the amount of such contribution for the previous calendar year for the State.

(c) HOLD HARMLESS.—No State shall have its FMAP for a fiscal year reduced as a result of the application of this section.

(d) REPORT.—Not later than May 15, 2009, the Secretary shall submit to the Congress a report on the problems presented by the current treatment of pension and insurance fund contributions in the use of Bureau of Economic Affairs calculations for the FMAP and for Medicaid and on possible alternative methodologies to mitigate such problems.

(e) FMAP DEFINED.—For purposes of this section, the term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396(d)).

SEC. 615. CLARIFICATION TREATMENT OF REGIONAL MEDICAL CENTER.

(a) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) shall be construed by the Secretary of Health and Human Services as prohibiting a State's use of funds as the non-Federal share of expenditures under title XIX of such Act where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in subsection (b), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

(b) CENTER DESCRIBED.—A center described in this subsection is a publicly-owned regional medical center that—

(1) provides level 1 trauma and burn care services;

(2) provides level 3 neonatal care services;

(3) is obligated to serve all patients, regardless of ability to pay;

(4) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States;

(5) provides services as a tertiary care provider for patients residing within a 125-mile radius; and

(6) meets the criteria for a disproportionate share hospital under section 1923 of such Act (42 U.S.C. 1396r–4) in at least one State other than the State in which the center is located.

SEC. 616. EXTENSION OF MEDICAID DSH ALLOTMENTS FOR TENNESSEE AND HAWAII.

Section 1923(f)(6) (42 U.S.C. 1396r–4(f)(6)), as amended by section 202 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275) is amended—

(1) in the paragraph heading, by striking ''2009 AND THE FIRST CALENDAR QUARTER OF FISCAL YEAR 2010'' and inserting ''2011 AND THE FIRST CALENDAR QUARTER OF FISCAL YEAR 2012'';

(2) in subparagraph (A)—

(A) in clause (i)—

(i) in the second sentence—

(I) by striking ''and 2009'' and inserting '', 2009, 2010, and 2011''; and

(II) by striking ''such portion of''; and

(ii) in the third sentence, by striking ''2010 for the period ending on December 31, 2009'' and inserting ''2012 for the period ending on December 31, 2011'';

(B) in clause (ii), by striking ''or for a period in fiscal year 2010'' and inserting ''2010, 2011, or for period in fiscal year 2012''; and

(C) in clause (iv)—

(i) in the clause heading, by striking ''2009 AND THE FIRST CALENDAR QUARTER OF FISCAL YEAR 2010'' and inserting ''2011 AND THE FIRST CALENDAR QUARTER OF FISCAL YEAR 2012''; and

(ii) in each of subclauses (I) and (II), by striking '' or for a period in fiscal year 2010'' and inserting ''2010, 2011, or for a period in fiscal year 2012''; and

(3) in subparagraph (B)—

(A) in clause (i)—

(i) in the first sentence, by striking ''2009'' and inserting ''2011''; and

(ii) in the second sentence, by striking ''2010 for the period ending on December 31, 2009'' and inserting ''2012 for the period ending on December 31, 2011''.

SEC. 617. GAO REPORT ON MEDICAID MANAGED CARE PAYMENT RATES.

Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives analyzing the extent to which State payment rates for medicaid managed care organizations under Medicaid are actuarially sound.

Subtitle C—Other Provisions

SEC. 621. OUTREACH REGARDING HEALTH INSURANCE OPTIONS AVAILABLE TO CHILDREN.

(a) DEFINITIONS.—In this section—

(1) the terms ''Administration'' and ''Administrator'' means the Small Business Administration and the Administrator thereof, respectively;

(2) the term ''certified development company'' means a development company participating in the program under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

(3) the term ''Medicaid program'' means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(4) the term ''Service Corps of Retired Executives'' means the Service Corps of Retired Executives authorized by section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1));

(5) the term ''small business concern'' has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632);

(6) the term ''small business development center'' means a small business development center described in section 21 of the Small Business Act (15 U.S.C. 648);

(7) the term ''State'' has the meaning given that term for purposes of title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);

(8) the term ''State Children's Health Insurance Program'' means the State Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);

(9) the term ''task force'' means the task force established under subsection (b)(1); and

(10) the term ''women's business center'' means a women's business center described in section 29 of the Small Business Act (15 U.S.C. 656).

(b) ESTABLISHMENT OF TASK FORCE.—

(1) ESTABLISHMENT.—There is established a task force to conduct a nationwide campaign of education and outreach for small business concerns regarding the availability of coverage for children through private insurance options, the Medicaid program, and the State Children's Health Insurance Program.

(2) MEMBERSHIP.—The task force shall consist of the Administrator, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury.

(3) RESPONSIBILITIES.—The campaign conducted under this subsection shall include—

(A) efforts to educate the owners of small business concerns about the value of health coverage for children;

(B) information regarding options available to the owners and employees of small business concerns to make insurance more affordable, including Federal and State tax deductions and

credits for health care-related expenses and health insurance expenses and Federal tax exclusion for health insurance options available under employer-sponsored cafeteria plans under section 125 of the Internal Revenue Code of 1986;

(C) efforts to educate the owners of small business concerns about assistance available through public programs; and

(D) efforts to educate the owners and employees of small business concerns regarding the availability of the hotline operated as part of the Insure Kids Now program of the Department of Health and Human Services.

(4) IMPLEMENTATION.—In carrying out this subsection, the task force may—

(A) use any business partner of the Administration, including—

(i) a small business development center;

(ii) a certified development company;

(iii) a women's business center; and

(iv) the Service Corps of Retired Executives;

(B) enter into—

(i) a memorandum of understanding with a chamber of commerce; and

(ii) a partnership with any appropriate small business concern or health advocacy group; and

(C) designate outreach programs at regional offices of the Department of Health and Human Services to work with district offices of the Administration.

(5) WEBSITE.—The Administrator shall ensure that links to information on the eligibility and enrollment requirements for the Medicaid program and State Children's Health Insurance Program of each State are prominently displayed on the website of the Administration.

(6) REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the status of the nationwide campaign conducted under paragraph (1).

(B) CONTENTS.—Each report submitted under subparagraph (A) shall include a status update on all efforts made to educate owners and employees of small business concerns on options for providing health insurance for children through public and private alternatives.

SEC. 622. SENSE OF THE SENATE REGARDING ACCESS TO AFFORDABLE AND MEANINGFUL HEALTH INSURANCE COVERAGE.

(a) FINDINGS.—The Senate finds the following:

(1) There are approximately 45 million Americans currently without health insurance.

(2) More than half of uninsured workers are employed by businesses with less than 25 employees or are self-employed.

(3) Health insurance premiums continue to rise at more than twice the rate of inflation for all consumer goods.

(4) Individuals in the small group and individual health insurance markets usually pay more for similar coverage than those in the large group market.

(5) The rapid growth in health insurance costs over the last few years has forced many employers, particularly small employers, to increase deductibles and co-pays or to drop coverage completely.

(b) SENSE OF THE SENATE.—The Senate—

(1) recognizes the necessity to improve affordability and access to health insurance for all Americans;

(2) acknowledges the value of building upon the existing private health insurance market; and

(3) affirms its intent to enact legislation this year that, with appropriate protection for consumers, improves access to affordable and meaningful health insurance coverage for employees of small businesses and individuals by—

(A) facilitating pooling mechanisms, including pooling across State lines, and

(B) providing assistance to small businesses and individuals, including financial assistance and tax incentives, for the purchase of private insurance coverage.

TITLE VII—REVENUE PROVISIONS

SEC. 701. INCREASE IN EXCISE TAX RATE ON TOBACCO PRODUCTS.

(a) CIGARS.—Section 5701(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''$1.828 cents per thousand ($1.594 cents per thousand on cigars removed during 2000 or 2001)'' in paragraph (1) and inserting ''$50.33 per thousand'',

(2) by striking ''20.719 percent (18.063 percent on cigars removed during 2000 or 2001)'' in paragraph (2) and inserting ''52.75 percent'', and

(3) by striking ''$48.75 per thousand ($42.50 per thousand on cigars removed during 2000 or 2001)'' in paragraph (2) and inserting ''40.26 cents per cigar''.

(b) CIGARETTES.—Section 5701(b) of such Code is amended—

(1) by striking ''$19.50 per thousand ($17 per thousand on cigarettes removed during 2000 or 2001)'' in paragraph (1) and inserting ''$50.33 per thousand'', and

(2) by striking ''$40.95 per thousand ($35.70 per thousand on cigarettes removed during 2000 or 2001)'' in paragraph (2) and inserting ''$105.69 per thousand''.

(c) CIGARETTE PAPERS.—Section 5701(c) of such Code is amended by striking ''1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)'' and inserting ''3.15 cents''.

(d) CIGARETTE TUBES.—Section 5701(d) of such Code is amended by striking ''2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001)'' and inserting ''6.30 cents''.

(e) SMOKELESS TOBACCO.—Section 5701(e) of such Code is amended—

(1) by striking ''58.5 cents (51 cents on snuff removed during 2000 or 2001)'' in paragraph (1) and inserting ''$1.51'', and

(2) by striking ''19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)'' in paragraph (2) and inserting ''50.33 cents''.

(f) PIPE TOBACCO.—Section 5701(f) of such Code is amended by striking ''$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)'' and inserting ''$2.8311 cents''.

(g) ROLL-YOUR-OWN TOBACCO.—Section 5701(g) of such Code is amended by striking ''$1.0969 cents (95.67 cents on roll-your-own tobacco removed during 2000 or 2001)'' and inserting ''$24.78''.

(h) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—On tobacco products (other than cigars described in section 5701(a)(2) of the Internal Revenue Code of 1986) and cigarette papers and tubes manufactured in or imported into the United States which are removed before April 1, 2009, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

(A) the tax which would be imposed under section 5701 of such Code on the article if the article had been removed on such date, over

(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

(2) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on April 1, 2009, for which such person is liable.

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding tobacco products, cigarette papers, or cigarette tubes on April 1, 2009, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 1, 2009.

(4) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (commonly known as the Foreign Trade Zone Act, 48 Stat. 998, 19 U.S.C. 81a et seq.) or any other provision of law, any article which is located in a foreign trade zone on April 1, 2009, shall be subject to the tax imposed by paragraph (1) if—

(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(B) such article is held on such date under the supervision of an officer of the United States Customs and Border Protection of the Department of Homeland Security pursuant to the 2d proviso of such section 3(a).

(5) DEFINITIONS.—For purposes of this subsection—

(A) IN GENERAL.—Any term used in this subsection which is also used in section 5702 of the Internal Revenue Code of 1986 shall have the same meaning as such term has in such section.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

(6) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.

(i) EFFECTIVE DATE.—The amendments made by this section shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009.

SEC. 702. ADMINISTRATIVE IMPROVEMENTS.

(a) PERMIT, INVENTORIES, REPORTS, AND RECORDS REQUIREMENTS FOR MANUFACTURERS AND IMPORTERS OF PROCESSED TOBACCO.—

(1) PERMIT.—

(A) APPLICATION.—Section 5712 of the Internal Revenue Code of 1986 is amended by inserting ''or processed tobacco'' after ''tobacco products''.

(B) ISSUANCE.—Section 5713(a) of such Code is amended by inserting ''or processed tobacco'' after ''tobacco products''.

(2) INVENTORIES, REPORTS, AND PACKAGES.—

(A) INVENTORIES.—Section 5721 of such Code is amended by inserting '', processed tobacco,'' after ''tobacco products''.

(B) REPORTS.—Section 5722 of such Code is amended by inserting '', processed tobacco,'' after ''tobacco products''.

(C) PACKAGES, MARKS, LABELS, AND NOTICES.—Section 5723 of such Code is amended by inserting '', processed tobacco,'' after ''tobacco products'' each place it appears.

(3) RECORDS.—Section 5741 of such Code is amended by inserting '', processed tobacco,'' after ''tobacco products''.

(4) MANUFACTURER OF PROCESSED TOBACCO.—Section 5702 of such Code is amended by adding at the end the following new subsection:

''(p) MANUFACTURER OF PROCESSED TOBACCO.—

''(1) IN GENERAL.—The term 'manufacturer of processed tobacco' means any person who processes any tobacco other than tobacco products.

''(2) PROCESSED TOBACCO.—The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.''.

(5) CONFORMING AMENDMENTS.—

(A) Section 5702(h) of such Code is amended by striking ''tobacco products and cigarette papers and tubes'' and inserting ''tobacco products or cigarette papers or tubes or any processed tobacco''.

(B) Sections 5702(j) and 5702(k) of such Code are each amended by inserting '', *or any processed tobacco,'' after ''tobacco products or cigarette papers or tubes''.*

(6) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on April 1, 2009.

(b) BASIS FOR DENIAL, SUSPENSION, OR REVOCATION OF PERMITS.—

(1) DENIAL.—Paragraph (3) of section 5712 of such Code is amended to read as follows:

''(3) such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

''(A) is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter,

''(B) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or

''(C) has failed to disclose any material information required or made any material false statement in the application therefor.''.

(2) SUSPENSION OR REVOCATION.—Subsection (b) of section 5713 of such Code is amended to read as follows:

''(b) SUSPENSION OR REVOCATION.—

''(1) SHOW CAUSE HEARING.—If the Secretary has reason to believe that any person holding a permit—

''(A) has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud,

''(B) has violated the conditions of such permit,

''(C) has failed to disclose any material information required or made any material false statement in the application for such permit,

''(D) has failed to maintain his premises in such manner as to protect the revenue,

''(E) is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter, or

''(F) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes,

the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked.

''(2) ACTION FOLLOWING HEARING.—If, after hearing, the Secretary finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked.''.

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

(c) APPLICATION OF INTERNAL REVENUE CODE STATUTE OF LIMITATIONS FOR ALCOHOL AND TOBACCO EXCISE TAXES.—

(1) IN GENERAL.—Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is amended by striking ''and section 520 (relating to refunds)'' and inserting ''section 520 (relating to refunds), and section 6501 of the Internal Revenue Code of 1986 (but only with respect to taxes imposed under chapters 51 and 52 of such Code)''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to articles imported after the date of the enactment of this Act.

(d) EXPANSION OF DEFINITION OF ROLL-YOUR-OWN TOBACCO.—

(1) IN GENERAL.—Section 5702(o) of the Internal Revenue Code of 1986 is amended by inserting ''or cigars, or for use as wrappers thereof'' before the period at the end.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009.

(e) TIME OF TAX FOR UNLAWFULLY MANUFACTURED TOBACCO PRODUCTS.—

(1) IN GENERAL.—Section 5703(b)(2) of such Code is amended by adding at the end the following new subparagraph:

''(F) SPECIAL RULE FOR UNLAWFULLY MANUFACTURED TOBACCO PRODUCTS.—In the case of any tobacco products, cigarette paper, or cigarette tubes manufactured in the United States at any place other than the premises of a manufacturer of tobacco products, cigarette paper, or cigarette tubes that has filed the bond and obtained the permit required under this chapter, tax shall be due and payable immediately upon manufacture.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the date of the enactment of this Act.

(f) DISCLOSURE.—

(1) IN GENERAL.—Paragraph (1) of section 6103(o) of such Code is amended by designating the text as subparagraph (A), moving such text 2 ems to the right, striking ''Returns'' and inserting ''(A) IN GENERAL.—Returns'', and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

''(B) USE IN CERTAIN PROCEEDINGS.—Returns and return information disclosed to a Federal agency under subparagraph (A) may be used in an action or proceeding (or in preparation for such action or proceeding) brought under section 625 of the American Jobs Creation Act of 2004 for the collection of any unpaid assessment or penalty arising under such Act.''.

(2) CONFORMING AMENDMENT.—Section 6103(p)(4) of such Code is amended by striking ''(o)(1)'' both places it appears and inserting ''(o)(1)(A)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply on or after the date of the enactment of this Act.

(g) TRANSITIONAL RULE.—Any person who—

(1) on April 1, 2009 is engaged in business as a manufacturer of processed tobacco or as an importer of processed tobacco, and

(2) before the end of the 90-day period beginning on such date, submits an application under subchapter B of chapter 52 of such Code to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business.

SEC. 703. TREASURY STUDY CONCERNING MAGNITUDE OF TOBACCO SMUGGLING IN THE UNITED STATES.

Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study concerning the magnitude of tobacco smuggling in the United States and submit to Congress recommendations for the most effective steps to reduce tobacco smuggling. Such study shall also include a review of the loss of Federal tax receipts due to illicit tobacco trade in the United States and the role of imported tobacco products in the illicit tobacco trade in the United States.

SEC. 704. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 0.5 percentage point.

UNANIMOUS-CONSENT AGREEMENT—H.R. 1

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H.R. 1 at 2 p.m., Monday, February 2.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR PRINTING

Mr. REID. Mr. President, I ask unanimous consent that the Inouye-Baucus amendment to H.R. 1, which is at the desk, be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009

AMENDMENT NO. 63, AS FURTHER MODIFIED

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the adoption of the Bingaman amendment No. 63, as modified, and the passage of H.R. 2, the Bingaman amendment No. 63 be modified further with the changes that are at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment No. 63, as further modified, is as follows:

AMENDMENT NO. 63

On page 99, line 9 strike ''and'' and insert ''in writing, by telephone, orally, through electronic signature, or through any other means specified by the Secretary or by''.

On page 108, between lines 3 and 4, insert the following:

''(H) STATE OPTION TO RELY ON STATE INCOME TAX DATA OR RETURN.—At the option of the State, a finding from an Express Lane agency may include gross income or adjusted gross income shown by State income tax records or returns.''.

ORDER FOR STAR PRINT—S. 350

Mr. REID. Mr. President, I ask unanimous consent that S. 350 be star printed with the changes at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

READING OF WASHINGTON'S FAREWELL ADDRESS

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the resolution of January 24, 1901, the traditional reading of Washington's Farewell Address take place on Monday, February 23, 2009, at 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the order of the Senate on January 24, 1901, as modified by the order of January 30, 2009, appoints the Senator from Nebraska, Mr. JOHANNS, to read Washington's Farewell Address on Monday, February 23, 2009.

The Chair, on behalf of the majority leader, pursuant to the provisions of Public Law 99–93, as amended by Public Law 99–151, appoints the Senator from

California (Mrs. FEINSTEIN) as Chairman of the United States Caucus on International Narcotics Control.

ORDERS FOR MONDAY, FEBRUARY 2, 2009

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 2 p.m., Monday, February 2; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to the consideration of H.R. 1, the American Recovery and Reinvestment Act of 2009; further, that at 3:15 p.m., the Senate proceed to executive session, as under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. Mr. President, at 6:15 p.m. on Monday, the Senate will proceed to a vote on confirmation of Eric Holder to be Attorney General of the United States.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 2, 2009, AT 2 P.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned as under the previous order.

There being no objection, the Senate, at 2:37 p.m., adjourned until Monday, February 2, 2009, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate:

CENTRAL INTELLIGENCE AGENCY

LEON E. PANETTA, OF CALIFORNIA, TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY, VICE GENERAL MICHAEL V. HAYDEN, UNITED STATES AIR FORCE.

DEPARTMENT OF JUSTICE

THOMAS JOHN PERRELLI, OF VIRGINIA, TO BE ASSOCIATE ATTORNEY GENERAL, VICE KEVIN J. O'CONNOR, RESIGNED.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY WHILE SERVING AS THE ATTENDING PHYSICIAN TO THE CONGRESS, UNDER ARTICLE II, SECTION 2, CLAUSE 2 OF THE CONSTITUTION:

To be rear admiral

CAPT. BRIAN P. MONAHAN