

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 4213

An Act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. BAUCUS

Viz:

1 In lieu of the matter proposed to be inserted, insert
2 the following:

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “American Jobs and Closing Tax Loopholes Act of 2010”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in titles I, II, and IV
9 of this Act an amendment or repeal is expressed in terms
10 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
2 section or other provision of the Internal Revenue Code
3 of 1986.

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

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—INFRASTRUCTURE INCENTIVES

Sec. 101. Extension of Build America Bonds.

Sec. 102. Exempt-facility bonds for sewage and water supply facilities.

Sec. 103. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.

Sec. 104. Extension and additional allocations of recovery zone bond authority.

Sec. 105. Allowance of new markets tax credit against alternative minimum tax.

Sec. 106. Extension of tax-exempt eligibility for loans guaranteed by Federal home loan banks.

Sec. 107. Extension of temporary small issuer rules for allocation of tax-exempt interest expense by financial institutions.

TITLE II—EXTENSION OF EXPIRING PROVISIONS

Subtitle A—Energy

Sec. 201. Alternative motor vehicle credit for new qualified hybrid motor vehicles other than passenger automobiles and light trucks.

Sec. 202. Incentives for biodiesel and renewable diesel.

Sec. 203. Credit for electricity produced at certain open-loop biomass facilities.

Sec. 204. Extension and modification of credit for steel industry fuel.

Sec. 205. Credit for producing fuel from coke or coke gas.

Sec. 206. New energy efficient home credit.

Sec. 207. Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures.

Sec. 208. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.

Sec. 209. Suspension of limitation on percentage depletion for oil and gas from marginal wells.

Sec. 210. Direct payment of energy efficient appliances tax credit.

Sec. 211. Modification of standards for windows, doors, and skylights with respect to the credit for nonbusiness energy property.

Subtitle B—Individual Tax Relief

PART I—MISCELLANEOUS PROVISIONS

Sec. 221. Deduction for certain expenses of elementary and secondary school teachers.

Sec. 222. Additional standard deduction for State and local real property taxes.

Sec. 223. Deduction of State and local sales taxes.

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- Sec. 224. Contributions of capital gain real property made for conservation purposes.
- Sec. 225. Above-the-line deduction for qualified tuition and related expenses.
- Sec. 226. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 227. Look-thru of certain regulated investment company stock in determining gross estate of nonresidents.
- Sec. 228. First-time homebuyer credit.

PART II—LOW-INCOME HOUSING CREDITS

- Sec. 231. Election for direct payment of low-income housing credit for 2010.
- Sec. 232. Low-income housing grant election.

Subtitle C—Business Tax Relief

- Sec. 241. Research credit.
- Sec. 242. Indian employment tax credit.
- Sec. 243. New markets tax credit.
- Sec. 244. Railroad track maintenance credit.
- Sec. 245. Mine rescue team training credit.
- Sec. 246. Employer wage credit for employees who are active duty members of the uniformed services.
- Sec. 247. 5-year depreciation for farming business machinery and equipment.
- Sec. 248. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Sec. 249. 7-year recovery period for motorsports entertainment complexes.
- Sec. 250. Accelerated depreciation for business property on an Indian reservation.
- Sec. 251. Enhanced charitable deduction for contributions of food inventory.
- Sec. 252. Enhanced charitable deduction for contributions of book inventories to public schools.
- Sec. 253. Enhanced charitable deduction for corporate contributions of computer inventory for educational purposes.
- Sec. 254. Election to expense mine safety equipment.
- Sec. 255. Special expensing rules for certain film and television productions.
- Sec. 256. Expensing of environmental remediation costs.
- Sec. 257. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 258. Modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 259. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business income.
- Sec. 260. Timber REIT modernization.
- Sec. 261. Treatment of certain dividends of regulated investment companies.
- Sec. 262. RIC qualified investment entity treatment under FIRPTA.
- Sec. 263. Exceptions for active financing income.
- Sec. 264. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
- Sec. 265. Basis adjustment to stock of S corps making charitable contributions of property.
- Sec. 266. Empowerment zone tax incentives.
- Sec. 267. Tax incentives for investment in the District of Columbia.
- Sec. 268. Renewal community tax incentives.

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- Sec. 269. Temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
- Sec. 270. Payment to American Samoa in lieu of extension of economic development credit.
- Sec. 271. Election to temporarily utilize unused AMT credits determined by domestic investment.
- Sec. 272. Study of extended tax expenditures.

Subtitle D—Temporary Disaster Relief Provisions

PART I—NATIONAL DISASTER RELIEF

- Sec. 281. Waiver of certain mortgage revenue bond requirements.
- Sec. 282. Losses attributable to federally declared disasters.
- Sec. 283. Special depreciation allowance for qualified disaster property.
- Sec. 284. Net operating losses attributable to federally declared disasters.
- Sec. 285. Expensing of qualified disaster expenses.

PART II—REGIONAL PROVISIONS

SUBPART A—NEW YORK LIBERTY ZONE

- Sec. 291. Special depreciation allowance for nonresidential and residential real property.
- Sec. 292. Tax-exempt bond financing.

SUBPART B—GO ZONE

- Sec. 295. Increase in rehabilitation credit.
- Sec. 296. Work opportunity tax credit with respect to certain individuals affected by Hurricane Katrina for employers inside disaster areas.
- Sec. 297. Extension of low-income housing credit rules for buildings in GO zones.

TITLE III—PENSION FUNDING RELIEF

Subtitle A—Single-Employer Plans

- Sec. 301. Extended period for single-employer defined benefit plans to amortize certain shortfall amortization bases.
- Sec. 302. Application of extended amortization period to plans subject to prior law funding rules.
- Sec. 303. Suspension of certain funding level limitations.
- Sec. 304. Lookback for credit balance rule.
- Sec. 305. Information reporting.
- Sec. 306. Rollover of amounts received in airline carrier bankruptcy.

Subtitle B—Multiemployer Plans

- Sec. 311. Optional use of 30-year amortization periods.
- Sec. 312. Optional longer recovery periods for multiemployer plans in endangered or critical status.
- Sec. 313. Modification of certain amortization extensions under prior law.
- Sec. 314. Alternative default schedule for plans in endangered or critical status.
- Sec. 315. Transition rule for certifications of plan status.

TITLE IV—REVENUE OFFSETS

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Subtitle A—Foreign Provisions

- Sec. 401. Rules to prevent splitting foreign tax credits from the income to which they relate.
- Sec. 402. Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.
- Sec. 403. Separate application of foreign tax credit limitation, etc., to items resourced under treaties.
- Sec. 404. Limitation on the amount of foreign taxes deemed paid with respect to section 956 inclusions.
- Sec. 405. Special rule with respect to certain redemptions by foreign subsidiaries.
- Sec. 406. Modification of affiliation rules for purposes of rules allocating interest expense.
- Sec. 407. Termination of special rules for interest and dividends received from persons meeting the 80-percent foreign business requirements.
- Sec. 408. Source rules for income on guarantees.
- Sec. 409. Limitation on extension of statute of limitations for failure to notify Secretary of certain foreign transfers.

Subtitle B—Personal Service Income Earned in Pass-thru Entities

- Sec. 411. Partnership interests transferred in connection with performance of services.
- Sec. 413. Employment tax treatment of professional service businesses.

Subtitle C—Corporate Provisions

- Sec. 421. Treatment of securities of a controlled corporation exchanged for assets in certain reorganizations.
- Sec. 422. Taxation of boot received in reorganizations.

Subtitle D—Other Provisions

- Sec. 431. Modifications with respect to Oil Spill Liability Trust Fund.
- Sec. 432. Time for payment of corporate estimated taxes.
- Sec. 433. Denial of deduction for punitive damages.

TITLE V—UNEMPLOYMENT, HEALTH, AND OTHER ASSISTANCE

Subtitle A—Unemployment Insurance and Other Assistance

- Sec. 501. Extension of unemployment insurance provisions.
- Sec. 502. Coordination of emergency unemployment compensation with regular compensation.
- Sec. 503. Extension of the Emergency Contingency Fund.
- Sec. 504. Requiring States to not reduce regular compensation in order to be eligible for funds under the emergency unemployment compensation program.

Subtitle B—Health Provisions

- Sec. 511. Extension of section 508 reclassifications.
- Sec. 512. Repeal of delay of RUG-IV.
- Sec. 513. Limitation on reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.

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- Sec. 514. Funding for claims reprocessing.
- Sec. 515. Medicaid and CHIP technical corrections.
- Sec. 516. Addition of inpatient drug discount program to 340B drug discount program.
- Sec. 517. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children's hospitals under the 340B drug discount program.
- Sec. 518. Conforming amendment related to waiver of coinsurance for preventive services.
- Sec. 519. Establish a CMS–IRS data match to identify fraudulent providers.
- Sec. 520. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 521. Physician payment update.
- Sec. 522. Adjustment to Medicare payment localities.
- Sec. 523. Clarification of 3-day payment window.
- Sec. 524. Extension of ARRA increase in FMAP.
- Sec. 525. Clarification for affiliated hospitals for distribution of additional residency positions.

TITLE VI—OTHER PROVISIONS

- Sec. 601. Extension of national flood insurance program.
- Sec. 602. Allocation of geothermal receipts.
- Sec. 603. Small business loan guarantee enhancement extensions.
- Sec. 604. Emergency agricultural disaster assistance.
- Sec. 605. Summer employment for youth.
- Sec. 606. Housing Trust Fund.
- Sec. 607. The Individual Indian Money Account Litigation Settlement Act of 2010.
- Sec. 608. Appropriation of funds for final settlement of claims from In re Black Farmers Discrimination Litigation.
- Sec. 609. Expansion of eligibility for concurrent receipt of military retired pay and veterans' disability compensation to include all chapter 61 disability retirees regardless of disability rating percentage or years of service.
- Sec. 610. Extension of use of 2009 poverty guidelines.
- Sec. 611. Refunds disregarded in the administration of Federal programs and federally assisted programs.
- Sec. 612. State court improvement program.
- Sec. 613. Qualifying timber contract options.
- Sec. 614. Extension and flexibility for certain allocated surface transportation programs.
- Sec. 615. Community College and Career Training Grant Program.
- Sec. 616. Extensions of duty suspensions on cotton shirting fabrics and related provisions.
- Sec. 617. Modification of Wool Apparel Manufacturers Trust Fund.
- Sec. 618. Department of Commerce Study.
- Sec. 619. ARRA planning and reporting.
- Sec. 620. Amendment of Travel Promotion Act of 2009.
- Sec. 621. Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits.
- Sec. 622. Report on tax shelter penalties and certain other enforcement actions.

TITLE VII—TRANSPARENCY REQUIREMENTS FOR FOREIGN-HELD
DEBT

- Sec. 701. Short title.
- Sec. 702. Definitions.
- Sec. 703. Sense of Congress.
- Sec. 704. Quarterly report on risks posed by foreign holdings of debt instruments of the United States.
- Sec. 705. Annual report on risks posed by the Federal debt of the United States.
- Sec. 706. Corrective action to address unacceptable and unsustainable risks to United States national security and economic stability.

TITLE VIII—TRANSPARENCY REQUIREMENTS FOR FOREIGN-HELD DEBT

- Sec. 801. Short title.
- Sec. 802. Definitions.
- Sec. 803. Sense of Congress.
- Sec. 804. Annual report on risks posed by foreign holdings of debt instruments of the United States.
- Sec. 805. Annual report on risks posed by the Federal debt of the United States.
- Sec. 806. Corrective action to address unacceptable risks to United States national security and economic stability.

TITLE IX—OFFICE OF THE HOMEOWNER ADVOCATE

- Sec. 901. Office of the Homeowner Advocate.
- Sec. 902. Functions of the Office.
- Sec. 903. Relationship with existing entities.
- Sec. 904. Rule of construction.
- Sec. 905. Reports to Congress.
- Sec. 906. Funding.
- Sec. 907. Prohibition on participation in Making Home Affordable for borrowers who strategically default.
- Sec. 908. Public availability of information.

TITLE X—BUDGETARY PROVISIONS

- Sec. 1001. Budgetary provisions.

1 **TITLE I—INFRASTRUCTURE** 2 **INCENTIVES**

3 **SEC. 101. EXTENSION OF BUILD AMERICA BONDS.**

- 4 (a) IN GENERAL.—Subparagraph (B) of section
- 5 54AA(d)(1) is amended by striking “January 1, 2011”
- 6 and inserting “January 1, 2013”.

7 (b) EXTENSION OF PAYMENTS TO ISSUERS.—

- 8 (1) IN GENERAL.—Section 6431 is amended—

1 (A) by striking “January 1, 2011” in sub-
2 section (a) and inserting “January 1, 2013”;
3 and

4 (B) by striking “January 1, 2011” in sub-
5 section (f)(1)(B) and inserting “a particular
6 date”.

7 (2) CONFORMING AMENDMENTS.—Subsection
8 (g) of section 54AA is amended—

9 (A) by striking “January 1, 2011” and in-
10 serting “January 1, 2013”; and

11 (B) by striking “QUALIFIED BONDS
12 ISSUED BEFORE 2011” in the heading and in-
13 serting “CERTAIN QUALIFIED BONDS”.

14 (c) REDUCTION IN PERCENTAGE OF PAYMENTS TO
15 ISSUERS.—Subsection (b) of section 6431 is amended—

16 (1) by striking “The Secretary” and inserting
17 the following:

18 “(1) IN GENERAL.—The Secretary”;

19 (2) by striking “35 percent” and inserting “the
20 applicable percentage”; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(2) APPLICABLE PERCENTAGE.—For purposes
24 of this subsection, the term ‘applicable percentage’

1 means the percentage determined in accordance with
 2 the following table:

“In the case of a qualified bond issued during calendar year:	The applicable percentage is:
2009 or 2010	35 percent
2011	32 percent
2012	30 percent.”.

3 (d) CURRENT REFUNDINGS PERMITTED.—Sub-
 4 section (g) of section 54AA is amended by adding at the
 5 end the following new paragraph:

6 “(3) TREATMENT OF CURRENT REFUNDING
 7 BONDS.—

8 “(A) IN GENERAL.—For purposes of this
 9 subsection, the term ‘qualified bond’ includes
 10 any bond (or series of bonds) issued to refund
 11 a qualified bond if—

12 “(i) the average maturity date of the
 13 issue of which the refunding bond is a part
 14 is not later than the average maturity date
 15 of the bonds to be refunded by such issue,

16 “(ii) the amount of the refunding
 17 bond does not exceed the outstanding
 18 amount of the refunded bond, and

19 “(iii) the refunded bond is redeemed
 20 not later than 90 days after the date of the
 21 issuance of the refunding bond.

1 “(B) APPLICABLE PERCENTAGE.—In the
2 case of a refunding bond referred to in subpara-
3 graph (A), the applicable percentage with re-
4 spect to such bond under section 6431(b) shall
5 be the lowest percentage specified in paragraph
6 (2) of such section.

7 “(C) DETERMINATION OF AVERAGE MATU-
8 RITY.—For purposes of subparagraph (A)(i),
9 average maturity shall be determined in accord-
10 ance with section 147(b)(2)(A).”.

11 (e) CLARIFICATION RELATED TO LEVEES AND
12 FLOOD CONTROL PROJECTS.—Subparagraph (A) of sec-
13 tion 54AA(g)(2) is amended by inserting “(including cap-
14 ital expenditures for levees and other flood control
15 projects)” after “capital expenditures”.

16 **SEC. 102. EXEMPT-FACILITY BONDS FOR SEWAGE AND**
17 **WATER SUPPLY FACILITIES.**

18 (a) BONDS FOR WATER AND SEWAGE FACILITIES
19 EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY
20 BONDS.—

21 (1) IN GENERAL.—Paragraph (3) of section
22 146(g) is amended by inserting “(4), (5),” after
23 “(2),”.

1 (2) CONFORMING AMENDMENT.—Paragraphs
2 (2) and (3)(B) of section 146(k) are both amended
3 by striking “(4), (5), (6),” and inserting “(6)”.

4 (b) TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOV-
5 ERNMENTS.—

6 (1) IN GENERAL.—Subsection (c) of section
7 7871 is amended by adding at the end the following
8 new paragraph:

9 “(4) EXCEPTION FOR BONDS FOR WATER AND
10 SEWAGE FACILITIES.—Paragraph (2) shall not apply
11 to an exempt facility bond 95 percent or more of the
12 net proceeds (as defined in section 150(a)(3)) of
13 which are to be used to provide facilities described
14 in paragraph (4) or (5) of section 142(a).”.

15 (2) CONFORMING AMENDMENT.—Paragraph (2)
16 of section 7871(c) is amended by striking “para-
17 graph (3)” and inserting “paragraphs (3) and (4)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to obligations issued after the date
20 of the enactment of this Act.

21 **SEC. 103. EXTENSION OF EXEMPTION FROM ALTERNATIVE**
22 **MINIMUM TAX TREATMENT FOR CERTAIN**
23 **TAX-EXEMPT BONDS.**

24 (a) IN GENERAL.—Clause (vi) of section 57(a)(5)(C)
25 is amended—

1 (1) by striking “January 1, 2011” in subclause
2 (I) and inserting “January 1, 2012”; and

3 (2) by striking “AND 2010” in the heading and
4 inserting “, 2010, AND 2011”.

5 (b) ADJUSTED CURRENT EARNINGS.—Clause (iv) of
6 section 56(g)(4)(B) is amended—

7 (1) by striking “January 1, 2011” in subclause
8 (I) and inserting “January 1, 2012”; and

9 (2) by striking “AND 2010” in the heading and
10 inserting “, 2010, AND 2011”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to obligations issued after Decem-
13 ber 31, 2010.

14 **SEC. 104. EXTENSION AND ADDITIONAL ALLOCATIONS OF**
15 **RECOVERY ZONE BOND AUTHORITY.**

16 (a) EXTENSION OF RECOVERY ZONE BOND AUTHOR-
17 ITY.—Section 1400U–2(b)(1) and section 1400U–
18 3(b)(1)(B) are each amended by striking “January 1,
19 2011” and inserting “January 1, 2012”.

20 (b) ADDITIONAL ALLOCATIONS OF RECOVERY ZONE
21 BOND AUTHORITY BASED ON UNEMPLOYMENT.—Section
22 1400U–1 is amended by adding at the end the following
23 new subsection:

24 “(c) ALLOCATION OF 2010 RECOVERY ZONE BOND
25 LIMITATIONS BASED ON UNEMPLOYMENT.—

1 “(1) IN GENERAL.—The Secretary shall allo-
2 cate the 2010 national recovery zone economic devel-
3 opment bond limitation and the 2010 national recov-
4 ery zone facility bond limitation among the States in
5 the proportion that each such State’s 2009 unem-
6 ployment number bears to the aggregate of the 2009
7 unemployment numbers for all of the States.

8 “(2) MINIMUM ALLOCATION.—The Secretary
9 shall adjust the allocations under paragraph (1) for
10 each State to the extent necessary to ensure that no
11 State (prior to any reduction under paragraph (3))
12 receives less than 0.9 percent of the 2010 national
13 recovery zone economic development bond limitation
14 and 0.9 percent of the 2010 national recovery zone
15 facility bond limitation.

16 “(3) ALLOCATIONS BY STATES.—

17 “(A) IN GENERAL.—Each State with re-
18 spect to which an allocation is made under
19 paragraph (1) shall reallocate such allocation
20 among the counties and large municipalities (as
21 defined in subsection (a)(3)(B)) in such State
22 in the proportion that each such county’s or
23 municipality’s 2009 unemployment number
24 bears to the aggregate of the 2009 unemploy-

1 ment numbers for all the counties and large
2 municipalities (as so defined) in such State.

3 “(B) 2010 ALLOCATION REDUCED BY
4 AMOUNT OF PREVIOUS ALLOCATION.—Each
5 State shall reduce (but not below zero)—

6 “(i) the amount of the 2010 national
7 recovery zone economic development bond
8 limitation allocated to each county or large
9 municipality (as so defined) in such State
10 by the amount of the national recovery
11 zone economic development bond limitation
12 allocated to such county or large munici-
13 pality under subsection (a)(3)(A) (deter-
14 mined without regard to any waiver there-
15 of), and

16 “(ii) the amount of the 2010 national
17 recovery zone facility bond limitation allo-
18 cated to each county or large municipality
19 (as so defined) in such State by the
20 amount of the national recovery zone facil-
21 ity bond limitation allocated to such county
22 or large municipality under subsection
23 (a)(3)(A) (determined without regard to
24 any waiver thereof).

1 “(C) WAIVER OF SUBALLOCATIONS.—A
2 county or municipality may waive any portion
3 of an allocation made under this paragraph. A
4 county or municipality shall be treated as hav-
5 ing waived any portion of an allocation made
6 under this paragraph which has not been allo-
7 cated to a bond issued before May 1, 2011. Any
8 allocation waived (or treated as waived) under
9 this subparagraph may be used or reallocated
10 by the State.

11 “(D) SPECIAL RULE FOR A MUNICIPALITY
12 IN A COUNTY.—In the case of any large munici-
13 pality any portion of which is in a county, such
14 portion shall be treated as part of such munici-
15 pality and not part of such county.

16 “(4) 2009 UNEMPLOYMENT NUMBER.—For
17 purposes of this subsection, the term ‘2009 unem-
18 ployment number’ means, with respect to any State,
19 county or municipality, the number of individuals in
20 such State, county, or municipality who were deter-
21 mined to be unemployed by the Bureau of Labor
22 Statistics for December 2009.

23 “(5) 2010 NATIONAL LIMITATIONS.—

24 “(A) RECOVERY ZONE ECONOMIC DEVEL-
25 OPMENT BONDS.—The 2010 national recovery

1 zone economic development bond limitation is
2 \$10,000,000,000. Any allocation of such limita-
3 tion under this subsection shall be treated for
4 purposes of section 1400U–2 in the same man-
5 ner as an allocation of national recovery zone
6 economic development bond limitation.

7 “(B) RECOVERY ZONE FACILITY BONDS.—
8 The 2010 national recovery zone facility bond
9 limitation is \$15,000,000,000. Any allocation of
10 such limitation under this subsection shall be
11 treated for purposes of section 1400U–3 in the
12 same manner as an allocation of national recov-
13 ery zone facility bond limitation.”.

14 (c) AUTHORITY OF STATE TO WAIVE CERTAIN 2009
15 ALLOCATIONS.—Subparagraph (A) of section 1400U–
16 1(a)(3) is amended by adding at the end the following:
17 “A county or municipality shall be treated as having
18 waived any portion of an allocation made under this sub-
19 paragraph which has not been allocated to a bond issued
20 before May 1, 2011. Any allocation waived (or treated as
21 waived) under this subparagraph may be used or reallo-
22 cated by the State.”.

1 **SEC. 105. ALLOWANCE OF NEW MARKETS TAX CREDIT**
2 **AGAINST ALTERNATIVE MINIMUM TAX.**

3 (a) IN GENERAL.—Subparagraph (B) of section
4 38(c)(4), as amended by the Patient Protection and Af-
5 fordable Care Act, is amended by redesignating clauses
6 (v) through (ix) as clauses (vi) through (x), respectively,
7 and by inserting after clause (iv) the following new clause:

8 “(v) the credit determined under sec-
9 tion 45D, but only with respect to credits
10 determined with respect to qualified equity
11 investments (as defined in section 45D(b))
12 initially made before January 1, 2012,”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to credits determined with respect
15 to qualified equity investments (as defined in section
16 45D(b) of the Internal Revenue Code of 1986) initially
17 made after March 15, 2010.

18 **SEC. 106. EXTENSION OF TAX-EXEMPT ELIGIBILITY FOR**
19 **LOANS GUARANTEED BY FEDERAL HOME**
20 **LOAN BANKS.**

21 Clause (iv) of section 149(b)(3)(A) is amended by
22 striking “December 31, 2010” and inserting “December
23 31, 2011”.

1 **SEC. 107. EXTENSION OF TEMPORARY SMALL ISSUER**
2 **RULES FOR ALLOCATION OF TAX-EXEMPT IN-**
3 **TEREST EXPENSE BY FINANCIAL INSTITU-**
4 **TIONS.**

5 (a) IN GENERAL.—Clauses (i), (ii), and (iii) of sec-
6 tion 265(b)(3)(G) are each amended by striking “or
7 2010” and inserting “, 2010, or 2011”.

8 (b) CONFORMING AMENDMENT.—Subparagraph (G)
9 of section 265(b)(3) is amended by striking “AND 2010”
10 in the heading and inserting “, 2010, AND 2011”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to obligations issued after Decem-
13 ber 31, 2010.

14 **TITLE II—EXTENSION OF**
15 **EXPIRING PROVISIONS**
16 **Subtitle A—Energy**

17 **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT FOR NEW**
18 **QUALIFIED HYBRID MOTOR VEHICLES**
19 **OTHER THAN PASSENGER AUTOMOBILES**
20 **AND LIGHT TRUCKS.**

21 (a) IN GENERAL.—Paragraph (3) of section 30B(k)
22 is amended by striking “December 31, 2009” and insert-
23 ing “December 31, 2010”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to property purchased after De-
26 cember 31, 2009.

1 **SEC. 202. INCENTIVES FOR BIODIESEL AND RENEWABLE**
2 **DIESEL.**

3 (a) CREDITS FOR BIODIESEL AND RENEWABLE DIE-
4 SEL USED AS FUEL.—Subsection (g) of section 40A is
5 amended by striking “December 31, 2009” and inserting
6 “December 31, 2010”.

7 (b) EXCISE TAX CREDITS AND OUTLAY PAYMENTS
8 FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIX-
9 TURES.—

10 (1) Paragraph (6) of section 6426(c) is amend-
11 ed by striking “December 31, 2009” and inserting
12 “December 31, 2010”.

13 (2) Subparagraph (B) of section 6427(e)(6) is
14 amended by striking “December 31, 2009” and in-
15 serting “December 31, 2010”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to fuel sold or used after December
18 31, 2009.

19 **SEC. 203. CREDIT FOR ELECTRICITY PRODUCED AT CER-**
20 **TAIN OPEN-LOOP BIOMASS FACILITIES.**

21 (a) IN GENERAL.—Clause (ii) of section 45(b)(4)(B)
22 is amended—

23 (1) by striking “5-year period” and inserting
24 “6-year period”; and

25 (2) by adding at the end the following: “In the
26 case of the last year of the 6-year period described

1 in the preceding sentence, the credit determined
2 under subsection (a) with respect to electricity pro-
3 duced during such year shall not exceed 80 percent
4 of such credit determined without regard to this sen-
5 tence.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to electricity produced and sold
8 after December 31, 2009.

9 **SEC. 204. EXTENSION AND MODIFICATION OF CREDIT FOR**
10 **STEEL INDUSTRY FUEL.**

11 (a) CREDIT PERIOD.—

12 (1) IN GENERAL.—Subclause (II) of section
13 45(e)(8)(D)(ii) is amended to read as follows:

14 “(II) CREDIT PERIOD.—In lieu
15 of the 10-year period referred to in
16 clauses (i) and (ii)(II) of subpara-
17 graph (A), the credit period shall be
18 the period beginning on the date that
19 the facility first produces steel indus-
20 try fuel that is sold to an unrelated
21 person after September 30, 2008, and
22 ending 2 years after such date.”.

23 (2) CONFORMING AMENDMENT.—Section
24 45(e)(8)(D) is amended by striking clause (iii) and
25 by redesignating clause (iv) as clause (iii).

1 (b) EXTENSION OF PLACED-IN-SERVICE DATE.—

2 Subparagraph (A) of section 45(d)(8) is amended—

3 (1) by striking “(or any modification to a facil-
4 ity)”; and

5 (2) by striking “2010” and inserting “2011”.

6 (c) CLARIFICATIONS.—

7 (1) STEEL INDUSTRY FUEL.—Subclause (I) of
8 section 45(c)(7)(C)(i) is amended by inserting “, a
9 blend of coal and petroleum coke, or other coke feed-
10 stock” after “on coal”.

11 (2) OWNERSHIP INTEREST.—Section 45(d)(8)
12 is amended by adding at the end the following new
13 flush sentence:

14 “With respect to a facility producing steel industry
15 fuel, no person (including a ground lessor, customer,
16 supplier, or technology licensor) shall be treated as
17 having an ownership interest in the facility or as
18 otherwise entitled to the credit allowable under sub-
19 section (a) with respect to such facility if such per-
20 son’s rent, license fee, or other entitlement to net
21 payments from the owner of such facility is meas-
22 ured by a fixed dollar amount or a fixed amount per
23 ton, or otherwise determined without regard to the
24 profit or loss of such facility.”.

1 (3) PRODUCTION AND SALE.—Subparagraph
2 (D) of section 45(e)(8), as amended by subsection
3 (a)(2), is amended by redesignating clause (iii) as
4 clause (iv) and by inserting after clause (ii) the fol-
5 lowing new clause:

6 “(iii) PRODUCTION AND SALE.—The
7 owner of a facility producing steel industry
8 fuel shall be treated as producing and sell-
9 ing steel industry fuel where that owner
10 manufactures such steel industry fuel from
11 coal, a blend of coal and petroleum coke,
12 or other coke feedstock to which it has
13 title. The sale of such steel industry fuel
14 by the owner of the facility to a person
15 who is not the owner of the facility shall
16 not fail to qualify as a sale to an unrelated
17 person solely because such purchaser may
18 also be a ground lessor, supplier, or cus-
19 tomer.”.

20 (d) SPECIFIED CREDIT FOR PURPOSES OF ALTER-
21 NATIVE MINIMUM TAX EXCLUSION.—Subclause (II) of
22 section 38(c)(4)(B)(iii) is amended by inserting “(in the
23 case of a refined coal production facility producing steel
24 industry fuel, during the credit period set forth in section
25 45(e)(8)(D)(ii)(II))” after “service”.

1 (e) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 subsections (a), (b), and (d) shall apply to fuel pro-
4 duced and sold after September 30, 2008.

5 (2) CLARIFICATIONS.—The amendments made
6 by subsection (c) shall take effect as if included in
7 the amendments made by the Energy Improvement
8 and Extension Act of 2008.

9 **SEC. 205. CREDIT FOR PRODUCING FUEL FROM COKE OR**
10 **COKE GAS.**

11 (a) IN GENERAL.—Paragraph (1) of section 45K(g)
12 is amended by striking “January 1, 2010” and inserting
13 “January 1, 2011”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to facilities placed in service after
16 December 31, 2009.

17 **SEC. 206. NEW ENERGY EFFICIENT HOME CREDIT.**

18 (a) IN GENERAL.—Subsection (g) of section 45L is
19 amended by striking “December 31, 2009” and inserting
20 “December 31, 2010”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to homes acquired after December
23 31, 2009.

1 **SEC. 207. EXCISE TAX CREDITS AND OUTLAY PAYMENTS**
2 **FOR ALTERNATIVE FUEL AND ALTERNATIVE**
3 **FUEL MIXTURES.**

4 (a) ALTERNATIVE FUEL CREDIT.—Paragraph (5) of
5 section 6426(d) is amended by striking “after December
6 31, 2009” and all that follows and inserting “after—

7 “(A) September 30, 2014, in the case of
8 liquefied hydrogen,

9 “(B) December 31, 2010, in the case of
10 fuels described in subparagraph (A), (C), (F),
11 or (G) of paragraph (2), and

12 “(C) December 31, 2009, in any other
13 case.”.

14 (b) ALTERNATIVE FUEL MIXTURE CREDIT.—Para-
15 graph (3) of section 6426(e) is amended by striking “after
16 December 31, 2009” and all that follows and inserting
17 “after—

18 “(A) September 30, 2014, in the case of
19 liquefied hydrogen,

20 “(B) December 31, 2010, in the case of
21 fuels described in subparagraph (A), (C), (F),
22 or (G) of subsection (d)(2), and

23 “(C) December 31, 2009, in any other
24 case.”.

25 (c) PAYMENT AUTHORITY.—

1 (1) IN GENERAL.—Paragraph (6) of section
2 6427(e) is amended by striking “and” at the end of
3 subparagraph (C), by striking the period at the end
4 of subparagraph (D) and inserting “, and”, and by
5 adding at the end the following new subparagraph:

6 “(E) any alternative fuel or alternative fuel
7 mixture (as so defined) involving fuel described
8 in subparagraph (A), (C), (F), or (G) of section
9 6426(d)(2) sold or used after December 31,
10 2010.”.

11 (2) CONFORMING AMENDMENT.—Subparagraph
12 (C) of section 6427(e)(6) is amended by inserting
13 “or (E)” after “subparagraph (D)”.

14 (d) EXCLUSION OF BLACK LIQUOR FROM CREDIT
15 ELIGIBILITY.—The last sentence of section 6426(d)(2) is
16 amended by striking “or biodiesel” and inserting “bio-
17 diesel, or any fuel (including lignin, wood residues, or
18 spent pulping liquors) derived from the production of
19 paper or pulp”.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to fuel sold or used after December
22 31, 2009.

1 **SEC. 208. SPECIAL RULE FOR SALES OR DISPOSITIONS TO**
2 **IMPLEMENT FERC OR STATE ELECTRIC RE-**
3 **STRUCTURING POLICY FOR QUALIFIED ELEC-**
4 **TRIC UTILITIES.**

5 (a) IN GENERAL.—Paragraph (3) of section 451(i)
6 is amended by striking “January 1, 2010” and inserting
7 “January 1, 2011”.

8 (b) MODIFICATION OF DEFINITION OF INDE-
9 PENDENT TRANSMISSION COMPANY.—

10 (1) IN GENERAL.—Clause (i) of section
11 451(i)(4)(B) is amended to read as follows:

12 “(i) who the Federal Energy Regu-
13 latory Commission determines in its au-
14 thorization of the transaction under section
15 203 of the Federal Power Act (16 U.S.C.
16 824b) or by declaratory order—

17 “(I) is not itself a market partici-
18 pant as determined by the Commis-
19 sion, and also is not controlled by any
20 such market participant, or

21 “(II) to be independent from
22 market participants or to be an inde-
23 pendent transmission company within
24 the meaning of such Commission’s
25 rules applicable to independent trans-
26 mission providers, and”.

1 (2) RELATED PERSONS.—Paragraph (4) of sec-
2 tion 451(i) is amended by adding at the end the fol-
3 lowing flush sentence:

4 “For purposes of subparagraph (B)(i)(I), a person
5 shall be treated as controlled by another person if
6 such persons would be treated as a single employer
7 under section 52.”.

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendment made by
10 subsection (a) shall apply to dispositions after De-
11 cember 31, 2009.

12 (2) MODIFICATIONS.—The amendments made
13 by subsection (b) shall apply to dispositions after the
14 date of the enactment of this Act.

15 **SEC. 209. SUSPENSION OF LIMITATION ON PERCENTAGE**
16 **DEPLETION FOR OIL AND GAS FROM MAR-**
17 **GINAL WELLS.**

18 (a) IN GENERAL.—Clause (ii) of section
19 613A(c)(6)(H) is amended by striking “January 1, 2010”
20 and inserting “January 1, 2011”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 December 31, 2009.

1 **SEC. 210. DIRECT PAYMENT OF ENERGY EFFICIENT APPLI-**
2 **ANCES TAX CREDIT.**

3 In the case of any taxable year which includes the
4 last day of calendar year 2009 or calendar year 2010, a
5 taxpayer who elects to waive the credit which would other-
6 wise be determined with respect to the taxpayer under sec-
7 tion 45M of the Internal Revenue Code of 1986 for such
8 taxable year shall be treated as making a payment against
9 the tax imposed under subtitle A of such Code for such
10 taxable year in an amount equal to 85 percent of the
11 amount of the credit which would otherwise be so deter-
12 mined. Such payment shall be treated as made on the later
13 of the due date of the return of such tax or the date on
14 which such return is filed. Elections under this section
15 may be made separately for 2009 and 2010, but once
16 made shall be irrevocable. No amount shall be includible
17 in gross income or alternative minimum taxable income
18 by reason of this section.

19 **SEC. 211. MODIFICATION OF STANDARDS FOR WINDOWS,**
20 **DOORS, AND SKYLIGHTS WITH RESPECT TO**
21 **THE CREDIT FOR NONBUSINESS ENERGY**
22 **PROPERTY.**

23 (a) IN GENERAL.—Paragraph (4) of section 25C(c)
24 is amended by striking “unless” and all that follows and
25 inserting “unless—

1 “(A) in the case of any component placed
2 in service after the date which is 90 days after
3 the date of the enactment of the American Jobs
4 and Closing Tax Loopholes Act of 2010, such
5 component meets the criteria for such compo-
6 nents established by the 2010 Energy Star Pro-
7 gram Requirements for Residential Windows,
8 Doors, and Skylights, Version 5.0 (or any sub-
9 sequent version of such requirements which is
10 in effect after January 4, 2010),

11 “(B) in the case of any component placed
12 in service after the date of the enactment of the
13 American Jobs and Closing Tax Loopholes Act
14 of 2010 and on or before the date which is 90
15 days after such date, such component meets the
16 criteria described in subparagraph (A) or is
17 equal to or below a U factor of 0.30 and SHGC
18 of 0.30, and

19 “(C) in the case of any component which
20 is a garage door, such component is equal to or
21 below a U factor of 0.30 and SHGC of 0.30.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to property placed in service after
24 the date of the enactment of this Act.

1 **Subtitle B—Individual Tax Relief**

2 **PART I—MISCELLANEOUS PROVISIONS**

3 **SEC. 221. DEDUCTION FOR CERTAIN EXPENSES OF ELE-**
4 **MENTARY AND SECONDARY SCHOOL TEACH-**
5 **ERS.**

6 (a) IN GENERAL.—Subparagraph (D) of section
7 62(a)(2) is amended by striking “or 2009” and inserting
8 “2009, or 2010”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2009.

12 **SEC. 222. ADDITIONAL STANDARD DEDUCTION FOR STATE**
13 **AND LOCAL REAL PROPERTY TAXES.**

14 (a) IN GENERAL.—Subparagraph (C) of section
15 63(c)(1) is amended by striking “or 2009” and inserting
16 “2009, or 2010”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2009.

20 **SEC. 223. DEDUCTION OF STATE AND LOCAL SALES TAXES.**

21 (a) IN GENERAL.—Subparagraph (I) of section
22 164(b)(5) is amended by striking “January 1, 2010” and
23 inserting “January 1, 2011”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2009.

4 **SEC. 224. CONTRIBUTIONS OF CAPITAL GAIN REAL PROP-**
5 **ERTY MADE FOR CONSERVATION PURPOSES.**

6 (a) IN GENERAL.—Clause (vi) of section
7 170(b)(1)(E) is amended by striking “December 31,
8 2009” and inserting “December 31, 2010”.

9 (b) CONTRIBUTIONS BY CERTAIN CORPORATE FARM-
10 ERS AND RANCHERS.—Clause (iii) of section 170(b)(2)(B)
11 is amended by striking “December 31, 2009” and insert-
12 ing “December 31, 2010”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to contributions made in taxable
15 years beginning after December 31, 2009.

16 **SEC. 225. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED**
17 **TUITION AND RELATED EXPENSES.**

18 (a) IN GENERAL.—Subsection (e) of section 222 is
19 amended by striking “December 31, 2009” and inserting
20 “December 31, 2010”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 December 31, 2009.

24 (c) TEMPORARY COORDINATION WITH HOPE AND
25 LIFETIME LEARNING CREDITS.—In the case of any tax-

1 payer for any taxable year beginning in 2010, no deduc-
2 tion shall be allowed under section 222 of the Internal
3 Revenue Code of 1986 if—

4 (1) the taxpayer’s net Federal income tax re-
5 duction which would be attributable to such deduc-
6 tion for such taxable year, is less than

7 (2) the credit which would be allowed to the
8 taxpayer for such taxable year under section 25A of
9 such Code (determined without regard to sections
10 25A(e) and 26 of such Code).

11 **SEC. 226. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
12 **TIREMENT PLANS FOR CHARITABLE PUR-**
13 **POSES.**

14 (a) IN GENERAL.—Subparagraph (F) of section
15 408(d)(8) is amended by striking “December 31, 2009”
16 and inserting “December 31, 2010”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to distributions made in taxable
19 years beginning after December 31, 2009.

20 **SEC. 227. LOOK-THRU OF CERTAIN REGULATED INVEST-**
21 **MENT COMPANY STOCK IN DETERMINING**
22 **GROSS ESTATE OF NONRESIDENTS.**

23 (a) IN GENERAL.—Paragraph (3) of section 2105(d)
24 is amended by striking “December 31, 2009” and insert-
25 ing “December 31, 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to estates of decedents dying after
3 December 31, 2009.

4 **SEC. 228. FIRST-TIME HOMEBUYER CREDIT.**

5 (a) IN GENERAL.—Paragraph (2) of section 36(h) is
6 amended by striking “paragraph (1) shall be applied by
7 substituting ‘July 1, 2010’ ” and inserting “and who pur-
8 chases such residence before October 1, 2010, paragraph
9 (1) shall be applied by substituting ‘October 1, 2010’ ”.

10 (b) CONFORMING AMENDMENT.—Subparagraph (B)
11 of section 36(h)(3) is amended by inserting “and for ‘Oc-
12 tober 1, 2010’ ” after “for ‘July 1, 2010’ ”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 subsections (a) and (b) shall apply to residences purchased
15 after June 30, 2010.

16 **PART II—LOW-INCOME HOUSING CREDITS**

17 **SEC. 231. ELECTION FOR DIRECT PAYMENT OF LOW-IN-**
18 **COME HOUSING CREDIT FOR 2010.**

19 (a) IN GENERAL.—Section 42 is amended by redesign-
20 ating subsection (n) as subsection (o) and by inserting
21 after subsection (m) the following new subsection:

22 “(n) ELECTION FOR DIRECT PAYMENT OF CRED-
23 IT.—

24 “(1) IN GENERAL.—The housing credit agency
25 of each State shall be allowed a credit in an amount

1 equal to such State's 2010 low-income housing re-
2 fundable credit election amount, which shall be pay-
3 able by the Secretary as provided in paragraph (5).

4 “(2) 2010 LOW-INCOME HOUSING REFUNDABLE
5 CREDIT ELECTION AMOUNT.—For purposes of this
6 subsection, the term ‘2010 low-income housing re-
7 fundable credit election amount’ means, with respect
8 to any State, such amount as the State may elect
9 which does not exceed 85 percent of the product
10 of—

11 “(A) the sum of—

12 “(i) 100 percent of the State housing
13 credit ceiling for 2010 which is attrib-
14 utable to amounts described in clauses (i)
15 and (iii) of subsection (h)(3)(C), plus any
16 credits returned to the State attributable
17 to section 1400N(c) (including credits
18 made available under such section as ap-
19 plied by reason of sections 702(d)(2) and
20 704(b) of the Tax Extenders and Alter-
21 native Minimum Tax Relief Act of 2008),
22 and

23 “(ii) 40 percent of the State housing
24 credit ceiling for 2010 which is attrib-
25 utable to amounts described in clauses (ii)

1 and (iv) of such subsection, plus any cred-
2 its for 2010 attributable to the application
3 of such section 702(d)(2) and 704(b), mul-
4 tiplied by
5 “(B) 10.

6 For purposes of subparagraph (A)(ii), in the case of
7 any area to which section 702(d)(2) or 704(b) of the
8 Tax Extenders and Alternative Minimum Tax Relief
9 Act of 2008 applies, section 1400N(c)(1)(A) shall be
10 applied without regard to clause (i)

11 “(3) COORDINATION WITH NON-REFUNDABLE
12 CREDIT.—For purposes of this section, the amounts
13 described in clauses (i) through (iv) of subsection
14 (h)(3)(C) with respect to any State for 2010 shall
15 each be reduced by so much of such amount as is
16 taken into account in determining the amount of the
17 credit allowed with respect to such State under para-
18 graph (1).

19 “(4) SPECIAL RULE FOR BASIS.—Basis of a
20 qualified low-income building shall not be reduced by
21 the amount of any payment made under this sub-
22 section.

23 “(5) PAYMENT OF CREDIT; USE TO FINANCE
24 LOW-INCOME BUILDINGS.—The Secretary shall pay
25 to the housing credit agency of each State an

1 amount equal to the credit allowed under paragraph
2 (1). Rules similar to the rules of subsections (c) and
3 (d) of section 1602 of the American Recovery and
4 Reinvestment Tax Act of 2009 shall apply with re-
5 spect to any payment made under this paragraph,
6 except that such subsection (d) shall be applied by
7 substituting ‘January 1, 2012’ for ‘January 1,
8 2011’.”.

9 (b) CONFORMING AMENDMENT.—Section 1324(b)(2)
10 of title 31, United States Code, is amended by inserting
11 “42(n),” after “36C,”.

12 **SEC. 232. LOW-INCOME HOUSING GRANT ELECTION.**

13 (a) CLARIFICATION OF ELIGIBILITY OF LOW-INCOME
14 HOUSING CREDITS FOR LOW-INCOME HOUSING GRANT
15 ELECTION.—Paragraph (1) of section 1602(b) of the
16 American Recovery and Reinvestment Tax Act of 2009 is
17 amended—

18 (1) by inserting “, plus any increase for 2009
19 or 2010 attributable to section 1400N(c) of such
20 Code (including credits made available under such
21 section as applied by reason of sections 702(d)(2)
22 and 704(b) of the Tax Extenders and Alternative
23 Minimum Tax Relief Act of 2008)” after “1986” in
24 subparagraph (A), and

1 (2) by inserting “, plus any credits for 2009 at-
2 tributable to the application of such section
3 702(d)(2) and 704(b)” after “such section” in sub-
4 paragraph (B).

5 (b) APPLICATION OF ADDITIONAL HOUSING CREDIT
6 AMOUNT FOR PURPOSES OF 2009 GRANT ELECTION.—
7 Subsection (b) of section 1602 of the American Recovery
8 and Reinvestment Tax Act of 2009, as amended by sub-
9 section (a), is amended by adding at the end the following
10 flush sentence:

11 “For purposes of paragraph (1)(B), in the case of any
12 area to which section 702(d)(2) or 704(b) of the Tax Ex-
13 tenders and Alternative Minimum Tax Relief Act of 2008
14 applies, section 1400N(c)(1)(A) of such Code shall be ap-
15 plied without regard to clause (i).”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply as if included in the enactment
18 of section 1602 of the American Recovery and Reinvest-
19 ment Tax Act of 2009.

20 **Subtitle C—Business Tax Relief**

21 **SEC. 241. RESEARCH CREDIT.**

22 (a) IN GENERAL.—Subparagraph (B) of section
23 41(h)(1) is amended by striking “December 31, 2009”
24 and inserting “December 31, 2010”.

1 (b) CONFORMING AMENDMENT.—Subparagraph (D)
2 of section 45C(b)(1) is amended by striking “December
3 31, 2009” and inserting “December 31, 2010”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to amounts paid or incurred after
6 December 31, 2009.

7 **SEC. 242. INDIAN EMPLOYMENT TAX CREDIT.**

8 (a) IN GENERAL.—Subsection (f) of section 45A is
9 amended by striking “December 31, 2009” and inserting
10 “December 31, 2010”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to taxable years beginning after
13 December 31, 2009.

14 **SEC. 243. NEW MARKETS TAX CREDIT.**

15 (a) IN GENERAL.—Subparagraph (F) of section
16 45D(f)(1) is amended by inserting “and 2010” after
17 “2009”.

18 (b) CONFORMING AMENDMENT.—Paragraph (3) of
19 section 45D(f) is amended by striking “2014” and insert-
20 ing “2015”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to calendar years beginning after
23 2009.

1 **SEC. 244. RAILROAD TRACK MAINTENANCE CREDIT.**

2 (a) IN GENERAL.—Subsection (f) of section 45G is
3 amended by striking “January 1, 2010” and inserting
4 “January 1, 2011”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to expenditures paid or incurred
7 in taxable years beginning after December 31, 2009.

8 **SEC. 245. MINE RESCUE TEAM TRAINING CREDIT.**

9 (a) IN GENERAL.—Subsection (e) of section 45N is
10 amended by striking “December 31, 2009” and inserting
11 “December 31, 2010”.

12 (b) CREDIT ALLOWABLE AGAINST AMT.—Subpara-
13 graph (B) of section 38(c)(4), as amended by section 105,
14 is amended—

15 (1) by redesignating clauses (vii) through (x) as
16 clauses (viii) through (xi), respectively; and

17 (2) by inserting after clause (vi) the following
18 new clause:

19 “(vii) the credit determined under sec-
20 tion 45N,”.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the amendments made by this section
24 shall apply to taxable years beginning after Decem-
25 ber 31, 2009.

1 (2) ALLOWANCE AGAINST AMT.—The amend-
2 ments made by subsection (b) shall apply to credits
3 determined for taxable years beginning after Decem-
4 ber 31, 2009, and to carrybacks of such credits.

5 **SEC. 246. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO**
6 **ARE ACTIVE DUTY MEMBERS OF THE UNI-**
7 **FORMED SERVICES.**

8 (a) IN GENERAL.—Subsection (f) of section 45P is
9 amended by striking “December 31, 2009” and inserting
10 “December 31, 2010”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to payments made after December
13 31, 2009.

14 **SEC. 247. 5-YEAR DEPRECIATION FOR FARMING BUSINESS**
15 **MACHINERY AND EQUIPMENT.**

16 (a) IN GENERAL.—Clause (vii) of section
17 168(e)(3)(B) is amended by striking “January 1, 2010”
18 and inserting “January 1, 2011”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to property placed in service after
21 December 31, 2009.

1 **SEC. 248. 15-YEAR STRAIGHT-LINE COST RECOVERY FOR**
2 **QUALIFIED LEASEHOLD IMPROVEMENTS,**
3 **QUALIFIED RESTAURANT BUILDINGS AND IM-**
4 **PROVEMENTS, AND QUALIFIED RETAIL IM-**
5 **PROVEMENTS.**

6 (a) IN GENERAL.—Clauses (iv), (v), and (ix) of sec-
7 tion 168(e)(3)(E) are each amended by striking “January
8 1, 2010” and inserting “January 1, 2011”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Clause (i) of section 168(e)(7)(A) is amend-
11 ed by striking “if such building is placed in service
12 after December 31, 2008, and before January 1,
13 2010,”.

14 (2) Paragraph (8) of section 168(e) is amended
15 by striking subparagraph (E).

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to property placed in service after
18 December 31, 2009.

19 **SEC. 249. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS**
20 **ENTERTAINMENT COMPLEXES.**

21 (a) IN GENERAL.—Subparagraph (D) of section
22 168(i)(15) is amended by striking “December 31, 2009”
23 and inserting “December 31, 2010”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to property placed in service after
26 December 31, 2009.

1 **SEC. 250. ACCELERATED DEPRECIATION FOR BUSINESS**
2 **PROPERTY ON AN INDIAN RESERVATION.**

3 (a) IN GENERAL.—Paragraph (8) of section 168(j)
4 is amended by striking “December 31, 2009” and insert-
5 ing “December 31, 2010”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to property placed in service after
8 December 31, 2009.

9 **SEC. 251. ENHANCED CHARITABLE DEDUCTION FOR CON-**
10 **TRIBUTIONS OF FOOD INVENTORY.**

11 (a) IN GENERAL.—Clause (iv) of section
12 170(e)(3)(C) is amended by striking “December 31,
13 2009” and inserting “December 31, 2010”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to contributions made after De-
16 cember 31, 2009.

17 **SEC. 252. ENHANCED CHARITABLE DEDUCTION FOR CON-**
18 **TRIBUTIONS OF BOOK INVENTORIES TO PUB-**
19 **LIC SCHOOLS.**

20 (a) IN GENERAL.—Clause (iv) of section
21 170(e)(3)(D) is amended by striking “December 31,
22 2009” and inserting “December 31, 2010”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to contributions made after De-
25 cember 31, 2009.

1 **SEC. 253. ENHANCED CHARITABLE DEDUCTION FOR COR-**
2 **PORATE CONTRIBUTIONS OF COMPUTER IN-**
3 **VENTORY FOR EDUCATIONAL PURPOSES.**

4 (a) IN GENERAL.—Subparagraph (G) of section
5 170(e)(6) is amended by striking “December 31, 2009”
6 and inserting “December 31, 2010”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to contributions made in taxable
9 years beginning after December 31, 2009.

10 **SEC. 254. ELECTION TO EXPENSE MINE SAFETY EQUIP-**
11 **MENT.**

12 (a) IN GENERAL.—Subsection (g) of section 179E is
13 amended by striking “December 31, 2009” and inserting
14 “December 31, 2010”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to property placed in service after
17 December 31, 2009.

18 **SEC. 255. SPECIAL EXPENSING RULES FOR CERTAIN FILM**
19 **AND TELEVISION PRODUCTIONS.**

20 (a) IN GENERAL.—Subsection (f) of section 181 is
21 amended by striking “December 31, 2009” and inserting
22 “December 31, 2010”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to productions commencing after
25 December 31, 2009.

1 **SEC. 256. EXPENSING OF ENVIRONMENTAL REMEDIATION**
2 **COSTS.**

3 (a) IN GENERAL.—Subsection (h) of section 198 is
4 amended by striking “December 31, 2009” and inserting
5 “December 31, 2010”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to expenditures paid or incurred
8 after December 31, 2009.

9 **SEC. 257. DEDUCTION ALLOWABLE WITH RESPECT TO IN-**
10 **COME ATTRIBUTABLE TO DOMESTIC PRO-**
11 **DUCTION ACTIVITIES IN PUERTO RICO.**

12 (a) IN GENERAL.—Subparagraph (C) of section
13 199(d)(8) is amended—

14 (1) by striking “first 4 taxable years” and in-
15 serting “first 5 taxable years”; and

16 (2) by striking “January 1, 2010” and insert-
17 ing “January 1, 2011”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2009.

21 **SEC. 258. MODIFICATION OF TAX TREATMENT OF CERTAIN**
22 **PAYMENTS TO CONTROLLING EXEMPT ORGA-**
23 **NIZATIONS.**

24 (a) IN GENERAL.—Clause (iv) of section
25 512(b)(13)(E) is amended by striking “December 31,
26 2009” and inserting “December 31, 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to payments received or accrued
3 after December 31, 2009.

4 **SEC. 259. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
5 **CHANGE OF CERTAIN BROWNFIELD SITES**
6 **FROM UNRELATED BUSINESS INCOME.**

7 (a) IN GENERAL.—Subparagraph (K) of section
8 512(b)(19) is amended by striking “December 31, 2009”
9 and inserting “December 31, 2010”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to property acquired after Decem-
12 ber 31, 2009.

13 **SEC. 260. TIMBER REIT MODERNIZATION.**

14 (a) IN GENERAL.—Paragraph (8) of section 856(c)
15 is amended by striking “means” and all that follows and
16 inserting “means December 31, 2010.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Subparagraph (I) of section 856(c)(2) is
19 amended by striking “the first taxable year begin-
20 ning after the date of the enactment of this subpara-
21 graph” and inserting “a taxable year beginning on
22 or before the termination date”.

23 (2) Clause (iii) of section 856(c)(5)(H) is
24 amended by inserting “in taxable years beginning”
25 after “dispositions”.

1 (3) Clause (v) of section 857(b)(6)(D) is
2 amended by inserting “in a taxable year beginning”
3 after “sale”.

4 (4) Subparagraph (G) of section 857(b)(6) is
5 amended by inserting “in a taxable year beginning”
6 after “In the case of a sale”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years ending after May
9 22, 2009.

10 **SEC. 261. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
11 **LATED INVESTMENT COMPANIES.**

12 (a) IN GENERAL.—Paragraphs (1)(C) and (2)(C) of
13 section 871(k) are each amended by striking “December
14 31, 2009” and inserting “December 31, 2010”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2009.

18 **SEC. 262. RIC QUALIFIED INVESTMENT ENTITY TREATMENT**
19 **UNDER FIRPTA.**

20 (a) IN GENERAL.—Clause (ii) of section
21 897(h)(4)(A) is amended by striking “December 31,
22 2009” and inserting “December 31, 2010”.

23 (b) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendment made by
25 subsection (a) shall take effect on January 1, 2010.

1 Notwithstanding the preceding sentence, such
2 amendment shall not apply with respect to the with-
3 holding requirement under section 1445 of the Inter-
4 nal Revenue Code of 1986 for any payment made
5 before the date of the enactment of this Act.

6 (2) AMOUNTS WITHHELD ON OR BEFORE DATE
7 OF ENACTMENT.—In the case of a regulated invest-
8 ment company—

9 (A) which makes a distribution after De-
10 cember 31, 2009, and before the date of the en-
11 actment of this Act; and

12 (B) which would (but for the second sen-
13 tence of paragraph (1)) have been required to
14 withhold with respect to such distribution under
15 section 1445 of such Code,

16 such investment company shall not be liable to any
17 person to whom such distribution was made for any
18 amount so withheld and paid over to the Secretary
19 of the Treasury.

20 **SEC. 263. EXCEPTIONS FOR ACTIVE FINANCING INCOME.**

21 (a) IN GENERAL.—Sections 953(e)(10) and
22 954(h)(9) are each amended by striking “January 1,
23 2010” and inserting “January 1, 2011”.

1 (b) CONFORMING AMENDMENT.—Section 953(e)(10)
2 is amended by striking “December 31, 2009” and insert-
3 ing “December 31, 2010”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years of foreign corpora-
6 tions beginning after December 31, 2009, and to taxable
7 years of United States shareholders with or within which
8 any such taxable year of such foreign corporation ends.

9 **SEC. 264. LOOK-THRU TREATMENT OF PAYMENTS BE-**
10 **TWEEN RELATED CONTROLLED FOREIGN**
11 **CORPORATIONS UNDER FOREIGN PERSONAL**
12 **HOLDING COMPANY RULES.**

13 (a) IN GENERAL.—Subparagraph (C) of section
14 954(c)(6) is amended by striking “January 1, 2010” and
15 inserting “January 1, 2011”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to taxable years of foreign corpora-
18 tions beginning after December 31, 2009, and to taxable
19 years of United States shareholders with or within which
20 any such taxable year of such foreign corporation ends.

1 **SEC. 265. BASIS ADJUSTMENT TO STOCK OF S CORPS MAK-**
2 **ING CHARITABLE CONTRIBUTIONS OF PROP-**
3 **ERTY.**

4 (a) IN GENERAL.—Paragraph (2) of section 1367(a)
5 is amended by striking “December 31, 2009” and insert-
6 ing “December 31, 2010”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to contributions made in taxable
9 years beginning after December 31, 2009.

10 **SEC. 266. EMPOWERMENT ZONE TAX INCENTIVES.**

11 (a) IN GENERAL.—Section 1391 is amended—

12 (1) by striking “December 31, 2009” in sub-
13 section (d)(1)(A)(i) and inserting “December 31,
14 2010”; and

15 (2) by striking the last sentence of subsection
16 (h)(2).

17 (b) INCREASED EXCLUSION OF GAIN ON STOCK OF
18 EMPOWERMENT ZONE BUSINESSES.—Subparagraph (C)
19 of section 1202(a)(2) is amended—

20 (1) by striking “December 31, 2014” and in-
21 serting “December 31, 2015”; and

22 (2) by striking “2014” in the heading and in-
23 serting “2015”.

24 (c) TREATMENT OF CERTAIN TERMINATION DATES
25 SPECIFIED IN NOMINATIONS.—In the case of a designa-
26 tion of an empowerment zone the nomination for which

1 included a termination date which is contemporaneous
2 with the date specified in subparagraph (A)(i) of section
3 1391(d)(1) of the Internal Revenue Code of 1986 (as in
4 effect before the enactment of this Act), subparagraph (B)
5 of such section shall not apply with respect to such des-
6 ignation unless, after the date of the enactment of this
7 section, the entity which made such nomination reconfirms
8 such termination date, or amends the nomination to pro-
9 vide for a new termination date, in such manner as the
10 Secretary of the Treasury (or the Secretary's designee)
11 may provide.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to periods after December 31,
14 2009.

15 **SEC. 267. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**
16 **TRICT OF COLUMBIA.**

17 (a) IN GENERAL.—Subsection (f) of section 1400 is
18 amended by striking “December 31, 2009” each place it
19 appears and inserting “December 31, 2010”.

20 (b) TAX-EXEMPT DC EMPOWERMENT ZONE
21 BONDS.—Subsection (b) of section 1400A is amended by
22 striking “December 31, 2009” and inserting “December
23 31, 2010”.

24 (c) ZERO-PERCENT CAPITAL GAINS RATE.—

1 (1) ACQUISITION DATE.—Paragraphs (2)(A)(i),
2 (3)(A), (4)(A)(i), and (4)(B)(i)(I) of section
3 1400B(b) are each amended by striking “January 1,
4 2010” and inserting “January 1, 2011”.

5 (2) LIMITATION ON PERIOD OF GAINS.—

6 (A) IN GENERAL.—Paragraph (2) of sec-
7 tion 1400B(e) is amended—

8 (i) by striking “December 31, 2014”
9 and inserting “December 31, 2015”; and

10 (ii) by striking “2014” in the heading
11 and inserting “2015”.

12 (B) PARTNERSHIPS AND S-CORPS.—Para-
13 graph (2) of section 1400B(g) is amended by
14 striking “December 31, 2014” and inserting
15 “December 31, 2015”.

16 (d) FIRST-TIME HOMEBUYER CREDIT.—Subsection
17 (i) of section 1400C is amended by striking “January 1,
18 2010” and inserting “January 1, 2011”.

19 (e) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, the amendments made by
22 this section shall apply to periods after December
23 31, 2009.

24 (2) TAX-EXEMPT DC EMPOWERMENT ZONE
25 BONDS.—The amendment made by subsection (b)

1 shall apply to bonds issued after December 31,
2 2009.

3 (3) ACQUISITION DATES FOR ZERO-PERCENT
4 CAPITAL GAINS RATE.—The amendments made by
5 subsection (c) shall apply to property acquired or
6 substantially improved after December 31, 2009.

7 (4) HOMEBUYER CREDIT.—The amendment
8 made by subsection (d) shall apply to homes pur-
9 chased after December 31, 2009.

10 **SEC. 268. RENEWAL COMMUNITY TAX INCENTIVES.**

11 (a) IN GENERAL.—Subsection (b) of section 1400E
12 is amended—

13 (1) by striking “December 31, 2009” in para-
14 graphs (1)(A) and (3) and inserting “December 31,
15 2010”; and

16 (2) by striking “January 1, 2010” in paragraph
17 (3) and inserting “January 1, 2011”.

18 (b) ZERO-PERCENT CAPITAL GAINS RATE.—

19 (1) ACQUISITION DATE.—Paragraphs (2)(A)(i),
20 (3)(A), (4)(A)(i), and (4)(B)(i) of section 1400F(b)
21 are each amended by striking “January 1, 2010”
22 and inserting “January 1, 2011”.

23 (2) LIMITATION ON PERIOD OF GAINS.—Para-
24 graph (2) of section 1400F(c) is amended—

1 (A) by striking “December 31, 2014” and
2 inserting “December 31, 2015”; and

3 (B) by striking “2014” in the heading and
4 inserting “2015”.

5 (3) CLERICAL AMENDMENT.—Subsection (d) of
6 section 1400F is amended by striking “and ‘Decem-
7 ber 31, 2014’ for ‘December 31, 2014’”.

8 (c) COMMERCIAL REVITALIZATION DEDUCTION.—

9 (1) IN GENERAL.—Subsection (g) of section
10 1400I is amended by striking “December 31, 2009”
11 and inserting “December 31, 2010”.

12 (2) CONFORMING AMENDMENT.—Subparagraph
13 (A) of section 1400I(d)(2) is amended by striking
14 “after 2001 and before 2010” and inserting “which
15 begins after 2001 and before the date referred to in
16 subsection (g)”.

17 (d) INCREASED EXPENSING UNDER SECTION 179.—
18 Subparagraph (A) of section 1400J(b)(1) is amended by
19 striking “January 1, 2010” and inserting “January 1,
20 2011”.

21 (e) TREATMENT OF CERTAIN TERMINATION DATES
22 SPECIFIED IN NOMINATIONS.—In the case of a designa-
23 tion of a renewal community the nomination for which in-
24 cluded a termination date which is contemporaneous with
25 the date specified in subparagraph (A) of section

1 1400E(b)(1) of the Internal Revenue Code of 1986 (as
2 in effect before the enactment of this Act), subparagraph
3 (B) of such section shall not apply with respect to such
4 designation unless, after the date of the enactment of this
5 section, the entity which made such nomination reconfirms
6 such termination date, or amends the nomination to pro-
7 vide for a new termination date, in such manner as the
8 Secretary of the Treasury (or the Secretary's designee)
9 may provide.

10 (f) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as otherwise pro-
12 vided in this subsection, the amendments made by
13 this section shall apply to periods after December
14 31, 2009.

15 (2) ACQUISITIONS.—The amendments made by
16 subsections (b)(1) and (d) shall apply to acquisitions
17 after December 31, 2009.

18 (3) COMMERCIAL REVITALIZATION DEDUC-
19 TION.—

20 (A) IN GENERAL.—The amendment made
21 by subsection (c)(1) shall apply to buildings
22 placed in service after December 31, 2009.

23 (B) CONFORMING AMENDMENT.—The
24 amendment made by subsection (c)(2) shall

1 apply to calendar years beginning after Decem-
2 ber 31, 2009.

3 **SEC. 269. TEMPORARY INCREASE IN LIMIT ON COVER OVER**
4 **OF RUM EXCISE TAXES TO PUERTO RICO AND**
5 **THE VIRGIN ISLANDS.**

6 (a) IN GENERAL.—Paragraph (1) of section 7652(f)
7 is amended by striking “January 1, 2010” and inserting
8 “January 1, 2011”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to distilled spirits brought into the
11 United States after December 31, 2009.

12 **SEC. 270. PAYMENT TO AMERICAN SAMOA IN LIEU OF EX-**
13 **TENSION OF ECONOMIC DEVELOPMENT**
14 **CREDIT.**

15 The Secretary of the Treasury (or his designee) shall
16 pay \$18,000,000 to the Government of American Samoa
17 for purposes of economic development. The payment made
18 under the preceding sentence shall be treated for purposes
19 of section 1324 of title 31, United States Code, as a re-
20 fund of internal revenue collections to which such section
21 applies.

1 **SEC. 271. ELECTION TO TEMPORARILY UTILIZE UNUSED**
2 **AMT CREDITS DETERMINED BY DOMESTIC IN-**
3 **VESTMENT.**

4 (a) IN GENERAL.—Section 53 is amended by adding
5 at the end the following new subsection:

6 “(g) ELECTION FOR CORPORATIONS WITH NEW DO-
7 MESTIC INVESTMENTS.—

8 “(1) IN GENERAL.—If a corporation elects to
9 have this subsection apply for its first taxable year
10 beginning after December 31, 2009, the limitation
11 imposed by subsection (c) for such taxable year shall
12 be increased by the AMT credit adjustment amount.

13 “(2) AMT CREDIT ADJUSTMENT AMOUNT.—
14 For purposes of paragraph (1), the term ‘AMT cred-
15 it adjustment amount’ means, the lesser of—

16 “(A) 50 percent of a corporation’s min-
17 imum tax credit for its first taxable year begin-
18 ning after December 31, 2009, determined
19 under subsection (b), or

20 “(B) 10 percent of new domestic invest-
21 ments made during such taxable year.

22 “(3) NEW DOMESTIC INVESTMENTS.—For pur-
23 poses of this subsection, the term ‘new domestic in-
24 vestments’ means the cost of qualified property (as
25 defined in section 168(k)(2)(A)(i))—

1 “(A) the original use of which commences
2 with the taxpayer during the taxable year, and

3 “(B) which is placed in service in the
4 United States by the taxpayer during such tax-
5 able year.

6 “(4) CREDIT REFUNDABLE.—For purposes of
7 subsection (b) of section 6401, the aggregate in-
8 crease in the credits allowable under this part for
9 any taxable year resulting from the application of
10 this subsection shall be treated as allowed under
11 subpart C (and not under any other subpart). For
12 purposes of section 6425, any amount treated as so
13 allowed shall be treated as a payment of estimated
14 income tax for the taxable year.

15 “(5) ELECTION.—An election under this sub-
16 section shall be made at such time and in such man-
17 ner as prescribed by the Secretary, and once made,
18 may be revoked only with the consent of the Sec-
19 retary. Not later than 90 days after the date of the
20 enactment of this subsection, the Secretary shall
21 issue guidance specifying such time and manner.

22 “(6) TREATMENT OF CERTAIN PARTNERSHIP
23 INVESTMENTS.—For purposes of this subsection, a
24 corporation shall take into account its allocable
25 share of any new domestic investments by a partner-

1 ship for any taxable year if, and only if, more than
2 90 percent of the capital and profits interests in
3 such partnership are owned by such corporation (di-
4 rectly or indirectly) at all times during such taxable
5 year.

6 “(7) NO DOUBLE BENEFIT.—

7 “(A) IN GENERAL.—A corporation making
8 an election under this subsection may not make
9 an election under subparagraph (H) of section
10 172(b)(1).

11 “(B) SPECIAL RULES WITH RESPECT TO
12 TAXPAYERS PREVIOUSLY ELECTING APPLICA-
13 BLE NET OPERATING LOSSES.—In the case of a
14 corporation which made an election under sub-
15 paragraph (H) of section 172(b)(1) and elects
16 the application of this subsection—

17 “(i) ELECTION OF APPLICABLE NET
18 OPERATING LOSS TREATED AS RE-
19 VOKED.—The election under such subpara-
20 graph (H) shall (notwithstanding clause
21 (iii)(II) of such subparagraph) be treated
22 as having been revoked by the taxpayer.

23 “(ii) COORDINATION WITH PROVISION
24 FOR EXPEDITED REFUND.—The amount
25 otherwise treated as a payment of esti-

1 mated income tax under the last sentence
2 of paragraph (4) shall be reduced (but not
3 below zero) by the aggregate increase in
4 unpaid tax liability determined under this
5 chapter by reason of the revocation of the
6 election under clause (i).

7 “(iii) APPLICATION OF STATUTE OF
8 LIMITATIONS.—With respect to the revoca-
9 tion of an election under clause (i)—

10 “(I) the statutory period for the
11 assessment of any deficiency attrib-
12 utable to such revocation shall not ex-
13 pire before the end of the 3-year pe-
14 riod beginning on the date of the elec-
15 tion to have this subsection apply, and

16 “(II) such deficiency may be as-
17 sessed before the expiration of such 3-
18 year period notwithstanding the provi-
19 sions of any other law or rule of law
20 which would otherwise prevent such
21 assessment.

22 “(C) EXCEPTION FOR ELIGIBLE SMALL
23 BUSINESSES.—Subparagraphs (A) and (B)
24 shall not apply to an eligible small business as
25 defined in section 172(b)(1)(H)(v)(II).

1 “(8) REGULATIONS.—The Secretary may issue
2 such regulations or other guidance as may be nec-
3 essary or appropriate to carry out the purposes of
4 this subsection, including to prevent fraud and abuse
5 under this subsection.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 6211(b)(4)(A) is amended by insert-
8 ing “53(g),” after “53(e),”.

9 (2) Section 1324(b)(2) of title 31, United
10 States Code, is amended by inserting “53(g),” after
11 “53(e),”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2009.

15 **SEC. 272. STUDY OF EXTENDED TAX EXPENDITURES.**

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

17 (1) Currently, the aggregate cost of Federal tax
18 expenditures rivals, or even exceeds, the amount of
19 total Federal discretionary spending.

20 (2) Given the escalating public debt, a critical
21 examination of this use of taxpayer dollars is essen-
22 tial.

23 (3) Additionally, tax expenditures can com-
24 plicate the Internal Revenue Code of 1986 for tax-

1 payers and complicate tax administration for the In-
2 ternal Revenue Service.

3 (4) To facilitate a better understanding of tax
4 expenditures in the future, it is constructive for leg-
5 islation extending these provisions to include a study
6 of such provisions.

7 (b) REQUIREMENT TO REPORT.—Not later than No-
8 vember 30, 2010, the Chief of Staff of the Joint Com-
9 mittee on Taxation, in consultation with the Comptroller
10 General of the United States, shall submit to the Com-
11 mittee on Ways and Means of the House of Representa-
12 tives and the Committee on Finance of the Senate a report
13 on each tax expenditure (as defined in section 3(3) of the
14 Congressional Budget Impoundment Control Act of 1974
15 (2 U.S.C. 622(3)) extended by this title.

16 (c) ROLLING SUBMISSION OF REPORTS.—The Chief
17 of Staff of the Joint Committee on Taxation shall initially
18 submit the reports for each such tax expenditure enacted
19 in this subtitle (relating to business tax relief) and subtitle
20 A (relating to energy) in order of the tax expenditure in-
21 curring the least aggregate cost to the greatest aggregate
22 cost (determined by reference to the cost estimate of this
23 Act by the Joint Committee on Taxation). Thereafter,
24 such reports may be submitted in such order as the Chief
25 of Staff determines appropriate.

1 (d) CONTENTS OF REPORT.—Such reports shall con-
2 tain the following:

3 (1) An explanation of the tax expenditure and
4 any relevant economic, social, or other context under
5 which it was first enacted.

6 (2) A description of the intended purpose of the
7 tax expenditure.

8 (3) An analysis of the overall success of the tax
9 expenditure in achieving such purpose, and evidence
10 supporting such analysis.

11 (4) An analysis of the extent to which further
12 extending the tax expenditure, or making it perma-
13 nent, would contribute to achieving such purpose.

14 (5) A description of the direct and indirect
15 beneficiaries of the tax expenditure, including identi-
16 fying any unintended beneficiaries.

17 (6) An analysis of whether the tax expenditure
18 is the most cost-effective method for achieving the
19 purpose for which it was intended, and a description
20 of any more cost-effective methods through which
21 such purpose could be accomplished.

22 (7) A description of any unintended effects of
23 the tax expenditure that are useful in understanding
24 the tax expenditure's overall value.

1 (8) An analysis of how the tax expenditure
2 could be modified to better achieve its original pur-
3 pose.

4 (9) A brief description of any interactions (ac-
5 tual or potential) with other tax expenditures or di-
6 rect spending programs in the same or related budg-
7 et function worthy of further study.

8 (10) A description of any unavailable informa-
9 tion the staff of the Joint Committee on Taxation
10 may need to complete a more thorough examination
11 and analysis of the tax expenditure, and what must
12 be done to make such information available.

13 (e) MINIMUM ANALYSIS BY DEADLINE.—In the event
14 the Chief of Staff of the Joint Committee on Taxation
15 concludes it will not be feasible to complete all reports by
16 the date specified in subsection (a), at a minimum, the
17 reports for each tax expenditure enacted in this subtitle
18 (relating to business tax relief) and subtitle A (relating
19 to energy) shall be completed by such date.

1 **Subtitle D—Temporary Disaster**
2 **Relief Provisions**

3 **PART I—NATIONAL DISASTER RELIEF**

4 **SEC. 281. WAIVER OF CERTAIN MORTGAGE REVENUE BOND**
5 **REQUIREMENTS.**

6 (a) IN GENERAL.—Paragraph (11) of section 143(k)
7 is amended by striking “January 1, 2010” and inserting
8 “January 1, 2011”.

9 (b) SPECIAL RULE FOR RESIDENCES DESTROYED IN
10 FEDERALLY DECLARED DISASTERS.—Paragraph (13) of
11 section 143(k), as redesignated by subsection (c), is
12 amended by striking “January 1, 2010” in subparagraphs
13 (A)(i) and (B)(i) and inserting “January 1, 2011”.

14 (c) TECHNICAL AMENDMENT.—Subsection (k) of sec-
15 tion 143 is amended by redesignating the second para-
16 graph (12) (relating to special rules for residences de-
17 stroyed in federally declared disasters) as paragraph (13).

18 (d) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided in this subsection, the amendment made by
21 this section shall apply to bonds issued after Decem-
22 ber 31, 2009.

23 (2) RESIDENCES DESTROYED IN FEDERALLY
24 DECLARED DISASTERS.—The amendments made by

1 subsection (b) shall apply with respect to disasters
2 occurring after December 31, 2009.

3 (3) TECHNICAL AMENDMENT.—The amendment
4 made by subsection (c) shall take effect as if in-
5 cluded in section 709 of the Tax Extenders and Al-
6 ternative Minimum Tax Relief Act of 2008.

7 **SEC. 282. LOSSES ATTRIBUTABLE TO FEDERALLY DE-**
8 **CLARED DISASTERS.**

9 (a) IN GENERAL.—Subclause (I) of section
10 165(h)(3)(B)(i) is amended by striking “January 1,
11 2010” and inserting “January 1, 2011”.

12 (b) \$500 LIMITATION.—Paragraph (1) of section
13 165(h) is amended by striking “December 31, 2009” and
14 inserting “December 31, 2010”.

15 (c) EFFECTIVE DATE.—

16 (1) IN GENERAL.—The amendment made by
17 subsection (a) shall apply to federally declared disas-
18 ters occurring after December 31, 2009.

19 (2) \$500 LIMITATION.—The amendment made
20 by subsection (b) shall apply to taxable years begin-
21 ning after December 31, 2009.

1 **SEC. 283. SPECIAL DEPRECIATION ALLOWANCE FOR QUALI-**
2 **FIED DISASTER PROPERTY.**

3 (a) IN GENERAL.—Subclause (I) of section
4 168(n)(2)(A)(ii) is amended by striking “January 1,
5 2010” and inserting “January 1, 2011”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to disasters occurring after Decem-
8 ber 31, 2009.

9 **SEC. 284. NET OPERATING LOSSES ATTRIBUTABLE TO FED-**
10 **ERALLY DECLARED DISASTERS.**

11 (a) IN GENERAL.—Subclause (I) of section
12 172(j)(1)(A)(i) is amended by striking “January 1, 2010”
13 and inserting “January 1, 2011”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to losses attributable to disasters
16 occurring after December 31, 2009.

17 **SEC. 285. EXPENSING OF QUALIFIED DISASTER EXPENSES.**

18 (a) IN GENERAL.—Subparagraph (A) of section
19 198A(b)(2) is amended by striking “January 1, 2010”
20 and inserting “January 1, 2011”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to expenditures on account of dis-
23 asters occurring after December 31, 2009.

1 **PART II—REGIONAL PROVISIONS**

2 **Subpart A—New York Liberty Zone**

3 **SEC. 291. SPECIAL DEPRECIATION ALLOWANCE FOR NON-**
4 **RESIDENTIAL AND RESIDENTIAL REAL PROP-**
5 **ERTY.**

6 (a) IN GENERAL.—Subparagraph (A) of section
7 1400L(b)(2) is amended by striking “December 31, 2009”
8 and inserting “December 31, 2010”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to property placed in service after
11 December 31, 2009.

12 **SEC. 292. TAX-EXEMPT BOND FINANCING.**

13 (a) IN GENERAL.—Subparagraph (D) of section
14 1400L(d)(2) is amended by striking “January 1, 2010”
15 and inserting “January 1, 2011”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to bonds issued after December
18 31, 2009.

19 **Subpart B—GO Zone**

20 **SEC. 295. INCREASE IN REHABILITATION CREDIT.**

21 (a) IN GENERAL.—Subsection (h) of section 1400N
22 is amended by striking “December 31, 2009” and insert-
23 ing “December 31, 2010”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to amounts paid or incurred after
26 December 31, 2009.

1 **SEC. 296. WORK OPPORTUNITY TAX CREDIT WITH RESPECT**
2 **TO CERTAIN INDIVIDUALS AFFECTED BY**
3 **HURRICANE KATRINA FOR EMPLOYERS IN-**
4 **SIDE DISASTER AREAS.**

5 (a) IN GENERAL.—Paragraph (1) of section 201(b)
6 of the Katrina Emergency Tax Relief Act of 2005 is
7 amended by striking “4-year” and inserting “5-year”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to individuals hired after August
10 27, 2009.

11 **SEC. 297. EXTENSION OF LOW-INCOME HOUSING CREDIT**
12 **RULES FOR BUILDINGS IN GO ZONES.**

13 Section 1400N(c)(5) is amended by striking “Janu-
14 ary 1, 2011” and inserting “January 1, 2013”.

15 **TITLE III—PENSION FUNDING**
16 **RELIEF**

17 **Subtitle A—Single-Employer Plans**

18 **SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**
19 **FINED BENEFIT PLANS TO AMORTIZE CER-**
20 **TAIN SHORTFALL AMORTIZATION BASES.**

21 (a) ERISA AMENDMENTS.—

22 (1) IN GENERAL.—Section 303(c)(2) of the
23 Employee Retirement Income Security Act of 1974
24 (29 U.S.C. 1083(c)(2)) is amended by adding at the
25 end the following subparagraphs:

26 “(D) SPECIAL RULE.—

1 “(i) IN GENERAL.—In the case of the
2 shortfall amortization base of a plan for
3 any applicable plan year, the shortfall am-
4 ortization installments are the amounts de-
5 scribed in clause (ii) or (iii), if made appli-
6 cable by an election under clause (iv). In
7 the absence of a timely election, such in-
8 stallments shall be determined without re-
9 gard to this subparagraph.

10 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
11 ULE.—The shortfall amortization install-
12 ments described in this clause are—

13 “(I) in the case of the first 2
14 plan years in the 9-plan-year period
15 beginning with the applicable plan
16 year, interest on the shortfall amorti-
17 zation base (determined by using the
18 effective interest rate for the applica-
19 ble plan year), and

20 “(II) in the case of the last 7
21 plan years in such 9-plan-year period,
22 the amounts necessary to amortize the
23 balance of such shortfall amortization
24 base in level annual installments over
25 such last 7 plan years (determined

1 using the segment rates determined
2 under subparagraph (C) of subsection
3 (h)(2) for the applicable plan year,
4 applied under rules similar to the
5 rules of subparagraph (B) of sub-
6 section (h)(2)).

7 “(iii) 15-YEAR AMORTIZATION.—The
8 shortfall amortization installments de-
9 scribed in this clause are the amounts
10 under subparagraphs (A) and (B) deter-
11 mined by substituting ‘15 plan-year period’
12 for ‘7-plan-year period’.

13 “(iv) ELECTION.—

14 “(I) IN GENERAL.—The plan
15 sponsor may, with respect to a plan,
16 elect, with respect to any of not more
17 than 2 applicable plan years, to deter-
18 mine shortfall amortization install-
19 ments under this subparagraph. An
20 election under either clause (ii) or
21 clause (iii) may be made with respect
22 to either of such applicable plan years.

23 “(II) ELIGIBILITY FOR ELEC-
24 TION.—An election may be made to
25 determine shortfall amortization in-

1 stallments under this subparagraph
2 with respect to a plan only if, as of
3 the date of the election—

4 “(aa) the plan sponsor is
5 not a debtor in a case under title
6 11, United States Code, or simi-
7 lar Federal or State law,

8 “(bb) there are no unpaid
9 minimum required contributions
10 with respect to the plan for pur-
11 poses of section 4971 of the In-
12 ternal Revenue Code of 1986,

13 “(cc) there is no lien in
14 favor of the plan under sub-
15 section (k) or under section
16 430(k) of such Code, and

17 “(dd) a distress termination
18 has not been initiated for the
19 plan under section 4041(c).

20 “(III) RULES RELATING TO
21 ELECTION.—Such election shall be
22 made at such times, and in such form
23 and manner, as shall be prescribed by
24 the Secretary of the Treasury and
25 shall be irrevocable, except under such

1 limited circumstances, and subject to
2 such conditions, as such Secretary
3 may prescribe.

4 “(E) APPLICABLE PLAN YEAR.—

5 “(i) IN GENERAL.—For purposes of
6 this paragraph, the term ‘applicable plan
7 year’ means, subject to the election of the
8 plan sponsor under subparagraph (D)(iv),
9 each of not more than 2 of the plan years
10 beginning in 2008, 2009, 2010, or 2011.

11 “(ii) SPECIAL RULE RELATING TO
12 2008.—A plan year may be elected as an
13 applicable plan year pursuant to this sub-
14 paragraph only if the due date under sub-
15 section (j)(1) for the payment of the min-
16 imum required contribution for such plan
17 year occurs on or after March 10, 2010.

18 “(F) INCREASES IN SHORTFALL AMORTI-
19 ZATION INSTALLMENTS IN CASES OF EXCESS
20 COMPENSATION OR CERTAIN DIVIDENDS OR
21 STOCK REDEMPTIONS.—

22 “(i) IN GENERAL.—If, with respect to
23 an election for an applicable plan year
24 under subparagraph (D), there is an in-
25 stallment acceleration amount with respect

1 to a plan for any plan year in the restric-
2 tion period (or if there is an installment
3 acceleration amount carried forward to a
4 plan year not in the restriction period),
5 then the shortfall amortization installment
6 otherwise determined and payable under
7 this paragraph for such plan year shall be
8 increased by such amount.

9 “(ii) BACK-END ADJUSTMENT TO AM-
10 ORTIZATION SCHEDULE.—Subject to rules
11 prescribed by the Secretary of the Treas-
12 ury, if a shortfall amortization installment
13 with respect to any shortfall amortization
14 base for an applicable plan year is required
15 to be increased for any plan year under
16 clause (i), subsequent shortfall amortiza-
17 tion installments with respect to such base
18 shall be reduced, in reverse order of the
19 otherwise required installments beginning
20 with the final scheduled installment, to the
21 extent necessary to limit the present value
22 of such subsequent shortfall amortization
23 installments (after application of this sub-
24 paragraph) to the present value of the re-

1 maining unamortized shortfall amortization
2 base.

3 “(iii) INSTALLMENT ACCELERATION
4 AMOUNT.—For purposes of this subpara-
5 graph—

6 “(I) IN GENERAL.—The term ‘in-
7 stallment acceleration amount’ means,
8 with respect to any plan year in a re-
9 striction period with respect to an ap-
10 plicable plan year, the sum of—

11 “(aa) the aggregate amount
12 of excess employee compensation
13 determined under clause (iv) for
14 the plan year, plus

15 “(bb) the dividend and re-
16 demption amount determined
17 under clause (v) for the plan
18 year.

19 “(II) CUMULATIVE LIMITA-
20 TION.—The installment acceleration
21 amount for any plan year shall not ex-
22 ceed the excess (if any) of—

23 “(aa) the sum of the short-
24 fall amortization installments for
25 the plan year and all preceding

1 plan years in the amortization
2 period elected under subpara-
3 graph (D) with respect to the
4 shortfall amortization base with
5 respect to an applicable year, de-
6 termined without regard to sub-
7 paragraph (D) and this subpara-
8 graph, over

9 “(bb) the sum of the short-
10 fall amortization installments for
11 such plan year and all such pre-
12 ceding plan years, determined
13 after application of subparagraph
14 (D) (and in the case of any pre-
15 ceding plan year, after applica-
16 tion of this subparagraph).

17 “(III) CARRYOVER OF EXCESS
18 INSTALLMENT ACCELERATION
19 AMOUNTS.—

20 “(aa) IN GENERAL.—If the
21 installment acceleration amount
22 for any plan year (determined
23 without regard to subclause (II))
24 exceeds the limitation under sub-
25 clause (II), then, subject to item

1 (bb), such excess shall be treated
2 as an installment acceleration
3 amount for the succeeding plan
4 year.

5 “(bb) CAP TO APPLY.—If
6 any amount treated as an install-
7 ment acceleration amount under
8 item (aa) or this item with re-
9 spect any succeeding plan year,
10 when added to other installment
11 acceleration amounts (determined
12 without regard to subclause (II))
13 with respect to the plan year, ex-
14 ceeds the limitation under sub-
15 clause (II), the portion of such
16 amount representing such excess
17 shall be treated as an installment
18 acceleration amount with respect
19 to the next succeeding plan year.

20 “(cc) LIMITATION ON YEARS
21 TO WHICH AMOUNTS CARRIED
22 FORWARD.—No amount shall be
23 carried forward under item (aa)
24 or (bb) to a plan year which be-
25 gins after the last plan year in

1 the restriction period (or after
2 the second plan year following
3 such last plan year in the case of
4 an election year with respect to
5 which 15-year amortization was
6 elected under subparagraph
7 (D)(iii)).

8 “(dd) ORDERING RULES.—
9 For purposes of applying item
10 (bb), installment acceleration
11 amounts for the plan year (deter-
12 mined without regard to any car-
13 ryover under this clause) shall be
14 applied first against the limita-
15 tion under subclause (II) and
16 then carryovers to such plan year
17 shall be applied against such lim-
18 itation on a first-in, first-out
19 basis.

20 “(iv) EXCESS EMPLOYEE COMPENSA-
21 TION.—

22 “(I) IN GENERAL.—For purposes
23 of this paragraph, the term ‘excess
24 employee compensation’ means the
25 sum of—

1 “(aa) with respect to any
2 employee, for any plan year, the
3 excess (if any) of—

4 “(AA) the aggregate
5 amount includible in income
6 under chapter 1 of the In-
7 ternal Revenue Code of
8 1986 for remuneration dur-
9 ing the calendar year in
10 which such plan year begins
11 for services performed by
12 the employee for the plan
13 sponsor (whether or not per-
14 formed during such calendar
15 year), over

16 “(BB) \$1,000,000, plus

17 “(bb) the amount of assets
18 set aside or reserved (directly or
19 indirectly) in a trust (or other ar-
20 rangement as determined by the
21 Secretary of the Treasury), or
22 transferred to such a trust or
23 other arrangement, during the
24 calendar year by a plan sponsor
25 for purposes of paying deferred

1 compensation of an employee
2 under a nonqualified deferred
3 compensation plan (as defined in
4 section 409A of such Code) of
5 the plan sponsor.

6 “(II) NO DOUBLE COUNTING.—
7 No amount shall be taken into ac-
8 count under subclause (I) more than
9 once.

10 “(III) EMPLOYEE; REMUNERA-
11 TION.—For purposes of this clause,
12 the term ‘employee’ includes, with re-
13 spect to a calendar year, a self-em-
14 ployed individual who is treated as an
15 employee under section 401(c) of the
16 Internal Revenue Code of 1986 for
17 the taxable year ending during such
18 calendar year, and the term ‘remu-
19 nation’ shall include earned income
20 of such an individual.

21 “(IV) CERTAIN PAYMENTS
22 UNDER EXISTING CONTRACTS.—There
23 shall not be taken into account under
24 subclause (I)(aa) any remuneration
25 consisting of nonqualified deferred

1 compensation, restricted stock (or re-
2 stricted stock units), stock options, or
3 stock appreciation rights payable or
4 granted under a written binding con-
5 tract that was in effect on March 1,
6 2010, and which was not modified in
7 any material respect before such re-
8 muneration is paid.

9 “(V) ONLY REMUNERATION FOR
10 POST-2009 SERVICES COUNTED.—Re-
11 muneration shall be taken into ac-
12 count under subclause (I)(aa) only to
13 the extent attributable to services per-
14 formed by the employee for the plan
15 sponsor after December 31, 2009.

16 “(VI) COMMISSIONS.—

17 “(aa) IN GENERAL.—There
18 shall not be taken into account
19 under subclause (I)(aa) any re-
20 muneration payable on a commis-
21 sion basis solely on account of in-
22 come directly generated by the
23 individual performance of the in-
24 dividual to whom such remunera-
25 tion is payable.

1 “(bb) SPECIFIED EMPLOY-
2 EES.—Item (aa) shall not apply
3 in the case of any specified em-
4 ployee (within the meaning of
5 section 409A(a)(2)(B)(i) of the
6 Internal Revenue Code of 1986)
7 or any employee who would be
8 such a specified employee if the
9 plan sponsor were a corporation
10 described in such section.

11 “(VII) INDEXING OF AMOUNT.—
12 In the case of any calendar year be-
13 ginning after 2010, the dollar amount
14 under subclause (I)(aa)(BB) shall be
15 increased by an amount equal to—

16 “(aa) such dollar amount,
17 multiplied by

18 “(bb) the cost-of-living ad-
19 justment determined under sec-
20 tion 1(f)(3) of the Internal Rev-
21 enue Code of 1986 for the cal-
22 endar year, determined by sub-
23 stituting ‘calendar year 2009’ for
24 ‘calendar year 1992’ in subpara-
25 graph (B) thereof.

1 If the amount of any increase under
2 clause (i) is not a multiple of \$20,000,
3 such increase shall be rounded to the
4 next lowest multiple of \$20,000.

5 “(v) CERTAIN DIVIDENDS AND RE-
6 DEMPTIONS.—

7 “(I) IN GENERAL.—The dividend
8 and redemption amount determined
9 under this clause for any plan year is
10 the lesser of—

11 “(aa) the excess of—

12 “(AA) the sum of the
13 dividends paid during the
14 plan year by the plan spon-
15 sor, plus the amounts paid
16 for the redemption of stock
17 of the plan sponsor re-
18 deemed during the plan
19 year, over

20 “(BB) an amount equal
21 to the average of adjusted
22 annual net income of the
23 plan sponsor for the last 5
24 fiscal years of the plan spon-

1 sor ending before such plan
2 year, or

3 “(bb) the sum of—

4 “(AA) the amounts
5 paid for the redemption of
6 stock of the plan sponsor re-
7 deemed during the plan
8 year, plus

9 “(BB) the excess of
10 dividends paid during the
11 plan year by the plan spon-
12 sor over the dividend base
13 amount.

14 “(II) DEFINITIONS.—

15 “(aa) ADJUSTED ANNUAL
16 NET INCOME.—For purposes of
17 subclause (I)(aa)(BB), the term
18 ‘adjusted annual net income’ with
19 respect to any fiscal year means
20 annual net income, determined in
21 accordance with generally accept-
22 ed accounting principles (before
23 after-tax gain or loss on any sale
24 of assets), but without regard to
25 any reduction by reason of depre-

1 ciation or amortization, except
2 that in no event shall adjusted
3 annual net income for any fiscal
4 year be less than zero.

5 “(bb) DIVIDEND BASE
6 AMOUNT.—For purposes of this
7 clause, the term ‘dividend base
8 amount’ means, with respect to a
9 plan year, an amount equal to
10 the greater of—

11 “(AA) the median of
12 the amounts of the dividends
13 paid during each of the last
14 5 fiscal years of the plan
15 sponsor ending before such
16 plan year, or

17 “(BB) the amount of
18 dividends paid during such
19 plan year on preferred stock
20 that was issued on or before
21 May 21, 2010, or that is re-
22 placement stock for such
23 preferred stock.

24 “(III) ONLY CERTAIN POST-2009

25 DIVIDENDS AND REDEMPTIONS

1 COUNTED.—For purposes of subclause
2 (I) (other than for purposes of calcu-
3 lating the dividend base amount),
4 there shall only be taken into account
5 dividends declared, and redemptions
6 occurring, after February 28, 2010.

7 “(IV) EXCEPTION FOR INTRA-
8 GROUP DIVIDENDS.—Dividends paid
9 by one member of a controlled group
10 (as defined in section 302(d)(3)) to
11 another member of such group shall
12 not be taken into account under sub-
13 clause (I).

14 “(V) EXCEPTION FOR STOCK
15 DIVIDENDS.—Any distribution by the
16 plan sponsor to its shareholders of
17 stock issued by the plan sponsor shall
18 not be taken into account under sub-
19 clause (I).

20 “(VI) EXCEPTION FOR CERTAIN
21 REDEMPTIONS.—The following shall
22 not be taken into account under sub-
23 clause (I):

24 “(aa) Redemptions of securi-
25 ties which, at the time of re-

1 demption, are not listed on an es-
2 tablished securities market and—

3 “(AA) are made pursu-
4 ant to a pension plan that is
5 qualified under section 401
6 of the Internal Revenue
7 Code of 1986 or a share-
8 holder-approved program, or

9 “(BB) are made on ac-
10 count of an employee’s ter-
11 mination of employment
12 with the plan sponsor, or the
13 death or disability of a
14 shareholder.

15 “(bb) Redemptions of secu-
16 rities which are not, immediately
17 after issuance, listed on an estab-
18 lished securities market and are,
19 or had previously been—

20 “(AA) held, directly or
21 indirectly, by, or for the ben-
22 efit of, the Federal Govern-
23 ment or a Federal reserve
24 bank, or

1 “(BB) held by a na-
2 tional government (or a gov-
3 ernment-related entity of
4 such a government) or an
5 employee benefit plan if
6 such shares are substantially
7 identical to shares described
8 in subitem (AA).

9 “(vi) OTHER DEFINITIONS AND
10 RULES.—For purposes of this subpara-
11 graph—

12 “(I) PLAN SPONSOR.—The term
13 ‘plan sponsor’ includes any member of
14 the plan sponsor’s controlled group
15 (as defined in section 302(d)(3)).

16 “(II) RESTRICTION PERIOD.—
17 The term ‘restriction period’ means,
18 with respect to any applicable plan
19 year with respect to which an election
20 is made under subparagraph (D)—

21 “(aa) except as provided in
22 item (bb), the 3-year period be-
23 ginning with the applicable plan
24 year (or, if later, the first plan

1 year beginning after December
2 31, 2009), or

3 “(bb) if the plan sponsor
4 elects 15-year amortization for
5 the shortfall amortization base
6 for the applicable plan year, the
7 5-year period beginning with
8 such plan year (or, if later, the
9 first plan year beginning after
10 December 31, 2009).

11 “(III) ELECTIONS FOR MULTIPLE
12 PLANS.—If a plan sponsor makes
13 elections under subparagraph (D)
14 with respect to 2 or more plans, the
15 Secretary of the Treasury shall pro-
16 vide rules for the application of this
17 subparagraph to such plans, including
18 rules for the ratable allocation of any
19 installment acceleration amount
20 among such plans on the basis of each
21 plan’s relative reduction in the plan’s
22 shortfall amortization installment for
23 the first plan year in the amortization
24 period described in clause (i) (deter-

1 mined without regard to this subpara-
2 graph).

3 “(G) MERGERS AND ACQUISITIONS.—The
4 Secretary of the Treasury shall prescribe rules
5 for the application of subparagraphs (D) and
6 (F) in any case where there is a merger or ac-
7 quisition involving a plan sponsor making the
8 election under subparagraph (D).

9 “(H) REGULATIONS AND GUIDANCE.—The
10 Secretary of the Treasury may prescribe such
11 regulations and other guidance of general appli-
12 cability as such Secretary may determine nec-
13 essary to achieve the purposes of subparagraphs
14 (D) and (F).”.

15 (2) NOTICE REQUIREMENT.—Section 204 of
16 such Act (29 U.S.C. 1054) is amended—

17 (A) by redesignating subsection (k) as sub-
18 section (l); and

19 (B) by inserting after subsection (j) the
20 following new subsection:

21 “(k) NOTICE IN CONNECTION WITH SHORTFALL AM-
22 ORTIZATION ELECTION.—

23 “(1) IN GENERAL.—Not later 30 days after the
24 date of an election under clause (iv) of section
25 303(c)(2)(D) in connection with a single-employer

1 plan, the plan administrator shall provide notice of
2 such election in accordance with this subsection to
3 each plan participant and beneficiary, each labor or-
4 ganization representing such participants and bene-
5 ficiaries, and the Pension Benefit Guaranty Corpora-
6 tion.

7 “(2) MATTERS INCLUDED IN NOTICE.—Each
8 notice provided pursuant to this subsection shall set
9 forth—

10 “(A) a statement that recently enacted leg-
11 islation permits employers to delay pension
12 funding;

13 “(B) with respect to required contribu-
14 tions—

15 “(i) the amount of contributions that
16 would have been required had the election
17 not been made;

18 “(ii) the amount of the reduction in
19 required contributions for the applicable
20 plan year that occurs on account of the
21 election; and

22 “(iii) the number of plan years to
23 which such reduction will apply;

1 “(C) with respect to a plan’s funding sta-
2 tus as of the end of the plan year preceding the
3 applicable plan year—

4 “(i) the liabilities determined under
5 section 4010(d)(1)(A); and

6 “(ii) the market value of assets of the
7 plan; and

8 “(D) with respect to installment accelera-
9 tion amounts (as defined in section
10 303(c)(2)(F)(iii)(I))—

11 “(i) an explanation of section
12 303(c)(2)(F) (relating to increases in
13 shortfall amortization installments in cases
14 of excess compensation or certain dividends
15 or stock redemptions); and

16 “(ii) a statement that increases in re-
17 quired contributions may occur in the
18 event of future payments of excess em-
19 ployee compensation or certain share re-
20 purchasing or dividend activity and that
21 subsequent notices of any such payments
22 or activity will be provided in the annual
23 funding notice provided pursuant to sec-
24 tion 101(f).

25 “(3) OTHER REQUIREMENTS.—

1 “(A) FORM.—The notice required by para-
2 graph (1) shall be written in a manner cal-
3 culated to be understood by the average plan
4 participant. The Secretary of the Treasury shall
5 prescribe a model notice that a plan adminis-
6 trator may use to satisfy the requirements of
7 paragraph (1).

8 “(B) PROVISION TO DESIGNATED PER-
9 SONS.—Any notice under paragraph (1) may be
10 provided to a person designated, in writing, by
11 the person to which it would otherwise be pro-
12 vided.

13 “(4) EFFECT OF EGREGIOUS FAILURE.—

14 “(A) IN GENERAL.—In the case of any
15 egregious failure to meet any requirement of
16 this subsection with respect to any election,
17 such election shall be treated as having not
18 been made.

19 “(B) EGREGIOUS FAILURE.—For purposes
20 of subparagraph (A), there is an egregious fail-
21 ure to meet the requirements of this subsection
22 if such failure is in the control of the plan spon-
23 sor and is—

24 “(i) an intentional failure (including
25 any failure to promptly provide the re-

1 quired notice or information after the plan
2 administrator discovers an unintentional
3 failure to meet the requirements of this
4 subsection),

5 “(ii) a failure to provide most of the
6 participants and beneficiaries with most of
7 the information they are entitled to receive
8 under this subsection, or

9 “(iii) a failure which is determined to
10 be egregious under regulations prescribed
11 by the Secretary of the Treasury.

12 “(5) USE OF NEW TECHNOLOGIES.—The Sec-
13 retary of the Treasury may, in consultation with the
14 Secretary, by regulations or other guidance of gen-
15 eral applicability, allow any notice under this sub-
16 section to be provided using new technologies.”.

17 (C) SUBSEQUENT SUPPLEMENTAL NO-
18 TICES.—Section 101(f)(2)(C) of such Act (29
19 U.S.C. 1021(f)(2)(C)) is amended—

20 (i) by striking “and” at the end of
21 clause (i);

22 (ii) by redesignating clause (ii) as
23 clause (iii); and

24 (iii) by inserting after clause (i) the
25 following new clause:

1 “(ii) any excess employee compensa-
2 tion amounts and any dividends and re-
3 demptions amounts determined under sec-
4 tion 303(c)(2)(F) for the preceding plan
5 year with respect to the plan, and”.

6 (3) DISREGARD OF INSTALLMENT ACCELERA-
7 TION AMOUNTS IN DETERMINING QUARTERLY CON-
8 TRIBUTIONS.—Section 303(j)(3) of such Act (29
9 U.S.C. 1083(j)(3)) is amended by adding at the end
10 the following new subparagraph:

11 “(F) DISREGARD OF INSTALLMENT ACCEL-
12 ERATION AMOUNTS.—Subparagraph (D) shall
13 be applied without regard to any increase under
14 subsection (c)(2)(F).”.

15 (4) CONFORMING AMENDMENT.—Section
16 303(c)(1) of such Act (29 U.S.C. 1083(c)(1)) is
17 amended by striking “the shortfall amortization
18 bases for such plan year and each of the 6 preceding
19 plan years” and inserting “any shortfall amortiza-
20 tion base which has not been fully amortized under
21 this subsection”.

22 (b) IRC AMENDMENTS.—

23 (1) IN GENERAL.—Section 430(c)(2) of the In-
24 ternal Revenue Code of 1986 is amended by adding
25 at the end the following subparagraphs:

1 “(D) SPECIAL RULE.—

2 “(i) IN GENERAL.—In the case of the
3 shortfall amortization base of a plan for
4 any applicable plan year, the shortfall am-
5 ortization installments are the amounts de-
6 scribed in clause (ii) or (iii), if made appli-
7 cable by an election under clause (iv). In
8 the absence of a timely election, such in-
9 stallments shall be determined without re-
10 gard to this subparagraph.

11 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
12 ULE.—The shortfall amortization install-
13 ments described in this clause are—

14 “(I) in the case of the first 2
15 plan years in the 9-plan-year period
16 beginning with the applicable plan
17 year, interest on the shortfall amorti-
18 zation base (determined by using the
19 effective interest rate for the applica-
20 ble plan year), and

21 “(II) in the case of the last 7
22 plan years in such 9-plan-year period,
23 the amounts necessary to amortize the
24 balance of such shortfall amortization
25 base in level annual installments over

1 such last 7 plan years (determined
2 using the segment rates determined
3 under subparagraph (C) of subsection
4 (h)(2) for the applicable plan year,
5 applied under rules similar to the
6 rules of subparagraph (B) of sub-
7 section (h)(2)).

8 “(iii) 15-YEAR AMORTIZATION.—The
9 shortfall amortization installments de-
10 scribed in this clause are the amounts
11 under subparagraphs (A) and (B) deter-
12 mined by substituting ‘15 plan-year period’
13 for ‘7-plan-year period’.

14 “(iv) ELECTION.—

15 “(I) IN GENERAL.—The plan
16 sponsor may, with respect to a plan,
17 elect, with respect to any of not more
18 than 2 applicable plan years, to deter-
19 mine shortfall amortization install-
20 ments under this subparagraph. An
21 election under either clause (ii) or
22 clause (iii) may be made with respect
23 to either of such applicable plan years.

24 “(II) ELIGIBILITY FOR ELEC-
25 TION.—An election may be made to

1 determine shortfall amortization in-
2 stallments under this subparagraph
3 with respect to a plan only if, as of
4 the date of the election—

5 “(aa) the plan sponsor is
6 not a debtor in a case under title
7 11, United States Code, or simi-
8 lar Federal or State law,

9 “(bb) there are no unpaid
10 minimum required contributions
11 with respect to the plan for pur-
12 poses of section 4971,

13 “(cc) there is no lien in
14 favor of the plan under sub-
15 section (k) or under section
16 303(k) of the Employee Retire-
17 ment Income Security Act of
18 1974, and

19 “(dd) a distress termination
20 has not been initiated for the
21 plan under section 4041(c) of
22 such Act.

23 “(III) RULES RELATING TO
24 ELECTION.—Such election shall be
25 made at such times, and in such form

1 and manner, as shall be prescribed by
2 the Secretary and shall be irrevocable,
3 except under such limited cir-
4 cumstances, and subject to such con-
5 ditions, as the Secretary may pre-
6 scribe.

7 “(E) APPLICABLE PLAN YEAR.—

8 “(i) IN GENERAL.—For purposes of
9 this paragraph, the term ‘applicable plan
10 year’ means, subject to the election of the
11 plan sponsor under subparagraph (D)(iv),
12 each of not more than 2 of the plan years
13 beginning in 2008, 2009, 2010, or 2011.

14 “(ii) SPECIAL RULE RELATING TO
15 2008.—A plan year may be elected as an
16 applicable plan year pursuant to this sub-
17 paragraph only if the due date under sub-
18 section (j)(1) for the payment of the min-
19 imum required contribution for such plan
20 year occurs on or after March 10, 2010.

21 “(F) INCREASES IN SHORTFALL AMORTI-
22 ZATION INSTALLMENTS IN CASES OF EXCESS
23 COMPENSATION OR CERTAIN DIVIDENDS OR
24 STOCK REDEMPTIONS.—

1 “(i) IN GENERAL.—If, with respect to
2 an election for an applicable plan year
3 under subparagraph (D), there is an in-
4 stallment acceleration amount with respect
5 to a plan for any plan year in the restric-
6 tion period (or if there is an installment
7 acceleration amount carried forward to a
8 plan year not in the restriction period),
9 then the shortfall amortization installment
10 otherwise determined and payable under
11 this paragraph for such plan year shall be
12 increased by such amount.

13 “(ii) BACK-END ADJUSTMENT TO AM-
14 ORTIZATION SCHEDULE.—Subject to rules
15 prescribed by the Secretary, if a shortfall
16 amortization installment with respect to
17 any shortfall amortization base for an ap-
18 plicable plan year is required to be in-
19 creased for any plan year under clause (i),
20 subsequent shortfall amortization install-
21 ments with respect to such base shall be
22 reduced, in reverse order of the otherwise
23 required installments beginning with the
24 final scheduled installment, to the extent
25 necessary to limit the present value of such

1 subsequent shortfall amortization install-
2 ments (after application of this subpara-
3 graph) to the present value of the remain-
4 ing unamortized shortfall amortization
5 base.

6 “(iii) INSTALLMENT ACCELERATION
7 AMOUNT.—For purposes of this subpara-
8 graph—

9 “(I) IN GENERAL.—The term ‘in-
10 stallment acceleration amount’ means,
11 with respect to any plan year in a re-
12 striction period with respect to an ap-
13 plicable plan year, the sum of—

14 “(aa) the aggregate amount
15 of excess employee compensation
16 determined under clause (iv) for
17 the plan year, plus

18 “(bb) the dividend and re-
19 demption amount determined
20 under clause (v) for the plan
21 year.

22 “(II) CUMULATIVE LIMITA-
23 TION.—The installment acceleration
24 amount for any plan year shall not ex-
25 ceed the excess (if any) of—

1 “(aa) the sum of the short-
2 fall amortization installments for
3 the plan year and all preceding
4 plan years in the amortization
5 period elected under subpara-
6 graph (D) with respect to the
7 shortfall amortization base with
8 respect to an applicable year, de-
9 termined without regard to sub-
10 paragraph (D) and this subpara-
11 graph, over

12 “(bb) the sum of the short-
13 fall amortization installments for
14 such plan year and all such pre-
15 ceding plan years, determined
16 after application of subparagraph
17 (D) (and in the case of any pre-
18 ceding plan year, after applica-
19 tion of this subparagraph).

20 “(III) CARRYOVER OF EXCESS
21 INSTALLMENT ACCELERATION
22 AMOUNTS.—

23 “(aa) IN GENERAL.—If the
24 installment acceleration amount
25 for any plan year (determined

1 without regard to subclause (II))
2 exceeds the limitation under sub-
3 clause (II), then, subject to item
4 (bb), such excess shall be treated
5 as an installment acceleration
6 amount for the succeeding plan
7 year.

8 “(bb) CAP TO APPLY.—If
9 any amount treated as an install-
10 ment acceleration amount under
11 item (aa) or this item with re-
12 spect any succeeding plan year,
13 when added to other installment
14 acceleration amounts (determined
15 without regard to subclause (II))
16 with respect to the plan year, ex-
17 ceeds the limitation under sub-
18 clause (II), the portion of such
19 amount representing such excess
20 shall be treated as an installment
21 acceleration amount with respect
22 to the next succeeding plan year.

23 “(cc) LIMITATION ON YEARS
24 TO WHICH AMOUNTS CARRIED
25 FORWARD.—No amount shall be

1 carried forward under item (aa)
2 or (bb) to a plan year which be-
3 gins after the last plan year in
4 the restriction period (or after
5 the second plan year following
6 such last plan year in the case of
7 an election year with respect to
8 which 15-year amortization was
9 elected under subparagraph
10 (D)(iii)).

11 “(dd) ORDERING RULES.—
12 For purposes of applying item
13 (bb), installment acceleration
14 amounts for the plan year (deter-
15 mined without regard to any car-
16 ryover under this clause) shall be
17 applied first against the limita-
18 tion under subclause (II) and
19 then carryovers to such plan year
20 shall be applied against such lim-
21 itation on a first-in, first-out
22 basis.

23 “(iv) EXCESS EMPLOYEE COMPENSA-
24 TION.—

1 “(I) IN GENERAL.—For purposes
2 of this paragraph, the term ‘excess
3 employee compensation’ means the
4 sum of—

5 “(aa) with respect to any
6 employee, for any plan year, the
7 excess (if any) of—

8 “(AA) the aggregate
9 amount includible in income
10 under chapter 1 for remuneration during the calendar
11 year in which such plan year
12 begins for services performed by the employee for
13 the plan sponsor (whether or
14 not performed during such
15 calendar year), over

16 “(BB) \$1,000,000, plus

17 “(bb) the amount of assets
18 set aside or reserved (directly or
19 indirectly) in a trust (or other arrangement as determined by the
20 Secretary), or transferred to such
21 a trust or other arrangement,
22 during the calendar year by a
23
24
25

1 plan sponsor for purposes of pay-
2 ing deferred compensation of an
3 employee under a nonqualified
4 deferred compensation plan (as
5 defined in section 409A) of the
6 plan sponsor.

7 “(II) NO DOUBLE COUNTING.—
8 No amount shall be taken into ac-
9 count under subclause (I) more than
10 once.

11 “(III) EMPLOYEE; REMUNERA-
12 TION.—For purposes of this clause,
13 the term ‘employee’ includes, with re-
14 spect to a calendar year, a self-em-
15 ployed individual who is treated as an
16 employee under section 401(c) for the
17 taxable year ending during such cal-
18 endar year, and the term ‘remunera-
19 tion’ shall include earned income of
20 such an individual.

21 “(IV) CERTAIN PAYMENTS
22 UNDER EXISTING CONTRACTS.—There
23 shall not be taken into account under
24 subclause (I) any remuneration con-
25 sisting of nonqualified deferred com-

1 pensation, restricted stock (or re-
2 stricted stock units), stock options, or
3 stock appreciation rights payable or
4 granted under a written binding con-
5 tract that was in effect on March 1,
6 2010, and which was not modified in
7 any material respect before such re-
8 muneration is paid.

9 “(V) ONLY REMUNERATION FOR
10 POST-2009 SERVICES COUNTED.—Re-
11 muneration shall be taken into ac-
12 count under subclause (I)(aa) only to
13 the extent attributable to services per-
14 formed by the employee for the plan
15 sponsor after December 31, 2009.

16 “(VI) COMMISSIONS.—

17 “(aa) IN GENERAL.—There
18 shall not be taken into account
19 under subclause (I)(aa) any re-
20 muneration payable on a commis-
21 sion basis solely on account of in-
22 come directly generated by the
23 individual performance of the in-
24 dividual to whom such remunera-
25 tion is payable.

“(bb) SPECIFIED EMPLOY-
EES.—Item (aa) shall not apply
in the case of any specified em-
ployee (within the meaning of
section 409A(a)(2)(B)(i)) or any
employee who would be such a
specified employee if the plan
sponsor were a corporation de-
scribed in such section.

“(VII) INDEXING OF AMOUNT.—

In the case of any calendar year beginning after 2010, the dollar amount under subclause (I)(aa)(BB) shall be increased by an amount equal to—

15 “(aa) such dollar amount,
16 multiplied by

“(bb) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

24 If the amount of any increase under
25 clause (i) is not a multiple of \$20,000,

1 such increase shall be rounded to the
2 next lowest multiple of \$20,000.

3 “(v) CERTAIN DIVIDENDS AND RE-
4 DEMPTIONS.—

5 “(I) IN GENERAL.—The dividend
6 and redemption amount determined
7 under this clause for any plan year is
8 the lesser of—

9 “(aa) the excess of—

10 “(AA) the sum of the
11 dividends paid during the
12 plan year by the plan spon-
13 sor, plus the amounts paid
14 for the redemption of stock
15 of the plan sponsor re-
16 deemed during the plan
17 year, over

18 “(BB) an amount equal
19 to the average of adjusted
20 annual net income of the
21 plan sponsor for the last 5
22 fiscal years of the plan spon-
23 sor ending before such plan
24 year, or

25 “(bb) the sum of—

1 “(AA) the amounts
2 paid for the redemption of
3 stock of the plan sponsor re-
4 deemed during the plan
5 year, plus

6 “(BB) the excess of
7 dividends paid during the
8 plan year by the plan spon-
9 sor over the dividend base
10 amount.

11 “(II) DEFINITIONS.—

12 “(aa) ADJUSTED ANNUAL
13 NET INCOME.—For purposes of
14 subclause (I)(aa)(BB), the term
15 ‘adjusted annual net income’ with
16 respect to any fiscal year means
17 annual net income, determined in
18 accordance with generally accept-
19 ed accounting principles (before
20 after-tax gain or loss on any sale
21 of assets), but without regard to
22 any reduction by reason of depre-
23 ciation or amortization, except
24 that in no event shall adjusted

1 annual net income for any fiscal
2 year be less than zero.

3 “(bb) DIVIDEND BASE
4 AMOUNT.—For purposes of this
5 clause, the term ‘dividend base
6 amount’ means, with respect to a
7 plan year, an amount equal to
8 the greater of—

9 “(AA) the median of
10 the amounts of the dividends
11 paid during each of the last
12 5 fiscal years of the plan
13 sponsor ending before such
14 plan year, or

15 “(BB) the amount of
16 dividends paid during such
17 plan year on preferred stock
18 that was issued on or before
19 May 21, 2010, or that is re-
20 placement stock for such
21 preferred stock.

22 “(III) ONLY CERTAIN POST-2009
23 DIVIDENDS AND REDEMPTIONS
24 COUNTED.—For purposes of subclause
25 (I) (other than for purposes of calcu-

lating the dividend base amount), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(IV) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under subclause (I).

“(V) EXCEPTION FOR STOCK DIVIDENDS.—Any distribution by the plan sponsor to its shareholders of stock issued by the plan sponsor shall not be taken into account under subclause (I).

“(VI) EXCEPTION FOR CERTAIN REDEMPTIONS.—The following shall not be taken into account under subclause (I):

“(aa) Redemptions of securities which, at the time of redemption, are not listed on an established securities market and—

1 “(AA) are made pursu-
2 ant to a pension plan that is
3 qualified under section 401
4 or a shareholder-approved
5 program, or

6 “(BB) are made on ac-
7 count of an employee’s ter-
8 mination of employment
9 with the plan sponsor, or the
10 death or disability of a
11 shareholder.

12 “(bb) Redemptions of secu-
13 rities which are not, immediately
14 after issuance, listed on an estab-
15 lished securities market and are,
16 or had previously been—

17 “(AA) held, directly or
18 indirectly, by, or for the ben-
19 efit of, the Federal Govern-
20 ment or a Federal reserve
21 bank, or

22 “(BB) held by a na-
23 tional government (or a gov-
24 ernment-related entity of
25 such a government) or an

1 employee benefit plan if
2 such shares are substantially
3 identical to shares described
4 in subitem (AA).

5 “(vi) OTHER DEFINITIONS AND
6 RULES.—For purposes of this subpara-
7 graph—

8 “(I) PLAN SPONSOR.—The term
9 ‘plan sponsor’ includes any group of
10 which the plan sponsor is a member
11 and which is treated as a single em-
12 ployer under subsection (b), (c), (m),
13 or (o) of section 414.

14 “(II) RESTRICTION PERIOD.—
15 The term ‘restriction period’ means,
16 with respect to any applicable plan
17 year with respect to which an election
18 is made under subparagraph (D)—

19 “(aa) except as provided in
20 item (bb), the 3-year period be-
21 ginning with the applicable plan
22 year (or, if later, the first plan
23 year beginning after December
24 31, 2009), or

1 “(bb) if the plan sponsor
2 elects 15-year amortization for
3 the shortfall amortization base
4 for the applicable plan year, the
5 5-year period beginning with
6 such plan year (or, if later, the
7 first plan year beginning after
8 December 31, 2009).

9 “(III) ELECTIONS FOR MULTIPLE
10 PLANS.—If a plan sponsor makes
11 elections under subparagraph (D)
12 with respect to 2 or more plans, the
13 Secretary shall provide rules for the
14 application of this subparagraph to
15 such plans, including rules for the rat-
16 able allocation of any installment ac-
17 celeration amount among such plans
18 on the basis of each plan’s relative re-
19 duction in the plan’s shortfall amorti-
20 zation installment for the first plan
21 year in the amortization period de-
22 scribed in clause (i) (determined with-
23 out regard to this subparagraph).

24 “(G) MERGERS AND ACQUISITIONS.—The
25 Secretary shall prescribe rules for the applica-

1 tion of subparagraphs (D) and (F) in any case
2 where there is a merger or acquisition involving
3 a plan sponsor making the election under sub-
4 paragraph (D).

5 “(H) REGULATIONS AND GUIDANCE.—The
6 Secretary may prescribe such regulations and
7 other guidance of general applicability as the
8 Secretary may determine necessary to achieve
9 the purposes of subparagraphs (D) and (F).”.

10 (2) NOTICE REQUIREMENT.—

11 (A) IN GENERAL.—Section 4980F of such
12 Code is amended—

13 (i) by striking “subsection (e)” each
14 place it appears in subsection (a) and
15 paragraphs (1) and (3) of subsection (c)
16 and inserting “subsections (e) and (f)”;

17 (ii) by striking “subsection (e)” in
18 subsection (c)(2)(A) and inserting “sub-
19 section (e), (f), or both, as the case may
20 be”; and

21 (iii) by redesignating subsection (f) as
22 subsection (g) and by inserting after sub-
23 section (e) the following new subsection:

24 “(f) NOTICE IN CONNECTION WITH SHORTFALL AM-
25 ORTIZATION ELECTION.—

1 “(1) IN GENERAL.—Not later 30 days after the
2 date of an election under clause (iv) of section
3 430(c)(2)(D) in connection with a plan, the plan ad-
4 ministrator shall provide notice of such election in
5 accordance with this subsection to each plan partici-
6 pant and beneficiary, each labor organization rep-
7 resenting such participants and beneficiaries, and
8 the Pension Benefit Guaranty Corporation.

9 “(2) MATTERS INCLUDED IN NOTICE.—Each
10 notice provided pursuant to this subsection shall set
11 forth—

12 “(A) a statement that recently enacted leg-
13 islation permits employers to delay pension
14 funding;

15 “(B) with respect to required contribu-
16 tions—

17 “(i) the amount of contributions that
18 would have been required had the election
19 not been made;

20 “(ii) the amount of the reduction in
21 required contributions for the applicable
22 plan year that occurs on account of the
23 election; and

24 “(iii) the number of plan years to
25 which such reduction will apply;

1 “(C) with respect to a plan’s funding sta-
2 tus as of the end of the plan year preceding the
3 applicable plan year—

4 “(i) the liabilities determined under
5 section 4010(d)(1)(A) of the Employee Re-
6 tirement Income Security Act of 1974; and

7 “(ii) the market value of assets of the
8 plan; and

9 “(D) with respect to installment accelera-
10 tion amounts (as defined in section
11 430(c)(2)(F)(iii)(I))—

12 “(i) an explanation of section
13 430(c)(2)(F) (relating to increases in
14 shortfall amortization installments in cases
15 of excess compensation or certain dividends
16 or stock redemptions); and

17 “(ii) a statement that increases in re-
18 quired contributions may occur in the
19 event of future payments of excess em-
20 ployee compensation or certain share re-
21 purchasing or dividend activity and that
22 subsequent notices of any such payments
23 or activity will be provided in the annual
24 funding notice provided pursuant to sec-

1 tion 101(f) of the Employee Retirement
2 Income Security Act of 1974.

3 “(3) OTHER REQUIREMENTS.—

4 “(A) FORM.—The notice required by para-
5 graph (1) shall be written in a manner cal-
6 culated to be understood by the average plan
7 participant and shall provide sufficient informa-
8 tion (as determined in accordance with regula-
9 tions or other guidance of general applicability
10 prescribed by the Secretary) to allow plan par-
11 ticipants and beneficiaries to understand the ef-
12 fect of the election. The Secretary shall pre-
13 scribe a model notice that a plan administrator
14 may use to satisfy the requirements of para-
15 graph (1).

16 “(B) PROVISION TO DESIGNATED PER-
17 SONS.—Any notice under paragraph (1) may be
18 provided to a person designated, in writing, by
19 the person to which it would otherwise be pro-
20 vided.”.

21 (B) CONFORMING AMENDMENT.—Sub-
22 section (g) of section 4980F of such Code is
23 amended by inserting “or (f)” after “subsection
24 (e)”.

1 (3) DISREGARD OF INSTALLMENT ACCELERA-
2 TION AMOUNTS IN DETERMINING QUARTERLY CON-
3 TRIBUTIONS.—Section 430(j)(3) of such Code is
4 amended by adding at the end the following new
5 subparagraph:

6 “(F) DISREGARD OF INSTALLMENT ACCEL-
7 ERATION AMOUNTS.—Subparagraph (D) shall
8 be applied without regard to any increase under
9 subsection (c)(2)(F).”.

10 (4) CONFORMING AMENDMENT.—Paragraph (1)
11 of section 430(c) of such Code is amended by strik-
12 ing “the shortfall amortization bases for such plan
13 year and each of the 6 preceding plan years” and in-
14 serting “any shortfall amortization base which has
15 not been fully amortized under this subsection”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to plan years beginning after De-
18 cember 31, 2007.

19 **SEC. 302. APPLICATION OF EXTENDED AMORTIZATION PE-**
20 **RIOD TO PLANS SUBJECT TO PRIOR LAW**
21 **FUNDING RULES.**

22 (a) IN GENERAL.—Title I of the Pension Protection
23 Act of 2006 is amended by redesignating section 107 as
24 section 108 and by inserting the following after section
25 106:

1 **“SEC. 107. APPLICATION OF FUNDING RELIEF TO PLANS**
2 **WITH DELAYED EFFECTIVE DATE.**

3 “(a) ALTERNATIVE ELECTIONS.—

4 “(1) IN GENERAL.—Subject to this section, a
5 plan sponsor of a plan to which section 104, 105, or
6 106 of this Act applies may either elect the applica-
7 tion of subsection (b) with respect to the plan for
8 not more than 2 applicable plan years or elect the
9 application of subsection (c) with respect to the plan
10 for 1 applicable plan year.

11 “(2) ELIGIBILITY FOR ELECTIONS.—An elec-
12 tion may be made by a plan sponsor under para-
13 graph (1) with respect to a plan only if at the time
14 of the election—

15 “(A) the plan sponsor is not a debtor in a
16 case under title 11, United States Code, or
17 similar Federal or State law,

18 “(B) there are no accumulated funding de-
19 ficiencies (as defined in section 302(a)(2) of the
20 Employee Retirement Income Security Act of
21 1974 (as in effect immediately before the enact-
22 ment of this Act) or in section 412(a) of the In-
23 ternal Revenue Code of 1986 (as so in effect))
24 with respect to the plan,

25 “(C) there is no lien in favor of the plan
26 under section 302(d) (as so in effect) or under

1 section 412(n) of such Code (as so in effect),
2 and

3 “(D) a distress termination has not been
4 initiated for the plan under section 4041(c) of
5 the Employee Retirement Income Security Act
6 of 1974.

7 “(b) ALTERNATIVE ADDITIONAL FUNDING
8 CHARGE.—If the plan sponsor elects the application of
9 this subsection with respect to the plan, for purposes of
10 applying section 302(d) of the Employee Retirement In-
11 come Security Act of 1974 (as in effect before the amend-
12 ments made by this subtitle and subtitle B) and section
13 412(l) of the Internal Revenue Code of 1986 (as so in
14 effect)—

15 “(1) the deficit reduction contribution under
16 paragraph (2) of such section 302(d) and paragraph
17 (2) of such section 412(l) for such plan for any ap-
18 plicable plan year, shall be zero, and

19 “(2) the additional funding charge under para-
20 graph (1) of such section 302(d) and paragraph (1)
21 of such section 412(l) for such plan for any applica-
22 ble plan year shall be increased by an amount equal
23 to the installment acceleration amount (as defined in
24 sections 303(c)(2)(F)(iii)(I) of such Act (as amend-
25 ed by the American Jobs and Closing Tax Loopholes

1 Act of 2010) and 430(c)(2)(F)(iii)(I) of such Code
2 (as so amended)) with respect to the plan sponsor
3 for such plan year, determined by treating the later
4 of such plan year or the first plan year beginning
5 after December 31, 2009, as the restriction period.

6 “(c) APPLICATION OF 15-YEAR AMORTIZATION.—If
7 the plan sponsor elects the application of this subsection
8 with respect to the plan, for purposes of applying section
9 302(d) of such Act (as in effect before the amendments
10 made by this subtitle and subtitle B) and section 412(l)
11 of such Code (as so in effect)—

12 “(1) in the case of the increased unfunded new
13 liability of the plan, the applicable percentage de-
14 scribed in paragraph (4)(C) of such section 302(d)
15 and paragraph (4)(C) of such section 412(l) for any
16 pre-effective date plan year beginning with or after
17 the applicable plan year shall be the ratio of—

18 “(A) the annual installments payable in
19 each plan year if the increased unfunded new li-
20 ability for such plan year were amortized in
21 equal installments over the period beginning
22 with such plan year and ending with the last
23 plan year in the period of 15 plan years begin-
24 ning with the applicable plan year, using an in-
25 terest rate equal to the third segment rate de-

1 scribed in sections 104(b), 105(b), and 106(b)
2 of this Act, to

3 “(B) the increased unfunded new liability
4 for such plan year,

5 “(2) in the case of the excess of the unfunded
6 new liability over the increased unfunded new liability,
7 such applicable percentage shall be determined
8 without regard to this section, and

9 “(3) the additional funding charge with respect
10 to the plan for a plan year shall be increased by an
11 amount equal to the installment acceleration amount
12 (as defined in section 303(c)(2)(F)(iii) of such Act
13 (as amended by the American Jobs and Closing Tax
14 Loopholes Act of 2010 and section 430(c)(2)(F)(iii)
15 of such Code (as so amended)) with respect to the
16 plan sponsor for such plan year, determined without
17 regard to subclause (II) of such sections
18 303(c)(2)(F)(iii) and 430(c)(2)(F)(iii).

19 “(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

21 “(1) APPLICABLE PLAN YEAR.—

22 “(A) IN GENERAL.—The term ‘applicable
23 plan year’ with respect to a plan means, subject
24 to the election of the plan sponsor under sub-

1 section (a), a plan year beginning in 2009,
2 2010, or 2011.

3 “(B) ELECTION.—

4 “(i) IN GENERAL.—The election de-
5 scribed in subsection (a) shall be made at
6 such times, and in such form and manner,
7 as shall be prescribed by the Secretary of
8 the Treasury.

9 “(ii) REDUCTION IN YEARS WHICH
10 MAY BE ELECTED.—The number of appli-
11 cable plan years for which an election may
12 be made under section 303(c)(2)(D) of the
13 Employee Retirement Income Security Act
14 of 1974 (as amended by the American
15 Jobs and Closing Tax Loopholes Act of
16 2010) or section 430(c)(2)(D) of the Inter-
17 nal Revenue Code of 1986 (as so amended)
18 shall be reduced by the number of applica-
19 ble plan years for which an election under
20 this section is made.

21 “(C) ALLOCATION OF INSTALLMENT AC-
22 CELERATION AMOUNT FOR MULTIPLE PLAN
23 ELECTION.—In the case of an election under
24 this section with respect to 2 or more plans by
25 the same plan sponsor, the installment accelera-

1 tion amount shall be apportioned ratably with
2 respect to such plans in proportion to the def-
3 icit reduction contributions of the plans deter-
4 mined without regard to subsection (b)(1).

5 “(2) PLAN SPONSOR.—The term ‘plan sponsor’
6 shall have the meaning provided such term in section
7 303(c)(2)(F)(vi)(I) of the Employee Retirement In-
8 come Security Act of 1974 (as amended by the
9 American Jobs and Closing Tax Loopholes Act of
10 2010) and section 430(c)(2)(F)(vi)(I) of the Internal
11 Revenue Code of 1986 (as so amended).

12 “(3) PRE-EFFECTIVE DATE PLAN YEAR.—The
13 term ‘pre-effective date plan year’ means, with re-
14 spect to a plan, any plan year prior to the first year
15 in which the amendments made by this subtitle and
16 subtitle B apply to the plan.

17 “(4) INCREASED UNFUNDED NEW LIABILITY.—
18 The term ‘increased unfunded new liability’ means,
19 with respect to a year, the excess (if any) of the un-
20 funded new liability over the amount of unfunded
21 new liability determined as if the value of the plan’s
22 assets determined under subsection 302(c)(2) of
23 such Act (as in effect before the amendments made
24 by this subtitle and subtitle B) and section
25 412(c)(2) of such Code (as so in effect) equaled the

1 product of the current liability of the plan for the
2 year multiplied by the funded current liability per-
3 centage (as defined in section 302(d)(8)(B) of such
4 Act (as so in effect) and 412(l)(8)(B) of such Code
5 (as so in effect)) of the plan for the second plan year
6 preceding the first applicable plan year of such plan
7 for which an election under this section is made.

8 “(5) OTHER DEFINITIONS.—The terms ‘un-
9 funded new liability’ and ‘current liability’ shall have
10 the meanings set forth in section 302(d) of such Act
11 (as so in effect) and section 412(l) of such Code (as
12 so in effect).

13 “(6) ADDITIONAL FUNDING CHARGE INCREASE
14 NOT TO EXCEED RELIEF.—

15 “(A) ELECTION UNDER SUBSECTION (B).—
16 In the case of an election under subsection (b),
17 an increase resulting from the application of
18 subsection (b)(2) in the additional funding
19 charge with respect to a plan for a plan year
20 shall not exceed the excess (if any) of—

21 “(i) the deficit reduction contribution
22 under section 302(d)(2) of such Act (as so
23 in effect) and section 412(l)(2) of such
24 Code (as so in effect) for such plan year,

1 determined as if the election had not been
2 made, over

3 “(ii) the deficit reduction contribution
4 under such sections for such plan (deter-
5 mined without regard to any increase
6 under subsection (b)(2)).

7 “(B) ELECTION UNDER SUBSECTION (C).—
8 An increase resulting from the application of
9 subsection (c)(3) in the additional funding
10 charge with respect to a plan for a plan year
11 shall not exceed the excess (if any) of—

12 “(i) the sum of the deficit reduction
13 contributions under section 302(d)(2) of
14 such Act (as so in effect) and section
15 412(l)(2) of such Code (as so in effect) for
16 such plan for such plan year and for all
17 preceding plan years beginning with or
18 after the applicable plan year, determined
19 as if the election had not been made, over

20 “(ii) the sum of the deficit reduction
21 contributions under such sections for such
22 plan years (determined without regard to
23 any increase under subsection (c)(3)).

24 “(e) NOTICE.—Not later 30 days after the date of
25 an election under subsection (a) in connection with a plan,

1 the plan administrator shall provide notice pursuant to,
2 and subject to, rules similar to the rules of sections 204(k)
3 of the Employee Retirement Income Security Act of 1974
4 (as amended by the American Jobs and Closing Tax Loop-
5 holes Act of 2010) and 4980F(f) of the Internal Revenue
6 Code of 1986 (as so amended).”.

7 (b) ELIGIBLE CHARITY PLANS.—Section 104 of such
8 Act is amended—

9 (1) by striking “eligible cooperative plan” wher-
10 ever it appears in subsections (a) and (b) and insert-
11 ing “eligible cooperative plan or an eligible charity
12 plan”; and

13 (2) by adding at the end the following new sub-
14 section:

15 “(d) ELIGIBLE CHARITY PLAN DEFINED.—For pur-
16 poses of this section, a plan shall be treated as an eligible
17 charity plan for a plan year if—

18 “(1) the plan is maintained by one or more em-
19 ployers employing employees who are accruing bene-
20 fits based on service for the plan year,

21 “(2) such employees are employed in at least 20
22 States,

23 “(3) each such employee (other than a de mini-
24 mis number of employees) is employed by an em-
25 ployer described in section 501(c)(3) of such Code

1 and the primary exempt purpose of each such em-
2 ployer is to provide services with respect to children,
3 and

4 “(4) the plan sponsor elects (at such time and
5 in such form and manner as shall be prescribed by
6 the Secretary of the Treasury) to be so treated.

7 Any election under this subsection may be revoked only
8 with the consent of the Secretary of the Treasury.”.

9 (c) REGULATIONS.—The Secretary of the Treasury
10 may prescribe such regulations as may be necessary to
11 carry out the purposes of the amendments made by this
12 section.

13 (d) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendment made by
15 subsection (a) shall apply to plan years beginning on
16 or after January 1, 2009.

17 (2) ELIGIBLE CHARITY PLANS.—The amend-
18 ments made by subsection (b) shall apply to plan
19 years beginning after December 31, 2009.

20 **SEC. 303. SUSPENSION OF CERTAIN FUNDING LEVEL LIM-**
21 **TATIONS.**

22 (a) LIMITATIONS ON BENEFIT ACCRUALS.—Section
23 203 of the Worker, Retiree, and Employer Recovery Act
24 of 2008 (Public Law 110–458; 122 Stat. 5118) is amend-
25 ed—

1 (1) by striking “the first plan year beginning
2 during the period beginning on October 1, 2008, and
3 ending on September 30, 2009” and inserting “any
4 plan year beginning during the period beginning on
5 October 1, 2008, and ending on December 31,
6 2011”;

7 (2) by striking “substituting” and all that fol-
8 lows through “for such plan year” and inserting
9 “substituting for such percentage the plan’s ad-
10 justed funding target attainment percentage for the
11 last plan year ending before September 30, 2009,”;
12 and

13 (3) by striking “for the preceding plan year is
14 greater” and inserting “for such last plan year is
15 greater”.

16 (b) SOCIAL SECURITY LEVEL-INCOME OPTIONS.—

17 (1) ERISA AMENDMENT.—Section
18 206(g)(3)(E) of the Employee Retirement Income
19 Security Act of 1974 is amended by adding at the
20 end the following new sentence: “For purposes of
21 applying clause (i) in the case of payments the an-
22 nuity starting date for which occurs on or before De-
23 cember 31, 2011, payments under a social security
24 leveling option shall be treated as not in excess of
25 the monthly amount paid under a single life annuity

1 (plus an amount not in excess of a social security
2 supplement described in the last sentence of section
3 204(b)(1)(G)).”.

4 (2) IRC AMENDMENT.—Section 436(d)(5) of
5 the Internal Revenue Code of 1986 is amended by
6 adding at the end the following new sentence: “For
7 purposes of applying subparagraph (A) in the case
8 of payments the annuity starting date for which oc-
9 curs on or before December 31, 2011, payments
10 under a social security leveling option shall be treat-
11 ed as not in excess of the monthly amount paid
12 under a single life annuity (plus an amount not in
13 excess of a social security supplement described in
14 the last sentence of section 411(a)(9)).”.

15 (3) EFFECTIVE DATE.—

16 (A) IN GENERAL.—The amendments made
17 by this subsection shall apply to annuity pay-
18 ments the annuity starting date for which oc-
19 curs on or after January 1, 2011.

20 (B) PERMITTED APPLICATION.—A plan
21 shall not be treated as failing to meet the re-
22 quirements of sections 206(g) of the Employee
23 Retirement Income Security Act of 1974 (as
24 amended by this subsection) and section 436(d)
25 of the Internal Revenue Code of 1986 (as so

1 amended) if the plan sponsor elects to apply the
2 amendments made by this subsection to pay-
3 ments the annuity starting date for which oc-
4 curs on or after the date of the enactment of
5 this Act and before January 1, 2011.

6 (c) APPLICATION OF CREDIT BALANCE WITH RE-
7 SPECT TO LIMITATIONS ON SHUTDOWN BENEFITS AND
8 UNPREDICTABLE CONTINGENT EVENT BENEFITS.—With
9 respect to plan years beginning on or before December 31,
10 2011, in applying paragraph (5)(C) of subsection (g) of
11 section 206 of the Employee Retirement Income Security
12 Act of 1974 and subsection (f)(3) of section 436 of the
13 Internal Revenue Code of 1986 in the case of unpredict-
14 able contingent events (within the meaning of section
15 206(g)(1)(C) of such Act and section 436(b)(3) of such
16 Code) occurring on or after January 1, 2010, the ref-
17 erences, in clause (i) of such paragraph (5)(C) and sub-
18 paragraph (A) of such subsection (f)(3), to paragraph
19 (1)(B) of such subsection (g) and subsection (b)(2) of
20 such section 436 shall be disregarded.

21 **SEC. 304. LOOKBACK FOR CREDIT BALANCE RULE.**

22 (a) AMENDMENT TO ERISA.—Paragraph (3) of sec-
23 tion 303(f) of the Employee Retirement Income Security
24 Act of 1974 is amended by adding the following at the
25 end thereof:

1 “(D) SPECIAL RULE FOR CERTAIN PLAN
2 YEARS.—

3 “(i) IN GENERAL.—For purposes of
4 applying subparagraph (C) for plan years
5 beginning after June 30, 2009, and on or
6 before December 31, 2011, the ratio deter-
7 mined under such subparagraph for the
8 preceding plan year shall be the greater
9 of—

10 “(I) such ratio, as determined
11 without regard to this subparagraph,
12 or

13 “(II) the ratio for such plan for
14 the plan year beginning after June
15 30, 2007, and on or before June 30,
16 2008, as determined under rules pre-
17 scribed by the Secretary of the Treas-
18 ury.

19 “(ii) SPECIAL RULE.—In the case of a
20 plan for which the valuation date is not the
21 first day of the plan year—

22 “(I) clause (i) shall apply to plan
23 years beginning after December 31,
24 2008, and on or before December 31,
25 2010, and

1 “(II) clause (i)(II) shall apply
2 based on the last plan year beginning
3 before July 1, 2007, as determined
4 under rules prescribed by the Sec-
5 retary of the Treasury.”.

6 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
7 1986.—Paragraph (3) of section 430(f) of the Internal
8 Revenue Code of 1986 is amended by adding the following
9 at the end thereof:

10 “(D) SPECIAL RULE FOR CERTAIN PLAN
11 YEARS.—

12 “(i) IN GENERAL.—For purposes of
13 applying subparagraph (C) for plan years
14 beginning after June 30, 2009, and on or
15 before December 31, 2011, the ratio deter-
16 mined under such subparagraph for the
17 preceding plan year shall be the greater
18 of—

19 “(I) such ratio, as determined
20 without regard to this subparagraph,
21 or

22 “(II) the ratio for such plan for
23 the plan year beginning after June
24 30, 2007, and on or before June 30,

1 2008, as determined under rules pre-
2 scribed by the Secretary.

3 “(ii) SPECIAL RULE.—In the case of a
4 plan for which the valuation date is not the
5 first day of the plan year—

6 “(I) clause (i) shall apply to plan
7 years beginning after December 31,
8 2008, and on or before December 31,
9 2010, and

10 “(II) clause (i)(II) shall apply
11 based on the last plan year beginning
12 before July 1, 2007, as determined
13 under rules prescribed by the Sec-
14 retary.”.

15 **SEC. 305. INFORMATION REPORTING.**

16 (a) IN GENERAL.—Section 4010(b) of the Employee
17 Retirement Security Act of 1974 (29 U.S.C. 1310(b)) is
18 amended by striking paragraph (1) and inserting the fol-
19 lowing:

20 “(1) either of the following requirements are
21 met:

22 “(A) the funding target attainment per-
23 centage (as defined in subsection (d)(2)(B)) at
24 the end of the preceding plan year of a plan
25 maintained by the contributing sponsor or any

1 member of its controlled group is less than 80
2 percent; or

3 “(B) the aggregate unfunded vested bene-
4 fits (as determined under section
5 4006(a)(3)(E)(iii)) of plans maintained by the
6 contributing sponsor and the members of its
7 controlled group exceed \$75,000,000 (dis-
8 regarding plans with no unfunded vested bene-
9 fits);”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to years beginning after 2009.

12 **SEC. 306. ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE**
13 **CARRIER BANKRUPTCY.**

14 (a) GENERAL RULES.—

15 (1) ROLLOVER OF AIRLINE PAYMENT
16 AMOUNT.—If a qualified airline employee receives
17 any airline payment amount and transfers any por-
18 tion of such amount to a traditional IRA within 180
19 days of receipt of such amount (or, if later, within
20 180 days of the date of the enactment of this Act),
21 then such amount (to the extent so transferred)
22 shall be treated as a rollover contribution described
23 in section 402(c) of the Internal Revenue Code of
24 1986. A qualified airline employee making such a
25 transfer may exclude from gross income the amount

1 transferred, in the taxable year in which the airline
2 payment amount was paid to the qualified airline
3 employee by the commercial passenger airline car-
4 rier.

5 (2) TRANSFER OF AMOUNTS ATTRIBUTABLE TO
6 AIRLINE PAYMENT AMOUNT FOLLOWING ROLLOVER
7 TO ROTH IRA.—A qualified airline employee who has
8 contributed an airline payment amount to a Roth
9 IRA that is treated as a qualified rollover contribu-
10 tion pursuant to section 125 of the Worker, Retiree,
11 and Employer Recovery Act of 2008 may transfer to
12 a traditional IRA, in a trustee-to-trustee transfer, all
13 or any part of the contribution (together with any
14 net income allocable to such contribution), and the
15 transfer to the traditional IRA will be deemed to
16 have been made at the time of the rollover to the
17 Roth IRA, if such transfer is made within 180 days
18 of the date of the enactment of this Act. A qualified
19 airline employee making such a transfer may exclude
20 from gross income the airline payment amount pre-
21 viously rolled over to the Roth IRA, to the extent an
22 amount attributable to the previous rollover was
23 transferred to a traditional IRA, in the taxable year
24 in which the airline payment amount was paid to the
25 qualified airline employee by the commercial pas-

1 senger airline carrier. No amount so transferred to
2 a traditional IRA may be treated as a qualified roll-
3 over contribution with respect to a Roth IRA within
4 the 5-taxable year period beginning with the taxable
5 year in which such transfer was made.

6 (3) EXTENSION OF TIME TO FILE CLAIM FOR
7 REFUND.—A qualified airline employee who excludes
8 an amount from gross income in a prior taxable year
9 under paragraph (1) or (2) may reflect such exclu-
10 sion in a claim for refund filed within the period of
11 limitation under section 6511(a) (or, if later, April
12 15, 2011).

13 (b) TREATMENT OF AIRLINE PAYMENT AMOUNTS
14 AND TRANSFERS FOR EMPLOYMENT TAXES.—For pur-
15 poses of chapter 21 of the Internal Revenue Code of 1986
16 and section 209 of the Social Security Act, an airline pay-
17 ment amount shall not fail to be treated as a payment
18 of wages by the commercial passenger airline carrier to
19 the qualified airline employee in the taxable year of pay-
20 ment because such amount is excluded from the qualified
21 airline employee's gross income under subsection (a).

22 (c) DEFINITIONS AND SPECIAL RULES.—For pur-
23 poses of this section—

24 (1) AIRLINE PAYMENT AMOUNT.—

1 (A) IN GENERAL.—The term “airline pay-
2 ment amount” means any payment of any
3 money or other property which is payable by a
4 commercial passenger airline carrier to a quali-
5 fied airline employee—

6 (i) under the approval of an order of
7 a Federal bankruptcy court in a case filed
8 after September 11, 2001, and before Jan-
9 uary 1, 2007; and

10 (ii) in respect of the qualified airline
11 employee’s interest in a bankruptcy claim
12 against the carrier, any note of the carrier
13 (or amount paid in lieu of a note being
14 issued), or any other fixed obligation of the
15 carrier to pay a lump sum amount.

16 The amount of such payment shall be deter-
17 mined without regard to any requirement to de-
18 duct and withhold tax from such payment
19 under sections 3102(a) and 3402(a).

20 (B) EXCEPTION.—An airline payment
21 amount shall not include any amount payable
22 on the basis of the carrier’s future earnings or
23 profits.

24 (2) QUALIFIED AIRLINE EMPLOYEE.—The term
25 “qualified airline employee” means an employee or

1 former employee of a commercial passenger airline
2 carrier who was a participant in a defined benefit
3 plan maintained by the carrier which—

4 (A) is a plan described in section 401(a) of
5 the Internal Revenue Code of 1986 which in-
6 cludes a trust exempt from tax under section
7 501(a) of such Code; and

8 (B) was terminated or became subject to
9 the restrictions contained in paragraphs (2) and
10 (3) of section 402(b) of the Pension Protection
11 Act of 2006.

12 (3) TRADITIONAL IRA.—The term “traditional
13 IRA” means an individual retirement plan (as de-
14 fined in section 7701(a)(37) of the Internal Revenue
15 Code of 1986) which is not a Roth IRA.

16 (4) ROTH IRA.—The term “Roth IRA” has the
17 meaning given such term by section 408A(b) of such
18 Code.

19 (d) SURVIVING SPOUSE.—If a qualified airline em-
20 ployee died after receiving an airline payment amount, or
21 if an airline payment amount was paid to the surviving
22 spouse of a qualified airline employee in respect of the
23 qualified airline employee, the surviving spouse of the
24 qualified airline employee may take all actions permitted
25 under section 125 of the Worker, Retiree and Employer

1 Recovery Act of 2008, or under this section, to the same
2 extent that the qualified airline employee could have done
3 had the qualified airline employee survived.

4 (e) EFFECTIVE DATE.—This section shall apply to
5 transfers made after the date of the enactment of this Act
6 with respect to airline payment amounts paid before, on,
7 or after such date.

8 **Subtitle B—Multiemployer Plans**

9 **SEC. 311. OPTIONAL USE OF 30-YEAR AMORTIZATION PERI-** 10 **ODS.**

11 (a) ELECTIVE SPECIAL RELIEF RULES.—

12 (1) ERISA AMENDMENT.—Section 304(b) of
13 the Employee Retirement Income Security Act of
14 1974 is amended by adding at the end the following
15 new paragraph:

16 “(8) ELECTIVE SPECIAL RELIEF RULES.—Not-
17 withstanding any other provision of this sub-
18 section—

19 “(A) AMORTIZATION OF NET INVESTMENT
20 LOSSES.—

21 “(i) IN GENERAL.—The plan sponsor
22 of a multiemployer plan with respect to
23 which the solvency test under subpara-
24 graph (B) is met may elect to treat the
25 portion of any experience loss or gain for

1 a plan year that is attributable to the allo-
2 cable portion of the net investment losses
3 incurred in either or both of the first two
4 plan years ending on or after June 30,
5 2008, as an experience loss separate from
6 other experience losses or gains to be am-
7 ortized in equal annual installments (until
8 fully amortized) over the period—

9 “(I) beginning with the plan year
10 for which the allocable portion is de-
11 termined, and

12 “(II) ending with the last plan
13 year in the 30-plan year period begin-
14 ning with the plan year following the
15 plan year in which such net invest-
16 ment loss was incurred.

17 “(ii) COORDINATION WITH EXTEN-
18 SIONS.—If an election is made under
19 clause (i) for any plan year—

20 “(I) no extension of the amorti-
21 zation period under clause (i) shall be
22 allowed under subsection (d), and

23 “(II) if an extension was granted
24 under subsection (d) for any plan year
25 before the plan year for which the

1 election under this subparagraph is
2 made, such extension shall not result
3 in such amortization period exceeding
4 30 years.

5 “(iii) DEFINITIONS AND RULES.—For
6 purposes of this subparagraph—

7 “(I) NET INVESTMENT
8 LOSSES.—

9 “(aa) IN GENERAL.—The
10 net investment loss incurred by a
11 plan in a plan year is equal to
12 the excess of—

13 “(AA) the expected
14 value of the assets as of the
15 end of the plan year, over

16 “(BB) the market value
17 of the assets as of the end of
18 the plan year,

19 including any difference attrib-
20 utable to a criminally fraudulent
21 investment arrangement.

22 “(bb) EXPECTED VALUE.—
23 For purposes of item (aa), the
24 expected value of the assets as of

1 the end of a plan year is the ex-
2 cess of—

3 “(AA) the market value
4 of the assets at the begin-
5 ning of the plan year plus
6 contributions made during
7 the plan year, over

8 “(BB) disbursements
9 made during the plan year.

10 The amounts described in
11 subitems (AA) and (BB) shall be
12 adjusted with interest at the
13 valuation rate to the end of the
14 plan year.

15 “(II) CRIMINALLY FRAUDULENT
16 INVESTMENT ARRANGEMENTS.—The
17 determination as to whether an ar-
18 rangement is a criminally fraudulent
19 investment arrangement shall be made
20 under rules substantially similar to
21 the rules prescribed by the Secretary
22 of the Treasury for purposes of sec-
23 tion 165 of the Internal Revenue Code
24 of 1986.

1 “(III) AMOUNT ATTRIBUTABLE
 2 TO ALLOCABLE PORTION OF NET IN-
 3 VESTMENT LOSS.—The amount at-
 4 tributable to the allocable portion of
 5 the net investment loss for a plan year
 6 shall be an amount equal to the allo-
 7 cable portion of net investment loss
 8 for the plan year under subclauses
 9 (IV) and (V), increased with interest
 10 at the valuation rate determined from
 11 the plan year after the plan year in
 12 which the net investment loss was in-
 13 curred.

14 “(IV) ALLOCABLE PORTION OF
 15 NET INVESTMENT LOSSES.—Except
 16 as provided in subclause (V), the net
 17 investment loss incurred in a plan
 18 year shall be allocated among the 5
 19 plan years following the plan year in
 20 which the investment loss is incurred
 21 in accordance with the following table:

“Plan year after the plan year in which the net investment loss was incurred	Allocable portion of net investment loss
1st	$\frac{1}{2}$
2nd	0
3rd	$\frac{1}{6}$
4th	$\frac{1}{6}$
5th	$\frac{1}{6}$

1 “(V) SPECIAL RULE FOR PLANS
2 THAT ADOPT LONGER SMOOTHER PE-
3 RIOD.—If a plan sponsor elects an ex-
4 tended smoothing period for its asset
5 valuation method under subsection
6 (c)(2)(B), then the allocable portion of
7 net investment loss for the first two
8 plan years following the plan year the
9 investment loss is incurred is the
10 same as determined under subclause
11 (IV), but the remaining $\frac{1}{2}$ of the net
12 investment loss is allocated ratably
13 over the period beginning with the
14 third plan year following the plan year
15 the net investment loss is incurred
16 and ending with the last plan year in
17 the extended smoothing period.

18 “(VI) SPECIAL RULE FOR OVER-
19 STATEMENT OF LOSS.—If, for a plan
20 year, there is an experience loss for
21 the plan and the amount described in
22 subclause (III) exceeds the total
23 amount of the experience loss for the
24 plan year, then the excess shall be
25 treated as an experience gain.

“(VII) SPECIAL RULE IN YEARS
FOR WHICH OVERALL EXPERIENCE IS
GAIN.—If, for a plan year, there is no
experience loss for the plan, then, in
addition to amortization of net invest-
ment losses under clause (i), the
amount described in subclause (III)
shall be treated as an experience gain
in addition to any other experience
gain.

11 “(B) SOLVENCY TEST.—

“(i) IN GENERAL.—An election may be made under this paragraph if the election includes certification by the plan actuary in connection with the election that the plan is projected to have a funded percentage at the end of the first 15 plan years that is not less than 100 percent of the funded percentage for the plan year of the election.

“(ii) FUNDED PERCENTAGE.—For purposes of clause (i), the term ‘funded percentage’ has the meaning provided in section 305(i)(2), except that the value of the plan’s assets referred to in section

1 305(i)(2)(A) shall be the market value of
2 such assets.

3 “(iii) ACTUARIAL ASSUMPTIONS.—In
4 making any certification under this sub-
5 paragraph, the plan actuary shall use the
6 same actuarial estimates, assumptions, and
7 methods as those applicable for the most
8 recent certification under section 305, ex-
9 cept that the plan actuary may take into
10 account benefit reductions and increases in
11 contribution rates, under either funding
12 improvement plans adopted under section
13 305(c) or under section 432(c) of the In-
14 ternal Revenue Code of 1986 or rehabilita-
15 tion plans adopted under section 305(e) or
16 under section 432(e) of such Code, that
17 the plan actuary reasonably anticipates will
18 occur without regard to any change in sta-
19 tus of the plan resulting from the election.

20 “(C) ADDITIONAL RESTRICTION ON BEN-
21 EFIT INCREASES.—If an election is made under
22 subparagraph (A), then, in addition to any
23 other applicable restrictions on benefit in-
24 creases, a plan amendment which is adopted on
25 or after March 10, 2010, and which increases

benefits may not go into effect during the period beginning on such date and ending with the second plan year beginning after such date unless—

“(i) the plan actuary certifies that—

“(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the election to have this paragraph apply to the plan, and

“(II) the plan’s funded percentage and projected credit balances for the first 3 plan years ending on or after such date are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

“(ii) the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

“(D) TIME, FORM, AND MANNER OF ELECTION.—An election under this paragraph shall

1 be made not later than June 30, 2011, and
2 shall be made in such form and manner as the
3 Secretary of the Treasury may prescribe.

4 “(E) REPORTING.—A plan sponsor of a
5 plan to which this paragraph applies shall—

6 “(i) give notice of such election to
7 participants and beneficiaries of the plan,
8 and

9 “(ii) inform the Pension Benefit
10 Guaranty Corporation of such election in
11 such form and manner as the Pension
12 Benefit Guaranty Corporation may pre-
13 scribe.”.

14 (2) IRC AMENDMENT.—Section 431(b) of the
15 Internal Revenue Code of 1986 is amended by add-
16 ing at the end the following new paragraph:

17 “(8) ELECTIVE SPECIAL RELIEF RULES.—Not-
18 withstanding any other provision of this sub-
19 section—

20 “(A) AMORTIZATION OF NET INVESTMENT
21 LOSSES.—

22 “(i) IN GENERAL.—The plan sponsor
23 of a multiemployer plan with respect to
24 which the solvency test under subpara-
25 graph (B) is met may elect to treat the

1 portion of any experience loss or gain for
2 a plan year that is attributable to the allo-
3 cable portion of the net investment losses
4 incurred in either or both of the first two
5 plan years ending on or after June 30,
6 2008, as an experience loss separate from
7 other experience losses and gains to be am-
8 ortized in equal annual installments (until
9 fully amortized) over the period—

10 “(I) beginning with the plan year
11 for which the allocable portion is de-
12 termined, and

13 “(II) ending with the last plan
14 year in the 30-plan year period begin-
15 ning with the plan year following the
16 plan year in which such net invest-
17 ment loss was incurred.

18 “(ii) COORDINATION WITH EXTEN-
19 SIONS.—If an election is made under
20 clause (i) for any plan year—

21 “(I) no extension of the amorti-
22 zation period under clause (i) shall be
23 allowed under subsection (d), and

24 “(II) if an extension was granted
25 under subsection (d) for any plan year

1 before the plan year for which the
2 election under this subparagraph is
3 made, such extension shall not result
4 in such amortization period exceeding
5 30 years.

6 “(iii) DEFINITIONS AND RULES.—For
7 purposes of this subparagraph—

8 “(I) NET INVESTMENT
9 LOSSES.—

10 “(aa) IN GENERAL.—The
11 net investment loss incurred by a
12 plan in a plan year is equal to
13 the excess of—

14 “(AA) the expected
15 value of the assets as of the
16 end of the plan year, over

17 “(BB) the market value
18 of the assets as of the end of
19 the plan year,

20 including any difference attrib-
21 utable to a criminally fraudulent
22 investment arrangement.

23 “(bb) EXPECTED VALUE.—
24 For purposes of item (aa), the
25 expected value of the assets as of

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1 the end of a plan year is the ex-
2 cess of—

3 “(AA) the market value
4 of the assets at the begin-
5 ning of the plan year plus
6 contributions made during
7 the plan year, over

8 “(BB) disbursements
9 made during the plan year.

10 The amounts described in
11 subitems (AA) and (BB) shall be
12 adjusted with interest at the
13 valuation rate to the end of the
14 plan year.

15 “(II) CRIMINALLY FRAUDULENT
16 INVESTMENT ARRANGEMENTS.—The
17 determination as to whether an ar-
18 rangement is a criminally fraudulent
19 investment arrangement shall be made
20 under rules substantially similar to
21 the rules prescribed by the Secretary
22 for purposes of section 165.

23 “(III) AMOUNT ATTRIBUTABLE
24 TO ALLOCABLE PORTION OF NET IN-
25 VESTMENT LOSS.—The amount at-

1 tributable to the allocable portion of
 2 the net investment loss for a plan year
 3 shall be an amount equal to the allo-
 4 cable portion of net investment loss
 5 for the plan year under subclauses
 6 (IV) and (V), increased with interest
 7 at the valuation rate determined from
 8 the plan year after the plan year in
 9 which the net investment loss was in-
 10 curred.

11 “(IV) ALLOCABLE PORTION OF
 12 NET INVESTMENT LOSSES.—Except
 13 as provided in subclause (V), the net
 14 investment loss incurred in a plan
 15 year shall be allocated among the 5
 16 plan years following the plan year in
 17 which the investment loss is incurred
 18 in accordance with the following table:

“Plan year after the plan year in which the net investment loss was incurred	Allocable portion of net investment loss
1st	$\frac{1}{2}$
2nd	0
3rd	$\frac{1}{6}$
4th	$\frac{1}{6}$
5th	$\frac{1}{6}$

19 “(V) SPECIAL RULE FOR PLANS
 20 THAT ADOPT LONGER SMOOTHER PE-
 21 RIOD.—If a plan sponsor elects an ex-
 22 tended smoothing period for its asset

1 valuation method under subsection
2 (c)(2)(B), then the allocable portion of
3 net investment loss for the first two
4 plan years following the plan year the
5 investment loss is incurred is the
6 same as determined under subclause
7 (IV), but the remaining $\frac{1}{2}$ of the net
8 investment loss is allocated ratably
9 over the period beginning with the
10 third plan year following the plan year
11 the net investment loss is incurred
12 and ending with the last plan year in
13 the extended smoothing period.

14 “(VI) SPECIAL RULE FOR OVER-
15 STATEMENT OF LOSS.—If, for a plan
16 year, there is an experience loss for
17 the plan and the amount described in
18 subclause (III) exceeds the total
19 amount of the experience loss for the
20 plan year, then the excess shall be
21 treated as an experience gain.

22 “(VII) SPECIAL RULE IN YEARS
23 FOR WHICH OVERALL EXPERIENCE IS
24 GAIN.—If, for a plan year, there is no
25 experience loss for the plan, then, in

1 addition to amortization of net invest-
2 ment losses under clause (i), the
3 amount described in subclause (III)
4 shall be treated as an experience gain
5 in addition to any other experience
6 gain.

7 “(B) SOLVENCY TEST.—

8 “(i) IN GENERAL.—An election may
9 be made under this paragraph if the elec-
10 tion includes certification by the plan actu-
11 ary in connection with the election that the
12 plan is projected to have a funded percent-
13 age at the end of the first 15 plan years
14 that is not less than 100 percent of the
15 funded percentage for the plan year of the
16 election.

17 “(ii) FUNDED PERCENTAGE.—For
18 purposes of clause (i), the term ‘funded
19 percentage’ has the meaning provided in
20 section 432(i)(2), except that the value of
21 the plan’s assets referred to in section
22 432(i)(2)(A) shall be the market value of
23 such assets.

24 “(iii) ACTUARIAL ASSUMPTIONS.—In
25 making any certification under this sub-

1 paragraph, the plan actuary shall use the
2 same actuarial estimates, assumptions, and
3 methods as those applicable for the most
4 recent certification under section 432, ex-
5 cept that the plan actuary may take into
6 account benefit reductions and increases in
7 contribution rates, under either funding
8 improvement plans adopted under section
9 432(c) or under section 305(c) of the Em-
10 ployee Retirement Income Security Act of
11 1974 or rehabilitation plans adopted under
12 section 432(e) or under section 305(e) of
13 such Act, that the plan actuary reasonably
14 anticipates will occur without regard to
15 any change in status of the plan resulting
16 from the election.

17 “(C) ADDITIONAL RESTRICTION ON BEN-
18 EFIT INCREASES.—If an election is made under
19 subparagraph (A), then, in addition to any
20 other applicable restrictions on benefit in-
21 creases, a plan amendment which is adopted on
22 or after March 10, 2010, and which increases
23 benefits may not go into effect during the pe-
24 riod beginning on such date and ending with

1 the second plan year beginning after such date
2 unless—

3 “(i) the plan actuary certifies that—

4 “(I) any such increase is paid for
5 out of additional contributions not al-
6 located to the plan immediately before
7 the election to have this paragraph
8 apply to the plan, and

9 “(II) the plan’s funded percent-
10 age and projected credit balances for
11 the first 3 plan years ending on or
12 after such date are reasonably ex-
13 pected to be at least as high as such
14 percentage and balances would have
15 been if the benefit increase had not
16 been adopted, or

17 “(ii) the amendment is required as a
18 condition of qualification under part I or
19 to comply with other applicable law.

20 “(D) TIME, FORM, AND MANNER OF ELEC-
21 TION.—An election under this paragraph shall
22 be made not later than June 30, 2011, and
23 shall be made in such form and manner as the
24 Secretary may prescribe.

1 “(E) REPORTING.—A plan sponsor of a
2 plan to which this paragraph applies shall—

3 “(i) give notice of such election to
4 participants and beneficiaries of the plan,
5 and

6 “(ii) inform the Pension Benefit
7 Guaranty Corporation of such election in
8 such form and manner as the Pension
9 Benefit Guaranty Corporation may pre-
10 scribe.”.

11 (b) ASSET SMOOTHING FOR MULTIEMPLOYER
12 PLANS.—

13 (1) ERISA AMENDMENT.—Section 304(c)(2) of
14 the Employee Retirement Income Security Act of
15 1974 (29 U.S.C. 1084(c)(2)) is amended—

16 (A) by redesignating subparagraph (B) as
17 subparagraph (C); and

18 (B) by inserting after subparagraph (A)
19 the following new subparagraph:

20 “(B) EXTENDED ASSET SMOOTHING PE-
21 RIOD FOR CERTAIN INVESTMENT LOSSES.—The
22 Secretary of the Treasury shall not treat the
23 asset valuation method of a multiemployer plan
24 as unreasonable solely because such method
25 spreads the difference between expected and ac-

1 tual returns for either or both of the first 2
2 plan years ending on or after June 30, 2008,
3 over a period of not more than 10 years. Any
4 change in valuation method to so spread such
5 difference shall be treated as approved, but only
6 if, in the case that the plan sponsor has made
7 an election under subsection (b)(8), any result-
8 ing change in asset value is treated for pur-
9 poses of amortization as a net experience loss
10 or gain.”.

11 (2) IRC AMENDMENT.—Section 431(c)(2) of
12 the Internal Revenue Code of 1986 is amended—

13 (A) by redesignating subparagraph (B) as
14 subparagraph (C); and

15 (B) by inserting after subparagraph (A)
16 the following new subparagraph:

17 “(B) EXTENDED ASSET SMOOTHING PE-
18 RIOD FOR CERTAIN INVESTMENT LOSSES.—The
19 Secretary shall not treat the asset valuation
20 method of a multiemployer plan as unreason-
21 able solely because such method spreads the dif-
22 ference between expected and actual returns for
23 either or both of the first 2 plan years ending
24 on or after June 30, 2008, over a period of not
25 more than 10 years. Any change in valuation

1 method to so spread such difference shall be
2 treated as approved, but only if, in the case
3 that the plan sponsor has made an election
4 under subsection (b)(8), any resulting change in
5 asset value is treated for purposes of amortiza-
6 tion as a net experience loss or gain.”.

7 (c) EFFECTIVE DATE AND SPECIAL RULES.—

8 (1) EFFECTIVE DATE.—The amendments made
9 by this section shall take effect as of the first day
10 of the first plan year beginning after June 30, 2008,
11 except that any election a plan sponsor makes pur-
12 suant to this section or the amendments made there-
13 by that affects the plan’s funding standard account
14 for any plan year beginning before October 1, 2009,
15 shall be disregarded for purposes of applying the
16 provisions of section 305 of the Employee Retirement
17 Income Security Act of 1974 and section 432
18 of the Internal Revenue Code of 1986 to that plan
19 year.

20 (2) DEEMED APPROVAL FOR CERTAIN FUNDING
21 METHOD CHANGES.—In the case of a multiemployer
22 plan with respect to which an election has been
23 made under section 304(b)(8) of the Employee Re-
24 tirement Income Security Act of 1974 (as amended

1 by this section) or section 431(b)(8) of the Internal
2 Revenue Code of 1986 (as so amended)—

3 (A) any change in the plan's funding meth-
4 od for a plan year beginning on or after July
5 1, 2008, and on or before December 31, 2010,
6 from a method that does not establish a base
7 for experience gains and losses to one that does
8 establish such a base shall be treated as ap-
9 proved by the Secretary of the Treasury; and

10 (B) any resulting funding method change
11 base shall be treated for purposes of amortiza-
12 tion as a net experience loss or gain.

13 **SEC. 312. OPTIONAL LONGER RECOVERY PERIODS FOR**
14 **MULTIEMPLOYER PLANS IN ENDANGERED**
15 **OR CRITICAL STATUS.**

16 (a) ERISA AMENDMENTS.—

17 (1) FUNDING IMPROVEMENT PERIOD.—Section
18 305(c)(4) of the Employee Retirement Income Secu-
19 rity Act of 1974 is amended—

20 (A) by redesignating subparagraphs (C)
21 and (D) as subparagraphs (D) and (E), respec-
22 tively; and

23 (B) by inserting after subparagraph (B)
24 the following new subparagraph:

1 “(C) ELECTION TO EXTEND PERIOD.—The
2 plan sponsor of an endangered or seriously en-
3 dangered plan may elect to extend the applica-
4 ble funding improvement period by up to 5
5 years, reduced by any extension of the period
6 previously elected pursuant to section 205 of
7 the Worker, Retiree and Employer Relief Act of
8 2008. Such an election shall be made not later
9 than June 30, 2011, and in such form and
10 manner as the Secretary of the Treasury may
11 prescribe.”.

12 (2) REHABILITATION PERIOD.—Section
13 305(e)(4) of such Act is amended—

14 (A) by redesignating subparagraph (B) as
15 subparagraph (C);

16 (B) in last sentence of subparagraph (A),
17 by striking “subparagraph (B)” each place it
18 appears and inserting “subparagraph (C)”; and

19 (C) by inserting after subparagraph (A)
20 the following new subparagraph:

21 “(B) ELECTION TO EXTEND PERIOD.—The
22 plan sponsor of a plan in critical status may
23 elect to extend the rehabilitation period by up
24 to five years, reduced by any extension of the
25 period previously elected pursuant to section

1 205 of the Worker, Retiree and Employer Re-
2 lief Act of 2008. Such an election shall be made
3 not later than June 30, 2011, and in such form
4 and manner as the Secretary of the Treasury
5 may prescribe.”.

6 (b) IRC AMENDMENTS.—

7 (1) FUNDING IMPROVEMENT PERIOD.—Section
8 432(c)(4) of the Internal Revenue Code of 1986 is
9 amended—

10 (A) by redesignating subparagraphs (C)
11 and (D) as subparagraphs (D) and (E), respec-
12 tively; and

13 (B) by inserting after subparagraph (B)
14 the following new subparagraph:

15 “(C) ELECTION TO EXTEND PERIOD.—The
16 plan sponsor of an endangered or seriously en-
17 dangered plan may elect to extend the applica-
18 ble funding improvement period by up to 5
19 years, reduced by any extension of the period
20 previously elected pursuant to section 205 of
21 the Worker, Retiree and Employer Relief Act of
22 2008. Such an election shall be made not later
23 than June 30, 2011, and in such form and
24 manner as the Secretary may prescribe.”.

1 (2) REHABILITATION PERIOD.—Section
2 432(e)(4) of such Code is amended—

3 (A) by redesignating subparagraph (B) as
4 subparagraph (C);

5 (B) in last sentence of subparagraph (A),
6 by striking “subparagraph (B)” each place it
7 appears and inserting “subparagraph (C)”; and

8 (C) by inserting after subparagraph (A)
9 the following new subparagraph:

10 “(B) ELECTION TO EXTEND PERIOD.—The
11 plan sponsor of a plan in critical status may
12 elect to extend the rehabilitation period by up
13 to five years, reduced by any extension of the
14 period previously elected pursuant to section
15 205 of the Worker, Retiree and Employer Re-
16 lief Act of 2008. Such an election shall be made
17 not later than June 30, 2011, and in such form
18 and manner as the Secretary may prescribe.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to funding improve-
21 ment periods and rehabilitation periods in connection with
22 funding improvement plans and rehabilitation plans
23 adopted or updated on or after the date of the enactment
24 of this Act.

1 **SEC. 313. MODIFICATION OF CERTAIN AMORTIZATION EX-**
2 **TENSIONS UNDER PRIOR LAW.**

3 (a) IN GENERAL.—In the case of an amortization ex-
4 tension that was granted to a multiemployer plan under
5 the terms of section 304 of the Employee Retirement In-
6 come Security Act of 1974 (as in effect immediately prior
7 to enactment of the Pension Protection Act of 2006) or
8 section 412(e) of the Internal Revenue Code (as so in ef-
9 fect), the determination of whether any financial condition
10 on the amortization extension is satisfied shall be made
11 by assuming that for any plan year that contains some
12 or all of the period beginning June 30, 2008, and ending
13 October 31, 2008, the actual rate of return on the plan
14 assets was equal to the interest rate used for purposes
15 of charging or crediting the funding standard account in
16 such plan year, unless the plan sponsor elects otherwise
17 in such form and manner as shall be prescribed by the
18 Secretary of Treasury.

19 (b) REVOCATION OF AMORTIZATION EXTENSIONS.—
20 The plan sponsor of a multiemployer plan may, in such
21 form and manner and after such notice as may be pre-
22 scribed by the Secretary, revoke any amortization exten-
23 sion described in subsection (a), effective for plan years
24 following the date of the revocation.

1 **SEC. 314. ALTERNATIVE DEFAULT SCHEDULE FOR PLANS**
2 **IN ENDANGERED OR CRITICAL STATUS.**

3 (a) ERISA AMENDMENTS.—

4 (1) ENDANGERED STATUS.—Section 305(c)(7)
5 of the Employee Retirement Income Security Act of
6 1974 (29 U.S.C. 1085(c)(7)) is amended by adding
7 at the end the following new subparagraph:

8 “(D) ALTERNATIVE DEFAULT SCHED-
9 ULE.—

10 “(i) IN GENERAL.—A plan sponsor
11 may, for purposes of this paragraph, des-
12 ignate an alternative schedule of contribu-
13 tion rates and related benefit changes
14 meeting the requirements of clause (ii) as
15 the default schedule, in lieu of the default
16 schedule referred to in subparagraph (A).

17 “(ii) REQUIREMENTS.—An alternative
18 schedule designated pursuant to clause (i)
19 meets the requirements of this clause if
20 such schedule has been adopted in collec-
21 tive bargaining agreements covering at
22 least 75 percent of the active participants
23 as of the date of the designation.”.

24 (2) CRITICAL STATUS.—Section 305(e)(3) of
25 such Act (29 U.S.C. 1085(e)(3)) is amended by add-
26 ing at the end the following new subparagraph:

1 “(D) ALTERNATIVE DEFAULT SCHED-
2 ULE.—

3 “(i) IN GENERAL.—A plan sponsor
4 may, for purposes of subparagraph (C),
5 designate an alternative schedule of con-
6 tribution rates and related benefit changes
7 meeting the requirements of clause (ii) as
8 the default schedule, in lieu of the default
9 schedule referred to in subparagraph
10 (C)(i).

11 “(ii) REQUIREMENTS.—An alternative
12 schedule designated pursuant to clause (i)
13 meets the requirements of this clause if
14 such schedule has been adopted in collec-
15 tive bargaining agreements covering at
16 least 75 percent of the active participants
17 as of the date of the designation.”.

18 (b) INTERNAL REVENUE CODE AMENDMENTS.—

19 (1) ENDANGERED STATUS.—Section 432(c)(7)
20 of the Internal Revenue Code of 1986 is amended by
21 adding at the end the following new subparagraph:

22 “(C) ALTERNATIVE DEFAULT SCHED-
23 ULE.—

24 “(i) IN GENERAL.—A plan sponsor
25 may, for purposes of this paragraph, des-

1 designate an alternative schedule of contribu-
2 tion rates and related benefit changes
3 meeting the requirements of clause (ii) as
4 the default schedule, in lieu of the default
5 schedule referred to in subparagraph (A).

6 “(ii) REQUIREMENTS.—An alternative
7 schedule designated pursuant to clause (i)
8 meets the requirements of this clause if
9 such schedule has been adopted in collec-
10 tive bargaining agreements covering at
11 least 75 percent of the active participants
12 as of the date of the designation.”.

13 (2) CRITICAL STATUS.—Section 432(e)(3) of
14 such Code is amended by adding at the end the fol-
15 lowing new subparagraph:

16 “(D) ALTERNATIVE DEFAULT SCHED-
17 ULE.—

18 “(i) IN GENERAL.—A plan sponsor
19 may, for purposes of subparagraph (C),
20 designate an alternative schedule of con-
21 tribution rates and related benefit changes
22 meeting the requirements of clause (ii) as
23 the default schedule, in lieu of the default
24 schedule referred to in subparagraph
25 (C)(i).

1 “(ii) REQUIREMENTS.—An alternative
2 schedule designated pursuant to clause (i)
3 meets the requirements of this clause if
4 such schedule has been adopted in collec-
5 tive bargaining agreements covering at
6 least 75 percent of the active participants
7 as of the date of the designation.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to designations of default schedules
10 by plan sponsors on or after the date of the enactment
11 of this Act.

12 (d) CROSS-REFERENCE.—For sunset of the amend-
13 ments made by this section, see section 221(c) of the Pen-
14 sion Protection Act of 2006.

15 **SEC. 315. TRANSITION RULE FOR CERTIFICATIONS OF**
16 **PLAN STATUS.**

17 (a) IN GENERAL.—A plan actuary shall not be treat-
18 ed as failing to meet the requirements of section
19 305(b)(3)(A) of the Employee Retirement Income Secu-
20 rity Act of 1974 and section 432(b)(3)(A) of the Internal
21 Revenue Code of 1986 in connection with a certification
22 required under such sections the deadline for which is
23 after the date of the enactment of this Act if the plan
24 actuary makes such certification at any time earlier than
25 75 days after the date of the enactment of this Act.

1 (b) REVISION OF PRIOR CERTIFICATION.—

2 (1) IN GENERAL.—If—

3 (A) a plan sponsor makes an election
4 under section 304(b)(8) of the Employee Re-
5 tirement Income Security Act of 1974 and sec-
6 tion 431(b)(8) of the Internal Revenue Code of
7 1986, or under section 304(c)(2)(B) of such
8 Act and section 432(c)(2)(B) such Code, with
9 respect to a plan for a plan year beginning on
10 or after October 1, 2009; and

11 (B) the plan actuary’s certification of the
12 plan status for such plan year (hereinafter in
13 this subsection referred to as “original certifi-
14 cation”) did not take into account any election
15 so made,

16 then the plan sponsor may direct the plan actuary
17 to make a new certification with respect to the plan
18 for the plan year which takes into account such elec-
19 tion (hereinafter in this subsection referred to as
20 “new certification”) if the plan’s status under sec-
21 tion 305 of such Act and section 432 of such Code
22 would change as a result of such election. Any such
23 new certification shall be treated as the most recent
24 certification referred to in section 304(b)(3)(B)(iii)

1 of such Act and section 431(b)(8)(B)(iii) of such
2 Code.

3 (2) DUE DATE FOR NEW CERTIFICATION.—Any
4 such new certification shall be made pursuant to sec-
5 tion 305(b)(3) of such Act and section 432(b)(3) of
6 such Code; except that any such new certification
7 shall be made not later than 75 days after the date
8 of the enactment of this Act.

9 (3) NOTICE.—

10 (A) IN GENERAL.—Except as provided in
11 subparagraph (B), any such new certification
12 shall be treated as the original certification for
13 purposes of section 305(b)(3)(D) of such Act
14 and section 432(b)(3)(D) of such Code.

15 (B) NOTICE ALREADY PROVIDED.—In any
16 case in which notice has been provided under
17 such sections with respect to the original certifi-
18 cation, not later than 30 days after the new
19 certification is made, the plan sponsor shall
20 provide notice of any change in status under
21 rules similar to the rules such sections.

22 (4) EFFECT OF CHANGE IN STATUS.—If a plan
23 ceases to be in critical status pursuant to the new
24 certification, then the plan shall, not later than 30
25 days after the due date described in paragraph (2),

1 cease any restriction of benefit payments, and im-
2 sition of contribution surcharges, under section 305
3 of such Act and section 432 of such Code by reason
4 of the original certification.

5 **TITLE IV—REVENUE OFFSETS**

6 **Subtitle A—Foreign Provisions**

7 **SEC. 401. RULES TO PREVENT SPLITTING FOREIGN TAX**
8 **CREDITS FROM THE INCOME TO WHICH THEY**
9 **RELATE.**

10 (a) IN GENERAL.—Subpart A of part III of sub-
11 chapter N of chapter 1 is amended by adding at the end
12 the following new section:

13 **“SEC. 909. SUSPENSION OF TAXES AND CREDITS UNTIL RE-**
14 **LATED INCOME TAKEN INTO ACCOUNT.**

15 “(a) IN GENERAL.—If there is a foreign tax credit
16 splitting event with respect to a foreign income tax paid
17 or accrued by the taxpayer, such tax shall not be taken
18 into account for purposes of this title before the taxable
19 year in which the related income is taken into account
20 under this chapter by the taxpayer.

21 “(b) SPECIAL RULES WITH RESPECT TO SECTION
22 902 CORPORATIONS.—If there is a foreign tax credit split-
23 ting event with respect to a foreign income tax paid or
24 accrued by a section 902 corporation, such tax shall not
25 be taken into account—

1 “(1) for purposes of section 902 or 960, or

2 “(2) for purposes of determining earnings and

3 profits under section 964(a),

4 before the taxable year in which the related income is

5 taken into account under this chapter by such section 902

6 corporation or a domestic corporation which meets the

7 ownership requirements of subsection (a) or (b) of section

8 902 with respect to such section 902 corporation.

9 “(c) SPECIAL RULES.—For purposes of this sec-
10 tion—

11 “(1) APPLICATION TO PARTNERSHIPS, ETC.—In
12 the case of a partnership, subsections (a) and (b)
13 shall be applied at the partner level. Except as oth-
14 erwise provided by the Secretary, a rule similar to
15 the rule of the preceding sentence shall apply in the
16 case of any S corporation or trust.

17 “(2) TREATMENT OF FOREIGN TAXES AFTER
18 SUSPENSION.—In the case of any foreign income tax
19 not taken into account by reason of subsection (a)
20 or (b), except as otherwise provided by the Sec-
21 retary, such tax shall be so taken into account in the
22 taxable year referred to in such subsection (other
23 than for purposes of section 986(a)) as a foreign in-
24 come tax paid or accrued in such taxable year.

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

1 “(1) FOREIGN TAX CREDIT SPLITTING
2 EVENT.—There is a foreign tax credit splitting event
3 with respect to a foreign income tax if the related
4 income is (or will be) taken into account under this
5 chapter by a covered person.

6 “(2) FOREIGN INCOME TAX.—The term ‘foreign
7 income tax’ means any income, war profits, or excess
8 profits tax paid or accrued to any foreign country or
9 to any possession of the United States.

10 “(3) RELATED INCOME.—The term ‘related in-
11 come’ means, with respect to any portion of any for-
12 eign income tax, the income (or, as appropriate,
13 earnings and profits) to which such portion of for-
14 eign income tax relates.

15 “(4) COVERED PERSON.—The term ‘covered
16 person’ means, with respect to any person who pays
17 or accrues a foreign income tax (hereafter in this
18 paragraph referred to as the ‘payor’)—

19 “(A) any entity in which the payor holds,
20 directly or indirectly, at least a 10 percent own-
21 ership interest (determined by vote or value),

22 “(B) any person which holds, directly or
23 indirectly, at least a 10 percent ownership in-
24 terest (determined by vote or value) in the
25 payor,

1 “(C) any person which bears a relationship
2 to the payor described in section 267(b) or
3 707(b), and

4 “(D) any other person specified by the
5 Secretary for purposes of this paragraph.

6 “(5) SECTION 902 CORPORATION.—The term
7 ‘section 902 corporation’ means any foreign corpora-
8 tion with respect to which one or more domestic cor-
9 porations meets the ownership requirements of sub-
10 section (a) or (b) of section 902.

11 “(e) REGULATIONS.—The Secretary may issue such
12 regulations or other guidance as is necessary or appro-
13 priate to carry out the purposes of this section, including
14 regulations or other guidance which provides—

15 “(1) appropriate exceptions from the provisions
16 of this section, and

17 “(2) for the proper application of this section
18 with respect to hybrid instruments.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 for subpart A of part III of subchapter N of chapter 1
21 is amended by adding at the end the following new item:

 “Sec. 909. Suspension of taxes and credits until related income taken into ac-
 count.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to—

1 (1) foreign income taxes (as defined in section
2 909(d) of the Internal Revenue Code of 1986, as
3 added by this section) paid or accrued after May 20,
4 2010; and

5 (2) foreign income taxes (as so defined) paid or
6 accrued by a section 902 corporation (as so defined)
7 on or before such date (and not deemed paid under
8 section 902(a) or 960 of such Code on or before
9 such date), but only for purposes of applying sec-
10 tions 902 and 960 with respect to periods after such
11 date.

12 Section 909(b)(2) of the Internal Revenue Code of 1986,
13 as added by this section, shall not apply to foreign income
14 taxes described in paragraph (2).

15 **SEC. 402. DENIAL OF FOREIGN TAX CREDIT WITH RESPECT**
16 **TO FOREIGN INCOME NOT SUBJECT TO**
17 **UNITED STATES TAXATION BY REASON OF**
18 **COVERED ASSET ACQUISITIONS.**

19 (a) IN GENERAL.—Section 901 is amended by redes-
20 ignating subsection (m) as subsection (n) and by inserting
21 after subsection (l) the following new subsection:

22 “(m) DENIAL OF FOREIGN TAX CREDIT WITH RE-
23 SPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED
24 STATES TAXATION BY REASON OF COVERED ASSET AC-
25 QUISITIONS.—

1 “(1) IN GENERAL.—In the case of a covered
2 asset acquisition, the disqualified portion of any for-
3 eign income tax determined with respect to the in-
4 come or gain attributable to the relevant foreign as-
5 sets—

6 “(A) shall not be taken into account in de-
7 termining the credit allowed under subsection
8 (a), and

9 “(B) in the case of a foreign income tax
10 paid by a section 902 corporation (as defined in
11 section 909(d)(5)), shall not be taken into ac-
12 count for purposes of section 902 or 960.

13 “(2) COVERED ASSET ACQUISITION.—For pur-
14 poses of this section, the term ‘covered asset acqui-
15 sition’ means—

16 “(A) a qualified stock purchase (as defined
17 in section 338(d)(3)) to which section 338(a)
18 applies,

19 “(B) any transaction which—

20 “(i) is treated as an acquisition of as-
21 sets for purposes of this chapter, and

22 “(ii) is treated as the acquisition of
23 stock of a corporation (or is disregarded)
24 for purposes of the foreign income taxes of
25 the relevant jurisdiction,

1 “(C) any acquisition of an interest in a
2 partnership which has an election in effect
3 under section 754, and

4 “(D) to the extent provided by the Sec-
5 retary, any other similar transaction.

6 “(3) DISQUALIFIED PORTION.—For purposes of
7 this section—

8 “(A) IN GENERAL.—The term ‘disqualified
9 portion’ means, with respect to any covered
10 asset acquisition, for any taxable year, the ratio
11 (expressed as a percentage) of—

12 “(i) the aggregate basis differences
13 (but not below zero) allocable to such tax-
14 able year under subparagraph (B) with re-
15 spect to all relevant foreign assets, divided
16 by

17 “(ii) the income on which the foreign
18 income tax referred to in paragraph (1) is
19 determined (or, if the taxpayer fails to sub-
20 stantiate such income to the satisfaction of
21 the Secretary, such income shall be deter-
22 mined by dividing the amount of such for-
23 eign income tax by the highest marginal
24 tax rate applicable to such income in the
25 relevant jurisdiction).

1 “(B) ALLOCATION OF BASIS DIF-
2 FERENCE.—For purposes of subparagraph
3 (A)(i)—

4 “(i) IN GENERAL.—The basis dif-
5 ference with respect to any relevant foreign
6 asset shall be allocated to taxable years
7 using the applicable cost recovery method
8 under this chapter.

9 “(ii) SPECIAL RULE FOR DISPOSITION
10 OF ASSETS.—Except as otherwise provided
11 by the Secretary, in the case of the disposi-
12 tion of any relevant foreign asset—

13 “(I) the basis difference allocated
14 to the taxable year which includes the
15 date of such disposition shall be the
16 excess of the basis difference with re-
17 spect to such asset over the aggregate
18 basis difference with respect to such
19 asset which has been allocated under
20 clause (i) to all prior taxable years,
21 and

22 “(II) no basis difference with re-
23 spect to such asset shall be allocated
24 under clause (i) to any taxable year
25 thereafter.

1 “(C) BASIS DIFFERENCE.—

2 “(i) IN GENERAL.—The term ‘basis
3 difference’ means, with respect to any rel-
4 evant foreign asset, the excess of—

5 “(I) the adjusted basis of such
6 asset immediately after the covered
7 asset acquisition, over

8 “(II) the adjusted basis of such
9 asset immediately before the covered
10 asset acquisition.

11 “(ii) BUILT-IN LOSS ASSETS.—In the
12 case of a relevant foreign asset with re-
13 spect to which the amount described in
14 clause (i)(II) exceeds the amount described
15 in clause (i)(I), such excess shall be taken
16 into account under this subsection as a
17 basis difference of a negative amount.

18 “(iii) SPECIAL RULE FOR SECTION 338
19 ELECTIONS.—In the case of a covered
20 asset acquisition described in paragraph
21 (2)(A), the covered asset acquisition shall
22 be treated for purposes of this subpara-
23 graph as occurring at the close of the ac-
24 quisition date (as defined in section
25 338(h)(2)).

1 “(4) RELEVANT FOREIGN ASSETS.—For pur-
2 poses of this section, the term ‘relevant foreign
3 asset’ means, with respect to any covered asset ac-
4 quisition, any asset (including any goodwill, going
5 concern value, or other intangible) with respect to
6 such acquisition if income, deduction, gain, or loss
7 attributable to such asset is taken into account in
8 determining the foreign income tax referred to in
9 paragraph (1).

10 “(5) FOREIGN INCOME TAX.—For purposes of
11 this section, the term ‘foreign income tax’ means
12 any income, war profits, or excess profits tax paid
13 or accrued to any foreign country or to any posses-
14 sion of the United States.

15 “(6) TAXES ALLOWED AS A DEDUCTION, ETC.—
16 Sections 275 and 78 shall not apply to any tax
17 which is not allowable as a credit under subsection
18 (a) by reason of this subsection.

19 “(7) REGULATIONS.—The Secretary may issue
20 such regulations or other guidance as is necessary or
21 appropriate to carry out the purposes of this sub-
22 section, including to exempt from the application of
23 this subsection certain covered asset acquisitions,
24 and relevant foreign assets with respect to which the
25 basis difference is de minimis.”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall apply to covered asset acquisitions (as defined
5 in section 901(m)(2) of the Internal Revenue Code
6 of 1986, as added by this section) after—

7 (A) May 20, 2010, if the transferor and
8 the transferee are related; and

9 (B) the date of the enactment of this Act
10 in any other case.

11 (2) TRANSITION RULE.—The amendments
12 made by this section shall not apply to any covered
13 asset acquisition (as so defined) with respect to
14 which the transferor and the transferee are not re-
15 lated if such acquisition is—

16 (A) made pursuant to a written agreement
17 which was binding on May 20, 2010, and at all
18 times thereafter,

19 (B) described in a ruling request submitted
20 to the Internal Revenue Service on or before
21 such date; or

22 (C) described on or before such date in a
23 public announcement or in a filing with the Se-
24 curities and Exchange Commission.

1 (3) RELATED PERSONS.—For purposes of this
2 subsection, a person shall be treated as related to
3 another person if the relationship between such per-
4 sons is described in section 267 or 707(b) of the In-
5 ternal Revenue Code of 1986.

6 **SEC. 403. SEPARATE APPLICATION OF FOREIGN TAX CRED-**
7 **IT LIMITATION, ETC., TO ITEMS RESOURCED**
8 **UNDER TREATIES.**

9 (a) IN GENERAL.—Subsection (d) of section 904 is
10 amended by redesignating paragraph (6) as paragraph (7)
11 and by inserting after paragraph (5) the following new
12 paragraph:

13 “(6) SEPARATE APPLICATION TO ITEMS
14 RESOURCED UNDER TREATIES.—

15 “(A) IN GENERAL.—If—

16 “(i) without regard to any treaty obli-
17 gation of the United States, any item of
18 income would be treated as derived from
19 sources within the United States,

20 “(ii) under a treaty obligation of the
21 United States, such item would be treated
22 as arising from sources outside the United
23 States, and

24 “(iii) the taxpayer chooses the bene-
25 fits of such treaty obligation,

1 subsections (a), (b), and (c) of this section and
2 sections 902, 907, and 960 shall be applied sep-
3 arately with respect to each such item.

4 “(B) COORDINATION WITH OTHER PROVI-
5 SIONS.—This paragraph shall not apply to any
6 item of income to which subsection (h)(10) or
7 section 865(h) applies.

8 “(C) REGULATIONS.—The Secretary may
9 issue such regulations or other guidance as is
10 necessary or appropriate to carry out the pur-
11 poses of this paragraph, including regulations
12 or other guidance which provides that related
13 items of income may be aggregated for pur-
14 poses of this paragraph.”.

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

18 **SEC. 404. LIMITATION ON THE AMOUNT OF FOREIGN TAXES**
19 **DEEMED PAID WITH RESPECT TO SECTION**
20 **956 INCLUSIONS.**

21 (a) IN GENERAL.—Section 960 is amended by adding
22 at the end the following new subsection:

23 “(c) LIMITATION WITH RESPECT TO SECTION 956
24 INCLUSIONS.—

1 “(1) IN GENERAL.—If there is included under
2 section 951(a)(1)(B) in the gross income of a do-
3 mestic corporation any amount attributable to the
4 earnings and profits of a foreign corporation which
5 is a member of a qualified group (as defined in sec-
6 tion 902(b)) with respect to the domestic corpora-
7 tion, the amount of any foreign income taxes deemed
8 to have been paid during the taxable year by such
9 domestic corporation under section 902 by reason of
10 subsection (a) with respect to such inclusion in gross
11 income shall not exceed the amount of the foreign
12 income taxes which would have been deemed to have
13 been paid during the taxable year by such domestic
14 corporation if cash in an amount equal to the
15 amount of such inclusion in gross income were dis-
16 tributed as a series of distributions (determined
17 without regard to any foreign taxes which would be
18 imposed on an actual distribution) through the chain
19 of ownership which begins with such foreign cor-
20 poration and ends with such domestic corporation.

21 “(2) AUTHORITY TO PREVENT ABUSE.—The
22 Secretary shall issue such regulations or other guid-
23 ance as is necessary or appropriate to carry out the
24 purposes of this subsection, including regulations or
25 other guidance which prevent the inappropriate use

1 of the foreign corporation's foreign income taxes not
2 deemed paid by reason of paragraph (1).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to acquisitions of United States
5 property (as defined in section 956(c) of the Internal Rev-
6 enue Code of 1986) after May 20, 2010.

7 **SEC. 405. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**
8 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

9 (a) **IN GENERAL.**—Paragraph (5) of section 304(b)
10 is amended by redesignating subparagraph (B) as sub-
11 paragraph (C) and by inserting after subparagraph (A)
12 the following new subparagraph:

13 “(B) **SPECIAL RULE IN CASE OF FOREIGN**
14 **ACQUIRING CORPORATION.**—In the case of any
15 acquisition to which subsection (a) applies in
16 which the acquiring corporation is a foreign
17 corporation, no earnings and profits shall be
18 taken into account under paragraph (2)(A)
19 (and subparagraph (A) shall not apply) if more
20 than 50 percent of the dividends arising from
21 such acquisition (determined without regard to
22 this subparagraph) would not—

23 “(i) be subject to tax under this chap-
24 ter for the taxable year in which the divi-
25 dends arise, or

1 “(ii) be includible in the earnings and
2 profits of a controlled foreign corporation
3 (as defined in section 957 and without re-
4 gard to section 953(c)).”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 this section shall apply to acquisitions after May 20, 2010.

7 **SEC. 406. MODIFICATION OF AFFILIATION RULES FOR PUR-**
8 **POSES OF RULES ALLOCATING INTEREST EX-**
9 **PENSE.**

10 (a) **IN GENERAL.**—Subparagraph (A) of section
11 864(e)(5) is amended by adding at the end the following:
12 “Notwithstanding the preceding sentence, a foreign cor-
13 poration shall be treated as a member of the affiliated
14 group if—

15 “(i) more than 50 percent of the gross
16 income of such foreign corporation for the
17 taxable year is effectively connected with
18 the conduct of a trade or business within
19 the United States, and

20 “(ii) at least 80 percent of either the
21 vote or value of all outstanding stock of
22 such foreign corporation is owned directly
23 or indirectly by members of the affiliated
24 group (determined with regard to this sen-
25 tence).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 **SEC. 407. TERMINATION OF SPECIAL RULES FOR INTEREST**
5 **AND DIVIDENDS RECEIVED FROM PERSONS**
6 **MEETING THE 80-PERCENT FOREIGN BUSI-**
7 **NESS REQUIREMENTS.**

8 (a) IN GENERAL.—Paragraph (1) of section 861(a)
9 is amended by striking subparagraph (A) and by redesignig-
10 nating subparagraphs (B) and (C) as subparagraphs (A)
11 and (B), respectively.

12 (b) GRANDFATHER RULE WITH RESPECT TO WITH-
13 HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM
14 PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-
15 NESS REQUIREMENTS.—

16 (1) IN GENERAL.—Subparagraph (B) of section
17 871(i)(2) is amended to read as follows:

18 “(B) The active foreign business percent-
19 age of—

20 “(i) any dividend paid by an existing
21 80/20 company, and

22 “(ii) any interest paid by an existing
23 80/20 company.”.

24 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
25 tion 871 is amended by redesignating subsections (l)

1 and (m) as subsections (m) and (n), respectively,
2 and by inserting after subsection (k) the following
3 new subsection:

4 “(l) RULES RELATING TO EXISTING 80/20 COMPA-
5 NIES.—For purposes of this subsection and subsection
6 (i)(2)(B)—

7 “(1) EXISTING 80/20 COMPANY.—

8 “(A) IN GENERAL.—The term ‘existing 80/
9 20 company’ means any corporation if—

10 “(i) such corporation met the 80-per-
11 cent foreign business requirements of sec-
12 tion 861(c)(1) (as in effect before the en-
13 actment of this subsection) for such cor-
14 poration’s last taxable year beginning be-
15 fore January 1, 2011,

16 “(ii) such corporation meets the 80-
17 percent foreign business requirements of
18 subparagraph (B) with respect to each tax-
19 able year after the taxable year referred to
20 in clause (i), and

21 “(iii) there has not been an addition
22 of a substantial line of business with re-
23 spect to such corporation after the date of
24 the enactment of this subsection.

1 “(B) FOREIGN BUSINESS REQUIRE-
2 MENTS.—

3 “(i) IN GENERAL.—A corporation
4 meets the 80-percent foreign business re-
5 quirements of this subparagraph if it is
6 shown to the satisfaction of the Secretary
7 that at least 80 percent of the gross in-
8 come from all sources of such corporation
9 for the testing period is active foreign busi-
10 ness income.

11 “(ii) ACTIVE FOREIGN BUSINESS IN-
12 COME.—For purposes of clause (i), the
13 term ‘active foreign business income’
14 means gross income which—

15 “(I) is derived from sources out-
16 side the United States (as determined
17 under this subchapter), and

18 “(II) is attributable to the active
19 conduct of a trade or business in a
20 foreign country or possession of the
21 United States.

22 “(iii) TESTING PERIOD.—For pur-
23 poses of this subsection, the term ‘testing
24 period’ means the 3-year period ending
25 with the close of the taxable year of the

1 corporation preceding the payment (or
2 such part of such period as may be appli-
3 cable). If the corporation has no gross in-
4 come for such 3-year period (or part there-
5 of), the testing period shall be the taxable
6 year in which the payment is made.

7 “(iv) TRANSITION RULE.—In the case
8 of a testing period which includes a taxable
9 year beginning before January 1, 2011, for
10 purposes of determining whether a cor-
11 poration meets the 80 percent foreign busi-
12 ness requirements of this subparagraph for
13 such taxable year, the requirements of sub-
14 paragraphs (A) and (B) of section
15 861(c)(1) (as in effect before the enact-
16 ment of this subsection) shall apply in lieu
17 of clause (i) to such taxable years .

18 “(2) ACTIVE FOREIGN BUSINESS PERCENT-
19 AGE.—The term ‘active foreign business percentage’
20 means, with respect to any existing 80/20 company,
21 the percentage which—

22 “(A) the active foreign business income of
23 such company for the testing period, is of

24 “(B) the gross income of such company for
25 the testing period from all sources.

1 “(3) AGGREGATION RULES.—For purposes of
2 applying paragraph (1) (other than subparagraphs
3 (A)(i) and (B)(iv) thereof) and paragraph (2)—

4 “(A) IN GENERAL.—The corporation re-
5 ferred to in paragraph (1)(A) and all of such
6 corporation’s subsidiaries shall be treated as
7 one corporation.

8 “(B) SUBSIDIARIES.—For purposes of sub-
9 paragraph (A), the term ‘subsidiary’ means any
10 corporation in which the corporation referred to
11 in subparagraph (A) owns (directly or indi-
12 rectly) stock meeting the requirements of sec-
13 tion 1504(a)(2) (determined by substituting ‘50
14 percent’ for ‘80 percent’ each place it appears
15 and without regard to section 1504(b)(3)).

16 “(4) REGULATIONS.—The Secretary may issue
17 such regulations or other guidance as is necessary or
18 appropriate to carry out the purposes of this section,
19 including regulations or other guidance which pro-
20 vide for the proper application of the aggregation
21 rules described in paragraph (3).”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 861 is amended by striking sub-
24 section (c) and by redesignating subsections (d), (e),
25 and (f) as subsections (c), (d), and (e), respectively.

1 (2) Paragraph (9) of section 904(h) is amended
2 to read as follows:

3 “(9) TREATMENT OF CERTAIN DOMESTIC COR-
4 PORATIONS.—In the case of any dividend treated as
5 not from sources within the United States under
6 section 861(a)(2)(A), the corporation paying such
7 dividend shall be treated for purposes of this sub-
8 section as a United States-owned foreign corpora-
9 tion.”.

10 (3) Subsection (c) of section 2104 is amended
11 in the last sentence by striking “or to a debt obliga-
12 tion of a domestic corporation” and all that follows
13 and inserting a period.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to taxable years beginning after Decem-
18 ber 31, 2010.

19 (2) GRANDFATHER RULE FOR OUTSTANDING
20 DEBT OBLIGATIONS.—

21 (A) IN GENERAL.—The amendments made
22 by this section shall not apply to payments of
23 interest on obligations issued before the date of
24 the enactment of this Act.

1 (B) EXCEPTION FOR RELATED PARTY
2 DEBT.—Subparagraph (A) shall not apply to
3 any interest which is payable to a related per-
4 son (determined under rules similar to the rules
5 of section 954(d)(3)).

6 (C) SIGNIFICANT MODIFICATIONS TREAT-
7 ED AS NEW ISSUES.—For purposes of subpara-
8 graph (A), a significant modification of the
9 terms of any obligation (including any extension
10 of the term of such obligation) shall be treated
11 as a new issue.

12 **SEC. 408. SOURCE RULES FOR INCOME ON GUARANTEES.**

13 (a) AMOUNTS SOURCED WITHIN THE UNITED
14 STATES.—Subsection (a) of section 861 is amended by
15 adding at the end the following new paragraph:

16 “(9) GUARANTEES.—Amounts received, directly
17 or indirectly, from—

18 “(A) a noncorporate resident or domestic
19 corporation for the provision of a guarantee of
20 any indebtedness of such resident or corpora-
21 tion, or

22 “(B) any foreign person for the provision
23 of a guarantee of any indebtedness of such per-
24 son, if such amount is connected with income
25 which is effectively connected (or treated as ef-

1 fectively connected) with the conduct of a trade
2 or business in the United States.”.

3 (b) AMOUNTS SOURCED WITHOUT THE UNITED
4 STATES.—Subsection (a) of section 862 is amended by
5 striking “and” at the end of paragraph (7), by striking
6 the period at the end of paragraph (8) and inserting “;
7 and”, and by adding at the end the following new para-
8 graph:

9 “(9) amounts received for the provision of a
10 guarantee of indebtedness other than amounts which
11 are derived from sources within the United States as
12 provided in section 861(a)(9).”.

13 (c) CONFORMING AMENDMENT.—Clause (ii) of sec-
14 tion 864(c)(4)(B) is amended by striking “dividends or in-
15 terest” and inserting “dividends, interest, or amounts re-
16 ceived for the provision of guarantees of indebtedness”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to guarantees issued after the date
19 of the enactment of this Act.

20 **SEC. 409. LIMITATION ON EXTENSION OF STATUTE OF LIMI-**
21 **TATIONS FOR FAILURE TO NOTIFY SEC-**
22 **RETARY OF CERTAIN FOREIGN TRANSFERS.**

23 (a) IN GENERAL.—Paragraph (8) of section 6501(c)
24 is amended—

1 (1) by striking “In the case of any information”
2 and inserting the following:

3 “(A) IN GENERAL.—In the case of any in-
4 formation”; and

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

6 “(B) APPLICATION TO FAILURES DUE TO
7 REASONABLE CAUSE.—If the failure to furnish
8 the information referred to in subparagraph (A)
9 is due to reasonable cause and not willful ne-
10 glect, subparagraph (A) shall apply only to the
11 item or items related to such failure.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect as if included in section 513
14 of the Hiring Incentives to Restore Employment Act.

15 **Subtitle B—Personal Service In-**
16 **come Earned in Pass-thru Enti-**
17 **ties**

18 **SEC. 411. PARTNERSHIP INTERESTS TRANSFERRED IN**
19 **CONNECTION WITH PERFORMANCE OF SERV-**
20 **ICES.**

21 (a) MODIFICATION TO ELECTION TO INCLUDE PART-
22 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
23 TRANSFER.—Subsection (c) of section 83 is amended by
24 redesignating paragraph (4) as paragraph (5) and by in-
25 serting after paragraph (3) the following new paragraph:

1 “(4) PARTNERSHIP INTERESTS.—Except as
2 provided by the Secretary, in the case of any trans-
3 fer of an interest in a partnership in connection with
4 the provision of services to (or for the benefit of)
5 such partnership—

6 “(A) the fair market value of such interest
7 shall be treated for purposes of this section as
8 being equal to the amount of the distribution
9 which the partner would receive if the partner-
10 ship sold (at the time of the transfer) all of its
11 assets at fair market value and distributed the
12 proceeds of such sale (reduced by the liabilities
13 of the partnership) to its partners in liquidation
14 of the partnership, and

15 “(B) the person receiving such interest
16 shall be treated as having made the election
17 under subsection (b)(1) unless such person
18 makes an election under this paragraph to have
19 such subsection not apply.”.

20 (b) CONFORMING AMENDMENT.—Paragraph (2) of
21 section 83(b) is amended by inserting “or subsection
22 (c)(4)(B)” after “paragraph (1)”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to interests in partnerships trans-
25 ferred after the date of the enactment of this Act.

1 **SEC. 412. INCOME OF PARTNERS FOR PERFORMING IN-**
2 **VESTMENT MANAGEMENT SERVICES TREAT-**
3 **ED AS ORDINARY INCOME RECEIVED FOR**
4 **PERFORMANCE OF SERVICES.**

5 (a) IN GENERAL.—Part I of subchapter K of chapter
6 1 is amended by adding at the end the following new sec-
7 tion:

8 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
9 **VESTMENT MANAGEMENT SERVICES TO**
10 **PARTNERSHIP.**

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

14 “(1) IN GENERAL.—Notwithstanding section
15 702(b)—

16 “(A) any net income with respect to such
17 interest for any partnership taxable year shall
18 be treated as ordinary income, and

19 “(B) any net loss with respect to such in-
20 terest for such year, to the extent not dis-
21 allowed under paragraph (2) for such year,
22 shall be treated as an ordinary loss.

23 All items of income, gain, deduction, and loss which
24 are taken into account in computing net income or
25 net loss shall be treated as ordinary income or ordi-
26 nary loss (as the case may be).

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1 “(2) TREATMENT OF LOSSES.—

2 “(A) LIMITATION.—Any net loss with re-
3 spect to such interest shall be allowed for any
4 partnership taxable year only to the extent that
5 such loss does not exceed the excess (if any)
6 of—

7 “(i) the aggregate net income with re-
8 spect to such interest for all prior partner-
9 ship taxable years, over

10 “(ii) the aggregate net loss with re-
11 spect to such interest not disallowed under
12 this subparagraph for all prior partnership
13 taxable years.

14 “(B) CARRYFORWARD.—Any net loss for
15 any partnership taxable year which is not al-
16 lowed by reason of subparagraph (A) shall be
17 treated as an item of loss with respect to such
18 partnership interest for the succeeding partner-
19 ship taxable year.

20 “(C) BASIS ADJUSTMENT.—No adjustment
21 to the basis of a partnership interest shall be
22 made on account of any net loss which is not
23 allowed by reason of subparagraph (A).

24 “(D) PRIOR PARTNERSHIP YEARS.—Any
25 reference in this paragraph to prior partnership

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1 taxable years shall only include prior partner-
2 ship taxable years to which this section applies.

3 “(3) NET INCOME AND LOSS.—For purposes of
4 this section—

5 “(A) NET INCOME.—The term ‘net in-
6 come’ means, with respect to any investment
7 services partnership interest for any partner-
8 ship taxable year, the excess (if any) of—

9 “(i) all items of income and gain
10 taken into account by the holder of such
11 interest under section 702 with respect to
12 such interest for such year, over

13 “(ii) all items of deduction and loss so
14 taken into account.

15 “(B) NET LOSS.—The term ‘net loss’
16 means, with respect to such interest for such
17 year, the excess (if any) of the amount de-
18 scribed in subparagraph (A)(ii) over the amount
19 described in subparagraph (A)(i).

20 “(4) SPECIAL RULE FOR DIVIDENDS.—Any div-
21 idend taken into account in determining net income
22 or net loss for purposes of paragraph (1) shall not
23 be treated as qualified dividend income for purposes
24 of section 1(h).

25 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

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1 “(1) GAIN.—Any gain on the disposition of an
2 investment services partnership interest shall be—

3 “(A) treated as ordinary income, and

4 “(B) recognized notwithstanding any other
5 provision of this subtitle.

6 “(2) LOSS.—Any loss on the disposition of an
7 investment services partnership interest shall be
8 treated as an ordinary loss to the extent of the ex-
9 cess (if any) of—

10 “(A) the aggregate net income with respect
11 to such interest for all partnership taxable
12 years to which this section applies, over

13 “(B) the aggregate net loss with respect to
14 such interest allowed under subsection (a)(2)
15 for all partnership taxable years to which this
16 section applies.

17 “(3) ELECTION WITH RESPECT TO CERTAIN EX-
18 CHANGES.—Paragraph (1)(B) shall not apply to the
19 contribution of an investment services partnership
20 interest to a partnership in exchange for an interest
21 in such partnership if—

22 “(A) the taxpayer makes an irrevocable
23 election to treat the partnership interest re-
24 ceived in the exchange as an investment serv-
25 ices partnership interest, and

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

4 “(4) DISPOSITION OF PORTION OF INTEREST.—
5 In the case of any disposition of an investment serv-
6 ices partnership interest, the amount of net loss
7 which otherwise would have (but for subsection
8 (a)(2)(C)) applied to reduce the basis of such inter-
9 est shall be disregarded for purposes of this section
10 for all succeeding partnership taxable years.

11 “(5) DISTRIBUTIONS OF PARTNERSHIP PROP-
12 PERTY.—In the case of any distribution of property
13 by a partnership with respect to any investment
14 services partnership interest held by a partner—

15 “(A) the excess (if any) of—

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

19 “(ii) the adjusted basis of such prop-
20 erty in the hands of the partnership,
21 shall be taken into account as an increase in
22 such partner’s distributive share of the taxable
23 income of the partnership (except to the extent
24 such excess is otherwise taken into account in

1 determining the taxable income of the partner-
2 ship),

3 “(B) such property shall be treated for
4 purposes of subpart B of part II as money dis-
5 tributed to such partner in an amount equal to
6 such fair market value, and

7 “(C) the basis of such property in the
8 hands of such partner shall be such fair market
9 value.

10 Subsection (b) of section 734 shall be applied with-
11 out regard to the preceding sentence. In the case of
12 a taxpayer which satisfies requirements similar to
13 the requirements of subparagraphs (A) and (B) of
14 paragraph (4), this paragraph and paragraph (1)(B)
15 shall not apply to the distribution of a partnership
16 interest if such distribution is in connection with a
17 contribution (or deemed contribution) of any prop-
18 erty of the partnership to which section 721 applies
19 pursuant to a transaction described in paragraph
20 (1)(B) or (2) of section 708(b).

21 “(6) APPLICATION OF SECTION 751.—

22 “(A) IN GENERAL.—In applying section
23 751, an investment services partnership interest
24 shall be treated as an inventory item.

1 “(B) EXCEPTION FOR CERTAIN DISPOSI-
2 TIONS OF INTERESTS IN A PUBLICLY TRADED
3 PARTNERSHIP.—Except as provided by the Sec-
4 retary, this paragraph shall not apply in the
5 case of any disposition of an interest in a pub-
6 licly traded partnership (as defined in section
7 7704) which is not an investment services part-
8 nership interest in the hands of the person dis-
9 posing of such interest.

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

12 “(1) IN GENERAL.—The term ‘investment serv-
13 ices partnership interest’ means any interest in a
14 partnership which is held (directly or indirectly) by
15 any person if it was reasonably expected (at the time
16 that such person acquired such interest) that such
17 person (or any person related to such person) would
18 provide (directly or, to the extent provided by the
19 Secretary, indirectly) a substantial quantity of any
20 of the following services with respect to assets held
21 (directly or indirectly) by the partnership:

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

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

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

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

7 “(2) SPECIFIED ASSET.—The term ‘specified
8 asset’ means securities (as defined in section
9 475(c)(2) without regard to the last sentence there-
10 of), real estate held for rental or investment, inter-
11 ests in partnerships, commodities (as defined in sec-
12 tion 475(e)(2)), or options or derivative contracts
13 with respect to any of the foregoing.

14 “(3) EXCEPTION FOR FAMILY FARMS.—The
15 term ‘specified asset’ shall not include any farm
16 used for farming purposes if such farm is held by
17 a partnership all of the interests in which are held
18 (directly or indirectly) by members of the same fam-
19 ily. Terms used in the preceding sentence which are
20 also used in section 2032A shall have the same
21 meaning as when used in such section.

22 “(4) RELATED PERSONS.—A person shall be
23 treated as related to another person if the relation-
24 ship between such persons is described in section
25 267 or 707(b).

1 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
2 ESTS.—

3 “(1) IN GENERAL.—In the case of any portion
4 of an investment services partnership interest which
5 is a qualified capital interest, all items of income,
6 gain, loss, and deduction which are allocated to such
7 qualified capital interest shall not be taken into ac-
8 count under subsection (a) if—

9 “(A) allocations of items are made by the
10 partnership to such qualified capital interest in
11 the same manner as such allocations are made
12 to other qualified capital interests held by part-
13 ners who do not provide any services described
14 in subsection (c)(1) and who are not related to
15 the partner holding the qualified capital inter-
16 est, and

17 “(B) the allocations made to such other in-
18 terests are significant compared to the alloca-
19 tions made to such qualified capital interest.

20 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
21 ALLOCATION REQUIREMENTS.—To the extent pro-
22 vided by the Secretary in regulations or other guid-
23 ance—

24 “(A) ALLOCATIONS TO PORTION OF QUALI-
25 FIED CAPITAL INTEREST.—Paragraph (1) may

1 be applied separately with respect to a portion
2 of a qualified capital interest.

3 “(B) NO OR INSIGNIFICANT ALLOCATIONS
4 TO NONSERVICE PROVIDERS.—In any case in
5 which the requirements of paragraph (1)(B) are
6 not satisfied, items of income, gain, loss, and
7 deduction shall not be taken into account under
8 subsection (a) to the extent that such items are
9 properly allocable under such regulations or
10 other guidance to qualified capital interests.

11 “(C) ALLOCATIONS TO SERVICE PRO-
12 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH
13 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
14 tions shall not be treated as failing to meet the
15 requirement of paragraph (1)(A) merely be-
16 cause the allocations to the qualified capital in-
17 terest represent a lower return than the alloca-
18 tions made to the other qualified capital inter-
19 ests referred to in such paragraph.

20 “(3) SPECIAL RULE FOR CHANGES IN SERV-
21 ICES.—In the case of an interest in a partnership
22 which is not an investment services partnership in-
23 terest and which, by reason of a change in the serv-
24 ices with respect to assets held (directly or indi-
25 rectly) by the partnership, would (without regard to

1 the reasonable expectation exception of subsection
2 (c)(1)) have become such an interest—

3 “(A) notwithstanding subsection (c)(1),
4 such interest shall be treated as an investment
5 services partnership interest as of the time of
6 such change, and

7 “(B) for purposes of this subsection, the
8 qualified capital interest of the holder of such
9 partnership interest immediately after such
10 change shall not be less than the fair market
11 value of such interest (determined immediately
12 before such change).

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

22 “(5) EXCEPTION FOR NO-SELF-CHARGED
23 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
24 cept as otherwise provided by the Secretary, an in-
25 terest shall not fail to be treated as satisfying the

1 requirement of paragraph (1)(A) merely because the
2 allocations made by the partnership to such interest
3 do not reflect the cost of services described in sub-
4 section (c)(1) which are provided (directly or indi-
5 rectly) to the partnership by the holder of such in-
6 terest (or a related person).

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

13 “(A) the distributive share of gain or loss
14 that would have been allocated to the qualified
15 capital interest (consistent with the require-
16 ments of paragraph (1)) if the partnership had
17 sold all of its assets at fair market value imme-
18 diately before the disposition, bears to

19 “(B) the distributive share of gain or loss
20 that would have been so allocated to the invest-
21 ment services partnership interest of which such
22 qualified capital interest is a part.

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

1 “(A) IN GENERAL.—The term ‘qualified
2 capital interest’ means so much of a partner’s
3 interest in the capital of the partnership as is
4 attributable to—

5 “(i) the fair market value of any
6 money or other property contributed to the
7 partnership in exchange for such interest
8 (determined without regard to section
9 752(a)),

10 “(ii) any amounts which have been in-
11 cluded in gross income under section 83
12 with respect to the transfer of such inter-
13 est, and

14 “(iii) the excess (if any) of—

15 “(I) any items of income and
16 gain taken into account under section
17 702 with respect to such interest, over

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

20 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
21 INTEREST.—

22 “(i) DISTRIBUTIONS AND LOSSES.—
23 The qualified capital interest shall be re-
24 duced by distributions from the partner-
25 ship with respect to such interest and by

1 the excess (if any) of the amount described
2 in subparagraph (A)(iii)(II) over the
3 amount described in subparagraph
4 (A)(iii)(I).

5 “(ii) SPECIAL RULE FOR CONTRIBU-
6 TIONS OF PROPERTY.—In the case of any
7 contribution of property described in sub-
8 paragraph (A)(i) with respect to which the
9 fair market value of such property is not
10 equal to the adjusted basis of such prop-
11 erty immediately before such contribution,
12 proper adjustments shall be made to the
13 qualified capital interest to take into ac-
14 count such difference consistent with such
15 regulations or other guidance as the Sec-
16 retary may provide.

17 “(8) TREATMENT OF CERTAIN LOANS.—

18 “(A) PROCEEDS OF PARTNERSHIP LOANS
19 NOT TREATED AS QUALIFIED CAPITAL INTER-
20 EST OF SERVICE PROVIDING PARTNERS.—For
21 purposes of this subsection, an investment serv-
22 ices partnership interest shall not be treated as
23 a qualified capital interest to the extent that
24 such interest is acquired in connection with the
25 proceeds of any loan or other advance made or

1 guaranteed, directly or indirectly, by any other
2 partner or the partnership (or any person re-
3 lated to any such other partner or the partner-
4 ship).

5 “(B) REDUCTION IN ALLOCATIONS TO
6 QUALIFIED CAPITAL INTERESTS FOR LOANS
7 FROM NONSERVICE- PROVIDING PARTNERS TO
8 THE PARTNERSHIP.—For purposes of this sub-
9 section, any loan or other advance to the part-
10 nership made or guaranteed, directly or indi-
11 rectly, by a partner not providing services de-
12 scribed in subsection (c)(1) to the partnership
13 (or any person related to such partner) shall be
14 taken into account in determining the qualified
15 capital interests of the partners in the partner-
16 ship.

17 “(e) OTHER INCOME AND GAIN IN CONNECTION
18 WITH INVESTMENT MANAGEMENT SERVICES.—

19 “(1) IN GENERAL.—If—

20 “(A) a person performs (directly or indi-
21 rectly) investment management services for any
22 entity,

23 “(B) such person holds (directly or indi-
24 rectly) a disqualified interest with respect to
25 such entity, and

“(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

any income or gain with respect to such interest shall be treated as ordinary income. Rules similar to the rules of subsections (a)(4) and (d) shall apply for purposes of this subsection.

11 “(2) DEFINITIONS.—For purposes of this sub-
12 section—

13 “(A) DISQUALIFIED INTEREST.—

14 “(i) IN GENERAL.—The term ‘dis-
15 qualified interest’ means, with respect to
16 any entity—

17 “(I) any interest in such entity
18 other than indebtedness,

19 “(II) convertible or contingent
20 debt of such entity,

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

24 “(IV) any derivative instrument
25 entered into (directly or indirectly)

1 with such entity or any investor in
2 such entity.

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

5 “(I) a partnership interest,

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

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

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

13 “(i) a domestic C corporation, or

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

16 “(I) effectively connected with
17 the conduct of a trade or business in
18 the United States, or

19 “(II) subject to a comprehensive
20 foreign income tax (as defined in sec-
21 tion 457A(d)(2)).

22 “(C) INVESTMENT MANAGEMENT SERV-
23 ICES.—The term ‘investment management serv-
24 ices’ means a substantial quantity of any of the
25 services described in subsection (c)(1).

1 “(f) REGULATIONS.—The Secretary shall prescribe
2 such regulations or other guidance as is necessary or ap-
3 propriate to carry out the purposes of this section, includ-
4 ing regulations or other guidance to—

5 “(1) provide modifications to the application of
6 this section (including treating related persons as
7 not related to one another) to the extent such modi-
8 fication is consistent with the purposes of this sec-
9 tion,

10 “(2) prevent the avoidance of the purposes of
11 this section, and

12 “(3) coordinate this section with the other pro-
13 visions of this title.

14 “(g) SPECIAL RULES FOR INDIVIDUALS.—In the case
15 of an individual—

16 “(1) IN GENERAL.—Subsection (a)(1) shall
17 apply only to the applicable percentage of the net in-
18 come or net loss referred to in such subsection.

19 “(2) DISPOSITIONS, ETC.—The amount which
20 (but for this paragraph) would be treated as ordi-
21 nary income by reason of subsection (b) or (e) shall
22 be the applicable percentage of such amount.

23 “(3) PRO RATA ALLOCATION TO ITEMS.—For
24 purposes of applying subsections (a) and (e), the ag-
25 gregate amount treated as ordinary income for any

1 such taxable year shall be allocated ratably among
2 the items of income, gain, loss, and deduction taken
3 into account in determining such amount.

4 “(4) SPECIAL RULE FOR RECOGNITION OF
5 GAIN.—Gain which (but for this section) would not
6 be recognized shall be recognized by reason of sub-
7 section (b) only to the extent that such gain is treat-
8 ed as ordinary income after application of paragraph
9 (2).

10 “(5) COORDINATION WITH LIMITATION ON
11 LOSSES.—For purposes of applying paragraph (2) of
12 subsection (a) with respect to any net loss for any
13 taxable year—

14 “(A) such paragraph shall only apply with
15 respect to the applicable percentage of such net
16 loss for such taxable year,

17 “(B) in the case of a prior partnership tax-
18 able year referred to in clause (i) or (ii) of sub-
19 paragraph (A) of such paragraph, only the ap-
20 plicable percentage (as in effect for such prior
21 taxable year) of net income or net loss for such
22 prior partnership taxable year shall be taken
23 into account, and

1 “(C) any net loss carried forward to the
2 succeeding partnership taxable year under sub-
3 paragraph (B) of such paragraph shall—

4 “(i) be taken into account in such
5 succeeding year without reduction under
6 this subsection, and

7 “(ii) in lieu of being taken into ac-
8 count as an item of loss in such succeeding
9 year, shall be taken into account—

10 “(I) as an increase in net loss or
11 as a reduction in net income (includ-
12 ing below zero), as the case may be,
13 and

14 “(II) after any reduction in the
15 amount of such net loss or net income
16 under this subsection.

17 A rule similar to the rule of the preceding sentence
18 shall apply for purposes of subsection (b)(2)(A).

19 “(6) COORDINATION WITH TREATMENT OF
20 DIVIDENDS.—Subsection (a)(4) shall only apply to
21 the applicable percentage of dividends described
22 therein.

23 “(7) APPLICABLE PERCENTAGE.—For purposes
24 of this subsection—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘applicable percent-
3 age’ means 75 percent.

4 “(B) EXCEPTIONS FOR SALES OF INTER-
5 ESTS AND ASSETS HELD AT LEAST 5 YEARS.—

6 “(i) IN GENERAL.—The applicable
7 percentage shall be 50 percent with respect
8 to—

9 “(I) any net income or net loss
10 under subsection (a)(1), or any in-
11 come or gain under subsection (e)
12 which is properly allocable to gain or
13 loss from the sale or exchange of any
14 asset which has been held at least 5
15 years, and

16 “(II) to the extent provided
17 under clause (ii), gain or loss under
18 subsection (b) on the disposition of an
19 investment services partnership inter-
20 est or gain under subsection (e) with
21 respect to a disqualified interest, but
22 only if such interest has been held for
23 at least 5 years.

24 “(ii) LOOK THROUGH IN THE CASE OF
25 DISPOSITION OF INTEREST.—Except as

provided by the Secretary, in the case of a disposition of an interest in an entity described in clause (i)(II), clause (i) shall be applied only to the portion of the gain or loss attributable to the assets of such entity which have been held for at least 5 years, unless substantially all of such assets have been held for at least 5 years. In the case of tiered entities, the preceding sentence shall be applied by reference to the assets of such entities rather than to an interest in such entities.

“(iii) SPECIAL RULE FOR SECTION 197 INTANGIBLE GAIN OF MANAGEMENT ENTITIES.—

“(I) IN GENERAL.—In the case of the disposition of an investment services partnership interest in a management entity which has been held for at least 5 years, any section 197 intangible gain with respect to such interest shall be treated as gain from an asset held for at least 5 years. In the case of tiered management entities, the holding period requirement

1 under the preceding sentence shall
2 apply with respect to interests in each
3 such management entity.

4 “(II) VALUATION BURDEN ON
5 THE TAXPAYER.—This clause shall
6 not apply to any gain from the dis-
7 position of an investment services
8 partnership interest unless the tax-
9 payer establishes (in such manner as
10 the Secretary shall provide) the
11 amount of the section 197 intangible
12 gain with respect to such disposition.

13 “(C) MANAGEMENT ENTITY.—For pur-
14 poses of this paragraph, the term ‘management
15 entity’ means a partnership the principal activ-
16 ity of which is providing the services described
17 in subsection (c) with respect to assets held (di-
18 rectly or indirectly) by such partnership.

19 “(D) SECTION 197 INTANGIBLE GAIN.—
20 For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘section
22 197 intangible gain’ means, with respect to
23 any management entity, gain recognized on
24 the disposition of an investment services
25 partnership interest in such entity which is

1 attributable to any section 197 intangible
2 (within the meaning of section 197(d)).

3 “(ii) VALUE OF INVESTMENT SERV-
4 ICES PARTNERSHIP INTEREST DIS-
5 REGARDED.—Except as provided by the
6 Secretary, no portion of the value of an in-
7 vestment services partnership interest
8 (other than the interest being disposed of)
9 shall be taken into account in determining
10 section 197 intangible gain.

11 “(iii) LIMITATION.—For purposes of
12 clause (i), gain from the disposition of an
13 investment services partnership interest
14 shall in no event be treated as attributable
15 to a section 197 intangible (within the
16 meaning of section 197(d)) if such gain
17 would be included in the amount of the
18 distribution which the partner disposing of
19 such interest would receive if the partner-
20 ship sold (at the time of the disposition) all
21 of its assets at fair market value and dis-
22 tributed the proceeds of such sale (reduced
23 by the liabilities of the partnership) to its
24 partners in liquidation of the partnership.

1 the parties to the disposition with re-
2 spect to such valuation.

3 “(h) CROSS REFERENCE.—For 40 percent penalty on
4 certain underpayments due to the avoidance of this sec-
5 tion, see section 6662.”.

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

9 “(6) INCOME FROM INVESTMENT SERVICES
10 PARTNERSHIP INTERESTS NOT QUALIFIED.—

“(A) IN GENERAL.—Items of income and gain shall not be treated as qualifying income if such items are treated as ordinary income by reason of the application of section 710 (relating to special rules for partners providing investment management services to partnership). The preceding sentence shall not apply to any item described in paragraph (1)(E) (or so much of paragraph (1)(F) as relates to paragraph (1)(E)).

21 “(B) SPECIAL RULES FOR CERTAIN PART-
22 NERSHIPS.—

23 “(i) CERTAIN PARTNERSHIPS OWNED
24 BY REAL ESTATE INVESTMENT TRUSTS.—

25 Subparagraph (A) shall not apply in the

1 case of a partnership which meets each of
2 the following requirements:

3 “(I) Such partnership is treated
4 as publicly traded under this section
5 solely by reason of interests in such
6 partnership being convertible into in-
7 terests in a real estate investment
8 trust which is publicly traded.

9 “(II) 50 percent or more of the
10 capital and profits interests of such
11 partnership are owned, directly or in-
12 directly, at all times during the tax-
13 able year by such real estate invest-
14 ment trust (determined with the ap-
15 plication of section 267(c)).

16 “(III) Such partnership meets
17 the requirements of paragraphs (2),
18 (3), and (4) of section 856(c).

19 “(ii) CERTAIN PARTNERSHIPS OWN-
20 ING OTHER PUBLICLY TRADED PARTNER-
21 SHIPS.—Subparagraph (A) shall not apply
22 in the case of a partnership which meets
23 each of the following requirements:

24 “(I) Substantially all of the as-
25 sets of such partnership consist of in-

1 terests in one or more publicly traded
2 partnerships (determined without re-
3 gard to subsection (b)(2)).

4 “(II) Substantially all of the in-
5 come of such partnership is ordinary
6 income or section 1231 gain (as de-
7 fined in section 1231(a)(3)).

8 “(C) TRANSITIONAL RULE.—Subpara-
9 graph (A) shall not apply to any taxable year
10 of the partnership beginning before the date
11 which is 10 years after the date of the enact-
12 ment of this paragraph.”.

13 (c) IMPOSITION OF PENALTY ON UNDERPAY-
14 MENTS.—

15 (1) IN GENERAL.—Subsection (b) of section
16 6662 is amended by inserting after paragraph (7)
17 the following new paragraph:

18 “(8) The application of subsection (e) of section
19 710, the regulations or other guidance prescribed
20 under section 710(f) to prevent the avoidance of the
21 purposes of section 710, or the regulations or other
22 guidance prescribed under section
23 710(g)(7)(D)(iv).”.

24 (2) AMOUNT OF PENALTY.—

1 (A) IN GENERAL.—Section 6662 is amend-
2 ed by adding at the end the following new sub-
3 section:

4 “(k) INCREASE IN PENALTY IN CASE OF PROPERTY
5 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
6 ICES.—In the case of any portion of an underpayment to
7 which this section applies by reason of subsection (b)(8),
8 subsection (a) shall be applied with respect to such portion
9 by substituting ‘40 percent’ for ‘20 percent’.”.

10 (B) CONFORMING AMENDMENT.—Subpara-
11 graph (B) of section 6662A(e)(2) is amended
12 by striking “or (i)” and inserting “, (i), or (k)”.

13 (3) SPECIAL RULES FOR APPLICATION OF REA-
14 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
15 tion 6664 is amended—

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

18 (B) by striking “paragraph (3)” in para-
19 graph (5)(A), as so redesignated, and inserting
20 “paragraph (4)”; and

21 (C) by inserting after paragraph (2) the
22 following new paragraph:

23 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
24 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
25 ICES.—

1 “(A) IN GENERAL.—Paragraph (1) shall
2 not apply to any portion of an underpayment to
3 which section 6662 applies by reason of sub-
4 section (b)(8) unless—

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

8 “(ii) there is or was substantial au-
9 thority for such treatment, and

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

13 “(B) RULES RELATING TO REASONABLE
14 BELIEF.—Rules similar to the rules of sub-
15 section (d)(3) shall apply for purposes of sub-
16 paragraph (A)(iii).”.

17 (d) INCOME AND LOSS FROM INVESTMENT SERVICES
18 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
19 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

20 (1) INTERNAL REVENUE CODE.—Section
21 1402(a) is amended by striking “and” at the end of
22 paragraph (16), by striking the period at the end of
23 paragraph (17) and inserting “; and”, and by insert-
24 ing after paragraph (17) the following new para-
25 graph:

1 “(18) notwithstanding the preceding provisions
2 of this subsection, in the case of any individual en-
3 gaged in the trade or business of providing services
4 described in section 710(c)(1) with respect to any
5 entity, any amount treated as ordinary income or or-
6 dinary loss of such individual under section 710 with
7 respect to such entity shall be taken into account in
8 determining the net earnings from self-employment
9 of such individual.”.

10 (2) SOCIAL SECURITY ACT.—Section 211(a) of
11 the Social Security Act is amended by striking
12 “and” at the end of paragraph (15), by striking the
13 period at the end of paragraph (16) and inserting “;
14 and”, and by inserting after paragraph (16) the fol-
15 lowing new paragraph:

16 “(17) Notwithstanding the preceding provisions
17 of this subsection, in the case of any individual en-
18 gaged in the trade or business of providing services
19 described in section 710(c)(1) of the Internal Rev-
20 enue Code of 1986 with respect to any entity, any
21 amount treated as ordinary income or ordinary loss
22 of such individual under section 710 of such Code
23 with respect to such entity shall be taken into ac-
24 count in determining the net earnings from self-em-
25 ployment of such individual.”.

1 (e) CONFORMING AMENDMENTS.—

2 (1) Subsection (d) of section 731 is amended by
3 inserting “section 710(b)(4) (relating to distribu-
4 tions of partnership property),” after “to the extent
5 otherwise provided by”.

6 (2) Section 741 is amended by inserting “or
7 section 710 (relating to special rules for partners
8 providing investment management services to part-
9 nership)” before the period at the end.

10 (3) The table of sections for part I of sub-
11 chapter K of chapter 1 is amended by adding at the
12 end the following new item:

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

13 (f) EFFECTIVE DATE.—

14 (1) IN GENERAL.—Except as otherwise pro-
15 vided in this subsection, the amendments made by
16 this section shall apply to taxable years ending after
17 December 31, 2010.

18 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
19 CLUDE EFFECTIVE DATE.—In applying section
20 710(a) of the Internal Revenue Code of 1986 (as
21 added by this section) in the case of any partnership
22 taxable year which includes December 31, 2010, the
23 amount of the net income referred to in such section
24 shall be treated as being the lesser of the net income

1 for the entire partnership taxable year or the net in-
2 come determined by only taking into account items
3 attributable to the portion of the partnership taxable
4 year which is after such date.

5 (3) DISPOSITIONS OF PARTNERSHIP INTER-
6 ESTS.—Section 710(b) of the Internal Revenue Code
7 of 1986 (as added by this section) shall apply to dis-
8 positions and distributions after December 31, 2010.

9 (4) OTHER INCOME AND GAIN IN CONNECTION
10 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
11 tion 710(e) of such Code (as added by this section)
12 shall take effect on December 31, 2010.

13 **SEC. 413. EMPLOYMENT TAX TREATMENT OF PROFES-**
14 **SIONAL SERVICE BUSINESSES.**

15 (a) IN GENERAL.—Section 1402 is amended by add-
16 ing at the end the following new subsection:

17 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE
18 BUSINESSES.—

19 “(1) SHAREHOLDERS PROVIDING SERVICES TO
20 DISQUALIFIED S CORPORATIONS.—

21 “(A) IN GENERAL.—In the case of any dis-
22 qualified S corporation, each shareholder of
23 such disqualified S corporation who provides
24 substantial services with respect to the profes-
25 sional service business referred to in subpara-

1 graph (C) shall take into account such share-
2 holder's pro rata share of all items of income or
3 loss described in section 1366 which are attrib-
4 utable to such business in determining the
5 shareholder's net earnings from self-employ-
6 ment.

7 “(B) TREATMENT OF FAMILY MEMBERS.—
8 Except as otherwise provided by the Secretary,
9 the shareholder's pro rata share of items re-
10 ferred to in subparagraph (A) shall be increased
11 by the pro rata share of such items of each
12 member of such shareholder's family (within
13 the meaning of section 318(a)(1)) who does not
14 provide substantial services with respect to such
15 professional service business.

16 “(C) DISQUALIFIED S CORPORATION.—For
17 purposes of this subsection, the term ‘disquali-
18 fied S corporation’ means—

19 “(i) any S corporation which is a
20 partner in a partnership which is engaged
21 in a professional service business if sub-
22 stantially all of the activities of such S cor-
23 poration are performed in connection with
24 such partnership, and

1 “(ii) any other S corporation which is
2 engaged in a professional service business
3 if 80 percent or more of the gross income
4 of such business is attributable to service
5 of 3 or fewer shareholders of such corpora-
6 tion.

7 “(2) PARTNERS.—In the case of any partner-
8 ship which is engaged in a professional service busi-
9 ness, subsection (a)(13) shall not apply to any part-
10 ner who provides substantial services with respect to
11 such professional service business.

12 “(3) PROFESSIONAL SERVICE BUSINESS.—For
13 purposes of this subsection, the term ‘professional
14 service business’ means any trade or business (or
15 portion thereof) providing services in the fields of
16 health, law, lobbying, engineering, architecture, ac-
17 counting, actuarial science, performing arts, con-
18 sulting, athletics, investment advice or management,
19 or brokerage services.

20 “(4) REGULATIONS.—The Secretary shall pre-
21 scribe such regulations as may be necessary or ap-
22 propriate to carry out the purposes of this sub-
23 section, including regulations which prevent the
24 avoidance of the purposes of this subsection through
25 tiered entities or otherwise.

1 “(5) CROSS REFERENCE.—For employment tax
2 treatment of wages paid to shareholders of S cor-
3 porations, see subtitle C.”.

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

7 “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE
8 BUSINESSES.—

9 “(1) SHAREHOLDERS PROVIDING SERVICES TO
10 DISQUALIFIED S CORPORATIONS.—

11 “(A) IN GENERAL.—In the case of any dis-
12 qualified S corporation, each shareholder of
13 such disqualified S corporation who provides
14 substantial services with respect to the profes-
15 sional service business referred to in subpara-
16 graph (C) shall take into account such share-
17 holder’s pro rata share of all items of income or
18 loss described in section 1366 of the Internal
19 Revenue Code of 1986 which are attributable to
20 such business in determining the shareholder’s
21 net earnings from self-employment.

22 “(B) TREATMENT OF FAMILY MEMBERS.—
23 Except as otherwise provided by the Secretary
24 of the Treasury, the shareholder’s pro rata
25 share of items referred to in subparagraph (A)

1 shall be increased by the pro rata share of such
2 items of each member of such shareholder's
3 family (within the meaning of section 318(a)(1)
4 of the Internal Revenue Code of 1986) who
5 does not provide substantial services with re-
6 spect to such professional service business.

7 “(C) DISQUALIFIED S CORPORATION.—For
8 purposes of this subsection, the term ‘disquali-
9 fied S corporation’ means—

10 “(i) any S corporation which is a
11 partner in a partnership which is engaged
12 in a professional service business if sub-
13 stantially all of the activities of such S cor-
14 poration are performed in connection with
15 such partnership, and

16 “(ii) any other S corporation which is
17 engaged in a professional service business
18 if 80 percent or more of the gross income
19 of such business is attributable to service
20 of 3 or fewer shareholders of such corpora-
21 tion.

22 “(2) PARTNERS.—In the case of any partner-
23 ship which is engaged in a professional service busi-
24 ness, subsection (a)(12) shall not apply to any part-

1 ner who provides substantial services with respect to
2 such professional service business.

3 “(3) PROFESSIONAL SERVICE BUSINESS.—For
4 purposes of this subsection, the term ‘professional
5 service business’ means any trade or business (or
6 portion thereof) providing services in the fields of
7 health, law, lobbying, engineering, architecture, ac-
8 counting, actuarial science, performing arts, con-
9 sulting, athletics, investment advice or management,
10 or brokerage services.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 2010.

14 **Subtitle C—Corporate Provisions**

15 **SEC. 421. TREATMENT OF SECURITIES OF A CONTROLLED** 16 **CORPORATION EXCHANGED FOR ASSETS IN** 17 **CERTAIN REORGANIZATIONS.**

18 (a) IN GENERAL.—Section 361 (relating to non-
19 recognition of gain or loss to corporations; treatment of
20 distributions) is amended by adding at the end the fol-
21 lowing new subsection:

22 “(d) SPECIAL RULES FOR TRANSACTIONS INVOLVING
23 SECTION 355 DISTRIBUTIONS.—In the case of a reorga-
24 nization described in section 368(a)(1)(D) with respect to
25 which stock or securities of the corporation to which the

1 assets are transferred are distributed in a transaction
2 which qualifies under section 355—

3 “(1) this section shall be applied by substituting
4 ‘stock other than nonqualified preferred stock (as
5 defined in section 351(g)(2))’ for ‘stock or securities’
6 in subsections (a) and (b)(1), and

7 “(2) the first sentence of subsection (b)(3) shall
8 apply only to the extent that the sum of the money
9 and the fair market value of the other property
10 transferred to such creditors does not exceed the ad-
11 justed bases of such assets transferred (reduced by
12 the amount of the liabilities assumed (within the
13 meaning of section 357(c))).”.

14 (b) CONFORMING AMENDMENT.—Paragraph (3) of
15 section 361(b) is amended by striking the last sentence.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the amendments made by this section
19 shall apply to exchanges after the date of the enact-
20 ment of this Act.

21 (2) TRANSITION RULE.—The amendments
22 made by this section shall not apply to any exchange
23 pursuant to a transaction which is—

1 (A) made pursuant to a written agreement
2 which was binding on March 15, 2010, and at
3 all times thereafter;

4 (B) described in a ruling request submitted
5 to the Internal Revenue Service on or before
6 such date; or

7 (C) described on or before such date in a
8 public announcement or in a filing with the Se-
9 curities and Exchange Commission.

10 **SEC. 422. TAXATION OF BOOT RECEIVED IN REORGANIZA-**
11 **TIONS.**

12 (a) IN GENERAL.—Paragraph (2) of section 356(a)
13 is amended—

14 (1) by striking “If an exchange” and inserting
15 “Except as otherwise provided by the Secretary—

16 “(A) IN GENERAL.—If an exchange”;

17 (2) by striking “then there shall be” and all
18 that follows through “February 28, 1913” and in-
19 serting “then the amount of other property or
20 money shall be treated as a dividend to the extent
21 of the earnings and profits of the corporation”; and

22 (3) by adding at the end the following new sub-
23 paragraph:

24 “(B) CERTAIN REORGANIZATIONS.—In the
25 case of a reorganization described in section

1 368(a)(1)(D) to which section 354(b)(1) applies
2 or any other reorganization specified by the
3 Secretary, in applying subparagraph (A)—

4 “(i) the earnings and profits of each
5 corporation which is a party to the reorga-
6 nization shall be taken into account, and

7 “(ii) the amount which is a dividend
8 (and source thereof) shall be determined
9 under rules similar to the rules of para-
10 graphs (2) and (5) of section 304(b).”.

11 (b) EARNINGS AND PROFITS.—Paragraph (7) of sec-
12 tion 312(n) is amended by adding at the end the following:
13 “A similar rule shall apply to an exchange to which section
14 356(a)(1) applies.”.

15 (c) CONFORMING AMENDMENT.—Paragraph (1) of
16 section 356(a) is amended by striking “then the gain” and
17 inserting “then (except as provided in paragraph (2)) the
18 gain”.

19 (d) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall apply to exchanges after the date of the enact-
23 ment of this Act.

24 (2) TRANSITION RULE.—The amendments
25 made by this section shall not apply to any exchange

1 between unrelated persons pursuant to a transaction
2 which is—

3 (A) made pursuant to a written agreement
4 which was binding on May 20, 2010, and at all
5 times thereafter;

6 (B) described in a ruling request submitted
7 to the Internal Revenue Service on or before
8 such date; or

9 (C) described in a public announcement or
10 filing with the Securities and Exchange Com-
11 mission on or before such date.

12 (3) RELATED PERSONS.—For purposes of this
13 subsection, a person shall be treated as related to
14 another person if the relationship between such per-
15 sons is described in section 267 or 707(b) of the In-
16 ternal Revenue Code of 1986.

17 **Subtitle D—Other Provisions**

18 **SEC. 431. MODIFICATIONS WITH RESPECT TO OIL SPILL LI-** 19 **ABILITY TRUST FUND.**

20 (a) EXTENSION OF APPLICATION OF OIL SPILL LI-
21 ABILITY TRUST FUND FINANCING RATE.—Paragraph (2)
22 of section 4611(f) is amended by striking “December 31,
23 2017” and inserting “December 31, 2020”.

1 (b) INCREASE IN OIL SPILL LIABILITY TRUST FUND
2 FINANCING RATE.—Subparagraph (B) of section
3 4611(c)(2) is amended to read as follows:

4 “(B) the Oil Spill Liability Trust Fund fi-
5 nancing rate is 49 cents a barrel.”.

6 (c) INCREASE IN PER INCIDENT LIMITATIONS ON
7 EXPENDITURES.—Subparagraph (A) of section
8 9509(c)(2) is amended—

9 (1) by striking “\$1,000,000,000” in clause (i)
10 and inserting “\$5,000,000,000”;

11 (2) by striking “\$500,000,000” in clause (ii)
12 and inserting “\$2,500,000,000”; and

13 (3) by striking “\$1,000,000,000 PER INCIDENT,
14 ETC” in the heading and inserting “PER INCIDENT
15 LIMITATIONS”.

16 (d) EFFECTIVE DATE.—

17 (1) EXTENSION OF FINANCING RATE.—Except
18 as provided in paragraph (2), the amendments made
19 by this section shall take effect on the date of the
20 enactment of this Act.

21 (2) INCREASE IN FINANCING RATE.—The
22 amendment made by subsection (b) shall apply to
23 crude oil received and petroleum products entered
24 during calendar quarters beginning more than 60
25 days after the date of the enactment of this Act.

1 **SEC. 432. TIME FOR PAYMENT OF CORPORATE ESTIMATED**
2 **TAXES.**

3 The percentage under paragraph (2) of section 561
4 of the Hiring Incentives to Restore Employment Act in
5 effect on the date of the enactment of this Act is increased
6 by 36 percentage points.

7 **SEC. 433. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.**

8 (a) DISALLOWANCE OF DEDUCTION FOR PUNITIVE
9 DAMAGES.—

10 (1) IN GENERAL.—Section 162(g) (relating to
11 treble damage payments under the antitrust laws) is
12 amended—

13 (A) by redesignating paragraphs (1) and
14 (2) as subparagraphs (A) and (B), respectively,
15 (B) by striking “If” and inserting:

16 “(1) TREBLE DAMAGES.—If”, and

17 (C) by adding at the end the following new
18 paragraph:

19 “(2) PUNITIVE DAMAGES.—No deduction shall
20 be allowed under this chapter for any amount paid
21 or incurred for punitive damages in connection with
22 any judgment in, or settlement of, any action. This
23 paragraph shall not apply to punitive damages de-
24 scribed in section 104(c).”.

1 (2) CONFORMING AMENDMENT.—The heading
2 for section 162(g) is amended by inserting “OR PU-
3 NITIVE DAMAGES” after “LAWS”.

4 (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES
5 PAID BY INSURER OR OTHERWISE.—

6 (1) IN GENERAL.—Part II of subchapter B of
7 chapter 1 (relating to items specifically included in
8 gross income) is amended by adding at the end the
9 following new section:

10 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
11 **ANCE OR OTHERWISE.**

12 “Gross income shall include any amount paid to or
13 on behalf of a taxpayer as insurance or otherwise by rea-
14 son of the taxpayer’s liability (or agreement) to pay puni-
15 tive damages.”.

16 (2) REPORTING REQUIREMENTS.—Section 6041
17 (relating to information at source) is amended by
18 adding at the end the following new subsection:

19 “(h) SECTION TO APPLY TO PUNITIVE DAMAGES
20 COMPENSATION.—This section shall apply to payments by
21 a person to or on behalf of another person as insurance
22 or otherwise by reason of the other person’s liability (or
23 agreement) to pay punitive damages.”.

24 (3) CONFORMING AMENDMENT.—The table of
25 sections for part II of subchapter B of chapter 1 is

1 amended by adding at the end the following new
2 item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to damages paid or incurred after
5 December 31, 2011.

6 **TITLE V—UNEMPLOYMENT,**
7 **HEALTH, AND OTHER ASSIST-**
8 **ANCE**

9 **Subtitle A—Unemployment**
10 **Insurance and Other Assistance**

11 **SEC. 501. EXTENSION OF UNEMPLOYMENT INSURANCE**
12 **PROVISIONS.**

13 (a) IN GENERAL.—(1) Section 4007 of the Supple-
14 mental Appropriations Act, 2008 (Public Law 110–252;
15 26 U.S.C. 3304 note) is amended—

16 (A) by striking “June 2, 2010” each place it
17 appears and inserting “November 30, 2010”;

18 (B) in the heading for subsection (b)(2), by
19 striking “JUNE 2, 2010” and inserting “NOVEMBER
20 30, 2010”; and

21 (C) in subsection (b)(3), by striking “November
22 6, 2010” and inserting “April 30, 2011”.

23 (2) Section 2005 of the Assistance for Unemployed
24 Workers and Struggling Families Act, as contained in

1 Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444),
2 is amended—

3 (A) by striking “June 2, 2010” each place it
4 appears and inserting “December 1, 2010”; and

5 (B) in subsection (c), by striking “November 6,
6 2010” and inserting “May 1, 2011”.

7 (3) Section 5 of the Unemployment Compensation
8 Extension Act of 2008 (Public Law 110–449; 26 U.S.C.
9 3304 note) is amended by striking “November 6, 2010”
10 and inserting “April 30, 2011”.

11 (b) FUNDING.—Section 4004(e)(1) of the Supple-
12 mental Appropriations Act, 2008 (Public Law 110–252;
13 26 U.S.C. 3304 note) is amended—

14 (1) in subparagraph (D), by striking “and” at
15 the end; and

16 (2) by inserting after subparagraph (E) the fol-
17 lowing:

18 “(F) the amendments made by section
19 501(a)(1) of the American Jobs and Closing
20 Tax Loopholes Act of 2010; and”.

21 (c) CONDITIONS FOR RECEIVING EMERGENCY UNEM-
22 PLOYMENT COMPENSATION.—Section 4001(d)(2) of the
23 Supplemental Appropriations Act, 2008 (Public Law 110–
24 252; 26 U.S.C. 3304 note) is amended, in the matter pre-
25 ceding subparagraph (A), by inserting before “shall

1 apply” the following: “(including terms and conditions re-
2 lating to availability for work, active search for work, and
3 refusal to accept work)”.

4 (d) **EFFECTIVE DATE.**—The amendments made by
5 this section shall take effect as if included in the enact-
6 ment of the Continuing Extension Act of 2010 (Public
7 Law 111–157).

8 **SEC. 502. COORDINATION OF EMERGENCY UNEMPLOY-**
9 **MENT COMPENSATION WITH REGULAR COM-**
10 **PENSATION.**

11 (a) **CERTAIN INDIVIDUALS NOT INELIGIBLE BY REA-**
12 **SON OF NEW ENTITLEMENT TO REGULAR BENEFITS.**—
13 Section 4002 of the Supplemental Appropriations Act,
14 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is
15 amended by adding at the end the following:

16 “(g) **COORDINATION OF EMERGENCY UNEMPLOY-**
17 **MENT COMPENSATION WITH REGULAR COMPENSA-**
18 **TION.**—

19 “(1) If—

20 “(A) an individual has been determined to
21 be entitled to emergency unemployment com-
22 pensation with respect to a benefit year,

23 “(B) that benefit year has expired,

1 “(C) that individual has remaining entitle-
2 ment to emergency unemployment compensa-
3 tion with respect to that benefit year, and

4 “(D) that individual would qualify for a
5 new benefit year in which the weekly benefit
6 amount of regular compensation is at least ei-
7 ther \$100 or 25 percent less than the individ-
8 ual’s weekly benefit amount in the benefit year
9 referred to in subparagraph (A),
10 then the State shall determine eligibility for com-
11 pensation as provided in paragraph (2).

12 “(2) For individuals described in paragraph (1),
13 the State shall determine whether the individual is
14 to be paid emergency unemployment compensation
15 or regular compensation for a week of unemploy-
16 ment using one of the following methods:

17 “(A) The State shall, if permitted by State
18 law, establish a new benefit year, but defer the
19 payment of regular compensation with respect
20 to that new benefit year until exhaustion of all
21 emergency unemployment compensation payable
22 with respect to the benefit year referred to in
23 paragraph (1)(A);

24 “(B) The State shall, if permitted by State
25 law, defer the establishment of a new benefit

1 year (which uses all the wages and employment
2 which would have been used to establish a ben-
3 efit year but for the application of this para-
4 graph), until exhaustion of all emergency unem-
5 ployment compensation payable with respect to
6 the benefit year referred to in paragraph(1)(A);

7 “(C) The State shall pay, if permitted by
8 State law—

9 “(i) regular compensation equal to the
10 weekly benefit amount established under
11 the new benefit year, and

12 “(ii) emergency unemployment com-
13 pensation equal to the difference between
14 that weekly benefit amount and the weekly
15 benefit amount for the expired benefit
16 year; or

17 “(D) The State shall determine rights to
18 emergency unemployment compensation without
19 regard to any rights to regular compensation if
20 the individual elects to not file a claim for reg-
21 ular compensation under the new benefit year.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to individuals whose benefit years,
24 as described in section 4002(g)(1)(B) the Supplemental
25 Appropriations Act, 2008 (Public Law 110–252; 26

1 U.S.C. 3304 note), as amended by this section, expire
2 after the date of enactment of this Act.

3 **SEC. 503. EXTENSION OF THE EMERGENCY CONTINGENCY**
4 **FUND.**

5 (a) IN GENERAL.—Section 403(c) of the Social Secu-
6 rity Act (42 U.S.C. 603(c)) is amended—

7 (1) in paragraph (2)(A), by inserting “, and for
8 fiscal year 2011, \$2,500,000,000” before “for pay-
9 ment”;

10 (2) by striking paragraph (2)(B) and inserting
11 the following:

12 “(B) AVAILABILITY AND USE OF FUNDS.—

13 “(i) FISCAL YEARS 2009 AND 2010.—

14 The amounts appropriated to the Emer-
15 gency Fund under subparagraph (A) for
16 fiscal year 2009 shall remain available
17 through fiscal year 2010 and shall be used
18 to make grants to States in each of fiscal
19 years 2009 and 2010 in accordance with
20 paragraph (3), except that the amounts
21 shall remain available through fiscal year
22 2011 to make grants and payments to
23 States in accordance with paragraph
24 (3)(C) to cover expenditures to subsidize
25 employment positions held by individuals

1 placed in the positions before fiscal year
2 2011.

3 “(ii) FISCAL YEAR 2011.—Subject to
4 clause (iii), the amounts appropriated to
5 the Emergency Fund under subparagraph
6 (A) for fiscal year 2011 shall remain avail-
7 able through fiscal year 2012 and shall be
8 used to make grants to States based on ex-
9 penditures in fiscal year 2011 for benefits
10 and services provided in fiscal year 2011 in
11 accordance with the requirements of para-
12 graph (3).

13 “(iii) RESERVATION OF FUNDS.—Of
14 the amounts appropriated to the Emer-
15 gency Fund under subparagraph (A) for
16 fiscal year 2011, \$500,000 shall be placed
17 in reserve for use in fiscal year 2012, and
18 shall be used to award grants for any ex-
19 penditures described in this subsection in-
20 curred by States after September 30,
21 2011.”;

22 (3) in paragraph (2)(C), by striking “2010”
23 and inserting “2012”;

24 (4) in paragraph (3)—

1 (A) in clause (i) of each of subparagraphs
2 (A), (B), and (C)—

3 (i) by striking “year 2009 or 2010”
4 and inserting “years 2009 through 2011”;
5 (ii) by striking “and” at the end of
6 subclause (I);

7 (iii) by striking the period at the end
8 of subclause (II) and inserting “; and”;
9 and

10 (iv) by adding at the end the fol-
11 lowing:

12 “(III) if the quarter is in fiscal
13 year 2011, has provided the Secretary
14 with such information as the Sec-
15 retary may find necessary in order to
16 make the determinations, or take any
17 other action, described in paragraph
18 (5)(C).”; and

19 (B) in subparagraph (C), by adding at the
20 end the following:

21 “(iv) LIMITATION ON EXPENDITURES
22 FOR SUBSIDIZED EMPLOYMENT.—An ex-
23 penditure for subsidized employment shall
24 be taken into account under clause (ii)

1 only if the expenditure is used to subsidize
2 employment for—

3 “(I) a member of a needy family
4 (without regard to whether the family
5 is receiving assistance under the State
6 program funded under this part); or

7 “(II) an individual who has ex-
8 hausted (or, within 60 days, will ex-
9 haust) all rights to receive unemploy-
10 ment compensation under Federal and
11 State law, and who is a member of a
12 needy family.”;

13 (5) by striking paragraph (5) and inserting the
14 following:

15 “(5) LIMITATIONS ON PAYMENTS; ADJUSTMENT
16 AUTHORITY.—

17 “(A) FISCAL YEARS 2009 AND 2010.—The
18 total amount payable to a single State under
19 subsection (b) and this subsection for fiscal
20 years 2009 and 2010 combined shall not exceed
21 50 percent of the annual State family assist-
22 ance grant.

23 “(B) FISCAL YEAR 2011.—Subject to sub-
24 paragraph (C), the total amount payable to a
25 single State under subsection (b) and this sub-

1 section for fiscal year 2011 shall not exceed 30
2 percent of the annual State family assistance
3 grant.

4 “(C) ADJUSTMENT AUTHORITY.—If the
5 Secretary determines that the Emergency Fund
6 is at risk of being depleted before September
7 30, 2011, or that funds are available to accom-
8 modate additional State requests under this
9 subsection, the Secretary may, through program
10 instructions issued without regard to the re-
11 quirements of section 553 of title 5, United
12 States Code—

13 “(i) specify priority criteria for award-
14 ing grants to States during fiscal year
15 2011; and

16 “(ii) adjust the percentage limitation
17 applicable under subparagraph (B) with
18 respect to the total amount payable to a
19 single State for fiscal year 2011.”; and

20 (6) in paragraph (6), by inserting “or for ex-
21 penditures described in paragraph (3)(C)(iv)” before
22 the period.

23 (b) CONFORMING AMENDMENTS.—Section 2101 of
24 division B of the American Recovery and Reinvestment
25 Act of 2009 (Public Law 111–5) is amended—

1 (1) in subsection (a)(2)—

2 (A) by striking “2010” and inserting
3 “2011”; and

4 (B) by striking all that follows “repealed”
5 and inserting a period; and

6 (2) in subsection (d)(1), by striking “2010”
7 and inserting “2011”.

8 (c) PROGRAM GUIDANCE.—The Secretary of Health
9 and Human Services shall issue program guidance, with-
10 out regard to the requirements of section 553 of title 5,
11 United States Code, which ensures that the funds provided
12 under the amendments made by this section to a jurisdic-
13 tion for subsidized employment do not support any sub-
14 sidized employment position the annual salary of which
15 is greater than, at State option—

16 (1) 200 percent of the poverty line (within the
17 meaning of section 673(2) of the Omnibus Budget
18 Reconciliation Act of 1981, including any revision
19 required by such section 673(2)) for a family of 4;
20 or

21 (2) the median wage in the jurisdiction.

1 **SEC. 504. REQUIRING STATES TO NOT REDUCE REGULAR**
2 **COMPENSATION IN ORDER TO BE ELIGIBLE**
3 **FOR FUNDS UNDER THE EMERGENCY UNEM-**
4 **PLOYMENT COMPENSATION PROGRAM.**

5 Section 4001 of the Supplemental Appropriations
6 Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note)
7 is amended by adding at the end the following new sub-
8 section:

9 “(g) NONREDUCTION RULE.—An agreement under
10 this section shall not apply (or shall cease to apply) with
11 respect to a State upon a determination by the Secretary
12 that the method governing the computation of regular
13 compensation under the State law of that State has been
14 modified in a manner such that—

15 “(1) the average weekly benefit amount of reg-
16 ular compensation which will be payable during the
17 period of the agreement occurring on or after June
18 2, 2010 (determined disregarding any additional
19 amounts attributable to the modification described
20 in section 2002(b)(1) of the Assistance for Unem-
21 ployed Workers and Struggling Families Act, as con-
22 tained in Public Law 111–5 (26 U.S.C. 3304 note;
23 123 Stat. 438)), will be less than

24 “(2) the average weekly benefit amount of reg-
25 ular compensation which would otherwise have been

1 payable during such period under the State law, as
2 in effect on June 2, 2010.”.

3 **Subtitle B—Health Provisions**

4 **SEC. 511. EXTENSION OF SECTION 508 RECLASSIFICATIONS.**

5 (a) IN GENERAL.—Section 106(a) of division B of
6 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
7 1395 note), as amended by section 117 of the Medicare,
8 Medicaid, and SCHIP Extension Act of 2007 (Public Law
9 110–173), section 124 of the Medicare Improvements for
10 Patients and Providers Act of 2008 (Public Law 110–
11 275), and sections 3137(a) and 10317 of Public Law 111–
12 148, is amended by striking “September 30, 2010” and
13 inserting “September 30, 2011”.

14 (b) CONFORMING AMENDMENT.—Section 117(a)(3)
15 of the Medicare, Medicaid, and SCHIP Extension Act of
16 2007 (Public Law 110–173)), is amended by inserting “in
17 fiscal years 2008 and 2009” after “For purposes of imple-
18 mentation of this subsection”.

19 **SEC. 512. REPEAL OF DELAY OF RUG-IV.**

20 Effective as if included in the enactment of Public
21 Law 111–148, section 10325 of such Act is repealed.

1 **SEC. 513. LIMITATION ON REASONABLE COSTS PAYMENTS**
2 **FOR CERTAIN CLINICAL DIAGNOSTIC LAB-**
3 **ORATORY TESTS FURNISHED TO HOSPITAL**
4 **PATIENTS IN CERTAIN RURAL AREAS.**

5 Section 3122 of Public Law 111–148 is repealed and
6 the provision of law amended by such section is restored
7 as if such section had not been enacted.

8 **SEC. 514. FUNDING FOR CLAIMS REPROCESSING.**

9 For purposes of carrying out the provisions of, and
10 amendments made by, this Act that relate to title XVIII
11 of the Social Security Act, and other provisions of such
12 title that involve reprocessing of claims, there are appro-
13 priated to the Secretary of Health and Human Services
14 for the Centers for Medicare & Medicaid Services Program
15 Management Account, from amounts in the general fund
16 of the Treasury not otherwise appropriated,
17 \$175,000,000. Amounts appropriated under the preceding
18 sentence shall remain available until expended.

19 **SEC. 515. MEDICAID AND CHIP TECHNICAL CORRECTIONS.**

20 (a) **REPEAL OF EXCLUSION OF CERTAIN INDIVID-**
21 **UALS AND ENTITIES FROM MEDICAID.**—Section 6502 of
22 Public Law 111–148 is repealed and the provisions of law
23 amended by such section are restored as if such section
24 had never been enacted. Nothing in the previous sentence
25 shall affect the execution or placement of the insertion
26 made by section 6503 of such Act.

1 (b) INCOME LEVEL FOR CERTAIN CHILDREN UNDER
2 MEDICAID.—Effective as if included in the enactment of
3 Public Law 111–148, section 2001(a)(5)(B) of such Act
4 is amended by striking all that follows “is amended” and
5 inserting the following: “by inserting after ‘100 percent’
6 the following: ‘(or, beginning January 1, 2014, 133 per-
7 cent)’.”.

8 (c) CALCULATION AND PUBLICATION OF PAYMENT
9 ERROR RATE MEASUREMENT FOR CERTAIN YEARS.—
10 Section 601(b) of the Children’s Health Insurance Pro-
11 gram Reauthorization Act of 2009 (Public Law 111–3)
12 is amended by adding at the end the following: “The Sec-
13 retary is not required under this subsection to calculate
14 or publish a national or a State-specific error rate for fis-
15 cal year 2009 or fiscal year 2010.”.

16 (d) CORRECTIONS TO EXCEPTIONS TO EXCLUSION
17 OF CHILDREN OF CERTAIN EMPLOYEES.—Section
18 2110(b)(6) of the Social Security Act (42 U.S.C.
19 1397jj(b)(6)) is amended—

20 (1) in subparagraph (B)—

21 (A) by striking “PER PERSON” in the
22 heading; and

23 (B) by striking “each employee” and in-
24 serting “employees”; and

1 (2) in subparagraph (C), by striking “, on a
2 case-by-case basis,”.

3 (e) ELECTRONIC HEALTH RECORDS.—Effective as if
4 included in the enactment of section 4201(a)(2) of the
5 American Recovery and Reinvestment Act of 2009 (Public
6 Law 111–5), section 1903(t) of the Social Security Act
7 (42 U.S.C. 1396b(t)) is amended—

8 (1) in paragraph (3)(E), by striking “reduced
9 by any payment that is made to such Medicaid pro-
10 vider from any other source (other than under this
11 subsection or by a State or local government)” and
12 inserting “reduced by the average payment the Sec-
13 retary estimates will be made to such Medicaid pro-
14 viders (determined on a percentage or other basis
15 for such classes or types of providers as the Sec-
16 retary may specify) from other sources (other than
17 under this subsection, or by the Federal government
18 or a State or local government)”; and

19 (2) in paragraph (6)(B), by inserting before the
20 period the following: “and shall be determined to
21 have met such responsibility to the extent that the
22 payment to the Medicaid provider is not in excess of
23 85 percent of the net average allowable cost”.

24 (f) CORRECTIONS OF DESIGNATIONS.—

1 (1) Section 1902 of the Social Security Act (42
2 U.S.C. 1396a) is amended—

3 (A) in subsection (a)(10), in the matter
4 following subparagraph (G), by striking “and”
5 before “(XVI) the medical” and by striking
6 “(XVI) if” and inserting “(XVII) if”; and

7 (B) in subsection (ii)(2), by striking
8 “(XV)” and inserting “(XVI)”.

9 (2) Section 2107(e)(1) of the Social Security
10 Act (42 U.S.C. 1397gg(e)(1)) is amended by redес-
11 ignating the subparagraph (N) of that section added
12 by 2101(e) of Public Law 111–148 as subparagraph
13 (O).

14 **SEC. 516. ADDITION OF INPATIENT DRUG DISCOUNT PRO-**
15 **GRAM TO 340B DRUG DISCOUNT PROGRAM.**

16 (a) ADDITION OF INPATIENT DRUG DISCOUNT.—
17 Title III of the Public Health Service Act is amended by
18 inserting after section 340B (42 U.S.C. 256b) the fol-
19 lowing:

20 **“SEC. 340B–1. DISCOUNT INPATIENT DRUGS FOR INDIVID-**
21 **UALS WITHOUT PRESCRIPTION DRUG COV-**
22 **ERAGE.**

23 “(a) REQUIREMENTS FOR AGREEMENTS WITH THE
24 SECRETARY.—

25 “(1) IN GENERAL.—

1 “(A) AGREEMENT.—The Secretary shall
2 enter into an agreement with each manufac-
3 turer of covered inpatient drugs under which
4 the amount required to be paid (taking into ac-
5 count any rebate or discount, as provided by
6 the Secretary) to the manufacturer for covered
7 inpatient drugs (other than drugs described in
8 paragraph (3)) purchased by a covered entity
9 on or after January 1, 2011, does not exceed
10 an amount equal to the average manufacturer
11 price for the drug under title XIX of the Social
12 Security Act in the preceding calendar quarter,
13 reduced by the rebate percentage described in
14 paragraph (2). For a covered inpatient drug
15 that also is a covered outpatient drug under
16 section 340B, the amount required to be paid
17 under the preceding sentence shall be equal to
18 the amount required to be paid under section
19 340B(a)(1) for such drug. The agreement with
20 a manufacturer under this subparagraph may,
21 at the discretion of the Secretary, be included
22 in the agreement with the same manufacturer
23 under section 340B.

24 “(B) CEILING PRICE.—Each such agree-
25 ment shall require that the manufacturer fur-

1 nish the Secretary with reports, on a quarterly
2 basis, of the price for each covered inpatient
3 drug subject to the agreement that, according
4 to the manufacturer, represents the maximum
5 price that covered entities may permissibly be
6 required to pay for the drug (referred to in this
7 section as the ‘ceiling price’), and shall require
8 that the manufacturer offer each covered entity
9 covered inpatient drugs for purchase at or
10 below the applicable ceiling price if such drug
11 is made available to any other purchaser at any
12 price.

13 “(C) ALLOCATION METHOD.—Each such
14 agreement shall require that, if the supply of a
15 covered inpatient drug is insufficient to meet
16 demand, then the manufacturer may use an al-
17 location method that is reported in writing to,
18 and approved by, the Secretary and does not
19 discriminate on the basis of the price paid by
20 covered entities or on any other basis related to
21 the participation of an entity in the program
22 under this section.

23 “(2) REBATE PERCENTAGE DEFINED.—

24 “(A) IN GENERAL.—For a covered inpa-
25 tient drug purchased in a calendar quarter, the

1 ‘rebate percentage’ is the amount (expressed as
2 a percentage) equal to—

3 “(i) the average total rebate required
4 under section 1927(c) of the Social Secu-
5 rity Act (or the average total rebate that
6 would be required if the drug were a cov-
7 ered outpatient drug under such section)
8 with respect to the drug (for a unit of the
9 dosage form and strength involved) during
10 the preceding calendar quarter; divided by

11 “(ii) the average manufacturer price
12 for such a unit of the drug during such
13 quarter.

14 “(B) OVER THE COUNTER DRUGS.—

15 “(i) IN GENERAL.—For purposes of
16 subparagraph (A), in the case of over the
17 counter drugs, the ‘rebate percentage’ shall
18 be determined as if the rebate required
19 under section 1927(c) of the Social Secu-
20 rity Act is based on the applicable percent-
21 age provided under section 1927(c)(3) of
22 such Act.

23 “(ii) DEFINITION.—The term ‘over
24 the counter drug’ means a drug that may
25 be sold without a prescription and which is

1 prescribed by a physician (or other persons
2 authorized to prescribe such drug under
3 State law).

4 “(3) DRUGS PROVIDED UNDER STATE MED-
5 ICAID PLANS.—Drugs described in this paragraph
6 are drugs purchased by the entity for which payment
7 is made by the State under the State plan for med-
8 ical assistance under title XIX of the Social Security
9 Act.

10 “(4) REQUIREMENTS FOR COVERED ENTI-
11 TIES.—

12 “(A) PROHIBITING DUPLICATE DISCOUNTS
13 OR REBATES.—

14 “(i) IN GENERAL.—A covered entity
15 shall not request payment under title XIX
16 of the Social Security Act for medical as-
17 sistance described in section 1905(a)(12)
18 of such Act with respect to a drug that is
19 subject to an agreement under this section
20 if the drug is subject to the payment of a
21 rebate to the State under section 1927 of
22 such Act.

23 “(ii) ESTABLISHMENT OF MECHA-
24 NISM.—The Secretary shall establish a
25 mechanism to ensure that covered entities

1 comply with clause (i). If the Secretary
2 does not establish a mechanism under the
3 previous sentence within 12 months of the
4 enactment of this section, the requirements
5 of section 1927(a)(5)(C) of the Social Se-
6 curity Act shall apply.

7 “(iii) PROHIBITING DISCLOSURE TO
8 GROUP PURCHASING ORGANIZATIONS.—In
9 the event that a covered entity is a mem-
10 ber of a group purchasing organization,
11 such entity shall not disclose the price or
12 any other information pertaining to any
13 purchases under this section directly or in-
14 directly to such group purchasing organi-
15 zation.

16 “(B) PROHIBITING RESALE, DISPENSING,
17 OR ADMINISTRATION OF DRUGS EXCEPT TO
18 CERTAIN PATIENTS.—With respect to any cov-
19 ered inpatient drug that is subject to an agree-
20 ment under this subsection, a covered entity
21 shall not dispense, administer, resell, or other-
22 wise transfer the covered inpatient drug to a
23 person unless—

24 “(i) such person is a patient of the
25 entity; and

1 “(ii) such person does not have health
2 plan coverage (as defined in subsection
3 (c)(3)) that provides prescription drug cov-
4 erage in the inpatient setting with respect
5 to such covered inpatient drug.

6 For purposes of clause (ii), a person shall be
7 treated as having health plan coverage (as de-
8 fined in subsection (c)(3)) with respect to a cov-
9 ered inpatient drug if benefits are not payable
10 under such coverage with respect to such drug
11 for reasons such as the application of a deduct-
12 ible or cost sharing or the use of utilization
13 management.

14 “(C) AUDITING.—A covered entity shall
15 permit the Secretary and the manufacturer of a
16 covered inpatient drug that is subject to an
17 agreement under this subsection with the entity
18 (acting in accordance with procedures estab-
19 lished by the Secretary relating to the number,
20 duration, and scope of audits) to audit at the
21 Secretary’s or the manufacturer’s expense the
22 records of the entity that directly pertain to the
23 entity’s compliance with the requirements de-
24 scribed in subparagraph (A) or (B) with respect
25 to drugs of the manufacturer. The use or dis-

1 closure of information for performance of such
2 an audit shall be treated as a use or disclosure
3 required by law for purposes of section
4 164.512(a) of title 45, Code of Federal Regula-
5 tions.

6 “(D) ADDITIONAL SANCTION FOR NON-
7 COMPLIANCE.—If the Secretary finds, after no-
8 tice and hearing, that a covered entity is in vio-
9 lation of a requirement described in subpara-
10 graph (A) or (B), the covered entity shall be
11 liable to the manufacturer of the covered inpa-
12 tient drug that is the subject of the violation in
13 an amount equal to the reduction in the price
14 of the drug (as described in subparagraph (A))
15 provided under the agreement between the Sec-
16 retary and the manufacturer under this sub-
17 section.

18 “(E) MAINTENANCE OF RECORDS.—

19 “(i) IN GENERAL.—A covered entity
20 shall establish and maintain an effective
21 recordkeeping system to comply with this
22 section and shall certify to the Secretary
23 that such entity is in compliance with sub-
24 paragraphs (A) and (B). The Secretary
25 shall require that hospitals that purchase

1 covered inpatient drugs for inpatient dis-
2 pensing or administration under this sub-
3 section appropriately segregate inventory
4 of such covered inpatient drugs, either
5 physically or electronically, from drugs for
6 outpatient use, as well as from drugs for
7 inpatient dispensing or administration to
8 individuals who have (for purposes of sub-
9 paragraph (B)) health plan coverage de-
10 scribed in clause (ii) of such subparagraph.

11 “(ii) CERTIFICATION OF NO THIRD-
12 PARTY PAYER.—A covered entity shall
13 maintain records that contain certification
14 by the covered entity that no third party
15 payment was received for any covered in-
16 patient drug that is subject to an agree-
17 ment under this subsection and that was
18 dispensed to an inpatient.

19 “(5) TREATMENT OF DISTINCT UNITS OF HOS-
20 PITALS.—In the case of a covered entity that is a
21 distinct part of a hospital, the distinct part of the
22 hospital shall not be considered a covered entity
23 under this subsection unless the hospital is otherwise
24 a covered entity under this subsection.

1 “(6) NOTICE TO MANUFACTURERS.—The Sec-
2 retary shall notify manufacturers of covered inpa-
3 tient drugs and single State agencies under section
4 1902(a)(5) of the Social Security Act of the identi-
5 ties of covered entities under this subsection, and of
6 entities that no longer meet the requirements of
7 paragraph (4), by means of timely updates of the
8 Internet website supported by the Department of
9 Health and Human Services relating to this section.

10 “(7) NO PROHIBITION ON LARGER DISCOUNT.—
11 Nothing in this subsection shall prohibit a manufac-
12 turer from charging a price for a drug that is lower
13 than the maximum price that may be charged under
14 paragraph (1).

15 “(b) COVERED ENTITY DEFINED.—In this section,
16 the term ‘covered entity’ means an entity that meets the
17 requirements described in subsection (a)(4) and is one of
18 the following:

19 “(1) A subsection (d) hospital (as defined in
20 section 1886(d)(1)(B) of the Social Security Act)
21 that—

22 “(A) is owned or operated by a unit of
23 State or local government, is a public or private
24 non-profit corporation which is formally granted
25 governmental powers by a unit of State or local

1 government, or is a private nonprofit hospital
2 which has a contract with a State or local gov-
3 ernment to provide health care services to low
4 income individuals who are not entitled to bene-
5 fits under title XVIII of the Social Security Act
6 or eligible for assistance under the State plan
7 for medical assistance under title XIX of such
8 Act; and

9 “(B) for the most recent cost reporting pe-
10 riod that ended before the calendar quarter in-
11 volved, had a disproportionate share adjustment
12 percentage (as determined using the method-
13 ology under section 1886(d)(5)(F) of the Social
14 Security Act as in effect on the date of enact-
15 ment of this section) greater than 20.20 percent
16 or was described in section 1886(d)(5)(F)(i)(II)
17 of such Act (as so in effect on the date of en-
18 actment of this section).

19 “(2) A children’s hospital excluded from the
20 Medicare prospective payment system pursuant to
21 section 1886(d)(1)(B)(iii) of the Social Security Act
22 that would meet the requirements of paragraph (1),
23 including the disproportionate share adjustment per-
24 centage requirement under subparagraph (B) of
25 such paragraph, if the hospital were a subsection (d)

1 hospital as defined by section 1886(d)(1)(B) of the
2 Social Security Act.

3 “(3) A free-standing cancer hospital excluded
4 from the Medicare prospective payment system pur-
5 suant to section 1886(d)(1)(B)(v) of the Social Se-
6 curity Act that would meet the requirements of
7 paragraph (1), including the disproportionate share
8 adjustment percentage requirement under subpara-
9 graph (B) of such paragraph, if the hospital were a
10 subsection (d) hospital as defined by section
11 1886(d)(1)(B) of the Social Security Act.

12 “(4) An entity that is a critical access hospital
13 (as determined under section 1820(c)(2) of the So-
14 cial Security Act), and that meets the requirements
15 of paragraph (1)(A).

16 “(5) An entity that is a rural referral center, as
17 defined by section 1886(d)(5)(C)(i) of the Social Se-
18 curity Act, or a sole community hospital, as defined
19 by section 1886(d)(5)(C)(iii) of such Act, and that
20 both meets the requirements of paragraph (1)(A)
21 and has a disproportionate share adjustment per-
22 centage equal to or greater than 8 percent.

23 “(c) OTHER DEFINITIONS.—In this section:

24 “(1) AVERAGE MANUFACTURER PRICE.—

1 “(A) IN GENERAL.—The term ‘average
2 manufacturer price’—

3 “(i) has the meaning given such term
4 in section 1927(k) of the Social Security
5 Act, except that such term shall be applied
6 under this section with respect to covered
7 inpatient drugs in the same manner (as
8 applicable) as such term is applied under
9 such section 1927(k) with respect to cov-
10 ered outpatient drugs (as defined in such
11 section); and

12 “(ii) with respect to a covered inpa-
13 tient drug for which there is no average
14 manufacturer price (as defined in clause
15 (i)), shall be the amount determined under
16 regulations promulgated by the Secretary
17 under subparagraph (B).

18 “(B) RULEMAKING.—The Secretary shall
19 by regulation, in consultation with the Adminis-
20 trator of the Centers for Medicare & Medicaid
21 Services, establish a method for determining the
22 average manufacturer price for covered inpa-
23 tient drugs for which there is no average manu-
24 facturer price (as defined in subparagraph
25 (A)(i)). Regulations promulgated with respect

1 to covered inpatient drugs under the preceding
2 sentence shall provide for the application of
3 methods for determining the average manufac-
4 turer price that are the same as the methods
5 used to determine such price in calculating re-
6 bates required for such drugs under an agree-
7 ment between a manufacturer and a State that
8 satisfies the requirements of section 1927(b) of
9 the Social Security Act, as applicable.

10 “(2) COVERED INPATIENT DRUG.—The term
11 ‘covered inpatient drug’ means a drug—

12 “(A) that is described in section
13 1927(k)(2) of the Social Security Act;

14 “(B) that, notwithstanding paragraph
15 (3)(A) of section 1927(k) of such Act, is used
16 in connection with an inpatient service provided
17 by a covered entity that is enrolled to partici-
18 pate in the drug discount program under this
19 section; and

20 “(C) that is not purchased by the covered
21 entity through or under contract with a group
22 purchasing organization.

23 “(3) HEALTH PLAN COVERAGE.—The term
24 ‘health plan coverage’ means—

1 “(A) health insurance coverage (as defined
2 in section 2791, and including coverage under
3 a State health benefits risk pool);

4 “(B) coverage under a group health plan
5 (as defined in such section, and including cov-
6 erage under a church plan, a governmental
7 plan, or a collectively bargained plan);

8 “(C) coverage under a Federal health care
9 program (as defined by section 1128B(f) of the
10 Social Security Act); or

11 “(D) such other health benefits coverage
12 as the Secretary recognizes for purposes of this
13 section.

14 “(4) MANUFACTURER.—The term ‘manufac-
15 turer’ has the meaning given such term in section
16 1927(k) of the Social Security Act.

17 “(d) PROGRAM INTEGRITY.—

18 “(1) MANUFACTURER COMPLIANCE.—

19 “(A) IN GENERAL.—From amounts appro-
20 priated under subsection (f), the Secretary shall
21 provide for improvements in compliance by
22 manufacturers with the requirements of this
23 section in order to prevent overcharges and
24 other violations of the discounted pricing re-
25 quirements specified in this section.

1 “(B) IMPROVEMENTS.—The improvements
2 described in subparagraph (A) shall include the
3 following:

4 “(i) The establishment of a process to
5 enable the Secretary to verify the accuracy
6 of ceiling prices calculated by manufactur-
7 ers under subsection (a)(1) and charged to
8 covered entities, which shall include the
9 following:

10 “(I) Developing and publishing
11 through an appropriate policy or regu-
12 latory issuance, precisely defined
13 standards and methodology for the
14 calculation of ceiling prices under
15 such subsection.

16 “(II) Comparing regularly the
17 ceiling prices calculated by the Sec-
18 retary with the quarterly pricing data
19 that is reported by manufacturers to
20 the Secretary.

21 “(III) Conducting periodic moni-
22 toring of sales transactions by covered
23 entities.

24 “(IV) Inquiring into any discrep-
25 ancies between ceiling prices and

1 manufacturer pricing data that may
2 be identified and taking, or requiring
3 manufacturers to take, corrective ac-
4 tion in response to such discrepancies,
5 including the issuance of refunds pur-
6 suant to the procedures set forth in
7 clause (ii).

8 “(ii) The establishment of procedures
9 for manufacturers to issue refunds to cov-
10 ered entities in the event that there is an
11 overcharge by the manufacturers, including
12 the following:

13 “(I) Providing the Secretary with
14 an explanation of why and how the
15 overcharge occurred, how the refunds
16 will be calculated, and to whom the
17 refunds will be issued.

18 “(II) Oversight by the Secretary
19 to ensure that the refunds are issued
20 accurately and within a reasonable pe-
21 riod of time.

22 “(iii) The provision of access through
23 the Internet website supported by the De-
24 partment of Health and Human Services
25 to the applicable ceiling prices for covered

1 inpatient drugs as calculated and verified
2 by the Secretary in accordance with this
3 section, in a manner (such as through the
4 use of password protection) that limits
5 such access to covered entities and ade-
6 quately assures security and protection of
7 privileged pricing data from unauthorized
8 re-disclosure.

9 “(iv) The development of a mecha-
10 nism by which—

11 “(I) rebates, discounts, or other
12 price concessions provided by manu-
13 facturers to other purchasers subse-
14 quent to the sale of covered inpatient
15 drugs to covered entities are reported
16 to the Secretary; and

17 “(II) appropriate credits and re-
18 funds are issued to covered entities if
19 such discounts, rebates, or other price
20 concessions have the effect of lowering
21 the applicable ceiling price for the rel-
22 evant quarter for the drugs involved.

23 “(v) Selective auditing of manufactur-
24 ers and wholesalers to ensure the integrity

1 of the drug discount program under this
2 section.

3 “(vi) The establishment of a require-
4 ment that manufacturers and wholesalers
5 use the identification system developed by
6 the Secretary for purposes of facilitating
7 the ordering, purchasing, and delivery of
8 covered inpatient drugs under this section,
9 including the processing of chargebacks for
10 such drugs.

11 “(vii) The imposition of sanctions in
12 the form of civil monetary penalties,
13 which—

14 “(I) shall be assessed according
15 to standards and procedures estab-
16 lished in regulations to be promul-
17 gated by the Secretary not later than
18 January 1, 2011;

19 “(II) shall not exceed \$10,000
20 per single dosage form of a covered
21 inpatient drug purchased by a covered
22 entity where a manufacturer know-
23 ingly charges such covered entity a
24 price for such drug that exceeds the

1 ceiling price under subsection (a)(1);
2 and

3 “(III) shall not exceed \$100,000
4 for each instance where a manufac-
5 turer withholds or provides materially
6 false information to the Secretary or
7 to covered entities under this section
8 or knowingly violates any provision of
9 this section (other than subsection
10 (a)(1)).

11 “(2) COVERED ENTITY COMPLIANCE.—

12 “(A) IN GENERAL.—From amounts appro-
13 priated under subsection (f), the Secretary shall
14 provide for improvements in compliance by cov-
15 ered entities with the requirements of this sec-
16 tion in order to prevent diversion and violations
17 of the duplicate discount provision and other re-
18 quirements specified under subsection (a)(4).

19 “(B) IMPROVEMENTS.—The improvements
20 described in subparagraph (A) shall include the
21 following:

22 “(i) The development of procedures to
23 enable and require covered entities to up-
24 date at least annually the information on
25 the Internet website supported by the De-

1 partment of Health and Human Services
2 relating to this section.

3 “(ii) The development of procedures
4 for the Secretary to verify the accuracy of
5 information regarding covered entities that
6 is listed on the website described in clause
7 (i).

8 “(iii) The development of more de-
9 tailed guidance describing methodologies
10 and options available to covered entities for
11 billing covered inpatient drugs to State
12 Medicaid agencies in a manner that avoids
13 duplicate discounts pursuant to subsection
14 (a)(4)(A).

15 “(iv) The establishment of a single,
16 universal, and standardized identification
17 system by which each covered entity site
18 and each covered entity’s purchasing sta-
19 tus under sections 340B and this section
20 can be identified by manufacturers, dis-
21 tributors, covered entities, and the Sec-
22 retary for purposes of facilitating the or-
23 dering, purchasing, and delivery of covered
24 inpatient drugs under this section, includ-

1 ing the processing of chargebacks for such
2 drugs.

3 “(v) The imposition of sanctions in
4 the form of civil monetary penalties,
5 which—

6 “(I) shall be assessed according
7 to standards and procedures estab-
8 lished in regulations promulgated by
9 the Secretary; and

10 “(II) shall not exceed \$10,000
11 for each instance where a covered en-
12 tity knowingly violates subsection
13 (a)(4)(B) or knowingly violates any
14 other provision of this section.

15 “(vi) The termination of a covered en-
16 tity’s participation in the program under
17 this section, for a period of time to be de-
18 termined by the Secretary, in cases in
19 which the Secretary determines, in accord-
20 ance with standards and procedures estab-
21 lished by regulation, that—

22 “(I) the violation by a covered
23 entity of a requirement of this section
24 was repeated and knowing; and

1 “(II) imposition of a monetary
2 penalty would be insufficient to rea-
3 sonably ensure compliance with the
4 requirements of this section.

5 “(vii) The referral of matters, as ap-
6 propriate, to the Food and Drug Adminis-
7 tration, the Office of the Inspector General
8 of the Department of Health and Human
9 Services, or other Federal or State agen-
10 cies.

11 “(3) ADMINISTRATIVE DISPUTE RESOLUTION
12 PROCESS.—From amounts appropriated under sub-
13 section (f), the Secretary may establish and imple-
14 ment an administrative process for the resolution of
15 the following:

16 “(A) Claims by covered entities that manu-
17 facturers have violated the terms of their agree-
18 ment with the Secretary under subsection
19 (a)(1).

20 “(B) Claims by manufacturers that cov-
21 ered entities have violated subsection (a)(4)(A)
22 or (a)(4)(B).

23 “(e) AUDIT AND SANCTIONS.—

24 “(1) AUDIT.—From amounts appropriated
25 under subsection (f), the Inspector General of the

1 Department of Health and Human Services (re-
2 ferred to in this subsection as the ‘Inspector Gen-
3 eral’) shall audit covered entities under this section
4 to verify compliance with criteria for eligibility and
5 participation under this section, including the
6 antidiversion prohibitions under subsection
7 (a)(4)(B), and take enforcement action or provide
8 information to the Secretary who shall take action to
9 ensure program compliance, as appropriate. A cov-
10 ered entity shall provide to the Inspector General,
11 upon request, records relevant to such audits.

12 “(2) REPORT.—For each audit conducted under
13 paragraph (1), the Inspector General shall prepare
14 and publish in a timely manner a report which shall
15 include findings and recommendations regarding—

16 “(A) the appropriateness of covered entity
17 eligibility determinations and, as applicable,
18 certifications;

19 “(B) the effectiveness of antidiversion pro-
20 hibitions; and

21 “(C) the effectiveness of restrictions on in-
22 patient dispensing and administration.

23 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to carry out this section

1 such sums as may be necessary for fiscal year 2011 and
2 each succeeding fiscal year.”.

3 (b) RULEMAKING.—Not later than January 1, 2011,
4 the Secretary shall promulgate regulations implementing
5 section 340B–1 of the Public Health Service Act (as added
6 by subsection (a)).

7 (c) CONFORMING AMENDMENT TO SECTION 340B.—
8 Paragraph (1) of section 340B(a) of the Public Health
9 Service Act (42 U.S.C. 256b(a)) is amended by adding
10 at the end the following: “Such agreement shall further
11 require that, if the supply of a covered outpatient drug
12 is insufficient to meet demand, then the manufacturer
13 may use an allocation method that is reported in writing
14 to, and approved by, the Secretary and does not discrimi-
15 nate on the basis of the price paid by covered entities or
16 on any other basis related to the participation of an entity
17 in the program under this section. The agreement with
18 a manufacturer under this paragraph may, at the discre-
19 tion of the Secretary, be included in the agreement with
20 the same manufacturer under section 340B–1.”.

21 (d) CONFORMING AMENDMENTS TO MEDICAID.—
22 Section 1927 of the Social Security Act (42 U.S.C. 1396r–
23 8) is amended—

24 (1) in subsection (a)—

1 (A) in paragraph (1), in the first sentence,
2 by striking “and paragraph (6)” and inserting
3 “, paragraph (6), and paragraph (8)”; and

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

6 “(8) LIMITATION ON PRICES OF DRUGS PUR-
7 CHASED BY 340B–1-COVERED ENTITIES.—

8 “(A) AGREEMENT WITH SECRETARY.—A
9 manufacturer meets the requirements of this
10 paragraph if the manufacturer has entered into
11 an agreement with the Secretary that meets the
12 requirements of section 340B–1 of the Public
13 Health Service Act with respect to covered in-
14 patient drugs (as defined in such section) pur-
15 chased by a 340B–1-covered entity on or after
16 January 1, 2011.

17 “(B) 340B–1-COVERED ENTITY DE-
18 FINED.—In this subsection, the term ‘340B–1-
19 covered entity’ means an entity described in
20 section 340B–1(b) of the Public Health Service
21 Act.”; and

22 (2) in subsection (c)(1)(C)(i)(I)—

23 (A) by striking “or” before “a covered en-
24 tity”; and

1 (B) by inserting before the semicolon the
2 following: “, or a covered entity for a covered
3 inpatient drug (as such terms are defined in
4 section 340B–1 of the Public Health Service
5 Act)”.
6

6 **SEC. 517. CONTINUED INCLUSION OF ORPHAN DRUGS IN**
7 **DEFINITION OF COVERED OUTPATIENT**
8 **DRUGS WITH RESPECT TO CHILDREN’S HOS-**
9 **PITALS UNDER THE 340B DRUG DISCOUNT**
10 **PROGRAM.**

11 (a) DEFINITION OF COVERED OUTPATIENT DRUG.—

12 (1) AMENDMENT.—Subsection (e) of section
13 340B of the Public Health Service Act (42 U.S.C.
14 256b) is amended by striking “covered entities de-
15 scribed in subparagraph (M)” and inserting “covered
16 entities described in subparagraph (M) (other than
17 a children’s hospital described in subparagraph
18 (M))”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall take effect as if included in
21 the enactment of section 2302 of the Health Care
22 and Education Reconciliation Act of 2010 (Public
23 Law 111–152).

24 (b) TECHNICAL AMENDMENT.—Subparagraph (B) of
25 section 1927(a)(5) of the Social Security Act (42 U.S.C.

1 1396r–8(a)(5)) is amended by striking “and a children’s
2 hospital” and all that follows through the end of the sub-
3 paragraph and inserting a period.

4 **SEC. 518. CONFORMING AMENDMENT RELATED TO WAIVER**
5 **OF COINSURANCE FOR PREVENTIVE SERV-**
6 **ICES.**

7 Effective as if included in section 10501(i)(2)(A) of
8 Public Law 111–148, section 1833(a)(3)(A) of the Social
9 Security Act (42 U.S.C. 1395l(a)(3)(A)) is amended by
10 striking “section 1861(s)(10)(A)” and inserting “section
11 1861(ddd)(3)”.

12 **SEC. 519. ESTABLISH A CMS-IRS DATA MATCH TO IDENTIFY**
13 **FRAUDULENT PROVIDERS.**

14 (a) **AUTHORITY TO DISCLOSE RETURN INFORMATION**
15 **CONCERNING OUTSTANDING TAX DEBTS FOR PURPOSES**
16 **OF ENHANCING MEDICARE PROGRAM INTEGRITY.—**

17 (1) **IN GENERAL.—**Section 6103(l) of the Inter-
18 nal Revenue Code of 1986 is amended by adding at
19 the end the following new paragraph:

20 “(22) **DISCLOSURE OF RETURN INFORMATION**
21 **TO DEPARTMENT OF HEALTH AND HUMAN SERVICES**
22 **FOR PURPOSES OF ENHANCING MEDICARE PROGRAM**
23 **INTEGRITY.—**

24 “(A) **IN GENERAL.—**The Secretary shall,
25 upon written request from the Secretary of

1 Health and Human Services, disclose to officers
2 and employees of the Department of Health
3 and Human Services return information with
4 respect to a taxpayer who has applied to enroll,
5 or reenroll, as a provider of services or supplier
6 under the Medicare program under title XVIII
7 of the Social Security Act. Such return infor-
8 mation shall be limited to—

9 “(i) the taxpayer identity information
10 with respect to such taxpayer;

11 “(ii) the amount of the delinquent tax
12 debt owed by that taxpayer; and

13 “(iii) the taxable year to which the de-
14 linquent tax debt pertains.

15 “(B) RESTRICTION ON DISCLOSURE.—Re-
16 turn information disclosed under subparagraph
17 (A) may be used by officers and employees of
18 the Department of Health and Human Services
19 for the purposes of, and to the extent necessary
20 in, establishing the taxpayer’s eligibility for en-
21 rollment or reenrollment in the Medicare pro-
22 gram, or in any administrative or judicial pro-
23 ceeding relating to, or arising from, a denial of
24 such enrollment or reenrollment, or in deter-
25 mining the level of enhanced oversight to be ap-

1 plied with respect to such taxpayer pursuant to
2 section 1866(j)(3) of the Social Security Act.

3 “(C) DELINQUENT TAX DEBT.—For pur-
4 poses of this paragraph, the term ‘delinquent
5 tax debt’ means an outstanding debt under this
6 title for which a notice of lien has been filed
7 pursuant to section 6323, but the term does not
8 include a debt that is being paid in a timely
9 manner pursuant to an agreement under sec-
10 tion 6159 or 7122, or a debt with respect to
11 which a collection due process hearing under
12 section 6330 is requested, pending, or com-
13 pleted and no payment is required.”.

14 (2) CONFORMING AMENDMENTS.—Section
15 6103(p)(4) of such Code, as amended by sections
16 1414 and 3308 of Public Law 111–148, in the mat-
17 ter preceding subparagraph (A) and in subpara-
18 graph (F)(ii), is amended by striking “or (17)” and
19 inserting “(17), or (22)” each place it appears.

20 (b) SECRETARY’S AUTHORITY TO USE INFORMATION
21 FROM THE DEPARTMENT OF TREASURY IN MEDICARE
22 ENROLLMENTS AND REENROLLMENTS.—Section
23 1866(j)(2) of the Social Security Act (42 U.S.C.
24 1395cc(j)), as inserted by section 6401(a) of Public Law
25 111–148, is further amended—

1 (1) by redesignating subparagraph (E) as sub-
2 paragraph (F); and

3 (2) by inserting after subparagraph (D) the fol-
4 lowing new subparagraph:

5 “(E) USE OF INFORMATION FROM THE
6 DEPARTMENT OF TREASURY CONCERNING TAX
7 DEBTS.—In reviewing the application of a pro-
8 vider of services or supplier to enroll or reenroll
9 under the program under this title, the Sec-
10 retary shall take into account the information
11 supplied by the Secretary of the Treasury pur-
12 suant to section 6103(l)(22) of the Internal
13 Revenue Code of 1986, in determining whether
14 to deny such application or to apply enhanced
15 oversight to such provider of services or sup-
16 plier pursuant to paragraph (3) if the Secretary
17 determines such provider of services or supplier
18 owes such a debt.”.

19 (c) AUTHORITY TO ADJUST PAYMENTS OF PRO-
20 VIDERS OF SERVICES AND SUPPLIERS WITH THE SAME
21 TAX IDENTIFICATION NUMBER FOR MEDICARE OBLIGA-
22 TIONS.—Section 1866(j)(6) of the Social Security Act (42
23 U.S.C. 1395cc(j)(6)), as inserted by section 6401(a) of
24 Public Law 111–148 and as redesignated by section 1304
25 of Public Law 111–152, is amended—

1 (1) in the paragraph heading, by striking
2 “PAST-DUE” and inserting “MEDICARE”;

3 (2) in subparagraph (A), by striking “past-due
4 obligations described in subparagraph (B)(ii) of an”
5 and inserting “amount described in subparagraph
6 (B)(ii) due from such”; and

7 (3) in subparagraph (B)(ii), by striking “a
8 past-due obligation” and inserting “an amount that
9 is more than the amount required to be paid”.

10 **SEC. 520. CLARIFICATION OF EFFECTIVE DATE OF PART B**

11 **SPECIAL ENROLLMENT PERIOD FOR DIS-**
12 **ABLED TRICARE BENEFICIARIES.**

13 Effective as if included in the enactment of Public
14 Law 111–148, section 3110(a)(2) of such Act is amended
15 to read as follows:

16 “(2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply to elections made after
18 the date of the enactment of this Act.”.

19 **SEC. 521. PHYSICIAN PAYMENT UPDATE.**

20 (a) IN GENERAL.—Section 1848(d) of the Social Se-
21 curity Act (42 U.S.C. 1395w–4(d)) is amended—

22 (1) in paragraph (10), in the heading, by strik-
23 ing “PORTION” and inserting “JANUARY THROUGH
24 MAY ”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(11) UPDATE FOR JUNE THROUGH NOVEMBER
4 OF 2010.—

5 “(A) IN GENERAL.—Subject to paragraphs
6 (7)(B), (8)(B), (9)(B), and (10)(B), in lieu of
7 the update to the single conversion factor estab-
8 lished in paragraph (1)(C) that would otherwise
9 apply for 2010 for the period beginning on
10 June 1, 2010, and ending on November 30,
11 2010, the update to the single conversion factor
12 shall be 2.2 percent.

13 “(B) NO EFFECT ON COMPUTATION OF
14 CONVERSION FACTOR FOR REMAINING PORTION
15 OF 2010 AND SUBSEQUENT YEARS.—The con-
16 version factor under this subsection shall be
17 computed under paragraph (1)(A) for the pe-
18 riod beginning on December 1, 2010, and end-
19 ing on December 31, 2010, and for 2011 and
20 subsequent years as if subparagraph (A) had
21 never applied.”.

22 (b) STATUTORY PAYGO.—The budgetary effects of
23 this Act, for the purpose of complying with the Statutory
24 Pay-As-You-Go Act of 2010, shall be determined by ref-
25 erence to the latest statement titled “Budgetary Effects

1 of PAYGO Legislation” for this Act, jointly submitted for
2 printing in the Congressional Record by the Chairmen of
3 the House and Senate Budget Committees, provided that
4 such statement has been submitted prior to the vote on
5 passage in the House acting first on this conference report
6 or amendment between the Houses.

7 **SEC. 522. ADJUSTMENT TO MEDICARE PAYMENT LOCAL-**
8 **ITIES.**

9 (a) IN GENERAL.—Section 1848(e) of the Social Se-
10 curity Act (42 U.S.C.1395w–4(e)) is amended by adding
11 at the end the following new paragraph:

12 “(6) TRANSITION TO USE OF MSAS AS FEE
13 SCHEDULE AREAS IN CALIFORNIA.—

14 “(A) IN GENERAL.—

15 “(i) REVISION.—Subject to clause (ii)
16 and notwithstanding the previous provi-
17 sions of this subsection, for services fur-
18 nished on or after January 1, 2012, the
19 Secretary shall revise the fee schedule
20 areas used for payment under this section
21 applicable to the State of California using
22 the Metropolitan Statistical Area (MSA)
23 iterative Geographic Adjustment Factor
24 methodology as follows:

1 “(I) The Secretary shall con-
2 figure the physician fee schedule areas
3 using the Metropolitan Statistical
4 Areas (each in this paragraph referred
5 to as an ‘MSA’), as defined by the Di-
6 rector of the Office of Management
7 and Budget as of the date of the en-
8 actment of this paragraph, as the
9 basis for the fee schedule areas.

10 “(II) For purposes of this clause,
11 the Secretary shall treat all areas not
12 included in an MSA as a single rest-
13 of-State MSA and any reference in
14 this paragraph to an MSA shall be
15 deemed to include a reference to such
16 rest-of-State MSA.

17 “(III) The Secretary shall list all
18 MSAs within the State by Geographic
19 Adjustment Factor described in para-
20 graph (2) (in this paragraph referred
21 to as a ‘GAF’) in descending order.

22 “(IV) In the first iteration, the
23 Secretary shall compare the GAF of
24 the highest cost MSA in the State to
25 the weighted-average GAF of all the

1 remaining MSAs in the State. If the
2 ratio of the GAF of the highest cost
3 MSA to the weighted-average of the
4 GAF of remaining lower cost MSAs is
5 1.05 or greater, the highest cost MSA
6 shall be a separate fee schedule area.

7 “(V) In the next iteration, the
8 Secretary shall compare the GAF of
9 the MSA with the second-highest
10 GAF to the weighted-average GAF of
11 the all the remaining MSAs (excluding
12 MSAs that become separate fee sched-
13 ule areas). If the ratio of the second-
14 highest MSA’s GAF to the weighted-
15 average of the remaining lower cost
16 MSAs is 1.05 or greater, the second-
17 highest MSA shall be a separate fee
18 schedule area.

19 “(VI) The iterative process shall
20 continue until the ratio of the GAF of
21 the MSA with highest remaining GAF
22 to the weighted-average of the remain-
23 ing MSAs with lower GAFs is less
24 than 1.05, and the remaining group of
25 MSAs with lower GAFs shall be treat-

1 ed as a single rest-of-State fee sched-
2 ule area.

3 “(VII) For purposes of the
4 iterative process described in this
5 clause, if two MSAs have identical
6 GAFs, they shall be combined.

7 “(ii) TRANSITION.—For services fur-
8 nished on or after January 1, 2012, and
9 before January 1, 2017, in the State of
10 California, after calculating the work, prac-
11 tice expense, and malpractice geographic
12 indices that would otherwise be determined
13 under clauses (i), (ii), and (iii) of para-
14 graph (1)(A) for a fee schedule area deter-
15 mined under clause (i), if the index for a
16 county within a fee schedule area is less
17 than the index that would otherwise be in
18 effect for such county, the Secretary shall
19 instead apply the index that would other-
20 wise be in effect for such county.

21 “(B) SUBSEQUENT REVISIONS.—After the
22 transition described in subparagraph (A)(ii),
23 not less than every 3 years the Secretary shall
24 review and update the fee schedule areas using
25 the methodology described in subparagraph

1 (A)(i) and any updated MSAs as defined by the
2 Director of the Office of Management and
3 Budget. The Secretary shall review and make
4 any changes pursuant to such reviews concu-
5 rent with the application of the periodic review
6 of the adjustment factors required under para-
7 graph (1)(C) for California.

8 “(C) REFERENCES TO FEE SCHEDULE
9 AREAS.—Effective for services furnished on or
10 after January 1, 2012, for the State of Cali-
11 fornia, any reference in this section to a fee
12 schedule area shall be deemed a reference to a
13 fee schedule area established in accordance with
14 this paragraph.”.

15 (b) CONFORMING AMENDMENT TO DEFINITION OF
16 FEE SCHEDULE AREA.—Section 1848(j)(2) of the Social
17 Security Act (42 U.S.C. 1395w(j)(2)) is amended by strik-
18 ing “The term” and inserting “Except as provided in sub-
19 section (e)(6)(C), the term”.

20 **SEC. 523. CLARIFICATION OF 3-DAY PAYMENT WINDOW.**

21 (a) IN GENERAL.—Section 1886 of the Social Secu-
22 rity Act (42 U.S.C. 1395ww) is amended—

23 (1) by adding at the end of subsection (a)(4)
24 the following new sentence: “In applying the first
25 sentence of this paragraph, the term ‘other services

1 related to the admission’ includes all services that
2 are not diagnostic services (other than ambulance
3 and maintenance renal dialysis services) for which
4 payment may be made under this title that are pro-
5 vided by a hospital (or an entity wholly owned or op-
6 erated by the hospital) to a patient—

7 “(A) on the date of the patient’s inpatient
8 admission; or

9 “(B) during the 3 days (or, in the case of
10 a hospital that is not a subsection (d) hospital,
11 during the 1 day) immediately preceding the
12 date of such admission unless the hospital dem-
13 onstrates (in a form and manner, and at a
14 time, specified by the Secretary) that such serv-
15 ices are not related (as determined by the Sec-
16 retary) to such admission.”; and

17 (2) in subsection (d)(7)—

18 (A) in subparagraph (A), by striking
19 “and” at the end;

20 (B) in subparagraph (B), by striking the
21 period and inserting “, and”; and

22 (C) by adding at the end the following new
23 subparagraph:

24 “(C) the determination of whether services
25 provided prior to a patient’s inpatient admis-

1 sion are related to the admission (as described
2 in subsection (a)(4)).”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply to services furnished on or after
5 the date of the enactment of this Act.

6 (c) NO REOPENING OF PREVIOUSLY BUNDLED
7 CLAIMS.—

8 (1) IN GENERAL.—The Secretary of Health and
9 Human Services may not reopen a claim, adjust a
10 claim, or make a payment pursuant to any request
11 for payment under title XVIII of the Social Security
12 Act, submitted by an entity (including a hospital or
13 an entity wholly owned or operated by the hospital)
14 for services described in paragraph (2) for purposes
15 of treating, as unrelated to a patient’s inpatient ad-
16 mission, services provided during the 3 days (or, in
17 the case of a hospital that is not a subsection (d)
18 hospital, during the 1 day) immediately preceding
19 the date of the patient’s inpatient admission.

20 (2) SERVICES DESCRIBED.—For purposes of
21 paragraph (1), the services described in this para-
22 graph are other services related to the admission (as
23 described in section 1886(a)(4) of the Social Secu-
24 rity Act (42 U.S.C. 1395ww(a)(4)), as amended by
25 subsection (a)) which were previously included on a

1 claim or request for payment submitted under part
2 A of title XVIII of such Act for which a reopening,
3 adjustment, or request for payment under part B of
4 such title, was not submitted prior to the date of the
5 enactment of this Act.

6 (d) IMPLEMENTATION.—Notwithstanding any other
7 provision of law, the Secretary of Health and Human
8 Services may implement the provisions of this section (and
9 amendments made by this section) by program instruction
10 or otherwise.

11 (e) RULE OF CONSTRUCTION.—Nothing in the
12 amendments made by this section shall be construed as
13 changing the policy described in section 1886(a)(4) of the
14 Social Security Act (42 U.S.C. 1395ww(a)(4)), as applied
15 by the Secretary of Health and Human Services before
16 the date of the enactment of this Act, with respect to diag-
17 nostic services.

18 **SEC. 524. EXTENSION OF ARRA INCREASE IN FMAP.**

19 Section 5001 of the American Recovery and Reinvest-
20 ment Act of 2009 (Public Law 111–5) is amended—

21 (1) in subsection (a)(3), by striking “first cal-
22 endar quarter” and inserting “first 3 calendar quar-
23 ters”;

24 (2) in subsection (c)—

1 (A) in paragraph (2)(B), by striking “July
2 1, 2010” and inserting “January 1, 2011”;

3 (B) in paragraph (3)(B)(i), by striking
4 “July 1, 2010” and inserting “January 1,
5 2011” each place it appears; and

6 (C) in paragraph (4)(C)(ii), by striking
7 “the 3-consecutive-month period beginning with
8 January 2010” and inserting “any 3-consecu-
9 tive-month period that begins after December
10 2009 and ends before January 2011”;

11 (3) in subsection (e), by adding at the end the
12 following:

13 “Notwithstanding paragraph (5), effective for payments
14 made on or after January 1, 2010, the increases in the
15 FMAP for a State under this section shall apply to pay-
16 ments under title XIX of such Act that are attributable
17 to expenditures for medical assistance provided to non-
18 pregnant childless adults made eligible under a State plan
19 under such title (including under any waiver under such
20 title or under section 1115 of such Act (42 U.S.C. 1315))
21 who would have been eligible for child health assistance
22 or other health benefits under eligibility standards in ef-
23 fect as of December 31, 2009, of a waiver of the State
24 child health plan under the title XXI of such Act.”;

25 (4) in subsection (g)—

1 (A) in paragraph (1), by striking “Sep-
2 tember 30, 2011” and inserting “March 31,
3 2012”;

4 (B) in paragraph (2), by inserting “of such
5 Act” after “1923”; and

6 (C) by adding at the end the following:

7 “(3) CERTIFICATION BY CHIEF EXECUTIVE OF-
8 FICER.—No additional Federal funds shall be paid
9 to a State as a result of this section with respect to
10 a calendar quarter occurring during the period be-
11 ginning on January 1, 2011, and ending on June
12 30, 2011, unless, not later than 45 days after the
13 date of enactment of this paragraph, the chief execu-
14 tive officer of the State certifies that the State will
15 request and use such additional Federal funds.”;
16 and

17 (5) in subsection (h)(3), by striking “December
18 31, 2010” and inserting “June 30, 2011”.

19 **SEC. 525. CLARIFICATION FOR AFFILIATED HOSPITALS FOR**
20 **DISTRIBUTION OF ADDITIONAL RESIDENCY**
21 **POSITIONS.**

22 Effective as if included in the enactment of section
23 5503(a) of Public Law 111–148, section 1886(h)(8) of the
24 Social Security Act (42 U.S.C. 1395ww(h)(8)), as added

1 by such section 5503(a), is amended by adding at the end
2 the following new subparagraph:

3 “(I) AFFILIATION.—The provisions of this
4 paragraph shall be applied to hospitals which
5 are members of the same affiliated group (as
6 defined by the Secretary under paragraph
7 (4)(H)(ii)) and the reference resident level for
8 each such hospital shall be the reference resi-
9 dent level with respect to the cost reporting pe-
10 riod that results in the smallest difference be-
11 tween the reference resident level and the other-
12 wise applicable resident limit.”.

13 **TITLE VI—OTHER PROVISIONS**

14 **SEC. 601. EXTENSION OF NATIONAL FLOOD INSURANCE** 15 **PROGRAM.**

16 (a) EXTENSION.—Section 129 of the Continuing Ap-
17 propriations Resolution, 2010 (Public Law 111–68), as
18 amended by section 7(a) of Public Law 111–157, is
19 amended by striking “by substituting” and all that follows
20 through the period at the end, and inserting “by sub-
21 stituting December 31, 2010, for the date specified in each
22 such section.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) shall be considered to have taken effect on
25 May 31, 2010.

1 **SEC. 602. ALLOCATION OF GEOTHERMAL RECEIPTS.**

2 Notwithstanding any other provision of law, for fiscal
3 year 2010 only, all funds received from sales, bonuses,
4 royalties, and rentals under the Geothermal Steam Act of
5 1970 (30 U.S.C. 1001 et seq.) shall be deposited in the
6 Treasury, of which—

7 (1) 50 percent shall be used by the Secretary
8 of the Treasury to make payments to States within
9 the boundaries of which the leased land and geo-
10 thermal resources are located;

11 (2) 25 percent shall be used by the Secretary
12 of the Treasury to make payments to the counties
13 within the boundaries of which the leased land or
14 geothermal resources are located; and

15 (3) 25 percent shall be deposited in miscella-
16 neous receipts.

17 **SEC. 603. SMALL BUSINESS LOAN GUARANTEE ENHANCE-**
18 **MENT EXTENSIONS.**

19 (a) APPROPRIATION.—There is appropriated, out of
20 any funds in the Treasury not otherwise appropriated, for
21 an additional amount for “Small Business Administra-
22 tion—Business Loans Program Account”, \$505,000,000,
23 to remain available through December 31, 2010, for the
24 cost of—

25 (1) fee reductions and eliminations under sec-
26 tion 501 of division A of the American Recovery and

1 Reinvestment Act of 2009 (Public Law 111–5; 123
2 Stat. 151), as amended by this section; and

3 (2) loan guarantees under section 502 of divi-
4 sion A of the American Recovery and Reinvestment
5 Act of 2009 (Public Law 111–5; 123 Stat. 152), as
6 amended by this section.

7 Such costs, including the cost of modifying such loans,
8 shall be as defined in section 502 of the Congressional
9 Budget Act of 1974.

10 (b) EXTENSION OF PROGRAMS.—

11 (1) FEES.—Section 501 of division A of the
12 American Recovery and Reinvestment Act of 2009
13 (Public Law 111–5; 123 Stat. 151) is amended by
14 striking “September 30, 2010” each place it appears
15 and inserting “December 31, 2010”.

16 (2) LOAN GUARANTEES.—Section 502(f) of di-
17 vision A of the American Recovery and Reinvest-
18 ment Act of 2009 (Public Law 111–5; 123 Stat.
19 153) is amended by striking “May 31, 2010” and
20 inserting “December 31, 2010”.

21 (c) APPROPRIATION.—There is appropriated for an
22 additional amount, out of any funds in the Treasury not
23 otherwise appropriated, for administrative expenses to
24 carry out sections 501 and 502 of division A of the Amer-
25 ican Recovery and Reinvestment Act of 2009 (Public Law

1 111–5), \$5,000,000, to remain available until expended,
2 which may be transferred and merged with the appropria-
3 tion for “Small Business Administration—Salaries and
4 Expenses”.

5 **SEC. 604. EMERGENCY AGRICULTURAL DISASTER ASSIST-**
6 **ANCE.**

7 (a) DEFINITIONS.—Except as otherwise provided in
8 this section, in this section:

9 (1) DISASTER COUNTY.—

10 (A) IN GENERAL.—The term “disaster
11 county” means a county included in the geo-
12 graphic area covered by a qualifying natural
13 disaster declaration for the 2009 crop year.

14 (B) EXCLUSION.—The term “disaster
15 county” does not include a contiguous county.

16 (2) ELIGIBLE AQUACULTURE PRODUCER.—The
17 term “eligible aquaculture producer” means an
18 aquaculture producer that during the 2009 calendar
19 year, as determined by the Secretary—

20 (A) produced an aquaculture species for
21 which feed costs represented a substantial per-
22 centage of the input costs of the aquaculture
23 operation; and

1 (B) experienced a substantial price in-
2 crease of feed costs above the previous 5-year
3 average.

4 (3) ELIGIBLE PRODUCER.—The term “eligible
5 producer” means an agricultural producer in a dis-
6 aster county.

7 (4) ELIGIBLE SPECIALTY CROP PRODUCER.—
8 The term “eligible specialty crop producer” means
9 an agricultural producer that, for the 2009 crop
10 year, as determined by the Secretary—

11 (A) produced, or was prevented from
12 planting, a specialty crop; and

13 (B) experienced specialty crop losses in a
14 disaster county due to drought, excessive rain-
15 fall, or a related condition.

16 (5) QUALIFYING NATURAL DISASTER DECLARA-
17 TION.—The term “qualifying natural disaster dec-
18 laration” means a natural disaster declared by the
19 Secretary for production losses under section 321(a)
20 of the Consolidated Farm and Rural Development
21 Act (7 U.S.C. 1961(a)).

22 (6) SECRETARY.—The term “Secretary” means
23 the Secretary of Agriculture.

24 (7) SPECIALTY CROP.—The term “specialty
25 crop” has the meaning given the term in section 3

1 of the Specialty Crops Competitiveness Act of 2004
2 (Public Law 108–465; 7 U.S.C. 1621 note).

3 (b) SUPPLEMENTAL DIRECT PAYMENT.—

4 (1) IN GENERAL.—Of the funds of the Com-
5 modity Credit Corporation, the Secretary shall use
6 such sums as are necessary to make supplemental
7 payments under sections 1103 and 1303 of the
8 Food, Conservation, and Energy Act of 2008 (7
9 U.S.C. 8713, 8753) to eligible producers on farms
10 located in disaster counties that had at least 1 crop
11 of economic significance (other than specialty crops
12 or crops intended for grazing) suffer at least a 5-
13 percent crop loss on a farm due to a natural dis-
14 aster, including quality losses, as determined by the
15 Secretary, in an amount equal to 90 percent of the
16 direct payment the eligible producers received for the
17 2009 crop year on the farm.

18 (2) ACRE PROGRAM.—Eligible producers that
19 received direct payments under section 1105 of the
20 Food, Conservation, and Energy Act of 2008 (7
21 U.S.C. 8715) for the 2009 crop year and that other-
22 wise meet the requirements of paragraph (1) shall
23 be eligible to receive supplemental payments under
24 that paragraph in an amount equal to 112.5 percent
25 of the reduced direct payment the eligible producers

1 received for the 2009 crop year under section 1103
2 or 1303 of the Food, Conservation, and Energy Act
3 of 2008 (7 U.S.C. 8713, 8753).

4 (3) RELATIONSHIP TO OTHER LAW.—Assistance
5 received under this subsection shall be included in
6 the calculation of farm revenue for the 2009 crop
7 year under section 531(b)(4)(A) of the Federal Crop
8 Insurance Act (7 U.S.C. 1531(b)(4)(A)) and section
9 901(b)(4)(A) of the Trade Act of 1974 (19 U.S.C.
10 2497(b)(4)(A)).

11 (c) SPECIALTY CROP ASSISTANCE.—

12 (1) IN GENERAL.—Of the funds of the Com-
13 modity Credit Corporation, the Secretary shall use
14 not more than \$300,000,000, to remain available
15 until September 30, 2011, to carry out a program
16 of grants to States to assist eligible specialty crop
17 producers for losses due to a natural disaster affect-
18 ing the 2009 crops, of which not more than—

19 (A) \$150,000,000 shall be used to assist
20 eligible specialty crop producers in counties that
21 have been declared a disaster as the result of
22 drought; and

23 (B) \$150,000,000 shall be used to assist
24 eligible specialty crop producers in counties that

1 have been declared a disaster as the result of
2 excessive rainfall or a related condition.

3 (2) NOTIFICATION.—Not later than 45 days
4 after the date of enactment of this Act, the Sec-
5 retary shall notify the State department of agri-
6 culture (or similar entity) in each State of the avail-
7 ability of funds to assist eligible specialty crop pro-
8 ducers, including such terms as are determined by
9 the Secretary to be necessary for the equitable treat-
10 ment of eligible specialty crop producers.

11 (3) PROVISION OF GRANTS.—

12 (A) IN GENERAL.—The Secretary shall
13 make grants to States for disaster counties on
14 a pro rata basis based on the value of specialty
15 crop losses in those counties during the 2009
16 calendar year, as determined by the Secretary.

17 (B) ADMINISTRATIVE COSTS.—State Sec-
18 retary of Agriculture may not use more than
19 five percent of the funds provided for costs as-
20 sociated with the administration of the grants
21 provided in paragraph (1).

22 (C) ADMINISTRATION OF GRANTS.—State
23 Secretary of Agriculture may enter into a con-
24 tract with the Department of Agriculture to ad-
25 minister the grants provided in paragraph (1).

1 (D) TIMING.—Not later than 90 days after
2 the date of enactment of this Act, the Secretary
3 shall make grants to States to provide assist-
4 ance under this subsection.

5 (E) MAXIMUM GRANT.—The maximum
6 amount of a grant made to a State for counties
7 described in paragraph (1)(B) may not exceed
8 \$40,000,000.

9 (4) REQUIREMENTS.—The Secretary shall
10 make grants under this subsection only to States
11 that demonstrate to the satisfaction of the Secretary
12 that the State will—

13 (A) use grant funds to issue payments to
14 eligible specialty crop producers;

15 (B) provide assistance to eligible specialty
16 crop producers not later than 60 days after the
17 date on which the State receives grant funds;
18 and

19 (C) not later than 30 days after the date
20 on which the State provides assistance to eligi-
21 ble specialty crop producers, submit to the Sec-
22 retary a report that describes—

23 (i) the manner in which the State pro-
24 vided assistance;

1 (ii) the amounts of assistance pro-
2 vided by type of specialty crop; and

3 (iii) the process by which the State
4 determined the levels of assistance to eligi-
5 ble specialty crop producers.

6 (D) RELATION TO OTHER LAW.—Assist-
7 ance received under this subsection shall be in-
8 cluded in the calculation of farm revenue for
9 the 2009 crop year under section 531(b)(4)(A)
10 of the Federal Crop Insurance Act (7 U.S.C.
11 1531(b)(4)(A)) and section 901(b)(4)(A) of the
12 Trade Act of 1974 (19 U.S.C. 2497(b)(4)(A)).

13 (d) COTTONSEED ASSISTANCE.—

14 (1) IN GENERAL.—Of the funds of the Com-
15 modity Credit Corporation, the Secretary shall use
16 not more than \$42,000,000 to provide supplemental
17 assistance to eligible producers and first-handlers of
18 the 2009 crop of cottonseed in a disaster county.

19 (2) GENERAL TERMS.—Except as otherwise
20 provided in this subsection, the Secretary shall pro-
21 vide disaster assistance under this subsection under
22 the same terms and conditions as assistance pro-
23 vided under section 3015 of the Emergency Agricul-
24 tural Disaster Assistance Act of 2006 (title III of
25 Public Law 109–234; 120 Stat. 477).

1 (3) DISTRIBUTION OF ASSISTANCE.—The Sec-
2 retary shall distribute assistance to first handlers for
3 the benefit of eligible producers in a disaster county
4 in an amount equal to the product obtained by mul-
5 tiplying—

6 (A) the payment rate, as determined under
7 paragraph (4); and

8 (B) the county-eligible production, as de-
9 termined under paragraph (5).

10 (4) PAYMENT RATE.—The payment rate shall
11 be equal to the quotient obtained by dividing—

12 (A) the total funds made available to carry
13 out this subsection; by

14 (B) the sum of the county-eligible produc-
15 tion, as determined under paragraph (5).

16 (5) COUNTY-ELIGIBLE PRODUCTION.—The
17 county-eligible production shall be equal to the prod-
18 uct obtained by multiplying—

19 (A) the number of acres planted to cotton
20 in the disaster county, as reported to the Sec-
21 retary by first handlers;

22 (B) the expected cotton lint yield for the
23 disaster county, as determined by the Secretary
24 based on the best available information; and

1 (C) the national average seed-to-lint ratio,
2 as determined by the Secretary based on the
3 best available information for the 5 crop years
4 immediately preceding the 2009 crop, excluding
5 the year in which the average ratio was the
6 highest and the year in which the average ratio
7 was the lowest in such period.

8 (e) AQUACULTURE ASSISTANCE.—

9 (1) IN GENERAL.—Of the funds of the Com-
10 modity Credit Corporation, the Secretary shall use
11 not more than \$25,000,000, to remain available
12 until September 30, 2011, to carry out a program
13 of grants to States to assist eligible aquaculture pro-
14 ducers for losses associated with high feed input
15 costs during the 2009 calendar year.

16 (2) NOTIFICATION.—Not later than 45 days
17 after the date of enactment of this Act, the Sec-
18 retary shall notify the State department of agri-
19 culture (or similar entity) in each State of the avail-
20 ability of funds to assist eligible aquaculture pro-
21 ducers, including such terms as are determined by
22 the Secretary to be necessary for the equitable treat-
23 ment of eligible aquaculture producers.

24 (3) PROVISION OF GRANTS.—

1 (A) IN GENERAL.—The Secretary shall
2 make grants to States under this subsection on
3 a pro rata basis based on the amount of aqua-
4 culture feed used in each State during the 2009
5 calendar year, as determined by the Secretary.

6 (B) TIMING.—Not later than 90 days after
7 the date of enactment of this Act, the Secretary
8 shall make grants to States to provide assist-
9 ance under this subsection.

10 (4) REQUIREMENTS.—The Secretary shall
11 make grants under this subsection only to States
12 that demonstrate to the satisfaction of the Secretary
13 that the State will—

14 (A) use grant funds to assist eligible aqua-
15 culture producers;

16 (B) provide assistance to eligible aqua-
17 culture producers not later than 60 days after
18 the date on which the State receives grant
19 funds; and

20 (C) not later than 30 days after the date
21 on which the State provides assistance to eligi-
22 ble aquaculture producers, submit to the Sec-
23 retary a report that describes—

24 (i) the manner in which the State pro-
25 vided assistance;

1 (ii) the amounts of assistance pro-
2 vided per species of aquaculture; and

3 (iii) the process by which the State
4 determined the levels of assistance to eligi-
5 ble aquaculture producers.

6 (5) REDUCTION IN PAYMENTS.—An eligible
7 aquaculture producer that receives assistance under
8 this subsection shall not be eligible to receive any
9 other assistance under the supplemental agricultural
10 disaster assistance program established under sec-
11 tion 531 of the Federal Crop Insurance Act (7
12 U.S.C. 1531) and section 901 of the Trade Act of
13 1974 (19 U.S.C. 2497) for any losses in 2009 relat-
14 ing to the same species of aquaculture.

15 (6) REPORT TO CONGRESS.—Not later than
16 240 days after the date of enactment of this Act, the
17 Secretary shall submit to the appropriate committees
18 of Congress a report that—

19 (A) describes in detail the manner in which
20 this subsection has been carried out; and

21 (B) includes the information reported to
22 the Secretary under paragraph (4)(C).

23 (f) HAWAII TRANSPORTATION COOPERATIVE.—Not-
24 withstanding any other provision of law, the Secretary
25 shall use \$21,000,000 of funds of the Commodity Credit

1 Corporation to make a payment to an agricultural trans-
2 portation cooperative in the State of Hawaii, the members
3 of which are eligible to participate in the commodity loan
4 program of the Farm Service Agency, for assistance to
5 maintain and develop employment.

6 (g) LIVESTOCK FORAGE DISASTER PROGRAM.—

7 (1) DEFINITION OF DISASTER COUNTY.—In
8 this subsection:

9 (A) IN GENERAL.—The term “disaster
10 county” means a county included in the geo-
11 graphic area covered by a qualifying natural
12 disaster declaration announced by the Secretary
13 in calendar year 2009.

14 (B) INCLUSION.—The term “disaster
15 county” includes a contiguous county.

16 (2) PAYMENTS.—Of the funds of the Com-
17 modity Credit Corporation, the Secretary shall use
18 not more than \$50,000,000 to carry out a program
19 to make payments to eligible producers that had
20 grazing losses in disaster counties in calendar year
21 2009.

22 (3) CRITERIA.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), assistance under this sub-
25 section shall be determined under the same cri-

1 teria as are used to carry out the programs
2 under section 531(d) of the Federal Crop In-
3 surance Act (7 U.S.C. 1531(d)) and section
4 901(d) of the Trade Act of 1974 (19 U.S.C.
5 2497(d)).

6 (B) DROUGHT INTENSITY.—For purposes
7 of this subsection, an eligible producer shall not
8 be required to meet the drought intensity re-
9 quirements of section 531(d)(3)(D)(ii) of the
10 Federal Crop Insurance Act (7 U.S.C.
11 1531(d)(3)(D)(ii)) and section 901(d)(3)(D)(ii)
12 of the Trade Act of 1974 (19 U.S.C.
13 2497(d)(3)(D)(ii)).

14 (4) AMOUNT.—Assistance under this subsection
15 shall be in an amount equal to 1 monthly payment
16 using the monthly payment rate under section
17 531(d)(3)(B) of the Federal Crop Insurance Act (7
18 U.S.C. 1531(d)(3)(B)) and section 901(d)(3)(B) of
19 the Trade Act of 1974 (19 U.S.C. 2497(d)(3)(B)).

20 (5) RELATION TO OTHER LAW.—An eligible
21 producer that receives assistance under this sub-
22 section shall be ineligible to receive assistance for
23 2009 grazing losses under the program carried out
24 under section 531(d) of the Federal Crop Insurance

1 Act (7 U.S.C. 1531(d)) and section 901(d) of the
2 Trade Act of 1974 (19 U.S.C. 2497(d)).

3 (h) EMERGENCY LOANS FOR POULTRY PRO-
4 DUCERS.—

5 (1) DEFINITIONS.—In this subsection:

6 (A) ANNOUNCEMENT DATE.—The term
7 “announcement date” means the date on which
8 the Secretary announces the emergency loan
9 program under this subsection.

10 (B) POULTRY INTEGRATOR.—The term
11 “poultry integrator” means a poultry integrator
12 that filed proceedings under chapter 11 of title
13 11, United States Code, in United States Bank-
14 ruptcy Court during the 30-day period begin-
15 ning on December 1, 2008.

16 (2) LOAN PROGRAM.—

17 (A) IN GENERAL.—Of the funds of the
18 Commodity Credit Corporation, the Secretary
19 shall use not more than \$75,000,000, to remain
20 available until expended, for the cost of making
21 no-interest emergency loans available to poultry
22 producers that meet the requirements of this
23 subsection.

24 (B) TERMS AND CONDITIONS.—Except as
25 otherwise provided in this subsection, emer-

1 agency loans under this subsection shall be sub-
2 ject to such terms and conditions as are deter-
3 mined by the Secretary.

4 (3) LOANS.—

5 (A) IN GENERAL.—An emergency loan
6 made to a poultry producer under this sub-
7 section shall be for the purpose of providing fi-
8 nancing to the poultry producer in response to
9 financial losses associated with the termination
10 or nonrenewal of any contract between the poul-
11 try producer and a poultry integrator.

12 (B) ELIGIBILITY.—

13 (i) IN GENERAL.—To be eligible for
14 an emergency loan under this subsection,
15 not later than 90 days after the announce-
16 ment date, a poultry producer shall submit
17 to the Secretary evidence that—

18 (I) the contract of the poultry
19 producer described in subparagraph

20 (A) was not continued; and

21 (II) no similar contract has been
22 awarded subsequently to the poultry
23 producer.

24 (ii) REQUIREMENT TO OFFER
25 LOANS.—Notwithstanding any other provi-

1 sion of law, if a poultry producer meets the
2 eligibility requirements described in clause
3 (i), subject to the availability of funds
4 under paragraph (2)(A), the Secretary
5 shall offer to make a loan under this sub-
6 section to the poultry producer with a min-
7 imum term of 2 years.

8 (4) ADDITIONAL REQUIREMENTS.—

9 (A) IN GENERAL.—A poultry producer
10 that receives an emergency loan under this sub-
11 section may use the emergency loan proceeds
12 only to repay the amount that the poultry pro-
13 ducer owes to any lender for the purchase, im-
14 provement, or operation of the poultry farm.

15 (B) CONVERSION OF THE LOAN.—A poul-
16 try producer that receives an emergency loan
17 under this subsection shall be eligible to have
18 the balance of the emergency loan converted,
19 but not refinanced, to a loan that has the same
20 terms and conditions as an operating loan
21 under subtitle B of the Consolidated Farm and
22 Rural Development Act (7 U.S.C. 1941 et seq.).

23 (i) STATE AND LOCAL GOVERNMENTS.—Section
24 1001(f)(6)(A) of the Food Security Act of 1985 (7 U.S.C.
25 1308(f)(6)(A)) is amended by inserting “(other than the

1 conservation reserve program established under sub-
2 chapter B of chapter 1 of subtitle D of title XII of this
3 Act)” before the period at the end.

4 (j) ADMINISTRATION.—

5 (1) REGULATIONS.—

6 (A) IN GENERAL.—As soon as practicable
7 after the date of enactment of this Act, the Sec-
8 retary shall promulgate such regulations as are
9 necessary to implement this section and the
10 amendment made by this section.

11 (B) PROCEDURE.—The promulgation of
12 the regulations and administration of this sec-
13 tion and the amendment made by this section
14 shall be made without regard to—

15 (i) the notice and comment provisions
16 of section 553 of title 5, United States
17 Code;

18 (ii) the Statement of Policy of the
19 Secretary of Agriculture effective July 24,
20 1971 (36 Fed. Reg. 13804), relating to no-
21 tices of proposed rulemaking and public
22 participation in rulemaking; and

23 (iii) chapter 35 of title 44, United
24 States Code (commonly known as the “Pa-
25 perwork Reduction Act”).

1 (C) CONGRESSIONAL REVIEW OF AGENCY
2 RULEMAKING.—In carrying out this paragraph,
3 the Secretary shall use the authority provided
4 under section 808 of title 5, United States
5 Code.

6 (2) ADMINISTRATIVE COSTS.—Of the funds of
7 the Commodity Credit Corporation, the Secretary
8 may use up to \$10,000,000 to pay administrative
9 costs incurred by the Secretary that are directly re-
10 lated to carrying out this Act.

11 (3) PROHIBITION.—None of the funds of the
12 Agricultural Disaster Relief Trust Fund established
13 under section 902 of the Trade Act of 1974 (19
14 U.S.C. 2497a) may be used to carry out this Act.

15 **SEC. 605. SUMMER EMPLOYMENT FOR YOUTH.**

16 There is appropriated, out of any funds in the Treas-
17 ury not otherwise appropriated, for an additional amount
18 for “Department of Labor—Employment and Training
19 Administration—Training and Employment Services” for
20 activities under the Workforce Investment Act of 1998
21 (“WIA”), \$1,000,000,000 shall be available for obligation
22 on the date of enactment of this Act for grants to States
23 for youth activities, including summer employment for
24 youth: *Provided*, That no portion of such funds shall be
25 reserved to carry out section 127(b)(1)(A) of the WIA:

1 *Provided further*, That for purposes of section
2 127(b)(1)(C)(iv) of the WIA, funds available for youth ac-
3 tivities shall be allotted as if the total amount available
4 for youth activities in the fiscal year does not exceed
5 \$1,000,000,000: *Provided further*, That with respect to the
6 youth activities provided with such funds, section
7 101(13)(A) of the WIA shall be applied by substituting
8 “age 24” for “age 21”: *Provided further*, That the work
9 readiness performance indicator described in section
10 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure
11 of performance used to assess the effectiveness of summer
12 employment for youth provided with such funds: *Provided*
13 *further*, That an amount that is not more than 1 percent
14 of such amount may be used for the administration, man-
15 agement, and oversight of the programs, activities, and
16 grants carried out with such funds, including the evalua-
17 tion of the use of such funds: *Provided further*, That funds
18 available under the preceding proviso, together with funds
19 described in section 801(a) of division A of the American
20 Recovery and reinvestment Act of 2009 (Public Law 111–
21 5), and funds provided in such Act under the heading
22 “Department of Labor–Departmental Management–Sala-
23 ries and Expenses”, shall remain available for obligation
24 through September 30, 2011.

1 **SEC. 606. HOUSING TRUST FUND.**

2 (a) **FUNDING.**—There is hereby appropriated for the
3 Housing Trust Fund established pursuant to section 1338
4 of the Federal Housing Enterprises Financial Safety and
5 Soundness Act of 1992 (12 U.S.C. 4568),
6 \$1,065,000,000, for use under such section: *Provided,*
7 That of the total amount provided under this heading,
8 \$65,000,000 shall be available to the Secretary of Housing
9 and Urban Development only for incremental project-
10 based voucher assistance to be allocated to States to be
11 used solely in conjunction with grant funds awarded under
12 such section 1338, pursuant to the formula established
13 under section 1338 and taking into account different per
14 unit subsidy needs among states, as determined by the
15 Secretary.

16 (b) **AMENDMENTS.**—Section 1338 of the Federal
17 Housing Enterprises Financial Safety and Soundness Act
18 of 1992 (12 U.S.C. 4568) is amended—

19 (1) in subsection (c)—

20 (A) in paragraph (4)(A) by inserting after
21 the period at the end the following: “Notwith-
22 standing any other provision of law, for the fis-
23 cal year following enactment of this sentence
24 and thereafter, the Secretary may make such
25 notice available only on the Internet at the ap-
26 propriate government website or websites or

1 through other electronic media, as determined
2 by the Secretary.”;

3 (B) in paragraph (5)(C), by striking “(8)”
4 and inserting “(9)”; and

5 (C) in paragraph (7)(A)—

6 (i) by striking “section
7 1335(a)(2)(B)” and inserting “section
8 1335(a)(1)(B)”; and

9 (ii) by inserting “the units funded
10 under” after “75 percent of”; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(k) ENVIRONMENTAL REVIEW.—For the purpose of
14 environmental compliance review, funds awarded under
15 this section shall be subject to section 288 of the HOME
16 Investment Partnerships Act (12 U.S.C. 12838) and shall
17 be treated as funds under the program established by such
18 Act.”.

19 **SEC. 607. THE INDIVIDUAL INDIAN MONEY ACCOUNT LITI-**
20 **GATION SETTLEMENT ACT OF 2010.**

21 (a) SHORT TITLE.—This section may be cited as the
22 “Individual Indian Money Account Litigation Settlement
23 Act of 2010”.

24 (b) DEFINITIONS.—In this section:

1 (1) AMENDED COMPLAINT.—The term
2 “Amended Complaint” means the Amended Com-
3 plaint attached to the Settlement.

4 (2) LAND CONSOLIDATION PROGRAM.—The
5 term “Land Consolidation Program” means a pro-
6 gram conducted in accordance with the Settlement
7 and the Indian Land Consolidation Act (25 U.S.C.
8 2201 et seq.) under which the Secretary may pur-
9 chase fractional interests in trust or restricted land.

10 (3) LITIGATION.—The term “Litigation” means
11 the case entitled Elouise Cobell et al. v. Ken Salazar
12 et al., United States District Court, District of Co-
13 lumbia, Civil Action No. 96–1285 (JR).

14 (4) PLAINTIFF.—The term “Plaintiff” means a
15 member of any class certified in the Litigation.

16 (5) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (6) SETTLEMENT.—The term “Settlement”
19 means the Class Action Settlement Agreement dated
20 December 7, 2009, in the Litigation, as modified by
21 the parties to the Litigation.

22 (7) TRUST ADMINISTRATION CLASS.—The term
23 “Trust Administration Class” means the Trust Ad-
24 ministration Class as defined in the Settlement.

1 (c) PURPOSE.—The purpose of this section is to au-
2 thorize the Settlement.

3 (d) AUTHORIZATION.—The Settlement is authorized,
4 ratified, and confirmed.

5 (e) JURISDICTIONAL PROVISIONS.—

6 (1) IN GENERAL.—Notwithstanding the limita-
7 tion of jurisdiction of district courts contained in
8 section 1346(a)(2) of title 28, United States Code,
9 the United States District Court for the District of
10 Columbia shall have jurisdiction over the claims as-
11 serted in the Amended Complaint for purposes of
12 the Settlement.

13 (2) CERTIFICATION OF TRUST ADMINISTRATION
14 CLASS.—

15 (A) IN GENERAL.—Notwithstanding the
16 requirements of the Federal Rules of Civil Pro-
17 cedure, the court overseeing the Litigation may
18 certify the Trust Administration Class.

19 (B) TREATMENT.—On certification under
20 subparagraph (A), the Trust Administration
21 Class shall be treated as a class under Federal
22 Rule of Civil Procedure 23(b)(3) for purposes
23 of the Settlement.

24 (f) TRUST LAND CONSOLIDATION.—

25 (1) TRUST LAND CONSOLIDATION FUND.—

1 (A) ESTABLISHMENT.—On final approval
2 (as defined in the Settlement) of the Settle-
3 ment, there shall be established in the Treasury
4 of the United States a fund, to be known as the
5 “Trust Land Consolidation Fund”.

6 (B) AVAILABILITY OF AMOUNTS.—
7 Amounts in the Trust Land Consolidation
8 Fund shall be made available to the Secretary
9 during the 10-year period beginning on the date
10 of final approval of the Settlement—

11 (i) to conduct the Land Consolidation
12 Program; and

13 (ii) for other costs specified in the
14 Settlement.

15 (C) DEPOSITS.—

16 (i) IN GENERAL.—On final approval
17 (as defined in the Settlement) of the Set-
18 tlement, the Secretary of the Treasury
19 shall deposit in the Trust Land Consolida-
20 tion Fund \$2,000,000,000 of the amounts
21 appropriated by section 1304 of title 31,
22 United States Code.

23 (ii) CONDITIONS MET.—The condi-
24 tions described in section 1304 of title 31,

1 United States Code, shall be considered to
2 be met for purposes of clause (i).

3 (D) TRANSFERS.—In a manner designed
4 to encourage participation in the Land Consoli-
5 dation Program, the Secretary may transfer, at
6 the discretion of the Secretary, not more than
7 \$60,000,000 of amounts in the Trust Land
8 Consolidation Fund to the Indian Education
9 Scholarship Holding Fund established under
10 paragraph 2.

11 (2) INDIAN EDUCATION SCHOLARSHIP HOLDING
12 FUND.—

13 (A) ESTABLISHMENT.—On the final ap-
14 proval (as defined in the Settlement) of the Set-
15 tlement, there shall be established in the Treas-
16 ury of the United States a fund, to be known
17 as the “Indian Education Scholarship Holding
18 Fund”.

19 (B) AVAILABILITY.—Notwithstanding any
20 other provision of law governing competition,
21 public notification, or Federal procurement or
22 assistance, amounts in the Indian Education
23 Scholarship Holding Fund shall be made avail-
24 able, without further appropriation, to the Sec-
25 retary to contribute to an Indian Education

1 Scholarship Fund, as described in the Settle-
2 ment, to provide scholarships for Native Ameri-
3 cans.

4 (3) ACQUISITION OF TRUST OR RESTRICTED
5 LAND.—The Secretary may acquire, at the discre-
6 tion of the Secretary and in accordance with the
7 Land Consolidation Program, any fractional interest
8 in trust or restricted land.

9 (4) TREATMENT OF UNLOCATABLE PLAIN-
10 TIFFS.—A Plaintiff the whereabouts of whom are
11 unknown and who, after reasonable efforts by the
12 Secretary, cannot be located during the 5 year pe-
13 riod beginning on the date of final approval (as de-
14 fined in the Settlement) of the Settlement shall be
15 considered to have accepted an offer made pursuant
16 to the Land Consolidation Program.

17 (g) TAXATION AND OTHER BENEFITS.—

18 (1) INTERNAL REVENUE CODE.—For purposes
19 of the Internal Revenue Code of 1986, amounts re-
20 ceived by an individual Indian as a lump sum or a
21 periodic payment pursuant to the Settlement—

22 (A) shall not be included in gross income;
23 and

24 (B) shall not be taken into consideration
25 for purposes of applying any provision of the

1 Internal Revenue Code of 1986 that takes into
2 account excludable income in computing ad-
3 justed gross income or modified adjusted gross
4 income, including section 86 of that Code (re-
5 lating to Social Security and tier 1 railroad re-
6 tirement benefits).

7 (2) OTHER BENEFITS.—Notwithstanding any
8 other provision of law, for purposes of determining
9 initial eligibility, ongoing eligibility, or level of bene-
10 fits under any Federal or federally assisted program,
11 amounts received by an individual Indian as a lump
12 sum or a periodic payment pursuant to the Settle-
13 ment shall not be treated for any household member,
14 during the 1-year period beginning on the date of re-
15 ceipt—

16 (A) as income for the month during which
17 the amounts were received; or

18 (B) as a resource.

19 **SEC. 608. APPROPRIATION OF FUNDS FOR FINAL SETTLE-**
20 **MENT OF CLAIMS FROM IN RE BLACK FARM-**
21 **ERS DISCRIMINATION LITIGATION.**

22 (a) DEFINITIONS.—In this section:

23 (1) SETTLEMENT AGREEMENT.—The term
24 “Settlement Agreement” means the settlement
25 agreement dated February 18, 2010 (including any

1 modifications agreed to by the parties and approved
2 by the court under that agreement) between certain
3 plaintiffs, by and through their counsel, and the Sec-
4 retary of Agriculture to resolve, fully and forever,
5 the claims raised or that could have been raised in
6 the cases consolidated in *In re Black Farmers Dis-*
7 *crimination Litigation*, No. 08–511 (D.D.C.), in-
8 cluding Pigford claims asserted under section 14012
9 of the Food, Conservation, and Energy Act of 2008
10 (Public Law 110–246; 122 Stat. 2209).

11 (2) PIGFORD CLAIM.—The term “Pigford
12 claim” has the meaning given that term in section
13 14012(a)(3) of the Food, Conservation, and Energy
14 Act of 2008 (Public Law 110–246; 122 Stat. 2210).

15 (b) APPROPRIATION OF FUNDS.—There is hereby ap-
16 propriated to the Secretary of Agriculture
17 \$1,150,000,000, to remain available until expended, to
18 carry out the terms of the Settlement Agreement if the
19 Settlement Agreement is approved by a court order that
20 is or becomes final and nonappealable. The funds appro-
21 priated by this subsection are in addition to the
22 \$100,000,000 of funds of the Commodity Credit Corpora-
23 tion made available by section 14012(i) of the Food, Con-
24 servation, and Energy Act of 2008 (Public Law 110–246;
25 122 Stat. 2212) and shall be available for obligation only

1 after those Commodity Credit Corporation funds are fully
2 obligated. If the Settlement Agreement is not approved as
3 provided in this subsection, the \$100,000,000 of funds of
4 the Commodity Credit Corporation made available by sec-
5 tion 14012(i) of the Food, Conservation, and Energy Act
6 of 2008 shall be the sole funding available for Pigford
7 claims.

8 (c) USE OF FUNDS.—The use of the funds appro-
9 priated by subsection (b) shall be subject to the express
10 terms of the Settlement Agreement.

11 (d) TREATMENT OF REMAINING FUNDS.—If any of
12 the funds appropriated by subsection (b) are not obligated
13 and expended to carry out the Settlement Agreement, the
14 Secretary of Agriculture shall return the unused funds to
15 the Treasury and may not make the unused funds avail-
16 able for any purpose related to section 14012 of the Food,
17 Conservation, and Energy Act of 2008, for any other set-
18 tlement agreement executed in *In re Black Farmers Dis-*
19 *crimination Litigation*, No. 08–511 (D.D.C.), or for any
20 other purpose.

21 (e) RULES OF CONSTRUCTION.—Nothing in this sec-
22 tion shall be construed as requiring the United States, any
23 of its officers or agencies, or any other party to enter into
24 the Settlement Agreement or any other settlement agree-

1 ment. Nothing in this section shall be construed as cre-
2 ating the basis for a Pigford claim.

3 (f) CONFORMING AMENDMENTS.—Section 14012 of
4 the Food, Conservation, and Energy Act of 2008 (Public
5 Law 110–246; 122 Stat. 2209) is amended—

6 (1) in subsection (c)(1)—

7 (A) by striking “subsection (h)” and in-
8 serting “subsection (g)”; and

9 (B) by striking “subsection (i)” and insert-
10 ing “subsection (h)”;

11 (2) by striking subsection (e);

12 (3) in subsection (g), by striking “subsection
13 (f)” and inserting “subsection (e)”;

14 (4) in subsection (i)—

15 (A) by striking “(1) IN GENERAL.—Of the
16 funds” and inserting “Of the funds”; and

17 (B) by striking paragraph (2);

18 (5) by striking subsection (j); and

19 (6) by redesignating subsections (f), (g), (h),
20 (i), and (k) as subsections (e), (f), (g), (h), and (i),
21 respectively.

1 **SEC. 609. EXPANSION OF ELIGIBILITY FOR CONCURRENT**
2 **RECEIPT OF MILITARY RETIRED PAY AND**
3 **VETERANS' DISABILITY COMPENSATION TO**
4 **INCLUDE ALL CHAPTER 61 DISABILITY RE-**
5 **TIREES REGARDLESS OF DISABILITY RATING**
6 **PERCENTAGE OR YEARS OF SERVICE.**

7 (a) PHASED EXPANSION CONCURRENT RECEIPT.—

8 Subsection (a) of section 1414 of title 10, United States
9 Code, is amended to read as follows:

10 “(a) PAYMENT OF BOTH RETIRED PAY AND DIS-
11 ABILITY COMPENSATION.—

12 “(1) PAYMENT OF BOTH REQUIRED.—

13 “(A) IN GENERAL.—Subject to subsection
14 (b), a member or former member of the uni-
15 formed services who is entitled for any month
16 to retired pay and who is also entitled for that
17 month to veterans' disability compensation for a
18 qualifying service-connected disability (in this
19 section referred to as a ‘qualified retiree’) is en-
20 titled to be paid both for that month without
21 regard to sections 5304 and 5305 of title 38.

22 “(B) APPLICABILITY OF FULL CONCUR-
23 RENT RECEIPT PHASE-IN REQUIREMENT.—Dur-
24 ing the period beginning on January 1, 2004,
25 and ending on December 31, 2013, payment of

1 retired pay to a qualified retiree is subject to
2 subsection (c).

3 “(C) PHASE-IN EXCEPTION FOR 100 PER-
4 CENT DISABLED RETIREES.—The payment of
5 retired pay is subject to subsection (c) only dur-
6 ing the period beginning on January 1, 2004,
7 and ending on December 31, 2004, in the case
8 of the following qualified retirees:

9 “(i) A qualified retiree receiving vet-
10 erans’ disability compensation for a dis-
11 ability rated as 100 percent.

12 “(ii) A qualified retiree receiving vet-
13 erans’ disability compensation at the rate
14 payable for a 100 percent disability by rea-
15 son of a determination of individual
16 unemployability.

17 “(D) TEMPORARY PHASE-IN EXCEPTION
18 FOR CERTAIN CHAPTER 61 DISABILITY RETIR-
19 EES; TERMINATION.—Subject to subsection (b),
20 during the period beginning on January 1,
21 2011, and ending on September 30, 2012, sub-
22 section (c) shall not apply to a qualified retiree
23 described in subparagraph (B) or (C) of para-
24 graph (2).

1 “(2) QUALIFYING SERVICE-CONNECTED DIS-
2 ABILITY DEFINED.—In this section:

3 “(A) 50 PERCENT RATING THRESHOLD.—

4 In the case of a member or former member re-
5 ceiving retired pay under any provision of law
6 other than chapter 61 of this title, or under
7 chapter 61 with 20 years or more of service
8 otherwise creditable under section 1405 or com-
9 puted under section 12732 of this title, the
10 term ‘qualifying service-connected disability’
11 means a service-connected disability or com-
12 bination of service-connected disabilities that is
13 rated as not less than 50 percent disabling by
14 the Secretary of Veterans Affairs. However,
15 during the period specified in paragraph (1)(D),
16 members or former members receiving retired
17 pay under chapter 61 with 20 years or more of
18 creditable service computed under section
19 12732 of this title, but not otherwise entitled to
20 retired pay under any other provision of this
21 title, shall qualify in accordance with subpara-
22 graphs (B) and (C).

23 “(B) INCLUSION OF MEMBERS NOT OTH-
24 ERWISE ENTITLED TO RETIRED PAY.—In the
25 case of a member or former member receiving

1 retired pay under chapter 61 of this title, but
2 who is not otherwise entitled to retired pay
3 under any other provision of this title, the term
4 ‘qualifying service-connected disability’ means a
5 service-connected disability or combination of
6 service-connected disabilities that is rated by
7 the Secretary of Veterans Affairs at the dis-
8 abling level specified in one of the following
9 clauses (which, subject to paragraph (3), is ef-
10 fective on or after the date specified in the ap-
11 plicable clause):

12 “(i) January 1, 2011, rated 100 per-
13 cent, or a rate payable at 100 percent by
14 reason of individual unemployability or
15 rated 90 percent.

16 “(ii) January 1, 2012, rated 80 per-
17 cent or 70 percent.

18 “(iii) January 1, 2013, rated 60 per-
19 cent or 50 percent.

20 “(C) ELIMINATION OF RATING THRESH-
21 OLD.—In the case of a member or former mem-
22 ber receiving retired pay under chapter 61 re-
23 gardless of being otherwise eligible for retire-
24 ment, the term ‘qualifying service-connected
25 disability’ means a service-connected disability

1 or combination of service-connected disabilities
2 that is rated by the Secretary of Veterans Af-
3 fairs at the disabling level specified in one of
4 the following clauses (which, subject to para-
5 graph (3), is effective on or after the date speci-
6 fied in the applicable clause):

7 “(i) January 1, 2014, rated 40 per-
8 cent or 30 percent.

9 “(ii) January 1, 2015, any rating.

10 “(3) LIMITED DURATION.—Notwithstanding
11 the effective date specified in each clause of subpara-
12 graphs (B) and (C) of paragraph (2), the clause—

13 “(A) shall apply only if the termination
14 date specified in paragraph (1)(D) would occur
15 during or after the calendar year specified in
16 the clause; and

17 “(B) shall not apply beyond the termi-
18 nation date specified in paragraph (1)(D).”.

19 (b) CONFORMING AMENDMENT TO SPECIAL RULES
20 FOR CHAPTER 61 DISABILITY RETIREES.—Subsection (b)
21 of such section is amended to read as follows:

22 “(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY
23 RETIREES WHEN ELIGIBILITY HAS BEEN ESTABLISHED
24 FOR SUCH RETIREES.—

1 “(1) GENERAL REDUCTION RULE.—The retired
2 pay of a member retired under chapter 61 of this
3 title is subject to reduction under sections 5304 and
4 5305 of title 38, but only to the extent that the
5 amount of the members retired pay under chapter
6 61 of this title exceeds the amount of retired pay to
7 which the member would have been entitled under
8 any other provision of law based upon the member’s
9 service in the uniformed services if the member had
10 not been retired under chapter 61 of this title.

11 “(2) CHAPTER 61 RETIREES NOT OTHERWISE
12 ENTITLED TO RETIRED PAY.—

13 “(A) BEFORE TERMINATION DATE.—If a
14 member with a qualifying service-connected dis-
15 ability (as defined in subsection (a)(2)) is re-
16 tired under chapter 61 of this title, but is not
17 otherwise entitled to retired pay under any
18 other provision of this title, and the termination
19 date specified in subsection (a)(1)(D) has not
20 occurred, the retired pay of the member is sub-
21 ject to reduction under sections 5304 and 5305
22 of title 38, but only to the extent that the
23 amount of the member’s retired pay under
24 chapter 61 of this title exceeds the amount
25 equal to 2½ percent of the member’s years of

1 creditable service multiplied by the member's
2 retired pay base under section 1406(b)(1) or
3 1407 of this title, whichever is applicable to the
4 member.

5 “(B) AFTER TERMINATION DATE.—Sub-
6 section (a) does not apply to a member de-
7 scribed in subparagraph (A) if the termination
8 date specified in subsection (a)(1)(D) has oc-
9 curred.”.

10 (c) CONFORMING AMENDMENT TO FULL CONCUR-
11 RENT RECEIPT PHASE-IN.—Subsection (c) of such section
12 is amended by striking “the second sentence of”.

13 (d) CLERICAL AMENDMENTS.—

14 (1) SECTION HEADING.—The heading of such
15 section is amended to read as follows:

16 **“§ 1414. Concurrent receipt of retired pay and vet-**
17 **erans' disability compensation”.**

18 (2) TABLE OF SECTIONS.—The table of sections
19 at the beginning of chapter 71 of such title is
20 amended by striking the item related to section 1414
21 and inserting the following new item:

 “1414. Concurrent receipt of retired pay and veterans' disability compensa-
 tion.”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on January 1, 2011.

1 **SEC. 610. EXTENSION OF USE OF 2009 POVERTY GUIDE-**
2 **LINES.**

3 Section 1012 of the Department of Defense Appro-
4 priations Act, 2010 (Public Law 111–118), as amended
5 by section 6 of the Continuing Extension Act of 2010
6 (Public Law 111–157), is amended—

7 (1) by striking “before May 31, 2010”; and

8 (2) by inserting “for 2011” after “until up-
9 dated poverty guidelines”.

10 **SEC. 611. REFUNDS DISREGARDED IN THE ADMINISTRA-**
11 **TION OF FEDERAL PROGRAMS AND FEDER-**
12 **ALLY ASSISTED PROGRAMS.**

13 (a) IN GENERAL.—Subchapter A of chapter 65 of the
14 Internal Revenue Code of 1986 is amended by adding at
15 the end the following new section:

16 **“SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRA-**
17 **TION OF FEDERAL PROGRAMS AND FEDER-**
18 **ALLY ASSISTED PROGRAMS.**

19 “(a) IN GENERAL.—Notwithstanding any other pro-
20 vision of law, any refund (or advance payment with respect
21 to a refundable credit) made to any individual under this
22 title shall not be taken into account as income, and shall
23 not be taken into account as resources for a period of 12
24 months from receipt, for purposes of determining the eligi-
25 bility of such individual (or any other individual) for bene-
26 fits or assistance (or the amount or extent of benefits or

1 assistance) under any Federal program or under any State
2 or local program financed in whole or in part with Federal
3 funds.

4 “(b) **TERMINATION.**—Subsection (a) shall not apply
5 to any amount received after December 31, 2010.”.

6 (b) **CLERICAL AMENDMENT.**—The table of sections
7 for such subchapter is amended by adding at the end the
8 following new item:

“Sec. 6409. Refunds disregarded in the administration of Federal programs
and federally assisted programs.”.

9 (c) **EFFECTIVE DATE.**—The amendments made by
10 this section shall apply to amounts received after Decem-
11 ber 31, 2009.

12 **SEC. 612. STATE COURT IMPROVEMENT PROGRAM.**

13 Section 438 of the Social Security Act (42 U.S.C.
14 629h) is amended—

15 (1) in subsection (c)(2)(A), by striking “2010”
16 and inserting “2011”; and

17 (2) in subsection (e), by striking “2010” and
18 inserting “2011”.

19 **SEC. 613. QUALIFYING TIMBER CONTRACT OPTIONS.**

20 (a) **DEFINITIONS.**—In this section:

21 (1) **QUALIFYING CONTRACT.**—The term “quali-
22 fying contract” means a contract that has not been
23 terminated by the Bureau of Land Management for
24 the sale of timber on lands administered by the Bu-

1 reau of Land Management that meets all of the fol-
2 lowing criteria:

3 (A) The contract was awarded during the
4 period beginning on January 1, 2005, and end-
5 ing on December 31, 2008.

6 (B) There is unharvested volume remain-
7 ing for the contract.

8 (C) The contract is not a salvage sale.

9 (D) The Secretary determined there is not
10 an urgent need to harvest under the contract
11 due to deteriorating timber conditions that de-
12 veloped after the award of the contract.

13 (2) SECRETARY.—The term “Secretary” means
14 the Secretary of the Interior, acting through the Di-
15 rector of Bureau of Land Management.

16 (3) TIMBER PURCHASER.—The term “timber
17 purchaser” means the party to the qualifying con-
18 tract for the sale of timber from lands administered
19 by the Bureau of Land Management.

20 (b) MARKET-RELATED CONTRACT EXTENSION OP-
21 TION.—Upon a timber purchaser’s written request, the
22 Secretary may make a one-time modification to the quali-
23 fying contract to add 3 years to the contract expiration
24 date if the written request—

1 (1) is received by the Secretary not later than
2 90 days after the date of enactment of this Act; and

3 (2) contains a provision releasing the United
4 States from all liability, including further consider-
5 ation or compensation, resulting from the modifica-
6 tion under this subsection of the term of a qualifying
7 contract.

8 (c) REPORTING.—Not later than 6 months after the
9 date of the enactment of this Act, the Secretary shall sub-
10 mit to Congress a report detailing a plan and timeline to
11 promulgate new regulations authorizing the Bureau of
12 Land Management to extend timber contracts due to
13 changes in market conditions.

14 (d) REGULATIONS.—Not later than 2 years after the
15 date of the enactment of this Act, the Secretary shall pro-
16 mulgate new regulations authorizing the Bureau of Land
17 Management to extend timber contracts due to changes
18 in market conditions.

19 (e) NO SURRENDER OF CLAIMS.—This section shall
20 not have the effect of surrendering any claim by the
21 United States against any timber purchaser that arose
22 under a timber sale contract, including a qualifying con-
23 tract, before the date on which the Secretary adjusts the
24 contract term under subsection (b).

1 **SEC. 614. EXTENSION AND FLEXIBILITY FOR CERTAIN AL-**
2 **LOCATED SURFACE TRANSPORTATION PRO-**
3 **GRAMS.**

4 (a) MODIFICATION OF ALLOCATION RULES.—Section
5 411(d) of the Surface Transportation Extension Act of
6 2010 (Public Law 111–147; 124 Stat. 80) is amended—

7 (1) in paragraph (1)—

8 (A) in the matter preceding subparagraph

9 (A)—

10 (i) by striking “1301, 1302,”; and

11 (ii) by striking “1198, 1204,”; and

12 (B) in subparagraph (A)—

13 (i) in the matter preceding clause (i)

14 by striking “apportioned under sections

15 104(b) and 144 of title 23, United States

16 Code,” and inserting “specified in section

17 105(a)(2) of title 23, United States Code

18 (except the high priority projects pro-

19 gram),”; and

20 (ii) in clause (ii) by striking “appor-

21 tioned under such sections of such Code”

22 and inserting “specified in such section

23 105(a)(2) (except the high priority projects

24 program)”; and

25 (2) in paragraph (2)—

1 (A) in the matter preceding subparagraph

2 (A)—

3 (i) by striking “1301, 1302,”; and

4 (ii) by striking “1198, 1204,”; and

5 (B) in subparagraph (A)—

6 (i) in the matter preceding clause (i)

7 by striking “apportioned under sections

8 104(b) and 144 of title 23, United States

9 Code,” and inserting “specified in section

10 105(a)(2) of title 23, United States Code

11 (except the high priority projects pro-

12 gram),”; and

13 (ii) in clause (ii) by striking “appor-

14 tioned under such sections of such Code”

15 and inserting “specified in such section

16 105(a)(2) (except the high priority projects

17 program)”; and

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

19 “(5) PROJECTS OF NATIONAL AND REGIONAL

20 SIGNIFICANCE AND NATIONAL CORRIDOR INFRA-

21 STRUCTURE IMPROVEMENT PROGRAMS.—

22 “(A) REDISTRIBUTION AMONG STATES.—

23 Notwithstanding sections 1301(m) and 1302(e)

24 of SAFETEA-LU (119 Stat. 1202 and 1205),

25 the Secretary shall apportion funds authorized

1 to be appropriated under subsection (b) for the
2 projects of national and regional significance
3 program and the national corridor infrastruc-
4 ture improvement program among all States
5 such that each State's share of the funds so ap-
6 portioned is equal to the State's share for fiscal
7 year 2009 of funds apportioned or allocated for
8 the programs specified in section 105(a)(2) of
9 title 23, United States Code.

10 “(B) DISTRIBUTION AMONG PROGRAMS.—
11 Funds apportioned to a State pursuant to sub-
12 paragraph (A) shall be—

13 “(i) made available to the State for
14 the programs specified in section 105(a)(2)
15 of title 23, United States Code (except the
16 high priority projects program), and in the
17 same proportion for each such program
18 that—

19 “(I) the amount apportioned to
20 the State for that program for fiscal
21 year 2009; bears to

22 “(II) the amount apportioned to
23 the State for fiscal year 2009 for all
24 such programs; and

1 “(ii) administered in the same manner
2 and with the same period of availability as
3 funding is administered under programs
4 identified in clause (i).”.

5 (b) EXPENDITURE AUTHORITY FROM HIGHWAY
6 TRUST FUND.—Paragraph (1) of section 9503(c) of the
7 Internal Revenue Code of 1986 is amended by striking
8 “Surface Transportation Extension Act of 2010” and in-
9 serting “American Jobs and Closing Tax Loopholes Act
10 of 2010”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect upon the date of enactment
13 of the Surface Transportation Extension Act of 2010
14 (Public Law 111–147; 124 Stat. 78 et seq.) and shall be
15 treated as being included in that Act at the time of the
16 enactment of that Act.

17 (d) SAVINGS CLAUSE.—

18 (1) IN GENERAL.—For fiscal year 2010 and for
19 the period beginning on October 1, 2010, and ending
20 on December 31, 2010, the amount of funds appor-
21 tioned to each State under section 411(d) of the
22 Surface Transportation Extension Act of 2010
23 (Public Law 111–147) that is determined by the
24 amount that the State received or was authorized to
25 receive for fiscal year 2009 to carry out the projects

1 of national and regional significance program and
2 national corridor infrastructure improvement pro-
3 gram shall be the greater of—

4 (A) the amount that the State was author-
5 ized to receive under section 411(d) of the Sur-
6 face Transportation Extension Act of 2010 with
7 respect to each such program according to the
8 provisions of that Act, as in effect on the day
9 before the date of enactment of this Act; or

10 (B) the amount that the State is author-
11 ized to receive under section 411(d) of the Sur-
12 face Transportation Extension Act of 2010 with
13 respect to each such program pursuant to the
14 provisions of that Act, as amended by the
15 amendments made by this section.

16 (2) OBLIGATION AUTHORITY.—For fiscal year
17 2010, the amount of obligation authority distributed
18 to each State shall be the greater of—

19 (A) the amount that the State was author-
20 ized to receive pursuant to section 120(a)(4)(A)
21 (as it pertains to the Appalachian Development
22 Highway System program) of title I of division
23 A of the Consolidated Appropriations Act, 2010
24 (Public Law 111–117) and sections
25 120(a)(4)(B) and 120(a)(6) of such title, as of

1 the day before the date of enactment of this
2 Act; or

3 (B) the amount that the State is author-
4 ized to receive pursuant to section 120(a)(4)(A)
5 (as it pertains to the Appalachian Development
6 Highway System program) of title I of division
7 A of the Consolidated Appropriations Act, 2010
8 (Public Law 111–117) and sections
9 120(a)(4)(B) and 120(a)(6) of such title, as of
10 the date of enactment of this Act.

11 (3) AUTHORIZATION OF APPROPRIATIONS.—
12 There is authorized to be appropriated out of the
13 Highway Trust Fund (other than the Mass Transit
14 Account) such sums as may be necessary to carry
15 out this subsection.

16 (4) INCREASE IN OBLIGATION LIMITATION.—
17 The limitation under the heading “Federal-aid High-
18 ways (Limitation on Obligations) (Highway Trust
19 Fund)” in Public Law 111–117 is increased by such
20 sums as may be necessary to carry out this sub-
21 section.

22 (5) CONTRACT AUTHORITY.—Funds made
23 available to carry out this subsection shall be avail-
24 able for obligation and administered in the same

1 manner as if such funds were apportioned under
2 chapter 1 of title 23, United States Code.

3 (6) AMOUNTS.—The dollar amount specified in
4 section 105(d)(1) of title 23, United States Code,
5 the dollar amount specified in section 120(a)(4)(B)
6 of title I of division A of the Consolidated Appro-
7 priations Act, 2010 (Public Law 111–117), and the
8 dollar amount specified in section 120(b)(10) of
9 such title shall each be increased as necessary to
10 carry out this subsection.

11 **SEC. 615. COMMUNITY COLLEGE AND CAREER TRAINING**
12 **GRANT PROGRAM.**

13 (a) IN GENERAL.—Section 278(a) of the Trade Act
14 of 1974 (19 U.S.C. 2372(a)) is amended by adding at the
15 end the following:

16 “(3) RULE OF CONSTRUCTION.—For purposes
17 of this section, any reference to ‘workers’, ‘workers
18 eligible for training under section 236’, or any other
19 reference to workers under this section shall be
20 deemed to include individuals who are, or are likely
21 to become, eligible for unemployment compensation
22 as defined in section 85(b) of the Internal Revenue
23 Code of 1986, or who remain unemployed after ex-
24 hausting all rights to such compensation.”.

1 (b) DEFINITION OF ELIGIBLE INSTITUTION.—Sec-
2 tion 278(b)(1) of the Trade Act of 1974 (19 U.S.C.
3 2372(b)(1)) is amended—

4 (1) by striking “section 102” and inserting
5 “section 101(a)”; and

6 (2) by striking “1002” and inserting
7 “1001(a)”.

8 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
9 279 of the Trade Act of 1974 (19 U.S.C. 2372a) is
10 amended—

11 (1) in subsection (a), by striking the last sen-
12 tence; and

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

14 “(c) ADMINISTRATIVE AND RELATED COSTS.—The
15 Secretary may retain not more than 5 percent of the funds
16 appropriated under subsection (b) for each fiscal year to
17 administer, evaluate, and establish reporting systems for
18 the Community College and Career Training Grant pro-
19 gram under section 278.

20 “(d) SUPPLEMENT NOT SUPPLANT.—Funds appro-
21 priated under subsection (b) shall be used to supplement
22 and not supplant other Federal, State, and local public
23 funds expended to support community college and career
24 training programs.

1 “(e) AVAILABILITY.—Funds appropriated under sub-
2 section (b) shall remain available for the fiscal year for
3 which the funds are appropriated and the subsequent fis-
4 cal year.”.

5 **SEC. 616. EXTENSIONS OF DUTY SUSPENSIONS ON COTTON**
6 **SHIRTING FABRICS AND RELATED PROVI-**
7 **SIONS.**

8 (a) EXTENSIONS.—Each of the following headings of
9 the Harmonized Tariff Schedule of the United States is
10 amended by striking the date in the effective date column
11 and inserting “12/31/2013”:

12 (1) Heading 9902.52.08 (relating to woven fab-
13 rics of cotton).

14 (2) Heading 9902.52.09 (relating to woven fab-
15 rics of cotton).

16 (3) Heading 9902.52.10 (relating to woven fab-
17 rics of cotton).

18 (4) Heading 9902.52.11 (relating to woven fab-
19 rics of cotton).

20 (5) Heading 9902.52.12 (relating to woven fab-
21 rics of cotton).

22 (6) Heading 9902.52.13 (relating to woven fab-
23 rics of cotton).

24 (7) Heading 9902.52.14 (relating to woven fab-
25 rics of cotton).

1 (8) Heading 9902.52.15 (relating to woven fab-
2 rics of cotton).

3 (9) Heading 9902.52.16 (relating to woven fab-
4 rics of cotton).

5 (10) Heading 9902.52.17 (relating to woven
6 fabrics of cotton).

7 (11) Heading 9902.52.18 (relating to woven
8 fabrics of cotton).

9 (12) Heading 9902.52.19 (relating to woven
10 fabrics of cotton).

11 (13) Heading 9902.52.20 (relating to woven
12 fabrics of cotton).

13 (14) Heading 9902.52.21 (relating to woven
14 fabrics of cotton).

15 (15) Heading 9902.52.22 (relating to woven
16 fabrics of cotton).

17 (16) Heading 9902.52.23 (relating to woven
18 fabrics of cotton).

19 (17) Heading 9902.52.24 (relating to woven
20 fabrics of cotton).

21 (18) Heading 9902.52.25 (relating to woven
22 fabrics of cotton).

23 (19) Heading 9902.52.26 (relating to woven
24 fabrics of cotton).

1 (20) Heading 9902.52.27 (relating to woven
2 fabrics of cotton).

3 (21) Heading 9902.52.28 (relating to woven
4 fabrics of cotton).

5 (22) Heading 9902.52.29 (relating to woven
6 fabrics of cotton).

7 (23) Heading 9902.52.30 (relating to woven
8 fabrics of cotton).

9 (24) Heading 9902.52.31 (relating to woven
10 fabrics of cotton).

11 (b) EXTENSION OF DUTY REFUNDS AND PIMA COT-
12 TON TRUST FUND; MODIFICATION OF AFFIDAVIT RE-
13 QUIREMENTS.—Section 407 of title IV of division C of the
14 Tax Relief and Health Care Act of 2006 (Public Law 109–
15 432; 120 Stat. 3060) is amended—

16 (1) in subsection (b)—

17 (A) in paragraph (1), by striking
18 “amounts determined by the Secretary” and all
19 that follows through “5208.59.80” and insert-
20 ing “amounts received in the general fund that
21 are attributable to duties received since Janu-
22 ary 1, 2004, on articles classified under heading
23 5208”; and

24 (B) in paragraph (2), by striking “October
25 1, 2008” and inserting “December 31, 2013”;

1 (2) in subsection (d)—

2 (A) in the matter preceding paragraph (1),
3 by inserting “annually” after “provided”; and

4 (B) in paragraph (1), by inserting “during
5 the year in which the affidavit is filed and”
6 after “imported cotton fabric”; and

7 (3) in subsection (f)—

8 (A) in the matter preceding paragraph (1),
9 by inserting “annually” after “provided”; and

10 (B) in paragraph (1), by inserting “during
11 the year in which the affidavit is filed and”
12 after “United States”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act and apply with respect to affidavits filed on
16 or after such date of enactment.

17 **SEC. 617. MODIFICATION OF WOOL APPAREL MANUFAC-**
18 **TURERS TRUST FUND.**

19 (a) IN GENERAL.—Section 4002(c)(2)(A) of the Mis-
20 cellaneous Trade and Technical Corrections Act of 2004
21 (Public Law 108–429; 118 Stat. 2600) is amended by
22 striking “chapter 51” and inserting “chapter 62”.

23 (b) FULL RESTORATION OF PAYMENT LEVELS IN
24 FISCAL YEAR 2010.—

25 (1) TRANSFER OF AMOUNTS.—

1 (A) IN GENERAL.—Not later than 30 days
2 after the date of the enactment of this Act, the
3 Secretary of the Treasury shall transfer to the
4 Wool Apparel Manufacturers Trust Fund, out
5 of the general fund of the Treasury of the
6 United States, amounts determined by the Sec-
7 retary of the Treasury to be equivalent to
8 amounts received in the general fund that are
9 attributable to the duty received on articles
10 classified under chapter 62 of the Harmonized
11 Tariff Schedule of the United States, subject to
12 the limitation in subparagraph (B).

13 (B) LIMITATION.—The Secretary of the
14 Treasury shall not transfer more than the
15 amount determined by the Secretary to be nec-
16 essary for—

17 (i) U.S. Customs and Border Protec-
18 tion to make payments to eligible manufac-
19 turers under section 4002(c)(3) of the Mis-
20 cellaneous Trade and Technical Correc-
21 tions Act of 2004 so that the amount of
22 such payments, when added to any other
23 payments made to eligible manufacturers
24 under section 4002(c)(3) of such Act for
25 calendar year 2010, equal the total amount

1 of payments authorized to be provided to
2 eligible manufacturers under section
3 4002(c)(3) of such Act for calendar year
4 2010; and

5 (ii) the Secretary of Commerce to pro-
6 vide grants to eligible manufacturers under
7 section 4002(c)(6) of the Miscellaneous
8 Trade and Technical Corrections Act of
9 2004 so that the amounts of such grants,
10 when added to any other grants made to
11 eligible manufacturers under section
12 4002(c)(6) of such Act for calendar year
13 2010, equal the total amount of grants au-
14 thorized to be provided to eligible manufac-
15 turers under section 4002(c)(6) of such
16 Act for calendar year 2010.

17 (2) PAYMENT OF AMOUNTS.—U.S. Customs
18 and Border Protection shall make payments de-
19 scribed in paragraph (1) to eligible manufacturers
20 not later than 30 days after such transfer of
21 amounts from the general fund of the Treasury of
22 the United States to the Wool Apparel Manufactur-
23 ers Trust Fund. The Secretary of Commerce shall
24 promptly provide grants described in paragraph (1)
25 to eligible manufacturers after such transfer of

1 amounts from the general fund of the Treasury of
2 the United States to the Wool Apparel Manufactur-
3 ers Trust Fund.

4 (c) RULE OF CONSTRUCTION.—The amendment
5 made by subsection (a) shall not be construed to affect
6 the availability of amounts transferred to the Wool Ap-
7 parel Manufacturers Trust Fund before the date of the
8 enactment of this Act.

9 **SEC. 618. DEPARTMENT OF COMMERCE STUDY.**

10 Not later than 180 days after the date of enactment
11 of this Act, the Secretary of Commerce shall report to
12 Congress detailing—

13 (1) the pattern of job loss in the New England,
14 Mid-Atlantic, and Midwest States over the past 20
15 years;

16 (2) the role of the off-shoring of manufacturing
17 jobs in overall job loss in the regions; and

18 (3) recommendations to attract industries and
19 bring jobs to the region.

20 **SEC. 619. ARRA PLANNING AND REPORTING.**

21 Section 1512 of the American Recovery and Reinvest-
22 ment Act of 2009 (Public Law 111–5; 123 Stat. 287) is
23 amended—

24 (1) in subsection (d)—

1 (A) in the subsection heading, by inserting
2 “PLANS AND” after “AGENCY”;

3 (B) by striking “Not later than” and in-
4 serting the following:

5 “(1) DEFINITION.—In this subsection, the term
6 ‘covered program’ means a program for which funds
7 are appropriated under this division—

8 “(A) in an amount that is—

9 “(i) more than \$2,000,000,000; and

10 “(ii) more than 150 percent of the
11 funds appropriated for the program for fis-
12 cal year 2008; or

13 “(B) that did not exist before the date of
14 enactment of this Act.

15 “(2) PLANS.—Not later than July 1, 2010, the
16 head of each agency that distributes recovery funds
17 shall submit to Congress and make available on the
18 website of the agency a plan for each covered pro-
19 gram, which shall, at a minimum, contain—

20 “(A) a description of the goals for the cov-
21 ered program using recovery funds;

22 “(B) a discussion of how the goals de-
23 scribed in subparagraph (A) relate to the goals
24 for ongoing activities of the covered program, if
25 applicable;

1 “(C) a description of the activities that the
2 agency will undertake to achieve the goals de-
3 scribed in subparagraph (A);

4 “(D) a description of the total recovery
5 funding for the covered program and the recov-
6 ery funding for each activity under the covered
7 program, including identifying whether the ac-
8 tivity will be carried out using grants, con-
9 tracts, or other types of funding mechanisms;

10 “(E) a schedule of milestones for major
11 phases of the activities under the covered pro-
12 gram, with planned delivery dates;

13 “(F) performance measures the agency will
14 use to track the progress of each of the activi-
15 ties under the covered program in meeting the
16 goals described in subparagraph (A), including
17 performance targets, the frequency of measure-
18 ment, and a description of the methodology for
19 each measure;

20 “(G) a description of the process of the
21 agency for the periodic review of the progress of
22 the covered program towards meeting the goals
23 described in subparagraph (A); and

1 “(H) a description of how the agency will
2 hold program managers accountable for achiev-
3 ing the goals described in subparagraph (A).

4 “(3) REPORTS.—

5 “(A) IN GENERAL.—Not later than”; and
6 (C) by adding at the end the following:

7 “(B) REPORTS ON PLANS.—Not later than
8 30 days after the end of the calendar quarter
9 ending September 30, 2010, and every calendar
10 quarter thereafter during which the agency obli-
11 gates or expends recovery funds, the head of
12 each agency that developed a plan for a covered
13 program under paragraph (2) shall submit to
14 Congress and make available on a website of
15 the agency a report for each covered program
16 that—

17 “(i) discusses the progress of the
18 agency in implementing the plan;

19 “(ii) describes the progress towards
20 achieving the goals described in paragraph
21 (2)(A) for the covered program;

22 “(iii) discusses the status of each ac-
23 tivity carried out under the covered pro-
24 gram, including whether the activity is
25 completed;

1 “(iv) details the unobligated and un-
2 expired balances and total obligations and
3 outlays under the covered program;

4 “(v) discusses—

5 “(I) whether the covered program
6 has met the milestones for the covered
7 program described in paragraph
8 (2)(E);

9 “(II) if the covered program has
10 failed to meet the milestones, the rea-
11 sons why; and

12 “(III) any changes in the mile-
13 stones for the covered program, in-
14 cluding the reasons for the change;

15 “(vi) discusses the performance of the
16 covered program, including—

17 “(I) whether the covered program
18 has met the performance measures for
19 the covered program described in
20 paragraph (2)(F);

21 “(II) if the covered program has
22 failed to meet the performance meas-
23 ures, the reasons why; and

1 “(III) any trends in information
2 relating to the performance of the cov-
3 ered program; and

4 “(vii) evaluates the ability of the cov-
5 ered program to meet the goals of the cov-
6 ered program given the performance of the
7 covered program.”;

8 (2) in subsection (f)—

9 (A) by striking “Within 180 days” and in-
10 sserting the following:

11 “(1) IN GENERAL.—Within 180 days”; and

12 (B) by adding at the end the following:

13 “(2) PENALTIES.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graphs (B), (C), and (D), the Attorney General
16 may bring a civil action in an appropriate
17 United States district court against a recipient
18 of recovery funds from an agency that does not
19 provide the information required under sub-
20 section (c) or knowingly provides information
21 under subsection (c) that contains a material
22 omission or misstatement. In a civil action
23 under this paragraph, the court may impose a
24 civil penalty on a recipient of recovery funds in
25 an amount not more than \$250,000. Any

1 amounts received from a civil penalty under this
2 paragraph shall be deposited in the general
3 fund of the Treasury.

4 “(B) NOTIFICATION.—

5 “(i) IN GENERAL.—The head of an
6 agency shall provide a written notification
7 to a recipient of recovery funds from the
8 agency that fails to provide the informa-
9 tion required under subsection (c). A noti-
10 fication under this subparagraph shall pro-
11 vide the recipient with information on how
12 to comply with the necessary reporting re-
13 quirements and notice of the penalties for
14 failing to do so.

15 “(ii) LIMITATION.—A court may not
16 impose a civil penalty under subparagraph
17 (A) relating to the failure to provide infor-
18 mation required under subsection (c) if,
19 not later than 31 days after the date of the
20 notification under clause (i), the recipient
21 of the recovery funds provides the informa-
22 tion.

23 “(C) CONSIDERATIONS.—In determining
24 the amount of a penalty under this paragraph

1 for a recipient of recovery funds, a court shall
2 consider—

3 “(i) the number of times the recipient
4 has failed to provide the information re-
5 quired under subsection (c);

6 “(ii) the amount of recovery funds
7 provided to the recipient;

8 “(iii) whether the recipient is a gov-
9 ernment, nonprofit entity, or educational
10 institution; and

11 “(iv) whether the recipient is a small
12 business concern (as defined under section
13 3 of the Small Business Act (15 U.S.C.
14 632)), with particular consideration given
15 to businesses with not more than 50 em-
16 ployees.

17 “(D) APPLICABILITY.—This paragraph
18 shall apply to any report required to be sub-
19 mitted on or after the date of enactment of this
20 paragraph.

21 “(E) NONEXCLUSIVITY.—The imposition
22 of a civil penalty under this subsection shall not
23 preclude any other criminal, civil, or adminis-
24 trative remedy available to the United States or
25 any other person under Federal or State law.

1 “(3) TECHNICAL ASSISTANCE.—Each agency
2 distributing recovery funds shall provide technical
3 assistance, as necessary, to assist recipients of recovery
4 funds in complying with the requirements to provide
5 information under subsection (c), which shall
6 include providing recipients with a reminder regarding
7 each reporting requirement.

8 “(4) PUBLIC LISTING.—

9 “(A) IN GENERAL.—Not later than 45
10 days after the end of each calendar quarter,
11 and subject to the notification requirements
12 under paragraph (2)(B), the Board shall make
13 available on the website established under section
14 1526 a list of all recipients of recovery
15 funds that did not provide the information required
16 under subsection (c) for the calendar
17 quarter.

18 “(B) CONTENTS.—A list made available
19 under subparagraph (A) shall, for each recipient
20 of recovery funds on the list, include the
21 name and address of the recipient, the identification
22 number for the award, the amount of
23 recovery funds awarded to the recipient, a description
24 of the activity for which the recovery

1 funds were provided, and, to the extent known
2 by the Board, the reason for noncompliance.

3 “(5) REGULATIONS AND REPORTING.—

4 “(A) REGULATIONS.—Not later than 90
5 days after the date of enactment of this para-
6 graph, the Attorney General, in consultation
7 with the Director of the Office of Management
8 and Budget and the Chairperson, shall promul-
9 gate regulations regarding implementation of
10 this section.

11 “(B) REPORTING.—

12 “(i) IN GENERAL.—Not later than
13 July 1, 2010, and every 3 months there-
14 after, the Director of the Office of Man-
15 agement and Budget, in consultation with
16 the Chairperson, shall submit to Congress
17 a report on the extent of noncompliance by
18 recipients of recovery funds with the re-
19 porting requirements under this section.

20 “(ii) CONTENTS.—Each report sub-
21 mitted under clause (i) shall include—

22 “(I) information, for the quarter
23 and in total, regarding the number
24 and amount of civil penalties imposed

1 and collected under this subsection,
2 sorted by agency and program;

3 “(II) information on the steps
4 taken by the Federal Government to
5 reduce the level of noncompliance; and

6 “(III) any other information de-
7 termined appropriate by the Direc-
8 tor.”; and

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

10 “(i) TERMINATION.—The reporting requirements
11 under this section shall terminate on September 30,
12 2013.”.

13 **SEC. 620. AMENDMENT OF TRAVEL PROMOTION ACT OF**
14 **2009.**

15 (a) TRAVEL PROMOTION FUND FEES.—Section
16 217(h)(3)(B) of the Immigration and Nationality Act (8
17 U.S.C. 1187(h)(3)(B)) is amended—

18 (1) by striking “subsection (d) of section 11 of
19 the Travel Promotion Act of 2009.” in clause (ii)
20 and inserting “subsection (d) of the Travel Pro-
21 motion Act of 2009 (22 U.S.C. 2131(d)).”; and

22 (2) by striking “September 30, 2014.” in clause
23 (iii) and inserting “September 30, 2015.”.

1 (b) IMPLEMENTATION BEGINNING IN FISCAL YEAR
2 2011.—Subsection (d) of the Travel Promotion Act of
3 2009 (22 U.S.C. 2131(d)) is amended—

4 (1) by striking “For fiscal year 2010, the” in
5 paragraph (2)(A) and inserting “The”;

6 (2) by striking “quarterly, beginning on Janu-
7 ary 1, 2010,” in paragraph (2)(A) and inserting
8 “monthly, immediately following the collection of
9 fees under section 217(h)(3)(B)(i)(I) of the Immi-
10 gration and Nationality Act (8 U.S.C.
11 1187(h)(3)(B)(i)(I),”;

12 (3) by striking “fiscal years 2011 through
13 2014,” in paragraph (2)(B) and inserting “fiscal
14 years 2012 through 2015,”;

15 (4) by striking “fiscal year 2010,” in paragraph
16 (3)(A) and inserting “fiscal year 2011,”;

17 (5) by striking “fiscal year 2011,” each place it
18 appears in paragraph (3)(A) and inserting “fiscal
19 year 2012,”; and

20 (6) by striking “fiscal year 2010, 2011, 2012,
21 2013, or 2014” in paragraph (4)(B) and inserting
22 “fiscal year 2011, 2012, 2013, 2014, or 2015”.

1 **SEC. 621. LIMITATION ON PENALTY FOR FAILURE TO DIS-**
2 **CLOSE REPORTABLE TRANSACTIONS BASED**
3 **ON RESULTING TAX BENEFITS.**

4 (a) IN GENERAL.—Subsection (b) of section 6707A
5 of the Internal Revenue Code of 1986 is amended to read
6 as follows:

7 “(b) AMOUNT OF PENALTY.—

8 “(1) IN GENERAL.—Except as otherwise pro-
9 vided in this subsection, the amount of the penalty
10 under subsection (a) with respect to any reportable
11 transaction shall be 75 percent of the decrease in
12 tax shown on the return as a result of such trans-
13 action (or which would have resulted from such
14 transaction if such transaction were respected for
15 Federal tax purposes).

16 “(2) MAXIMUM PENALTY.—The amount of the
17 penalty under subsection (a) with respect to any re-
18 portable transaction shall not exceed—

19 “(A) in the case of a listed transaction,
20 \$200,000 (\$100,000 in the case of a natural
21 person), or

22 “(B) in the case of any other reportable
23 transaction, \$50,000 (\$10,000 in the case of a
24 natural person).

25 “(3) MINIMUM PENALTY.—The amount of the
26 penalty under subsection (a) with respect to any

1 transaction shall not be less than \$10,000 (\$5,000
2 in the case of a natural person).”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to penalties assessed after Decem-
5 ber 31, 2006.

6 **SEC. 622. REPORT ON TAX SHELTER PENALTIES AND CER-**
7 **TAIN OTHER ENFORCEMENT ACTIONS.**

8 (a) IN GENERAL.—The Commissioner of Internal
9 Revenue, in consultation with the Secretary of the Treas-
10 ury, shall submit to the Committee on Ways and Means
11 of the House of Representatives and the Committee on
12 Finance of the Senate an annual report on the penalties
13 assessed by the Internal Revenue Service during the pre-
14 ceding year under each of the following provisions of the
15 Internal Revenue Code of 1986:

16 (1) Section 6662A (relating to accuracy-related
17 penalty on understatements with respect to report-
18 able transactions).

19 (2) Section 6700(a) (relating to promoting abu-
20 sive tax shelters).

21 (3) Section 6707 (relating to failure to furnish
22 information regarding reportable transactions).

23 (4) Section 6707A (relating to failure to include
24 reportable transaction information with return).

1 (5) Section 6708 (relating to failure to main-
2 tain lists of advisees with respect to reportable
3 transactions).

4 (b) ADDITIONAL INFORMATION.—The report re-
5 quired under subsection (a) shall also include information
6 on the following with respect to each year:

7 (1) Any action taken under section 330(b) of
8 title 31, United States Code, with respect to any re-
9 portable transaction (as defined in section 6707A(c)
10 of the Internal Revenue Code of 1986).

11 (2) Any extension of the time for assessment of
12 tax enforced, or assessment of any amount under
13 such an extension, under paragraph (10) of section
14 6501(c) of the Internal Revenue Code of 1986.

15 (c) DATE OF REPORT.—The first report required
16 under subsection (a) shall be submitted not later than De-
17 cember 31, 2010.

18 **TITLE VII—TRANSPARENCY RE-**
19 **QUIREMENTS FOR FOREIGN-**
20 **HELD DEBT**

21 **SEC. 701. SHORT TITLE.**

22 This title may be cited as the “Foreign-Held Debt
23 Transparency and Threat Assessment Act”.

24 **SEC. 702. DEFINITIONS.**

25 In this title:

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means the following:

4 (A) The Committee on Armed Services, the
5 Committee on Foreign Relations, the Com-
6 mittee on Finance, and the Committee on the
7 Budget of the Senate.

8 (B) The Committee on Armed Services,
9 the Committee on Foreign Affairs, the Com-
10 mittee on Ways and Means, and the Committee
11 on the Budget of the House of Representatives.

12 (2) DEBT INSTRUMENTS OF THE UNITED
13 STATES.—The term “debt instruments of the United
14 States” means all bills, notes, and bonds issued or
15 guaranteed by the United States or by an entity of
16 the United States Government, including any Gov-
17 ernment-sponsored enterprise.

18 **SEC. 703. SENSE OF CONGRESS.**

19 It is the sense of Congress that—

20 (1) the growing Federal debt of the United
21 States has the potential to jeopardize the national
22 security and economic stability of the United States;

23 (2) the increasing dependence of the United
24 States on foreign creditors has the potential to make
25 the United States vulnerable to undue influence by

1 certain foreign creditors in national security and
2 economic policymaking;

3 (3) the People's Republic of China is the largest
4 foreign creditor of the United States, in terms of its
5 overall holdings of debt instruments of the United
6 States;

7 (4) the current level of transparency in the
8 scope and extent of foreign holdings of debt instru-
9 ments of the United States is inadequate and needs
10 to be improved, particularly regarding the holdings
11 of the People's Republic of China;

12 (5) through the People's Republic of China's
13 large holdings of debt instruments of the United
14 States, China has become a super creditor of the
15 United States;

16 (6) under certain circumstances, the holdings of
17 the People's Republic of China could give China a
18 tool with which China can try to manipulate the do-
19 mestic and foreign policymaking of the United
20 States, including the United States relationship with
21 Taiwan;

22 (7) under certain circumstances, if the People's
23 Republic of China were to be displeased with a given
24 United States policy or action, China could attempt
25 to destabilize the United States economy by rapidly

1 divesting large portions of China's holdings of debt
2 instruments of the United States; and

3 (8) the People's Republic of China's expansive
4 holdings of such debt instruments of the United
5 States could potentially pose a direct threat to the
6 United States economy and to United States na-
7 tional security. This potential threat is a significant
8 issue that warrants further analysis and evaluation.

9 **SEC. 704. QUARTERLY REPORT ON RISKS POSED BY FOR-**
10 **EIGN HOLDINGS OF DEBT INSTRUMENTS OF**
11 **THE UNITED STATES.**

12 (a) QUARTERLY REPORT.—Not later than March 31,
13 June 30, September 30, and December 31 of each year,
14 the President shall submit to the appropriate congres-
15 sional committees a report on the risks posed by foreign
16 holdings of debt instruments of the United States, in both
17 classified and unclassified form.

18 (b) MATTERS TO BE INCLUDED.—Each report sub-
19 mitted under this section shall include the following:

20 (1) The most recent data available on foreign
21 holdings of debt instruments of the United States,
22 which data shall not be older than the date that is
23 7 months preceding the date of the report.

24 (2) The country of domicile of all foreign credi-
25 tors who hold debt instruments of the United States.

1 (3) The total amount of debt instruments of the
2 United States that are held by the foreign creditors,
3 broken out by the creditors' country of domicile and
4 by public, quasi-public, and private creditors.

5 (4) For each foreign country listed in para-
6 graph (3)—

7 (A) an analysis of the country's purpose in
8 holding debt instruments of the United States
9 and long-term intentions with regard to such
10 debt instruments;

11 (B) an analysis of the current and foresee-
12 able risks to the long-term national security and
13 economic stability of the United States posed by
14 each country's holdings of debt instruments of
15 the United States; and

16 (C) a specific determination of whether the
17 level of risk identified under subparagraph (B)
18 is acceptable or unacceptable.

19 (c) PUBLIC AVAILABILITY.—The President shall
20 make each report required by subsection (a) available, in
21 its unclassified form, to the public by posting it on the
22 Internet in a conspicuous manner and location.

1 **SEC. 705. ANNUAL REPORT ON RISKS POSED BY THE FED-**
2 **ERAL DEBT OF THE UNITED STATES.**

3 (a) IN GENERAL.—Not later than December 31 of
4 each year, the Comptroller General of the United States
5 shall submit to the appropriate congressional committees
6 a report on the risks to the United States posed by the
7 Federal debt of the United States.

8 (b) CONTENT OF REPORT.—Each report submitted
9 under this section shall include the following:

10 (1) An analysis of the current and foreseeable
11 risks to the long-term national security and eco-
12 nomic stability of the United States posed by the
13 Federal debt of the United States.

14 (2) A specific determination of whether the lev-
15 els of risk identified under paragraph (1) are sus-
16 tainable.

17 (3) If the determination under paragraph (2) is
18 that the levels of risk are unsustainable, specific rec-
19 ommendations for reducing the levels of risk to sus-
20 tainable levels, in a manner that results in a reduc-
21 tion in Federal spending.

1 **SEC. 706. CORRECTIVE ACTION TO ADDRESS UNACCEPT-**
2 **ABLE AND UNSUSTAINABLE RISKS TO**
3 **UNITED STATES NATIONAL SECURITY AND**
4 **ECONOMIC STABILITY.**

5 In any case in which the President determines under
6 section 704(b)(4)(C) that a foreign country's holdings of
7 debt instruments of the United States pose an unaccept-
8 able risk to the long-term national security or economic
9 stability of the United States, the President shall, within
10 30 days of the determination—

11 (1) formulate a plan of action to reduce the risk
12 level to an acceptable and sustainable level, in a
13 manner that results in a reduction in Federal spend-
14 ing;

15 (2) submit to the appropriate congressional
16 committees a report on the plan of action that in-
17 cludes a timeline for the implementation of the plan
18 and recommendations for any legislative action that
19 would be required to fully implement the plan; and

20 (3) move expeditiously to implement the plan in
21 order to protect the long-term national security and
22 economic stability of the United States.

1 **TITLE VIII—TRANSPARENCY RE-**
2 **QUIREMENTS FOR FOREIGN-**
3 **HELD DEBT**

4 **SEC. 801. SHORT TITLE.**

5 This title may be cited as the “Foreign-Held Debt
6 Transparency and Threat Assessment Act”.

7 **SEC. 802. DEFINITIONS.**

8 In this title:

9 (1) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term “appropriate congressional com-
11 mittees” means the following:

12 (A) The Committee on Armed Services, the
13 Committee on Foreign Relations, the Com-
14 mittee on Finance, the Committee on Banking,
15 Housing, and Urban Affairs, and the Com-
16 mittee on the Budget of the Senate.

17 (B) The Committee on Armed Services,
18 the Committee on Foreign Affairs, the Com-
19 mittee on Ways and Means, the Committee on
20 Financial Services, and the Committee on the
21 Budget of the House of Representatives.

22 (2) DEBT INSTRUMENTS OF THE UNITED
23 STATES.—The term “debt instruments of the United
24 States” means all bills, notes, and bonds held by the
25 public and issued or guaranteed by the United

1 States or by an entity of the United States Govern-
2 ment.

3 **SEC. 803. SENSE OF CONGRESS.**

4 It is the sense of Congress that—

5 (1) the growing Federal debt of the United
6 States has the potential to jeopardize the national
7 security and economic stability of the United States;

8 (2) large foreign holdings of debt instruments
9 of the United States have the potential to make the
10 United States vulnerable to undue influence by for-
11 eign creditors in national security and economic pol-
12 icymaking;

13 (3) the People's Republic of China, Japan, and
14 the United Kingdom are the 3 largest foreign hold-
15 ers of debt instruments of the United States; and

16 (4) the current level of transparency in the
17 scope and extent of foreign holdings of debt instru-
18 ments of the United States is inadequate and needs
19 to be improved.

20 **SEC. 804. ANNUAL REPORT ON RISKS POSED BY FOREIGN**
21 **HOLDINGS OF DEBT INSTRUMENTS OF THE**
22 **UNITED STATES.**

23 (a) ANNUAL REPORT.—Not later than March 31 of
24 each year, the Secretary of the Treasury shall submit to
25 the appropriate congressional committees a report on the

1 risks posed by foreign holdings of debt instruments of the
2 United States, in both classified and unclassified form.

3 (b) MATTERS TO BE INCLUDED.—Each report sub-
4 mitted under this section shall include the following:

5 (1) The most recent data available on foreign
6 holdings of debt instruments of the United States,
7 which data shall not be older than the date that is
8 9 months preceding the date of the report.

9 (2) The total amount of debt instruments of the
10 United States that are held by foreign residents,
11 broken out by the residents' country of domicile and
12 by public and private residents.

13 (3) An analysis of the current and foreseeable
14 risks to the long-term national security and eco-
15 nomic stability of the United States posed by foreign
16 holdings of debt instruments of the United States.

17 (c) PUBLIC AVAILABILITY.—The Secretary of the
18 Treasury shall make each report required by subsection
19 (a) available, in its unclassified form, to the public by post-
20 ing it on the Internet in a conspicuous manner and loca-
21 tion.

22 **SEC. 805. ANNUAL REPORT ON RISKS POSED BY THE FED-**
23 **ERAL DEBT OF THE UNITED STATES.**

24 (a) IN GENERAL.—Not later than March 31 of each
25 year, the Comptroller General of the United States shall

1 submit to the appropriate congressional committees a re-
2 port on the risks to the United States posed by the Fed-
3 eral debt of the United States.

4 (b) CONTENT OF REPORT.—Each report submitted
5 under this section shall include the following:

6 (1) An analysis of the current and foreseeable
7 risks to the long-term national security and eco-
8 nomic stability of the United States posed by the
9 Federal debt of the United States.

10 (2) Specific recommendations for reducing the
11 levels of risk resulting from the Federal debt.

12 **SEC. 806. CORRECTIVE ACTION TO ADDRESS UNACCEPT-**
13 **ABLE RISKS TO UNITED STATES NATIONAL**
14 **SECURITY AND ECONOMIC STABILITY.**

15 If the President determines that foreign holdings of
16 debt instruments of the United States pose an unaccept-
17 able risk to the long-term national security or economic
18 stability of the United States, the President shall, within
19 30 days of the determination—

20 (1) formulate a plan of action to reduce such
21 risk;

22 (2) submit to the appropriate congressional
23 committees a report on the plan of action that in-
24 cludes a timeline for the implementation of the plan

1 and recommendations for any legislative action that
2 would be required to fully implement the plan; and
3 (3) move expeditiously to implement the plan in
4 order to protect the long-term national security and
5 economic stability of the United States.

6 **TITLE IX—OFFICE OF THE**
7 **HOMEOWNER ADVOCATE**

8 **SEC. 901. OFFICE OF THE HOMEOWNER ADVOCATE.**

9 (a) ESTABLISHMENT.—There is established in the
10 Department of the Treasury an office to be known as the
11 “Office of the Homeowner Advocate” (in this title referred
12 to as the “Office”).

13 (b) DIRECTOR.—

14 (1) IN GENERAL.—The Director of the Office of
15 the Homeowner Advocate (in this title referred to as
16 the “Director”) shall report directly to the Assistant
17 Secretary of the Treasury for Financial Stability,
18 and shall be entitled to compensation at the same
19 rate as the highest rate of basic pay established for
20 the Senior Executive Service under section 5382 of
21 title 5, United States Code.

22 (2) APPOINTMENT.—The Director shall be ap-
23 pointed by the Secretary, after consultation with the
24 Secretary of the Department of Housing and Urban
25 Development, and without regard to the provisions

1 of title 5, United States Code, relating to appoint-
2 ments in the competitive service or the Senior Exec-
3 utive Service.

4 (3) QUALIFICATIONS.—An individual appointed
5 under paragraph (2) shall have—

6 (A) experience as an advocate for home-
7 owners; and

8 (B) experience dealing with mortgage
9 servicers.

10 (4) RESTRICTION ON EMPLOYMENT.—An indi-
11 vidual may be appointed as Director only if such in-
12 dividual was not an officer or employee of either a
13 mortgage servicer or the Department of the Treas-
14 ury during the 4-year period preceding the date of
15 such appointment.

16 (5) HIRING AUTHORITY.—The Director shall
17 have the authority to hire staff, obtain support by
18 contract, and manage the budget of the Office of the
19 Homeowner Advocate.

20 **SEC. 902. FUNCTIONS OF THE OFFICE.**

21 (a) IN GENERAL.—It shall be the function of the Of-
22 fice—

23 (1) to assist homeowners, housing counselors,
24 and housing lawyers in resolving problems with the
25 Home Affordable Modification Program of the Mak-

1 ing Home Affordable initiative of the Secretary, au-
2 thorized under the Emergency Economic Stabiliza-
3 tion Act of 2008 (in this title referred to as the
4 “Home Affordable Modification Program”)

5 (2) to identify areas, both individual and sys-
6 tematic, in which homeowners, housing counselors,
7 and housing lawyers have problems in dealings with
8 the Home Affordable Modification Program;

9 (3) to the extent possible, to propose changes in
10 the administrative practices of the Home Affordable
11 Modification Program, to mitigate problems identi-
12 fied under paragraph (2);

13 (4) to identify potential legislative changes
14 which may be appropriate to mitigate such problems;
15 and

16 (5) to implement other programs and initiatives
17 that the Director deems important to assisting
18 homeowners, housing counselors, and housing law-
19 yers in resolving problems with the Home Affordable
20 Modification Program, which may include—

21 (A) running a triage hotline for home-
22 owners at risk of foreclosure;

23 (B) providing homeowners with access to
24 housing counseling programs of the Department

1 of Housing and Urban Development at no cost
2 to the homeowner;

3 (C) developing Internet tools related to the
4 Home Affordable Modification Program; and

5 (D) developing training and educational
6 materials.

7 (b) AUTHORITY.—

8 (1) IN GENERAL.—Staff designated by the Di-
9 rector shall have the authority to implement servicer
10 remedies, on a case-by-case basis, subject to the ap-
11 proval of the Assistant Secretary of the Treasury for
12 Financial Stability.

13 (2) RESOLUTION OF HOMEOWNER CON-
14 CERNS.—The Office shall, to the extent possible, re-
15 solve all homeowner concerns not later than 30 days
16 after the opening of a case with such homeowner.

17 (c) COMMENCEMENT OF OPERATIONS.—The Office
18 shall commence its operations, as required by this title,
19 not later than 3 months after the date of enactment of
20 this Act.

21 (d) SUNSET.—The Office shall cease operations as of
22 the date on which the Home Affordable Modification Pro-
23 gram ceases to operate.

1 **SEC. 903. RELATIONSHIP WITH EXISTING ENTITIES.**

2 (a) TRANSFER.—The Office shall coordinate and cen-
3 tralize all complaint escalations relating to the Home Af-
4 fordable Modification Program.

5 (b) HOTLINE.—The HOPE hotline (or any successor
6 triage hotline) shall reroute all complaints relating to the
7 Home Affordable Modification Program to the Office.

8 (c) COORDINATION.—The Office shall coordinate
9 with the compliance office of the Office of Financial Sta-
10 bility of the Department of the Treasury and the Home-
11 ownership Preservation Office of the Department of the
12 Treasury.

13 **SEC. 904. RULE OF CONSTRUCTION.**

14 Nothing in this section shall prohibit a mortgage
15 servicer from evaluating a homeowner for eligibility under
16 the Home Affordable Foreclosure Alternatives Program
17 while a case is still open with the Office of the Homeowner
18 Advocate. Nothing in this section may be construed to re-
19 lieve any loan services from otherwise applicable rules, di-
20 rectives, or similar guidance under the Home Affordable
21 Modification Program relating to the continuation or com-
22 pletion of foreclosure proceedings.

23 **SEC. 905. REPORTS TO CONGRESS.**

24 (a) TESTIMONY.—The Director shall be available to
25 testify before the Committee on Banking, Housing, and
26 Urban Affairs of the Senate and the Committee on Finan-

1 cial Services of the House of Representatives, not less fre-
2 quently than 4 times a year, or at any time at the request
3 of the Chairs of either committee.

4 (b) REPORTS.—Once annually, the Director shall
5 provide a detailed report to Congress on the Home Afford-
6 able Modification Program. Such report shall contain full
7 and substantive analysis, in addition to statistical informa-
8 tion, including, at a minimum—

9 (1) data and analysis of the types and volume
10 of complaints received from homeowners, housing
11 counselors, and housing lawyers, broken down by
12 category of servicer, except that servicers may not be
13 identified by name in the report;

14 (2) a summary of not fewer than 20 of the
15 most serious problems encountered by Home Afford-
16 able Modification Program participants, including a
17 description of the nature of such problems;

18 (3) to the extent known, identification of the 10
19 most litigated issues for Home Affordable Modifica-
20 tion Program participants, including recommenda-
21 tions for mitigating such disputes;

22 (4) data and analysis on the resolutions of the
23 complaints received from homeowners, housing coun-
24 selors, and housing lawyers;

1 (5) identification of any programs or initiatives
2 that the Office has taken to improve the Home Af-
3 fordable Modification Program;

4 (6) recommendations for such administrative
5 and legislative action as may be appropriate to re-
6 solve problems encountered by Home Affordable
7 Modification Program participants; and

8 (7) such other information as the Director may
9 deem advisable.

10 **SEC. 906. FUNDING.**

11 Amounts made available for the costs of administra-
12 tion of the Home Affordable Modification Program that
13 are not otherwise obligated shall be available to carry out
14 the duties of the Office. Funding shall be maintained at
15 levels adequate to reasonably carry out the functions of
16 the Office.

17 **SEC. 907. PROHIBITION ON PARTICIPATION IN MAKING**
18 **HOME AFFORDABLE FOR BORROWERS WHO**
19 **STRATEGICALLY DEFAULT.**

20 No mortgage may be modified under the Making
21 Home Affordable Program, or with any funds from the
22 Troubled Asset Relief Program, unless the servicer of the
23 mortgage loan has determined, in accordance with stand-
24 ards and requirements established by the Secretary of the
25 Treasury, that the mortgagor cannot afford to make pay-

1 ments under the terms of the existing mortgage loan. The
2 Secretary of the Treasury, in consultation with the Sec-
3 retary of Housing and Urban Development, shall issue
4 rules to carry out this section not later than 90 days after
5 the date of enactment of this Act.

6 **SEC. 908. PUBLIC AVAILABILITY OF INFORMATION.**

7 (a) PUBLIC AVAILABILITY OF DATA.—The Secretary
8 of the Treasury shall revise the guidelines for the Home
9 Affordable Modification Program of the Making Home Af-
10 fordable initiative of the Secretary of the Treasury, au-
11 thorized under the Emergency Economic Stabilization Act
12 of 2008 (Public Law 110–343), to establish that the data
13 collected by the Secretary of the Treasury from each mort-
14 gage servicer and lender participating in the Program is
15 made public in accordance with subsection (b).

16 (b) CONTENT.—Not more than 60 days after each
17 monthly deadline for submission of data by mortgage
18 servicers and lender participating in the program, the
19 Treasury shall make all data tables available to the public
20 at the individual record level. This data shall include but
21 not be limited to—

22 (1) higher risk loans, including loans made in
23 connection with any program to provide expanded
24 loan approvals, shall be reported separately;

25 (2) disclose—

1 (A) the rate or pace at which such mort-
2 gages are becoming seriously delinquent;

3 (B) whether such rate or pace is increasing
4 or decreasing;

5 (C) if there are certain subsets within the
6 loans covered by this section that have greater
7 or lesser rates or paces of delinquency; and

8 (D) if such subsets exist, the characteris-
9 tics of such subset of mortgages;

10 (3) with respect to the loss mitigation efforts of
11 the loan—

12 (A) the processes and practices that the re-
13 porter has in effect to minimize losses on mort-
14 gages covered by this section; and

15 (B) the manner and methods by which
16 such processes and practices are being mon-
17 itored for effectiveness;

18 (4) disclose, with respect to loans that are or
19 become 60 or more days past due, (provided that for
20 purposes of disclosure under this paragraph that
21 each loan should have a unique number that is not
22 the same as any loan number the borrower, origi-
23 nator, or servicer uses), the following attributes—

24 (A) the original loan amount;

25 (B) the current loan amount;

1 (C) the loan-to-value ratio and combined
2 loan-to-value ratio, both at origination and cur-
3 rently, and the number of liens on the property;

4 (D) the property valuation at the time of
5 origination of the loan, and all subsequent prop-
6 erty valuations and the date of each valuation;

7 (E) each relevant credit score of each bor-
8 rower obtained at any time in connection with
9 the loan, with the date of the credit score, to
10 the extent allowed by existing law;

11 (F) whether the loan has any mortgage or
12 other credit insurance or guarantee;

13 (G) the current interest rate on such loan;

14 (H) any rate caps and floors if the loan is
15 an adjustable rate mortgage loan;

16 (I) the adjustable rate mortgage index or
17 indices for such loan;

18 (J) whether the loan is currently past due,
19 and if so how many days such loan is past due;

20 (K) the total number of days the loan has
21 been past due at any time;

22 (L) whether the loan is subject to a balloon
23 payment;

24 (M) the date of each modification of the
25 loan;

1 (N) whether any amounts of loan principal
2 has been deferred or written off, and if so, the
3 date and amount of each deferral and the date
4 and amount of each writedown;

5 (O) whether the interest rate was changed
6 from a rate that could adjust to a fixed rate,
7 and if so, the period of time for which the rate
8 will be fixed;

9 (P) the amount by which the interest rate
10 on the loan was reduced, and for what period
11 of time it was reduced;

12 (Q) if the interest rate was reduced or
13 fixed for a period of time less than the remain-
14 ing loan term, on what dates, and to what
15 rates, could the rate potentially increase in the
16 future;

17 (R) whether the loan term was modified,
18 and if so, whether it was extended or shortened,
19 and by what amount of time;

20 (S) whether the loan is in the process of
21 foreclosure or similar procedure, whether judi-
22 cial or otherwise; and

23 (T) whether a foreclosure or similar proce-
24 dure, whether judicial or otherwise, has been
25 completed.

1 (c) GUIDELINES AND REGULATIONS.—The Secretary
2 of the Treasury shall establish guidelines and regulations
3 necessary—

4 (1) to ensure that the privacy of individual con-
5 sumers is appropriately protected in the reports
6 under this section;

7 (2) to make the data reported under this sub-
8 section available on a public website with no cost to
9 access the data, in a consistent format;

10 (3) to update the data no less frequently than
11 monthly;

12 (4) to establish procedures for disclosing such
13 data to the public on a public website with no cost
14 to access the data; and

15 (5) to allow the Secretary to make such dele-
16 tions as the Secretary may determine to be appro-
17 priate to protect any privacy interest of any loan
18 modification applicant, including the deletion or al-
19 teration of the applicant's name and identification
20 number.

21 (d) EXCEPTION.—No data shall have to be disclosed
22 if it voids or violates existing contracts between the Sec-
23 retary of Treasury and mortgage servicers as part of the
24 Making Home Affordable Program.

1 **TITLE X—BUDGETARY**
2 **PROVISIONS**

3 **SEC. 1001. BUDGETARY PROVISIONS.**

4 (a) STATUTORY PAYGO.—The budgetary effects of
5 this Act, for the purpose of complying with the Statutory
6 Pay-As-You-Go Act of 2010, shall be determined by ref-
7 erence to the latest statement titled ‘Budgetary Effects
8 of PAYGO Legislation’ for this Act, jointly submitted for
9 printing in the Congressional Record by the Chairmen of
10 the House and Senate Budget Committees, provided that
11 such statement has been submitted prior to the vote on
12 passage in the House acting first on this conference report
13 or amendment between the Houses.

14 (b) EMERGENCY DESIGNATIONS.—Sections 501 and
15 524—

16 (1) are designated as an emergency require-
17 ment pursuant to section 4(g) of the Statutory Pay-
18 As-You-Go Act of 2010 (Public Law 111–139; 2
19 U.S.C. 933(g));

20 (2) in the House of Representatives, are des-
21 ignated as an emergency for purposes of pay-as-you-
22 go principles; and

23 (3) in the Senate, are designated as an emer-
24 gency requirement pursuant to section 403(a) of S.

- 1 Con. Res. 13 (111th Congress), the concurrent reso-
- 2 lution on the budget for fiscal year 2010.