

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

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

H. R. 5297

To create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, 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. REID (for himself, Mr. BAUCUS, and Ms. LANDRIEU)

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Jobs

5 Act of 2010”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

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TITLE I—SMALL BUSINESSES

Sec. 1001. Definitions.

Subtitle A—Small Business Access to Credit

Sec. 1101. Short title.

PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

- Sec. 1111. Section 7(a) business loans.
- Sec. 1112. Maximum loan amounts under 504 program.
- Sec. 1113. Maximum loan limits under microloan program.
- Sec. 1114. Loan guarantee enhancement extensions.
- Sec. 1115. New Markets Venture Capital company investment limitations.
- Sec. 1116. Alternative size standards.
- Sec. 1117. Sale of 7(a) loans in secondary market.
- Sec. 1118. Online lending platform.
- Sec. 1119. SBA Secondary Market Guarantee Authority.

PART II—SMALL BUSINESS ACCESS TO CAPITAL

- Sec. 1122. Low-interest refinancing under the local development business loan program.

PART III—OTHER MATTERS

- Sec. 1131. Small business intermediary lending pilot program.
- Sec. 1132. Public policy goals.
- Sec. 1133. Floor plan pilot program extension.
- Sec. 1134. Guarantees for bonds and notes issued for community or economic development purposes.
- Sec. 1135. Temporary express loan enhancement.
- Sec. 1136. Prohibition on using TARP funds or tax increases.

Subtitle B—Small Business Trade and Exporting

- Sec. 1201. Short title.
- Sec. 1202. Definitions.
- Sec. 1203. Office of International Trade.
- Sec. 1204. Duties of the Office of International Trade.
- Sec. 1205. Export assistance centers.
- Sec. 1206. International trade finance programs.
- Sec. 1207. State Trade and Export Promotion Grant Program.
- Sec. 1208. Rural export promotion.
- Sec. 1209. International trade cooperation by small business development centers.

Subtitle C—Small Business Contracting

PART I—CONTRACT BUNDLING

- Sec. 1311. Small Business Act.
- Sec. 1312. Leadership and oversight.
- Sec. 1313. Consolidation of contract requirements.
- Sec. 1314. Small business teams pilot program.

PART II—SUBCONTRACTING INTEGRITY

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- Sec. 1321. Subcontracting misrepresentations.
- Sec. 1322. Small business subcontracting improvements.

PART III—ACQUISITION PROCESS

- Sec. 1331. Reservation of prime contract awards for small businesses.
- Sec. 1332. Micro-purchase guidelines.
- Sec. 1333. Agency accountability.
- Sec. 1334. Payment of subcontractors.
- Sec. 1335. Repeal of Small Business Competitiveness Demonstration Program.

PART IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

- Sec. 1341. Policy and presumptions.
- Sec. 1342. Annual certification.
- Sec. 1343. Training for contracting and enforcement personnel.
- Sec. 1344. Updated size standards.
- Sec. 1345. Study and report on the mentor-protege program.
- Sec. 1346. Contracting goals reports.
- Sec. 1347. Small business contracting parity.

Subtitle D—Small Business Management and Counseling Assistance

- Sec. 1401. Matching requirements under small business programs.
- Sec. 1402. Grants for SBDCs.

Subtitle E—Disaster Loan Improvement

- Sec. 1501. Aquaculture business disaster assistance.

Subtitle F—Small Business Regulatory Relief

- Sec. 1601. Requirements providing for more detailed analyses.
- Sec. 1602. Office of advocacy.

Subtitle G—Appropriations Provisions

- Sec. 1701. Salaries and expenses.
- Sec. 1702. Business loans program account.
- Sec. 1703. Community Development Financial Institutions Fund program account.
- Sec. 1704. Small business loan guarantee enhancement extensions.

TITLE II—TAX PROVISIONS

- Sec. 2001. Short title.

Subtitle A—Small Business Relief

PART I—PROVIDING ACCESS TO CAPITAL

- Sec. 2011. Temporary exclusion of 100 percent of gain on certain small business stock.
- Sec. 2012. General business credits of eligible small businesses for 2010 carried back 5 years.
- Sec. 2013. General business credits of eligible small businesses in 2010 not subject to alternative minimum tax.
- Sec. 2014. Temporary reduction in recognition period for built-in gains tax.

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PART II—ENCOURAGING INVESTMENT

- Sec. 2021. Increased expensing limitations for 2010 and 2011; certain real property treated as section 179 property.
- Sec. 2022. Additional first-year depreciation for 50 percent of the basis of certain qualified property.
- Sec. 2023. Special rule for long-term contract accounting.

PART III—PROMOTING ENTREPRENEURSHIP

- Sec. 2031. Increase in amount allowed as deduction for start-up expenditures in 2010.
- Sec. 2032. Authorization of appropriations for the United States Trade Representative to develop market access opportunities for United States small- and medium-sized businesses and to enforce trade agreements.

PART IV—PROMOTING SMALL BUSINESS FAIRNESS

- Sec. 2041. Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits.
- Sec. 2042. Deduction for health insurance costs in computing self-employment taxes in 2010.
- Sec. 2043. Removal of cellular telephones and similar telecommunications equipment from listed property.

Subtitle B—Revenue Provisions

PART I—REDUCING THE TAX GAP

- Sec. 2101. Information reporting for rental property expense payments.
- Sec. 2102. Increase in information return penalties.
- Sec. 2103. Report on tax shelter penalties and certain other enforcement actions.
- Sec. 2104. Application of continuous levy to tax liabilities of certain Federal contractors.

PART II—PROMOTING RETIREMENT PREPARATION

- Sec. 2111. Participants in government section 457 plans allowed to treat elective deferrals as Roth contributions.
- Sec. 2112. Rollovers from elective deferral plans to designated Roth accounts.
- Sec. 2113. Special rules for annuities received from only a portion of a contract.

PART III—CLOSING UNINTENDED LOOPHOLES

- Sec. 2121. Crude tall oil ineligible for cellulosic biofuel producer credit.
- Sec. 2122. Source rules for income on guarantees.

PART IV—TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

- Sec. 2131. Time for payment of corporate estimated taxes.

TITLE III—STATE SMALL BUSINESS CREDIT INITIATIVE

- Sec. 3001. Short title.
- Sec. 3002. Definitions.
- Sec. 3003. Federal funds allocated to States.

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- Sec. 3004. Approving States for participation.
- Sec. 3005. Approving State capital access programs.
- Sec. 3006. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers.
- Sec. 3007. Reports.
- Sec. 3008. Remedies for State program termination or failures.
- Sec. 3009. Implementation and administration.
- Sec. 3010. Regulations.
- Sec. 3011. Oversight and audits.

TITLE IV—ADDITIONAL SMALL BUSINESS PROVISIONS

Subtitle A—Small Business Lending Fund

- Sec. 4101. Purpose.
- Sec. 4102. Definitions.
- Sec. 4103. Small business lending fund.
- Sec. 4104. Additional authorities of the Secretary.
- Sec. 4105. Considerations.
- Sec. 4106. Reports.
- Sec. 4107. Oversight and audits.
- Sec. 4108. Credit reform; funding.
- Sec. 4109. Termination and continuation of authorities.
- Sec. 4110. Preservation of authority.
- Sec. 4111. Assurances.
- Sec. 4112. Study and report with respect to women-owned, veteran-owned, and minority-owned businesses.
- Sec. 4113. Sense of congress.

Subtitle B—Other Provisions

PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES

- Sec. 4221. Short title.
- Sec. 4222. Global business development and promotion activities of the Department of Commerce.
- Sec. 4223. Additional funding to improve access to global markets for rural businesses.
- Sec. 4224. Additional funding for the ExporTech program.
- Sec. 4225. Additional funding for the market development cooperator program of the department of commerce.
- Sec. 4226. Hollings Manufacturing Partnership Program; Technology Innovation Program.
- Sec. 4227. Sense of the Senate concerning Federal collaboration with States on export promotion issues.
- Sec. 4228. Report on tariff and nontariff barriers.

PART II—MEDICARE FRAUD

- Sec. 4241. Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the Medicare fee-for-service program.

TITLE V—BUDGETARY PROVISIONS

- Sec. 5001. Determination of budgetary effects.

1 TITLE I—SMALL BUSINESSES

2 SEC. 1001. DEFINITIONS.

3 In this title—

4 (1) the terms “Administration” and “Adminis-
5 trator” mean the Small Business Administration
6 and the Administrator thereof, respectively; and

7 (2) the term “small business concern” has the
8 meaning given that term under section 3 of the
9 Small Business Act (15 U.S.C. 632).

10 Subtitle A—Small Business Access **11 to Credit**

12 SEC. 1101. SHORT TITLE.

13 This subtitle may be cited as the “Small Business
14 Job Creation and Access to Capital Act of 2010”.

15 PART I—NEXT STEPS FOR MAIN STREET CREDIT **16 AVAILABILITY**

17 SEC. 1111. SECTION 7(a) BUSINESS LOANS.

18 (a) AMENDMENT.—Section 7(a) of the Small Busi-
19 ness Act (15 U.S.C. 636(a)) is amended—

20 (1) in paragraph (2)(A)—

21 (A) in clause (i), by striking “75 percent”
22 and inserting “90 percent”; and

23 (B) in clause (ii), by striking “85 percent”
24 and inserting “90 percent”; and

1 (2) in paragraph (3)(A), by striking
2 “\$1,500,000 (or if the gross loan amount would ex-
3 ceed \$2,000,000” and inserting “\$4,500,000 (or if
4 the gross loan amount would exceed \$5,000,000”.

5 (b) PROSPECTIVE REPEAL.—Effective January 1,
6 2011, section 7(a) of the Small Business Act (15 U.S.C.
7 636(a)) is amended—

8 (1) in paragraph (2)(A)—

9 (A) in clause (i), by striking “90 percent”
10 and inserting “75 percent”; and

11 (B) in clause (ii), by striking “90 percent”
12 and inserting “85 percent”; and

13 (2) in paragraph (3)(A), by striking
14 “\$4,500,000” and inserting “\$3,750,000”.

15 **SEC. 1112. MAXIMUM LOAN AMOUNTS UNDER 504 PRO-**
16 **GRAM.**

17 Section 502(2)(A) of the Small Business Investment
18 Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

19 (1) in clause (i), by striking “\$1,500,000” and
20 inserting “\$5,000,000”;

21 (2) in clause (ii), by striking “\$2,000,000” and
22 inserting “\$5,000,000”;

23 (3) in clause (iii), by striking “\$4,000,000” and
24 inserting “\$5,500,000”;

1 (4) in clause (iv), by striking “\$4,000,000” and
2 inserting “\$5,500,000”; and

3 (5) in clause (v), by striking “\$4,000,000” and
4 inserting “\$5,500,000”.

5 **SEC. 1113. MAXIMUM LOAN LIMITS UNDER MICROLOAN**
6 **PROGRAM.**

7 Section 7(m) of the Small Business Act (15 U.S.C.
8 636(m)) is amended—

9 (1) in paragraph (1)(B)(iii), by striking
10 “\$35,000” and inserting “\$50,000”;

11 (2) in paragraph (3)—

12 (A) in subparagraph (C), by striking
13 “\$3,500,000” and inserting “\$5,000,000”; and

14 (B) in subparagraph (E), by striking
15 “\$35,000” each place that term appears and
16 inserting “\$50,000”; and

17 (3) in paragraph (11)(B), by striking
18 “\$35,000” and inserting “\$50,000”.

19 **SEC. 1114. LOAN GUARANTEE ENHANCEMENT EXTENSIONS.**

20 (a) FEES.—Section 501 of the American Recovery
21 and Reinvestment Act of 2009 (Public Law 111–5; 123
22 Stat. 151) is amended by striking “September 30, 2010”
23 each place that term appears and inserting “December 31,
24 2010”.

1 (b) LOAN GUARANTEES.—Section 502(f) of division
2 A of the American Recovery and Reinvestment Act of
3 2009 (Public Law 111–5; 123 Stat. 153) is amended by
4 striking “May 31, 2010” and inserting “December 31,
5 2010”.

6 **SEC. 1115. NEW MARKETS VENTURE CAPITAL COMPANY IN-**
7 **VESTMENT LIMITATIONS.**

8 Section 355 of the Small Business Investment Act
9 of 1958 (15 U.S.C. 689d) is amended by adding at the
10 end the following:

11 “(e) INVESTMENT LIMITATIONS.—

12 “(1) DEFINITION.—In this subsection, the term
13 ‘covered New Markets Venture Capital company’
14 means a New Markets Venture Capital company—

15 “(A) granted final approval by the Admin-
16 istrator under section 354(e) on or after March
17 1, 2002; and

18 “(B) that has obtained a financing from
19 the Administrator.

20 “(2) LIMITATION.—Except to the extent ap-
21 proved by the Administrator, a covered New Markets
22 Venture Capital company may not acquire or issue
23 commitments for securities under this title for any
24 single enterprise in an aggregate amount equal to
25 more than 10 percent of the sum of—

1 “(A) the regulatory capital of the covered
2 New Markets Venture Capital company; and
3 “(B) the total amount of leverage pro-
4 jected in the participation agreement of the cov-
5 ered New Markets Venture Capital.”.

6 **SEC. 1116. ALTERNATIVE SIZE STANDARDS.**

7 Section 3(a) of the Small Business Act (15 U.S.C.
8 632(a)) is amended by adding at the end the following:

9 “(5) ALTERNATIVE SIZE STANDARD.—

10 “(A) IN GENERAL.—The Administrator shall
11 establish an alternative size standard for applicants
12 for business loans under section 7(a) and applicants
13 for development company loans under title V of the
14 Small Business Investment Act of 1958 (15 U.S.C.
15 695 et seq.), that uses maximum tangible net worth
16 and average net income as an alternative to the use
17 of industry standards.

18 “(B) INTERIM RULE.—Until the date on which
19 the alternative size standard established under sub-
20 paragraph (A) is in effect, an applicant for a busi-
21 ness loan under section 7(a) or an applicant for a
22 development company loan under title V of the
23 Small Business Investment Act of 1958 may be eli-
24 gible for such a loan if—

1 “(i) the maximum tangible net worth of
2 the applicant is not more than \$15,000,000;
3 and

4 “(ii) the average net income after Federal
5 income taxes (excluding any carry-over losses)
6 of the applicant for the 2 full fiscal years before
7 the date of the application is not more than
8 \$5,000,000.”.

9 **SEC. 1117. SALE OF 7(a) LOANS IN SECONDARY MARKET.**

10 Section 5(g) of the Small Business Act (15 U.S.C.
11 634(g)) is amended by adding at the end the following:

12 “(6) If the amount of the guaranteed portion of any
13 loan under section 7(a) is more than \$500,000, the Ad-
14 ministrators shall, upon request of a pool assembler, divide
15 the loan guarantee into increments of \$500,000 and 1 in-
16 crement of any remaining amount less than \$500,000, in
17 order to permit the maximum amount of any loan in a
18 pool to be not more than \$500,000. Only 1 increment of
19 any loan guarantee divided under this paragraph may be
20 included in the same pool. Increments of loan guarantees
21 to different borrowers that are divided under this para-
22 graph may be included in the same pool.”.

1 **SEC. 1118. ONLINE LENDING PLATFORM.**

2 It is the sense of Congress that the Administrator
3 of the Small Business Administration should establish a
4 website that—

5 (1) lists each lender that makes loans guaran-
6 teed by the Small Business Administration and pro-
7 vides information about the loan rates of each such
8 lender; and

9 (2) allows prospective borrowers to compare
10 rates on loans guaranteed by the Small Business
11 Administration.

12 **SEC. 1119. SBA SECONDARY MARKET GUARANTEE AUTHOR-**
13 **ITY.**

14 Section 503(f) of division A of the American Recovery
15 and Reinvestment Act of 2009 (Public Law 111–5; 123
16 Stat. 155) is amended by striking “on the date 2 years
17 after the date of enactment of this section” and inserting
18 “2 years after the date of the first sale of a pool of first
19 lien position 504 loans guaranteed under this section to
20 a third-party investor”.

1 **PART II—SMALL BUSINESS ACCESS TO CAPITAL**

2 **SEC. 1122. LOW-INTEREST REFINANCING UNDER THE**
3 **LOCAL DEVELOPMENT BUSINESS LOAN PRO-**
4 **GRAM.**

5 (a) REFINANCING.—Section 502(7) of the Small
6 Business Investment Act of 1958 (15 U.S.C. 696(7)) is
7 amended by adding at the end the following:

8 “(C) REFINANCING NOT INVOLVING EX-
9 PANSIONS.—

10 “(i) DEFINITIONS.—In this subpara-
11 graph—

12 “(I) the term ‘borrower’ means a
13 small business concern that submits
14 an application to a development com-
15 pany for financing under this sub-
16 paragraph;

17 “(II) the term ‘eligible fixed
18 asset’ means tangible property relat-
19 ing to which the Administrator may
20 provide financing under this section;
21 and

22 “(III) the term ‘qualified debt’
23 means indebtedness—

24 “(aa) that—

25 “(AA) was incurred not
26 less than 2 years before the

1 date of the application for
2 assistance under this sub-
3 paragraph;

4 “(BB) is a commercial
5 loan;

6 “(CC) is not subject to
7 a guarantee by a Federal
8 agency;

9 “(DD) the proceeds of
10 which were used to acquire
11 an eligible fixed asset;

12 “(EE) was incurred for
13 the benefit of the small busi-
14 ness concern; and

15 “(FF) is collateralized
16 by eligible fixed assets; and

17 “(bb) for which the borrower
18 has been current on all payments
19 for not less than 1 year before
20 the date of the application.

21 “(ii) AUTHORITY.—A project that
22 does not involve the expansion of a small
23 business concern may include the refi-
24 nancing of qualified debt if—

1 “(I) the amount of the financing
2 is not more than 90 percent of the
3 value of the collateral for the financ-
4 ing, except that, if the appraised value
5 of the eligible fixed assets serving as
6 collateral for the financing is less than
7 the amount equal to 125 percent of
8 the amount of the financing, the bor-
9 rower may provide additional cash or
10 other collateral to eliminate any defi-
11 ciency;

12 “(II) the borrower has been in
13 operation for all of the 2-year period
14 ending on the date of the loan; and

15 “(III) for a financing for which
16 the Administrator determines there
17 will be an additional cost attributable
18 to the refinancing of the qualified
19 debt, the borrower agrees to pay a fee
20 in an amount equal to the anticipated
21 additional cost.

22 “(iii) FINANCING FOR BUSINESS EX-
23 PENSES.—

24 “(I) FINANCING FOR BUSINESS
25 EXPENSES.—The Administrator may

1 provide financing to a borrower that
2 receives financing that includes a refi-
3 nancing of qualified debt under clause
4 (ii), in addition to the refinancing
5 under clause (ii), to be used solely for
6 the payment of business expenses.

7 “(II) APPLICATION FOR FINANC-
8 ING.—An application for financing
9 under subclause (I) shall include—

10 “(aa) a specific description
11 of the expenses for which the ad-
12 ditional financing is requested;
13 and

14 “(bb) an itemization of the
15 amount of each expense.

16 “(III) CONDITION ON ADDI-
17 TIONAL FINANCING.—A borrower may
18 not use any part of the financing
19 under this clause for non-business
20 purposes.

21 “(iv) LOANS BASED ON JOBS.—

22 “(I) JOB CREATION AND RETEN-
23 TION GOALS.—

24 “(aa) IN GENERAL.—The
25 Administrator may provide fi-

1 nancing under this subparagraph
2 for a borrower that meets the job
3 creation goals under subsection
4 (d) or (e) of section 501.

5 “(bb) ALTERNATE JOB RE-
6 TENTION GOAL.—The Adminis-
7 trator may provide financing
8 under this subparagraph to a
9 borrower that does not meet the
10 goals described in item (aa) in an
11 amount that is not more than the
12 product obtained by multiplying
13 the number of employees of the
14 borrower by \$65,000.

15 “(II) NUMBER OF EMPLOYEES.—
16 For purposes of subclause (I), the
17 number of employees of a borrower is
18 equal to the sum of—

19 “(aa) the number of full-
20 time employees of the borrower
21 on the date on which the bor-
22 rower applies for a loan under
23 this subparagraph; and

24 “(bb) the product obtained
25 by multiplying—

1 “(AA) the number of
2 part-time employees of the
3 borrower on the date on
4 which the borrower applies
5 for a loan under this sub-
6 paragraph; by

7 “(BB) the quotient ob-
8 tained by dividing the aver-
9 age number of hours each
10 part time employee of the
11 borrower works each week
12 by 40.

13 “(v) NONDELEGATION.—Notwith-
14 standing section 508(e), the Administrator
15 may not permit a premier certified lender
16 to approve or disapprove an application for
17 assistance under this subparagraph.

18 “(vi) TOTAL AMOUNT OF LOANS.—
19 The Administrator may provide not more
20 than a total of \$7,500,000,000 of financ-
21 ing under this subparagraph for each fiscal
22 year.”.

23 (b) PROSPECTIVE REPEAL.—Effective 2 years after
24 the date of enactment of this Act, section 502(7) of the

1 Small Business Investment Act of 1958 (15 U.S.C.
2 696(7)) is amended by striking subparagraph (C).

3 (c) TECHNICAL CORRECTION.—Section 502(2)(A)(i)
4 of the Small Business Investment Act of 1958 (15 U.S.C.
5 696(2)(A)(i)) is amended by striking “subparagraph (B)
6 or (C)” and inserting “clause (ii), (iii), (iv), or (v)”.

7 **PART III—OTHER MATTERS**

8 **SEC. 1131. SMALL BUSINESS INTERMEDIARY LENDING**
9 **PILOT PROGRAM.**

10 (a) IN GENERAL.—Section 7 of the Small Business
11 Act (15 U.S.C. 636) is amended by striking subsection
12 (l) and inserting the following:

13 “(l) SMALL BUSINESS INTERMEDIARY LENDING
14 PILOT PROGRAM.—

15 “(1) DEFINITIONS.—In this subsection—

16 “(A) the term ‘eligible intermediary’—

17 “(i) means a private, nonprofit entity
18 that—

19 “(I) seeks or has been awarded a
20 loan from the Administrator to make
21 loans to small business concerns
22 under this subsection; and

23 “(II) has not less than 1 year of
24 experience making loans to startup,

1 newly established, or growing small
2 business concerns; and

3 “(ii) includes—

4 “(I) a private, nonprofit commu-
5 nity development corporation;

6 “(II) a consortium of private,
7 nonprofit organizations or nonprofit
8 community development corporations;
9 and

10 “(III) an agency of or nonprofit
11 entity established by a Native Amer-
12 ican Tribal Government; and

13 “(B) the term ‘Program’ means the small
14 business intermediary lending pilot program es-
15 tablished under paragraph (2).

16 “(2) ESTABLISHMENT.—There is established a
17 3-year small business intermediary lending pilot pro-
18 gram, under which the Administrator may make di-
19 rect loans to eligible intermediaries, for the purpose
20 of making loans to startup, newly established, and
21 growing small business concerns.

22 “(3) PURPOSES.—The purposes of the Program
23 are—

24 “(A) to assist small business concerns in
25 areas suffering from a lack of credit due to

1 poor economic conditions or changes in the fi-
2 nancial market; and

3 “(B) to establish a loan program under
4 which the Administrator may provide loans to
5 eligible intermediaries to enable the eligible
6 intermediaries to provide loans to startup,
7 newly established, and growing small business
8 concerns for working capital, real estate, or the
9 acquisition of materials, supplies, or equipment.

10 “(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

11 “(A) APPLICATION.—Each eligible inter-
12 mediary desiring a loan under this subsection
13 shall submit an application to the Adminis-
14 trator that describes—

15 “(i) the type of small business con-
16 cerns to be assisted;

17 “(ii) the size and range of loans to be
18 made;

19 “(iii) the interest rate and terms of
20 loans to be made;

21 “(iv) the geographic area to be served
22 and the economic, poverty, and unemploy-
23 ment characteristics of the area;

1 “(v) the status of small business con-
2 cerns in the area to be served and an anal-
3 ysis of the availability of credit; and

4 “(vi) the qualifications of the appli-
5 cant to carry out this subsection.

6 “(B) LOAN LIMITS.—No loan may be
7 made to an eligible intermediary under this sub-
8 section if the total amount outstanding and
9 committed to the eligible intermediary by the
10 Administrator would, as a result of such loan,
11 exceed \$1,000,000 during the participation of
12 the eligible intermediary in the Program.

13 “(C) LOAN DURATION.—Loans made by
14 the Administrator under this subsection shall be
15 for a term of 20 years.

16 “(D) APPLICABLE INTEREST RATES.—
17 Loans made by the Administrator to an eligible
18 intermediary under the Program shall bear an
19 annual interest rate equal to 1.00 percent.

20 “(E) FEES; COLLATERAL.—The Adminis-
21 trator may not charge any fees or require col-
22 lateral with respect to any loan made to an eli-
23 gible intermediary under this subsection.

24 “(F) DELAYED PAYMENTS.—The Adminis-
25 trator shall not require the repayment of prin-

1 cipal or interest on a loan made to an eligible
2 intermediary under the Program during the 2-
3 year period beginning on the date of the initial
4 disbursement of funds under that loan.

5 “(G) MAXIMUM PARTICIPANTS AND
6 AMOUNTS.—During each of fiscal years 2011,
7 2012, and 2013, the Administrator may make
8 loans under the Program—

9 “(i) to not more than 20 eligible inter-
10 mediaries; and

11 “(ii) in a total amount of not more
12 than \$20,000,000.

13 “(5) LOANS TO SMALL BUSINESS CONCERNS.—

14 “(A) IN GENERAL.—The Administrator,
15 through an eligible intermediary, shall make
16 loans to startup, newly established, and growing
17 small business concerns for working capital,
18 real estate, and the acquisition of materials,
19 supplies, furniture, fixtures, and equipment.

20 “(B) MAXIMUM LOAN.—An eligible inter-
21 mediary may not make a loan under this sub-
22 section of more than \$200,000 to any 1 small
23 business concern.

24 “(C) APPLICABLE INTEREST RATES.—A
25 loan made by an eligible intermediary to a small

1 business concern under this subsection, may
2 have a fixed or a variable interest rate, and
3 shall bear an interest rate specified by the eligi-
4 ble intermediary in the application of the eligi-
5 ble intermediary for a loan under this sub-
6 section.

7 “(D) REVIEW RESTRICTIONS.—The Ad-
8 ministrator may not review individual loans
9 made by an eligible intermediary to a small
10 business concern before approval of the loan by
11 the eligible intermediary.

12 “(6) TERMINATION.—The authority of the Ad-
13 ministrator to make loans under the Program shall
14 terminate 3 years after the date of enactment of the
15 Small Business Job Creation and Access to Capital
16 Act of 2010.”.

17 (b) RULEMAKING AUTHORITY.—Not later than 180
18 days after the date of enactment of this Act, the Adminis-
19 trator shall issue regulations to carry out section 7(l) of
20 the Small Business Act, as amended by subsection (a).

21 (c) AVAILABILITY OF FUNDS.—Any amounts pro-
22 vided to the Administrator for the purposes of carrying
23 out section 7(l) of the Small Business Act, as amended
24 by subsection (a), shall remain available until expended.

1 SEC. 1132. PUBLIC POLICY GOALS.

2 Section 501(d)(3) of the Small Business Investment
3 Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

4 (1) in subparagraph (J), by striking “or” at the
5 end;

6 (2) in subparagraph (K), by striking the period
7 at the end and inserting “, or”; and

8 (3) by adding at the end the following:

9 “(L) reduction of rates of unemployment
10 in labor surplus areas, as such areas are deter-
11 mined by the Secretary of Labor.”.

12 SEC. 1133. FLOOR PLAN PILOT PROGRAM EXTENSION.

13 (a) IN GENERAL.—Section 7(a) of the Small Busi-
14 ness Act (15 U.S.C. 636(a)) is amended—

(1) by redesignating paragraph (32), relating to increased veteran participation, as added by section 208 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186; 122 Stat. 631), as paragraph (33); and

21 (2) by adding at the end the following:

22 “(34) FLOOR PLAN FINANCING PROGRAM.—

23 “(A) DEFINITION.—In this paragraph, the
24 term ‘eligible retail good’—

25 “(i) means a good for which a title
26 may be obtained under State law; and

1 “(ii) includes an automobile, rec-
2 reational vehicle, boat, and manufactured
3 home.

4 “(B) PROGRAM.—The Administrator may
5 guarantee the timely payment of an open-end
6 extension of credit to a small business concern,
7 the proceeds of which may be used for the pur-
8 chase of eligible retail goods for resale.

9 “(C) AMOUNT.—An open-end extension of
10 credit guaranteed under this paragraph shall be
11 in an amount not less than \$500,000 and not
12 more than \$5,000,000.

13 “(D) TERM.—An open-end extension of
14 credit guaranteed under this paragraph shall
15 have a term of not more than 5 years.

16 “(E) GUARANTEE PERCENTAGE.—The Ad-
17 ministrator may guarantee—

18 “(i) not less than 60 percent of an
19 open-end extension of credit under this
20 paragraph; and

21 “(ii) not more than 75 percent of an
22 open-end extension of credit under this
23 paragraph.

24 “(F) ADVANCE RATE.—The lender for an
25 open-end extension of credit guaranteed under

1 this paragraph may allow the borrower to draw
2 funds on the line of credit in an amount equal
3 to not more than 100 percent of the value of
4 the eligible retail goods to be purchased.”.

5 (b) SUNSET.—Effective September 30, 2013, section
6 7(a) of the Small Business Act (15 U.S.C. 636(a)) is
7 amended—

8 (1) by striking paragraph (34); and

9 (2) by redesignating paragraph (35), as added
10 by section 1206 of this Act, as paragraph (34).

11 **SEC. 1134. GUARANTEES FOR BONDS AND NOTES ISSUED**
12 **FOR COMMUNITY OR ECONOMIC DEVELOP-**
13 **MENT PURPOSES.**

14 The Riegle Community Development and Regulatory
15 Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is
16 amended by inserting after section 114 (12 U.S.C. 4713)
17 the following:

18 **“SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED**
19 **FOR COMMUNITY OR ECONOMIC DEVELOP-**
20 **MENT PURPOSES.**

21 “(a) DEFINITIONS.—In this section, the following
22 definitions shall apply:

23 “(1) ELIGIBLE COMMUNITY DEVELOPMENT FI-
24 NANCIAL INSTITUTION.—The term ‘eligible commu-
25 nity development financial institution’ means a com-

1 community development financial institution (as de-
2 scribed in section 1805.201 of title 12, Code of Fed-
3 eral Regulations, or any successor thereto) certified
4 by the Secretary that has applied to a qualified
5 issuer for, or been granted by a qualified issuer, a
6 loan under the Program.

7 “(2) ELIGIBLE COMMUNITY OR ECONOMIC DE-
8 VELOPMENT PURPOSE.—The term ‘eligible commu-
9 nity or economic development purpose’—

10 “(A) means any purpose described in sec-
11 tion 108(b); and

12 “(B) includes the provision of community
13 or economic development in low-income or un-
14 derserved rural areas.

15 “(3) GUARANTEE.—The term ‘guarantee’
16 means a written agreement between the Secretary
17 and a qualified issuer (or trustee), pursuant to
18 which the Secretary ensures repayment of the
19 verifiable losses of principal, interest, and call pre-
20 mium, if any, on notes or bonds issued by a qualified
21 issuer to finance or refinance loans to eligible com-
22 munity development financial institutions.

23 “(4) LOAN.—The term ‘loan’ means any credit
24 instrument that is extended under the Program for

1 any eligible community or economic development
2 purpose.

3 “(5) MASTER SERVICER.—

4 “(A) IN GENERAL.—The term ‘master
5 servicer’ means any entity approved by the Sec-
6 retary in accordance with subparagraph (B) to
7 oversee the activities of servicers, as provided in
8 subsection (f)(4).

9 “(B) APPROVAL CRITERIA FOR MASTER
10 SERVICERS.—The Secretary shall approve or
11 deny any application to become a master
12 servicer under the Program not later than 90
13 days after the date on which all required infor-
14 mation is submitted to the Secretary, based on
15 the capacity and experience of the applicant
16 in—

17 “(i) loan administration, servicing,
18 and loan monitoring;

19 “(ii) managing regional or national
20 loan intake, processing, or servicing oper-
21 ational systems and infrastructure;

22 “(iii) managing regional or national
23 originator communication systems and in-
24 frastructure;

1 “(iv) developing and implementing
2 training and other risk management strat-
3 egies on a regional or national basis; and
4 “(v) compliance monitoring, investor
5 relations, and reporting.

6 “(6) PROGRAM.—The term ‘Program’ means
7 the guarantee Program for bonds and notes issued
8 for eligible community or economic development pur-
9 poses established under this section.

10 “(7) PROGRAM ADMINISTRATOR.—The term
11 ‘Program administrator’ means an entity designated
12 by the issuer to perform administrative duties, as
13 provided in subsection (f)(2).

14 “(8) QUALIFIED ISSUER.—

15 “(A) IN GENERAL.—The term ‘qualified
16 issuer’ means a community development finan-
17 cial institution (or any entity designated to
18 issue notes or bonds on behalf of such commu-
19 nity development financial institution) that
20 meets the qualification requirements of this
21 paragraph.

22 “(B) APPROVAL CRITERIA FOR QUALIFIED
23 ISSUERS.—

24 “(i) IN GENERAL.—The Secretary
25 shall approve a qualified issuer for a guar-

1 antee under the Program in accordance
2 with the requirements of this paragraph,
3 and such additional requirements as the
4 Secretary may establish, by regulation.

5 “(ii) TERMS AND QUALIFICATIONS.—

6 A qualified issuer shall—

7 “(I) have appropriate expertise,
8 capacity, and experience, or otherwise
9 be qualified to make loans for eligible
10 community or economic development
11 purposes;

12 “(II) provide to the Secretary—

13 “(aa) an acceptable state-
14 ment of the proposed sources and
15 uses of the funds; and

16 “(bb) a capital distribution
17 plan that meets the requirements
18 of subsection (c)(1); and

19 “(III) certify to the Secretary
20 that the bonds or notes to be guaran-
21 teed are to be used for eligible com-
22 munity or economic development pur-
23 poses.

24 “(C) DEPARTMENT OPINION; TIMING.—

1 “(i) DEPARTMENT OPINION.—Not
2 later than 30 days after the date of a re-
3 quest by a qualified issuer for approval of
4 a guarantee under the Program, the Sec-
5 retary shall provide an opinion regarding
6 compliance by the issuer with the require-
7 ments of the Program under this section.

8 “(ii) TIMING.—The Secretary shall
9 approve or deny a guarantee under this
10 section after consideration of the opinion
11 provided to the Secretary under clause (i),
12 and in no case later than 90 days after re-
13 ceipt of all required information by the
14 Secretary with respect to a request for
15 such guarantee.

16 “(9) SECRETARY.—The term ‘Secretary’ means
17 the Secretary of the Treasury.

18 “(10) SERVICER.—The term ‘servicer’ means
19 an entity designated by the issuer to perform various
20 servicing duties, as provided in subsection (f)(3).

21 “(b) GUARANTEES AUTHORIZED.—The Secretary
22 shall guarantee payments on bonds or notes issued by any
23 qualified issuer, if the proceeds of the bonds or notes are
24 used in accordance with this section to make loans to eligi-
25 ble community development financial institutions—

1 “(1) for eligible community or economic devel-
2 opment purposes; or

3 “(2) to refinance loans or notes issued for such
4 purposes.

5 “(c) GENERAL PROGRAM REQUIREMENTS.—

6 “(1) IN GENERAL.—A capital distribution plan
7 meets the requirements of this subsection, if not less
8 than 90 percent of the principal amount of guaran-
9 teed bonds or notes (other than costs of issuance
10 fees) are used to make loans for any eligible commu-
11 nity or economic development purpose, measured an-
12 nually, beginning at the end of the 1-year period be-
13 ginning on the issuance date of such guaranteed
14 bonds or notes.

15 “(2) RELENDING ACCOUNT.—Not more than 10
16 percent of the principal amount of guaranteed bonds
17 or notes, multiplied by an amount equal to the out-
18 standing principal balance of issued notes or bonds,
19 minus the risk-share pool amount under subsection
20 (d), may be held in a relending account and may be
21 made available for new eligible community or eco-
22 nomic development purposes.

23 “(3) LIMITATIONS ON UNPAID PRINCIPAL BAL-
24 ANCES.—The proceeds of guaranteed bonds or notes
25 under the Program may not be used to pay fees

1 (other than costs of issuance fees), and shall be held
2 in—

3 “(A) community or economic development
4 loans;

5 “(B) a relending account, to the extent au-
6 thorized under paragraph (2); or

7 “(C) a risk-share pool established under
8 subsection (d).

9 “(4) REPAYMENT.—If a qualified issuer fails to
10 meet the requirements of paragraph (1) by the end
11 of the 90-day period beginning at the end of the an-
12 nual measurement period, repayment shall be made
13 on that portion of bonds or notes necessary to bring
14 the bonds or notes that remain outstanding after
15 such repayment into compliance with the 90 percent
16 requirement of paragraph (1).

17 “(5) PROHIBITED USES.—The Secretary shall,
18 by regulation—

19 “(A) prohibit, as appropriate, certain uses
20 of amounts from the guarantee of a bond or
21 note under the Program, including the use of
22 such funds for political activities, lobbying, out-
23 reach, counseling services, or travel expenses;
24 and

1 “(B) provide that the guarantee of a bond
2 or note under the Program may not be used for
3 salaries or other administrative costs of—

4 “(i) the qualified issuer; or

5 “(ii) any recipient of amounts from
6 the guarantee of a bond or note.

7 “(d) RISK-SHARE POOL.—Each qualified issuer
8 shall, during the term of a guarantee provided under the
9 Program, establish a risk-share pool, capitalized by con-
10 tributions from eligible community development financial
11 institution participants an amount equal to 3 percent of
12 the guaranteed amount outstanding on the subject notes
13 and bonds.

14 “(e) GUARANTEES.—

15 “(1) IN GENERAL.—A guarantee issued under
16 the Program shall—

17 “(A) be for the full amount of a bond or
18 note, including the amount of principal, inter-
19 est, and call premiums;

20 “(B) be fully assignable and transferable
21 to the capital market, on terms and conditions
22 that are consistent with comparable Govern-
23 ment-guaranteed bonds, and satisfactory to the
24 Secretary;

1 “(C) represent the full faith and credit of
2 the United States; and

3 “(D) not exceed 30 years.

4 “(2) LIMITATIONS.—

5 “(A) ANNUAL NUMBER OF GUARAN-
6 TEES.—The Secretary shall issue not more than
7 10 guarantees in any calendar year under the
8 Program.

9 “(B) GUARANTEE AMOUNT.—The Sec-
10 retary may not guarantee any amount under
11 the Program equal to less than \$100,000,000,
12 but the total of all such guarantees in any fiscal
13 year may not exceed \$1,000,000,000.

14 “(f) SERVICING OF TRANSACTIONS.—

15 “(1) IN GENERAL.—To maximize efficiencies
16 and minimize cost and interest rates, loans made
17 under this section may be serviced by qualified Pro-
18 gram administrators, bond servicers, and a master
19 servicer.

20 “(2) DUTIES OF PROGRAM ADMINISTRATOR.—
21 The duties of a Program administrator shall in-
22 clude—

23 “(A) approving and qualifying eligible com-
24 munity development financial institution appli-
25 cations for participation in the Program;

1 “(B) compliance monitoring;

2 “(C) bond packaging in connection with
3 the Program; and

4 “(D) all other duties and related services
5 that are customarily expected of a Program ad-
6 ministrator.

7 “(3) DUTIES OF SERVICER.—The duties of a
8 servicer shall include—

9 “(A) billing and collecting loan payments;

10 “(B) initiating collection activities on past-
11 due loans;

12 “(C) transferring loan payments to the
13 master servicing accounts;

14 “(D) loan administration and servicing;

15 “(E) systematic and timely reporting of
16 loan performance through remittance and serv-
17 icing reports;

18 “(F) proper measurement of annual out-
19 standing loan requirements; and

20 “(G) all other duties and related services
21 that are customarily expected of servicers.

22 “(4) DUTIES OF MASTER SERVICER.—The du-
23 ties of a master servicer shall include—

1 “(A) tracking the movement of funds be-
2 tween the accounts of the master servicer and
3 any other servicer;

4 “(B) ensuring orderly receipt of the
5 monthly remittance and servicing reports of the
6 servicer;

7 “(C) monitoring the collection comments
8 and foreclosure actions;

9 “(D) aggregating the reporting and dis-
10 tribution of funds to trustees and investors;

11 “(E) removing and replacing a servicer, as
12 necessary;

13 “(F) loan administration and servicing;

14 “(G) systematic and timely reporting of
15 loan performance compiled from all bond
16 servicers’ reports;

17 “(H) proper distribution of funds to inves-
18 tors; and

19 “(I) all other duties and related services
20 that are customarily expected of a master
21 servicer.

22 “(g) FEES.—

23 “(1) IN GENERAL.—A qualified issuer that re-
24 ceives a guarantee issued under this section on a
25 bond or note shall pay a fee to the Secretary, in an

1 amount equal to 10 basis points of the amount of
2 the unpaid principal of the bond or note guaranteed.

3 “(2) PAYMENT.—A qualified issuer shall pay
4 the fee required under this subsection on an annual
5 basis.

6 “(3) USE OF FEES.—Fees collected by the Sec-
7 retary under this subsection shall be used to reim-
8 burse the Department of the Treasury for any ad-
9 ministrative costs incurred by the Department in im-
10 plementing the Program established under this sec-
11 tion.

12 “(h) AUTHORIZATION OF APPROPRIATIONS.—

13 “(1) IN GENERAL.—There are authorized to be
14 appropriated to the Secretary, such sums as are nec-
15 essary to carry out this section.

16 “(2) USE OF FEES.—To the extent that the
17 amount of funds appropriated for a fiscal year under
18 paragraph (1) are not sufficient to carry out this
19 section, the Secretary may use the fees collected
20 under subsection (g) for the cost of providing guar-
21 antees of bonds and notes under this section.

22 “(i) INVESTMENT IN GUARANTEED BONDS INELI-
23 GIBLE FOR COMMUNITY REINVESTMENT ACT PUR-
24 POSES.—Notwithstanding any other provision of law, any
25 investment by a financial institution in bonds or notes

1 guaranteed under the Program shall not be taken into ac-
2 count in assessing the record of such institution for pur-
3 poses of the Community Reinvestment Act of 1977 (12
4 U.S.C. 2901).

5 “(j) ADMINISTRATION.—

6 “(1) REGULATIONS.—Not later than 1 year
7 after the date of enactment of this section, the Sec-
8 retary shall promulgate regulations to carry out this
9 section.

10 “(2) IMPLEMENTATION.—Not later than 2
11 years after the date of enactment of this section, the
12 Secretary shall implement this section.

13 “(k) TERMINATION.—This section is repealed, and
14 the authority provided under this section shall terminate,
15 on September 30, 2014.”.

16 **SEC. 1135. TEMPORARY EXPRESS LOAN ENHANCEMENT.**

17 (a) IN GENERAL.—Section 7(a)(31)(D) of the Small
18 Business Act (15 U.S.C. 636(a)(31)(D)) is amended by
19 striking “\$350,000” and inserting “\$1,000,000”.

20 (b) PROSPECTIVE REPEAL.—Effective 1 year after
21 the date of enactment of this Act, section 7(a)(31)(D) of
22 the Small Business Act (15 U.S.C. 636(a)(31)(D)) is
23 amended by striking “\$1,000,000” and inserting
24 “\$350,000”.

1 **SEC. 1136. PROHIBITION ON USING TARP FUNDS OR TAX IN-**
2 **CREASES.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), nothing in section 1111, 1112, 1113, 1114, 1115,
5 1116, 1117, 1118, 1122, or 1131, or an amendment made
6 by such sections, shall be construed to limit the ability
7 of Congress to appropriate funds.

8 (b) TARP FUNDS AND TAX INCREASES.—

9 (1) IN GENERAL.—Any covered amounts may
10 not be used to carry out section 1111, 1112, 1113,
11 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or
12 an amendment made by such sections.

13 (2) DEFINITION.—In this subsection, the term
14 “covered amounts” means—

15 (A) the amounts made available to the Sec-
16 retary of the Treasury under title I of the
17 Emergency Economic Stabilization Act of 2008
18 S.C. 5201 et seq.) to purchase (under section
19 101) or guarantee (under section 102) assets
20 under that Act; and

21 (B) any revenue increase attributable to
22 any amendment to the Internal Revenue Code
23 of 1986 made during the period beginning on
24 the date of enactment of this Act and ending on
25 December 31, 2010.

1 **Subtitle B—Small Business Trade**
2 **and Exporting**

3 **SEC. 1201. SHORT TITLE.**

4 This subtitle may be cited as the “Small Business
5 Export Enhancement and International Trade Act of
6 2010”.

7 **SEC. 1202. DEFINITIONS.**

8 (a) DEFINITIONS.—In this subtitle—

9 (1) the term “Associate Administrator” means
10 the Associate Administrator for International Trade
11 appointed under section 22(a)(2) of the Small Busi-
12 ness Act, as amended by this subtitle;

13 (2) the term “Export Assistance Center” means
14 a one-stop shop referred to in section 2301(b)(8) of
15 the Omnibus Trade and Competitiveness Act of
16 1988 (15 U.S.C. 4721(b)(8)); and

17 (3) the term “rural small business concern”
18 means a small business concern located in a rural
19 area, as that term is defined in section 1393(a)(2)
20 of the Internal Revenue Code of 1986.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) DEFINITIONS.—Section 3 of the Small
23 Business Act (15 U.S.C. 632) is amended by adding
24 at the end the following:

1 “(t) SMALL BUSINESS DEVELOPMENT CENTER.—In
2 this Act, the term ‘small business development center’
3 means a small business development center described in
4 section 21.

5 “(u) REGION OF THE ADMINISTRATION.—In this
6 Act, the term ‘region of the Administration’ means the
7 geographic area served by a regional office of the Adminis-
8 tration established under section 4(a).”.

9 (2) CONFORMING AMENDMENT.—Section
10 4(b)(3)(B)(x) of the Small Business Act (15 U.S.C.
11 633(b)(3)(B)(x)) is amended by striking “Adminis-
12 tration district and region” and inserting “district
13 and region of the Administration”.

14 **SEC. 1203. OFFICE OF INTERNATIONAL TRADE.**

15 (a) ESTABLISHMENT.—Section 22 of the Small Busi-
16 ness Act (15 U.S.C. 649) is amended—

17 (1) by striking “SEC. 22. (a) There” and in-
18 serting the following:

19 **“SEC. 22. OFFICE OF INTERNATIONAL TRADE.**

20 “(a) ESTABLISHMENT.—

21 “(1) OFFICE.—There”; and

22 (2) in subsection (a)—

23 (A) in paragraph (1), as so designated, by
24 striking the period and inserting “for the pri-
25 mary purposes of increasing—

1 “(A) the number of small business con-
2 cerns that export; and

3 “(B) the volume of exports by small busi-
4 ness concerns.”; and

5 (B) by adding at the end the following:

6 “(2) ASSOCIATE ADMINISTRATOR.—The head of
7 the Office shall be the Associate Administrator for
8 International Trade, who shall be responsible to the
9 Administrator.”.

10 (b) AUTHORITY FOR ADDITIONAL ASSOCIATE AD-
11 MINISTRATOR.—Section 4(b)(1) of the Small Business Act
12 (15 U.S.C. 633(b)(1)) is amended—

13 (1) in the fifth sentence, by striking “five Asso-
14 ciate Administrators” and inserting “Associate Ad-
15 ministrators”; and

16 (2) by adding at the end the following: “One
17 such Associate Administrator shall be the Associate
18 Administrator for International Trade, who shall be
19 the head of the Office of International Trade estab-
20 lished under section 22.”.

21 (c) DISCHARGE OF INTERNATIONAL TRADE RESPON-
22 SIBILITIES OF ADMINISTRATION.—Section 22 of the Small
23 Business Act (15 U.S.C. 649) is amended by adding at
24 the end the following:

1 “(h) DISCHARGE OF INTERNATIONAL TRADE RE-
2 SPONSIBILITIES OF ADMINISTRATION.—The Adminis-
3 trator shall ensure that—

4 “(1) the responsibilities of the Administration
5 regarding international trade are carried out by the
6 Associate Administrator;

7 “(2) the Associate Administrator has sufficient
8 resources to carry out such responsibilities; and

9 “(3) the Associate Administrator has direct su-
10 pervision and control over—

11 “(A) the staff of the Office; and

12 “(B) any employee of the Administration
13 whose principal duty station is an Export As-
14 sistance Center, or any successor entity.”.

15 (d) ROLE OF ASSOCIATE ADMINISTRATOR IN CAR-
16 RYING OUT INTERNATIONAL TRADE POLICY.—Section
17 2(b)(1) of the Small Business Act (15 U.S.C. 631(b)(1))
18 is amended in the matter preceding subparagraph (A)—

19 (1) by inserting “the Administrator of” before
20 “the Small Business Administration”; and

21 (2) by inserting “through the Associate Admin-
22 istrator for International Trade, and” before “in co-
23 operation with”.

24 (e) IMPLEMENTATION DATE.—Not later than 90
25 days after the date of enactment of this Act, the Adminis-

1 trator of the Small Business Administration shall appoint
2 an Associate Administrator for International Trade under
3 section 22(a) of the Small Business Act (15 U.S.C.
4 649(a)), as added by this section.

5 **SEC. 1204. DUTIES OF THE OFFICE OF INTERNATIONAL**
6 **TRADE.**

7 (a) AMENDMENTS TO SECTION 22.—Section 22 of
8 the Small Business Act (15 U.S.C. 649) is amended—

9 (1) by striking subsection (b) and inserting the
10 following:

11 “(b) TRADE DISTRIBUTION NETWORK.—The Asso-
12 ciate Administrator, working in close cooperation with the
13 Secretary of Commerce, the United States Trade Rep-
14 resentative, the Secretary of Agriculture, the Secretary of
15 State, the President of the Export-Import Bank of the
16 United States, the President of the Overseas Private In-
17 vestment Corporation, Director of the United States
18 Trade and Development Agency, and other relevant Fed-
19 eral agencies, small business development centers engaged
20 in export promotion efforts, Export Assistance Centers,
21 regional and district offices of the Administration, the
22 small business community, and relevant State and local
23 export promotion programs, shall—

24 “(1) maintain a distribution network, using re-
25 gional and district offices of the Administration, the

1 small business development center network, net-
2 works of women's business centers, the Service
3 Corps of Retired Executives authorized by section
4 8(b)(1), and Export Assistance Centers, for pro-
5 grams relating to—

6 “(A) trade promotion;

7 “(B) trade finance;

8 “(C) trade adjustment assistance;

9 “(D) trade remedy assistance; and

10 “(E) trade data collection;

11 “(2) aggressively market the programs de-
12 scribed in paragraph (1) and disseminate informa-
13 tion, including computerized marketing data, to
14 small business concerns on exporting trends, market-
15 specific growth, industry trends, and international
16 prospects for exports;

17 “(3) promote export assistance programs
18 through the district and regional offices of the Ad-
19 ministration, the small business development center
20 network, Export Assistance Centers, the network of
21 women's business centers, chapters of the Service
22 Corps of Retired Executives, State and local export
23 promotion programs, and partners in the private
24 sector; and

1 “(4) give preference in hiring or approving the
2 transfer of any employee into the Office or to a posi-
3 tion described in subsection (c)(9) to otherwise
4 qualified applicants who are fluent in a language in
5 addition to English, to—

6 “(A) accompany small business concerns
7 on foreign trade missions; and

8 “(B) translate documents, interpret con-
9 versations, and facilitate multilingual trans-
10 actions, including by providing referral lists for
11 translation services, if required.”;

12 (2) in subsection (c)—

13 (A) by striking “(c) The Office” and in-
14 serting the following:

15 “(c) PROMOTION OF SALES OPPORTUNITIES.—The
16 Associate Administrator”;

17 (B) by redesignating paragraphs (1)
18 through (8) as paragraphs (2) through (9), re-
19 spectively;

20 (C) by inserting before paragraph (2), as
21 so redesignated, the following:

22 “(1) establish annual goals for the Office relat-
23 ing to—

1 “(A) enhancing the exporting capability of
2 small business concerns and small manufactur-
3 ers;

4 “(B) facilitating technology transfers;

5 “(C) enhancing programs and services to
6 assist small business concerns and small manu-
7 facturers to compete effectively and efficiently
8 in foreign markets;

9 “(D) increasing the ability of small busi-
10 ness concerns to access capital; and

11 “(E) disseminating information concerning
12 Federal, State, and private programs and initia-
13 tives;”;

14 (D) in paragraph (2), as so redesignated,
15 by striking “mechanism for” and all that fol-
16 lows through “(D) assisting” and inserting the
17 following: “mechanism for—

18 “(A) identifying subsectors of the small
19 business community with strong export poten-
20 tial;

21 “(B) identifying areas of demand in for-
22 eign markets;

23 “(C) prescreening foreign buyers for com-
24 mercial and credit purposes; and

25 “(D) assisting”;

1 (E) in paragraph (3), as so redesignated,
2 by striking “assist small businesses in the for-
3 mation and utilization of” and inserting “assist
4 small business concerns in forming and using”;

5 (F) in paragraph (4), as so redesignated—

6 (i) by striking “local” and inserting
7 “district”;

8 (ii) by striking “existing”;

9 (iii) by striking “Small Business De-
10 velopment Center network” and inserting
11 “small business development center net-
12 work”; and

13 (iv) by striking “Small Business De-
14 velopment Center Program” and inserting
15 “small business development center pro-
16 gram”;

17 (G) in paragraph (5), as so redesignated—

18 (i) in subparagraph (A), by striking
19 “Gross State Produce” and inserting
20 “Gross State Product”;

21 (ii) in subparagraph (B), by striking
22 “SIC” each place it appears and inserting
23 “North American Industry Classification
24 System”; and

1 (iii) in subparagraph (C), by striking
2 “small businesses” and inserting “small
3 business concerns”;

4 (H) in paragraph (6), as so redesignated,
5 by striking the period at the end and inserting
6 a semicolon;

7 (I) in paragraph (7), as so redesignated—
8 (i) in the matter preceding subpara-
9 graph (A)—

10 (I) by inserting “concerns” after
11 “small business”; and

12 (II) by striking “current” and in-
13 serting “up to date”;

14 (ii) in subparagraph (A), by striking
15 “Administration’s regional offices” and in-
16 serting “regional and district offices of the
17 Administration”;

18 (iii) in subparagraph (B) by striking
19 “current”;

20 (iv) in subparagraph (C), by striking
21 “current”; and

22 (v) by striking “small businesses”
23 each place that term appears and inserting
24 “small business concerns”;

1 (J) in paragraph (8), as so redesignated,
2 by striking and at the end;

3 (K) in paragraph (9), as so redesignated—
4 (i) in the matter preceding subpara-
5 graph (A)—

6 (I) by striking “full-time export
7 development specialists to each Ad-
8 ministration regional office and as-
9 signing”; and

10 (II) by striking “person in each
11 district office. Such specialists” and
12 inserting “individual in each district
13 office and providing each Administra-
14 tion regional office with a full-time ex-
15 port development specialist, who”;

16 (ii) in subparagraph (B)—

17 (I) by striking “current”; and

18 (II) by striking “with” and in-
19 serting “in”;

20 (iii) in subparagraph (D)—

21 (I) by striking “Administration
22 personnel involved in granting” and
23 inserting “personnel of the Adminis-
24 tration involved in making”; and

25 (II) by striking “and” at the end;

1 (iv) in subparagraph (E)—

2 (I) by striking “small businesses’
3 needs” and inserting “the needs of
4 small business concerns”; and

5 (II) by striking the period at the
6 end and inserting a semicolon;

7 (v) by adding at the end the following:

8 “(F) participate, jointly with employees of
9 the Office, in an annual training program that
10 focuses on current small business needs for ex-
11 porting; and

12 “(G) develop and conduct training pro-
13 grams for exporters and lenders, in cooperation
14 with the Export Assistance Centers, the De-
15 partment of Commerce, the Department of Ag-
16 riculture, small business development centers,
17 women’s business centers, the Export-Import
18 Bank of the United States, the Overseas Pri-
19 vate Investment Corporation, and other relevant
20 Federal agencies;”; and

21 (vi) by striking “small businesses”
22 each place that term appears and inserting
23 “small business concerns”; and

24 (L) by adding at the end the following:

1 “(10) make available on the website of the Ad-
2 ministration the name and contact information of
3 each individual described in paragraph (9);

4 “(11) carry out a nationwide marketing effort
5 using technology, online resources, training, and
6 other strategies to promote exporting as a business
7 development opportunity for small business con-
8 cerns;

9 “(12) disseminate information to the small
10 business community through regional and district of-
11 fices of the Administration, the small business devel-
12 opment center network, Export Assistance Centers,
13 the network of women’s business centers, chapters of
14 the Service Corps of Retired Executives authorized
15 by section 8(b)(1), State and local export promotion
16 programs, and partners in the private sector regard-
17 ing exporting trends, market-specific growth, indus-
18 try trends, and prospects for exporting; and

19 “(13) establish and carry out training programs
20 for the staff of the regional and district offices of
21 the Administration and resource partners of the Ad-
22 ministration on export promotion and providing as-
23 sistance relating to exports.”;

24 (3) in subsection (d)—

1 (A) by redesignating paragraphs (1)
2 through (5) as clauses (i) through (v), respec-
3 tively, and adjusting the margins accordingly;

4 (B) by striking “(d) The Office” and in-
5 serting the following:

6 “(d) EXPORT FINANCING PROGRAMS.—

7 “(1) IN GENERAL.—The Associate Adminis-
8 trator”; and

9 (C) by striking “To accomplish this goal,
10 the Office shall work” and inserting the fol-
11 lowing:

12 “(2) TRADE FINANCE SPECIALIST.—To accom-
13 plish the goal established under paragraph (1), the
14 Associate Administrator shall—

15 “(A) designate at least 1 individual within
16 the Administration as a trade finance specialist
17 to oversee international loan programs and as-
18 sist Administration employees with trade fi-
19 nance issues; and

20 “(B) work”;

21 (4) in subsection (e), by striking “(e) The Of-
22 fice” and inserting the following:

23 “(e) TRADE REMEDIES.—The Associate Adminis-
24 trator”;

1 (5) by amending subsection (f) to read as fol-
2 lows:

3 “(f) REPORTING REQUIREMENT.—The Associate Ad-
4 ministrators shall submit an annual report to the Com-
5 mittee on Small Business and Entrepreneurship of the
6 Senate and the Committee on Small Business of the
7 House of Representatives that contains—

8 “(1) a description of the progress of the Office
9 in implementing the requirements of this section;

10 “(2) a detailed account of the results of export
11 growth activities of the Administration, including the
12 activities of each district and regional office of the
13 Administration, based on the performance measures
14 described in subsection (i);

15 “(3) an estimate of the total number of jobs
16 created or retained as a result of export assistance
17 provided by the Administration and resource part-
18 ners of the Administration;

19 “(4) for any travel by the staff of the Office,
20 the destination of such travel and the benefits to the
21 Administration and to small business concerns re-
22 sulting from such travel; and

23 “(5) a description of the participation by the
24 Office in trade negotiations.”;

1 (6) in subsection (g), by striking “(g) The Of-
2 fice” and inserting the following:

3 “(g) STUDIES.—The Associate Administrator”; and

4 (7) by adding after subsection (h), as added by
5 section 1203 of this subtitle, the following:

6 “(i) EXPORT AND TRADE COUNSELING.—

7 “(1) DEFINITION.—In this subsection—

8 “(A) the term ‘lead small business develop-
9 ment center’ means a small business develop-
10 ment center that has received a grant from the
11 Administration; and

12 “(B) the term ‘lead women’s business cen-
13 ter’ means a women’s business center that has
14 received a grant from the Administration.

15 “(2) CERTIFICATION PROGRAM.—The Adminis-
16 trator shall establish an export and trade counseling
17 certification program to certify employees of lead
18 small business development centers and lead wom-
19 en’s business centers in providing export assistance
20 to small business concerns.

21 “(3) NUMBER OF CERTIFIED EMPLOYEES.—

22 The Administrator shall ensure that the number of
23 employees of each lead small business development
24 center who are certified in providing export assist-
25 ance is not less than the lesser of—

1 “(A) 5; or

2 “(B) 10 percent of the total number of em-
3 ployees of the lead small business development
4 center.

5 “(4) REIMBURSEMENT FOR CERTIFICATION.—

6 “(A) IN GENERAL.—Subject to the avail-
7 ability of appropriations, the Administrator
8 shall reimburse a lead small business develop-
9 ment center or a lead women’s business center
10 for costs relating to the certification of an em-
11 ployee of the lead small business center or lead
12 women’s business center in providing export as-
13 sistance under the program established under
14 paragraph (2).

15 “(B) LIMITATION.—The total amount re-
16 imburSED by the Administrator under subpara-
17 graph (A) may not exceed \$350,000 in any fis-
18 cal year.

19 “(j) PERFORMANCE MEASURES.—

20 “(1) IN GENERAL.—The Associate Adminis-
21 trator shall develop performance measures for the
22 Administration to support export growth goals for
23 the activities of the Office under this section that in-
24 clude—

1 “(A) the number of small business con-
2 cerns that—

3 “(i) receive assistance from the Ad-
4 ministration;

5 “(ii) had not exported goods or serv-
6 ices before receiving the assistance de-
7 scribed in clause (i); and

8 “(iii) export goods or services;

9 “(B) the number of small business con-
10 cerns receiving assistance from the Administra-
11 tion that export goods or services to a market
12 outside the United States into which the small
13 business concern did not export before receiving
14 the assistance;

15 “(C) export revenues by small business
16 concerns assisted by programs of the Adminis-
17 tration;

18 “(D) the number of small business con-
19 cerns referred to an Export Assistance Center
20 or a small business development center by the
21 staff of the Office;

22 “(E) the number of small business con-
23 cerns referred to the Administration by an Ex-
24 port Assistance Center or a small business de-
25 velopment center; and

1 “(F) the number of small business con-
2 cerns referred to the Department of Commerce,
3 the Department of Agriculture, the Department
4 of State, the Export-Import Bank of the United
5 States, the Overseas Private Investment Cor-
6 poration, or the United States Trade and De-
7 velopment Agency by the staff of the Office, an
8 Export Assistance Center, or a small business
9 development center.

10 “(2) JOINT PERFORMANCE MEASURES.—The
11 Associate Administrator shall develop joint perform-
12 ance measures for the district offices of the Adminis-
13 tration and the Export Assistance Centers that in-
14 clude the number of export loans made under—

15 “(A) section 7(a)(16);

16 “(B) the Export Working Capital Program
17 established under section 7(a)(14);

18 “(C) the Preferred Lenders Program, as
19 defined in section 7(a)(2)(C)(ii); and

20 “(D) the export express program estab-
21 lished under section 7(a)(34).

22 “(3) CONSISTENCY OF TRACKING.—The Asso-
23 ciate Administrator, in coordination with the depart-
24 ments and agencies that are represented on the
25 Trade Promotion Coordinating Committee estab-

1 lished under section 2312 of the Export Enhance-
2 ment Act of 1988 (15 U.S.C. 4727) and the small
3 business development center network, shall develop a
4 system to track exports by small business concerns,
5 including information relating to the performance
6 measures developed under paragraph (1), that is
7 consistent with systems used by the departments
8 and agencies and the network.”.

9 (b) REPORT.—Not later than 60 days after the date
10 of enactment of this Act, the Administrator shall submit
11 a report to the Committee on Small Business and Entre-
12 preneurship of the Senate and the Committee on Small
13 Business of the House of Representatives on any travel
14 by the staff of the Office of International Trade of the
15 Administration, during the period beginning on October
16 1, 2004, and ending on the date of enactment of the Act,
17 including the destination of such travel and the benefits
18 to the Administration and to small business concerns re-
19 sulting from such travel.

20 **SEC. 1205. EXPORT ASSISTANCE CENTERS.**

21 (a) EXPORT ASSISTANCE CENTERS.—Section 22 of
22 the Small Business Act (15 U.S.C. 649), as amended by
23 this subtitle, is amended by adding at the end the fol-
24 lowing:

25 “(k) EXPORT ASSISTANCE CENTERS.—

1 “(1) EXPORT FINANCE SPECIALISTS.—

2 “(A) MINIMUM NUMBER OF EXPORT FI-
3 NANCE SPECIALISTS.—On and after the date
4 that is 90 days after the date of enactment of
5 this subsection, the Administrator, in coordina-
6 tion with the Secretary of Commerce, shall en-
7 sure that the number of export finance special-
8 ists is not less than the number of such employ-
9 ees so assigned on January 1, 2003.

10 “(B) EXPORT FINANCE SPECIALISTS AS-
11 SIGNED TO EACH REGION OF THE ADMINISTRA-
12 TION.—On and after the date that is 2 years
13 after the date of enactment of this subsection,
14 the Administrator, in coordination with the Sec-
15 retary of Commerce, shall ensure that there are
16 not fewer than 3 export finance specialists in
17 each region of the Administration.

18 “(2) PLACEMENT OF EXPORT FINANCE SPE-
19 CIALISTS.—

20 “(A) PRIORITY.—The Administrator shall
21 give priority, to the maximum extent prac-
22 ticable, to placing employees of the Administra-
23 tion at any Export Assistance Center that—

1 “(i) had an Administration employee
2 assigned to the Export Assistance Center
3 before January 2003; and

4 “(ii) has not had an Administration
5 employee assigned to the Export Assist-
6 ance Center during the period beginning
7 January 2003, and ending on the date of
8 enactment of this subsection, either
9 through retirement or reassignment.

10 “(B) NEEDS OF EXPORTERS.—The Ad-
11 ministrator shall, to the maximum extent prac-
12 ticable, strategically assign Administration em-
13 ployees to Export Assistance Centers, based on
14 the needs of exporters.

15 “(C) RULE OF CONSTRUCTION.—Nothing
16 in this subsection may be construed to require
17 the Administrator to reassign or remove an ex-
18 port finance specialist who is assigned to an
19 Export Assistance Center on the date of enact-
20 ment of this subsection.

21 “(3) GOALS.—The Associate Administrator
22 shall work with the Department of Commerce, the
23 Export-Import Bank of the United States, and the
24 Overseas Private Investment Corporation to estab-

1 lish shared annual goals for the Export Assistance
2 Centers.

3 “(4) OVERSIGHT.—The Associate Adminis-
4 trator shall designate an individual within the Ad-
5 ministration to oversee all activities conducted by
6 Administration employees assigned to Export Assist-
7 ance Centers.

8 “(1) DEFINITIONS.—In this section—

9 “(1) the term ‘Associate Administrator’ means
10 the Associate Administrator for International Trade
11 described in subsection (a)(2);

12 “(2) the term ‘Export Assistance Center’ means
13 a one-stop shop for United States exporters estab-
14 lished by the United States and Foreign Commercial
15 Service of the Department of Commerce pursuant to
16 section 2301(b)(8) of the Omnibus Trade and Com-
17 petitiveness Act of 1988 (15 U.S.C. 4721(b)(8));

18 “(3) the term ‘export finance specialist’ means
19 a full-time equivalent employee of the Office as-
20 signed to an Export Assistance Center to carry out
21 the duties described in subsection (e); and

22 “(4) the term ‘Office’ means the Office of
23 International Trade established under subsection
24 (a)(1).”.

1 (b) STUDY AND REPORT ON FILLING GAPS IN HIGH-
2 AND-LOW-EXPORT VOLUME AREAS.—

3 (1) STUDY AND REPORT.—Not later than 6
4 months after the date of enactment of this Act, and
5 every 2 years thereafter, the Administrator shall—

6 (A) conduct a study of—

7 (i) the volume of exports for each
8 State;

9 (ii) the availability of export finance
10 specialists in each State;

11 (iii) the number of exporters in each
12 State that are small business concerns;

13 (iv) the percentage of exporters in
14 each State that are small business con-
15 cerns;

16 (v) the change, if any, in the number
17 of exporters that are small business con-
18 cerns in each State—

19 (I) for the first study conducted
20 under this subparagraph, during the
21 10-year period ending on the date of
22 enactment of this Act; and

23 (II) for each subsequent study,
24 during the 10-year period ending on
25 the date the study is commenced;

1 (vi) the total value of the exports in
2 each State by small business concerns;

3 (vii) the percentage of the total vol-
4 ume of exports in each State that is attrib-
5 utable to small business concerns; and

6 (viii) the change, if any, in the per-
7 centage of the total volume of exports in
8 each State that is attributable to small
9 business concerns—

10 (I) for the first study conducted
11 under this subparagraph, during the
12 10-year period ending on the date of
13 enactment of this Act; and

14 (II) for each subsequent study,
15 during the 10-year period ending on
16 the date the study is commenced; and

17 (B) submit to the Committee on Small
18 Business and Entrepreneurship of the Senate
19 and the Committee on Small Business of the
20 House of Representatives a report containing—

21 (i) the results of the study under sub-
22 paragraph (A);

23 (ii) to the extent practicable, a rec-
24 ommendation regarding how to eliminate
25 gaps between the supply of and demand

1 for export finance specialists in the 15
2 States that have the greatest volume of ex-
3 ports, based upon the most recent data
4 available from the Department of Com-
5 merce;

6 (iii) to the extent practicable, a rec-
7 ommendation regarding how to eliminate
8 gaps between the supply of and demand
9 for export finance specialists in the 15
10 States that have the lowest volume of ex-
11 ports, based upon the most recent data
12 available from the Department of Com-
13 merce; and

14 (iv) such additional information as the
15 Administrator determines is appropriate.

16 (2) DEFINITION.—In this subsection, the term
17 “export finance specialist” has the meaning given
18 that term in section 22(l) of the Small Business Act,
19 as added by this title.

20 **SEC. 1206. INTERNATIONAL TRADE FINANCE PROGRAMS.**

21 (a) LOAN LIMITS.—

22 (1) TOTAL AMOUNT OUTSTANDING.—Section
23 7(a)(3)(B) of the Small Business Act (15 U.S.C.
24 636(a)(3)(B)) is amended by striking “\$1,750,000,
25 of which not more than \$1,250,000” and inserting

1 “\$4,500,000 (or if the gross loan amount would ex-
2 ceed \$5,000,000), of which not more than
3 \$4,000,000”.

4 (2) PARTICIPATION.—Section 7(a)(2) of the
5 Small Business Act (15 U.S.C. 636(a)(2)) is amend-
6 ed—

7 (A) in subparagraph (A), in the matter
8 preceding clause (i), by striking “subparagraph
9 (B)” and inserting “subparagraphs (B), (D),
10 and (E)”;

11 (B) in subparagraph (D), by striking
12 “Notwithstanding subparagraph (A), in” and
13 inserting “In”; and

14 (C) by adding at the end the following:

15 “(E) PARTICIPATION IN INTERNATIONAL
16 TRADE LOAN.—In an agreement to participate
17 in a loan on a deferred basis under paragraph
18 (16), the participation by the Administration
19 may not exceed 90 percent.”.

20 (b) WORKING CAPITAL.—Section 7(a)(16)(A) of the
21 Small Business Act (15 U.S.C. 636(a)(16)(A)) is amend-
22 ed—

23 (1) in the matter preceding clause (i), by strik-
24 ing “in—” and inserting “—”;

25 (2) in clause (i)—

1 (A) by inserting “in” after “(i)”; and

2 (B) by striking “or” at the end;

3 (3) in clause (ii)—

4 (A) by inserting “in” after “(ii)”; and

5 (B) by striking the period at the end and

6 inserting “, including any debt that qualifies for

7 refinancing under any other provision of this

8 subsection; or”; and

9 (4) by adding at the end the following:

10 “(iii) by providing working capital.”.

11 (c) COLLATERAL.—Section 7(a)(16)(B) of the Small
12 Business Act (15 U.S.C. 636(a)(16)(B)) is amended—

13 (1) by striking “Each loan” and inserting the
14 following:

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), each loan”; and

17 (2) by adding at the end the following:

18 “(ii) EXCEPTION.—A loan under this
19 paragraph may be secured by a second lien
20 position on the property or equipment fi-
21 nanced by the loan or on other assets of
22 the small business concern, if the Adminis-
23 trator determines the lien provides ade-
24 quate assurance of the payment of the
25 loan.”.

1 (d) EXPORT WORKING CAPITAL PROGRAM.—Section
2 7(a) of the Small Business Act (15 U.S.C. 636(a)) is
3 amended—

4 (1) in paragraph (2)(D), by striking “not ex-
5 ceed” and inserting “be”; and

6 (2) in paragraph (14)—

7 (A) by striking “(A) The Administration”
8 and inserting the following: “EXPORT WORKING
9 CAPITAL PROGRAM.—

10 “(A) IN GENERAL.—The Administrator”;

11 (B) by striking “(B) When considering”
12 and inserting the following:

13 “(C) CONSIDERATIONS.—When consid-
14 ering”;

15 (C) by striking “(C) The Administration”
16 and inserting the following:

17 “(D) MARKETING.—The Administrator”;

18 and

19 (D) by inserting after subparagraph (A)
20 the following:

21 “(B) TERMS.—

22 “(i) LOAN AMOUNT.—The Adminis-
23 trator may not guarantee a loan under this
24 paragraph of more than \$5,000,000.

25 “(ii) FEES.—

1 “(I) IN GENERAL.—For a loan
2 under this paragraph, the Adminis-
3 trator shall collect the fee assessed
4 under paragraph (23) not more fre-
5 quently than once each year.

6 “(II) UNTAPPED CREDIT.—The
7 Administrator may not assess a fee on
8 capital that is not accessed by the
9 small business concern.”.

10 (e) PARTICIPATION IN PREFERRED LENDERS PRO-
11 GRAM.—Section 7(a)(2)(C) of the Small Business Act (15
12 U.S.C. 636(a)(2)(C)) is amended—

13 (1) by redesignating clause (ii) as clause (iii);

14 and

15 (2) by inserting after clause (i) the following:

16 “(ii) EXPORT-IMPORT BANK LEND-
17 ERS.—Any lender that is participating in
18 the Delegated Authority Lender Program
19 of the Export-Import Bank of the United
20 States (or any successor to the Program)
21 shall be eligible to participate in the Pre-
22 ferred Lenders Program.”.

23 (f) EXPORT EXPRESS PROGRAM.—Section 7(a) of the
24 Small Business Act (15 U.S.C. 636(a)) is amended by
25 adding at the end the following:

1 “(35) EXPORT EXPRESS PROGRAM.—

2 “(A) DEFINITIONS.—In this paragraph—

3 “(i) the term ‘export development ac-
4 tivity’ includes—

5 “(I) obtaining a standby letter of
6 credit when required as a bid bond,
7 performance bond, or advance pay-
8 ment guarantee;

9 “(II) participation in a trade
10 show that takes place outside the
11 United States;

12 “(III) translation of product bro-
13 chures or catalogues for use in mar-
14 kets outside the United States;

15 “(IV) obtaining a general line of
16 credit for export purposes;

17 “(V) performing a service con-
18 tract from buyers located outside the
19 United States;

20 “(VI) obtaining transaction-spe-
21 cific financing associated with com-
22 pleting export orders;

23 “(VII) purchasing real estate or
24 equipment to be used in the produc-
25 tion of goods or services for export;

1 “(VIII) providing term loans or
2 other financing to enable a small busi-
3 ness concern, including an export
4 trading company and an export man-
5 agement company, to develop a mar-
6 ket outside the United States; and

7 “(IX) acquiring, constructing,
8 renovating, modernizing, improving,
9 or expanding a production facility or
10 equipment to be used in the United
11 States in the production of goods or
12 services for export; and

13 “(ii) the term ‘express loan’ means a
14 loan in which a lender uses to the max-
15 imum extent practicable the loan analyses,
16 procedures, and documentation of the lend-
17 er to provide expedited processing of the
18 loan application.

19 “(B) AUTHORITY.—The Administrator
20 may guarantee the timely payment of an ex-
21 press loan to a small business concern made for
22 an export development activity.

23 “(C) LEVEL OF PARTICIPATION.—

24 “(i) MAXIMUM AMOUNT.—The max-
25 imum amount of an express loan guaran-

1 teed under this paragraph shall be
2 \$500,000.

3 “(ii) PERCENTAGE.—For an express
4 loan guaranteed under this paragraph, the
5 Administrator shall guarantee—

6 “(I) 90 percent of a loan that is
7 not more than \$350,000; and

8 “(II) 75 percent of a loan that is
9 more than \$350,000 and not more
10 than \$500,000.”.

11 (g) ANNUAL LISTING OF EXPORT FINANCE LEND-
12 ERS.—Section 7(a)(16) of the Small Business Act (15
13 U.S.C. 636(a)(16)) is amended by adding at the end the
14 following:

15 “(F) LIST OF EXPORT FINANCE LEND-
16 ERS.—

17 “(i) PUBLICATION OF LIST RE-
18 QUIRED.—The Administrator shall publish
19 an annual list of the banks and partici-
20 pating lending institutions that, during the
21 1-year period ending on the date of publi-
22 cation of the list, have made loans guaran-
23 teed by the Administration under—

24 “(I) this paragraph;

25 “(II) paragraph (14); or

1 “(III) paragraph (34).

2 “(ii) AVAILABILITY OF LIST.—The
3 Administrator shall—

4 “(I) post the list published under
5 clause (i) on the website of the Ad-
6 ministration; and

7 “(II) make the list published
8 under clause (i) available, upon re-
9 quest, at each district office of the
10 Administration.”.

11 (h) APPLICABILITY.—The amendments made by sub-
12 sections (a) through (f) shall apply with respect to any
13 loan made after the date of enactment of this Act.

14 **SEC. 1207. STATE TRADE AND EXPORT PROMOTION GRANT**
15 **PROGRAM.**

16 (a) DEFINITIONS.—In this section—

17 (1) the term “eligible small business concern”
18 means a small business concern that—

19 (A) has been in business for not less than
20 the 1-year period ending on the date on which
21 assistance is provided using a grant under this
22 section;

23 (B) is operating profitably, based on oper-
24 ations in the United States;

1 (C) has demonstrated understanding of the
2 costs associated with exporting and doing busi-
3 ness with foreign purchasers, including the
4 costs of freight forwarding, customs brokers,
5 packing and shipping, as determined by the As-
6 sociate Administrator; and

7 (D) has in effect a strategic plan for ex-
8 porting;

9 (2) the term “program” means the State Trade
10 and Export Promotion Grant Program established
11 under subsection (b);

12 (3) the term “small business concern owned
13 and controlled by women” has the meaning given
14 that term in section 3 of the Small Business Act (15
15 U.S.C. 632);

16 (4) the term “socially and economically dis-
17 advantaged small business concern” has the mean-
18 ing given that term in section 8(a)(4)(A) of the
19 Small Business Act (15 U.S.C. 6537(a)(4)(A)); and

20 (5) the term “State” means each of the several
21 States, the District of Columbia, the Commonwealth
22 of Puerto Rico, the Virgin Islands, Guam, and
23 American Samoa.

24 (b) ESTABLISHMENT OF PROGRAM.—The Associate
25 Administrator shall establish a 3-year trade and export

1 promotion pilot program to be known as the State Trade
2 and Export Promotion Grant Program, to make grants
3 to States to carry out export programs that assist eligible
4 small business concerns in—

5 (1) participation in a foreign trade mission;

6 (2) a foreign market sales trip;

7 (3) a subscription to services provided by the
8 Department of Commerce;

9 (4) the payment of website translation fees;

10 (5) the design of international marketing
11 media;

12 (6) a trade show exhibition;

13 (7) participation in training workshops; or

14 (8) any other export initiative determined ap-
15 propriate by the Associate Administrator.

16 (c) GRANTS.—

17 (1) JOINT REVIEW.—In carrying out the pro-
18 gram, the Associate Administrator may make a
19 grant to a State to increase the number of eligible
20 small business concerns in the State that export or
21 to increase the value of the exports by eligible small
22 business concerns in the State.

23 (2) CONSIDERATIONS.—In making grants
24 under this section, the Associate Administrator may

1 give priority to an application by a State that pro-
2 poses a program that—

3 (A) focuses on eligible small business con-
4 cerns as part of an export promotion program;

5 (B) demonstrates success in promoting ex-
6 ports by—

7 (i) socially and economically disadvan-
8 tagged small business concerns;

9 (ii) small business concerns owned or
10 controlled by women; and

11 (iii) rural small business concerns;

12 (C) promotes exports from a State that is
13 not 1 of the 10 States with the highest percent-
14 age of exporters that are small business con-
15 cerns, based upon the latest data available from
16 the Department of Commerce; and

17 (D) promotes new-to-market export oppor-
18 tunities to the People's Republic of China for
19 eligible small business concerns in the United
20 States.

21 (3) LIMITATIONS.—

22 (A) SINGLE APPLICATION.—A State may
23 not submit more than 1 application for a grant
24 under the program in any 1 fiscal year.

1 (B) PROPORTION OF AMOUNTS.—The total
2 value of grants under the program made during
3 a fiscal year to the 10 States with the highest
4 number of exporters that are small business
5 concerns, based upon the latest data available
6 from the Department of Commerce, shall be not
7 more than 40 percent of the amounts appro-
8 priated for the program for that fiscal year.

9 (4) APPLICATION.—A State desiring a grant
10 under the program shall submit an application at
11 such time, in such manner, and accompanied by
12 such information as the Associate Administrator
13 may establish.

14 (d) COMPETITIVE BASIS.—The Associate Adminis-
15 trator shall award grants under the program on a competi-
16 tive basis.

17 (e) FEDERAL SHARE.—The Federal share of the cost
18 of an export program carried out using a grant under the
19 program shall be—

20 (1) for a State that has a high export volume,
21 as determined by the Associate Administrator, not
22 more than 65 percent; and

23 (2) for a State that does not have a high export
24 volume, as determined by the Associate Adminis-
25 trator, not more than 75 percent.

1 (f) NON-FEDERAL SHARE.—The non-Federal share
2 of the cost of an export program carried using a grant
3 under the program shall be comprised of not less than 50
4 percent cash and not more than 50 percent of indirect
5 costs and in-kind contributions, except that no such costs
6 or contributions may be derived from funds from any
7 other Federal program.

8 (g) REPORTS.—

9 (1) INITIAL REPORT.—Not later than 120 days
10 after the date of enactment of this Act, the Asso-
11 ciate Administrator shall submit to the Committee
12 on Small Business and Entrepreneurship of the Sen-
13 ate and the Committee on Small Business of the
14 House of Representatives a report, which shall in-
15 clude—

16 (A) a description of the structure of and
17 procedures for the program;

18 (B) a management plan for the program;

19 and

20 (C) a description of the merit-based review
21 process to be used in the program.

22 (2) ANNUAL REPORTS.—The Associate Admin-
23 istrator shall submit an annual report to the Com-
24 mittee on Small Business and Entrepreneurship of
25 the Senate and the Committee on Small Business of

1 the House of Representatives regarding the pro-
2 gram, which shall include—

3 (A) the number and amount of grants
4 made under the program during the preceding
5 year;

6 (B) a list of the States receiving a grant
7 under the program during the preceding year,
8 including the activities being performed with
9 grant; and

10 (C) the effect of each grant on exports by
11 eligible small business concerns in the State re-
12 ceiving the grant.

13 (h) REVIEWS BY INSPECTOR GENERAL.—

14 (1) IN GENERAL.—The Inspector General of
15 the Administration shall conduct a review of—

16 (A) the extent to which recipients of grants
17 under the program are measuring the perform-
18 ance of the activities being conducted and the
19 results of the measurements; and

20 (B) the overall management and effective-
21 ness of the program.

22 (2) REPORT.—Not later than September 30,
23 2012, the Inspector General of the Administration
24 shall submit to the Committee on Small Business
25 and Entrepreneurship of the Senate and the Com-

1 mittee on Small Business of the House of Rep-
2 resentatives a report regarding the review conducted
3 under paragraph (1).

4 (i) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to carry out the program
6 \$30,000,000 for each of fiscal years 2011, 2012, and
7 2013.

8 (j) TERMINATION.—The authority to carry out the
9 program shall terminate 3 years after the date on which
10 the Associate Administrator establishes the program.

11 **SEC. 1208. RURAL EXPORT PROMOTION.**

12 Not later than 6 months after the date of enactment
13 of this Act, the Administrator, in consultation with the
14 Secretary of Agriculture and the Secretary of Commerce,
15 shall submit to the Committee on Small Business and En-
16 trepreneurship of the Senate and the Committee on Small
17 Business of the House of Representatives a report that
18 contains—

19 (1) a description of each program of the Ad-
20 ministration that promotes exports by rural small
21 business concerns, including—

22 (A) the number of rural small business
23 concerns served by the program;

24 (B) the change, if any, in the number of
25 rural small business concerns as a result of par-

1 ticipation in the program during the 10-year
2 period ending on the date of enactment of this
3 Act;

4 (C) the volume of exports by rural small
5 business concerns that participate in the pro-
6 gram; and

7 (D) the change, if any, in the volume of
8 exports by rural small businesses that partici-
9 pate in the program during the 10-year period
10 ending on the date of enactment of this Act;

11 (2) a description of the coordination between
12 programs of the Administration and other Federal
13 programs that promote exports by rural small busi-
14 ness concerns;

15 (3) recommendations, if any, for improving the
16 coordination described in paragraph (2);

17 (4) a description of any plan by the Administra-
18 tion to market the international trade financing pro-
19 grams of the Administration through lenders that—

20 (A) serve rural small business concerns;
21 and

22 (B) are associated with financing programs
23 of the Department of Agriculture;

24 (5) recommendations, if any, for improving co-
25 ordination between the counseling programs and ex-

1 port financing programs of the Administration, in
2 order to increase the volume of exports by rural
3 small business concerns; and

4 (6) any additional information the Adminis-
5 trator determines is necessary.

6 **SEC. 1209. INTERNATIONAL TRADE COOPERATION BY**
7 **SMALL BUSINESS DEVELOPMENT CENTERS.**

8 Section 21(a) of the Small Business Act (15 U.S.C.
9 648(a)) is amended—

10 (1) by striking “(2) The Small Business Devel-
11 opment Centers” and inserting the following:

12 “(2) COOPERATION TO PROVIDE INTER-
13 NATIONAL TRADE SERVICES.—

14 “(A) INFORMATION AND SERVICES.—The
15 small business development centers”; and

16 (2) in paragraph (2)—

17 (A) in subparagraph (A), as so designated,
18 by inserting “(including State trade agencies),”
19 after “local agencies”; and

20 (B) by adding at the end the following:

21 “(B) COOPERATION WITH STATE TRADE
22 AGENCIES AND EXPORT ASSISTANCE CEN-
23 TERS.—A small business development center
24 that counsels a small business concern on issues
25 relating to international trade shall—

1 “(i) consult with State trade agencies
2 and Export Assistance Centers to provide
3 appropriate services to the small business
4 concern; and

5 “(ii) as necessary, refer the small
6 business concern to a State trade agency
7 or an Export Assistance Center for further
8 counseling or assistance.

9 “(C) DEFINITION.—In this paragraph, the
10 term ‘Export Assistance Center’ has the same
11 meaning as in section 22.”.

12 **Subtitle C—Small Business**
13 **Contracting**

14 **PART I—CONTRACT BUNDLING**

15 **SEC. 1311. SMALL BUSINESS ACT.**

16 Section 3 of the Small Business Act (15 U.S.C. 632),
17 as amended by section 1202, is amended by adding at the
18 end the following:

19 “(v) MULTIPLE AWARD CONTRACT.—In this Act, the
20 term ‘multiple award contract’ means—

21 “(1) a multiple award task order contract or
22 delivery order contract that is entered into under the
23 authority of sections 303H through 303K of the
24 Federal Property and Administrative Services Act of
25 1949 (41 U.S.C. 253h through 253k); and

1 “(2) any other indefinite delivery, indefinite
2 quantity contract that is entered into by the head of
3 a Federal agency with 2 or more sources pursuant
4 to the same solicitation.”.

5 **SEC. 1312. LEADERSHIP AND OVERSIGHT.**

6 (a) IN GENERAL.—Section 15 of the Small Business
7 Act (15 U.S.C. 644) is amended by adding at the end the
8 following:

9 “(q) BUNDLING ACCOUNTABILITY MEASURES.—

10 “(1) TEAMING REQUIREMENTS.—Each Federal
11 agency shall include in each solicitation for any mul-
12 tiple award contract above the substantial bundling
13 threshold of the Federal agency a provision soliciting
14 bids from any responsible source, including respon-
15 sible small business concerns and teams or joint ven-
16 tures of small business concerns.

17 “(2) POLICIES ON REDUCTION OF CONTRACT
18 BUNDLING.—

19 “(A) IN GENERAL.—Not later than 1 year
20 after the date of enactment of this subsection,
21 the Federal Acquisition Regulatory Council es-
22 tablished under section 25(a) of the Office of
23 Federal Procurement Policy Act (41 U.S.C.
24 4219(a)) shall amend the Federal Acquisition

1 Regulation issued under section 25 of such Act
2 to—

3 “(i) establish a Government-wide pol-
4 icy regarding contract bundling, including
5 regarding the solicitation of teaming and
6 joint ventures under paragraph (1); and

7 “(ii) require that the policy estab-
8 lished under clause (i) be published on the
9 website of each Federal agency.

10 “(B) RATIONALE FOR CONTRACT BUN-
11 DLING.—Not later than 30 days after the date
12 on which the head of a Federal agency submits
13 data certifications to the Administrator for
14 Federal Procurement Policy, the head of the
15 Federal agency shall publish on the website of
16 the Federal agency a list and rationale for any
17 bundled contract for which the Federal agency
18 solicited bids or that was awarded by the Fed-
19 eral agency.

20 “(3) REPORTING.—Not later than 90 days after
21 the date of enactment of this subsection, and every
22 3 years thereafter, the Administrator shall submit to
23 the Committee on Small Business and Entrepre-
24 neurship of the Senate and the Committee on Small
25 Business of the House of Representatives a report

1 regarding procurement center representatives and
2 commercial market representatives, which shall—

3 “(A) identify each area for which the Ad-
4 ministration has assigned a procurement center
5 representative or a commercial market rep-
6 resentative;

7 “(B) explain why the Administration se-
8 lected the areas identified under subparagraph
9 (A); and

10 “(C) describe the activities performed by
11 procurement center representatives and com-
12 mercial market representatives.”.

13 (b) TECHNICAL CORRECTION.—Section 15(g) of the
14 Small Business Act (15 U.S.C. 644(g)) is amended by
15 striking “Administrator of the Office of Federal Procure-
16 ment Policy” each place it appears and inserting “Admin-
17 istrator for Federal Procurement Policy”.

18 (c) REPORT.—

19 (1) IN GENERAL.—Not later than 180 days
20 after the date of enactment of this Act, the Comp-
21 troller General of the United States shall submit to
22 Congress a report regarding the procurement center
23 representative program of the Administration.

24 (2) CONTENTS.—The report submitted under
25 paragraph (1) shall—

1 (A) address ways to improve the effective-
2 ness of the procurement center representative
3 program in helping small business concerns ob-
4 tain Federal contracts;

5 (B) evaluate the effectiveness of procure-
6 ment center representatives and commercial
7 marketing representatives; and

8 (C) include recommendations, if any, on
9 how to improve the procurement center rep-
10 resentative program.

11 (d) ELECTRONIC PROCUREMENT CENTER REP-
12 RESENTATIVE.—

13 (1) IN GENERAL.—Not later than 1 year after
14 the date of enactment of this Act, the Administrator
15 shall implement a 3-year pilot electronic procure-
16 ment center representative program.

17 (2) REPORT.—Not later than 30 days after the
18 pilot program under paragraph (1) ends, the Comp-
19 troller General of the United States shall submit to
20 the Committee on Small Business and Entrepre-
21 neurship of the Senate and the Committee on Small
22 Business of the House of Representatives a report
23 regarding the pilot program.

1 **SEC. 1313. CONSOLIDATION OF CONTRACT REQUIREMENTS.**

2 (a) IN GENERAL.—The Small Business Act (15
3 U.S.C. 631 et seq.) is amended—

4 (1) by redesignating section 44 as section 45;
5 and

6 (2) by inserting after section 43 the following:

7 **“SEC. 44. CONSOLIDATION OF CONTRACT REQUIREMENTS.**

8 **“(a) DEFINITIONS.—**In this section—

9 “(1) the term ‘Chief Acquisition Officer’ means
10 the employee of a Federal agency designated as the
11 Chief Acquisition Officer for the Federal agency
12 under section 16(a) of the Office of Federal Pro-
13 curement Policy Act (41 U.S.C. 414(a));

14 “(2) the term ‘consolidation of contract require-
15 ments’, with respect to contract requirements of a
16 Federal agency, means a use of a solicitation to ob-
17 tain offers for a single contract or a multiple award
18 contract to satisfy 2 or more requirements of the
19 Federal agency for goods or services that have been
20 provided to or performed for the Federal agency
21 under 2 or more separate contracts lower in cost
22 than the total cost of the contract for which the of-
23 fers are solicited; and

24 “(3) the term ‘senior procurement executive’
25 means an official designated under section 16(c) of
26 the Office of Federal Procurement Policy Act (41

1 U.S.C. 414(c)) as the senior procurement executive
2 for a Federal agency.

3 “(b) POLICY.—The head of each Federal agency shall
4 ensure that the decisions made by the Federal agency re-
5 garding consolidation of contract requirements of the Fed-
6 eral agency are made with a view to providing small busi-
7 ness concerns with appropriate opportunities to partici-
8 pate as prime contractors and subcontractors in the pro-
9 curements of the Federal agency.

10 “(c) LIMITATION ON USE OF ACQUISITION STRATE-
11 GIES INVOLVING CONSOLIDATION.—

12 “(1) IN GENERAL.—Subject to paragraph (4),
13 the head of a Federal agency may not carry out an
14 acquisition strategy that includes a consolidation of
15 contract requirements of the Federal agency with a
16 total value of more than \$2,000,000, unless the sen-
17 ior procurement executive or Chief Acquisition Offi-
18 cer for the Federal agency, before carrying out the
19 acquisition strategy—

20 “(A) conducts market research;

21 “(B) identifies any alternative contracting
22 approaches that would involve a lesser degree of
23 consolidation of contract requirements;

1 “(C) makes a written determination that
2 the consolidation of contract requirements is
3 necessary and justified;

4 “(D) identifies any negative impact by the
5 acquisition strategy on contracting with small
6 business concerns; and

7 “(E) certifies to the head of the Federal
8 agency that steps will be taken to include small
9 business concerns in the acquisition strategy.

10 “(2) DETERMINATION THAT CONSOLIDATION IS
11 NECESSARY AND JUSTIFIED.—

12 “(A) IN GENERAL.—A senior procurement
13 executive or Chief Acquisition Officer may de-
14 termine that an acquisition strategy involving a
15 consolidation of contract requirements is nec-
16 essary and justified for the purposes of para-
17 graph (1)(C) if the benefits of the acquisition
18 strategy substantially exceed the benefits of
19 each of the possible alternative contracting ap-
20 proaches identified under paragraph (1)(B).

21 “(B) SAVINGS IN ADMINISTRATIVE OR
22 PERSONNEL COSTS.—For purposes of subpara-
23 graph (A), savings in administrative or per-
24 sonnel costs alone do not constitute a sufficient
25 justification for a consolidation of contract re-

1 quirements in a procurement unless the ex-
2 pected total amount of the cost savings, as de-
3 termined by the senior procurement executive
4 or Chief Acquisition Officer, is expected to be
5 substantial in relation to the total cost of the
6 procurement.

7 “(3) BENEFITS TO BE CONSIDERED.—The ben-
8 efits considered for the purposes of paragraphs (1)
9 and (2) may include cost and, regardless of whether
10 quantifiable in dollar amounts—

11 “(A) quality;

12 “(B) acquisition cycle;

13 “(C) terms and conditions; and

14 “(D) any other benefit.

15 “(4) DEPARTMENT OF DEFENSE.—

16 “(A) IN GENERAL.—The Department of
17 Defense and each military department shall
18 comply with this section until after the date de-
19 scribed in subparagraph (C).

20 “(B) RULE.—After the date described in
21 subparagraph (C), contracting by the Depart-
22 ment of Defense or a military department shall
23 be conducted in accordance with section 2382
24 of title 10, United States Code.

1 “(C) DATE.—The date described in this
2 subparagraph is the date on which the Adminis-
3 trator determines the Department of Defense or
4 a military department is in compliance with the
5 Government-wide contracting goals under sec-
6 tion 15.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENT.—
8 Section 2382(b)(1) of title 10, United States Code, is
9 amended by striking “An official” and inserting “Subject
10 to section 44(c)(4), an official”.

11 **SEC. 1314. SMALL BUSINESS TEAMS PILOT PROGRAM.**

12 (a) DEFINITIONS.—In this section—

13 (1) the term “Pilot Program” means the Small
14 Business Teaming Pilot Program established under
15 subsection (b); and

16 (2) the term “eligible organization” means a
17 well-established national organization for small busi-
18 ness concerns with the capacity to provide assistance
19 to small business concerns (which may be provided
20 with the assistance of the Administrator) relating
21 to—

22 (A) customer relations and outreach;

23 (B) team relations and outreach; and

24 (C) performance measurement and quality
25 assurance.

1 (b) ESTABLISHMENT.—The Administrator shall es-
2 tablish a Small Business Teaming Pilot Program for
3 teaming and joint ventures involving small business con-
4 cerns.

5 (c) GRANTS.—Under the Pilot Program, the Admin-
6 istrator may make grants to eligible organizations to pro-
7 vide assistance and guidance to teams of small business
8 concerns seeking to compete for larger procurement con-
9 tracts.

10 (d) CONTRACTING OPPORTUNITIES.—The Adminis-
11 trator shall work with eligible organizations receiving a
12 grant under the Pilot Program to recommend appropriate
13 contracting opportunities for teams or joint ventures of
14 small business concerns.

15 (e) REPORT.—Not later than 1 year before the date
16 on which the authority to carry out the Pilot Program ter-
17 minates under subsection (f), the Administrator shall sub-
18 mit to the Committee on Small Business and Entrepre-
19 neurship of the Senate and the Committee on Small Busi-
20 ness of the House of Representatives a report on the effec-
21 tiveness of the Pilot Program.

22 (f) TERMINATION.—The authority to carry out the
23 Pilot Program shall terminate 5 years after the date of
24 enactment of this Act.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated for grants under sub-
3 section (c) \$5,000,000 for each of fiscal years 2010
4 through 2015.

5 **PART II—SUBCONTRACTING INTEGRITY**

6 **SEC. 1321. SUBCONTRACTING MISREPRESENTATIONS.**

7 Not later than 1 year after the date of enactment
8 of this Act, the Administrator, in consultation with the
9 Administrator for Federal Procurement Policy, shall pro-
10 mulgate regulations relating to, and the Federal Acquisi-
11 tion Regulatory Council established under section 25(a)
12 of the Office of Federal Procurement Policy Act (41
13 U.S.C. 421(a)) shall amend the Federal Acquisition Regu-
14 lation issued under section 25 of such Act to establish a
15 policy on, subcontracting compliance relating to small
16 business concerns, including assignment of compliance re-
17 sponsibilities between contracting offices, small business
18 offices, and program offices and periodic oversight and re-
19 view activities.

20 **SEC. 1322. SMALL BUSINESS SUBCONTRACTING IMPROVE-**
21 **MENTS.**

22 Section 8(d)(6) of the Small Business Act (15 U.S.C.
23 637(d)(6)) is amended—

24 (1) in subparagraph (E), by striking “and” at
25 the end;

1 (2) in subparagraph (F), by striking the period
2 at the end and inserting “; and”; and

3 (3) by adding at the end, the following:

4 “(G) a representation that the offeror or
5 bidder will—

6 “(i) make a good faith effort to ac-
7 quire articles, equipment, supplies, serv-
8 ices, or materials, or obtain the perform-
9 ance of construction work from the small
10 business concerns used in preparing and
11 submitting to the contracting agency the
12 bid or proposal, in the same amount and
13 quality used in preparing and submitting
14 the bid or proposal; and

15 “(ii) provide to the contracting officer
16 a written explanation if the offeror or bid-
17 der fails to acquire articles, equipment,
18 supplies, services, or materials or obtain
19 the performance of construction work as
20 described in clause (i).”.

1 **PART III—ACQUISITION PROCESS**

2 **SEC. 1331. RESERVATION OF PRIME CONTRACT AWARDS**
3 **FOR SMALL BUSINESSES.**

4 Section 15 of the Small Business Act (15 U.S.C.
5 644), as amended by this Act, is amended by adding at
6 the end the following:

7 “(r) **MULTIPLE AWARD CONTRACTS.**—Not later than
8 1 year after the date of enactment of this subsection, the
9 Administrator for Federal Procurement Policy and the
10 Administrator, in consultation with the Administrator of
11 General Services, shall, by regulation, establish guidance
12 under which Federal agencies may, at their discretion—

13 “(1) set aside part or parts of a multiple award
14 contract for small business concerns, including the
15 subcategories of small business concerns identified in
16 subsection (g)(2);

17 “(2) notwithstanding the fair opportunity re-
18 quirements under section 2304c(b) of title 10,
19 United States Code, and section 303J(b) of the Fed-
20 eral Property and Administrative Services Act of
21 1949 (41 U.S.C. 253j(b)), set aside orders placed
22 against multiple award contracts for small business
23 concerns, including the subcategories of small busi-
24 ness concerns identified in subsection (g)(2); and

25 “(3) reserve 1 or more contract awards for
26 small business concerns under full and open multiple

1 award procurements, including the subcategories of
2 small business concerns identified in subsection
3 (g)(2).”.

4 **SEC. 1332. MICRO-PURCHASE GUIDELINES.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Director of the Office of Management and
7 Budget, in coordination with the Administrator of General
8 Services, shall issue guidelines regarding the analysis of
9 purchase card expenditures to identify opportunities for
10 achieving and accurately measuring fair participation of
11 small business concerns in purchases in an amount not
12 in excess of the micro-purchase threshold, as defined in
13 section 32 of the Office of Federal Procurement Policy
14 Act (41 U.S.C. 428) (in this section referred to as “micro-
15 purchases”), consistent with the national policy on small
16 business participation in Federal procurements set forth
17 in sections 2(a) and 15(g) of the Small Business Act (15
18 U.S.C. 631(a) and 644(g)), and dissemination of best
19 practices for participation of small business concerns in
20 micro-purchases.

21 **SEC. 1333. AGENCY ACCOUNTABILITY.**

22 Section 15(g)(2) of the Small Business Act (15
23 U.S.C. 644(g)(2)) is amended—

24 (1) by inserting “(A)” after “(2)”;

1 (2) by striking “Goals established” and insert-
2 ing the following:

3 “(B) Goals established”;

4 (3) by striking “Whenever” and inserting the
5 following:

6 “(C) Whenever”;

7 (4) by striking “For the purpose of” and insert-
8 ing the following:

9 “(D) For the purpose of”;

10 (5) by striking “The head of each Federal
11 agency, in attempting to attain such participation”
12 and inserting the following:

13 “(E) The head of each Federal agency, in attempting
14 to attain the participation described in subparagraph
15 (D)”.

16 (6) in subparagraph (E), as so designated—

17 (A) by striking “(A) contracts” and insert-
18 ing “(i) contracts”; and

19 (B) by striking “(B) contracts” and insert-
20 ing “(ii) contracts”; and

21 (7) by adding at the end the following:

22 “(F)(i) Each procurement employee or program man-
23 ager described in clause (ii) shall communicate to the sub-
24 ordinates of the procurement employee or program man-
25 ager the importance of achieving small business goals.

1 “(ii) A procurement employee or program manager
2 described in this clause is a senior procurement executive,
3 senior program manager, or Director of Small and Dis-
4 advantaged Business Utilization of a Federal agency hav-
5 ing contracting authority.”.

6 **SEC. 1334. PAYMENT OF SUBCONTRACTORS.**

7 Section 8(d) of the Small Business Act (15 U.S.C.
8 637(d)) is amended by adding at the end the following:

9 “(12) PAYMENT OF SUBCONTRACTORS.—

10 “(A) DEFINITION.—In this paragraph, the term
11 ‘covered contract’ means a contract relating to which
12 a prime contractor is required to develop a subcon-
13 tracting plan under paragraph (4) or (5).

14 “(B) NOTICE.—

15 “(i) IN GENERAL.—A prime contractor for
16 a covered contract shall notify in writing the
17 contracting officer for the covered contract if
18 the prime contractor pays a reduced price to a
19 subcontractor for goods and services upon com-
20 pletion of the responsibilities of the subcon-
21 tractor or the payment to a subcontractor is
22 more than 90 days past due for goods or serv-
23 ices provided for the covered contract for which
24 the Federal agency has paid the prime con-
25 tractor.

1 “(ii) CONTENTS.—A prime contractor shall
2 include the reason for the reduction in a pay-
3 ment to or failure to pay a subcontractor in any
4 notice made under clause (i).

5 “(C) PERFORMANCE.—A contracting officer for
6 a covered contract shall consider the unjustified fail-
7 ure by a prime contractor to make a full or timely
8 payment to a subcontractor in evaluating the per-
9 formance of the prime contractor.

10 “(D) CONTROL OF FUNDS.—If the contracting
11 officer for a covered contract determines that a
12 prime contractor has a history of unjustified, un-
13 timely payments to contractors, the contracting offi-
14 cer shall record the identity of the contractor in ac-
15 cordance with the regulations promulgated under
16 subparagraph (E).

17 “(E) REGULATIONS.—Not later than 1 year
18 after the date of enactment of this paragraph, the
19 Federal Acquisition Regulatory Council established
20 under section 25(a) of the Office of Federal Pro-
21 curement Policy Act (41 U.S.C. 421(a)) shall amend
22 the Federal Acquisition Regulation issued under sec-
23 tion 25 of such Act to—

24 “(i) describe the circumstances under
25 which a contractor may be determined to have

1 a history of unjustified, untimely payments to
2 subcontractors;

3 “(ii) establish a process for contracting of-
4 ficers to record the identity of a contractor de-
5 scribed in clause (i); and

6 “(iii) require the identity of a contractor
7 described in clause (i) to be incorporated in,
8 and made publicly available through, the Fed-
9 eral Awardee Performance and Integrity Infor-
10 mation System, or any successor thereto.”.

11 **SEC. 1335. REPEAL OF SMALL BUSINESS COMPETITIVENESS**

12 **DEMONSTRATION PROGRAM.**

13 (a) IN GENERAL.—The Business Opportunity Devel-
14 opment Reform Act of 1988 (Public Law 100–656) is
15 amended by striking title VII (15 U.S.C. 644 note).

16 (b) EFFECTIVE DATE AND APPLICABILITY.—The
17 amendment made by this section—

18 (1) shall take effect on the date of enactment
19 of this Act; and

20 (2) apply to the first full fiscal year after the
21 date of enactment of this Act.

1 **PART IV—SMALL BUSINESS SIZE AND STATUS**

2 **INTEGRITY**

3 **SEC. 1341. POLICY AND PRESUMPTIONS.**

4 Section 3 of the Small Business Act (15 U.S.C. 632),
5 as amended by section 1311, is amended by adding at the
6 end the following:

7 “(w) PRESUMPTION.—

8 “(1) IN GENERAL.—In every contract, sub-
9 contract, cooperative agreement, cooperative re-
10 search and development agreement, or grant which
11 is set aside, reserved, or otherwise classified as in-
12 tended for award to small business concerns, there
13 shall be a presumption of loss to the United States
14 based on the total amount expended on the contract,
15 subcontract, cooperative agreement, cooperative re-
16 search and development agreement, or grant when-
17 ever it is established that a business concern other
18 than a small business concern willfully sought and
19 received the award by misrepresentation.

20 “(2) DEEMED CERTIFICATIONS.—The following
21 actions shall be deemed affirmative, willful, and in-
22 tentional certifications of small business size and
23 status:

24 “(A) Submission of a bid or proposal for a
25 Federal grant, contract, subcontract, coopera-
26 tive agreement, or cooperative research and de-

1 velopment agreement reserved, set aside, or oth-
2 erwise classified as intended for award to small
3 business concerns.

4 “(B) Submission of a bid or proposal for
5 a Federal grant, contract, subcontract, coopera-
6 tive agreement, or cooperative research and de-
7 velopment agreement which in any way encour-
8 ages a Federal agency to classify the bid or pro-
9 posal, if awarded, as an award to a small busi-
10 ness concern.

11 “(C) Registration on any Federal elec-
12 tronic database for the purpose of being consid-
13 ered for award of a Federal grant, contract,
14 subcontract, cooperative agreement, or coopera-
15 tive research agreement, as a small business
16 concern.

17 “(3) CERTIFICATION BY SIGNATURE OF RE-
18 SPONSIBLE OFFICIAL.—

19 “(A) IN GENERAL.—Each solicitation, bid,
20 or application for a Federal contract, sub-
21 contract, or grant shall contain a certification
22 concerning the small business size and status of
23 a business concern seeking the Federal con-
24 tract, subcontract, or grant.

1 “(B) CONTENT OF CERTIFICATIONS.—A
2 certification that a business concern qualifies as
3 a small business concern of the exact size and
4 status claimed by the business concern for pur-
5 poses of bidding on a Federal contract or sub-
6 contract, or applying for a Federal grant, shall
7 contain the signature of an authorized official
8 on the same page on which the certification is
9 contained.

10 “(4) REGULATIONS.—The Administrator shall
11 promulgate regulations to provide adequate protec-
12 tions to individuals and business concerns from li-
13 ability under this subsection in cases of uninten-
14 tional errors, technical malfunctions, and other simi-
15 lar situations.”.

16 **SEC. 1342. ANNUAL CERTIFICATION.**

17 Section 3 of the Small Business Act (15 U.S.C. 632),
18 as amended by section 1341, is amended by adding at the
19 end the following:

20 “(x) ANNUAL CERTIFICATION.—

21 “(1) IN GENERAL.—Each business certified as
22 a small business concern under this Act shall annu-
23 ally certify its small business size and, if appro-
24 priate, its small business status, by means of a con-
25 firming entry on the Online Representations and

1 Certifications Application database of the Adminis-
2 tration, or any successor thereto.

3 “(2) REGULATIONS.—Not later than 1 year
4 after the date of enactment of this subsection, the
5 Administrator, in consultation with the Inspector
6 General and the Chief Counsel for Advocacy of the
7 Administration, shall promulgate regulations to en-
8 sure that—

9 “(A) no business concern continues to be
10 certified as a small business concern on the On-
11 line Representations and Certifications Applica-
12 tion database of the Administration, or any suc-
13 cessor thereto, without fulfilling the require-
14 ments for annual certification under this sub-
15 section; and

16 “(B) the requirements of this subsection
17 are implemented in a manner presenting the
18 least possible regulatory burden on small busi-
19 ness concerns.”.

20 **SEC. 1343. TRAINING FOR CONTRACTING AND ENFORCE-**
21 **MENT PERSONNEL.**

22 (a) IN GENERAL.—Not later than 1 year after the
23 date of enactment of this Act, the Federal Acquisition In-
24 stitute, in consultation with the Administrator for Federal
25 Procurement Policy, the Defense Acquisition University,

1 and the Administrator, shall develop courses for acqui-
2 tion personnel concerning proper classification of business
3 concerns and small business size and status for purposes
4 of Federal contracts, subcontracts, grants, cooperative
5 agreements, and cooperative research and development
6 agreements.

7 (b) POLICY ON PROSECUTIONS OF SMALL BUSINESS
8 SIZE AND STATUS FRAUD.—Section 3 of the Small Busi-
9 ness Act (15 U.S.C. 632), as amended by section 1342,
10 is amended by adding at the end the following:

11 “(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS
12 SIZE AND STATUS FRAUD.—Not later than 1 year after
13 the date of enactment of this subsection, the Adminis-
14 trator, in consultation with the Attorney General, shall
15 issue a Government-wide policy on prosecution of small
16 business size and status fraud, which shall direct Federal
17 agencies to appropriately publicize the policy.”.

18 **SEC. 1344. UPDATED SIZE STANDARDS.**

19 (a) ROLLING REVIEW.—

20 (1) IN GENERAL.—The Administrator shall—

21 (A) during the 18-month period beginning
22 on the date of enactment of this Act, and dur-
23 ing every 18-month period thereafter, conduct a
24 detailed review of not less than $\frac{1}{3}$ of the size
25 standards for small business concerns estab-

lished under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

(B) after completing each review under subparagraph (A) make appropriate adjustments to the size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

(C) make publicly available—

(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and

(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report regarding the review, including why the Administrator—

- 1 (i) used the factors and criteria de-
2 scribed in subparagraph (C); and
3 (ii) adjusted or did not adjust each
4 size standard that was reviewed under the
5 review.

6 (2) COMPLETE REVIEW OF SIZE STANDARDS.—

7 The Administrator shall ensure that each size stand-
8 ard for small business concerns established under
9 section 3(a)(2) of the Small Business Act (15 U.S.C.
10 632(a)(2)) is reviewed under paragraph (1) not less
11 frequently than once every 5 years.

12 (b) RULES.—Not later than 1 year after the date of
13 enactment of this Act, the Administrator shall promulgate
14 rules for conducting the reviews required under subsection
15 (a).

16 **SEC. 1345. STUDY AND REPORT ON THE MENTOR-PROTEGE**
17 **PROGRAM.**

18 (a) IN GENERAL.—The Comptroller General of the
19 United States shall conduct a study of the mentor-protege
20 program of the Administration for small business concerns
21 participating in programs under section 8(a) of the Small
22 Business Act (15 U.S.C. 637(a)), and other relationships
23 and strategic alliances pairing a larger business and a
24 small business concern partner to gain access to Federal
25 Government contracts, to determine whether the programs

1 and relationships are effectively supporting the goal of in-
2 creasing the participation of small business concerns in
3 Government contracting.

4 (b) MATTERS TO BE STUDIED.—The study con-
5 ducted under this section shall include—

6 (1) a review of a broad cross-section of indus-
7 tries; and

8 (2) an evaluation of—

9 (A) how each Federal agency carrying out
10 a program described in subsection (a) admin-
11 isters and monitors the program;

12 (B) whether there are systems in place to
13 ensure that the mentor-protege relationship, or
14 similar affiliation, promotes real gain to the
15 protege, and is not just a mechanism to enable
16 participants that would not otherwise qualify
17 under section 8(a) of the Small Business Act
18 (15 U.S.C. 637(a)) to receive contracts under
19 that section; and

20 (C) the degree to which protege businesses
21 become able to compete for Federal contracts
22 without the assistance of a mentor.

23 (c) REPORT TO CONGRESS.—Not later than 180 days
24 after the date of enactment of this Act, the Comptroller
25 General shall submit to the Committee on Small Business

1 and Entrepreneurship of the Senate and the Committee
2 on Small Business of the House of Representatives a re-
3 port on the results of the study conducted under this sec-
4 tion.

5 **SEC. 1346. CONTRACTING GOALS REPORTS.**

6 Section 15(h)(2) of the Small Business Act (15
7 U.S.C. 644(h)(2)) is amended by striking “submit them”
8 and all that follows through “the following:” and inserting
9 “submit to the President and the Committee on Small
10 Business and Entrepreneurship of the Senate and the
11 Committee on Small Business of the House of Representa-
12 tives the compilation and analysis, which shall include the
13 following:”.

14 **SEC. 1347. SMALL BUSINESS CONTRACTING PARITY.**

15 (a) DEFINITIONS.—In this section—

16 (1) the terms “Administration” and “Adminis-
17 trator” mean the Small Business Administration
18 and the Administrator thereof, respectively; and

19 (2) the terms “HUBZone small business con-
20 cern”, “small business concern”, “small business
21 concern owned and controlled by service-disabled
22 veterans”, and “small business concern owned and
23 controlled by women” have the same meanings as in
24 section 3 of the Small Business Act (15 U.S.C.
25 632).

1 (b) CONTRACTING IMPROVEMENTS.—

2 (1) CONTRACTING OPPORTUNITIES.—Section
3 31(b)(2)(B) of the Small Business Act (15 U.S.C.
4 657a(b)(2)(B)) is amended by striking “shall” and
5 inserting “may”.

6 (2) CONTRACTING GOALS.—Section 15(g)(1) of
7 the Small Business Act (15 U.S.C. 644(g)(1)) is
8 amended in the fourth sentence by inserting “and
9 subcontract” after “not less than 3 percent of the
10 total value of all prime contract”.

11 (3) MENTOR-PROTEGE PROGRAMS.—The Ad-
12 ministrator may establish mentor-protege programs
13 for small business concerns owned and controlled by
14 service-disabled veterans, small business concerns
15 owned and controlled by women, and HUBZone
16 small business concerns modeled on the mentor-pro-
17 tege program of the Administration for small busi-
18 ness concerns participating in programs under sec-
19 tion 8(a) of the Small Business Act (15 U.S.C.
20 637(a)).

21 (c) SMALL BUSINESS CONTRACTING PROGRAMS PAR-
22 ITY.—Section 31(b)(2) of the Small Business Act (15
23 U.S.C. 657a(b)(2)) is amended—

1 (1) in the matter preceding subparagraph (A),
2 by striking “Notwithstanding any other provision of
3 law—”;

4 (2) in subparagraph (A)—

5 (A) in the matter preceding clause (i), by
6 striking “a contracting” and inserting “SOLE
7 SOURCE CONTRACTS.—A contracting”; and

8 (B) in clause (iii), by striking the semi-
9 colon at the end and inserting a period;

10 (3) in subparagraph (B)—

11 (A) by striking “a contract opportunity
12 shall” and inserting “RESTRICTED COMPETI-
13 TION.—A contract opportunity may”; and

14 (B) by striking “; and” and inserting a pe-
15 riod; and

16 (4) in subparagraph (C), by striking “not later”
17 and inserting “APPEALS.—Not later”.

18 **Subtitle D—Small Business Man-**
19 **agement and Counseling Assist-**
20 **ance**

21 **SEC. 1401. MATCHING REQUIREMENTS UNDER SMALL BUSI-**
22 **NESS PROGRAMS.**

23 (a) MICROLOAN PROGRAM.—Section 7(m) of the
24 Small Business Act (15 U.S.C. 636(m)) is amended—

25 (1) in paragraph (3)(B)—

1 (A) by striking “As a condition” and in-
2 serting the following:

3 “(i) IN GENERAL.—Subject to clause
4 (ii), as a condition”;

5 (B) by striking “the Administration” and
6 inserting “the Administrator”; and

7 (C) by adding at the end the following:

8 “(ii) WAIVER OF NON-FEDERAL
9 SHARE.—

10 “(I) IN GENERAL.—Upon request
11 by an intermediary, and in accordance
12 with this clause, the Administrator
13 may waive, in whole or in part, the re-
14 quirement to obtain non-Federal
15 funds under clause (i) for a fiscal
16 year. The Administrator may waive
17 the requirement to obtain non-Federal
18 funds under this clause for successive
19 fiscal years.

20 “(II) CONSIDERATIONS.—In de-
21 termining whether to waive the re-
22 quirement to obtain non-Federal
23 funds under this clause, the Adminis-
24 trator shall consider—

1 “(aa) the economic condi-
2 tions affecting the intermediary;

3 “(bb) the impact a waiver
4 under this clause would have on
5 the credibility of the microloan
6 program under this subsection;

7 “(cc) the demonstrated abil-
8 ity of the intermediary to raise
9 non-Federal funds; and

10 “(dd) the performance of
11 the intermediary.

12 “(III) LIMITATIONS.—

13 “(aa) IN GENERAL.—The
14 Administrator may not waive the
15 requirement to obtain non-Fed-
16 eral funds under this clause if
17 granting the waiver would under-
18 mine the credibility of the
19 microloan program under this
20 subsection.

21 “(bb) SUNSET.—The Ad-
22 ministrator may not waive the re-
23 quirement to obtain non-Federal
24 funds under this clause for fiscal

1 year 2013 or any fiscal year
2 thereafter.”; and

3 (2) in paragraph (4)(B)—

4 (A) by striking “As a condition” and all
5 that follows through “the Administration shall
6 require” and inserting the following:

7 “(i) IN GENERAL.—Subject to clause
8 (ii), as a condition of a grant made under
9 subparagraph (A), the Administrator shall
10 require”; and

11 (B) by adding at the end the following:

12 “(ii) W A I V E R O F N O N - F E D E R A L
13 S H A R E . —

“(I) IN GENERAL.—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

24 “(II) CONSIDERATIONS.—In de-
25 termining whether to waive the re-

1 requirement to obtain non-Federal
2 funds under this clause, the Adminis-
3 trator shall consider—

4 “(aa) the economic condi-
5 tions affecting the intermediary;

6 “(bb) the impact a waiver
7 under this clause would have on
8 the credibility of the microloan
9 program under this subsection;

10 “(cc) the demonstrated abil-
11 ity of the intermediary to raise
12 non-Federal funds; and

13 “(dd) the performance of
14 the intermediary.

15 “(III) LIMITATIONS.—

16 “(aa) IN GENERAL.—The
17 Administrator may not waive the
18 requirement to obtain non-Fed-
19 eral funds under this clause if
20 granting the waiver would under-
21 mine the credibility of the
22 microloan program under this
23 subsection.

24 “(bb) SUNSET.—The Ad-
25 ministrator may not waive the re-

1 requirement to obtain non-Federal
2 funds under this clause for fiscal
3 year 2013 or any fiscal year
4 thereafter.”.

5 (b) WOMEN’S BUSINESS CENTER PROGRAM.—Sec-
6 tion 29(c) of the Small Business Act (15 U.S.C. 656(c))
7 is amended—

8 (1) in paragraph (1), by striking “As a condi-
9 tion” and inserting “Subject to paragraph (5), as a
10 condition”; and

11 (2) by adding at the end the following:

12 “(5) WAIVER OF NON-FEDERAL SHARE RELAT-
13 ING TO TECHNICAL ASSISTANCE AND COUN-
14 SELING.—

15 “(A) IN GENERAL.—Upon request by a re-
16 cipient organization, and in accordance with
17 this paragraph, the Administrator may waive,
18 in whole or in part, the requirement to obtain
19 non-Federal funds under this subsection for the
20 technical assistance and counseling activities of
21 the recipient organization carried out using fi-
22 nancial assistance under this section for a fiscal
23 year. The Administrator may waive the require-
24 ment to obtain non-Federal funds under this
25 paragraph for successive fiscal years.

1 “(B) CONSIDERATIONS.—In determining
2 whether to waive the requirement to obtain
3 non-Federal funds under this paragraph, the
4 Administrator shall consider—

5 “(i) the economic conditions affecting
6 the recipient organization;

7 “(ii) the impact a waiver under this
8 clause would have on the credibility of the
9 women’s business center program under
10 this section;

11 “(iii) the demonstrated ability of the
12 recipient organization to raise non-Federal
13 funds; and

14 “(iv) the performance of the recipient
15 organization.

16 “(C) LIMITATIONS.—

17 “(i) IN GENERAL.—The Administrator
18 may not waive the requirement to obtain
19 non-Federal funds under this paragraph if
20 granting the waiver would undermine the
21 credibility of the women’s business center
22 program under this section.

23 “(ii) SUNSET.—The Administrator
24 may not waive the requirement to obtain
25 non-Federal funds under this paragraph

1 for fiscal year 2013 or any fiscal year
2 thereafter.”.

3 (c) PROSPECTIVE REPEALS.—Effective October 1,
4 2012, the Small Business Act (15 U.S.C. 631 et seq.) is
5 amended—

6 (1) in section 7(m) (15 U.S.C. 636(m))—

7 (A) in paragraph (3)(B)—

8 (i) by striking “INTERMEDIARY CON-
9 TRIBUTION.—” and all that follows
10 through “Subject to clause (ii), as” and in-
11 serting “INTERMEDIARY CONTRIBUTION.—
12 As”; and

13 (ii) by striking clause (ii); and

14 (B) in paragraph (4)(B)—

15 (i) by striking “CONTRIBUTION.—”
16 and all that follows through “Subject to
17 clause (ii), as” and inserting “CONTRIBU-
18 TION.—As”; and

19 (ii) by striking clause (ii); and

20 (2) in section 29(c) (15 U.S.C. 656(c))—

21 (A) in paragraph (1), by striking “Subject
22 to paragraph (5), as” and inserting “As”; and

23 (B) by striking paragraph (5).

1 **SEC. 1402. GRANTS FOR SBDCS.**

2 (a) IN GENERAL.—The Administrator may make
3 grants to small business development centers under sec-
4 tion 21 of the Small Business Act (15 U.S.C. 648) to pro-
5 vide targeted technical assistance to small business con-
6 cerns seeking access to capital or credit, Federal procure-
7 ment opportunities, energy efficiency audits to reduce en-
8 ergy bills, opportunities to export products or provide serv-
9 ices to foreign customers, adopting, making innovations
10 in, and using broadband technologies, or other assistance.

11 (b) ALLOCATION.—

12 (1) IN GENERAL.—Subject to paragraph (2),
13 and notwithstanding the requirements of section
14 21(a)(4)(C)(iii) of the Small Business Act (15
15 U.S.C. 648(a)(4)(C)(iii)), the amount appropriated
16 to carry out this section shall be allocated under the
17 formula under section 21(a)(4)(C)(i) of that Act.

18 (2) MINIMUM FUNDING.—The amount made
19 available under this section to each State shall be
20 not less than \$325,000.

21 (3) TYPES OF USES.—Of the total amount of
22 the grants awarded by the Administrator under this
23 section—

24 (A) not less than 80 percent shall be used
25 for counseling of small business concerns; and

1 (B) not more than 20 percent may be used
2 for classes or seminars.

3 (c) NO NON-FEDERAL SHARE REQUIRED.—Notwith-
4 standing section 21(a)(4)(A) of the Small Business Act
5 (15 U.S.C. 648(a)(4)(A)), the recipient of a grant made
6 under this section shall not be required to provide non-
7 Federal matching funds.

8 (d) DISTRIBUTION.—Not later than 30 days after the
9 date on which amounts are appropriated to carry out this
10 section, the Administrator shall disburse the total amount
11 appropriated.

12 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to the Administrator
14 \$50,000,000 to carry out this section.

15 **Subtitle E—Disaster Loan**
16 **Improvement**

17 **SEC. 1501. AQUACULTURE BUSINESS DISASTER ASSIST-**
18 **ANCE.**

19 Section 3 of the Small Business Act (15 U.S.C. 632),
20 as amended by section 1343, is amended by adding at the
21 end the following:

22 “(z) AQUACULTURE BUSINESS DISASTER ASSIST-
23 ANCE.—Subject to section 18(a) and notwithstanding sec-
24 tion 18(b)(1), the Administrator may provide disaster as-

1 sistance under section 7(b)(2) to aquaculture enterprises
2 that are small businesses.”.

3 **Subtitle F—Small Business** 4 **Regulatory Relief**

5 **SEC. 1601. REQUIREMENTS PROVIDING FOR MORE DE-** 6 **TAILED ANALYSES.**

7 Section 604(a) of title 5, United States Code, is
8 amended—

- 9 (1) in paragraph (1), by striking “succinct”;
10 (2) in paragraph (2), by striking “summary”
11 each place it appears and inserting “statement”;
12 (3) by redesignating paragraphs (3), (4), and
13 (5) as paragraphs (4), (5), and (6), respectively; and
14 (4) by inserting after paragraph (2) the fol-
15 lowing:

16 “(3) the response of the agency to any com-
17 ments filed by the Chief Counsel for Advocacy of the
18 Small Business Administration in response to the
19 proposed rule, and a detailed statement of any
20 change made to the proposed rule in the final rule
21 as a result of the comments;”.

22 **SEC. 1602. OFFICE OF ADVOCACY.**

23 (a) IN GENERAL.—Section 203 of Public Law 94–
24 305 (15 U.S.C. 634c) is amended—

1 (1) in paragraph (4), by striking “and” at the
2 end;

3 (2) in paragraph (5), by striking the period and
4 inserting “; and”; and

5 (3) by adding at the end the following:

6 “(6) carry out the responsibilities of the Office
7 of Advocacy under chapter 6 of title 5, United
8 States Code.”.

9 (b) BUDGETARY LINE ITEM AND AUTHORIZATION OF
10 APPROPRIATIONS.—Title II of Public Law 94–305 (15
11 U.S.C. 634a et seq.) is amended by striking section 207
12 and inserting the following:

13 **“SEC. 207. BUDGETARY LINE ITEM AND AUTHORIZATION OF**
14 **APPROPRIATIONS.**

15 “(a) APPROPRIATION REQUESTS.—Each budget of
16 the United States Government submitted by the President
17 under section 1105 of title 31, United States Code, shall
18 include a separate statement of the amount of appropria-
19 tions requested for the Office of Advocacy of the Small
20 Business Administration, which shall be designated in a
21 separate account in the General Fund of the Treasury.

22 “(b) ADMINISTRATIVE OPERATIONS.—The Adminis-
23 trator of the Small Business Administration shall provide
24 the Office of Advocacy with appropriate and adequate of-
25 fice space at central and field office locations, together

1 with such equipment, operating budget, and communica-
2 tions facilities and services as may be necessary, and shall
3 provide necessary maintenance services for such offices
4 and the equipment and facilities located in such offices.

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as are nec-
7 essary to carry out this title. Any amount appropriated
8 under this subsection shall remain available, without fiscal
9 year limitation, until expended.”.

10 **Subtitle G—Appropriations** 11 **Provisions**

12 **SEC. 1701. SALARIES AND EXPENSES.**

13 (a) APPROPRIATION.—There is appropriated, out of
14 any money in the Treasury not otherwise appropriated,
15 for the fiscal year ending September 30, 2010,
16 \$150,000,000, to remain available until September 30,
17 2012, for an additional amount for the appropriations ac-
18 count appropriated under the heading “SALARIES AND EX-
19 PENSES” under the heading “SMALL BUSINESS ADMINIS-
20 TRATION”, of which—

21 (1) \$50,000,000 is for grants to small business
22 development centers authorized under section 1402;

23 (2) \$1,000,000 is for the costs of administering
24 grants authorized under section 1402;

1 (3) \$30,000,000 is for grants to States for fis-
2 cal year 2011 to carry out export programs that as-
3 sist small business concerns authorized under section
4 1207;

5 (4) \$30,000,000 is for grants to States for fis-
6 cal year 2012 to carry out export programs that as-
7 sist small business concerns authorized under section
8 1207;

9 (5) \$2,500,000 is for the costs of administering
10 grants authorized under section 1207;

11 (6) \$5,000,000 is for grants for fiscal year
12 2011 under the Small Business Teaming Pilot Pro-
13 gram under section 1314; and

14 (7) \$5,000,000 is for grants for fiscal year
15 2012 under the Small Business Teaming Pilot Pro-
16 gram under section 1314.

17 (b) REPORT.—Not later than 60 days after the date
18 of enactment of this Act, the Administrator shall submit
19 to the Committee on Appropriations of the Senate and the
20 Committee on Appropriations of the House of Representa-
21 tives a detailed expenditure plan for using the funds pro-
22 vided under subsection (a).

23 **SEC. 1702. BUSINESS LOANS PROGRAM ACCOUNT.**

24 (a) IN GENERAL.—There is appropriated, out of any
25 money in the Treasury not otherwise appropriated, for the

1 fiscal year ending September 30, 2010, for an additional
2 amount for the appropriations account appropriated under
3 the heading “BUSINESS LOANS PROGRAM ACCOUNT” under
4 the heading “SMALL BUSINESS ADMINISTRATION”—

5 (1) \$8,000,000, to remain available until Sep-
6 tember 30, 2012, for fiscal year 2011 for the cost
7 of direct loans authorized under section 7(l) of the
8 Small Business Act, as added by section 1131 of
9 this title, including the cost of modifying the loans;

10 (2) \$8,000,000, to remain available until Sep-
11 tember 30, 2012, for fiscal year 2012 for the cost
12 of direct loans authorized under section 7(l) of the
13 Small Business Act, as added by section 1131 of
14 this title, including the cost of modifying the loans;

15 (3) \$6,500,000, to remain available until Sep-
16 tember 30, 2012, for administrative expenses to
17 carry out the direct loan program authorized under
18 section 7(l) of the Small Business Act, as added by
19 section 1131 of this title, which may be transferred
20 to and merged with the appropriations account ap-
21 propriated under the heading “SALARIES AND EX-
22 PENSES” under the heading “SMALL BUSINESS AD-
23 MINISTRATION”; and

24 (4) \$15,000,000, to remain available until Sep-
25 tember 30, 2011, for the cost of guaranteed loans as

1 authorized under section 7(a) of the Small Business
2 Act, including the cost of modifying the loans.

3 (b) DEFINITION.—In this section, the term “cost”
4 has the meaning given that term in section 502 of the
5 Congressional Budget Act of 1974.

6 **SEC. 1703. COMMUNITY DEVELOPMENT FINANCIAL INSTI-**
7 **TUTIONS FUND PROGRAM ACCOUNT.**

8 There is appropriated, out of any money in the Treas-
9 ury not otherwise appropriated, for the fiscal year ending
10 September 30, 2010, for an additional amount for the ap-
11 propriations account appropriated under the heading
12 “COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS
13 FUND PROGRAM ACCOUNT” under the heading “DE-
14 PARTMENT OF THE TREASURY”, \$13,500,000, to
15 remain available until September 30, 2012, for the costs
16 of administering guarantees for bonds and notes as au-
17 thorized under section 114A of the Riegle Community De-
18 velopment and Regulatory Improvement Act of 1994, as
19 added by section 1134 of this Act.

20 **SEC. 1704. SMALL BUSINESS LOAN GUARANTEE ENHANCE-**
21 **MENT EXTENSIONS.**

22 (a) EXTENSION OF PROGRAMS.—

23 (1) IN GENERAL.—There is appropriated, out
24 of any funds in the Treasury not otherwise appro-
25 priated, for an additional amount for “Small Busi-

1 ness Administration—Business Loans Program Ac-
2 count”, \$505,000,000, to remain available through
3 December 31, 2010, for the cost of—

4 (A) fee reductions and eliminations under
5 section 501 of division A of the American Re-
6 covery and Reinvestment Act of 2009 (Public
7 Law 111–5; 123 Stat. 151), as amended by this
8 Act; and

9 (B) loan guarantees under section 502 of
10 division A of the American Recovery and Rein-
11 vestment Act of 2009 (Public Law 111–5; 123
12 Stat. 152), as amended by this Act.

13 (2) COST.—For purposes of this subsection, the
14 term “cost” has the same meaning as in section 502
15 of the Congressional Budget Act of 1974 (2 U.S.C.
16 661a).

17 (b) ADMINISTRATIVE EXPENSES.—There is appro-
18 priated for an additional amount, out of any funds in the
19 Treasury not otherwise appropriated, for administrative
20 expenses to carry out sections 501 and 502 of division A
21 of the American Recovery and Reinvestment Act of 2009
22 (Public Law 111–5), \$5,000,000, to remain available until
23 expended, which may be transferred and merged with the
24 appropriation for “Small Business Administration—Sala-
25 ries and Expenses”.

1 **TITLE II—TAX PROVISIONS**

2 **SEC. 2001. SHORT TITLE.**

3 This title may be cited as the “Creating Small Busi-
4 ness Jobs Act of 2010”.

5 **Subtitle A—Small Business Relief**

6 **PART I—PROVIDING ACCESS TO CAPITAL**

7 **SEC. 2011. TEMPORARY EXCLUSION OF 100 PERCENT OF**
8 **GAIN ON CERTAIN SMALL BUSINESS STOCK.**

9 (a) IN GENERAL.—Subsection (a) of section 1202 of
10 the Internal Revenue Code of 1986 is amended by adding
11 at the end the following new paragraph:

12 “(4) 100 PERCENT EXCLUSION FOR STOCK AC-
13 QUIRED DURING CERTAIN PERIODS IN 2010.—In the
14 case of qualified small business stock acquired after
15 the date of the enactment of the Creating Small
16 Business Jobs Act of 2010 and before January 1,
17 2011—

18 “(A) paragraph (1) shall be applied by
19 substituting ‘100 percent’ for ‘50 percent’,

20 “(B) paragraph (2) shall not apply, and

21 “(C) paragraph (7) of section 57(a) shall
22 not apply.”.

23 (b) CONFORMING AMENDMENT.—Paragraph (3) of
24 section 1202(a) of the Internal Revenue Code of 1986 is
25 amended—

1 (1) by inserting “CERTAIN PERIODS IN” before
2 “2010” in the heading, and

(2) by striking “before January 1, 2011” and inserting “on or before the date of the enactment of the Creating Small Business Jobs Act of 2010”.

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

9 SEC. 2012. GENERAL BUSINESS CREDITS OF ELIGIBLE
10 SMALL BUSINESSES FOR 2010 CARRIED BACK
11 5 YEARS.

(a) IN GENERAL.—Section 39(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

15 “(4) 5-YEAR CARRYBACK FOR ELIGIBLE SMALL
16 BUSINESS CREDITS.—

“(A) IN GENERAL.—Notwithstanding sub-
section (d), in the case of eligible small business
credits determined in the first taxable year of
the taxpayer beginning in 2010—

21 “(i) paragraph (1) shall be applied by
22 substituting ‘each of the 5 taxable years’
23 for ‘the taxable year’ in subparagraph (A)
24 thereof, and

25 “(ii) paragraph (2) shall be applied—

1 “(I) by substituting ‘25 taxable
2 years’ for ‘21 taxable years’ in sub-
3 paragraph (A) thereof, and

4 “(II) by substituting ‘24 taxable
5 years’ for ‘20 taxable years’ in sub-
6 paragraph (B) thereof.

7 “(B) ELIGIBLE SMALL BUSINESS CRED-
8 ITS.—For purposes of this subsection, the term
9 ‘eligible small business credits’ has the meaning
10 given such term by section 38(c)(5)(B).”.

11 (b) CONFORMING AMENDMENT.—Section
12 39(a)(3)(A) of the Internal Revenue Code of 1986 is
13 amended by inserting “or the eligible small business cred-
14 its” after “credit”).

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

18 **SEC. 2013. GENERAL BUSINESS CREDITS OF ELIGIBLE**
19 **SMALL BUSINESSES IN 2010 NOT SUBJECT TO**
20 **ALTERNATIVE MINIMUM TAX.**

21 (a) IN GENERAL.—Section 38(c) of the Internal Rev-
22 enue Code of 1986 is amended by redesignating paragraph
23 (5) as paragraph (6) and by inserting after paragraph (4)
24 the following new paragraph:

1 “(5) SPECIAL RULES FOR ELIGIBLE SMALL
2 BUSINESS CREDITS IN 2010.—

3 “(A) IN GENERAL.—In the case of eligible
4 small business credits determined in taxable
5 years beginning in 2010—

6 “(i) this section and section 39 shall
7 be applied separately with respect to such
8 credits, and

9 “(ii) in applying paragraph (1) to
10 such credits—

11 “(I) the tentative minimum tax
12 shall be treated as being zero, and

13 “(II) the limitation under para-
14 graph (1) (as modified by subclause
15 (I)) shall be reduced by the credit al-
16 lowed under subsection (a) for the
17 taxable year (other than the eligible
18 small business credits).

19 “(B) ELIGIBLE SMALL BUSINESS CRED-
20 ITS.—For purposes of this subsection, the term
21 ‘eligible small business credits’ means the sum
22 of the credits listed in subsection (b) which are
23 determined for the taxable year with respect to
24 an eligible small business. Such credits shall not

1 be taken into account under paragraph (2), (3),
2 or (4).

3 “(C) ELIGIBLE SMALL BUSINESS.—For
4 purposes of this subsection, the term ‘eligible
5 small business’ means, with respect to any tax-
6 able year—

7 “(i) a corporation the stock of which
8 is not publicly traded,

9 “(ii) a partnership, or

10 “(iii) a sole proprietorship,

11 if the average annual gross receipts of such cor-
12 poration, partnership, or sole proprietorship for
13 the 3-taxable-year period preceding such taxable
14 year does not exceed \$50,000,000. For pur-
15 poses of applying the test under the preceding
16 sentence, rules similar to the rules of para-
17 graphs (2) and (3) of section 448(c) shall
18 apply.

19 “(D) TREATMENT OF PARTNERS AND S
20 CORPORATION SHAREHOLDERS.—Credits deter-
21 mined with respect to a partnership or S cor-
22 poration shall not be treated as eligible small
23 business credits by any partner or shareholder
24 unless such partner or shareholder meets the
25 gross receipts test under subparagraph (C) for

1 the taxable year in which such credits are treat-
2 ed as current year business credits.”.

3 (b) TECHNICAL AMENDMENT.—Section 55(e)(5) of
4 the Internal Revenue Code of 1986 is amended by striking
5 “38(c)(3)(B)” and inserting “38(c)(6)(B)”.

6 (c) CONFORMING AMENDMENTS.—

7 (1) Subclause (II) of section 38(c)(2)(A)(ii) of
8 the Internal Revenue Code of 1986 is amended by
9 inserting “the eligible small business credits,” after
10 “the New York Liberty Zone business employee
11 credit,”.

12 (2) Subclause (II) of section 38(c)(3)(A)(ii) of
13 such Code is amended by inserting “, the eligible
14 small business credits,” after “the New York Liberty
15 Zone business employee credit”.

16 (3) Subclause (II) of section 38(c)(4)(A)(ii) of
17 such Code is amended by inserting “the eligible
18 small business credits and” before “the specified
19 credits”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 subsection (a) shall apply to credits determined in taxable
22 years beginning after December 31, 2009, and to
23 carrybacks of such credits.

1 **SEC. 2014. TEMPORARY REDUCTION IN RECOGNITION PE-**
2 **RIOD FOR BUILT-IN GAINS TAX.**

3 (a) IN GENERAL.—Subparagraph (B) of section
4 1374(d)(7) of the Internal Revenue Code of 1986 is
5 amended to read as follows:

6 “(B) SPECIAL RULES FOR 2009, 2010, AND
7 2011.—No tax shall be imposed on the net rec-
8 ognized built-in gain of an S corporation—

9 “(i) in the case of any taxable year
10 beginning in 2009 or 2010, if the 7th tax-
11 able year in the recognition period pre-
12 ceded such taxable year, or

13 “(ii) in the case of any taxable year
14 beginning in 2011, if the 5th year in the
15 recognition period preceded such taxable
16 year.

17 The preceding sentence shall be applied sepa-
18 rately with respect to any asset to which para-
19 graph (8) applies.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 December 31, 2010.

PART II—ENCOURAGING INVESTMENT

**SEC. 2021. INCREASED EXPENSING LIMITATIONS FOR 2010
AND 2011; CERTAIN REAL PROPERTY TREAT-
ED AS SECTION 179 PROPERTY.**

(a) INCREASED LIMITATIONS.—Subsection (b) of section 179 of the Internal Revenue Code of 1986 is amended—

(1) by striking “shall not exceed” and all that follows in paragraph (1) and inserting “shall not exceed—

“(A) \$250,000 in the case of taxable years beginning after 2007 and before 2010,

“(B) \$500,000 in the case of taxable years beginning in 2010 or 2011, and

“(C) \$25,000 in the case of taxable years beginning after 2011.”, and

(2) by striking “exceeds” and all that follows in paragraph (2) and inserting “exceeds—

“(A) \$800,000 in the case of taxable years beginning after 2007 and before 2010,

“(B) \$2,000,000 in the case of taxable years beginning in 2010 or 2011, and

“(C) \$200,000 in the case of taxable years beginning after 2011.”.

1 (b) INCLUSION OF CERTAIN REAL PROPERTY.—Sec-
2 tion 179 of the Internal Revenue Code of 1986 is amended
3 by adding at the end the following new subsection:

4 “(f) SPECIAL RULES FOR QUALIFIED REAL PROP-
5 erty.—

6 “(1) IN GENERAL.—If a taxpayer elects the ap-
7 plication of this subsection for any taxable year be-
8 ginning in 2010 or 2011, the term ‘section 179
9 property’ shall include any qualified real property
10 which is—

11 “(A) of a character subject to an allowance
12 for depreciation,

13 “(B) acquired by purchase for use in the
14 active conduct of a trade or business, and

15 “(C) not described in the last sentence of
16 subsection (d)(1).

17 “(2) QUALIFIED REAL PROPERTY.—For pur-
18 poses of this subsection, the term ‘qualified real
19 property’ means—

20 “(A) qualified leasehold improvement prop-
21 erty described in section 168(e)(6),

22 “(B) qualified restaurant property de-
23 scribed in section 168(e)(7) (without regard to
24 the dates specified in subparagraph (A)(i)
25 thereof), and

1 “(C) qualified retail improvement property
2 described in section 168(e)(8) (without regard
3 to subparagraph (E) thereof).

4 “(3) LIMITATION.—For purposes of applying
5 the limitation under subsection (b)(1)(B), not more
6 than \$250,000 of the aggregate cost which is taken
7 into account under subsection (a) for any taxable
8 year may be attributable to qualified real property.

9 “(4) CARRYOVER LIMITATION.—

10 “(A) IN GENERAL.—Notwithstanding sub-
11 section (b)(3)(B), no amount attributable to
12 qualified real property may be carried over to a
13 taxable year beginning after 2011.

14 “(B) TREATMENT OF DISALLOWED
15 AMOUNTS.—Except as provided in subpara-
16 graph (C), to the extent that any amount is not
17 allowed to be carried over to a taxable year be-
18 ginning after 2011 by reason of subparagraph
19 (A), this title shall be applied as if no election
20 under this section had been made with respect
21 to such amount.

22 “(C) AMOUNTS CARRIED OVER FROM
23 2010.—If subparagraph (B) applies to any
24 amount (or portion of an amount) which is car-
25 ried over from a taxable year other than the

1 taxpayer's last taxable year beginning in 2011,
2 such amount (or portion of an amount) shall be
3 treated for purposes of this title as attributable
4 to property placed in service on the first day of
5 the taxpayer's last taxable year beginning in
6 2011.

7 “(D) ALLOCATION OF AMOUNTS.—For
8 purposes of applying this paragraph and sub-
9 section (b)(3)(B) to any taxable year, the
10 amount which is disallowed under subsection
11 (b)(3)(A) for such taxable year which is attrib-
12 uted to qualified real property shall be the
13 amount which bears the same ratio to the total
14 amount so disallowed as—

15 “(i) the aggregate amount attrib-
16 utable to qualified real property placed in
17 service during such taxable year, increased
18 by the portion of any amount carried over
19 to such taxable year from a prior taxable
20 year which is attributable to such property,
21 bears to

22 “(ii) the total amount of section 179
23 property placed in service during such tax-
24 able year, increased by the aggregate

1 amount carried over to such taxable year
2 from any prior taxable year.

3 For purposes of the preceding sentence, only
4 section 179 property with respect to which an
5 election was made under subsection (c)(1) (de-
6 termined without regard to subparagraph (B)
7 of this paragraph) shall be taken into ac-
8 count.”.

9 (c) REVOCABILITY OF ELECTION.—Paragraph (2) of
10 section 179(c) of the Internal Revenue Code of 1986 is
11 amended by striking “2011” and inserting “2012”.

12 (d) COMPUTER SOFTWARE TREATED AS 179 PROP-
13 erty.—Clause (ii) of section 179(d)(1)(A) is amended by
14 striking “2011” and inserting “2012”.

15 (e) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply to property placed in service after De-
19 cember 31, 2009, in taxable years beginning after
20 such date.

21 (2) EXTENSIONS.—The amendments made by
22 subsections (c) and (d) shall apply to taxable years
23 beginning after December 31, 2010.

1 **SEC. 2022. ADDITIONAL FIRST-YEAR DEPRECIATION FOR 50**
2 **PERCENT OF THE BASIS OF CERTAIN QUALI-**
3 **FIED PROPERTY.**

4 (a) IN GENERAL.—Paragraph (2) of section 168(k)
5 of the Internal Revenue Code of 1986 is amended—

6 (1) by striking “January 1, 2011” in subpara-
7 graph (A)(iv) and inserting “January 1, 2012”, and

8 (2) by striking “January 1, 2010” each place
9 it appears and inserting “January 1, 2011”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) The heading for subsection (k) of section
12 168 of the Internal Revenue Code of 1986 is amend-
13 ed by striking “JANUARY 1, 2010” and inserting
14 “JANUARY 1, 2011”.

15 (2) The heading for clause (ii) of section
16 168(k)(2)(B) of such Code is amended by striking
17 “PRE-JANUARY 1, 2010” and inserting “PRE-JANU-
18 ARY 1, 2011”.

19 (3) Subparagraph (D) of section 168(k)(4) of
20 such Code is amended by striking “and” at the end
21 of clause (ii), by striking the period at the end of
22 clause (iii) and inserting a comma, and by adding at
23 the end the following new clauses:

24 “(iv) ‘January 1, 2011’ shall be sub-
25 stituted for ‘January 1, 2012’ in subpara-
26 graph (A)(iv) thereof, and

1 “(v) ‘January 1, 2010’ shall be sub-
2 stituted for ‘January 1, 2011’ each place it
3 appears in subparagraph (A) thereof.”.

4 (4) Subparagraph (B) of section 168(l)(5) of
5 such Code is amended by striking “January 1,
6 2010” and inserting “January 1, 2011”.

7 (5) Subparagraph (C) of section 168(n)(2) of
8 such Code is amended by striking “January 1,
9 2010” and inserting “January 1, 2011”.

10 (6) Subparagraph (D) of section 1400L(b)(2)
11 of such Code is amended by striking “January 1,
12 2010” and inserting “January 1, 2011”.

13 (7) Subparagraph (B) of section 1400N(d)(3)
14 of such Code is amended by striking “January 1,
15 2010” and inserting “January 1, 2011”.

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

20 **SEC. 2023. SPECIAL RULE FOR LONG-TERM CONTRACT AC-**
21 **COUNTING.**

22 (a) IN GENERAL.—Section 460(c) of the Internal
23 Revenue Code of 1986 is amended by adding at the end
24 the following new paragraph:

1 “(6) SPECIAL RULE FOR ALLOCATION OF
2 BONUS DEPRECIATION WITH RESPECT TO CERTAIN
3 PROPERTY.—

4 “(A) IN GENERAL.—Solely for purposes of
5 determining the percentage of completion under
6 subsection (b)(1)(A), the cost of qualified prop-
7 erty shall be taken into account as a cost allo-
8 cated to the contract as if subsection (k) of sec-
9 tion 168 had not been enacted.

10 “(B) QUALIFIED PROPERTY.—For pur-
11 poses of this paragraph, the term ‘qualified
12 property’ means property described in section
13 168(k)(2) which—

14 “(i) has a recovery period of 7 years
15 or less, and

16 “(ii) is placed in service after Decem-
17 ber 31, 2009, and before January 1, 2011
18 (January 1, 2012, in the case of property
19 described in section 168(k)(2)(B)).’.”.

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

1 **PART III—PROMOTING ENTREPRENEURSHIP**

2 **SEC. 2031. INCREASE IN AMOUNT ALLOWED AS DEDUCTION**
3 **FOR START-UP EXPENDITURES IN 2010.**

4 (a) **START-UP EXPENDITURES.**—Subsection (b) of
5 section 195 of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following new para-
7 graph:

8 “(3) **SPECIAL RULE FOR TAXABLE YEARS BE-**
9 **GINNING IN 2010.**—In the case of a taxable year be-
10 ginning in 2010, paragraph (1)(A)(ii) shall be ap-
11 plied—

12 “(A) by substituting ‘\$10,000’ for
13 ‘\$5,000’, and

14 “(B) by substituting ‘\$60,000’ for
15 ‘\$50,000’.”.

16 (b) **EFFECTIVE DATE.**—The amendment made by
17 this section shall apply to amounts paid or incurred in tax-
18 able years beginning after December 31, 2009.

19 **SEC. 2032. AUTHORIZATION OF APPROPRIATIONS FOR THE**
20 **UNITED STATES TRADE REPRESENTATIVE TO**
21 **DEVELOP MARKET ACCESS OPPORTUNITIES**
22 **FOR UNITED STATES SMALL- AND MEDIUM-**
23 **SIZED BUSINESSES AND TO ENFORCE TRADE**
24 **AGREEMENTS.**

25 (a) **IN GENERAL.**—There are authorized to be appro-
26 priated to the Office of the United States Trade Rep-

1 representative \$5,230,000, to remain available until ex-
2 pendent, for—

3 (1) analyzing and developing opportunities for
4 businesses in the United States to access the mar-
5 kets of foreign countries; and

6 (2) enforcing trade agreements to which the
7 United States is a party.

8 (b) REQUIREMENTS.—In obligating and expending
9 the funds authorized to be appropriated under subsection
10 (a), the United States Trade Representative shall—

11 (1) give preference to those initiatives that the
12 United States Trade Representative determines will
13 create or sustain the greatest number of jobs in the
14 United States or result in the greatest benefit to the
15 economy of the United States; and

16 (2) consider the needs of small- and medium-
17 sized businesses in the United States with respect
18 to—

19 (A) accessing the markets of foreign coun-
20 tries; and

21 (B) the enforcement of trade agreements
22 to which the United States is a party.

1 **PART IV—PROMOTING SMALL BUSINESS**

2 **FAIRNESS**

3 **SEC. 2041. LIMITATION ON PENALTY FOR FAILURE TO DIS-**
4 **CLOSE REPORTABLE TRANSACTIONS BASED**
5 **ON RESULTING TAX BENEFITS.**

6 (a) IN GENERAL.—Subsection (b) of section 6707A
7 of the Internal Revenue Code of 1986 is amended to read
8 as follows:

9 “(b) AMOUNT OF PENALTY.—

10 “(1) IN GENERAL.—Except as otherwise pro-
11 vided in this subsection, the amount of the penalty
12 under subsection (a) with respect to any reportable
13 transaction shall be 75 percent of the decrease in
14 tax shown on the return as a result of such trans-
15 action (or which would have resulted from such
16 transaction if such transaction were respected for
17 Federal tax purposes).

18 “(2) MAXIMUM PENALTY.—The amount of the
19 penalty under subsection (a) with respect to any re-
20 reportable transaction shall not exceed—

21 “(A) in the case of a listed transaction,
22 \$200,000 (\$100,000 in the case of a natural
23 person), or

24 “(B) in the case of any other reportable
25 transaction, \$50,000 (\$10,000 in the case of a
26 natural person).

1 “(3) MINIMUM PENALTY.—The amount of the
2 penalty under subsection (a) with respect to any
3 transaction shall not be less than \$10,000 (\$5,000
4 in the case of a natural person).”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to penalties assessed after Decem-
7 ber 31, 2006.

8 **SEC. 2042. DEDUCTION FOR HEALTH INSURANCE COSTS IN**
9 **COMPUTING SELF-EMPLOYMENT TAXES IN**
10 **2010.**

11 (a) IN GENERAL.—Paragraph (4) of section 162(l)
12 of the Internal Revenue Code of 1986 is amended by in-
13 serting “for taxable years beginning before January 1,
14 2010, or after December 31, 2010” before the period.

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

18 **SEC. 2043. REMOVAL OF CELLULAR TELEPHONES AND**
19 **SIMILAR TELECOMMUNICATIONS EQUIP-**
20 **MENT FROM LISTED PROPERTY.**

21 (a) IN GENERAL.—Subparagraph (A) of section
22 280F(d)(4) of the Internal Revenue Code of 1986 (defin-
23 ing listed property) is amended by adding “‘and’” at the
24 end of clause (iv), by striking clause (v), and by redesign-
25 ating clause (vi) as clause (v).

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

4 **Subtitle B—Revenue Provisions**

5 **PART I—REDUCING THE TAX GAP**

6 **SEC. 2101. INFORMATION REPORTING FOR RENTAL PROP-** 7 **ERTY EXPENSE PAYMENTS.**

8 (a) IN GENERAL.—Section 6041 of the Internal Rev-
9 enue Code of 1986, as amended by section 9006 of the
10 Patient Protection and Affordable Care Act, is amended
11 by redesignating subsections (h) and (i) as subsections (i)
12 and (j), respectively, and by inserting after subsection (g)
13 the following new subsection:

14 “(h) TREATMENT OF RENTAL PROPERTY EXPENSE
15 PAYMENTS.—

16 “(1) IN GENERAL.—Solely for purposes of sub-
17 section (a) and except as provided in paragraph (2),
18 a person receiving rental income from real estate
19 shall be considered to be engaged in a trade or busi-
20 ness of renting property.

21 “(2) EXCEPTIONS.—Paragraph (1) shall not
22 apply to—

23 “(A) any individual, including any indi-
24 vidual who is an active member of the uni-
25 formed services or an employee of the intel-

1 ligence community (as defined in section
2 121(d)(9)(C)(iv)), if substantially all rental in-
3 come is derived from renting the principal resi-
4 dence (within the meaning of section 121) of
5 such individual on a temporary basis,

6 “(B) any individual who receives rental in-
7 come of not more than the minimal amount, as
8 determined under regulations prescribed by the
9 Secretary, and

10 “(C) any other individual for whom the re-
11 quirements of this section would cause hard-
12 ship, as determined under regulations pre-
13 scribed by the Secretary.”.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 subsection (a) shall apply to payments made after Decem-
16 ber 31, 2010.

17 **SEC. 2102. INCREASE IN INFORMATION RETURN PEN-**
18 **ALTIES.**

19 (a) **FAILURE TO FILE CORRECT INFORMATION RE-**
20 **URNS.**—

21 (1) **IN GENERAL.**—Subsections (a)(1),
22 (b)(1)(A), and (b)(2)(A) of section 6721 of the In-
23 ternal Revenue Code of 1986 are each amended by
24 striking “\$50” and inserting “\$100”.

1 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
2 sections (a)(1), (d)(1)(A), and (e)(3)(A) of section
3 6721 of such Code are each amended by striking
4 “\$250,000” and inserting “\$1,500,000”.

5 (b) REDUCTION WHERE CORRECTION WITHIN 30
6 DAYS.—

7 (1) IN GENERAL.—Subparagraph (A) of section
8 6721(b)(1) of the Internal Revenue Code of 1986 is
9 amended by striking “\$15” and inserting “\$30”.

10 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
11 sections (b)(1)(B) and (d)(1)(B) of section 6721 of
12 such Code are each amended by striking “\$75,000”
13 and inserting “\$250,000”.

14 (c) REDUCTION WHERE CORRECTION ON OR BEFORE
15 AUGUST 1.—

16 (1) IN GENERAL.—Subparagraph (A) of section
17 6721(b)(2) of the Internal Revenue Code of 1986 is
18 amended by striking “\$30” and inserting “\$60”.

19 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
20 sections (b)(2)(B) and (d)(1)(C) of section 6721 of
21 such Code are each amended by striking “\$150,000”
22 and inserting “\$500,000”.

23 (d) AGGREGATE ANNUAL LIMITATIONS FOR PER-
24 SONS WITH GROSS RECEIPTS OF NOT MORE THAN
25 \$5,000,000.—

1 (1) IN GENERAL.—Paragraph (1) of section
2 6721(d) of the Internal Revenue Code of 1986 is
3 amended—

4 (A) by striking “\$100,000” in subpara-
5 graph (A) and inserting “\$500,000”,

6 (B) by striking “\$25,000” in subpara-
7 graph (B) and inserting “\$75,000”, and

8 (C) by striking “\$50,000” in subparagraph
9 (C) and inserting “\$200,000”.

10 (2) TECHNICAL AMENDMENT.—Paragraph (1)
11 of section 6721(d) of such Code is amended by strik-
12 ing “such taxable year” and inserting “such cal-
13 endar year”.

14 (e) PENALTY IN CASE OF INTENTIONAL DIS-
15 REGARD.—Paragraph (2) of section 6721(e) of the Inter-
16 nal Revenue Code of 1986 is amended by striking “\$100”
17 and inserting “\$250”.

18 (f) ADJUSTMENT FOR INFLATION.—Section 6721 of
19 the Internal Revenue Code of 1986 is amended by adding
20 at the end the following new subsection:

21 “(f) ADJUSTMENT FOR INFLATION.—

22 “(1) IN GENERAL.—For each fifth calendar
23 year beginning after 2012, each of the dollar
24 amounts under subsections (a), (b), (d) (other than
25 paragraph (2)(A) thereof), and (e) shall be increased

1 by such dollar amount multiplied by the cost-of-liv-
2 ing adjustment determined under section 1(f)(3) de-
3 termined by substituting ‘calendar year 2011’ for
4 ‘calendar year 1992’ in subparagraph (B) thereof.

5 “(2) ROUNDING.—If any amount adjusted
6 under paragraph (1)—

7 “(A) is not less than \$75,000 and is not
8 a multiple of \$500, such amount shall be
9 rounded to the next lowest multiple of \$500,
10 and

11 “(B) is not described in subparagraph (A)
12 and is not a multiple of \$10, such amount shall
13 be rounded to the next lowest multiple of \$10.”.

14 (g) FAILURE TO FURNISH CORRECT PAYEE STATE-
15 MENTS.—Section 6722 of the Internal Revenue Code of
16 1986 is amended to read as follows:

17 **“SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATE-**
18 **MENTS.**

19 “(a) IMPOSITION OF PENALTY.—

20 “(1) GENERAL RULE.—In the case of each fail-
21 ure described in paragraph (2) by any person with
22 respect to a payee statement, such person shall pay
23 a penalty of \$100 for each statement with respect to
24 which such a failure occurs, but the total amount

1 imposed on such person for all such failures during
2 any calendar year shall not exceed \$1,500,000.

3 “(2) FAILURES SUBJECT TO PENALTY.—For
4 purposes of paragraph (1), the failures described in
5 this paragraph are—

6 “(A) any failure to furnish a payee state-
7 ment on or before the date prescribed therefor
8 to the person to whom such statement is re-
9 quired to be furnished, and

10 “(B) any failure to include all of the infor-
11 mation required to be shown on a payee state-
12 ment or the inclusion of incorrect information.

13 “(b) REDUCTION WHERE CORRECTION IN SPECIFIED
14 PERIOD.—

15 “(1) CORRECTION WITHIN 30 DAYS.—If any
16 failure described in subsection (a)(2) is corrected on
17 or before the day 30 days after the required filing
18 date—

19 “(A) the penalty imposed by subsection (a)
20 shall be \$30 in lieu of \$100, and

21 “(B) the total amount imposed on the per-
22 son for all such failures during any calendar
23 year which are so corrected shall not exceed
24 \$250,000.

1 “(2) FAILURES CORRECTED ON OR BEFORE AU-
2 GUST 1.—If any failure described in subsection
3 (a)(2) is corrected after the 30th day referred to in
4 paragraph (1) but on or before August 1 of the cal-
5 endar year in which the required filing date occurs—

6 “(A) the penalty imposed by subsection (a)
7 shall be \$60 in lieu of \$100, and

8 “(B) the total amount imposed on the per-
9 son for all such failures during the calendar
10 year which are so corrected shall not exceed
11 \$500,000.

12 “(c) EXCEPTION FOR DE MINIMIS FAILURES.—

13 “(1) IN GENERAL.—If—

14 “(A) a payee statement is furnished to the
15 person to whom such statement is required to
16 be furnished,

17 “(B) there is a failure described in sub-
18 section (a)(2)(B) (determined after the applica-
19 tion of section 6724(a)) with respect to such
20 statement, and

21 “(C) such failure is corrected on or before
22 August 1 of the calendar year in which the re-
23 quired filing date occurs,

1 for purposes of this section, such statement shall be
2 treated as having been furnished with all of the cor-
3 rect required information.

4 “(2) LIMITATION.—The number of payee state-
5 ments to which paragraph (1) applies for any cal-
6 endar year shall not exceed the greater of—

7 “(A) 10, or

8 “(B) one-half of 1 percent of the total
9 number of payee statements required to be filed
10 by the person during the calendar year.

11 “(d) LOWER LIMITATIONS FOR PERSONS WITH
12 GROSS RECEIPTS OF NOT MORE THAN \$5,000,000.—

13 “(1) IN GENERAL.—If any person meets the
14 gross receipts test of paragraph (2) with respect to
15 any calendar year, with respect to failures during
16 such calendar year—

17 “(A) subsection (a)(1) shall be applied by
18 substituting ‘\$500,000’ for ‘\$1,500,000’,

19 “(B) subsection (b)(1)(B) shall be applied
20 by substituting ‘\$75,000’ for ‘\$250,000’, and

21 “(C) subsection (b)(2)(B) shall be applied
22 by substituting ‘\$200,000’ for ‘\$500,000’.

23 “(2) GROSS RECEIPTS TEST.—A person meets
24 the gross receipts test of this paragraph if such per-

1 son meets the gross receipts test of section
2 6721(d)(2).

3 “(e) PENALTY IN CASE OF INTENTIONAL DIS-
4 REGARD.—If 1 or more failures to which subsection (a)
5 applies are due to intentional disregard of the requirement
6 to furnish a payee statement (or the correct information
7 reporting requirement), then, with respect to each such
8 failure—

9 “(1) subsections (b), (c), and (d) shall not
10 apply,

11 “(2) the penalty imposed under subsection
12 (a)(1) shall be \$250, or, if greater—

13 “(A) in the case of a payee statement
14 other than a statement required under section
15 6045(b), 6041A(e) (in respect of a return re-
16 quired under section 6041A(b)), 6050H(d),
17 6050J(e), 6050K(b), or 6050L(c), 10 percent
18 of the aggregate amount of the items required
19 to be reported correctly, or

20 “(B) in the case of a payee statement re-
21 quired under section 6045(b), 6050K(b), or
22 6050L(c), 5 percent of the aggregate amount of
23 the items required to be reported correctly, and

24 “(3) in the case of any penalty determined
25 under paragraph (2)—

1 “(A) the \$1,500,000 limitation under sub-
2 section (a) shall not apply, and

3 “(B) such penalty shall not be taken into
4 account in applying such limitation to penalties
5 not determined under paragraph (2).

6 “(f) ADJUSTMENT FOR INFLATION.—

7 “(1) IN GENERAL.—For each fifth calendar
8 year beginning after 2012, each of the dollar
9 amounts under subsections (a), (b), (d)(1), and (e)
10 shall be increased by such dollar amount multiplied
11 by the cost-of-living adjustment determined under
12 section 1(f)(3) determined by substituting ‘calendar
13 year 2011’ for ‘calendar year 1992’ in subparagraph
14 (B) thereof.

15 “(2) ROUNDING.—If any amount adjusted
16 under paragraph (1)—

17 “(A) is not less than \$75,000 and is not
18 a multiple of \$500, such amount shall be
19 rounded to the next lowest multiple of \$500,
20 and

21 “(B) is not described in subparagraph (A)
22 and is not a multiple of \$10, such amount shall
23 be rounded to the next lowest multiple of \$10.”.

1 (h) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to information returns
3 required to be filed on or after January 1, 2011.

4 **SEC. 2103. REPORT ON TAX SHELTER PENALTIES AND CER-**
5 **TAIN OTHER ENFORCEMENT ACTIONS.**

6 (a) IN GENERAL.—The Commissioner of Internal
7 Revenue, in consultation with the Secretary of the Treas-
8 ury, shall submit to the Committee on Ways and Means
9 of the House of Representatives and the Committee on
10 Finance of the Senate an annual report on the penalties
11 assessed by the Internal Revenue Service during the pre-
12 ceding year under each of the following provisions of the
13 Internal Revenue Code of 1986:

14 (1) Section 6662A (relating to accuracy-related
15 penalty on understatements with respect to report-
16 able transactions).

17 (2) Section 6700(a) (relating to promoting abu-
18 sive tax shelters).

19 (3) Section 6707 (relating to failure to furnish
20 information regarding reportable transactions).

21 (4) Section 6707A (relating to failure to include
22 reportable transaction information with return).

23 (5) Section 6708 (relating to failure to main-
24 tain lists of advisees with respect to reportable
25 transactions).

1 (b) ADDITIONAL INFORMATION.—The report re-
2 quired under subsection (a) shall also include information
3 on the following with respect to each year:

4 (1) Any action taken under section 330(b) of
5 title 31, United States Code, with respect to any re-
6 portable transaction (as defined in section 6707A(c)
7 of the Internal Revenue Code of 1986).

8 (2) Any extension of the time for assessment of
9 tax enforced, or assessment of any amount under
10 such an extension, under paragraph (10) of section
11 6501(c) of the Internal Revenue Code of 1986.

12 (c) DATE OF REPORT.—The first report required
13 under subsection (a) shall be submitted not later than De-
14 cember 31, 2010.

15 **SEC. 2104. APPLICATION OF CONTINUOUS LEVY TO TAX LI-**
16 **ABILITIES OF CERTAIN FEDERAL CONTRAC-**
17 **TORS.**

18 (a) IN GENERAL.—Subsection (f) of section 6330 of
19 the Internal Revenue Code of 1986 is amended by striking
20 “or” at the end of paragraph (2), by inserting “or” at
21 the end of paragraph (3), and by inserting after paragraph
22 (3) the following new paragraph:

23 “(4) the Secretary has served a Federal con-
24 tractor levy,”.

1 (b) FEDERAL CONTRACTOR LEVY.—Subsection (h)
2 of section 6330 of the Internal Revenue Code of 1986 is
3 amended—

4 (1) by striking all that precedes “any levy in
5 connection with the collection” and inserting the fol-
6 lowing:

7 “(h) DEFINITIONS RELATED TO EXCEPTIONS.—For
8 purposes of subsection (f)—

9 “(1) DISQUALIFIED EMPLOYMENT TAX LEVY.—
10 A disqualified employment tax levy is”; and

11 (2) by adding at the end the following new
12 paragraph:

13 “(2) FEDERAL CONTRACTOR LEVY.—A Federal
14 contractor levy is any levy if the person whose prop-
15 erty is subject to the levy (or any predecessor there-
16 of) is a Federal contractor.”.

17 (c) CONFORMING AMENDMENT.—The heading of
18 subsection (f) of section 6330 of the Internal Revenue
19 Code of 1986 is amended by striking “JEOPARDY AND
20 STATE REFUND COLLECTION” and inserting “EXCEP-
21 TIONS”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to levies issued after the date of
24 the enactment of this Act.

PART II—PROMOTING RETIREMENT

PREPARATION

SEC. 2111. PARTICIPANTS IN GOVERNMENT SECTION 457

PLANS ALLOWED TO TREAT ELECTIVE DE-

FERRALS AS ROTH CONTRIBUTIONS.

(a) IN GENERAL.—Section 402A(e)(1) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following:

“(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).”.

(b) ELECTIVE DEFERRALS.—Section 402A(e)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

“(2) ELECTIVE DEFERRAL.—The term ‘elective deferral’ means—

“(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

“(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2010.

4 **SEC. 2112. ROLLOVERS FROM ELECTIVE DEFERRAL PLANS**
5 **TO DESIGNATED ROTH ACCOUNTS.**

6 (a) IN GENERAL.—Section 402A(c) of the Internal
7 Revenue Code of 1986 is amended by adding at the end
8 the following new paragraph:

9 “(4) TAXABLE ROLLOVERS TO DESIGNATED
10 ROTH ACCOUNTS.—

11 “(A) IN GENERAL.—Notwithstanding sec-
12 tions 402(c), 403(b)(8), and 457(e)(16), in the
13 case of any distribution to which this paragraph
14 applies—

15 “(i) there shall be included in gross
16 income any amount which would be includ-
17 ible were it not part of a qualified rollover
18 contribution,

19 “(ii) section 72(t) shall not apply, and

20 “(iii) unless the taxpayer elects not to
21 have this clause apply, any amount re-
22 quired to be included in gross income for
23 any taxable year beginning in 2010 by rea-
24 son of this paragraph shall be so included
25 ratably over the 2-taxable-year period be-

1 ginning with the first taxable year begin-
2 ning in 2011.

3 Any election under clause (iii) for any distribu-
4 tions during a taxable year may not be changed
5 after the due date for such taxable year.

6 “(B) DISTRIBUTIONS TO WHICH PARA-
7 GRAPH APPLIES.—In the case of an applicable
8 retirement plan which includes a qualified Roth
9 contribution program, this paragraph shall
10 apply to a distribution from such plan other
11 than from a designated Roth account which is
12 contributed in a qualified rollover contribution
13 (within the meaning of section 408A(e)) to the
14 designated Roth account maintained under such
15 plan for the benefit of the individual to whom
16 the distribution is made.

17 “(C) COORDINATION WITH LIMIT.—Any
18 distribution to which this paragraph applies
19 shall not be taken into account for purposes of
20 paragraph (1).

21 “(D) OTHER RULES.—The rules of sub-
22 paragraphs (D), (E), and (F) of section
23 408A(d)(3) (as in effect for taxable years begin-
24 ning after 2009) shall apply for purposes of
25 this paragraph.”.

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

4 **SEC. 2113. SPECIAL RULES FOR ANNUITIES RECEIVED**
5 **FROM ONLY A PORTION OF A CONTRACT.**

6 (a) IN GENERAL.—Subsection (a) of section 72 of the
7 Internal Revenue Code of 1986 is amended to read as fol-
8 lows:

9 “(a) GENERAL RULES FOR ANNUITIES.—

10 “(1) INCOME INCLUSION.—Except as otherwise
11 provided in this chapter, gross income includes any
12 amount received as an annuity (whether for a period
13 certain or during one or more lives) under an annu-
14 ity, endowment, or life insurance contract.

15 “(2) PARTIAL ANNUITIZATION.—If any amount
16 is received as an annuity for a period of 10 years
17 or more or during one or more lives under any por-
18 tion of an annuity, endowment, or life insurance con-
19 tract—

20 “(A) such portion shall be treated as a
21 separate contract for purposes of this section,

22 “(B) for purposes of applying subsections
23 (b), (c), and (e), the investment in the contract
24 shall be allocated pro rata between each portion
25 of the contract from which amounts are re-

1 ceived as an annuity and the portion of the con-
2 tract from which amounts are not received as
3 an annuity, and

4 “(C) a separate annuity starting date
5 under subsection (c)(4) shall be determined
6 with respect to each portion of the contract
7 from which amounts are received as an annu-
8 ity.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to amounts received in taxable
11 years beginning after December 31, 2010.

12 PART III—CLOSING UNINTENDED LOOPHOLES

13 SEC. 2121. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC
14 BIOFUEL PRODUCER CREDIT.

15 (a) IN GENERAL.—Clause (iii) of section 40(b)(6)(E)
16 of the Internal Revenue Code of 1986, as added by the
17 Health Care and Education Reconciliation Act of 2010,
18 is amended—

19 (1) by striking “or” at the end of subclause (I),

20 (2) by striking the period at the end of sub-
21 clause (II) and inserting “, or”,

(3) by adding at the end the following new sub-
clause:

24 “(III) such fuel has an acid num-
25 ber greater than 25.”, and

1 (4) by striking “UNPROCESSED” in the heading
2 and inserting “CERTAIN”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to fuels sold or used on or after
5 January 1, 2010.

6 **SEC. 2122. SOURCE RULES FOR INCOME ON GUARANTEES.**

7 (a) AMOUNTS SOURCED WITHIN THE UNITED
8 STATES.—Subsection (a) of section 861 of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new paragraph:

11 “(9) GUARANTEES.—Amounts received, directly
12 or indirectly, from—

13 “(A) a noncorporate resident or domestic
14 corporation for the provision of a guarantee of
15 any indebtedness of such resident or corpora-
16 tion, or

17 “(B) any foreign person for the provision
18 of a guarantee of any indebtedness of such per-
19 son, if such amount is connected with income
20 which is effectively connected (or treated as ef-
21 fectively connected) with the conduct of a trade
22 or business in the United States.”.

23 (b) AMOUNTS SOURCED WITHOUT THE UNITED
24 STATES.—Subsection (a) of section 862 of the Internal
25 Revenue Code of 1986 is amended by striking “and” at

1 the end of paragraph (7), by striking the period at the
2 end of paragraph (8) and inserting “; and”, and by adding
3 at the end the following new paragraph:

4 “(9) amounts received, directly or indirectly,
5 from a foreign person for the provision of a guar-
6 antee of indebtedness of such person other than
7 amounts which are derived from sources within the
8 United States as provided in section 861(a)(9).”.

9 (c) CONFORMING AMENDMENT.—Clause (ii) of sec-
10 tion 864(c)(4)(B) of the Internal Revenue Code of 1986
11 is amended by striking “dividends or interest” and insert-
12 ing “dividends, interest, or amounts received for the provi-
13 sion of guarantees of indebtedness”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to guarantees issued after the date
16 of the enactment of this Act.

17 **PART IV—TIME FOR PAYMENT OF CORPORATE**
18 **ESTIMATED TAXES**

19 **SEC. 2131. TIME FOR PAYMENT OF CORPORATE ESTIMATED**
20 **TAXES.**

21 The percentage under paragraph (2) of section 561
22 of the Hiring Incentives to Restore Employment Act in
23 effect on the date of the enactment of this Act is increased
24 by 36 percentage points.

1 **TITLE III—STATE SMALL**
2 **BUSINESS CREDIT INITIATIVE**

3 **SEC. 3001. SHORT TITLE.**

4 This title may be cited as the “State Small Business
5 Credit Initiative Act of 2010”.

6 **SEC. 3002. DEFINITIONS.**

7 In this title, the following definitions shall apply:

8 (1) APPROPRIATE COMMITTEES OF CON-
9 GRESS.—The term “appropriate committees of Con-
10 gress” means—

11 (A) the Committee on Small Business and
12 Entrepreneurship, the Committee on Agri-
13 culture, Nutrition, and Forestry, the Committee
14 on Banking, Housing, and Urban Affairs, the
15 Committee on Finance, the Committee on the
16 Budget, and the Committee on Appropriations
17 of the Senate; and

18 (B) the Committee on Small Business, the
19 Committee on Agriculture, the Committee on
20 Financial Services, the Committee on Ways and
21 Means, the Committee on the Budget, and the
22 Committee on Appropriations of the House of
23 Representatives.

1 (2) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—The term “appropriate Federal banking agen-
3 cy”—

4 (A) has the same meaning as in section
5 3(q) of the Federal Deposit Insurance Act (12
6 U.S.C. 1813(q)); and

7 (B) includes the National Credit Union
8 Administration Board in the case of any credit
9 union the deposits of which are insured in ac-
10 cordance with the Federal Credit Union Act.

11 (3) ENROLLED LOAN.—The term “enrolled
12 loan” means a loan made by a financial institution
13 lender that is enrolled by a participating State in an
14 approved State capital access program in accordance
15 with this title.

16 (4) FEDERAL CONTRIBUTION.—The term “Fed-
17 eral contribution” means the portion of the contribu-
18 tion made by a participating State to, or for the ac-
19 count of, an approved State program that is made
20 with Federal funds allocated to the State by the Sec-
21 retary under section 3003.

22 (5) FINANCIAL INSTITUTION.—The term “fi-
23 nancial institution” means any insured depository
24 institution, insured credit union, or community de-
25 velopment financial institution, as those terms are

1 each defined in section 103 of the Riegle Community
2 Development and Regulatory Improvement Act of
3 1994 (12 U.S.C. 4702)

4 (6) PARTICIPATING STATE.—The term “partici-
5 pating State” means any State that has been ap-
6 proved for participation in the Program under sec-
7 tion 3004.

8 (7) PROGRAM.—The term “Program” means
9 the State Small Business Credit Initiative estab-
10 lished under this title.

11 (8) QUALIFYING LOAN OR SWAP FUNDING FA-
12 CILITY.—The term “qualifying loan or swap funding
13 facility” means a contractual arrangement between a
14 participating State and a private financial entity
15 under which—

16 (A) the participating State delivers funds
17 to the entity as collateral;

18 (B) the entity provides funding from the
19 arrangement back to the participating State;
20 and

21 (C) the full amount of resulting funding
22 from the arrangement, less any fees and other
23 costs of the arrangement, is contributed to, or
24 for the account of, an approved State program.

1 (9) RESERVE FUND.—The term “reserve fund”
2 means a fund, established by a participating State,
3 dedicated to a particular financial institution lender,
4 for the purposes of—

5 (A) depositing all required premium
6 charges paid by the financial institution lender
7 and by each borrower receiving a loan under an
8 approved State program from that financial in-
9 stitution lender;

10 (B) depositing contributions made by the
11 participating State, including State contribu-
12 tions made with Federal contributions; and

13 (C) covering losses on enrolled loans by
14 disbursing accumulated funds.

15 (10) STATE.—The term “State” means—

16 (A) a State of the United States;

17 (B) the District of Columbia, the Common-
18 wealth of Puerto Rico, the Commonwealth of
19 Northern Mariana Islands, Guam, American
20 Samoa, and the United States Virgin Islands;

21 (C) when designated by a State of the
22 United States, a political subdivision of that
23 State that the Secretary determines has the ca-
24 pacity to participate in the Program; and

1 (D) under the circumstances described in
2 section 3004(d), a municipality of a State of
3 the United States to which the Secretary has
4 given a special permission under section
5 3004(d).

6 (11) STATE CAPITAL ACCESS PROGRAM.—The
7 term “State capital access program” means a pro-
8 gram of a State that—

9 (A) uses public resources to promote pri-
10 vate access to credit; and

11 (B) meets the eligibility criteria in section
12 3005(c).

13 (12) STATE OTHER CREDIT SUPPORT PRO-
14 GRAM.—The term “State other credit support pro-
15 gram”—

16 (A) means a program of a State that—

17 (i) uses public resources to promote
18 private access to credit;

19 (ii) is not a State capital access pro-
20 gram; and

21 (iii) meets the eligibility criteria in
22 section 3006(c); and

23 (B) includes, collateral support programs,
24 loan participation programs, State-run venture

1 capital fund programs, and credit guarantee
2 programs.

3 (13) STATE PROGRAM.—The term “State pro-
4 gram” means a State capital access program or a
5 State other credit support program.

6 (14) SECRETARY.—The term “Secretary”
7 means the Secretary of the Treasury.

8 **SEC. 3003. FEDERAL FUNDS ALLOCATED TO STATES.**

9 (a) PROGRAM ESTABLISHED; PURPOSE.—There is
10 established the State Small Business Credit Initiative, to
11 be administered by the Secretary. Under the Program, the
12 Secretary shall allocate Federal funds to participating
13 States and make the allocated funds available to the par-
14 ticipating States as provided in this section for the uses
15 described in this section.

16 (b) ALLOCATION FORMULA.—

17 (1) IN GENERAL.—Not later than 30 days after
18 the date of enactment of this Act, the Secretary
19 shall allocate Federal funds to participating States
20 so that each State is eligible to receive an amount
21 equal to the average of the respective amounts that
22 the State—

23 (A) would receive under the 2009 alloca-
24 tion, as determined under paragraph (2); and

1 (B) would receive under the 2010 allocation,
2 tion, as determined under paragraph (3).

3 (2) 2009 ALLOCATION FORMULA.—

4 (A) IN GENERAL.—The Secretary shall determine
5 the 2009 allocation by allocating Federal
6 funds among the States in the proportion
7 that each such State’s 2008 State employment
8 decline bears to the aggregate of the 2008
9 State employment declines for all States.

10 (B) MINIMUM ALLOCATION.—The Secretary shall
11 adjust the allocations under subparagraph (A)
12 for each State to the extent necessary to ensure
13 that no State receives less than
14 0.9 percent of the Federal funds.

15 (C) 2008 STATE EMPLOYMENT DECLINE
16 DEFINED.—In this paragraph and with respect
17 to a State, the term “2008 State employment
18 decline” means the excess (if any) of—

19 (i) the number of individuals employed
20 in such State determined for December 2007;
21 over

22 (ii) the number of individuals employed
23 in such State determined for December
24 2008.

25 (3) 2010 ALLOCATION FORMULA.—

1 (A) IN GENERAL.—The Secretary shall de-
2 termine the 2010 allocation by allocating Fed-
3 eral funds among the States in the proportion
4 that each such State’s 2009 unemployment
5 number bears to the aggregate of the 2009 un-
6 employment numbers for all of the States.

7 (B) MINIMUM ALLOCATION.—The Sec-
8 retary shall adjust the allocations under sub-
9 paragraph (A) for each State to the extent nec-
10 essary to ensure that no State receives less than
11 0.9 percent of the Federal funds.

12 (C) 2009 UNEMPLOYMENT NUMBER DE-
13 FINED.—In this paragraph and with respect to
14 a State, the term “2009 unemployment num-
15 ber” means the number of individuals within
16 such State who were determined to be unem-
17 ployed by the Bureau of Labor Statistics for
18 December 2009.

19 (c) AVAILABILITY OF ALLOCATED AMOUNT.—The
20 amount allocated by the Secretary to each participating
21 State under subsection (b) shall be made available to the
22 State as follows:

23 (1) ALLOCATED AMOUNT GENERALLY TO BE
24 AVAILABLE TO STATE IN ONE-THIRDS.—

25 (A) IN GENERAL.—The Secretary shall—

1 (i) apportion the participating State's
2 allocated amount into thirds;

3 (ii) transfer to the participating State
4 the first $\frac{1}{3}$ when the Secretary approves
5 the State for participation under section
6 3004; and

7 (iii) transfer to the participating State
8 each successive $\frac{1}{3}$ when the State has cer-
9 tified to the Secretary that it has ex-
10 pended, transferred, or obligated 80 per-
11 cent of the last transferred $\frac{1}{3}$ for Federal
12 contributions to, or for the account of,
13 State programs.

14 (B) AUTHORITY TO WITHHOLD PENDING
15 AUDIT.—The Secretary may withhold the trans-
16 fer of any successive $\frac{1}{3}$ pending results of a fi-
17 nancial audit.

18 (C) INSPECTOR GENERAL AUDITS.—

19 (i) IN GENERAL.—The Inspector Gen-
20 eral of the Department of the Treasury
21 shall carry out an audit of the partici-
22 pating State's use of allocated Federal
23 funds transferred to the State.

24 (ii) RECOUPMENT OF MISUSED
25 TRANSFERRED FUNDS REQUIRED.—The al-

1 location agreement between the Secretary
2 and the participating State shall provide
3 that the Secretary shall recoup any allo-
4 cated Federal funds transferred to the par-
5 ticipating State if the results of the an
6 audit include a finding that there was an
7 intentional or reckless misuse of trans-
8 ferred funds by the State.

9 (iii) PENALTY FOR MISSTATEMENT.—

10 Any participating State that is found to
11 have intentionally misstated any report
12 issued to the Secretary under the Program
13 shall be ineligible to receive any additional
14 funds under the Program. Funds that had
15 been allocated or that would otherwise
16 have been allocated to such participating
17 State shall be paid into the general fund of
18 the Treasury for reduction of the public
19 debt.

20 (iv) MUNICIPALITIES.—In this sub-

21 paragraph, the term “participating State”
22 shall include a municipality given special
23 permission to participate in the Program,
24 under section 3004(d).

1 (D) EXCEPTION.—The Secretary may, in
2 the Secretary's discretion, transfer the full
3 amount of the participating State's allocated
4 amount to the State in a single transfer if the
5 participating State applies to the Secretary for
6 approval to use the full amount of the allocation
7 as collateral for a qualifying loan or swap fund-
8 ing facility.

9 (2) TRANSFERRED AMOUNTS.—Each amount
10 transferred to a participating State under this sec-
11 tion shall remain available to the State until used by
12 the State as permitted under paragraph (3).

13 (3) USE OF TRANSFERRED FUNDS.—Each par-
14 ticipating State may use funds transferred to it
15 under this section only—

16 (A) for making Federal contributions to, or
17 for the account of, an approved State program;

18 (B) as collateral for a qualifying loan or
19 swap funding facility;

20 (C) in the case of the first $\frac{1}{3}$ transferred,
21 for paying administrative costs incurred by the
22 State in implementing an approved State pro-
23 gram in an amount not to exceed 5 percent of
24 that first $\frac{1}{3}$; or

1 (D) in the case of each successive $\frac{1}{3}$ trans-
2 ferred, for paying administrative costs incurred
3 by the State in implementing an approved State
4 program in an amount not to exceed 3 percent
5 of that successive $\frac{1}{3}$.

6 (4) TERMINATION OF AVAILABILITY OF
7 AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF
8 PARTICIPATION.—Any portion of a participating
9 State's allocated amount that has not been trans-
10 ferred to the State under this section by the end of
11 the 2-year period beginning on the date that the
12 Secretary approves the State for participation may
13 be deemed by the Secretary to be no longer allocated
14 to the State and no longer available to the State and
15 shall be returned to the General Fund of the Treas-
16 ury.

17 (5) TRANSFERRED AMOUNTS NOT ASSIST-
18 ANCE.—The amounts transferred to a participating
19 State under this section shall not be considered as-
20 sistance for purposes of subtitle V of title 31, United
21 States Code.

22 (6) DEFINITIONS.—In this section—

23 (A) the term “allocated amount” means
24 the total amount of Federal funds allocated by

1 the Secretary under subsection (b) to the par-
2 ticipating State; and

3 (B) the term “ $\frac{1}{3}$ ” means—

4 (i) in the case of the first $\frac{1}{3}$ and sec-
5 ond $\frac{1}{3}$, an amount equal to 33 percent of
6 a participating State’s allocated amount;
7 and

8 (ii) in the case of the last $\frac{1}{3}$, an
9 amount equal to 34 percent of a partici-
10 pating State’s allocated amount.

11 **SEC. 3004. APPROVING STATES FOR PARTICIPATION.**

12 (a) APPLICATION.—Any State may apply to the Sec-
13 retary for approval to be a participating State under the
14 Program and to be eligible for an allocation of Federal
15 funds under the Program.

16 (b) GENERAL APPROVAL CRITERIA.—The Secretary
17 shall approve a State to be a participating State, if—

18 (1) a specific department, agency, or political
19 subdivision of the State has been designated to im-
20 plement a State program and participate in the Pro-
21 gram;

22 (2) all legal actions necessary to enable such
23 designated department, agency, or political subdivi-
24 sion to implement a State program and participate
25 in the Program have been accomplished;

1 (3) the State has filed an application with the
2 Secretary for approval of a State capital access pro-
3 gram under section 3005 or approval as a State
4 other credit support program under section 3006, in
5 each case within the time period provided in the re-
6 spective section; and

7 (4) the State and the Secretary have executed
8 an allocation agreement that—

9 (A) conforms to the requirements of this
10 title;

11 (B) ensures that the State program com-
12 plies with such national standards as are estab-
13 lished by the Secretary under section
14 3009(a)(2);

15 (C) sets forth internal control, compliance,
16 and reporting requirements as established by
17 the Secretary, and such other terms and condi-
18 tions necessary to carry out the purposes of this
19 title, including an agreement by the State to
20 allow the Secretary to audit State programs;

21 (D) requires that the State program be
22 fully positioned, within 90 days of the State's
23 execution of the allocation agreement with the
24 Secretary, to act on providing the kind of credit

1 support that the State program was established
2 to provide; and

3 (E) includes an agreement by the State to
4 deliver to the Secretary, and update annually, a
5 schedule describing how the State intends to
6 apportion among its State programs the Fed-
7 eral funds allocated to the State.

8 (c) CONTRACTUAL ARRANGEMENTS FOR IMPLEMEN-
9 TATION OF STATE PROGRAMS.—A State may be approved
10 to be a participating State, and be eligible for an allocation
11 of Federal funds under the Program, if the State has con-
12 tractual arrangements for the implementation and admin-
13 istration of its State program with—

14 (1) an existing, approved State program admin-
15 istered by another State; or

16 (2) an authorized agent of, or entity supervised
17 by, the State, including for-profit and not-for-profit
18 entities.

19 (d) SPECIAL PERMISSION.—

20 (1) CIRCUMSTANCES WHEN A MUNICIPALITY
21 MAY APPLY DIRECTLY.—If a State does not, within
22 60 days after the date of enactment of this Act, file
23 with the Secretary a notice of its intent to apply for
24 approval by the Secretary of a State program or
25 within 9 months after the date of enactment of this

1 Act, file with the Secretary a complete application
2 for approval of a State program, the Secretary may
3 grant to municipalities of that State a special per-
4 mission that will allow them to apply directly to the
5 Secretary without the State for approval to be par-
6 ticipating municipalities.

7 (2) TIMING REQUIREMENTS APPLICABLE TO
8 MUNICIPALITIES APPLYING DIRECTLY.—To qualify
9 for the special permission, a municipality of a State
10 shall be required, within 12 months after the date
11 of enactment of this Act, to file with the Secretary
12 a complete application for approval by the Secretary
13 of a State program.

14 (3) NOTICES OF INTENT AND APPLICATIONS
15 FROM MORE THAN 1 MUNICIPALITY.—A municipality
16 of a State may combine with 1 or more other mu-
17 nicipalities of that State to file a joint notice of in-
18 tent to file and a joint application.

19 (4) APPROVAL CRITERIA.—The general ap-
20 proval criteria in paragraphs (2) and (4) shall apply.

21 (5) ALLOCATION TO MUNICIPALITIES.—

22 (A) IF MORE THAN 3.—If more than 3 mu-
23 nicipalities, or combination of municipalities as
24 provided in paragraph (3), of a State apply for
25 approval by the Secretary to be participating

1 municipalities under this subsection, and the
2 applications meet the approval criteria in para-
3 graph (4), the Secretary shall allocate Federal
4 funds to the 3 municipalities with the largest
5 populations.

6 (B) IF 3 OR FEWER.—If 3 or fewer mu-
7 nicipalities, or combination of municipalities as
8 provided in paragraph (3), of a State apply for
9 approval by the Secretary to be participating
10 municipalities under this subsection, and the
11 applications meet the approval criteria in para-
12 graph (4), the Secretary shall allocate Federal
13 funds to each applicant municipality or com-
14 bination of municipalities.

15 (6) APPORTIONMENT OF ALLOCATED AMOUNT
16 AMONG PARTICIPATING MUNICIPALITIES.—If the
17 Secretary approves municipalities to be participating
18 municipalities under this subsection, the Secretary
19 shall apportion the full amount of the Federal funds
20 that are allocated to that State to municipalities
21 that are approved under this subsection in amounts
22 proportionate to the population of those municipali-
23 ties, based on the most recent available decennial
24 census.

1 (7) APPROVING STATE PROGRAMS FOR MUNICI-
2 PALITIES.—If the Secretary approves municipalities
3 to be participating municipalities under this sub-
4 section, the Secretary shall take into account the ad-
5 ditional considerations in section 3006(d) in making
6 the determination under section 3005 or 3006 that
7 the State program or programs to be implemented
8 by the participating municipalities, including a State
9 capital access program, is eligible for Federal con-
10 tributions to, or for the account of, the State pro-
11 gram.

12 **SEC. 3005. APPROVING STATE CAPITAL ACCESS PROGRAMS.**

13 (a) APPLICATION.—A participating State that estab-
14 lishes a new, or has an existing, State capital access pro-
15 gram that meets the eligibility criteria in subsection (c)
16 may apply to Secretary to have the State capital access
17 program approved as eligible for Federal contributions to
18 the reserve fund.

19 (b) APPROVAL.—The Secretary shall approve such
20 State capital access program as eligible for Federal con-
21 tributions to the reserve fund if—

22 (1) within 60 days after the date of enactment
23 of this Act, the State has filed with the Secretary a
24 notice of intent to apply for approval by the Sec-
25 retary of a State capital access program;

1 (2) within 9 months after the date of enactment
2 of this Act, the State has filed with the Secretary a
3 complete application for approval by the Secretary of
4 a capital access program;

5 (3) the State satisfies the requirements of sub-
6 sections (a) and (b) of section 3004; and

7 (4) the State capital access program meets the
8 eligibility criteria in subsection (c).

9 (c) ELIGIBILITY CRITERIA FOR STATE CAPITAL AC-
10 CESS PROGRAMS.—For a State capital access program to
11 be approved under this section, that program shall be re-
12 quired to be a program of the State that—

13 (1) provides portfolio insurance for business
14 loans based on a separate loan-loss reserve fund for
15 each financial institution;

16 (2) requires insurance premiums to be paid by
17 the financial institution lenders and by the business
18 borrowers to the reserve fund to have their loans en-
19 rolled in the reserve fund;

20 (3) provides for contributions to be made by the
21 State to the reserve fund in amounts at least equal
22 to the sum of the amount of the insurance premium
23 charges paid by the borrower and the financial insti-
24 tution to the reserve fund for any newly enrolled
25 loan; and

1 (4) provides its portfolio insurance solely for
2 loans that meet both the following requirements:

3 (A) The borrower has 500 employees or
4 less at the time that the loan is enrolled in the
5 Program.

6 (B) The loan amount does not exceed
7 \$5,000,000.

8 (d) FEDERAL CONTRIBUTIONS TO APPROVED STATE
9 CAPITAL ACCESS PROGRAMS.—A State capital access pro-
10 gram approved under this section will be eligible for receiv-
11 ing Federal contributions to the reserve fund in an
12 amount equal to the sum of the amount of the insurance
13 premium charges paid by the borrowers and by the finan-
14 cial institution to the reserve fund for loans that meet the
15 requirements in subsection (c)(4). A participating State
16 may use the Federal contribution to make its contribution
17 to the reserve fund of an approved State capital access
18 program.

19 (e) MINIMUM PROGRAM REQUIREMENTS FOR STATE
20 CAPITAL ACCESS PROGRAMS.—The Secretary shall, by
21 regulation or other guidance, prescribe Program require-
22 ments that meet the following minimum requirements:

23 (1) EXPERIENCE AND CAPACITY.—The partici-
24 pating State shall determine for each financial insti-
25 tution that participates in the State capital access

1 program, after consultation with the appropriate
2 Federal banking agency or, in the case of a financial
3 institution that is a nondepository community devel-
4 opment financial institution, the Community Devel-
5 opment Financial Institution Fund, that the finan-
6 cial institution has sufficient commercial lending ex-
7 perience and financial and managerial capacity to
8 participate in the approved State capital access pro-
9 gram. The determination by the State shall not be
10 reviewable by the Secretary.

11 (2) INVESTMENT AUTHORITY.—Subject to ap-
12 plicable State law, the participating State may in-
13 vest, or cause to be invested, funds held in a reserve
14 fund by establishing a deposit account at the finan-
15 cial institution lender in the name of the partici-
16 pating State. In the event that funds in the reserve
17 fund are not deposited in such an account, such
18 funds shall be invested in a form that the partici-
19 pating State determines is safe and liquid.

20 (3) LOAN TERMS AND CONDITIONS TO BE DE-
21 TERMINED BY AGREEMENT.—A loan to be filed for
22 enrollment in an approved State capital access pro-
23 gram may be made with such interest rate, fees, and
24 other terms and conditions, and the loan may be en-
25 rolled in the approved State capital access program

1 and claims may be filed and paid, as agreed upon
2 by the financial institution lender and the borrower,
3 consistent with applicable law.

4 (4) LENDER CAPITAL AT-RISK.—A loan to be
5 filed for enrollment in the State capital access pro-
6 gram shall require the financial institution lender to
7 have a meaningful amount of its own capital re-
8 sources at risk in the loan.

9 (5) PREMIUM CHARGES MINIMUM AND MAX-
10 IMUM AMOUNTS.—The insurance premium charges
11 payable to the reserve fund by the borrower and the
12 financial institution lender shall be prescribed by the
13 financial institution lender, within minimum and
14 maximum limits that require that the sum of the in-
15 surance premium charges paid in connection with a
16 loan by the borrower and the financial institution
17 lender may not be less than 2 percent nor more than
18 7 percent of the amount of the loan enrolled in the
19 approved State capital access program.

20 (6) STATE CONTRIBUTIONS.—In enrolling a
21 loan in an approved State capital access program,
22 the participating State may make a contribution to
23 the reserve fund to supplement Federal contribu-
24 tions made under this Program.

25 (7) LOAN PURPOSE.—

1 (A) PARTICULAR LOAN PURPOSE REQUIRE-
2 MENTS AND PROHIBITIONS.—In connection
3 with the filing of a loan for enrollment in an
4 approved State capital access program, the fi-
5 nancial institution lender—

6 (i) shall obtain an assurance from
7 each borrower that—

8 (I) the proceeds of the loan will
9 be used for a business purpose;

10 (II) the loan will not be used to
11 finance such business activities as the
12 Secretary, by regulation, may pro-
13 scribe as prohibited loan purposes for
14 enrollment in an approved State cap-
15 ital access program; and

16 (III) the borrower is not—

17 (aa) an executive officer, di-
18 rector, or principal shareholder of
19 the financial institution lender;

20 (bb) a member of the imme-
21 diate family of an executive offi-
22 cer, director, or principal share-
23 holder of the financial institution
24 lender; or

1 (cc) a related interest of any
2 such executive officer, director,
3 principal shareholder, or member
4 of the immediate family;

5 (ii) shall provide assurances to the
6 participating State that the loan has not
7 been made in order to place under the pro-
8 tection of the approved State capital access
9 program prior debt that is not covered
10 under the approved State capital access
11 program and that is or was owed by the
12 borrower to the financial institution lender
13 or to an affiliate of the financial institution
14 lender;

15 (iii) shall not allow the enrollment of
16 a loan to a borrower that is a refinancing
17 of a loan previously made to that borrower
18 by the financial institution lender or an af-
19 filiate of the financial institution lender;
20 and

21 (iv) may include additional restric-
22 tions on the eligibility of loans or bor-
23 rowers that are not inconsistent with the
24 provisions and purposes of this title, in-
25 cluding compliance with all applicable Fed-

1 eral and State laws, regulations, ordi-
2 nances, and Executive orders.

3 (B) DEFINITIONS.—In this paragraph, the
4 terms “executive officer”, “director”, “principal
5 shareholder”, “immediate family”, and “related
6 interest” refer to the same relationship to a fi-
7 nancial institution lender as the relationship de-
8 scribed in part 215 of title 12 of the Code of
9 Federal Regulations, or any successor to such
10 part.

11 (8) CAPITAL ACCESS FOR SMALL BUSINESSES
12 IN UNDERSERVED COMMUNITIES.—At the time that
13 a State applies to the Secretary to have the State
14 capital access program approved as eligible for Fed-
15 eral contributions, the State shall deliver to the Sec-
16 retary a report stating how the State plans to use
17 the Federal contributions to the reserve fund to pro-
18 vide access to capital for small businesses in low-
19 and moderate-income, minority, and other under-
20 served communities, including women- and minority-
21 owned small businesses.

1 **SEC. 3006. APPROVING COLLATERAL SUPPORT AND OTHER**
2 **INNOVATIVE CREDIT ACCESS AND GUAR-**
3 **ANTEE INITIATIVES FOR SMALL BUSINESSES**
4 **AND MANUFACTURERS.**

5 (a) APPLICATION.—A participating State that estab-
6 lishes a new, or has an existing, credit support program
7 that meets the eligibility criteria in subsection (c) may
8 apply to the Secretary to have the State other credit sup-
9 port program approved as eligible for Federal contribu-
10 tions to, or for the account of, the State program.

11 (b) APPROVAL.—The Secretary shall approve such
12 State other credit support program as eligible for Federal
13 contributions to, or for the account of, the program if—

14 (1) the Secretary determines that the State sat-
15 isfies the requirements of paragraphs (1) through
16 (3) of section 3005(b);

17 (2) the Secretary determines that the State
18 other credit support program meets the eligibility
19 criteria in subsection (c);

20 (3) the Secretary determines the State other
21 credit support program to be eligible based on the
22 additional considerations in subsection (d); and

23 (4) within 9 months after the date of enactment
24 of this Act, the State has filed with Treasury a com-
25 plete application for Treasury approval.

1 (c) ELIGIBILITY CRITERIA FOR STATE OTHER CRED-
2 IT SUPPORT PROGRAMS.—For a State other credit sup-
3 port program to be approved under this section, that pro-
4 gram shall be required to be a program of the State that—

5 (1) can demonstrate that, at a minimum, \$1 of
6 public investment by the State program will cause
7 and result in \$1 of new private credit;

8 (2) can demonstrate a reasonable expectation
9 that, when considered with all other State programs
10 of the State, such State programs together have the
11 ability to use amounts of new Federal contributions
12 to, or for the account of, all such programs in the
13 State to cause and result in amounts of new small
14 business lending at least 10 times the new Federal
15 contribution amount;

16 (3) for those State other credit support pro-
17 grams that provide their credit support through 1 or
18 more financial institution lenders, requires the finan-
19 cial institution lenders to have a meaningful amount
20 of their own capital resources at risk in their small
21 business lending; and

22 (4) uses Federal funds allocated under this title
23 to extend credit support that—

24 (A) targets an average borrower size of
25 500 employees or less;

1 (B) does not extend credit support to bor-
2 rowers that have more than 750 employees;

3 (C) targets support towards loans with an
4 average principal amount of \$5,000,000 or less;
5 and

6 (D) does not extend credit support to loans
7 that exceed a principal amount of \$20,000,000.

8 (d) ADDITIONAL CONSIDERATIONS.—In making a de-
9 termination that a State other credit support program is
10 eligible for Federal contributions to, or for the account
11 of, the State program, the Secretary shall take into ac-
12 count the following additional considerations:

13 (1) The anticipated benefits to the State, its
14 businesses, and its residents to be derived from the
15 Federal contributions to, or for the account of, the
16 approved State other credit support program, includ-
17 ing the extent to which resulting small business
18 lending will expand economic opportunities.

19 (2) The operational capacity, skills, and experi-
20 ence of the management team of the State other
21 credit support program.

22 (3) The capacity of the State other credit sup-
23 port program to manage increases in the volume of
24 its small business lending.

1 (4) The internal accounting and administrative
2 controls systems of the State other credit support
3 program, and the extent to which they can provide
4 reasonable assurance that funds of the State pro-
5 gram are safeguarded against waste, loss, unauthor-
6 ized use, or misappropriation.

7 (5) The soundness of the program design and
8 implementation plan of the State other credit sup-
9 port program.

10 (e) FEDERAL CONTRIBUTIONS TO APPROVED STATE
11 OTHER CREDIT SUPPORT PROGRAMS.—A State other
12 credit support program approved under this section will
13 be eligible for receiving Federal contributions to, or for
14 the account of, the State program in an amount consistent
15 with the schedule describing the apportionment of allo-
16 cated Federal funds among State programs delivered by
17 the State to the Secretary under the allocation agreement.

18 (f) MINIMUM PROGRAM REQUIREMENTS FOR STATE
19 OTHER CREDIT SUPPORT PROGRAMS.—

20 (1) FUND TO PRESCRIBE.—The Secretary shall,
21 by regulation or other guidance, prescribe Program
22 requirements for approved State other credit support
23 programs.

24 (2) CONSIDERATIONS FOR FUND.—In pre-
25 scribing minimum Program requirements for ap-

1 proved State other credit support programs, the Sec-
2 retary shall take into consideration, to the extent the
3 Secretary determines applicable and appropriate, the
4 minimum Program requirements for approved State
5 capital access programs in section 3005(e).

6 **SEC. 3007. REPORTS.**

7 (a) QUARTERLY USE-OF-FUNDS REPORT.—

8 (1) IN GENERAL.—Not later than 30 days after
9 the beginning of each calendar quarter, beginning
10 after the first full calendar quarter to occur after
11 the date the Secretary approves a State for partici-
12 pation, the participating State shall submit to the
13 Secretary a report on the use of Federal funding by
14 the participating State during the previous calendar
15 quarter.

16 (2) REPORT CONTENTS.—Each report under
17 this subsection shall—

18 (A) indicate the total amount of Federal
19 funding used by the participating State; and

20 (B) include a certification by the partici-
21 pating State that—

22 (i) the information provided in accord-
23 ance with subparagraph (A) is accurate;

24 (ii) funds continue to be available and
25 legally committed to contributions by the

1 State to, or for the account of, approved
2 State programs, less any amount that has
3 been contributed by the State to, or for the
4 account of, approved State programs sub-
5 sequent to the State being approved for
6 participation in the Program; and

7 (iii) the participating State is imple-
8 menting its approved State program or
9 programs in accordance with this title and
10 regulations issued under section 3010.

11 (b) ANNUAL REPORT.—Not later than March 31 of
12 each year, beginning March 31, 2011, each participating
13 State shall submit to the Secretary an annual report that
14 shall include the following information:

15 (1) The number of borrowers that received new
16 loans originated under the approved State program
17 or programs after the State program was approved
18 as eligible for Federal contributions.

19 (2) The total amount of such new loans.

20 (3) Breakdowns by industry type, loan size, an-
21 nual sales, and number of employees of the bor-
22 rowers that received such new loans.

23 (4) The zip code of each borrower that received
24 such a new loan.

1 (5) Such other data as the Secretary, in the
2 Secretary's sole discretion, may require to carry out
3 the purposes of the Program.

4 (c) FORM.—The reports and data filed under sub-
5 sections (a) and (b) shall be in such form as the Secretary,
6 in the Secretary's sole discretion, may require.

7 (d) TERMINATION OF REPORTING REQUIRE-
8 MENTS.—The requirement to submit reports under sub-
9 sections (a) and (b) shall terminate for a participating
10 State with the submission of the completed reports due
11 on the first March 31 to occur after 5 complete 12-month
12 periods after the State is approved by the Secretary to
13 be a participating State.

14 **SEC. 3008. REMEDIES FOR STATE PROGRAM TERMINATION**
15 **OR FAILURES.**

16 (a) REMEDIES.—

17 (1) IN GENERAL.—If any of the events listed in
18 paragraph (2) occur, the Secretary, in the Sec-
19 retary's discretion, may—

20 (A) reduce the amount of Federal funds al-
21 located to the State under the Program; or

22 (B) terminate any further transfers of allo-
23 cated amounts that have not yet been trans-
24 ferred to the State.

1 (2) CAUSAL EVENTS.—The events referred to in
2 paragraph (1) are—

3 (A) termination by a participating State of
4 its participation in the Program;

5 (B) failure on the part of a participating
6 State to submit complete reports under section
7 3007 on a timely basis; or

8 (C) noncompliance by the State with the
9 terms of the allocation agreement between the
10 Secretary and the State.

11 (b) DEALLOCATED AMOUNTS TO BE REALLO-
12 CATED.—If, after 13 months, any portion of the amount
13 of Federal funds allocated to a participating State is
14 deemed by the Secretary to be no longer allocated to the
15 State after actions taken by the Secretary under sub-
16 section (a)(1), the Secretary shall reallocate that portion
17 among the participating States, excluding the State whose
18 allocated funds were deemed to be no longer allocated, as
19 provided in section 3003(b).

20 **SEC. 3009. IMPLEMENTATION AND ADMINISTRATION.**

21 (a) GENERAL AUTHORITIES AND DUTIES.—The Sec-
22 retary shall—

23 (1) consult with the Administrator of the Small
24 Business Administration and the appropriate Fed-

1 eral banking agencies on the administration of the
2 Program;

3 (2) establish minimum national standards for
4 approved State programs;

5 (3) provide technical assistance to States for
6 starting State programs and generally disseminate
7 best practices;

8 (4) manage, administer, and perform necessary
9 program integrity functions for the Program; and

10 (5) ensure adequate oversight of the approved
11 State programs, including oversight of the cash
12 flows, performance, and compliance of each approved
13 State program.

14 (b) APPROPRIATIONS.—There is hereby appropriated
15 to the Secretary, out of funds in the Treasury not other-
16 wise appropriated, \$1,500,000,000 to carry out the Pro-
17 gram, including to pay reasonable costs of administering
18 the Program.

19 (c) TERMINATION OF SECRETARY'S PROGRAM AD-
20 MINISTRATION FUNCTIONS.—The authorities and duties
21 of the Secretary to implement and administer the Program
22 shall terminate at the end of the 7-year period beginning
23 on the date of enactment of this Act.

24 (d) EXPEDITED CONTRACTING.—During the 1-year
25 period beginning on the date of enactment of this Act, the

1 Secretary may enter into contracts without regard to any
2 other provision of law regarding public contracts, for pur-
3 poses of carrying out this title.

4 **SEC. 3010. REGULATIONS.**

5 The Secretary, in consultation with the Administrator
6 of the Small Business Administration, shall issue such
7 regulations and other guidance as the Secretary deter-
8 mines necessary or appropriate to implement this title in-
9 cluding to define terms, to establish compliance and re-
10 porting requirements, and such other terms and conditions
11 necessary to carry out the purposes of this title.

12 **SEC. 3011. OVERSIGHT AND AUDITS.**

13 (a) INSPECTOR GENERAL OVERSIGHT.—The Inspec-
14 tor General of the Department of the Treasury shall con-
15 duct, supervise, and coordinate audits and investigations
16 of the use of funds made available under the Program.

17 (b) GAO AUDIT.—The Comptroller General of the
18 United States shall perform an annual audit of the Pro-
19 gram and issue a report to the appropriate committees
20 of Congress containing the results of such audit.

21 (c) REQUIRED CERTIFICATION.—

22 (1) FINANCIAL INSTITUTIONS CERTIFI-
23 CATION.—With respect to funds received by a par-
24 ticipating State under the Program, any financial in-
25 stitution that receives a loan, a loan guarantee, or

1 other financial assistance using such funds after the
2 date of the enactment of this Act shall certify that
3 such institution is in compliance with the require-
4 ments of section 103.121 of title 31, Code of Fed-
5 eral Regulations, a regulation that, at a minimum,
6 requires financial institutions, as that term is de-
7 fined in section 5312 (a)(2) and (c)(1)(A) of title
8 31, United States Code, to implement reasonable
9 procedures to verify the identity of any person seek-
10 ing to open an account, to the extent reasonable and
11 practicable, maintain records of the information
12 used to verify the person's identity, and determine
13 whether the person appears on any lists of known or
14 suspected terrorists or terrorist organizations pro-
15 vided to the financial institution by any government
16 agency.

17 (2) SEX OFFENSE CERTIFICATION.—With re-
18 spect to funds received by a participating State
19 under the Program, any private entity that receives
20 a loan, a loan guarantee, or other financial assist-
21 ance using such funds after the date of the enact-
22 ment of this Act shall certify to the participating
23 State that the principals of such entity have not
24 been convicted of a sex offense against a minor (as
25 such terms are defined in section 111 of the Sex Of-

1 fender Registration and Notification Act (42 U.S.C.
2 16911)).

3 (d) PROHIBITION ON PORNOGRAPHY.—None of the
4 funds made available under this title may be used to pay
5 the salary of any individual engaged in activities related
6 to the Program who has been officially disciplined for vio-
7 lations of subpart G of the Standards of Ethical Conduct
8 for Employees of the Executive Branch for viewing,
9 downloading, or exchanging pornography, including child
10 pornography, on a Federal Government computer or while
11 performing official Federal Government duties.

12 **TITLE IV—ADDITIONAL SMALL**
13 **BUSINESS PROVISIONS**
14 **Subtitle A—Small Business**
15 **Lending Fund**

16 **SEC. 4101. PURPOSE.**

17 The purpose of this subtitle is to address the ongoing
18 effects of the financial crisis on small businesses by pro-
19 viding temporary authority to the Secretary of the Treas-
20 ury to make capital investments in eligible institutions in
21 order to increase the availability of credit for small busi-
22 nesses.

23 **SEC. 4102. DEFINITIONS.**

24 For purposes of this subtitle:

1 (1) APPROPRIATE COMMITTEES OF CON-
2 GRESS.—The term “appropriate committees of Con-
3 gress” means—

4 (A) the Committee on Small Business and
5 Entrepreneurship, the Committee on Agri-
6 culture, Nutrition, and Forestry, the Committee
7 on Banking, Housing, and Urban Affairs, the
8 Committee on Finance, the Committee on the
9 Budget, and the Committee on Appropriations
10 of the Senate; and

11 (B) the Committee on Small Business, the
12 Committee on Agriculture, the Committee on
13 Financial Services, the Committee on Ways and
14 Means, the Committee on the Budget, and the
15 Committee on Appropriations of the House of
16 Representatives.

17 (2) APPROPRIATE FEDERAL BANKING AGEN-
18 CY.—The term “appropriate Federal banking agen-
19 cy” has the meaning given such term under section
20 3(q) of the Federal Deposit Insurance Act (12
21 U.S.C. 1813(q)).

22 (3) BANK HOLDING COMPANY.—The term
23 “bank holding company” has the meaning given
24 such term under section 2(a)(1) of the Bank Hold-

1 ing Company Act of 1956 (12 U.S.C.
2 1841(2)(a)(1)).

3 (4) CALL REPORT.—The term “call report”
4 means—

5 (A) reports of Condition and Income sub-
6 mitted to the Office of the Comptroller of the
7 Currency, the Board of Governors of the Fed-
8 eral Reserve System, and the Federal Deposit
9 Insurance Corporation;

10 (B) the Office of Thrift Supervision Thrift
11 Financial Report;

12 (C) any report that is designated by the
13 Office of the Comptroller of the Currency, the
14 Board of Governors of the Federal Reserve Sys-
15 tem, the Federal Deposit Insurance Corpora-
16 tion, or the Office of Thrift Supervision, as ap-
17 plicable, as a successor to any report referred to
18 in subparagraph (A) or (B);

19 (D) reports of Condition and Income as
20 designated through guidance developed by the
21 Secretary, in consultation with the Director of
22 the Community Development Financial Institu-
23 tions Fund; and

24 (E) with respect to an eligible institution
25 for which no report exists that is described

1 under subparagraph (A), (B), (C), or (D), such
2 other report or set of information as the Sec-
3 retary, in consultation with the Administrator
4 of the Small Business Administration, may pre-
5 scribe.

6 (5) CDCI.—The term “CDCI” means the Com-
7 munity Development Capital Initiative created by
8 the Secretary under the Troubled Asset Relief Pro-
9 gram established by the Emergency Economic Sta-
10 bilization Act of 2008.

11 (6) CDCI INVESTMENT.—The term “CDCI in-
12 vestment” means, with respect to any eligible insti-
13 tution, the principal amount of any investment made
14 by the Secretary in such eligible institution under
15 the CDCI that has not been repaid.

16 (7) CDFI; COMMUNITY DEVELOPMENT FINAN-
17 CIAL INSTITUTION.—The terms “CDFI” and “com-
18 munity development financial institution” have the
19 meaning given the term “community development fi-
20 nancial institution” under the Riegle Community
21 Development and Regulatory Improvement Act of
22 1994.

23 (8) CDLF; COMMUNITY DEVELOPMENT LOAN
24 FUND.—The terms “CDLF” and “community devel-
25 opment loan fund” mean any entity that—

1 (A) is certified by the Department of the
2 Treasury as a community development financial
3 institution loan fund;

4 (B) is exempt from taxation under the In-
5 ternal Revenue Code of 1986; and

6 (C) had assets less than or equal to
7 \$10,000,000,000 as of the end of the fourth
8 quarter of calendar year 2009.

9 (9) CPP.—The term “CPP” means the Capital
10 Purchase Program created by the Secretary under
11 the Troubled Asset Relief Program established by
12 the Emergency Economic Stabilization Act of 2008.

13 (10) CPP INVESTMENT.—The term “CPP in-
14 vestment” means, with respect to any eligible insti-
15 tution, the principal amount of any investment made
16 by the Secretary in such eligible institution under
17 the CPP that has not been repaid.

18 (11) ELIGIBLE INSTITUTION.—The term “eligi-
19 ble institution” means—

20 (A) any insured depository institution,
21 which—

22 (i) is not controlled by a bank holding
23 company or savings and loan holding com-
24 pany that is also an eligible institution;

1 (ii) has total assets of equal to or less
2 than \$10,000,000,000, as reported in the
3 call report of the insured depository insti-
4 tution as of the end of the fourth quarter
5 of calendar year 2009; and

6 (iii) is not directly or indirectly con-
7 trolled by any company or other entity that
8 has total consolidated assets of more than
9 \$10,000,000,000, as so reported;

10 (B) any bank holding company which has
11 total consolidated assets of equal to or less than
12 \$10,000,000,000, as reported in the call report
13 of the bank holding company as of the end of
14 the fourth quarter of calendar year 2009;

15 (C) any savings and loan holding company
16 which has total consolidated assets of equal to
17 or less than \$10,000,000,000, as reported in
18 the call report of the savings and loan holding
19 company as of the end of the fourth quarter of
20 calendar year 2009; and

21 (D) any community development financial
22 institution loan fund which has total assets of
23 equal to or less than \$10,000,000,000, as re-
24 ported in audited financial statements for the
25 fiscal year of the community development finan-

1 cial institution loan fund that ends in calendar
2 year 2009.

3 (12) FUND.—The term “Fund” means the
4 Small Business Lending Fund established under sec-
5 tion 4103(a)(1).

6 (13) INSURED DEPOSITORY INSTITUTION.—The
7 term “insured depository institution” has the mean-
8 ing given such term under section 3(c)(2) of the
9 Federal Deposit Insurance Act (12 U.S.C.
10 1813(c)(2)).

11 (14) MINORITY-OWNED AND WOMEN-OWNED
12 BUSINESS.—The terms “minority-owned business”
13 and “women-owned business” shall have the mean-
14 ing given the terms “minority-owned business” and
15 “women’s business”, respectively, under section
16 21A(r)(4) of the Federal Home Loan Bank Act (12
17 U.S.C. 1441A(r)(4)).

18 (15) PROGRAM.—The term “Program” means
19 the Small Business Lending Fund Program author-
20 ized under section 4103(a)(2).

21 (16) SAVINGS AND LOAN HOLDING COMPANY.—
22 The term “savings and loan holding company” has
23 the meaning given such term under section
24 10(a)(1)(D) of the Home Owners’ Loan Act (12
25 U.S.C. 1467a(a)(1)(D)).

1 (17) SECRETARY.—The term “Secretary”
2 means the Secretary of the Treasury.

3 (18) SMALL BUSINESS LENDING.—

4 (A) IN GENERAL.—The term “small busi-
5 ness lending” means lending, as defined by and
6 reported in an eligible institutions’ quarterly
7 call report, where each loan comprising such
8 lending is one of the following types:

9 (i) Commercial and industrial loans.

10 (ii) Owner-occupied nonfarm, nonresi-
11 dential real estate loans.

12 (iii) Loans to finance agricultural pro-
13 duction and other loans to farmers.

14 (iv) Loans secured by farmland.

15 (B) EXCLUSION.—No loan that has an
16 original amount greater than \$10,000,000 or
17 that goes to a business with more than
18 \$50,000,000 in revenues shall be included in
19 the measure.

20 (C) TREATMENT OF HOLDING COMPA-
21 NIES.—In the case of eligible institutions that
22 are bank holding companies or savings and loan
23 holding companies having one or more insured
24 depository institution subsidiaries, small busi-
25 ness lending shall be measured based on the

1 combined small business lending reported in the
2 call report of the insured depository institution
3 subsidiaries.

4 (19) VETERAN-OWNED BUSINESS.—

5 (A) The term “veteran-owned business”
6 means a business—

7 (i) more than 50 percent of the own-
8 ership or control of which is held by 1 or
9 more veterans;

10 (ii) more than 50 percent of the net
11 profit or loss of which accrues to 1 or more
12 veterans; and

13 (iii) a significant percentage of senior
14 management positions of which are held by
15 veterans.

16 (B) For purposes of this paragraph, the
17 term “veteran” has the meaning given such
18 term in section 101(2) of title 38, United
19 States Code.

20 **SEC. 4103. SMALL BUSINESS LENDING FUND.**

21 (a) FUND AND PROGRAM.—

22 (1) FUND ESTABLISHED.—There is established
23 in the Treasury of the United States a fund to be
24 known as the “Small Business Lending Fund”,
25 which shall be administered by the Secretary.

1 (2) PROGRAMS AUTHORIZED.—The Secretary is
2 authorized to establish the Small Business Lending
3 Fund Program for using the Fund consistent with
4 this subtitle.

5 (b) USE OF FUND.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 the Fund shall be available to the Secretary, without
8 further appropriation or fiscal year limitation, for
9 the costs of purchases (including commitments to
10 purchase), and modifications of such purchases, of
11 preferred stock and other financial instruments from
12 eligible institutions on such terms and conditions as
13 are determined by the Secretary in accordance with
14 this subtitle. For purposes of this paragraph and
15 with respect to an eligible institution, the term
16 “other financial instruments” shall include only debt
17 instruments for which such eligible institution is
18 fully liable or equity equivalent capital of the eligible
19 institution. Such debt instruments may be subordi-
20 nated to the claims of other creditors of the eligible
21 institution.

22 (2) MAXIMUM PURCHASE LIMIT.—The aggre-
23 gate amount of purchases (and commitments to pur-
24 chase) made pursuant to paragraph (1) may not ex-
25 ceed \$30,000,000,000.

1 (3) PROCEEDS USED TO PAY DOWN PUBLIC
2 DEBT.—All funds received by the Secretary in con-
3 nection with purchases made pursuant to paragraph
4 (1), including interest payments, dividend payments,
5 and proceeds from the sale of any financial instru-
6 ment, shall be paid into the general fund of the
7 Treasury for reduction of the public debt.

8 (4) LIMITATION ON PURCHASES FROM
9 CDLFS.—

10 (A) IN GENERAL.—Not more than 1 per-
11 cent of the maximum purchase limit of the Pro-
12 gram, pursuant to paragraph (2), may be used
13 to make purchases from community develop-
14 ment loan funds.

15 (B) ELIGIBILITY STANDARDS.—The Sec-
16 retary, in consultation with the Community De-
17 velopment Financial Institutions Fund, shall
18 develop eligibility criteria to determine the fi-
19 nancial ability of a CDLF to participate in the
20 Program and repay the investment. Such cri-
21 teria shall include the following:

22 (i) Ratio of net assets to total assets
23 is at least 20 percent.

24 (ii) Ratio of loan loss reserves to loans
25 and leases 90 days or more delinquent (in-

1 cluding loans sold with full recourse) is at
2 least 30 percent.

3 (iii) Positive net income measured on
4 a 3-year rolling average.

5 (iv) Operating liquidity ratio of at
6 least 1.0 for the 4 most recent quarters
7 and for one or both of the two preceding
8 years.

9 (v) Ratio of loans and leases 90 days
10 or more delinquent (including loans sold
11 with full recourse) to total equity plus loan
12 loss reserves is less than 40 percent.

13 (C) REQUIREMENT TO SUBMIT AUDITED
14 FINANCIAL STATEMENTS.—CDLFs partici-
15 pating in the Program shall submit audited fi-
16 nancial statements to the Secretary, have a
17 clean audit opinion, and have at least 3 years
18 of operating experience.

19 (c) CREDITS TO THE FUND.—There shall be credited
20 to the Fund amounts made available pursuant to section
21 4108, to the extent provided by appropriations Acts.

22 (d) TERMS.—

23 (1) APPLICATION.—

24 (A) INSTITUTIONS WITH ASSETS OF
25 \$1,000,000,000 OR LESS.—Eligible institutions

1 having total assets equal to or less than
2 \$1,000,000,000, as reported in a call report as
3 of the end of the fourth quarter of calendar
4 year 2009, may apply to receive a capital in-
5 vestment from the Fund in an amount not ex-
6 ceeding 5 percent of risk-weighted assets, as re-
7 ported in the call report immediately preceding
8 the date of application, less the amount of any
9 CDCI investment and any CPP investment.

10 (B) INSTITUTIONS WITH ASSETS OF MORE
11 THAN \$1,000,000,000 AND LESS THAN OR EQUAL
12 TO \$10,000,000,000.—Eligible institutions having
13 total assets of more than \$1,000,000,000 but
14 less than \$10,000,000,000, as of the end of the
15 fourth quarter of calendar year 2009, may
16 apply to receive a capital investment from the
17 Fund in an amount not exceeding 3 percent of
18 risk-weighted assets, as reported in the call re-
19 port immediately preceding the date of applica-
20 tion, less the amount of any CDCI investment
21 and any CPP investment.

22 (C) TREATMENT OF HOLDING COMPA-
23 NIES.—In the case of an eligible institution that
24 is a bank holding company or a savings and
25 loan holding company having one or more in-

1 sured depository institution subsidiaries, total
2 assets shall be measured based on the combined
3 total assets reported in the call report of the in-
4 sured depository institution subsidiaries as of
5 the end of the fourth quarter of calendar year
6 2009 and risk-weighted assets shall be meas-
7 ured based on the combined risk-weighted as-
8 sets of the insured depository institution sub-
9 sidiaries as reported in the call report imme-
10 diately preceding the date of application.

11 (D) TREATMENT OF APPLICANTS THAT
12 ARE INSTITUTIONS CONTROLLED BY HOLDING
13 COMPANIES.—If an eligible institution that ap-
14 plies to receive a capital investment under the
15 Program is under the control of a bank holding
16 company or a savings and loan holding com-
17 pany, then the Secretary may use the Fund to
18 purchase preferred stock or other financial in-
19 struments from the top-tier bank holding com-
20 pany or savings and loan holding company of
21 such eligible institution, as applicable. For pur-
22 poses of this subparagraph, the term “control”
23 with respect to a bank holding company shall
24 have the same meaning as in section 2(a)(2) of
25 the Bank Holding Company Act of 1956 (12

1 U.S.C. 1841(2)(a)(2)). For purposes of this
2 subparagraph, the term “control” with respect
3 to a savings and loan holding company shall
4 have the same meaning as in 10(a)(2) of the
5 Home Owners’ Loan Act (12 U.S.C.
6 1467a(a)(2)).

7 (E) REQUIREMENT TO PROVIDE A SMALL
8 BUSINESS LENDING PLAN.—At the time that an
9 applicant submits an application to the Sec-
10 retary for a capital investment under the Pro-
11 gram, the applicant shall deliver to the appro-
12 priate Federal banking agency, and, for appli-
13 cants that are State-chartered banks, to the ap-
14 propriate State banking regulator, a small busi-
15 ness lending plan describing how the applicant’s
16 business strategy and operating goals will allow
17 it to address the needs of small businesses in
18 the areas it serves, as well as a plan to provide
19 linguistically and culturally appropriate out-
20 reach, where appropriate. In the case of eligible
21 institutions that are community development
22 loan funds, this plan shall be submitted to the
23 Secretary. This plan shall be confidential super-
24 visory information.

1 (F) TREATMENT OF APPLICANTS THAT
2 ARE COMMUNITY DEVELOPMENT LOAN
3 FUNDS.—Eligible institutions that are commu-
4 nity development loan funds may apply to re-
5 ceive a capital investment from the Fund in an
6 amount not exceeding 5 percent of total assets,
7 as reported in the audited financial statements
8 for the fiscal year of the eligible institution that
9 ends in calendar year 2009.

10 (2) CONSULTATION WITH REGULATORS.—For
11 each eligible institution that applies to receive a cap-
12 ital investment under the Program, the Secretary
13 shall—

14 (A) consult with the appropriate Federal
15 banking agency or, in the case of an eligible in-
16 stitution that is a nondepository community de-
17 velopment financial institution, the Community
18 Development Financial Institution Fund, for
19 the eligible institution, to determine whether
20 the eligible institution may receive such capital
21 investment;

22 (B) in the case of an eligible institution
23 that is a State-chartered bank, consider any
24 views received from the State banking regulator
25 of the State of the eligible institution regarding

1 the financial condition of the eligible institution;
2 and

3 (C) in the case of a community develop-
4 ment financial institution loan fund, consult
5 with the Community Development Financial In-
6 stitution Fund.

7 (3) CONSIDERATION OF MATCHED PRIVATE IN-
8 VESTMENTS.—

9 (A) IN GENERAL.—For an eligible institu-
10 tion that applies to receive a capital investment
11 under the Program, if the entity to be consulted
12 under paragraph (2) would not otherwise rec-
13 ommend the eligible institution to receive the
14 capital investment, the Secretary, in consulta-
15 tion with the entity to be so consulted, may
16 consider whether the entity to be consulted
17 would recommend the eligible institution to re-
18 ceive a capital investment based on the financial
19 condition of the institution if the conditions in
20 subparagraph (B) are satisfied.

21 (B) CONDITIONS.—The conditions referred
22 to in subparagraph (A) are as follows:

23 (i) CAPITAL SOURCES.—The eligible
24 institution shall receive capital both under

1 the Program and from private, nongovern-
2 ment investors.

3 (ii) AMOUNT OF CAPITAL.—The
4 amount of capital to be received under the
5 Program shall not exceed 3 percent of risk-
6 weighted assets, as reported in the call re-
7 port immediately preceding the date of ap-
8 plication, less the amount of any CDCI in-
9 vestment and any CPP investment.

10 (iii) TERMS.—The amount of capital
11 to be received from private, nongovernment
12 investors shall be—

13 (I) equal to or greater than 100
14 percent of the capital to be received
15 under the Program; and

16 (II) subordinate to the capital in-
17 vestment made by the Secretary under
18 the Program.

19 (4) INELIGIBILITY OF INSTITUTIONS ON FDIC
20 PROBLEM BANK LIST.—

21 (A) IN GENERAL.—An eligible institution
22 may not receive any capital investment under
23 the Program, if—

24 (i) such institution is on the FDIC
25 problem bank list; or

1 (ii) such institution has been removed
2 from the FDIC problem bank list for less
3 than 90 days.

4 (B) CONSTRUCTION.—Nothing in subpara-
5 graph (A) shall be construed as limiting the dis-
6 cretion of the Secretary to deny the application
7 of an eligible institution that is not on the
8 FDIC problem bank list.

9 (C) FDIC PROBLEM BANK LIST DE-
10 FINED.—For purposes of this paragraph, the
11 term “FDIC problem bank list” means the list
12 of depository institutions having a current rat-
13 ing of 4 or 5 under the Uniform Financial In-
14 stitutions Rating System, or such other list des-
15 ignated by the Federal Deposit Insurance Cor-
16 poration.

17 (5) INCENTIVES TO LEND.—

18 (A) REQUIREMENTS ON PREFERRED
19 STOCK AND OTHER FINANCIAL INSTRU-
20 MENTS.—Any preferred stock or other financial
21 instrument issued to Treasury by an eligible in-
22 stitution receiving a capital investment under
23 the Program shall provide that—

1 (i) the rate at which dividends or in-
2 terest are payable shall be 5 percent per
3 annum initially;

4 (ii) within the first 2 years after the
5 date of the capital investment under the
6 Program, the rate may be adjusted based
7 on the amount of an eligible institution's
8 small business lending. Changes in the
9 amount of small business lending shall be
10 measured against the average amount of
11 small business lending reported by the eli-
12 gible institution in its call reports for the
13 4 full quarters immediately preceding the
14 date of enactment of this Act, minus ad-
15 justments from each quarterly balance in
16 respect of—

17 (I) net loan charge offs with re-
18 spect to small business lending; and

19 (II) gains realized by the eligible
20 institution resulting from mergers, ac-
21 quisitions or purchases of loans after
22 origination and syndication; which ad-
23 justments shall be determined in ac-
24 cordance with guidance promulgated
25 by the Secretary; and

1 (iii) during any calendar quarter dur-
2 ing the initial 2-year period referred to in
3 clause (ii), an institution's rate shall be ad-
4 justed to reflect the following schedule,
5 based on that institution's change in the
6 amount of small business lending relative
7 to the baseline—

8 (I) if the amount of small busi-
9 ness lending has increased by less
10 than 2.5 percent, the dividend or in-
11 terest rate shall be 5 percent;

12 (II) if the amount of small busi-
13 ness lending has increased by 2.5 per-
14 cent or greater, but by less than 5.0
15 percent, the dividend or interest rate
16 shall be 4 percent;

17 (III) if the amount of small busi-
18 ness lending has increased by 5.0 per-
19 cent or greater, but by less than 7.5
20 percent, the dividend or interest rate
21 shall be 3 percent;

22 (IV) if the amount of small busi-
23 ness lending has increased by 7.5 per-
24 cent or greater, and but by less than

1 10.0 percent, the dividend or interest
2 rate shall be 2 percent; or

3 (V) if the amount of small busi-
4 ness lending has increased by 10 per-
5 cent or greater, the dividend or inter-
6 est rate shall be 1 percent.

7 (B) BASIS OF INITIAL RATE.—The initial
8 dividend or interest rate shall be based on call
9 report data published in the quarter imme-
10 diately preceding the date of the capital invest-
11 ment under the Program.

12 (C) TIMING OF RATE ADJUSTMENTS.—Any
13 rate adjustment shall occur in the calendar
14 quarter following the publication of call report
15 data, such that the rate based on call report
16 data from any one calendar quarter, which is
17 published in the first following calendar quar-
18 ter, shall be adjusted in that first following cal-
19 endar quarter and payable in the second fol-
20 lowing quarter.

21 (D) RATE FOLLOWING INITIAL 2-YEAR PE-
22 RIOD.—Generally, the rate based on call report
23 data from the eighth calendar quarter after the
24 date of the capital investment under the Pro-
25 gram shall be payable until the expiration of

1 the 4½-year period that begins on the date of
2 the investment. In the case where the amount
3 of small business lending has remained the
4 same or decreased relative to the institution's
5 baseline in the eighth quarter after the date of
6 the capital investment under the Program, the
7 rate shall be 7 percent until the expiration of
8 the 4½-year period that begins on the date of
9 the investment.

10 (E) RATE FOLLOWING INITIAL 4½ -YEAR
11 PERIOD.—The dividend or interest rate paid on
12 any preferred stock or other financial instru-
13 ment issued by an eligible institution that re-
14 ceives a capital investment under the Program
15 shall increase to 9 percent at the end of the
16 4½-year period that begins on the date of the
17 capital investment under the Program.

18 (F) LIMITATION ON RATE REDUCTIONS
19 WITH RESPECT TO CERTAIN AMOUNT.—The re-
20 duction in the dividend or interest rate payable
21 to Treasury by any eligible institution shall be
22 limited such that the rate reduction shall not
23 apply to a dollar amount of the investment
24 made by Treasury that is greater than the dol-
25 lar amount increase in the amount of small

1 business lending realized under this program.
2 The Secretary may issue guidelines that will
3 apply to new capital investments limiting the
4 amount of capital available to eligible institu-
5 tions consistent with this limitation.

6 (G) RATE ADJUSTMENTS FOR S CORPORA-
7 TION.—Before making a capital investment in
8 an eligible institution that is an S corporation
9 or a corporation organized on a mutual basis,
10 the Secretary may adjust the dividend or inter-
11 est rate on the financial instrument to be issued
12 to the Secretary, from the dividend or interest
13 rate that would apply under subparagraphs (A)
14 through (F), to take into account any differen-
15 tial tax treatment of securities issued by such
16 eligible institution. For purpose of this subpara-
17 graph, the term “S corporation” has the same
18 meaning as in section 1361(a) of the Internal
19 Revenue Code of 1986.

20 (H) REPAYMENT DEADLINE.—The capital
21 investment received by an eligible institution
22 under the Program shall be evidenced by pre-
23 ferred stock or other financial instrument
24 that—

1 (i) includes, as a term and condition,
2 that the capital investment will—

3 (I) be repaid not later than the
4 end of the 10-year period beginning
5 on the date of the capital investment
6 under the Program; or

7 (II) at the end of such 10-year
8 period, be subject to such additional
9 terms as the Secretary shall prescribe,
10 which shall include a requirement that
11 the stock or instrument shall carry
12 the highest dividend or interest rate
13 payable; and

14 (ii) provides that the term and condi-
15 tion described under clause (i) shall not
16 apply if the application of that term and
17 condition would adversely affect the capital
18 treatment of the stock or financial instru-
19 ment under current or successor applicable
20 capital provisions compared to a capital in-
21 strument with identical terms other than
22 the term and condition described under
23 clause (i).

24 (I) REQUIREMENTS ON FINANCIAL IN-
25 STRUMENTS ISSUED BY A COMMUNITY DEVEL-

1 OPMENT FINANCIAL INSTITUTION LOAN
2 FUND.—Any equity equivalent capital issued to
3 the Treasury by a community development loan
4 fund receiving a capital investment under the
5 Program shall provide that the rate at which in-
6 terest is payable shall be 2 percent per annum
7 for 8 years. After 8 years, the rate at which in-
8 terest is payable shall be 9 percent.

9 (6) ADDITIONAL INCENTIVES TO REPAY.—The
10 Secretary may, by regulation or guidance issued
11 under section 4104(9), establish repayment incen-
12 tives in addition to the incentive in paragraph (5)(E)
13 that will apply to new capital investments in a man-
14 ner that the Secretary determines to be consistent
15 with the purposes of this subtitle.

16 (7) CAPITAL PURCHASE PROGRAM REFI-
17 NANCE.—

18 (A) IN GENERAL.—The Secretary shall, in
19 a manner that the Secretary determines to be
20 consistent with the purposes of this subtitle,
21 issue regulations and other guidance to permit
22 eligible institutions to refinance securities
23 issued to Treasury under the CDCI and the
24 CPP for securities to be issued under the Pro-
25 gram.

1 (B) PROHIBITION ON PARTICIPATION BY
2 NON-PAYING CPP PARTICIPANTS.—Subpara-
3 graph (A) shall not apply to any eligible institu-
4 tion that has missed more than one dividend
5 payment due under the CPP. For purposes of
6 this subparagraph, a CPP dividend payment
7 that is submitted within 60 days of the due
8 date of such payment shall not be considered a
9 missed dividend payment.

10 (8) OUTREACH TO MINORITIES, WOMEN, AND
11 VETERANS.—The Secretary shall require eligible in-
12 stitutions receiving capital investments under the
13 Program to provide linguistically and culturally ap-
14 propriate outreach and advertising in the applicant
15 pool describing the availability and application proc-
16 ess of receiving loans from the eligible institution
17 that are made possible by the Program through the
18 use of print, radio, television or electronic media out-
19 lets which target organizations, trade associations,
20 and individuals that—

21 (A) represent or work within or are mem-
22 bers of minority communities;

23 (B) represent or work with or are women;
24 and

25 (C) represent or work with or are veterans.

1 (9) ADDITIONAL TERMS.—The Secretary may,
2 by regulation or guidance issued under section
3 4104(9), make modifications that will apply to new
4 capital investments in order to manage risks associ-
5 ated with the administration of the Fund in a man-
6 ner consistent with the purposes of this subtitle.

7 (10) MINIMUM UNDERWRITING STANDARDS.—
8 The appropriate Federal banking agency for an eli-
9 gible institution that receives funds under the Pro-
10 gram shall within 60 days issue guidance regarding
11 prudent underwriting standards that must be used
12 for loans made by the eligible institution using such
13 funds.

14 **SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.**

15 The Secretary may take such actions as the Secretary
16 deems necessary to carry out the authorities in this sub-
17 title, including, without limitation, the following:

18 (1) The Secretary may use the services of any
19 agency or instrumentality of the United States or
20 component thereof on a reimbursable basis, and any
21 such agency or instrumentality or component thereof
22 is authorized to provide services as requested by the
23 Secretary using all authorities vested in or delegated
24 to that agency, instrumentality, or component.

1 (2) The Secretary may enter into contracts, in-
2 cluding contracts for services authorized by section
3 3109 of title 5, United States Code.

4 (3) The Secretary may designate any bank, sav-
5 ings association, trust company, security broker or
6 dealer, asset manager, or investment adviser as a fi-
7 nancial agent of the Federal Government and such
8 institution shall perform all such reasonable duties
9 related to this subtitle as financial agent of the Fed-
10 eral Government as may be required. The Secretary
11 shall have authority to amend existing agreements
12 with financial agents, entered into during the 2-year
13 period before the date of enactment of this Act, to
14 perform reasonable duties related to this subtitle.

15 (4) The Secretary may exercise any rights re-
16 ceived in connection with any preferred stock or
17 other financial instruments or assets purchased or
18 acquired pursuant to the authorities granted under
19 this subtitle.

20 (5) Subject to section 4103(b)(3), the Secretary
21 may manage any assets purchased under this sub-
22 title, including revenues and portfolio risks there-
23 from.

24 (6) The Secretary may sell, dispose of, transfer,
25 exchange or enter into securities loans, repurchase

1 transactions, or other financial transactions in re-
2 gard to, any preferred stock or other financial in-
3 strument or asset purchased or acquired under this
4 subtitle, upon terms and conditions and at a price
5 determined by the Secretary.

6 (7) The Secretary may manage or prohibit con-
7 flicts of interest that may arise in connection with
8 the administration and execution of the authorities
9 provided under this subtitle.

10 (8) The Secretary may establish and use vehi-
11 cles, subject to supervision by the Secretary, to pur-
12 chase, hold, and sell preferred stock or other finan-
13 cial instruments and issue obligations.

14 (9) The Secretary may, in consultation with the
15 Administrator of the Small Business Administration,
16 issue such regulations and other guidance as may be
17 necessary or appropriate to define terms or carry
18 out the authorities or purposes of this subtitle.

19 **SEC. 4105. CONSIDERATIONS.**

20 In exercising the authorities granted in this subtitle,
21 the Secretary shall take into consideration—

22 (1) increasing the availability of credit for small
23 businesses;

24 (2) providing funding to minority-owned eligible
25 institutions and other eligible institutions that serve

1 small businesses that are minority-, veteran-, and
2 women-owned and that also serve low- and mod-
3 erate-income, minority, and other underserved or
4 rural communities;

5 (3) protecting and increasing American jobs;

6 (4) increasing the opportunity for small busi-
7 ness development in areas with high unemployment
8 rates that exceed the national average;

9 (5) ensuring that all eligible institutions may
10 apply to participate in the program established
11 under this subtitle, without discrimination based on
12 geography;

13 (6) providing transparency with respect to use
14 of funds provided under this subtitle;

15 (7) minimizing the cost to taxpayers of exer-
16 cising the authorities;

17 (8) promoting and engaging in financial edu-
18 cation to would-be borrowers; and

19 (9) providing funding to eligible institutions
20 that serve small businesses directly affected by the
21 discharge of oil arising from the explosion on and
22 sinking of the mobile offshore drilling unit Deep-
23 water Horizon and small businesses in communities
24 that have suffered negative economic effects as a re-

1 sult of that discharge with particular consideration
2 to States along the coast of the Gulf of Mexico.

3 **SEC. 4106. REPORTS.**

4 The Secretary shall provide to the appropriate com-
5 mittees of Congress—

6 (1) within 7 days of the end of each month
7 commencing with the first month in which trans-
8 actions are made under the Program, a written re-
9 port describing all of the transactions made during
10 the reporting period pursuant to the authorities
11 granted under this subtitle;

12 (2) after the end of March and the end of Sep-
13 tember, commencing September 30, 2010, a written
14 report on all projected costs and liabilities, all oper-
15 ating expenses, including compensation for financial
16 agents, and all transactions made by the Fund,
17 which shall include participating institutions and
18 amounts each institution has received under the Pro-
19 gram; and

20 (3) within 7 days of the end of each calendar
21 quarter commencing with the first calendar quarter
22 in which transactions are made under the Program,
23 a written report detailing how eligible institutions
24 participating in the Program have used the funds
25 such institutions received under the Program.

1 **SEC. 4107. OVERSIGHT AND AUDITS.**

2 (a) INSPECTOR GENERAL OVERSIGHT.—The Inspec-
3 tor General of the Department of the Treasury shall con-
4 duct, supervise, and coordinate audits and investigations
5 of the Program through the Office of Small Business
6 Lending Fund Program Oversight established under sub-
7 section (b).

8 (b) OFFICE OF SMALL BUSINESS LENDING FUND
9 PROGRAM OVERSIGHT.—

10 (1) ESTABLISHMENT.—There is hereby estab-
11 lished within the Office of the Inspector General of
12 the Department of the Treasury a new office to be
13 named the “Office of Small Business Lending Fund
14 Program Oversight” to provide oversight of the Pro-
15 gram.

16 (2) LEADERSHIP.—The Inspector General shall
17 appoint a Special Deputy Inspector General for
18 SBLF Program Oversight to lead the Office, with
19 commensurate staff, who shall report directly to the
20 Inspector General and who shall be responsible for
21 the performance of all auditing and investigative ac-
22 tivities relating to the Program.

23 (3) REPORTING.—

24 (A) IN GENERAL.—The Inspector General
25 shall issue a report no less than two times a
26 year to the Congress and the Secretary devoted

1 to the oversight provided by the Office, includ-
2 ing any recommendations for improvements to
3 the Program.

4 (B) RECOMMENDATIONS.—With respect to
5 any deficiencies identified in a report under
6 subparagraph (A), the Secretary shall either—

7 (i) take actions to address such defi-
8 ciencies; or

9 (ii) certify to the appropriate commit-
10 tees of Congress that no action is nec-
11 essary or appropriate.

12 (4) COORDINATION.—The Inspector General, in
13 maximizing the effectiveness of the Office, shall
14 work with other Offices of Inspector General, as ap-
15 propriate, to minimize duplication of effort and en-
16 sure comprehensive oversight of the Program.

17 (5) TERMINATION.—The Office shall terminate
18 at the end of the 6-month period beginning on the
19 date on which all capital investments are repaid
20 under the Program or the date on which the Sec-
21 retary determines that any remaining capital invest-
22 ments will not be repaid.

23 (6) DEFINITIONS.—For purposes of this sub-
24 section:

1 (A) OFFICE.—The term “Office” means
2 the Office of Small Business Lending Fund
3 Program Oversight established under paragraph
4 (1).

5 (B) INSPECTOR GENERAL.—The term “In-
6 spectator General” means the Inspector General
7 of the Department of the Treasury.

8 (c) GAO AUDIT.—The Comptroller General of the
9 United States shall perform an annual audit of the Pro-
10 gram and issue a report to the appropriate committees
11 of Congress containing the results of such audit.

12 (d) REQUIRED CERTIFICATIONS.—

13 (1) ELIGIBLE INSTITUTION CERTIFICATION.—
14 Each eligible institution that participates in the Pro-
15 gram must certify that such institution is in compli-
16 ance with the requirements of section 103.121 of
17 title 31, Code of Federal Regulations, a regulation
18 that, at a minimum, requires financial institutions,
19 as that term is defined in 31 U.S.C. 5312(a)(2) and
20 (c)(1)(A), to implement reasonable procedures to
21 verify the identity of any person seeking to open an
22 account, to the extent reasonable and practicable,
23 maintain records of the information used to verify
24 the person’s identity, and determine whether the
25 person appears on any lists of known or suspected

1 terrorists or terrorist organizations provided to the
2 financial institution by any government agency.

3 (2) LOAN RECIPIENTS.—With respect to funds
4 received by an eligible institution under the Pro-
5 gram, any business receiving a loan from the eligible
6 institution using such funds after the date of the en-
7 actment of this Act shall certify to such eligible in-
8 stitution that the principals of such business have
9 not been convicted of a sex offense against a minor
10 (as such terms are defined in section 111 of the Sex
11 Offender Registration and Notification Act (42
12 U.S.C. 16911)).

13 (e) PROHIBITION ON PORNOGRAPHY.—None of the
14 funds made available under this subtitle may be used to
15 pay the salary of any individual engaged in activities re-
16 lated to the Program who has been officially disciplined
17 for violations of subpart G of the Standards of Ethical
18 Conduct for Employees of the Executive Branch for view-
19 ing, downloading, or exchanging pornography, including
20 child pornography, on a Federal Government computer or
21 while performing official Federal Government duties.

22 **SEC. 4108. CREDIT REFORM; FUNDING.**

23 (a) CREDIT REFORM.—The cost of purchases of pre-
24 ferred stock and other financial instruments made as cap-
25 ital investments under this subtitle shall be determined as

1 provided under the Federal Credit Reform Act of 1990
2 (2 U.S.C. 661 et seq.).

3 (b) FUNDS MADE AVAILABLE.—There are hereby ap-
4 propriated, out of funds in the Treasury not otherwise ap-
5 propriated, such sums as may be necessary to pay the
6 costs of \$30,000,000,000 of capital investments in eligible
7 institutions, including the costs of modifying such invest-
8 ments, and reasonable costs of administering the program
9 of making, holding, managing, and selling the capital in-
10 vestments.

11 **SEC. 4109. TERMINATION AND CONTINUATION OF AU-**
12 **THORITIES.**

13 (a) TERMINATION OF INVESTMENT AUTHORITY.—
14 The authority to make capital investments in eligible insti-
15 tutions, including commitments to purchase preferred
16 stock or other instruments, provided under this subtitle
17 shall terminate 1 year after the date of enactment of this
18 Act.

19 (b) CONTINUATION OF OTHER AUTHORITIES.—The
20 authorities of the Secretary under section 4104 shall not
21 be limited by the termination date in subsection (a).

22 **SEC. 4110. PRESERVATION OF AUTHORITY.**

23 Nothing in this subtitle may be construed to limit the
24 authority of the Secretary under any other provision of
25 law.

1 **SEC. 4111. ASSURANCES.**

2 (a) SMALL BUSINESS LENDING FUND SEPARATE
3 FROM TARP.—The Small Business Lending Fund Pro-
4 gram is established as separate and distinct from the
5 Troubled Asset Relief Program established by the Emer-
6 gency Economic Stabilization Act of 2008. An institution
7 shall not, by virtue of a capital investment under the Small
8 Business Lending Fund Program, be considered a recipi-
9 ent of the Troubled Asset Relief Program.

10 (b) CHANGE IN LAW.—If, after a capital investment
11 has been made in an eligible institution under the Pro-
12 gram, there is a change in law that modifies the terms
13 of the investment or program in a materially adverse re-
14 spect for the eligible institution, the eligible institution
15 may, after consultation with the appropriate Federal
16 banking agency for the eligible institution, repay the in-
17 vestment without impediment.

18 **SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-**
19 **OWNED, VETERAN-OWNED, AND MINORITY-**
20 **OWNED BUSINESSES.**

21 (a) STUDY.—The Secretary shall conduct a study of
22 the impact of the Program on women-owned businesses,
23 veteran-owned businesses, and minority-owned businesses.

24 (b) REPORT.—Not later than one year after the date
25 of enactment of this Act, the Secretary shall submit to
26 Congress a report on the results of the study conducted

1 pursuant to subsection (a). To the extent possible, the
2 Secretary shall disaggregate the results of such study by
3 ethnic group and gender.

4 (c) INFORMATION PROVIDED TO THE SECRETARY.—
5 Eligible institutions that participate in the Program shall
6 provide the Secretary with such information as the Sec-
7 retary may require to carry out the study required by this
8 section.

9 **SEC. 4113. SENSE OF CONGRESS.**

10 It is the sense of Congress that the Federal Deposit
11 Insurance Corporation and other bank regulators are
12 sending mixed messages to banks regarding regulatory
13 capital requirements and lending standards, which is a
14 contributing cause of decreased small business lending and
15 increased regulatory uncertainty at community banks.

16 **Subtitle B—Other Provisions**

17 **PART I—SMALL BUSINESS EXPORT PROMOTION**

18 **INITIATIVES**

19 **SEC. 4221. SHORT TITLE.**

20 This part may be cited as the “Export Promotion Act
21 of 2010”.

1 **SEC. 4222. GLOBAL BUSINESS DEVELOPMENT AND PRO-**
2 **MOTION ACTIVITIES OF THE DEPARTMENT**
3 **OF COMMERCE.**

4 (a) INCREASE IN EMPLOYEES WITH RESPONSIBILITY
5 FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION
6 ACTIVITIES.—

7 (1) IN GENERAL.—During the 24-month period
8 beginning on the date of the enactment of this Act,
9 the Secretary of Commerce shall increase the num-
10 ber of full-time departmental employees whose pri-
11 mary responsibilities involve promoting or facili-
12 tating participation by United States businesses in
13 the global marketplace and facilitating the entry
14 into, or expansion of, such participation by United
15 States businesses. In carrying out this subsection,
16 the Secretary shall ensure that—

17 (A) the cohort of such employees is in-
18 creased by not less than 80 persons; and

19 (B) a substantial portion of the increased
20 cohort is stationed outside the United States.

21 (2) ENHANCED FOCUS ON UNITED STATES
22 SMALL- AND MEDIUM-SIZED BUSINESSES.—In car-
23 rying out this subsection, the Secretary shall take
24 such action as may be necessary to ensure that the
25 activities of the Department of Commerce relating to
26 promoting and facilitating participation by United

1 States businesses in the global marketplace include
2 promoting and facilitating such participation by
3 small and medium-sized businesses in the United
4 States.

5 (3) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated to the Sec-
7 retary for each of the fiscal years 2011 and 2012
8 such sums as may be necessary to carry out this sec-
9 tion.

10 (b) ADDITIONAL FUNDING FOR GLOBAL BUSINESS
11 DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DE-
12 PARTMENT OF COMMERCE.—

13 (1) IN GENERAL.—There are authorized to be
14 appropriated to the Secretary of Commerce for the
15 period beginning on the date of the enactment of
16 this Act and ending 18 months thereafter,
17 \$30,000,000 to promote or facilitate participation by
18 United States businesses in the global marketplace
19 and facilitating the entry into, or expansion of, such
20 participation by United States businesses.

21 (2) REQUIREMENTS.—In obligating and ex-
22 pending the funds authorized to be appropriated by
23 paragraph (1), the Secretary of Commerce shall give
24 preference to activities that—

1 (A) assist small- and medium-sized busi-
2 nesses in the United States; and

3 (B) the Secretary determines will create or
4 sustain the greatest number of jobs in the
5 United States and obtain the maximum return
6 on investment.

7 **SEC. 4223. ADDITIONAL FUNDING TO IMPROVE ACCESS TO**
8 **GLOBAL MARKETS FOR RURAL BUSINESSES.**

9 (a) IN GENERAL.—There are authorized to be appro-
10 priated to the Secretary of Commerce \$5,000,000 for each
11 of the fiscal years 2011 and 2012 for improving access
12 to the global marketplace for goods and services provided
13 by rural businesses in the United States.

14 (b) REQUIREMENTS.—In obligating and expending
15 the funds authorized to be appropriated by subsection (a),
16 the Secretary of Commerce shall give preference to activi-
17 ties that—

18 (1) assist small- and medium-sized businesses
19 in the United States; and

20 (2) the Secretary determines will create or sus-
21 tain the greatest number of jobs in the United
22 States and obtain the maximum return on invest-
23 ment.

1 **SEC. 4224. ADDITIONAL FUNDING FOR THE EXPORTECH**
2 **PROGRAM.**

3 (a) IN GENERAL.—There are authorized to be appro-
4 priated to the Secretary of Commerce \$11,000,000 for the
5 period beginning on the date of the enactment of this Act
6 and ending 18 months thereafter, to expand ExporTech,
7 a joint program of the Hollings Manufacturing Partner-
8 ship Program and the Export Assistance Centers of the
9 Department of Commerce.

10 (b) REQUIREMENTS.—In obligating and expending
11 the funds authorized to be appropriated by subsection (a),
12 the Secretary of Commerce shall give preference to activi-
13 ties that—

14 (1) assist small- and medium-sized businesses
15 in the United States; and

16 (2) the Secretary determines will create or sus-
17 tain the greatest number of jobs in the United
18 States and obtain the maximum return on invest-
19 ment.

20 **SEC. 4225. ADDITIONAL FUNDING FOR THE MARKET DE-**
21 **VELOPMENT COOPERATOR PROGRAM OF**
22 **THE DEPARTMENT OF COMMERCE.**

23 (a) IN GENERAL.—There are authorized to be appro-
24 priated to the Secretary of Commerce for the period begin-
25 ning on the date of the enactment of this Act and ending
26 18 months thereafter, \$15,000,000 for the Manufacturing

1 and Services unit of the International Trade Administra-
2 tion—

3 (1) to establish public-private partnerships
4 under the Market Development Cooperator Program
5 of the International Trade Administration; and

6 (2) to underwrite a portion of the start-up costs
7 for new projects carried out under that Program to
8 strengthen the competitiveness and market share of
9 United States industry, not to exceed, for each such
10 project, the lesser of—

11 (A) $\frac{1}{3}$ of the total start-up costs for the
12 project; or

13 (B) \$500,000.

14 (b) REQUIREMENTS.—In obligating and expending
15 the funds authorized to be appropriated by subsection (a),
16 the Secretary of Commerce shall give preference to activi-
17 ties that—

18 (1) assist small- and medium-sized businesses
19 in the United States; and

20 (2) the Secretary determines will create or sus-
21 tain the greatest number of jobs in the United
22 States and obtain the maximum return on invest-
23 ment.

1 **SEC. 4226. HOLLINGS MANUFACTURING PARTNERSHIP**
2 **PROGRAM; TECHNOLOGY INNOVATION PRO-**
3 **GRAM.**

4 (a) HOLLINGS MANUFACTURING PARTNERSHIP PRO-
5 GRAM.—Section 25(f) of the National Institute of Stand-
6 ards and Technology Act (15 U.S.C. 278k(f)) is amended
7 by adding at the end the following:

8 “(7) GLOBAL MARKETPLACE PROJECTS.—In
9 making awards under this subsection, the Director,
10 in consultation with the Manufacturing Extension
11 Partnership Advisory Board and the Secretary of
12 Commerce, may—

13 “(A) take into consideration whether an
14 application has significant potential for enhanc-
15 ing the competitiveness of small and medium-
16 sized United States manufacturers in the global
17 marketplace; and

18 “(B) give a preference to applications for
19 such projects to the extent the Director deems
20 appropriate, taking into account the broader
21 purposes of this subsection.”.

22 (b) TECHNOLOGY INNOVATION PROGRAM.—In
23 awarding grants, cooperative agreements, or contracts
24 under section 28 of the National Institute of Standards
25 and Technology Act (15 U.S.C. 278n), in addition to the
26 award criteria set forth in subsection (c) of that section,

1 the Director of the National Institute of Standards and
2 Technology may take into consideration whether an appli-
3 cation has significant potential for enhancing the competi-
4 tiveness of small- and medium-sized businesses in the
5 United States in the global marketplace. The Director
6 shall consult with the Technology Innovation Program Ad-
7 visory Board and the Secretary of Commerce in imple-
8 menting this subsection.

9 **SEC. 4227. SENSE OF THE SENATE CONCERNING FEDERAL**
10 **COLLABORATION WITH STATES ON EXPORT**
11 **PROMOTION ISSUES.**

12 It is the sense of the Senate that the Secretary of
13 Commerce should enhance Federal collaboration with the
14 States on export promotion issues by—

15 (1) providing the necessary training to the staff
16 at State international trade agencies to enable them
17 to assist the United States and Foreign Commercial
18 Service (established by section 2301 of the Export
19 Enhancement Act of 1988 (15 U.S.C. 4721)) in pro-
20 viding counseling and other export services to busi-
21 nesses in their communities; and

22 (2) entering into agreements with State inter-
23 national trade agencies for those agencies to deliver
24 export promotion services in their local communities

1 in order to extend the outreach of United States and
2 Foreign Commercial Service programs.

3 **SEC. 4228. REPORT ON TARIFF AND NONTARIFF BARRIERS.**

4 Not later than 90 days after the date of the enact-
5 ment of this Act, the Secretary of Commerce, in consulta-
6 tion with the United States Trade Representative and
7 other appropriate entities, shall report to Congress on the
8 tariff and nontariff barriers imposed by Colombia, the Re-
9 public of Korea, and Panama with respect to exports of
10 articles from the United States, including articles exported
11 or produced by small- and medium-sized businesses in the
12 United States.

13 **PART II—MEDICARE FRAUD**

14 **SEC. 4241. USE OF PREDICTIVE MODELING AND OTHER**
15 **ANALYTICS TECHNOLOGIES TO IDENTIFY**
16 **AND PREVENT WASTE, FRAUD, AND ABUSE IN**
17 **THE MEDICARE FEE-FOR-SERVICE PROGRAM.**

18 (a) USE IN THE MEDICARE FEE-FOR-SERVICE PRO-
19 GRAM.—The Secretary shall use predictive modeling and
20 other analytics technologies (in this section referred to as
21 “predictive analytics technologies”) to identify improper
22 claims for reimbursement and to prevent the payment of
23 such claims under the Medicare fee-for-service program.

1 (b) PREDICTIVE ANALYTICS TECHNOLOGIES RE-
2 QUIREMENTS.—The predictive analytics technologies used
3 by the Secretary shall—

4 (1) capture Medicare provider and Medicare
5 beneficiary activities across the Medicare fee-for-
6 service program to provide a comprehensive view
7 across all providers, beneficiaries, and geographies
8 within such program in order to—

9 (A) identify and analyze Medicare provider
10 networks, provider billing patterns, and bene-
11 ficiary utilization patterns; and

12 (B) identify and detect any such patterns
13 and networks that represent a high risk of
14 fraudulent activity;

15 (2) be integrated into the existing Medicare fee-
16 for-service program claims flow with minimal effort
17 and maximum efficiency;

18 (3) be able to—

19 (A) analyze large data sets for unusual or
20 suspicious patterns or anomalies or contain
21 other factors that are linked to the occurrence
22 of waste, fraud, or abuse;

23 (B) undertake such analysis before pay-
24 ment is made; and

1 (C) prioritize such identified transactions
2 for additional review before payment is made in
3 terms of the likelihood of potential waste, fraud,
4 and abuse to more efficiently utilize investiga-
5 tive resources;

6 (4) capture outcome information on adjudicated
7 claims for reimbursement to allow for refinement
8 and enhancement of the predictive analytics tech-
9 nologies on the basis of such outcome information,
10 including post-payment information about the even-
11 tual status of a claim; and

12 (5) prevent the payment of claims for reim-
13 bursement that have been identified as potentially
14 wasteful, fraudulent, or abusive until such time as
15 the claims have been verified as valid.

16 (c) IMPLEMENTATION REQUIREMENTS.—

17 (1) REQUEST FOR PROPOSALS.—Not later than
18 January 1, 2011, the Secretary shall issue a request
19 for proposals to carry out this section during the
20 first year of implementation. To the extent the Sec-
21 retary determines appropriate—

22 (A) the initial request for proposals may
23 include subsequent implementation years; and

1 (B) the Secretary may issue additional re-
2 quests for proposals with respect to subsequent
3 implementation years.

4 (2) FIRST IMPLEMENTATION YEAR.—The initial
5 request for proposals issued under paragraph (1)
6 shall require the contractors selected to commence
7 using predictive analytics technologies on July 1,
8 2011, in the 10 States identified by the Secretary as
9 having the highest risk of waste, fraud, or abuse in
10 the Medicare fee-for-service program.

11 (3) SECOND IMPLEMENTATION YEAR.—Based
12 on the results of the report and recommendation re-
13 quired under subsection (e)(1)(B), the Secretary
14 shall expand the use of predictive analytics tech-
15 nologies on October 1, 2012, to apply to an addi-
16 tional 10 States identified by the Secretary as hav-
17 ing the highest risk of waste, fraud, or abuse in the
18 Medicare fee-for-service program, after the States
19 identified under paragraph (2).

20 (4) THIRD IMPLEMENTATION YEAR.—Based on
21 the results of the report and recommendation re-
22 quired under subsection (e)(2), the Secretary shall
23 expand the use of predictive analytics technologies
24 on January 1, 2014, to apply to the Medicare fee-
25 for-service program in any State not identified under

1 paragraph (2) or (3) and the commonwealths and
2 territories.

3 (5) FOURTH IMPLEMENTATION YEAR.—Based
4 on the results of the report and recommendation re-
5 quired under subsection (e)(3), the Secretary shall
6 expand the use of predictive analytics technologies,
7 beginning April 1, 2015, to apply to Medicaid and
8 CHIP. To the extent the Secretary determines ap-
9 propriate, such expansion may be made on a phased-
10 in basis.

11 (6) OPTION FOR REFINEMENT AND EVALUA-
12 TION.—If, with respect to the first, second, or third
13 implementation year, the Inspector General of the
14 Department of Health and Human Services certifies
15 as part of the report required under subsection (e)
16 for that year no or only nominal actual savings to
17 the Medicare fee-for-service program, the Secretary
18 may impose a moratorium, not to exceed 12 months,
19 on the expansion of the use of predictive analytics
20 technologies under this section for the succeeding
21 year in order to refine the use of predictive analytics
22 technologies to achieve more than nominal savings
23 before further expansion. If a moratorium is im-
24 posed in accordance with this paragraph, the imple-
25 mentation dates applicable for the succeeding year

1 or years shall be adjusted to reflect the length of the
2 moratorium period.

3 (d) CONTRACTOR SELECTION, QUALIFICATIONS, AND
4 DATA ACCESS REQUIREMENTS.—

5 (1) SELECTION.—

6 (A) IN GENERAL.—The Secretary shall se-
7 lect contractors to carry out this section using
8 competitive procedures as provided for in the
9 Federal Acquisition Regulation.

10 (B) NUMBER OF CONTRACTORS.—The Sec-
11 retary shall select at least 2 contractors to
12 carry out this section with respect to any year.

13 (2) QUALIFICATIONS.—

14 (A) IN GENERAL.—The Secretary shall
15 enter into a contract under this section with an
16 entity only if the entity—

17 (i) has leadership and staff who—

18 (I) have the appropriate clinical
19 knowledge of, and experience with, the
20 payment rules and regulations under
21 the Medicare fee-for-service program;
22 and

23 (II) have direct management ex-
24 perience and proficiency utilizing pre-
25 dictive analytics technologies nec-

1 essary to carry out the requirements
2 under subsection (b); or
3 (ii) has a contract, or will enter into
4 a contract, with another entity that has
5 leadership and staff meeting the criteria
6 described in clause (i).

7 (B) CONFLICT OF INTEREST.—The Sec-
8 retary may only enter into a contract under this
9 section with an entity to the extent that the en-
10 tity complies with such conflict of interest
11 standards as are generally applicable to Federal
12 acquisition and procurement.

13 (3) DATA ACCESS.—The Secretary shall provide
14 entities with a contract under this section with ap-
15 propriate access to data necessary for the entity to
16 use predictive analytics technologies in accordance
17 with the contract.

18 (e) REPORTING REQUIREMENTS.—

19 (1) FIRST IMPLEMENTATION YEAR REPORT.—
20 Not later than 3 months after the completion of the
21 first implementation year under this section, the
22 Secretary shall submit to the appropriate committees
23 of Congress and make available to the public a re-
24 port that includes the following:

1 (A) A description of the implementation of
2 the use of predictive analytics technologies dur-
3 ing the year.

4 (B) A certification of the Inspector Gen-
5 eral of the Department of Health and Human
6 Services that—

7 (i) specifies the actual and projected
8 savings to the Medicare fee-for-service pro-
9 gram as a result of the use of predictive
10 analytics technologies, including estimates
11 of the amounts of such savings with re-
12 spect to both improper payments recovered
13 and improper payments avoided;

14 (ii) the actual and projected savings
15 to the Medicare fee-for-service program as
16 a result of such use of predictive analytics
17 technologies relative to the return on in-
18 vestment for the use of such technologies
19 and in comparison to other strategies or
20 technologies used to prevent and detect
21 fraud, waste, and abuse in the Medicare
22 fee-for-service program; and

23 (iii) includes recommendations regard-
24 ing—

1 (I) whether the Secretary should
2 continue to use predictive analytics
3 technologies;

4 (II) whether the use of such tech-
5 nologies should be expanded in ac-
6 cordance with the requirements of
7 subsection (c); and

8 (III) any modifications or refine-
9 ments that should be made to increase
10 the amount of actual or projected sav-
11 ings or mitigate any adverse impact
12 on Medicare beneficiaries or providers.

13 (C) An analysis of the extent to which the
14 use of predictive analytics technologies success-
15 fully prevented and detected waste, fraud, or
16 abuse in the Medicare fee-for-service program.

17 (D) A review of whether the predictive
18 analytics technologies affected access to, or the
19 quality of, items and services furnished to Medi-
20 care beneficiaries.

21 (E) A review of what effect, if any, the use
22 of predictive analytics technologies had on
23 Medicare providers.

24 (F) Any other items determined appro-
25 priate by the Secretary.

1 (2) SECOND YEAR IMPLEMENTATION RE-
2 PORT.—Not later than 3 months after the comple-
3 tion of the second implementation year under this
4 section, the Secretary shall submit to the appro-
5 priate committees of Congress and make available to
6 the public a report that includes, with respect to
7 such year, the items required under paragraph (1)
8 as well as any other additional items determined ap-
9 propriate by the Secretary with respect to the report
10 for such year.

11 (3) THIRD YEAR IMPLEMENTATION REPORT.—
12 Not later than 3 months after the completion of the
13 third implementation year under this section, the
14 Secretary shall submit to the appropriate committees
15 of Congress, and make available to the public, a re-
16 port that includes with respect to such year, the
17 items required under paragraph (1), as well as any
18 other additional items determined appropriate by the
19 Secretary with respect to the report for such year,
20 and the following:

21 (A) An analysis of the cost-effectiveness
22 and feasibility of expanding the use of pre-
23 dictive analytics technologies to Medicaid and
24 CHIP.

1 (B) An analysis of the effect, if any, the
2 application of predictive analytics technologies
3 to claims under Medicaid and CHIP would have
4 on States and the commonwealths and terri-
5 tories.

6 (C) Recommendations regarding the extent
7 to which technical assistance may be necessary
8 to expand the application of predictive analytics
9 technologies to claims under Medicaid and
10 CHIP, and the type of any such assistance.

11 (f) INDEPENDENT EVALUATION AND REPORT.—

12 (1) EVALUATION.—Upon completion of the first
13 year in which predictive analytics technologies are
14 used with respect to claims under Medicaid and
15 CHIP, the Secretary shall, by grant, contract, or
16 interagency agreement, conduct an independent eval-
17 uation of the use of predictive analytics technologies
18 under the Medicare fee-for-service program and
19 Medicaid and CHIP. The evaluation shall include an
20 analysis with respect to each such program of the
21 items required for the third year implementation re-
22 port under subsection (e)(3).

23 (2) REPORT.—Not later than 18 months after
24 the evaluation required under paragraph (1) is initi-
25 ated, the Secretary shall submit a report to Con-

1 gress on the evaluation that shall include the results
2 of the evaluation, the Secretary's response to such
3 results and, to the extent the Secretary determines
4 appropriate, recommendations for legislation or ad-
5 ministrative actions.

6 (g) WAIVER AUTHORITY.—The Secretary may waive
7 such provisions of titles XI, XVIII, XIX, and XXI of the
8 Social Security Act, including applicable prompt payment
9 requirements under titles XVIII and XIX of such Act, as
10 the Secretary determines to be appropriate to carry out
11 this section.

12 (h) FUNDING.—

13 (1) APPROPRIATION.—Out of any funds in the
14 Treasury not otherwise appropriated, there is appro-
15 priated to the Secretary to carry out this section,
16 \$100,000,000 for the period beginning January 1,
17 2011, to remain available until expended.

18 (2) RESERVATIONS.—

19 (A) INDEPENDENT EVALUATION.—The
20 Secretary shall reserve not more than 5 percent
21 of the funds appropriated under paragraph (1)
22 for purposes of conducting the independent
23 evaluation required under subsection (f).

24 (B) APPLICATION TO MEDICAID AND
25 CHIP.—The Secretary shall reserve such portion

1 of the funds appropriated under paragraph (1)
2 as the Secretary determines appropriate for
3 purposes of providing assistance to States for
4 administrative expenses in the event of the ex-
5 pansion of predictive analytics technologies to
6 claims under Medicaid and CHIP.

7 (i) DEFINITIONS.—In this section:

8 (1) COMMONWEALTHS AND TERRITORIES.—The
9 term “commonwealth and territories” includes the
10 Commonwealth of Puerto Rico, the Virgin Islands,
11 Guam, American Samoa, the Commonwealth of the
12 Northern Mariana Islands, and any other territory
13 or possession of the United States in which the
14 Medicare fee-for-service program, Medicaid, or
15 CHIP operates.

16 (2) CHIP.—The term “CHIP” means the Chil-
17 dren’s Health Insurance Program established under
18 title XXI of the Social Security Act (42 U.S.C.
19 1397aa et seq.).

20 (3) MEDICAID.—The term “Medicaid” means
21 the program to provide grants to States for medical
22 assistance programs established under title XIX of
23 the Social Security Act (42 U.S.C. 1396 et seq.).

1 (4) MEDICARE BENEFICIARY.—The term
2 “Medicare beneficiary” means an individual enrolled
3 in the Medicare fee-for-service program.

4 (5) MEDICARE FEE-FOR-SERVICE PROGRAM.—
5 The term “Medicare fee-for-service program” means
6 the original medicare fee-for-service program under
7 parts A and B of title XVIII of the Social Security
8 Act (42 U.S.C. 1395 et seq.).

9 (6) MEDICARE PROVIDER.—The term “Medi-
10 care provider” means a provider of services (as de-
11 fined in subsection (u) of section 1861 of the Social
12 Security Act (42 U.S.C. 1395x)) and a supplier (as
13 defined in subsection (d) of such section).

14 (7) SECRETARY.—The term “Secretary” means
15 the Secretary of Health and Human Services, acting
16 through the Administrator of the Centers for Medi-
17 care & Medicaid Services.

18 (8) STATE.—The term “State” means each of
19 the 50 States and the District of Columbia.

20 **TITLE V—BUDGETARY**
21 **PROVISIONS**

22 **SEC. 5001. DETERMINATION OF BUDGETARY EFFECTS.**

23 The budgetary effects of this Act, for the purpose of
24 complying with the Statutory Pay-As-You-Go-Act of 2010,
25 shall be determined by reference to the latest statement

1 titled “Budgetary Effects of PAYGO Legislation” for this
2 Act, submitted for printing in the Congressional Record
3 by the Chairman of the Senate Budget Committee, pro-
4 vided that such statement has been submitted prior to the
5 vote on passage.