

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 598
OFFERED BY MR. RANGEL OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 **TITLE I—TAX PROVISIONS**

2 **SECTION 1000. SHORT TITLE, ETC.**

3 (a) **SHORT TITLE.**—This title may be cited as the
4 “American Recovery and Reinvestment Tax Act of 2009”.

5 (b) **REFERENCE.**—Except as otherwise expressly pro-
6 vided, whenever in this title an amendment or repeal is
7 expressed in terms of an amendment to, or repeal of, a
8 section or other provision, the reference shall be consid-
9 ered to be made to a section or other provision of the In-
10 ternal Revenue Code of 1986.

11 (c) **TABLE OF CONTENTS.**—The table of contents for
12 this title is as follows:

Sec. 1000. Short title, etc.

Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Increase in earned income tax credit.

Sec. 1102. Increase of refundable portion of child credit.

Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

Subtitle D—Housing Incentives

- Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.
- Sec. 1302. Coordination of low-income housing credit and low-income housing grants.

Subtitle E—Tax Incentives for Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

- Sec. 1401. Special allowance for certain property acquired during 2009.
- Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

- Sec. 1411. 5-year carryback of operating losses.
- Sec. 1412. Exception for TARP recipients.

PART 3—INCENTIVES FOR NEW JOBS

- Sec. 1421. Incentives to hire unemployed veterans and disconnected youth.

PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

- Sec. 1431. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

- Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
- Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
- Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

- Sec. 1511. Qualified school construction bonds.
- Sec. 1512. Extension and expansion of qualified zone academy bonds.

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

- Sec. 1521. Taxable bond option for governmental bonds.

PART 4—RECOVERY ZONE BONDS

- Sec. 1531. Recovery zone bonds.
- Sec. 1532. Tribal economic development bonds.

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

- Sec. 1541. Repeal of withholding tax on government contractors.

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

- Sec. 1601. Extension of credit for electricity produced from certain renewable resources.
- Sec. 1602. Election of investment credit in lieu of production credit.
- Sec. 1603. Repeal of certain limitations on credit for renewable energy property.
- Sec. 1604. Coordination with renewable energy grants.

PART 2—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

- Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.
- Sec. 1612. Increased limitation and expansion of qualified energy conservation bonds.

PART 3—ENERGY CONSERVATION INCENTIVES

- Sec. 1621. Extension and modification of credit for nonbusiness energy property.
- Sec. 1622. Modification of credit for residential energy efficient property.
- Sec. 1623. Temporary increase in credit for alternative fuel vehicle refueling property.

PART 4—ENERGY RESEARCH INCENTIVES

- Sec. 1631. Increased research credit for energy research.

Subtitle H—Other Provisions

PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

- Sec. 1701. Application of certain labor standards to projects financed with certain tax-favored bonds.

PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING

- Sec. 1711. Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009.

PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

- Sec. 1721. Grants for specified energy property in lieu of tax credits.

1 **Subtitle A—Making Work Pay**

2 **SEC. 1001. MAKING WORK PAY CREDIT.**

- 3 (a) IN GENERAL.—Subpart C of part IV of sub-
- 4 chapter A of chapter 1 is amended by inserting after sec-
- 5 tion 36 the following new section:

1 **“SEC. 36A. MAKING WORK PAY CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
3 gible individual, there shall be allowed as a credit against
4 the tax imposed by this subtitle for the taxable year an
5 amount equal to the lesser of—

6 “(1) 6.2 percent of earned income of the tax-
7 payer, or

8 “(2) \$500 (\$1,000 in the case of a joint re-
9 turn).

10 “(b) LIMITATION BASED ON MODIFIED ADJUSTED
11 GROSS INCOME.—

12 “(1) IN GENERAL.—The amount allowable as a
13 credit under subsection (a) (determined without re-
14 gard to this paragraph) for the taxable year shall be
15 reduced (but not below zero) by 2 percent of so
16 much of the taxpayer’s modified adjusted gross in-
17 come as exceeds \$75,000 (\$150,000 in the case of
18 a joint return).

19 “(2) MODIFIED ADJUSTED GROSS INCOME.—
20 For purposes of subparagraph (A), the term ‘modi-
21 fied adjusted gross income’ means the adjusted
22 gross income of the taxpayer for the taxable year in-
23 creased by any amount excluded from gross income
24 under section 911, 931, or 933.

25 “(c) DEFINITIONS.—For purposes of this section—

1 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
2 individual’ means any individual other than—

3 “(A) any nonresident alien individual,

4 “(B) any individual with respect to whom
5 a deduction under section 151 is allowable to
6 another taxpayer for a taxable year beginning
7 in the calendar year in which the individual’s
8 taxable year begins, and

9 “(C) an estate or trust.

10 “(2) EARNED INCOME.—The term ‘earned in-
11 come’ has the meaning given such term by section
12 32(c)(2), except that such term shall not include net
13 earnings from self-employment which are not taken
14 into account in computing taxable income. For pur-
15 poses of the preceding sentence, any amount ex-
16 cluded from gross income by reason of section 112
17 shall be treated as earned income which is taken
18 into account in computing taxable income for the
19 taxable year.

20 “(d) TERMINATION.—This section shall not apply to
21 taxable years beginning after December 31, 2010.”.

22 (b) TREATMENT OF POSSESSIONS.—

23 (1) PAYMENTS TO POSSESSIONS.—

24 (A) MIRROR CODE POSSESSION.—The Sec-
25 retary of the Treasury shall pay to each posses-

1 sion of the United States with a mirror code
2 tax system amounts equal to the loss to that
3 possession by reason of the amendments made
4 by this section with respect to taxable years be-
5 ginning in 2009 and 2010. Such amounts shall
6 be determined by the Secretary of the Treasury
7 based on information provided by the govern-
8 ment of the respective possession.

9 (B) OTHER POSSESSIONS.—The Secretary
10 of the Treasury shall pay to each possession of
11 the United States which does not have a mirror
12 code tax system amounts estimated by the Sec-
13 retary of the Treasury as being equal to the ag-
14 gregate benefits that would have been provided
15 to residents of such possession by reason of the
16 amendments made by this section for taxable
17 years beginning in 2009 and 2010 if a mirror
18 code tax system had been in effect in such pos-
19 session. The preceding sentence shall not apply
20 with respect to any possession of the United
21 States unless such possession has a plan, which
22 has been approved by the Secretary of the
23 Treasury, under which such possession will
24 promptly distribute such payments to the resi-
25 dents of such possession.

1 (2) COORDINATION WITH CREDIT ALLOWED
2 AGAINST UNITED STATES INCOME TAXES.—No cred-
3 it shall be allowed against United States income
4 taxes for any taxable year under section 36A of the
5 Internal Revenue Code of 1986 (as added by this
6 section) to any person—

7 (A) to whom a credit is allowed against
8 taxes imposed by the possession by reason of
9 the amendments made by this section for such
10 taxable year, or

11 (B) who is eligible for a payment under a
12 plan described in paragraph (1)(B) with respect
13 to such taxable year.

14 (3) DEFINITIONS AND SPECIAL RULES.—

15 (A) POSSESSION OF THE UNITED
16 STATES.—For purposes of this subsection, the
17 term “possession of the United States” includes
18 the Commonwealth of Puerto Rico and the
19 Commonwealth of the Northern Mariana Is-
20 lands.

21 (B) MIRROR CODE TAX SYSTEM.—For pur-
22 poses of this subsection, the term “mirror code
23 tax system” means, with respect to any posses-
24 sion of the United States, the income tax sys-
25 tem of such possession if the income tax liabil-

1 ity of the residents of such possession under
2 such system is determined by reference to the
3 income tax laws of the United States as if such
4 possession were the United States.

5 (C) TREATMENT OF PAYMENTS.—For pur-
6 poses of section 1324(b)(2) of title 31, United
7 States Code, the payments under this sub-
8 section shall be treated in the same manner as
9 a refund due from the credit allowed under sec-
10 tion 36A of the Internal Revenue Code of 1986
11 (as added by this section).

12 (c) REFUNDS DISREGARDED IN THE ADMINISTRA-
13 TION OF FEDERAL PROGRAMS AND FEDERALLY AS-
14 SISTED PROGRAMS.—Any credit or refund allowed or
15 made to any individual by reason of section 36A of the
16 Internal Revenue Code of 1986 (as added by this section)
17 or by reason of subsection (b) of this section shall not be
18 taken into account as income and shall not be taken into
19 account as resources for the month of receipt and the fol-
20 lowing 2 months, for purposes of determining the eligi-
21 bility of such individual or any other individual for benefits
22 or assistance, or the amount or extent of benefits or assist-
23 ance, under any Federal program or under any State or
24 local program financed in whole or in part with Federal
25 funds.

1 (d) CONFORMING AMENDMENTS.—

2 (1) Section 6211(b)(4)(A) is amended by insert-
3 ing “36A,” after “36,”.

4 (2) Section 1324(b)(2) of title 31, United
5 States Code, is amended by inserting “36A,” after
6 “36,”.

7 (3) The table of sections for subpart C of part
8 IV of subchapter A of chapter 1 is amended by in-
9 serting after the item relating to section 36 the fol-
10 lowing new item:

“Sec. 36A. Making work pay credit.”.

11 (e) EFFECTIVE DATE.—This section shall apply to
12 taxable years beginning after December 31, 2008.

13 **Subtitle B—Additional Tax Relief**
14 **for Families With Children**

15 **SEC. 1101. INCREASE IN EARNED INCOME TAX CREDIT.**

16 (a) IN GENERAL.—Subsection (b) of section 32 is
17 amended by adding at the end the following new para-
18 graph:

19 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
20 the case of any taxable year beginning in 2009 or
21 2010—

22 “(A) INCREASED CREDIT PERCENTAGE
23 FOR 3 OR MORE QUALIFYING CHILDREN.—In
24 the case of a taxpayer with 3 or more qualifying
25 children, the credit percentage is 45 percent.

1 “(B) REDUCTION OF MARRIAGE PEN-
2 ALTY.—

3 “(i) IN GENERAL.—The dollar amount
4 in effect under paragraph (2)(B) shall be
5 \$5,000.

6 “(ii) INFLATION ADJUSTMENT.—In
7 the case of any taxable year beginning in
8 2010, the \$5,000 amount in clause (i)
9 shall be increased by an amount equal to—

10 “(I) such dollar amount, multi-
11 plied by

12 “(II) the cost of living adjust-
13 ment determined under section 1(f)(3)
14 for the calendar year in which the tax-
15 able year begins determined by sub-
16 stituting ‘calendar year 2008’ for ‘cal-
17 endar year 1992’ in subparagraph (B)
18 thereof.

19 “(iii) ROUNDING.—Subparagraph (A)
20 of subsection (j)(2) shall apply after taking
21 into account any increase under clause
22 (ii).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2008.

1 **SEC. 1102. INCREASE OF REFUNDABLE PORTION OF CHILD**
2 **CREDIT.**

3 (a) **IN GENERAL.**—Paragraph (4) of section 24(d) is
4 amended to read as follows:

5 “(4) **SPECIAL RULE FOR 2009 AND 2010.**—Not-
6 withstanding paragraph (3), in the case of any tax-
7 able year beginning in 2009 or 2010, the dollar
8 amount in effect for such taxable year under para-
9 graph (1)(B)(i) shall be zero.”.

10 (b) **EFFECTIVE DATE.**—The amendments made by
11 this section shall apply to taxable years beginning after
12 December 31, 2008.

13 **Subtitle C—American Opportunity**
14 **Tax Credit**

15 **SEC. 1201. AMERICAN OPPORTUNITY TAX CREDIT.**

16 (a) **IN GENERAL.**—Section 25A (relating to Hope
17 scholarship credit) is amended by redesignating subsection
18 (i) as subsection (j) and by inserting after subsection (h)
19 the following new subsection:

20 “(i) **AMERICAN OPPORTUNITY TAX CREDIT.**—In the
21 case of any taxable year beginning in 2009 or 2010—

22 “(1) **INCREASE IN CREDIT.**—The Hope Scholar-
23 ship Credit shall be an amount equal to the sum
24 of—

25 “(A) 100 percent of so much of the quali-
26 fied tuition and related expenses paid by the

1 taxpayer during the taxable year (for education
2 furnished to the eligible student during any
3 academic period beginning in such taxable year)
4 as does not exceed \$2,000, plus

5 “(B) 25 percent of such expenses so paid
6 as exceeds \$2,000 but does not exceed \$4,000.

7 “(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF
8 POST-SECONDARY EDUCATION.—Subparagraphs (A)
9 and (C) of subsection (b)(2) shall be applied by sub-
10 stituting ‘4’ for ‘2’.

11 “(3) QUALIFIED TUITION AND RELATED EX-
12 PENSES TO INCLUDE REQUIRED COURSE MATE-
13 RIALS.—Subsection (f)(1)(A) shall be applied by
14 substituting ‘tuition, fees, and course materials’ for
15 ‘tuition and fees’.

16 “(4) INCREASE IN AGI LIMITS FOR HOPE
17 SCHOLARSHIP CREDIT.—In lieu of applying sub-
18 section (d) with respect to the Hope Scholarship
19 Credit, such credit (determined without regard to
20 this paragraph) shall be reduced (but not below
21 zero) by the amount which bears the same ratio to
22 such credit (as so determined) as—

23 “(A) the excess of—

1 “(i) the taxpayer’s modified adjusted
2 gross income (as defined in subsection
3 (d)(3)) for such taxable year, over

4 “(ii) \$80,000 (\$160,000 in the case of
5 a joint return), bears to

6 “(B) \$10,000 (\$20,000 in the case of a
7 joint return).

8 “(5) CREDIT ALLOWED AGAINST ALTERNATIVE
9 MINIMUM TAX.—In the case of a taxable year to
10 which section 26(a)(2) does not apply, so much of
11 the credit allowed under subsection (a) as is attrib-
12 utable to the Hope Scholarship Credit shall not ex-
13 ceed the excess of—

14 “(A) the sum of the regular tax liability
15 (as defined in section 26(b)) plus the tax im-
16 posed by section 55, over

17 “(B) the sum of the credits allowable
18 under this subpart (other than this subsection
19 and sections 23, 25D, and 30D) and section 27
20 for the taxable year.

21 Any reference in this section or section 24, 25, 26,
22 25B, 904, or 1400C to a credit allowable under this
23 subsection shall be treated as a reference to so much
24 of the credit allowable under subsection (a) as is at-
25 tributable to the Hope Scholarship Credit.

1 “(6) PORTION OF CREDIT MADE REFUND-
2 ABLE.—40 percent of so much of the credit allowed
3 under subsection (a) as is attributable to the Hope
4 Scholarship Credit (determined after application of
5 paragraph (4) and without regard to this paragraph
6 and section 26(a)(2) or paragraph (5), as the case
7 may be) shall be treated as a credit allowable under
8 subpart C (and not allowed under subsection (a)).
9 The preceding sentence shall not apply to any tax-
10 payer for any taxable year if such taxpayer is a child
11 to whom subsection (g) of section 1 applies for such
12 taxable year.

13 “(7) COORDINATION WITH MIDWESTERN DIS-
14 ASTER AREA BENEFITS.—In the case of a taxpayer
15 with respect to whom section 702(a)(1)(B) of the
16 Heartland Disaster Tax Relief Act of 2008 applies
17 for any taxable year, such taxpayer may elect to
18 waive the application of this subsection to such tax-
19 payer for such taxable year.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 24(b)(3)(B) is amended by inserting
22 “25A(i),” after “23,”.

23 (2) Section 25(e)(1)(C)(ii) is amended by in-
24 serting “25A(i),” after “24,”.

1 (3) Section 26(a)(1) is amended by inserting
2 “25A(i),” after “24,”.

3 (4) Section 25B(g)(2) is amended by inserting
4 “25A(i),” after “23,”.

5 (5) Section 904(i) is amended by inserting
6 “25A(i),” after “24,”.

7 (6) Section 1400C(d)(2) is amended by insert-
8 ing “25A(i),” after “24,”.

9 (7) Section 1324(b)(2) of title 31, United
10 States Code, is amended by inserting “25A,” before
11 “35”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 (d) APPLICATION OF EGTRRA SUNSET.—The
16 amendment made by subsection (b)(1) shall be subject to
17 title IX of the Economic Growth and Tax Relief Reconcili-
18 ation Act of 2001 in the same manner as the provision
19 of such Act to which such amendment relates.

20 (e) TREASURY STUDIES REGARDING EDUCATION IN-
21 CENTIVES.—

22 (1) STUDY REGARDING COORDINATION WITH
23 NON-TAX EDUCATIONAL INCENTIVES.—The Sec-
24 retary of the Treasury, or the Secretary’s delegate,
25 shall study how to coordinate the credit allowed

1 under section 25A of the Internal Revenue Code of
2 1986 with the Federal Pell Grant program under
3 section 401 of the Higher Education Act of 1965.

4 (2) STUDY REGARDING IMPOSITION OF COMMU-
5 NITY SERVICE REQUIREMENTS.—The Secretary of
6 the Treasury, or the Secretary’s delegate, shall study
7 the feasibility of requiring students to perform com-
8 munity service as a condition of taking their tuition
9 and related expenses into account under section 25A
10 of the Internal Revenue Code of 1986.

11 (3) REPORT.—Not later than 1 year after the
12 date of the enactment of this Act, the Secretary of
13 the Treasury, or the Secretary’s delegate, shall re-
14 port to Congress on the results of the studies con-
15 ducted under this paragraph.

16 **Subtitle D—Housing Incentives**

17 **SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-** 18 **TIME HOMEBUYER CREDIT.**

19 (a) IN GENERAL.—Paragraph (4) of section 36(f) is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(D) WAIVER OF RECAPTURE FOR PUR-
23 CHASES IN 2009.—In the case of any credit al-
24 lowed with respect to the purchase of a prin-

1 cipal residence after December 31, 2008, and
2 before July 1, 2009—

3 “(i) paragraph (1) shall not apply,
4 and

5 “(ii) paragraph (2) shall apply only if
6 the disposition or cessation described in
7 paragraph (2) with respect to such resi-
8 dence occurs during the 36-month period
9 beginning on the date of the purchase of
10 such residence by the taxpayer.”.

11 (b) CONFORMING AMENDMENT.—Subsection (g) of
12 section 36 is amended by striking “subsection (c)” and
13 inserting “subsections (c) and (f)(4)(D)”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to residences purchased after De-
16 cember 31, 2008.

17 **SEC. 1302. COORDINATION OF LOW-INCOME HOUSING**
18 **CREDIT AND LOW-INCOME HOUSING GRANTS.**

19 Subsection (i) of section 42 of the Internal Revenue
20 Code of 1986 is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(9) COORDINATION WITH LOW-INCOME HOUS-
23 ING GRANTS.—

24 “(A) REDUCTION IN STATE HOUSING
25 CREDIT CEILING FOR LOW-INCOME HOUSING

1 GRANTS RECEIVED IN 2009.—For purposes of
2 this section, the amounts described in clauses
3 (i) through (iv) of subsection (h)(3)(C) with re-
4 spect to any State for 2009 shall each be re-
5 duced by so much of such amount as is taken
6 into account in determining the amount of any
7 grant to such State under section 1711 of the
8 American Recovery and Reinvestment Tax Act
9 of 2009.

10 “(B) SPECIAL RULE FOR BASIS.—Basis of
11 a qualified low-income building shall not be re-
12 duced by the amount of any grant described in
13 subparagraph (A).”.

14 **Subtitle E—Tax Incentives for** 15 **Business**

16 **PART 1—TEMPORARY INVESTMENT INCENTIVES**

17 **SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY** 18 **ACQUIRED DURING 2009.**

19 (a) IN GENERAL.—Paragraph (2) of section 168(k)
20 is amended—

21 (1) by striking “January 1, 2010” and insert-
22 ing “January 1, 2011”, and

23 (2) by striking “January 1, 2009” each place
24 it appears and inserting “January 1, 2010”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) The heading for subsection (k) of section
2 168 is amended by striking “JANUARY 1, 2009” and
3 inserting “JANUARY 1, 2010”.

4 (2) The heading for clause (ii) of section
5 168(k)(2)(B) is amended by striking “PRE-JANUARY
6 1, 2009” and inserting “PRE-JANUARY 1, 2010”.

7 (3) Subparagraph (D) of section 168(k)(4) is
8 amended—

9 (A) by striking “and” at the end of clause
10 (i),

11 (B) by redesignating clause (ii) as clause
12 (v), and

13 (C) by inserting after clause (i) the fol-
14 lowing new clauses:

15 “(ii) ‘April 1, 2008’ shall be sub-
16 stituted for ‘January 1, 2008’ in subpara-
17 graph (A)(iii)(I) thereof,

18 “(iii) ‘January 1, 2009’ shall be sub-
19 stituted for ‘January 1, 2010’ each place it
20 appears,

21 “(iv) ‘January 1, 2010’ shall be sub-
22 stituted for ‘January 1, 2011’ in subpara-
23 graph (A)(iv) thereof, and”.

1 (4) Subparagraph (B) of section 168(l)(5) is
2 amended by striking “January 1, 2009” and insert-
3 ing “January 1, 2010”.

4 (5) Subparagraph (B) of section 1400N(d)(3)
5 is amended by striking “January 1, 2009” and in-
6 serting “January 1, 2010”.

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to property placed in service after De-
11 cember 31, 2008, in taxable years ending after such
12 date.

13 (2) TECHNICAL AMENDMENT.—Section
14 168(k)(4)(D)(ii) of the Internal Revenue Code of
15 1986, as added by subsection (b)(3)(C), shall apply
16 to taxable years ending after March 31, 2008.

17 **SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
18 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
19 **NESS ASSETS.**

20 (a) IN GENERAL.—Paragraph (7) of section 179(b)
21 is amended—

22 (1) by striking “2008” and inserting “2008, or
23 2009”, and

24 (2) by striking “2008” in the heading thereof
25 and inserting “2008, AND 2009”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2008.

4 **PART 2—5-YEAR CARRYBACK OF OPERATING**
5 **LOSSES**

6 **SEC. 1411. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

7 (a) IN GENERAL.—Subparagraph (H) of section
8 172(b)(1) is amended to read as follows:

9 “(H) CARRYBACK FOR 2008 AND 2009 NET
10 OPERATING LOSSES.—

11 “(i) IN GENERAL.—In the case of an
12 applicable 2008 or 2009 net operating loss
13 with respect to which the taxpayer has
14 elected the application of this subpara-
15 graph—

16 “(I) such net operating loss shall
17 be reduced by 10 percent of such loss
18 (determined without regard to this
19 subparagraph),

20 “(II) subparagraph (A)(i) shall
21 be applied by substituting any whole
22 number elected by the taxpayer which
23 is more than 2 and less than 6 for ‘2’,

24 “(III) subparagraph (E)(ii) shall
25 be applied by substituting the whole

1 number which is one less than the
2 whole number substituted under sub-
3 clause (II) for ‘2’, and

4 “(IV) subparagraph (F) shall not
5 apply.

6 “(ii) APPLICABLE 2008 OR 2009 NET
7 OPERATING LOSS.—For purposes of this
8 subparagraph, the term ‘applicable 2008
9 or 2009 net operating loss’ means—

10 “(I) the taxpayer’s net operating
11 loss for any taxable year ending in
12 2008 or 2009, or

13 “(II) if the taxpayer elects to
14 have this subclause apply in lieu of
15 subclause (I), the taxpayer’s net oper-
16 ating loss for any taxable year begin-
17 ning in 2008 or 2009.

18 “(iii) ELECTION.—Any election under
19 this subparagraph shall be made in such
20 manner as may be prescribed by the Sec-
21 retary, and shall be made by the due date
22 (including extension of time) for filing the
23 taxpayer’s return for the taxable year of
24 the net operating loss. Any such election,
25 once made, shall be irrevocable.

1 “(iv) COORDINATION WITH ALTER-
2 NATIVE TAX NET OPERATING LOSS DEDUC-
3 TION.—In the case of a taxpayer who
4 elects to have clause (ii)(II) apply, section
5 56(d)(1)(A)(ii) shall be applied by sub-
6 stituting ‘ending during 2001 or 2002 or
7 beginning during 2008 or 2009’ for ‘end-
8 ing during 2001, 2002, 2008, or 2009’.”.

9 (b) ALTERNATIVE TAX NET OPERATING LOSS DE-
10 DUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is
11 amended to read as follows:

12 “(I) the amount of such deduc-
13 tion attributable to the sum of
14 carrybacks of net operating losses
15 from taxable years ending during
16 2001, 2002, 2008, or 2009 and
17 carryovers of net operating losses to
18 such taxable years, or”.

19 (c) LOSS FROM OPERATIONS OF LIFE INSURANCE
20 COMPANIES.—Subsection (b) of section 810 is amended
21 by adding at the end the following new paragraph:

22 “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—
23 “(A) IN GENERAL.—In the case of an ap-
24 plicable 2008 or 2009 loss from operations with

1 respect to which the taxpayer has elected the
2 application of this paragraph—

3 “(i) such loss from operations shall be
4 reduced by 10 percent of such loss (deter-
5 mined without regard to this paragraph),
6 and

7 “(ii) paragraph (1)(A) shall be ap-
8 plied, at the election of the taxpayer, by
9 substituting ‘5’ or ‘4’ for ‘3’.

10 “(B) APPLICABLE 2008 OR 2009 LOSS FROM
11 OPERATIONS.—For purposes of this paragraph,
12 the term ‘applicable 2008 or 2009 loss from op-
13 erations’ means—

14 “(i) the taxpayer’s loss from oper-
15 ations for any taxable year ending in 2008
16 or 2009, or

17 “(ii) if the taxpayer elects to have this
18 clause apply in lieu of clause (i), the tax-
19 payer’s loss from operations for any tax-
20 able year beginning in 2008 or 2009.

21 “(C) ELECTION.—Any election under this
22 paragraph shall be made in such manner as
23 may be prescribed by the Secretary, and shall
24 be made by the due date (including extension of
25 time) for filing the taxpayer’s return for the

1 taxable year of the loss from operations. Any
2 such election, once made, shall be irrevocable.

3 “(D) COORDINATION WITH ALTERNATIVE
4 TAX NET OPERATING LOSS DEDUCTION.—In the
5 case of a taxpayer who elects to have subpara-
6 graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall
7 be applied by substituting ‘ending during 2001
8 or 2002 or beginning during 2008 or 2009’ for
9 ‘ending during 2001, 2002, 2008, or 2009’.”.

10 (d) CONFORMING AMENDMENT.—Section 172 is
11 amended by striking subsection (k).

12 (e) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided in this subsection, the amendments made by
15 this section shall apply to net operating losses aris-
16 ing in taxable years ending after December 31,
17 2007.

18 (2) ALTERNATIVE TAX NET OPERATING LOSS
19 DEDUCTION.—The amendment made by subsection
20 (b) shall apply to taxable years ending after 1997.

21 (3) LOSS FROM OPERATIONS OF LIFE INSUR-
22 ANCE COMPANIES.—The amendment made by sub-
23 section (d) shall apply to losses from operations aris-
24 ing in taxable years ending after December 31,
25 2007.

1 (4) TRANSITIONAL RULE.—In the case of a net
2 operating loss (or, in the case of a life insurance
3 company, a loss from operations) for a taxable year
4 ending before the date of the enactment of this
5 Act—

6 (A) any election made under section
7 172(b)(3) or 810(b)(3) of the Internal Revenue
8 Code of 1986 with respect to such loss may
9 (notwithstanding such section) be revoked be-
10 fore the applicable date,

11 (B) any election made under section
12 172(b)(1)(H) or 810(b)(4) of such Code with
13 respect to such loss shall (notwithstanding such
14 section) be treated as timely made if made be-
15 fore the applicable date, and

16 (C) any application under section 6411(a)
17 of such Code with respect to such loss shall be
18 treated as timely filed if filed before the appli-
19 cable date.

20 For purposes of this paragraph, the term “applica-
21 ble date” means the date which is 60 days after the
22 date of the enactment of this Act.

23 **SEC. 1412. EXCEPTION FOR TARP RECIPIENTS.**

24 The amendments made by this part shall not apply
25 to—

1 (1) any taxpayer if—

2 (A) the Federal Government acquires, at
3 any time, an equity interest in the taxpayer
4 pursuant to the Emergency Economic Stabiliza-
5 tion Act of 2008, or

6 (B) the Federal Government acquires, at
7 any time, any warrant (or other right) to ac-
8 quire any equity interest with respect to the
9 taxpayer pursuant to such Act,

10 (2) the Federal National Mortgage Association
11 and the Federal Home Loan Mortgage Corporation,
12 and

13 (3) any taxpayer which at any time in 2008 or
14 2009 is a member of the same affiliated group (as
15 defined in section 1504 of the Internal Revenue
16 Code of 1986, determined without regard to sub-
17 section (b) thereof) as a taxpayer described in para-
18 graph (1) or (2).

19 **PART 3—INCENTIVES FOR NEW JOBS**

20 **SEC. 1421. INCENTIVES TO HIRE UNEMPLOYED VETERANS**
21 **AND DISCONNECTED YOUTH.**

22 (a) IN GENERAL.—Subsection (d) of section 51 is
23 amended by adding at the end the following new para-
24 graph:

1 “(14) CREDIT ALLOWED FOR UNEMPLOYED
2 VETERANS AND DISCONNECTED YOUTH HIRED IN
3 2009 OR 2010.—

4 “(A) IN GENERAL.—Any unemployed vet-
5 eran or disconnected youth who begins work for
6 the employer during 2009 or 2010 shall be
7 treated as a member of a targeted group for
8 purposes of this subpart.

9 “(B) DEFINITIONS.—For purposes of this
10 paragraph—

11 “(i) UNEMPLOYED VETERAN.—The
12 term ‘unemployed veteran’ means any vet-
13 eran (as defined in paragraph (3)(B), de-
14 termined without regard to clause (ii)
15 thereof) who is certified by the designated
16 local agency as—

17 “(I) having been discharged or
18 released from active duty in the
19 Armed Forces during 2008, 2009, or
20 2010, and

21 “(II) being in receipt of unem-
22 ployment compensation under State or
23 Federal law for not less than 4 weeks
24 during the 1-year period ending on
25 the hiring date.

1 “(ii) DISCONNECTED YOUTH.—The
2 term ‘disconnected youth’ means any indi-
3 vidual who is certified by the designated
4 local agency—

5 “(I) as having attained age 16
6 but not age 25 on the hiring date,

7 “(II) as not regularly attending
8 any secondary, technical, or post-sec-
9 ondary school during the 6-month pe-
10 riod preceding the hiring date,

11 “(III) as not regularly employed
12 during such 6-month period, and

13 “(IV) as not readily employable
14 by reason of lacking a sufficient num-
15 ber of basic skills.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to individuals who begin work for
18 the employer after December 31, 2008.

1 **PART 4—CLARIFICATION OF REGULATIONS RE-**
2 **LATED TO LIMITATIONS ON CERTAIN BUILT-**
3 **IN LOSSES FOLLOWING AN OWNERSHIP**
4 **CHANGE**

5 **SEC. 1431. CLARIFICATION OF REGULATIONS RELATED TO**
6 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
7 **FOLLOWING AN OWNERSHIP CHANGE.**

8 (a) FINDINGS.—Congress finds as follows:

9 (1) The delegation of authority to the Secretary
10 of the Treasury under section 382(m) of the Inter-
11 nal Revenue Code of 1986 does not authorize the
12 Secretary to provide exemptions or special rules that
13 are restricted to particular industries or classes of
14 taxpayers.

15 (2) Internal Revenue Service Notice 2008–83 is
16 inconsistent with the congressional intent in enact-
17 ing such section 382(m).

18 (3) The legal authority to prescribe Internal
19 Revenue Service Notice 2008–83 is doubtful.

20 (4) However, as taxpayers should generally be
21 able to rely on guidance issued by the Secretary of
22 the Treasury legislation is necessary to clarify the
23 force and effect of Internal Revenue Service Notice
24 2008–83 and restore the proper application under
25 the Internal Revenue Code of 1986 of the limitation

1 on built-in losses following an ownership change of
2 a bank.

3 (b) DETERMINATION OF FORCE AND EFFECT OF IN-
4 TERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPT-
5 ING BANKS FROM LIMITATION ON CERTAIN BUILT-IN
6 LOSSES FOLLOWING OWNERSHIP CHANGE.—

7 (1) IN GENERAL.—Internal Revenue Service
8 Notice 2008–83—

9 (A) shall be deemed to have the force and
10 effect of law with respect to any ownership
11 change (as defined in section 382(g) of the In-
12 ternal Revenue Code of 1986) occurring on or
13 before January 16, 2009, and

14 (B) shall have no force or effect with re-
15 spect to any ownership change after such date.

16 (2) BINDING CONTRACTS.—Notwithstanding
17 paragraph (1), Internal Revenue Service Notice
18 2008–83 shall have the force and effect of law with
19 respect to any ownership change (as so defined)
20 which occurs after January 16, 2009 if such
21 change—

22 (A) is pursuant to a written binding con-
23 tract entered into on or before such date, or

24 (B) is pursuant to a written agreement en-
25 tered into on or before such date and such

1 agreement was described on or before such date
2 in a public announcement or in a filing with the
3 Securities and Exchange Commission required
4 by reason of such ownership change.

5 **Subtitle F—Fiscal Relief for State** 6 **and Local Governments**

7 **PART 1—IMPROVED MARKETABILITY FOR TAX-** 8 **EXEMPT BONDS**

9 **SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-** 10 **EXEMPT INTEREST EXPENSE OF FINANCIAL** 11 **INSTITUTIONS.**

12 (a) IN GENERAL.—Subsection (b) of section 265 is
13 amended by adding at the end the following new para-
14 graph:

15 “(7) DE MINIMIS EXCEPTION FOR BONDS
16 ISSUED DURING 2009 OR 2010.—

17 “(A) IN GENERAL.—In applying paragraph
18 (2)(A), there shall not be taken into account
19 tax-exempt obligations issued during 2009 or
20 2010.

21 “(B) LIMITATION.—The amount of tax-ex-
22 empt obligations not taken into account by rea-
23 son of subparagraph (A) shall not exceed 2 per-
24 cent of the amount determined under para-
25 graph (2)(B).

1 “(C) REFUNDINGS.—For purposes of this
2 paragraph, a refunding bond (whether a current
3 or advance refunding) shall be treated as issued
4 on the date of the issuance of the refunded
5 bond (or in the case of a series of refundings,
6 the original bond).”.

7 (b) TREATMENT AS FINANCIAL INSTITUTION PREF-
8 ERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is
9 amended by adding at the end the following: “That por-
10 tion of any obligation not taken into account under para-
11 graph (2)(A) of section 265(b) by reason of paragraph (7)
12 of such section shall be treated for purposes of this section
13 as having been acquired on August 7, 1986.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to obligations issued after Decem-
16 ber 31, 2008.

17 **SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION**
18 **TO TAX-EXEMPT INTEREST EXPENSE ALLOCA-**
19 **TION RULES FOR FINANCIAL INSTITUTIONS.**

20 (a) IN GENERAL.—Paragraph (3) of section 265(b)
21 (relating to exception for certain tax-exempt obligations)
22 is amended by adding at the end the following new sub-
23 paragraph:

24 “(G) SPECIAL RULES FOR OBLIGATIONS
25 ISSUED DURING 2009 AND 2010.—

1 “(i) INCREASE IN LIMITATION.—In
2 the case of obligations issued during 2009
3 or 2010, subparagraphs (C)(i), (D)(i), and
4 (D)(iii)(II) shall each be applied by sub-
5 stituting ‘\$30,000,000’ for ‘\$10,000,000’.

6 “(ii) QUALIFIED 501(C)(3) BONDS
7 TREATED AS ISSUED BY EXEMPT ORGANI-
8 ZATION.—In the case of a qualified
9 501(c)(3) bond issued during 2009 or
10 2010, this paragraph shall be applied by
11 treating the 501(c)(3) organization for
12 whose benefit such bond was issued as the
13 issuer.

14 “(iii) SPECIAL RULE FOR QUALIFIED
15 FINANCINGS.—In the case of a qualified fi-
16 nancing issue issued during 2009 or
17 2010—

18 “(I) subparagraph (F) shall not
19 apply, and

20 “(II) any obligation issued as a
21 part of such issue shall be treated as
22 a qualified tax-exempt obligation if
23 the requirements of this paragraph
24 are met with respect to each qualified
25 portion of the issue (determined by

1 treating each qualified portion as a
2 separate issue).

3 “(iv) QUALIFIED FINANCING ISSUE.—
4 For purposes of this subparagraph, the
5 term ‘qualified financing issue’ means any
6 composite or pooled issue the proceeds of
7 which are used directly or indirectly to
8 make or finance loans to 2 or more ulti-
9 mate borrowers all of whom are qualified
10 borrowers.

11 “(v) QUALIFIED PORTION.—For pur-
12 poses of this subparagraph, the term
13 ‘qualified portion’ means that portion of
14 the proceeds which are used with respect
15 to each qualified borrower under the issue.

16 “(vi) QUALIFIED BORROWER.—For
17 purposes of this subparagraph, the term
18 ‘qualified borrower’ means a borrower
19 which is a State or political subdivision
20 thereof or an organization described in sec-
21 tion 501(c)(3) and exempt from taxation
22 under section 501(a).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to obligations issued after Decem-
25 ber 31, 2008.

1 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
2 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
3 **BONDS.**

4 (a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED
5 DURING 2009 AND 2010 NOT TREATED AS TAX PREF-
6 ERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is
7 amended by adding at the end a new clause:

8 “(vi) EXCEPTION FOR BONDS ISSUED
9 IN 2009 AND 2010.—For purposes of clause
10 (i), the term ‘private activity bond’ shall
11 not include any bond issued after Decem-
12 ber 31, 2008, and before January 1, 2011.
13 For purposes of the preceding sentence, a
14 refunding bond (whether a current or ad-
15 vance refunding) shall be treated as issued
16 on the date of the issuance of the refunded
17 bond (or in the case of a series of
18 refundings, the original bond).”.

19 (b) NO ADJUSTMENT TO ADJUSTED CURRENT
20 EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS
21 ISSUED AFTER 2008.—Subparagraph (B) of section
22 56(g)(4) is amended by adding at the end the following
23 new clause:

24 “(iv) TAX EXEMPT INTEREST ON
25 BONDS ISSUED IN 2009 AND 2010.—Clause
26 (i) shall not apply in the case of any inter-

1 est on a bond issued after December 31,
2 2008, and before January 1, 2011. For
3 purposes of the preceding sentence, a re-
4 funding bond (whether a current or ad-
5 vance refunding) shall be treated as issued
6 on the date of the issuance of the refunded
7 bond (or in the case of a series of
8 refundings, the original bond).”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to obligations issued after Decem-
11 ber 31, 2008.

12 **PART 2—TAX CREDIT BONDS FOR SCHOOLS**

13 **SEC. 1511. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

14 (a) IN GENERAL.—Subpart I of part IV of sub-
15 chapter A of chapter 1 is amended by adding at the end
16 the following new section:

17 **“SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

18 “(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—
19 For purposes of this subchapter, the term ‘qualified school
20 construction bond’ means any bond issued as part of an
21 issue if—

22 “(1) 100 percent of the available project pro-
23 ceeds of such issue are to be used for the construc-
24 tion, rehabilitation, or repair of a public school facil-
25 ity or for the acquisition of land on which such a fa-

1 cility is to be constructed with part of the proceeds
2 of such issue,

3 “(2) the bond is issued by a State or local gov-
4 ernment within the jurisdiction of which such school
5 is located, and

6 “(3) the issuer designates such bond for pur-
7 poses of this section.

8 “(b) LIMITATION ON AMOUNT OF BONDS DES-
9 IGNATED.—The maximum aggregate face amount of
10 bonds issued during any calendar year which may be des-
11 ignated under subsection (a) by any issuer shall not exceed
12 the sum of—

13 “(1) the limitation amount allocated under sub-
14 section (d) for such calendar year to such issuer,
15 and

16 “(2) if such issuer is a large local educational
17 agency (as defined in subsection (e)(4)) or is issuing
18 on behalf of such an agency, the limitation amount
19 allocated under subsection (e) for such calendar year
20 to such agency.

21 “(c) NATIONAL LIMITATION ON AMOUNT OF BONDS
22 DESIGNATED.—There is a national qualified school con-
23 struction bond limitation for each calendar year. Such lim-
24 itation is—

25 “(1) \$11,000,000,000 for 2009,

1 “(2) \$11,000,000,000 for 2010, and

2 “(3) except as provided in subsection (f), zero
3 after 2010.

4 “(d) 60 PERCENT OF LIMITATION ALLOCATED
5 AMONG STATES.—

6 “(1) IN GENERAL.—60 percent of the limitation
7 applicable under subsection (c) for any calendar year
8 shall be allocated by the Secretary among the States
9 in proportion to the respective numbers of children
10 in each State who have attained age 5 but not age
11 18 for the most recent fiscal year ending before such
12 calendar year. The limitation amount allocated to a
13 State under the preceding sentence shall be allocated
14 by the State to issuers within such State.

15 “(2) MINIMUM ALLOCATIONS TO STATES.—

16 “(A) IN GENERAL.—The Secretary shall
17 adjust the allocations under this subsection for
18 any calendar year for each State to the extent
19 necessary to ensure that the sum of—

20 “(i) the amount allocated to such
21 State under this subsection for such year,
22 and

23 “(ii) the aggregate amounts allocated
24 under subsection (e) to large local edu-

1 cational agencies in such State for such
2 year,
3 is not less than an amount equal to such
4 State's adjusted minimum percentage of the
5 amount to be allocated under paragraph (1) for
6 the calendar year.

7 “(B) ADJUSTED MINIMUM PERCENTAGE.—
8 A State's adjusted minimum percentage for any
9 calendar year is the product of—

10 “(i) the minimum percentage de-
11 scribed in section 1124(d) of the Elemen-
12 tary and Secondary Education Act of 1965
13 (20 U.S.C. 6334(d)) for such State for the
14 most recent fiscal year ending before such
15 calendar year, multiplied by

16 “(ii) 1.68.

17 “(3) ALLOCATIONS TO CERTAIN POSSES-
18 SIONS.—The amount to be allocated under para-
19 graph (1) to any possession of the United States
20 other than Puerto Rico shall be the amount which
21 would have been allocated if all allocations under
22 paragraph (1) were made on the basis of respective
23 populations of individuals below the poverty line (as
24 defined by the Office of Management and Budget).
25 In making other allocations, the amount to be allo-

1 cated under paragraph (1) shall be reduced by the
2 aggregate amount allocated under this paragraph to
3 possessions of the United States.

4 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
5 addition to the amounts otherwise allocated under
6 this subsection, \$200,000,000 for calendar year
7 2009, and \$200,000,000 for calendar year 2010,
8 shall be allocated by the Secretary of the Interior for
9 purposes of the construction, rehabilitation, and re-
10 pair of schools funded by the Bureau of Indian Af-
11 fairs. In the case of amounts allocated under the
12 preceding sentence, Indian tribal governments (as
13 defined in section 7701(a)(40)) shall be treated as
14 qualified issuers for purposes of this subchapter.

15 “(e) 40 PERCENT OF LIMITATION ALLOCATED
16 AMONG LARGEST SCHOOL DISTRICTS.—

17 “(1) IN GENERAL.—40 percent of the limitation
18 applicable under subsection (c) for any calendar year
19 shall be allocated under paragraph (2) by the Sec-
20 retary among local educational agencies which are
21 large local educational agencies for such year.

22 “(2) ALLOCATION FORMULA.—The amount to
23 be allocated under paragraph (1) for any calendar
24 year shall be allocated among large local educational
25 agencies in proportion to the respective amounts

1 each such agency received for Basic Grants under
2 subpart 2 of part A of title I of the Elementary and
3 Secondary Education Act of 1965 (20 U.S.C. 6331
4 et seq.) for the most recent fiscal year ending before
5 such calendar year.

6 “(3) ALLOCATION OF UNUSED LIMITATION TO
7 STATE.—The amount allocated under this subsection
8 to a large local educational agency for any calendar
9 year may be reallocated by such agency to the State
10 in which such agency is located for such calendar
11 year. Any amount reallocated to a State under the
12 preceding sentence may be allocated as provided in
13 subsection (d)(1).

14 “(4) LARGE LOCAL EDUCATIONAL AGENCY.—
15 For purposes of this section, the term ‘large local
16 educational agency’ means, with respect to a cal-
17 endar year, any local educational agency if such
18 agency is—

19 “(A) among the 100 local educational
20 agencies with the largest numbers of children
21 aged 5 through 17 from families living below
22 the poverty level, as determined by the Sec-
23 retary using the most recent data available
24 from the Department of Commerce that are
25 satisfactory to the Secretary, or

1 “(B) 1 of not more than 25 local edu-
2 cational agencies (other than those described in
3 subparagraph (A)) that the Secretary of Edu-
4 cation determines (based on the most recent
5 data available satisfactory to the Secretary) are
6 in particular need of assistance, based on a low
7 level of resources for school construction, a high
8 level of enrollment growth, or such other factors
9 as the Secretary deems appropriate.

10 “(f) CARRYOVER OF UNUSED LIMITATION.—If for
11 any calendar year—

12 “(1) the amount allocated under subsection (d)
13 to any State, exceeds

14 “(2) the amount of bonds issued during such
15 year which are designated under subsection (a) pur-
16 suant to such allocation,

17 the limitation amount under such subsection for such
18 State for the following calendar year shall be increased
19 by the amount of such excess. A similar rule shall apply
20 to the amounts allocated under subsection (d)(4) or (e).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Paragraph (1) of section 54A(d) is amended
23 by striking “or” at the end of subparagraph (C), by
24 inserting “or” at the end of subparagraph (D), and

1 by inserting after subparagraph (D) the following
2 new subparagraph:

3 “(E) a qualified school construction
4 bond,”.

5 (2) Subparagraph (C) of section 54A(d)(2) is
6 amended by striking “and” at the end of clause (iii),
7 by striking the period at the end of clause (iv) and
8 inserting “, and”, and by adding at the end the fol-
9 lowing new clause:

10 “(v) in the case of a qualified school
11 construction bond, a purpose specified in
12 section 54F(a)(1).”.

13 (3) The table of sections for subpart I of part
14 IV of subchapter A of chapter 1 is amended by add-
15 ing at the end the following new item:

“Sec. 54F. Qualified school construction bonds.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to obligations issued after Decem-
18 ber 31, 2008.

19 **SEC. 1512. EXTENSION AND EXPANSION OF QUALIFIED**
20 **ZONE ACADEMY BONDS.**

21 (a) IN GENERAL.—Section 54E(c)(1) is amended by
22 striking “and 2009” and inserting “and \$1,400,000,000
23 for 2009 and 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to obligations issued after Decem-
3 ber 31, 2008.

4 **PART 3—TAXABLE BOND OPTION FOR**
5 **GOVERNMENTAL BONDS**

6 **SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL**
7 **BONDS.**

8 (a) IN GENERAL.—Part IV of subchapter A of chap-
9 ter 1 is amended by adding at the end the following new
10 subpart:

11 **“Subpart J—Taxable Bond Option for Governmental**
12 **Bonds**

“Sec. 54AA. Taxable bond option for governmental bonds.

13 **“SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL**
14 **BONDS.**

15 “(a) IN GENERAL.—If a taxpayer holds a taxable
16 governmental bond on one or more interest payment dates
17 of the bond during any taxable year, there shall be allowed
18 as a credit against the tax imposed by this chapter for
19 the taxable year an amount equal to the sum of the credits
20 determined under subsection (b) with respect to such
21 dates.

22 “(b) AMOUNT OF CREDIT.—The amount of the credit
23 determined under this subsection with respect to any in-
24 terest payment date for a taxable governmental bond is

1 35 percent of the amount of interest payable by the issuer
2 with respect to such date.

3 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The credit allowed under
5 subsection (a) for any taxable year shall not exceed
6 the excess of—

7 “(A) the sum of the regular tax liability
8 (as defined in section 26(b)) plus the tax im-
9 posed by section 55, over

10 “(B) the sum of the credits allowable
11 under this part (other than subpart C and this
12 subpart).

13 “(2) CARRYOVER OF UNUSED CREDIT.—If the
14 credit allowable under subsection (a) exceeds the
15 limitation imposed by paragraph (1) for such taxable
16 year, such excess shall be carried to the succeeding
17 taxable year and added to the credit allowable under
18 subsection (a) for such taxable year (determined be-
19 fore the application of paragraph (1) for such suc-
20 ceeding taxable year).

21 “(d) TAXABLE GOVERNMENTAL BOND.—

22 “(1) IN GENERAL.—For purposes of this sec-
23 tion, the term ‘taxable governmental bond’ means
24 any obligation (other than a private activity bond)
25 if—

1 “(A) the interest on such obligation would
2 (but for this section) be excludable from gross
3 income under section 103, and

4 “(B) the issuer makes an irrevocable elec-
5 tion to have this section apply.

6 “(2) APPLICABLE RULES.—For purposes of ap-
7 plying paragraph (1)—

8 “(A) a taxable governmental bond shall not
9 be treated as federally guaranteed by reason of
10 the credit allowed under subsection (a) or sec-
11 tion 6431,

12 “(B) the yield on a taxable governmental
13 bond shall be determined without regard to the
14 credit allowed under subsection (a), and

15 “(C) a bond shall not be treated as a tax-
16 able governmental bond if the issue price has
17 more than a de minimis amount (determined
18 under rules similar to the rules of section
19 1273(a)(3)) of premium over the stated prin-
20 cipal amount of the bond.

21 “(e) INTEREST PAYMENT DATE.—For purposes of
22 this section, the term ‘interest payment date’ means any
23 date on which the holder of record of the taxable govern-
24 mental bond is entitled to a payment of interest under
25 such bond.

1 “(f) SPECIAL RULES.—

2 “(1) INTEREST ON TAXABLE GOVERNMENTAL
3 BONDS INCLUDIBLE IN GROSS INCOME FOR FED-
4 ERAL INCOME TAX PURPOSES.—For purposes of this
5 title, interest on any taxable governmental bond
6 shall be includible in gross income.

7 “(2) APPLICATION OF CERTAIN RULES.—Rules
8 similar to the rules of subsections (f), (g), (h), and
9 (i) of section 54A shall apply for purposes of the
10 credit allowed under subsection (a).

11 “(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED
12 BEFORE 2011.—In the case of a qualified bond issued be-
13 fore January 1, 2011—

14 “(1) ISSUER ALLOWED REFUNDABLE CRED-
15 IT.—In lieu of any credit allowed under this section
16 with respect to such bond, the issuer of such bond
17 shall be allowed a credit as provided in section 6431.

18 “(2) QUALIFIED BOND.—For purposes of this
19 subsection, the term ‘qualified bond’ means any tax-
20 able governmental bond issued as part of an issue
21 if—

22 “(A) 100 percent of the available project
23 proceeds (as defined in section 54A) of such
24 issue are to be used for capital expenditures,
25 and

1 “(B) the issuer makes an irrevocable elec-
2 tion to have this subsection apply.”.

3 (b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE
4 2011.—Subchapter B of chapter 65 is amended by adding
5 at the end the following new section:

6 **“SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
7 **ISSUER.**

8 “(a) IN GENERAL.—In the case of a qualified bond
9 issued before January 1, 2011, the issuer of such bond
10 shall be allowed a credit with respect to each interest pay-
11 ment under such bond which shall be payable by the Sec-
12 retary as provided in subsection (b).

13 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
14 (contemporaneously with each interest payment date
15 under such bond) to the issuer of such bond (or to any
16 person who makes such interest payments on behalf of the
17 issuer) 35 percent of the interest payable under such bond
18 on such date.

19 “(c) APPLICATION OF ARBITRAGE RULES.—For pur-
20 poses of section 148, the yield on a qualified bond shall
21 be reduced by the credit allowed under this section.

22 “(d) INTEREST PAYMENT DATE.—For purposes of
23 this subsection, the term ‘interest payment date’ means
24 each date on which interest is payable by the issuer under
25 the terms of the bond.

1 “(e) QUALIFIED BOND.—For purposes of this sub-
2 section, the term ‘qualified bond’ has the meaning given
3 such term in section 54AA(h).”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Section 1324(b)(2) of title 31, United
6 States Code, is amended by striking “or 6428” and
7 inserting “6428, or 6431.”.

8 (2) Section 54A(c)(1)(B) is amended by strik-
9 ing “subpart C” and inserting “subparts C and J”.

10 (3) Sections 54(c)(2), 1397E(c)(2), and
11 1400N(l)(3)(B) are each amended by striking “and
12 I” and inserting “, I, and J”.

13 (4) Section 6401(b)(1) is amended by striking
14 “and I” and inserting “I, and J”.

15 (5) The table of subparts for part IV of sub-
16 chapter A of chapter 1 is amended by adding at the
17 end the following new item:

“Subpart J. Taxable bond option for governmental bonds.”.

18 (6) The table of sections for subchapter B of
19 chapter 65 is amended by adding at the end the fol-
20 lowing new item:

“Sec. 6431. Credit for qualified bonds allowed to issuer on advance basis.”.

21 (d) TRANSITIONAL COORDINATION WITH STATE
22 LAW.—Except as otherwise provided by a State after the
23 date of the enactment of this Act, the interest on any tax-
24 able governmental bond (as defined in section 54AA of

1 the Internal Revenue Code of 1986, as added by this sec-
2 tion) and the amount of any credit determined under such
3 section with respect to such bond shall be treated for pur-
4 poses of the income tax laws of such State as being exempt
5 from Federal income tax.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to obligations issued after the date
8 of the enactment of this Act.

9 **PART 4—RECOVERY ZONE BONDS**

10 **SEC. 1531. RECOVERY ZONE BONDS.**

11 (a) IN GENERAL.—Subchapter Y of chapter 1 is
12 amended by adding at the end the following new part:

13 **“PART III—RECOVERY ZONE BONDS**

“Sec. 1400U-1. Allocation of recovery zone bonds.

“Sec. 1400U-2. Recovery zone economic development bonds.

“Sec. 1400U-3. Recovery zone facility bonds.

14 **“SEC. 1400U-1. ALLOCATION OF RECOVERY ZONE BONDS.**

15 “(a) ALLOCATIONS.—

16 “(1) IN GENERAL.—The Secretary shall allo-
17 cate the national recovery zone economic develop-
18 ment bond limitation and the national recovery zone
19 facility bond limitation among the States in the pro-
20 portion that each such State’s 2008 State employ-
21 ment decline bears to the aggregate of the 2008
22 State employment declines for all of the States.

23 “(2) 2008 STATE EMPLOYMENT DECLINE.—For
24 purposes of this subsection, the term ‘2008 State

1 employment decline’ means, with respect to any
2 State, the excess (if any) of—

3 “(A) the number of individuals employed
4 in such State determined for December 2007,
5 over

6 “(B) the number of individuals employed
7 in such State determined for December 2008.

8 “(3) ALLOCATIONS BY STATES.—

9 “(A) IN GENERAL.—Each State with re-
10 spect to which an allocation is made under
11 paragraph (1) shall reallocate such allocation
12 among the counties and large municipalities in
13 such State in the proportion the each such
14 county’s or municipality’s 2008 employment de-
15 cline bears to the aggregate of the 2008 em-
16 ployment declines for all the counties and mu-
17 nicipalities in such State.

18 “(B) LARGE MUNICIPALITIES.—For pur-
19 poses of subparagraph (A), the term ‘large mu-
20 nicipality’ means a municipality with a popu-
21 lation of more than 100,000.

22 “(C) DETERMINATION OF LOCAL EMPLOY-
23 MENT DECLINES.—For purposes of this para-
24 graph, the employment decline of any munici-
25 pality or county shall be determined in the

1 same manner as determining the State employ-
2 ment decline under paragraph (2), except that
3 in the case of a municipality any portion of
4 which is in a county, such portion shall be
5 treated as part of such municipality and not
6 part of such county.

7 “(4) NATIONAL LIMITATIONS.—

8 “(A) RECOVERY ZONE ECONOMIC DEVEL-
9 OPMENT BONDS.—There is a national recovery
10 zone economic development bond limitation of
11 \$10,000,000,000.

12 “(B) RECOVERY ZONE FACILITY BONDS.—
13 There is a national recovery zone facility bond
14 limitation of \$15,000,000,000.

15 “(b) RECOVERY ZONE.—For purposes of this part,
16 the term ‘recovery zone’ means—

17 “(1) any area designated by the issuer as hav-
18 ing significant poverty, unemployment, home fore-
19 closures, or general distress, and

20 “(2) any area for which a designation as an em-
21 powerment zone or renewal community is in effect.

22 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**
23 **BONDS.**

24 “(a) IN GENERAL.—In the case of a recovery zone
25 economic development bond—

1 “(1) such bond shall be treated as a qualified
2 bond for purposes of section 6431, and

3 “(2) subsection (b) of such section shall be ap-
4 plied by substituting ‘55 percent’ for ‘35 percent’.

5 “(b) RECOVERY ZONE ECONOMIC DEVELOPMENT
6 BOND.—

7 “(1) IN GENERAL.—For purposes of this sec-
8 tion, the term ‘recovery zone economic development
9 bond’ means any taxable governmental bond (as de-
10 fined in section 54AA(d)) issued before January 1,
11 2011, as part of issue if—

12 “(A) 100 percent of the available project
13 proceeds (as defined in section 54A) of such
14 issue are to be used for one or more qualified
15 economic development purposes, and

16 “(B) the issuer designates such bond for
17 purposes of this section.

18 “(2) LIMITATION ON AMOUNT OF BONDS DES-
19 IGNATED.—The maximum aggregate face amount of
20 bonds which may be designated by any issuer under
21 paragraph (1) shall not exceed the amount of the re-
22 covery zone economic development bond limitation
23 allocated to such issuer under section 1400U-1.

24 “(c) QUALIFIED ECONOMIC DEVELOPMENT PUR-
25 POSE.—For purposes of this section, the term ‘qualified

1 economic development purpose’ means expenditures for
2 purposes of promoting development or other economic ac-
3 tivity in a recovery zone, including—

4 “(1) capital expenditures paid or incurred with
5 respect to property located in such zone,

6 “(2) expenditures for public infrastructure and
7 construction of public facilities, and

8 “(3) expenditures for job training and edu-
9 cational programs.

10 **“SEC. 1400U-3. RECOVERY ZONE FACILITY BONDS.**

11 “(a) IN GENERAL.—For purposes of part IV of sub-
12 chapter B (relating to tax exemption requirements for
13 State and local bonds), the term ‘exempt facility bond’ in-
14 cludes any recovery zone facility bond.

15 “(b) RECOVERY ZONE FACILITY BOND.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, the term ‘recovery zone facility bond’ means
18 any bond issued as part of an issue if—

19 “(A) 95 percent or more of the net pro-
20 ceeds (as defined in section 150(a)(3)) of such
21 issue are to be used for recovery zone property,

22 “(B) such bond is issued before January 1,
23 2011, and

24 “(C) the issuer designates such bond for
25 purposes of this section.

1 “(2) LIMITATION ON AMOUNT OF BONDS DES-
2 IGNATED.—The maximum aggregate face amount of
3 bonds which may be designated by any issuer under
4 paragraph (1) shall not exceed the amount of recov-
5 ery zone facility bond limitation allocated to such
6 issuer under section 1400U-1.

7 “(c) RECOVERY ZONE PROPERTY.—For purposes of
8 this section—

9 “(1) IN GENERAL.—The term ‘recovery zone
10 property’ means any property to which section 168
11 applies (or would apply but for section 179) if—

12 “(A) such property was acquired by the
13 taxpayer by purchase (as defined in section
14 179(d)(2)) after the date on which the designa-
15 tion of the recovery zone took effect,

16 “(B) the original use of which in the recov-
17 ery zone commences with the taxpayer, and

18 “(C) substantially all of the use of which
19 is in the recovery zone and is in the active con-
20 duct of a qualified business by the taxpayer in
21 such zone.

22 “(2) QUALIFIED BUSINESS.—The term ‘quali-
23 fied business’ means any trade or business except
24 that—

1 “(A) the rental to others of real property
2 located in a recovery zone shall be treated as a
3 qualified business only if the property is not
4 residential rental property (as defined in section
5 168(e)(2)), and

6 “(B) such term shall not include any trade
7 or business consisting of the operation of any
8 facility described in section 144(c)(6)(B).

9 “(3) SPECIAL RULES FOR SUBSTANTIAL REN-
10 OVATIONS AND SALE-LEASEBACK.—Rules similar to
11 the rules of subsections (a)(2) and (b) of section
12 1397D shall apply for purposes of this subsection.

13 “(d) NONAPPLICATION OF CERTAIN RULES.—Sec-
14 tions 146 (relating to volume cap) and 147(d) (relating
15 to acquisition of existing property not permitted) shall not
16 apply to any recovery zone facility bond.”.

17 (b) CLERICAL AMENDMENT.—The table of parts for
18 subchapter Y of chapter 1 of such Code is amended by
19 adding at the end the following new item:

 “PART III. RECOVERY ZONE BONDS.”.

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

23 **SEC. 1532. TRIBAL ECONOMIC DEVELOPMENT BONDS.**

24 (a) IN GENERAL.—Section 7871 is amended by add-
25 ing at the end the following new subsection:

1 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

2 “(1) ALLOCATION OF LIMITATION.—

3 “(A) IN GENERAL.—The Secretary shall
4 allocate the national tribal economic develop-
5 ment bond limitation among the Indian tribal
6 governments in such manner as the Secretary,
7 in consultation with the Secretary of the Inte-
8 rior, determines appropriate.

9 “(B) NATIONAL LIMITATION.—There is a
10 national tribal economic development bond limi-
11 tation of \$2,000,000,000.

12 “(2) BONDS TREATED AS EXEMPT FROM
13 TAX.—In the case of a tribal economic development
14 bond—

15 “(A) notwithstanding subsection (c), such
16 bond shall be treated for purposes of this title
17 in the same manner as if such bond were issued
18 by a State, and

19 “(B) section 146 shall not apply.

20 “(3) TRIBAL ECONOMIC DEVELOPMENT
21 BOND.—

22 “(A) IN GENERAL.—For purposes of this
23 section, the term ‘tribal economic development
24 bond’ means any bond issued by an Indian trib-
25 al government—

1 “(i) the interest on which is not ex-
2 empt from tax under section 103 by reason
3 of subsection (c) (determined without re-
4 gard to this subsection) but would be so
5 exempt if issued by a State or local govern-
6 ment, and

7 “(ii) which is designated by the In-
8 dian tribal government as a tribal eco-
9 nomic development bond for purposes of
10 this subsection.

11 “(B) EXCEPTIONS.—The term tribal eco-
12 nomic development bond shall not include any
13 bond issued as part of an issue if any portion
14 of the proceeds of such issue are used to fi-
15 nance—

16 “(i) any portion of a building in which
17 class II or class III gaming (as defined in
18 section 4 of the Indian Gaming Regulatory
19 Act) is conducted or housed or any other
20 property actually used in the conduct of
21 such gaming, or

22 “(ii) any facility located outside the
23 Indian reservation (as defined in section
24 168(j)(6)).

1 “(C) LIMITATION ON AMOUNT OF BONDS
2 DESIGNATED.—The maximum aggregate face
3 amount of bonds which may be designated by
4 any Indian tribal government under subpara-
5 graph (A) shall not exceed the amount of na-
6 tional tribal economic development bond limita-
7 tion allocated to such government under para-
8 graph (1).”.

9 (b) STUDY.—The Secretary of the Treasury, or the
10 Secretary’s delegate, shall conduct a study of the effects
11 of the amendment made by subsection (a). Not later than
12 1 year after the date of the enactment of this Act, the
13 Secretary of the Treasury, or the Secretary’s delegate,
14 shall report to Congress on the results of the studies con-
15 ducted under this paragraph, including the Secretary’s
16 recommendations regarding such amendment.

17 (c) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply to obligations issued after the
19 date of the enactment of this Act.

20 **PART 5—REPEAL OF WITHHOLDING TAX ON**
21 **GOVERNMENT CONTRACTORS**

22 **SEC. 1541. REPEAL OF WITHHOLDING TAX ON GOVERN-**
23 **MENT CONTRACTORS.**

24 Section 3402 is amended by striking subsection (t).

1 **Subtitle G—Energy Incentives**

2 **PART 1—RENEWABLE ENERGY INCENTIVES**

3 **SEC. 1601. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**
4 **DUCED FROM CERTAIN RENEWABLE RE-**
5 **SOURCES.**

6 (a) **IN GENERAL.**—Subsection (d) of section 45 is
7 amended—

8 (1) by striking “2010” in paragraph (1) and in-
9 serting “2013”,

10 (2) by striking “2011” each place it appears in
11 paragraphs (2), (3), (4), (6), (7) and (9) and insert-
12 ing “2014”, and

13 (3) by striking “2012” in paragraph (11)(B)
14 and inserting “2014”.

15 (b) **TECHNICAL AMENDMENT.**—Paragraph (5) of
16 section 45(d) is amended by striking “and before” and
17 all that follows and inserting “ and before October 3,
18 2008.”.

19 (c) **EFFECTIVE DATE.**—

20 (1) **IN GENERAL.**—The amendments made by
21 subsection (a) shall apply to property placed in serv-
22 ice after the date of the enactment of this Act.

23 (2) **TECHNICAL AMENDMENT.**—The amendment
24 made by subsection (b) shall take effect as if in-

1 cluded in section 102 of the Energy Improvement
2 and Extension Act of 2008.

3 **SEC. 1602. ELECTION OF INVESTMENT CREDIT IN LIEU OF**
4 **PRODUCTION CREDIT.**

5 (a) IN GENERAL.—Subsection (a) of section 48 is
6 amended by adding at the end the following new para-
7 graph:

8 “(5) ELECTION TO TREAT QUALIFIED FACILI-
9 TIES AS ENERGY PROPERTY.—

10 “(A) IN GENERAL.—In the case of any
11 qualified investment credit facility placed in
12 service in 2009 or 2010—

13 “(i) such facility shall be treated as
14 energy property for purposes of this sec-
15 tion, and

16 “(ii) the energy percentage with re-
17 spect to such property shall be 30 percent.

18 “(B) DENIAL OF PRODUCTION CREDIT.—
19 No credit shall be allowed under section 45 for
20 any taxable year with respect to any qualified
21 investment credit facility.

22 “(C) QUALIFIED INVESTMENT CREDIT FA-
23 CILITY.—For purposes of this paragraph, the
24 term ‘qualified investment credit facility’ means
25 any facility described in paragraph (1), (2), (3),

1 (4), (6), (7), (9), or (11) of section 45(d) if no
2 credit has been allowed under section 45 with
3 respect to such facility and the taxpayer makes
4 an irrevocable election to have this paragraph
5 apply to such facility.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to facilities placed in service after
8 December 31, 2008.

9 **SEC. 1603. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
10 **FOR RENEWABLE ENERGY PROPERTY.**

11 (a) REPEAL OF LIMITATION ON CREDIT FOR QUALI-
12 FIED SMALL WIND ENERGY PROPERTY.—Paragraph (4)
13 of section 48(c) is amended by striking subparagraph (B)
14 and by redesignating subparagraphs (C) and (D) as sub-
15 paragraphs (B) and (C).

16 (b) REPEAL OF LIMITATION ON PROPERTY FI-
17 NANCED BY SUBSIDIZED ENERGY FINANCING.—

18 (1) IN GENERAL.—Subsection (a) of section 48
19 is amended by striking paragraph (4).

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 25C(e)(1) is amended by strik-
22 ing “(8), and (9)” and inserting “and (8)”.

23 (B) Section 25D(e) is amended by striking
24 paragraph (9).

25 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2),the amendment made by this section shall
3 apply to periods after December 31, 2008, under
4 rules similar to the rules of section 48(m) of the In-
5 ternal Revenue Code of 1986 (as in effect on the day
6 before the date of the enactment of the Revenue
7 Reconciliation Act of 1990).

8 (2) CONFORMING AMENDMENTS.—The amend-
9 ments made by subsection (b)(2) shall apply to tax-
10 able years beginning after December 31, 2008.

11 **SEC. 1604. COORDINATION WITH RENEWABLE ENERGY**
12 **GRANTS.**

13 Section 48 is amended by adding at the end the fol-
14 lowing new subsection:

15 “(d) COORDINATION WITH DEPARTMENT OF EN-
16 ERGY GRANTS.—In the case of any property with respect
17 to which the Secretary of Energy makes a grant under
18 section 1721 of the American Recovery and Reinvestment
19 Tax Act of 2009—

20 “(1) DENIAL OF PRODUCTION AND INVEST-
21 MENT CREDITS.—No credit shall be determined
22 under this section or section 45 with respect to such
23 property for the taxable year in which such grant is
24 made or any subsequent taxable year.

1 “(2) RECAPTURE OF CREDITS FOR PROGRESS
2 EXPENDITURES MADE BEFORE GRANT.—If a credit
3 was determined under this section with respect to
4 such property for any taxable year ending before
5 such grant is made—

6 “(A) the tax imposed under subtitle A on
7 the taxpayer for the taxable year in which such
8 grant is made shall be increased by so much of
9 such credit as was allowed under section 38,

10 “(B) the general business carryforwards
11 under section 39 shall be adjusted so as to re-
12 capture the portion of such credit which was
13 not so allowed, and

14 “(C) the amount of such grant shall be de-
15 termined without regard to any reduction in the
16 basis of such property by reason of such credit.

17 “(3) TREATMENT OF GRANTS.—Any such grant
18 shall—

19 “(A) not be includible in the gross income
20 of the taxpayer, but

21 “(B) shall be taken into account in deter-
22 mining the basis of the property to which such
23 grant relates, except that the basis of such
24 property shall be reduced under section 50(c) in

1 the same manner as a credit allowed under sub-
2 section (a).”.

3 **PART 2—INCREASED ALLOCATIONS OF NEW**
4 **CLEAN RENEWABLE ENERGY BONDS AND**
5 **QUALIFIED ENERGY CONSERVATION BONDS**

6 **SEC. 1611. INCREASED LIMITATION ON ISSUANCE OF NEW**
7 **CLEAN RENEWABLE ENERGY BONDS.**

8 Subsection (c) of section 54C is amended by adding
9 at the end the following new paragraph:

10 “(4) **ADDITIONAL LIMITATION.**—The national
11 new clean renewable energy bond limitation shall be
12 increased by \$1,600,000,000. Such increase shall be
13 allocated by the Secretary consistent with the rules
14 of paragraphs (2) and (3).”.

15 **SEC. 1612. INCREASED LIMITATION AND EXPANSION OF**
16 **QUALIFIED ENERGY CONSERVATION BONDS.**

17 (a) **INCREASED LIMITATION.**—Subsection (e) of sec-
18 tion 54D is amended by adding at the end the following
19 new paragraph:

20 “(4) **ADDITIONAL LIMITATION.**—The national
21 qualified energy conservation bond limitation shall
22 be increased by \$2,400,000,000. Such increase shall
23 be allocated by the Secretary consistent with the
24 rules of paragraphs (1), (2), and (3).”.

1 (b) LOANS AND GRANTS TO IMPLEMENT GREEN
2 COMMUNITY PROGRAMS.—

3 (1) IN GENERAL.—Subparagraph (A) of section
4 54D(f)(1) is amended by inserting “(or loans or
5 grants for capital expenditures to implement any
6 green community program)” after “Capital expendi-
7 tures”.

8 (2) BONDS TO IMPLEMENT GREEN COMMUNITY
9 PROGRAMS NOT TREATED AS PRIVATE ACTIVITY
10 BONDS FOR PURPOSES OF LIMITATIONS ON QUALI-
11 FIED ENERGY CONSERVATION BONDS.—Subsection
12 (e) of section 54D is amended by adding at the end
13 the following new paragraph:

14 “(4) BONDS TO IMPLEMENT GREEN COMMU-
15 NITY PROGRAMS NOT TREATED AS PRIVATE ACTIV-
16 ITY BONDS.—For purposes of paragraph (3) and
17 subsection (f)(2), a bond shall not be treated as a
18 private activity bond solely because proceeds of the
19 issue of which such bond is a part are to be used
20 for loans or grants for capital expenditures to imple-
21 ment any green community program.”.

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

1 **PART 3—ENERGY CONSERVATION INCENTIVES**
2 **SEC. 1621. EXTENSION AND MODIFICATION OF CREDIT FOR**
3 **NONBUSINESS ENERGY PROPERTY.**

4 (a) IN GENERAL.—Section 25C is amended by strik-
5 ing subsections (a) and (b) and inserting the following new
6 subsections:

7 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
8 dividual, there shall be allowed as a credit against the tax
9 imposed by this chapter for the taxable year an amount
10 equal to 30 percent of the sum of—

11 “(1) the amount paid or incurred by the tax-
12 payer during such taxable year for qualified energy
13 efficiency improvements, and

14 “(2) the amount of the residential energy prop-
15 erty expenditures paid or incurred by the taxpayer
16 during such taxable year.

17 “(b) LIMITATION.—The aggregate amount of the
18 credits allowed under this section for taxable years begin-
19 ning in 2009 and 2010 with respect to any taxpayer shall
20 not exceed \$1,500.”.

21 (b) EXTENSION.—Section 25C(g)(2) is amended by
22 striking “December 31, 2009” and inserting “December
23 31, 2010”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to taxable years beginning after
26 December 31, 2008.

1 **SEC. 1622. MODIFICATION OF CREDIT FOR RESIDENTIAL**
2 **ENERGY EFFICIENT PROPERTY.**

3 (a) REMOVAL OF CREDIT LIMITATION FOR PROP-
4 erty PLACED IN SERVICE.—

5 (1) IN GENERAL.—Paragraph (1) of section
6 25D(b) is amended to read as follows:

7 “(1) MAXIMUM CREDIT FOR FUEL CELLS.—In
8 the case of any qualified fuel cell property expendi-
9 ture, the credit allowed under subsection (a) (deter-
10 mined without regard to subsection (c)) for any tax-
11 able year shall not exceed \$500 with respect to each
12 half kilowatt of capacity of the qualified fuel cell
13 property (as defined in section 48(c)(1)) to which
14 such expenditure relates.”.

15 (2) CONFORMING AMENDMENT.—Paragraph (4)
16 of section 25D(e) is amended—

17 (A) by striking all that precedes subpara-
18 graph (B) and inserting the following:

19 “(4) FUEL CELL EXPENDITURE LIMITATIONS
20 IN CASE OF JOINT OCCUPANCY.—In the case of any
21 dwelling unit with respect to which qualified fuel cell
22 property expenditures are made and which is jointly
23 occupied and used during any calendar year as a
24 residence by two or more individuals the following
25 rules shall apply:

1 “(A) MAXIMUM EXPENDITURES FOR FUEL
2 CELLS.—The maximum amount of such ex-
3 penditures which may be taken into account
4 under subsection (a) by all such individuals
5 with respect to such dwelling unit during such
6 calendar year shall be \$1,667 in the case of
7 each half kilowatt of capacity of qualified fuel
8 cell property (as defined in section 48(c)(1))
9 with respect to which such expenditures re-
10 late.”, and

11 (B) by striking subparagraph (C).

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 1623. TEMPORARY INCREASE IN CREDIT FOR ALTER-**
16 **NATIVE FUEL VEHICLE REFUELING PROP-**
17 **ERTY.**

18 (a) IN GENERAL.—Section 30C(e) is amended by
19 adding at the end the following new paragraph:

20 “(6) SPECIAL RULE FOR PROPERTY PLACED IN
21 SERVICE DURING 2009 AND 2010.—In the case of
22 property placed in service in taxable years beginning
23 after December 31, 2008, and before January 1,
24 2011—

1 “(A) in the case of any such property
2 which does not relate to hydrogen—

3 “(i) subsection (a) shall be applied by
4 substituting ‘50 percent’ for ‘30 percent’,

5 “(ii) subsection (b)(1) shall be applied
6 by substituting ‘\$50,000’ for ‘\$30,000’,
7 and

8 “(iii) subsection (b)(2) shall be ap-
9 plied by substituting ‘\$2,000’ for ‘\$1,000’,
10 and

11 “(B) in the case of any such property
12 which relates to hydrogen, subsection (b) shall
13 be applied by substituting ‘\$200,000’ for
14 ‘\$30,000’.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2008.

18 **PART 4—ENERGY RESEARCH INCENTIVES**

19 **SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RE-** 20 **SEARCH.**

21 (a) IN GENERAL.—Section 41 is amended by redesi-
22 gnating subsection (h) as subsection (i) and by inserting
23 after subsection (g) the following new subsection:

24 “(h) ENERGY RESEARCH CREDIT.—In the case of
25 any taxable year beginning in 2009 or 2010—

1 “(1) IN GENERAL.—The credit determined
2 under subsection (a)(1) shall be increased by 20 per-
3 cent of the qualified energy research expenses for
4 the taxable year.

5 “(2) QUALIFIED ENERGY RESEARCH EX-
6 PENSES.—For purposes of this subsection, the term
7 ‘qualified energy research expenses’ means so much
8 of the taxpayer’s qualified research expenses as are
9 related to the fields of fuel cells and battery tech-
10 nology, renewable energy, energy conservation tech-
11 nology, efficient transmission and distribution of
12 electricity, and carbon capture and sequestration.

13 “(3) COORDINATION WITH OTHER RESEARCH
14 CREDITS.—

15 “(A) INCREMENTAL CREDIT.—The amount
16 of qualified energy research expenses taken into
17 account under subsection (a)(1)(A) shall not ex-
18 ceed the base amount.

19 “(B) ALTERNATIVE SIMPLIFIED CREDIT.—
20 For purposes of subsection (c)(5), the amount
21 of qualified energy research expenses taken into
22 account for the taxable year for which the cred-
23 it is being determined shall not exceed—

24 “(i) in the case of subsection
25 (c)(5)(A), 50 percent of the average quali-

1 fied research expenses for the 3 taxable
2 years preceding the taxable year for which
3 the credit is being determined, and

4 “(ii) in the case of subsection
5 (c)(5)(B)(ii), zero.

6 “(C) BASIC RESEARCH AND ENERGY RE-
7 SEARCH CONSORTIUM PAYMENTS.—Any amount
8 taken into account under paragraph (1) shall
9 not be taken into account under paragraph (2)
10 or (3) of subsection (a).”.

11 (b) CONFORMING AMENDMENT.—Subparagraph (B)
12 of section 41(i)(1)(B), as redesignated by subsection (a),
13 is amended by inserting “(in the case of the increase in
14 the credit determined under subsection (h), December 31,
15 2010)” after “December 31, 2009”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2008.

1 **Subtitle H—Other Provisions**
2 **PART 1—APPLICATION OF CERTAIN LABOR**
3 **STANDARDS TO PROJECTS FINANCED WITH**
4 **CERTAIN TAX-FAVORED BONDS**
5 **SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS**
6 **TO PROJECTS FINANCED WITH CERTAIN TAX-**
7 **FAVORED BONDS.**

8 Subchapter IV of chapter 31 of the title 40, United
9 States Code, shall apply to projects financed with the pro-
10 ceeds of—

11 (1) any qualified clean renewable energy bond
12 (as defined in section 54C of the Internal Revenue
13 Code of 1986) issued after the date of the enact-
14 ment of this Act,

15 (2) any qualified energy conservation bond (as
16 defined in section 54D of the Internal Revenue Code
17 of 1986) issued after the date of the enactment of
18 this Act,

19 (3) any qualified zone academy bond (as de-
20 fined in section 54E of the Internal Revenue Code
21 of 1986) issued after the date of the enactment of
22 this Act,

23 (4) any qualified school construction bond (as
24 defined in section 54F of the Internal Revenue Code
25 of 1986), and

1 (5) any recovery zone economic development
2 bond (as defined in section 1400U–2 of the Internal
3 Revenue Code of 1986).

4 **PART 2—GRANTS TO PROVIDE FINANCING FOR**
5 **LOW-INCOME HOUSING**

6 **SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING**
7 **PROJECTS IN LIEU OF LOW-INCOME HOUS-**
8 **ING CREDIT ALLOCATIONS FOR 2009.**

9 (a) IN GENERAL.—The Secretary of the Treasury
10 shall make a grant to the housing credit agency of each
11 State in an amount equal to such State’s low-income hous-
12 ing grant election amount.

13 (b) LOW-INCOME HOUSING GRANT ELECTION
14 AMOUNT.—For purposes of this section, the term “low-
15 income housing grant election amount” means, with re-
16 spect to any State, such amount as the State may elect
17 which does not exceed 85 percent of the product of—

18 (1) the sum of—

19 (A) 100 percent of the State housing credit
20 ceiling for 2009 which is attributable to
21 amounts described in clauses (i) and (iii) of sec-
22 tion 42(h)(3)(C) of the Internal Revenue Code
23 of 1986, and

24 (B) 40 percent of the State housing credit
25 ceiling for 2009 which is attributable to

1 amounts described in clauses (ii) and (iv) of
2 such section, multiplied by

3 (2) 10.

4 (c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

5 (1) IN GENERAL.—A State housing credit agen-
6 cy receiving a grant under this section shall use such
7 grant to make subawards to finance the construction
8 or acquisition and rehabilitation of qualified low-in-
9 come buildings. A subaward under this section may
10 be made to finance a qualified low-income building
11 with or without an allocation under section 42 of the
12 Internal Revenue Code of 1986, except that a State
13 housing credit agency may make subawards to fi-
14 nance qualified low-income buildings without an allo-
15 cation only if it makes a determination that such use
16 will increase the total funds available to the State to
17 build and rehabilitate affordable housing. In com-
18 plying with such determination requirement, a State
19 housing credit agency shall establish a process in
20 which applicants that are allocated credits are re-
21 quired to demonstrate good faith efforts to obtain
22 investment commitments for such credits before the
23 agency makes such subawards.

24 (2) SUBAWARDS SUBJECT TO SAME REQUIRE-
25 MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-

1 TIONS.—Any such subaward with respect to any
2 qualified low-income building shall be made in the
3 same manner and shall be subject to the same limi-
4 tations (including rent, income, and use restrictions
5 on such building) as an allocation of housing credit
6 dollar amount allocated by such State housing credit
7 agency under section 42 of the Internal Revenue
8 Code of 1986, except that such subawards shall not
9 be limited by, or otherwise affect (except as provided
10 in subsection (h)(3)(J) of such section), the State
11 housing credit ceiling applicable to such agency.

12 (3) COMPLIANCE AND ASSET MANAGEMENT.—
13 The State housing credit agency shall perform asset
14 management functions to ensure compliance with
15 section 42 of the Internal Revenue Code of 1986
16 and the long-term viability of buildings funded by
17 any subaward under this section. The State housing
18 credit agency may collect reasonable fees from a
19 subaward recipient to cover expenses associated with
20 the performance of its duties under this paragraph.
21 The State housing credit agency may retain an
22 agent or other private contractor to satisfy the re-
23 quirements of this paragraph.

24 (4) RECAPTURE.—The State housing credit
25 agency shall impose conditions or restrictions, in-

1 including a requirement providing for recapture, on
2 any subaward under this section so as to assure that
3 the building with respect to which such subaward is
4 made remains a qualified low-income building during
5 the compliance period. Any such recapture shall be
6 payable to the Secretary of the Treasury for deposit
7 in the general fund of the Treasury and may be en-
8 forced by means of liens or such other methods as
9 the Secretary of the Treasury determines appro-
10 priate.

11 (d) RETURN OF UNUSED GRANT FUNDS.—Any grant
12 funds not used to make subawards under this section be-
13 fore January 1, 2011, shall be returned to the Secretary
14 of the Treasury on such date. Any subawards returned
15 to the State housing credit agency on or after such date
16 shall be promptly returned to the Secretary of the Treas-
17 ury. Any amounts returned to the Secretary of the Treas-
18 ury under this subsection shall be deposited in the general
19 fund of the Treasury.

20 (e) DEFINITIONS.—Any term used in this section
21 which is also used in section 42 of the Internal Revenue
22 Code of 1986 shall have the same meaning for purposes
23 of this section as when used in such section 42. Any ref-
24 erence in this section to the Secretary of the Treasury
25 shall be treated as including the Secretary's delegate.

1 (f) APPROPRIATIONS.—There is hereby appropriated
2 to the Secretary of the Treasury such sums as may be
3 necessary to carry out this section.

4 **PART 3—GRANTS FOR SPECIFIED ENERGY**

5 **PROPERTY IN LIEU OF TAX CREDITS**

6 **SEC. 1721. GRANTS FOR SPECIFIED ENERGY PROPERTY IN**
7 **LIEU OF TAX CREDITS.**

8 (a) IN GENERAL.—Upon application, the Secretary
9 of Energy shall, within 60 days of the application and sub-
10 ject to the requirements of this section, provide a grant
11 to each person who places in service specified energy prop-
12 erty during 2009 or 2010 to reimburse such person for
13 a portion of the expense of such facility as provided in
14 subsection (b).

15 (b) GRANT AMOUNT.—

16 (1) IN GENERAL.—The amount of the grant
17 under subsection (a) with respect to any specified
18 energy property shall be the applicable percentage of
19 the basis of such facility.

20 (2) APPLICABLE PERCENTAGE.—For purposes
21 of paragraph (1), the term “applicable percentage”
22 means—

23 (A) 30 percent in the case of any property
24 described in paragraphs (1) through (4) of sub-
25 section (c), and

1 (B) 10 percent in the case of any other
2 property.

3 (3) DOLLAR LIMITATIONS.—In the case of
4 property described in paragraph (2), (6), or (7) of
5 subsection (c), the amount of any grant under this
6 section with respect to such property shall not ex-
7 ceed the limitation described in section 48(c)(1)(B),
8 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue
9 Code of 1986, respectively, with respect to such
10 property.

11 (c) SPECIFIED ENERGY PROPERTY.—For purposes
12 of this section, the term “specified energy property”
13 means any of the following:

14 (1) QUALIFIED FACILITIES.—Any facility de-
15 scribed in paragraph (1), (2), (3), (4), (6), (7), (9),
16 or (11) of section 45(d) of the Internal Revenue
17 Code of 1986.

18 (2) QUALIFIED FUEL CELL PROPERTY.—Any
19 qualified fuel cell property (as defined in section
20 48(c)(1) of such Code).

21 (3) SOLAR PROPERTY.—Any property described
22 in clause (i) or (ii) of section 48(a)(3)(A) of such
23 Code.

1 (4) QUALIFIED SMALL WIND ENERGY PROP-
2 ERTY.—Any qualified small wind energy property
3 (as defined in section 48(c)(4) of such Code).

4 (5) GEOTHERMAL PROPERTY.—Any property
5 described in clause (iii) of section 48(a)(3)(A) of
6 such Code.

7 (6) QUALIFIED MICROTURBINE PROPERTY.—
8 Any qualified microturbine property (as defined in
9 section 48(c)(2) of such Code).

10 (7) COMBINED HEAT AND POWER SYSTEM
11 PROPERTY.—Any combined heat and power system
12 property (as defined in section 48(c)(3) of such
13 Code).

14 (8) GEOTHERMAL HEATPUMP PROPERTY.—Any
15 property described in clause (vii) of section
16 48(a)(3)(A) of such Code.

17 (d) APPLICATION OF CERTAIN RULES.—In making
18 grants under this section, the Secretary of Energy shall
19 apply rules similar to the rules of section 50 of the Inter-
20 nal Revenue Code of 1986. In applying such rules, if the
21 facility is disposed of, or otherwise ceases to be a qualified
22 renewable energy facility, the Secretary of Energy shall
23 provide for the recapture of the appropriate percentage of
24 the grant amount in such manner as the Secretary of En-
25 ergy determines appropriate.

1 (e) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—

2 The Secretary of Energy shall not make any grant under
3 this section to any Federal, State, or local government (or
4 any political subdivision, agency, or instrumentality there-
5 of) or any organization described in section 501(c) of the
6 Internal Revenue Code of 1986 and exempt from tax
7 under section 501(a) of such Code.

8 (f) DEFINITIONS.—Terms used in this section which
9 are also used in section 45 or 48 of the Internal Revenue
10 Code of 1986 shall have the same meaning for purposes
11 of this section as when used in such section 45 or 48.
12 Any reference in this section to the Secretary of the Treas-
13 ury shall be treated as including the Secretary's delegate.

14 (g) COORDINATION BETWEEN DEPARTMENTS OF
15 TREASURY AND ENERGY.—The Secretary of the Treasury
16 shall provide the Secretary of Energy with such technical
17 assistance as the Secretary of Energy may require in car-
18 rying out this section. The Secretary of Energy shall pro-
19 vide the Secretary of the Treasury with such information
20 as the Secretary of the Treasury may require in carrying
21 out the amendment made by section 1604.

22 (h) APPROPRIATIONS.—There is hereby appropriated
23 to the Secretary of Energy such sums as may be necessary
24 to carry out this section.

1 (i) TERMINATION.—The Secretary of Energy shall
2 not make any grant to any person under this section un-
3 less the application of such person for such grant is re-
4 ceived before October 1, 2011.

5 **TITLE II—ASSISTANCE FOR UN-**
6 **EMPLOYED WORKERS AND**
7 **STRUGGLING FAMILIES**

8 **SEC. 2000. SHORT TITLE.**

9 This title may be cited as the “Assistance for Unem-
10 ployed Workers and Struggling Families Act”.

11 **Subtitle A—Unemployment**
12 **Insurance**

13 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
14 **COMPENSATION PROGRAM.**

15 (a) IN GENERAL.—Section 4007 of the Supplemental
16 Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C.
17 3304 note), as amended by section 4 of the Unemployment
18 Compensation Extension Act of 2008 (Public Law 110-
19 449; 122 Stat. 5015), is amended—

20 (1) by striking “March 31, 2009” each place it
21 appears and inserting “December 31, 2009”;

22 (2) in the heading for subsection (b)(2), by
23 striking “MARCH 31, 2009” and inserting “DECEM-
24 BER 31, 2009”; and

1 (3) in subsection (b)(3), by striking “August
2 27, 2009” and inserting “May 31, 2010”.

3 (b) FINANCING PROVISIONS.—Section 4004 of such
4 Act is amended by adding at the end the following:

5 “(e) TRANSFER OF FUNDS.—Notwithstanding any
6 other provision of law, the Secretary of the Treasury shall
7 transfer from the general fund of the Treasury (from
8 funds not otherwise appropriated)—

9 “(1) to the extended unemployment compensa-
10 tion account (as established by section 905 of the
11 Social Security Act) such sums as the Secretary of
12 Labor estimates to be necessary to make payments
13 to States under this title by reason of the amend-
14 ments made by section 2001(a) of the Assistance for
15 Unemployed Workers and Struggling Families Act;
16 and

17 “(2) to the employment security administration
18 account (as established by section 901 of the Social
19 Security Act) such sums as the Secretary of Labor
20 estimates to be necessary for purposes of assisting
21 States in meeting administrative costs by reason of
22 the amendments referred to in paragraph (1).

23 There are appropriated from the general fund of the
24 Treasury, without fiscal year limitation, the sums referred

1 to in the preceding sentence and such sums shall not be
2 required to be repaid.”.

3 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
4 **BENEFITS.**

5 (a) FEDERAL-STATE AGREEMENTS.—Any State
6 which desires to do so may enter into and participate in
7 an agreement under this section with the Secretary of
8 Labor (hereinafter in this section referred to as the “Sec-
9 retary”). Any State which is a party to an agreement
10 under this section may, upon providing 30 days’ written
11 notice to the Secretary, terminate such agreement.

12 (b) PROVISIONS OF AGREEMENT.—

13 (1) ADDITIONAL COMPENSATION.—Any agree-
14 ment under this section shall provide that the State
15 agency of the State will make payments of regular
16 compensation to individuals in amounts and to the
17 extent that they would be determined if the State
18 law of the State were applied, with respect to any
19 week for which the individual is (disregarding this
20 section) otherwise entitled under the State law to re-
21 ceive regular compensation, as if such State law had
22 been modified in a manner such that the amount of
23 regular compensation (including dependents’ allow-
24 ances) payable for any week shall be equal to the
25 amount determined under the State law (before the

1 application of this paragraph) plus an additional
2 \$25.

3 (2) ALLOWABLE METHODS OF PAYMENT.—Any
4 additional compensation provided for in accordance
5 with paragraph (1) shall be payable either—

6 (A) as an amount which is paid at the
7 same time and in the same manner as any reg-
8 ular compensation otherwise payable for the
9 week involved; or

10 (B) at the option of the State, by pay-
11 ments which are made separately from, but on
12 the same weekly basis as, any regular com-
13 pensation otherwise payable.

14 (c) NONREDUCTION RULE.—An agreement under
15 this section shall not apply (or shall cease to apply) with
16 respect to a State upon a determination by the Secretary
17 that the method governing the computation of regular
18 compensation under the State law of that State has been
19 modified in a manner such that—

20 (1) the average weekly benefit amount of reg-
21 ular compensation which will be payable during the
22 period of the agreement (determined disregarding
23 any additional amounts attributable to the modifica-
24 tion described in subsection (b)(1)) will be less than

1 (2) the average weekly benefit amount of reg-
2 ular compensation which would otherwise have been
3 payable during such period under the State law, as
4 in effect on December 31, 2008.

5 (d) PAYMENTS TO STATES.—

6 (1) IN GENERAL.—

7 (A) FULL REIMBURSEMENT.—There shall
8 be paid to each State which has entered into an
9 agreement under this section an amount equal
10 to 100 percent of—

11 (i) the total amount of additional
12 compensation (as described in subsection
13 (b)(1)) paid to individuals by the State
14 pursuant to such agreement; and

15 (ii) any additional administrative ex-
16 penses incurred by the State by reason of
17 such agreement (as determined by the Sec-
18 retary).

19 (B) TERMS OF PAYMENTS.—Sums payable
20 to any State by reason of such State's having
21 an agreement under this section shall be pay-
22 able, either in advance or by way of reimburse-
23 ment (as determined by the Secretary), in such
24 amounts as the Secretary estimates the State
25 will be entitled to receive under this section for

1 each calendar month, reduced or increased, as
2 the case may be, by any amount by which the
3 Secretary finds that his estimates for any prior
4 calendar month were greater or less than the
5 amounts which should have been paid to the
6 State. Such estimates may be made on the
7 basis of such statistical, sampling, or other
8 method as may be agreed upon by the Secretary
9 and the State agency of the State involved.

10 (2) CERTIFICATIONS.—The Secretary shall
11 from time to time certify to the Secretary of the
12 Treasury for payment to each State the sums pay-
13 able to such State under this section.

14 (3) APPROPRIATION.—There are appropriated
15 from the general fund of the Treasury, without fiscal
16 year limitation, such sums as may be necessary for
17 purposes of this subsection.

18 (e) APPLICABILITY.—

19 (1) IN GENERAL.—An agreement entered into
20 under this section shall apply to weeks of unemploy-
21 ment—

22 (A) beginning after the date on which such
23 agreement is entered into; and

24 (B) ending before January 1, 2010.

1 (2) TRANSITION RULE FOR INDIVIDUALS RE-
2 MAINING ENTITLED TO REGULAR COMPENSATION AS
3 OF JANUARY 1, 2010.—In the case of any individual
4 who, as of the date specified in paragraph (1)(B),
5 has not yet exhausted all rights to regular com-
6 pensation under the State law of a State with re-
7 spect to a benefit year that began before such date,
8 additional compensation (as described in subsection
9 (b)(1)) shall continue to be payable to such indi-
10 vidual for any week beginning on or after such date
11 for which the individual is otherwise eligible for reg-
12 ular compensation with respect to such benefit year.

13 (3) TERMINATION.—Notwithstanding any other
14 provision of this subsection, no additional compensa-
15 tion (as described in subsection (b)(1)) shall be pay-
16 able for any week beginning after June 30, 2010.

17 (f) FRAUD AND OVERPAYMENTS.—The provisions of
18 section 4005 of the Supplemental Appropriations Act,
19 2008 (Public Law 110–252; 122 Stat. 2356) shall apply
20 with respect to additional compensation (as described in
21 subsection (b)(1)) to the same extent and in the same
22 manner as in the case of emergency unemployment com-
23 pensation.

24 (g) APPLICATION TO OTHER UNEMPLOYMENT BENE-
25 FITS.—

1 (1) IN GENERAL.—Each agreement under this
2 section shall include provisions to provide that the
3 purposes of the preceding provisions of this section
4 shall be applied with respect to unemployment bene-
5 fits described in subsection (h)(3) to the same extent
6 and in the same manner as if those benefits were
7 regular compensation.

8 (2) ELIGIBILITY AND TERMINATION RULES.—
9 Additional compensation (as described in subsection
10 (b)(1))—

11 (A) shall not be payable, pursuant to this
12 subsection, with respect to any unemployment
13 benefits described in subsection (h)(3) for any
14 week beginning on or after the date specified in
15 subsection (e)(1)(B), except in the case of an
16 individual who was eligible to receive additional
17 compensation (as so described) in connection
18 with any regular compensation or any unem-
19 ployment benefits described in subsection (h)(3)
20 for any period of unemployment ending before
21 such date; and

22 (B) shall in no event be payable for any
23 week beginning after the date specified in sub-
24 section (e)(3).

25 (h) DEFINITIONS.—For purposes of this section—

1 (1) the terms “compensation”, “regular com-
2 pensation”, “benefit year”, “State”, “State agency”,
3 “State law”, and “week” have the respective mean-
4 ings given such terms under section 205 of the Fed-
5 eral-State Extended Unemployment Compensation
6 Act of 1970 (26 U.S.C. 3304 note);

7 (2) the term “emergency unemployment com-
8 pensation” means emergency unemployment com-
9 pensation under title IV of the Supplemental Appro-
10 propriations Act, 2008 (Public Law 110–252; 122 Stat.
11 2353); and

12 (3) any reference to unemployment benefits de-
13 scribed in this paragraph shall be considered to refer
14 to—

15 (A) extended compensation (as defined by
16 section 205 of the Federal-State Extended Un-
17 employment Compensation Act of 1970); and

18 (B) unemployment compensation (as de-
19 fined by section 85(b) of the Internal Revenue
20 Code of 1986) provided under any program ad-
21 ministered by a State under an agreement with
22 the Secretary.

1 **SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT**
2 **COMPENSATION MODERNIZATION.**

3 (a) IN GENERAL.—Section 903 of the Social Security
4 Act (42 U.S.C. 1103) is amended by adding at the end
5 the following:

6 “Special Transfers in Fiscal Years 2009, 2010, and 2011
7 for Modernization

8 “(f)(1)(A) In addition to any other amounts, the Sec-
9 retary of Labor shall provide for the making of unemploy-
10 ment compensation modernization incentive payments
11 (hereinafter ‘incentive payments’) to the accounts of the
12 States in the Unemployment Trust Fund, by transfer from
13 amounts reserved for that purpose in the Federal unem-
14 ployment account, in accordance with succeeding provi-
15 sions of this subsection.

16 “(B) The maximum incentive payment allowable
17 under this subsection with respect to any State shall, as
18 determined by the Secretary of Labor, be equal to the
19 amount obtained by multiplying \$7,000,000,000 by the
20 same ratio as would apply under subsection (a)(2)(B) for
21 purposes of determining such State’s share of any excess
22 amount (as described in subsection (a)(1)) that would
23 have been subject to transfer to State accounts, as of Oc-
24 tober 1, 2008, under the provisions of subsection (a).

25 “(C) Of the maximum incentive payment determined
26 under subparagraph (B) with respect to a State—

1 “(i) one-third shall be transferred to the ac-
2 count of such State upon a certification under para-
3 graph (4)(B) that the State law of such State meets
4 the requirements of paragraph (2); and

5 “(ii) the remainder shall be transferred to the
6 account of such State upon a certification under
7 paragraph (4)(B) that the State law of such State
8 meets the requirements of paragraph (3).

9 “(2) The State law of a State meets the requirements
10 of this paragraph if such State law—

11 “(A) uses a base period that includes the most
12 recently completed calendar quarter before the start
13 of the benefit year for purposes of determining eligi-
14 bility for unemployment compensation; or

15 “(B) provides that, in the case of an individual
16 who would not otherwise be eligible for unemploy-
17 ment compensation under the State law because of
18 the use of a base period that does not include the
19 most recently completed calendar quarter before the
20 start of the benefit year, eligibility shall be deter-
21 mined using a base period that includes such cal-
22 endar quarter.

23 “(3) The State law of a State meets the requirements
24 of this paragraph if such State law includes provisions to
25 carry out at least 2 of the following subparagraphs:

1 “(A) An individual shall not be denied regular
2 unemployment compensation under any State law
3 provisions relating to availability for work, active
4 search for work, or refusal to accept work, solely be-
5 cause such individual is seeking only part-time work
6 (as defined by the Secretary of Labor), except that
7 the State law provisions carrying out this subpara-
8 graph may exclude an individual if a majority of the
9 weeks of work in such individual’s base period do
10 not include part-time work (as so defined).

11 “(B) An individual shall not be disqualified
12 from regular unemployment compensation for sepa-
13 rating from employment if that separation is for any
14 compelling family reason. For purposes of this sub-
15 paragraph, the term ‘compelling family reason’
16 means the following:

17 “(i) Domestic violence, verified by such
18 reasonable and confidential documentation as
19 the State law may require, which causes the in-
20 dividual reasonably to believe that such individ-
21 ual’s continued employment would jeopardize
22 the safety of the individual or of any member
23 of the individual’s immediate family (as defined
24 by the Secretary of Labor).

1 “(ii) The illness or disability of a member
2 of the individual’s immediate family (as those
3 terms are defined by the Secretary of Labor).

4 “(iii) The need for the individual to accom-
5 pany such individual’s spouse—

6 “(I) to a place from which it is im-
7 practical for such individual to commute;
8 and

9 “(II) due to a change in location of
10 the spouse’s employment.

11 “(C) Weekly unemployment compensation is
12 payable under this subparagraph to any individual
13 who is unemployed (as determined under the State
14 unemployment compensation law), has exhausted all
15 rights to regular unemployment compensation under
16 the State law, and is enrolled and making satisfac-
17 tory progress in a State-approved training program
18 or in a job training program authorized under the
19 Workforce Investment Act of 1998. Such programs
20 shall prepare individuals who have been separated
21 from a declining occupation, or who have been invol-
22 untarily and indefinitely separated from employment
23 as a result of a permanent reduction of operations
24 at the individual’s place of employment, for entry
25 into a high-demand occupation. The amount of un-

1 employment compensation payable under this sub-
2 paragraph to an individual for a week of unemploy-
3 ment shall be equal to the individual's average week-
4 ly benefit amount (including dependents' allowances)
5 for the most recent benefit year, and the total
6 amount of unemployment compensation payable
7 under this subparagraph to any individual shall be
8 equal to at least 26 times the individual's average
9 weekly benefit amount (including dependents' allow-
10 ances) for the most recent benefit year.

11 “(D) Dependents' allowances are provided, in
12 the case of any individual who is entitled to receive
13 regular unemployment compensation and who has
14 any dependents (as defined by State law), in an
15 amount equal to at least \$15 per dependent per
16 week, subject to any aggregate limitation on such al-
17 lowances which the State law may establish (but
18 which aggregate limitation on the total allowance for
19 dependents paid to an individual may not be less
20 than \$50 for each week of unemployment or 50 per-
21 cent of the individual's weekly benefit amount for
22 the benefit year, whichever is less).

23 “(4)(A) Any State seeking an incentive payment
24 under this subsection shall submit an application therefor
25 at such time, in such manner, and complete with such in-

1 formation as the Secretary of Labor may within 60 days
2 after the date of the enactment of this subsection prescribe
3 (whether by regulation or otherwise), including informa-
4 tion relating to compliance with the requirements of para-
5 graph (2) or (3), as well as how the State intends to use
6 the incentive payment to improve or strengthen the State's
7 unemployment compensation program. The Secretary of
8 Labor shall, within 30 days after receiving a complete ap-
9 plication, notify the State agency of the State of the Sec-
10 retary's findings with respect to the requirements of para-
11 graph (2) or (3) (or both).

12 “(B)(i) If the Secretary of Labor finds that the State
13 law provisions (disregarding any State law provisions
14 which are not then currently in effect as permanent law
15 or which are subject to discontinuation) meet the require-
16 ments of paragraph (2) or (3), as the case may be, the
17 Secretary of Labor shall thereupon make a certification
18 to that effect to the Secretary of the Treasury, together
19 with a certification as to the amount of the incentive pay-
20 ment to be transferred to the State account pursuant to
21 that finding. The Secretary of the Treasury shall make
22 the appropriate transfer within 7 days after receiving such
23 certification.

24 “(ii) For purposes of clause (i), State law provisions
25 which are to take effect within 12 months after the date

1 of their certification under this subparagraph shall be con-
2 sidered to be in effect as of the date of such certification.

3 “(C)(i) No certification of compliance with the re-
4 quirements of paragraph (2) or (3) may be made with re-
5 spect to any State whose State law is not otherwise eligible
6 for certification under section 303 or approvable under
7 section 3304 of the Federal Unemployment Tax Act.

8 “(ii) No certification of compliance with the require-
9 ments of paragraph (3) may be made with respect to any
10 State whose State law is not in compliance with the re-
11 quirements of paragraph (2).

12 “(iii) No application under subparagraph (A) may be
13 considered if submitted before the date of the enactment
14 of this subsection or after the latest date necessary (as
15 specified by the Secretary of Labor) to ensure that all in-
16 centive payments under this subsection are made before
17 October 1, 2011.

18 “(5)(A) Except as provided in subparagraph (B), any
19 amount transferred to the account of a State under this
20 subsection may be used by such State only in the payment
21 of cash benefits to individuals with respect to their unem-
22 ployment (including for dependents’ allowances and for
23 unemployment compensation under paragraph (3)(C)), ex-
24 clusive of expenses of administration.

1 “(B) A State may, subject to the same conditions as
2 set forth in subsection (c)(2) (excluding subparagraph (B)
3 thereof, and deeming the reference to ‘subsections (a) and
4 (b)’ in subparagraph (D) thereof to include this sub-
5 section), use any amount transferred to the account of
6 such State under this subsection for the administration
7 of its unemployment compensation law and public employ-
8 ment offices.

9 “(6) Out of any money in the Federal unemployment
10 account not otherwise appropriated, the Secretary of the
11 Treasury shall reserve \$7,000,000,000 for incentive pay-
12 ments under this subsection. Any amount so reserved shall
13 not be taken into account for purposes of any determina-
14 tion under section 902, 910, or 1203 of the amount in
15 the Federal unemployment account as of any given time.
16 Any amount so reserved for which the Secretary of the
17 Treasury has not received a certification under paragraph
18 (4)(B) by the deadline described in paragraph (4)(C)(iii)
19 shall, upon the close of fiscal year 2011, become unre-
20 stricted as to use as part of the Federal unemployment
21 account.

22 “(7) For purposes of this subsection, the terms ‘ben-
23 efit year’, ‘base period’, and ‘week’ have the respective
24 meanings given such terms under section 205 of the Fed-

1 eral-State Extended Unemployment Compensation Act of
2 1970 (26 U.S.C. 3304 note).

3 “Special Transfer in Fiscal Year 2009 for Administration

4 “(g)(1) In addition to any other amounts, the Sec-
5 retary of the Treasury shall transfer from the employment
6 security administration account to the account of each
7 State in the Unemployment Trust Fund, within 30 days
8 after the date of the enactment of this subsection, the
9 amount determined with respect to such State under para-
10 graph (2).

11 “(2) The amount to be transferred under this sub-
12 section to a State account shall (as determined by the Sec-
13 retary of Labor and certified by such Secretary to the Sec-
14 retary of the Treasury) be equal to the amount obtained
15 by multiplying \$500,000,000 by the same ratio as deter-
16 mined under subsection (f)(1)(B) with respect to such
17 State.

18 “(3) Any amount transferred to the account of a
19 State as a result of the enactment of this subsection may
20 be used by the State agency of such State only in the pay-
21 ment of expenses incurred by it for—

22 “(A) the administration of the provisions of its
23 State law carrying out the purposes of subsection
24 (f)(2) or any subparagraph of subsection (f)(3);

1 “(B) improved outreach to individuals who
2 might be eligible for regular unemployment com-
3 pensation by virtue of any provisions of the State
4 law which are described in subparagraph (A);

5 “(C) the improvement of unemployment benefit
6 and unemployment tax operations, including re-
7 sponding to increased demand for unemployment
8 compensation; and

9 “(D) staff-assisted reemployment services for
10 unemployment compensation claimants.”.

11 (b) REGULATIONS.—The Secretary of Labor may
12 prescribe any regulations, operating instructions, or other
13 guidance necessary to carry out the amendment made by
14 subsection (a).

15 **Subtitle B—Assistance for** 16 **Vulnerable Individuals**

17 **SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.**

18 (a) IN GENERAL.—Section 403 of the Social Security
19 Act (42 U.S.C. 603) is amended by adding at the end the
20 following:

21 “(c) EMERGENCY FUND.—

22 “(1) ESTABLISHMENT.—There is established in
23 the Treasury of the United States a fund which
24 shall be known as the ‘Emergency Contingency
25 Fund for State Temporary Assistance for Needy

1 Families Programs’ (in this subsection referred to as
2 the ‘Emergency Fund’).

3 “(2) DEPOSITS INTO FUND.—Out of any money
4 in the Treasury of the United States not otherwise
5 appropriated, there are appropriated such sums as
6 are necessary for payment to the Emergency Fund.

7 “(3) GRANTS.—

8 “(A) GRANT RELATED TO CASELOAD IN-
9 CREASES.—

10 “(i) IN GENERAL.—For each calendar
11 quarter in fiscal year 2009 or 2010, the
12 Secretary shall make a grant from the
13 Emergency Fund to each State that—

14 “(I) requests a grant under this
15 subparagraph for the quarter; and

16 “(II) meets the requirement of
17 clause (ii) for the quarter.

18 “(ii) CASELOAD INCREASE REQUIRE-
19 MENT.—A State meets the requirement of
20 this clause for a quarter if the average
21 monthly assistance caseload of the State
22 for the quarter exceeds the average month-
23 ly assistance caseload of the State for the
24 corresponding quarter in the emergency
25 fund base year of the State.

1 “(iii) AMOUNT OF GRANT.—Subject to
2 paragraph (5), the amount of the grant to
3 be made to a State under this subpara-
4 graph for a quarter shall be 80 percent of
5 the amount (if any) by which the total ex-
6 penditures of the State for basic assistance
7 (as defined by the Secretary) in the quar-
8 ter, whether under the State program
9 funded under this part or as qualified
10 State expenditures, exceeds the total ex-
11 penditures of the State for such assistance
12 for the corresponding quarter in the emer-
13 gency fund base year of the State.

14 “(B) GRANT RELATED TO INCREASED EX-
15 PENDITURES FOR NON-RECURRENT SHORT
16 TERM BENEFITS.—

17 “(i) IN GENERAL.—For each calendar
18 quarter in fiscal year 2009 or 2010, the
19 Secretary shall make a grant from the
20 Emergency Fund to each State that—

21 “(I) requests a grant under this
22 subparagraph for the quarter; and

23 “(II) meets the requirement of
24 clause (ii) for the quarter.

1 “(ii) NON-RECURRENT SHORT TERM
2 EXPENDITURE REQUIREMENT.—A State
3 meets the requirement of this clause for a
4 quarter if the total expenditures of the
5 State for non-recurrent short term benefits
6 in the quarter, whether under the State
7 program funded under this part or as
8 qualified State expenditures, exceeds the
9 total such expenditures of the State for
10 non-recurrent short term benefits in the
11 corresponding quarter in the emergency
12 fund base year of the State.

13 “(iii) AMOUNT OF GRANT.—Subject to
14 paragraph (5), the amount of the grant to
15 be made to a State under this subpara-
16 graph for a quarter shall be an amount
17 equal to 80 percent of the excess described
18 in clause (ii).

19 “(C) GRANT RELATED TO INCREASED EX-
20 PENDITURES FOR SUBSIDIZED EMPLOYMENT.—

21 “(i) IN GENERAL.—For each calendar
22 quarter in fiscal year 2009 or 2010, the
23 Secretary shall make a grant from the
24 Emergency Fund to each State that—

1 “(I) requests a grant under this
2 subparagraph for the quarter; and

3 “(II) meets the requirement of
4 clause (ii) for the quarter.

5 “(ii) SUBSIDIZED EMPLOYMENT EX-
6 PENDITURE REQUIREMENT.—A State
7 meets the requirement of this clause for a
8 quarter if the total expenditures of the
9 State for subsidized employment in the
10 quarter, whether under the State program
11 funded under this part or as qualified
12 State expenditures, exceeds the total of
13 such expenditures of the State in the cor-
14 responding quarter in the emergency fund
15 base year of the State.

16 “(iii) AMOUNT OF GRANT.—Subject to
17 paragraph (5), the amount of the grant to
18 be made to a State under this subpara-
19 graph for a quarter shall be an amount
20 equal to 80 percent of the excess described
21 in clause (ii).

22 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
23 MENTS TO DATA AND COLLECT NEEDED DATA.—In
24 determining the size of the caseload of a State and
25 the expenditures of a State for basic assistance, non-

1 recurrent short-term benefits, and subsidized em-
2 ployment, during any period for which the State re-
3 quests funds under this subsection, and during the
4 emergency fund base year of the State, the Sec-
5 retary may make appropriate adjustments to the
6 data to ensure that the data reflect expenditures
7 under the State program funded under this part and
8 qualified State expenditures. The Secretary may de-
9 velop a mechanism for collecting expenditure data,
10 including procedures which allow States to make
11 reasonable estimates, and may set deadlines for
12 making revisions to the data.

13 “(5) LIMITATION.—The total amount payable
14 to a single State under subsection (b) and this sub-
15 section for a fiscal year shall not exceed 25 percent
16 of the State family assistance grant.

17 “(6) LIMITATIONS ON USE OF FUNDS.—A State
18 to which an amount is paid under this subsection
19 may use the amount only as authorized by section
20 404.

21 “(7) TIMING OF IMPLEMENTATION.—The Sec-
22 retary shall implement this subsection as quickly as
23 reasonably possible, pursuant to appropriate guid-
24 ance to States.

25 “(8) DEFINITIONS.—In this subsection:

1 “(A) AVERAGE MONTHLY ASSISTANCE
2 CASELOAD.—The term ‘average monthly assist-
3 ance caseload’ means, with respect to a State
4 and a quarter, the number of families receiving
5 assistance during the quarter under the State
6 program funded under this part or as qualified
7 State expenditures, subject to adjustment under
8 paragraph (4).

9 “(B) EMERGENCY FUND BASE YEAR.—

10 “(i) IN GENERAL.—The term ‘emer-
11 gency fund base year’ means, with respect
12 to a State and a category described in
13 clause (ii), whichever of fiscal year 2007 or
14 2008 is the fiscal year in which the
15 amount described by the category with re-
16 spect to the State is the lesser.

17 “(ii) CATEGORIES DESCRIBED.—The
18 categories described in this clause are the
19 following:

20 “(I) The average monthly assist-
21 ance caseload of the State.

22 “(II) The total expenditures of
23 the State for non-recurrent short term
24 benefits, whether under the State pro-

1 gram funded under this part or as
2 qualified State expenditures.

3 “(III) The total expenditures of
4 the State for subsidized employment,
5 whether under the State program
6 funded under this part or as qualified
7 State expenditures.

8 “(C) QUALIFIED STATE EXPENDITURES.—
9 The term ‘qualified State expenditures’ has the
10 meaning given the term in section 409(a)(7).”.

11 (b) TEMPORARY MODIFICATION OF CASELOAD RE-
12 DUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act
13 (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or
14 if the immediately preceding fiscal year is fiscal year 2009
15 or 2010, then, at State option, during the emergency fund
16 base year of the State with respect to the average monthly
17 assistance caseload of the State (within the meaning of
18 section 403(c)(8)(B)))” before “under the State”.

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

22 **SEC. 2102. ONE-TIME EMERGENCY PAYMENT TO SSI RECIPI-**
23 **ENTS.**

24 (a) PAYMENT AUTHORITY.—

1 (1) IN GENERAL.—At the earliest practicable
2 date in calendar year 2009 but not later than 120
3 days after the date of the enactment of this section,
4 the Commissioner of Social Security shall make a
5 one-time payment to each individual who is deter-
6 mined by the Commissioner in calendar year 2009 to
7 be an individual who—

8 (A) is entitled to a cash benefit under the
9 supplemental security income program under
10 title XVI of the Social Security Act (other than
11 pursuant to section 1611(e)(1)(B) of such Act)
12 for at least 1 day in the calendar month in
13 which the first payment under this section is to
14 be made; or

15 (B)(i) was entitled to such a cash benefit
16 (other than pursuant to section 1611(e)(1)(B)
17 of such Act) for at least 1 day in the 2-month
18 period preceding that calendar month; and

19 (ii) whose entitlement to that benefit
20 ceased in that 2-month period solely because
21 the income of the individual (and the income of
22 the spouse, if any, of the individual) exceeded
23 the applicable income limit described in para-
24 graph (1)(A) or (2)(A) of section 1611(a) of
25 such Act.

1 (2) AMOUNT OF PAYMENT.—Subject to sub-
2 section (b)(1) of this section, the amount of the pay-
3 ment shall be—

4 (A) in the case of an individual eligible for
5 a payment under this section who does not have
6 a spouse eligible for such a payment, an
7 amount equal to the average of the cash bene-
8 fits payable in the aggregate under section
9 1611 or 1619(a) of the Social Security Act to
10 eligible individuals who do not have an eligible
11 spouse, for the most recent month for which
12 data on payment of the benefits are available,
13 as determined by the Commissioner of Social
14 Security; or

15 (B) in the case of an individual eligible for
16 a payment under this section who has a spouse
17 eligible for such a payment, an amount equal to
18 the average of the cash benefits payable in the
19 aggregate under section 1611 or 1619(a) of the
20 Social Security Act to eligible individuals who
21 have an eligible spouse, for the most recent
22 month for which data on payment of the bene-
23 fits are available, as so determined.

24 (b) ADMINISTRATIVE PROVISIONS.—

1 (1) AUTHORITY TO WITHHOLD PAYMENT TO
2 RECOVER PRIOR OVERPAYMENT OF SSI BENEFITS.—
3 The Commissioner of Social Security may withhold
4 part or all of a payment otherwise required to be
5 made under subsection (a) of this section to an indi-
6 vidual, in order to recover a prior overpayment of
7 benefits to the individual under the supplemental se-
8 curity income program under title XVI of the Social
9 Security Act, subject to the limitations of section
10 1631(b) of such Act.

11 (2) PAYMENT TO BE DISREGARDED IN DETER-
12 MINING UNDERPAYMENTS UNDER THE SSI PRO-
13 GRAM.—A payment under subsection (a) shall be
14 disregarded in determining whether there has been
15 an underpayment of benefits under the supplemental
16 security income program under title XVI of the So-
17 cial Security Act.

18 (3) NONASSIGNMENT.—The provisions of sec-
19 tion 1631(d) of the Social Security Act shall apply
20 with respect to payments under this section to the
21 same extent as they apply in the case of title XVI
22 of such Act.

23 (c) PAYMENTS TO BE DISREGARDED FOR PURPOSES
24 OF ALL FEDERAL AND FEDERALLY ASSISTED PRO-
25 GRAMS.—A payment under subsection (a) shall not be re-

1 garded as income to the recipient, and shall not be re-
2 garded as a resource of the recipient for the month of re-
3 ceipt and the following 6 months, for purposes of deter-
4 mining the eligibility of any individual for benefits or as-
5 sistance, or the amount or extent of benefits or assistance,
6 under any Federal program or under any State or local
7 program financed in whole or in part with Federal funds.

8 (d) APPROPRIATION.—Out of any sums in the Treas-
9 ury of the United States not otherwise appropriated, there
10 are appropriated such sums as may be necessary to carry
11 out this section.

12 **SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD**
13 **SUPPORT LAW.**

14 During the period that begins with October 1, 2008,
15 and ends with September 30, 2010, section 455(a)(1) of
16 the Social Security Act shall be applied and administered
17 as if the phrase “from amounts paid to the State under
18 section 458 or” did not appear in such section.

1 **TITLE III—HEALTH INSURANCE**
2 **ASSISTANCE FOR THE UNEM-**
3 **EMPLOYED**

4 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**
5 **TITLE.**

6 (a) SHORT TITLE OF TITLE.—This title may be cited
7 as the “Health Insurance Assistance for the Unemployed
8 Act of 2009”.

9 (b) TABLE OF CONTENTS OF TITLE.—The table of
10 contents of this title is as follows:

Sec. 3001. Short title and table of contents of title.

Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA
benefits for older or long-term employees.

Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

11 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**
12 **AND EXTENSION OF COBRA BENEFITS FOR**
13 **OLDER OR LONG-TERM EMPLOYEES.**

14 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-
15 ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-
16 LIES.—

17 (1) PROVISION OF PREMIUM ASSISTANCE.—

18 (A) REDUCTION OF PREMIUMS PAY-
19 ABLE.—In the case of any premium for a pe-
20 riod of coverage beginning on or after the date
21 of the enactment of this Act for COBRA con-
22 tinuation coverage with respect to any assist-
23 ance eligible individual, such individual shall be

1 treated for purposes of any COBRA continu-
2 ation provision as having paid the amount of
3 such premium if such individual pays 35 per-
4 cent of the amount of such premium (as deter-
5 mined without regard to this subsection).

6 (B) PREMIUM REIMBURSEMENT.—For pro-
7 visions providing the balance of such premium,
8 see section 6431 of the Internal Revenue Code
9 of 1986, as added by paragraph (12).

10 (2) LIMITATION OF PERIOD OF PREMIUM AS-
11 SISTANCE.—

12 (A) IN GENERAL.—Paragraph (1)(A) shall
13 not apply with respect to any assistance eligible
14 individual for months of coverage beginning on
15 or after the earlier of—

16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage
19 consisting of only dental, vision, coun-
20 seling, or referral services (or a combina-
21 tion thereof), coverage under a health re-
22 imbursement arrangement or a health
23 flexible spending arrangement, or coverage
24 of treatment that is furnished in an on-site
25 medical facility maintained by the em-

1 ployer and that consists primarily of first-
2 aid services, prevention and wellness care,
3 or similar care (or a combination thereof))
4 or is eligible for benefits under title XVIII
5 of the Social Security Act, or

6 (ii) the earliest of—

7 (I) the date which is 12 months
8 after the first day of the first month
9 that paragraph (1)(A) applies with re-
10 spect to such individual,

11 (II) the date following the expira-
12 tion of the maximum period of con-
13 tinuation coverage required under the
14 applicable COBRA continuation cov-
15 erage provision, or

16 (III) the date following the expi-
17 ration of the period of continuation
18 coverage allowed under paragraph
19 (4)(B)(ii).

20 (B) TIMING OF ELIGIBILITY FOR ADDI-
21 TIONAL COVERAGE.—For purposes of subpara-
22 graph (A)(i), an individual shall not be treated
23 as eligible for coverage under a group health
24 plan before the first date on which such indi-
25 vidual could be covered under such plan.

1 (C) NOTIFICATION REQUIREMENT.—An
2 assistance eligible individual shall notify in writ-
3 ing the group health plan with respect to which
4 paragraph (1)(A) applies if such paragraph
5 ceases to apply by reason of subparagraph
6 (A)(i). Such notice shall be provided to the
7 group health plan in such time and manner as
8 may be specified by the Secretary of Labor.

9 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
10 purposes of this section, the term “assistance eligible
11 individual” means any qualified beneficiary if—

12 (A) at any time during the period that be-
13 gins with September 1, 2008, and ends with
14 December 31, 2009, such qualified beneficiary
15 is eligible for COBRA continuation coverage,

16 (B) such qualified beneficiary elects such
17 coverage, and

18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the
20 involuntary termination of the covered employ-
21 ee’s employment and occurred during such pe-
22 riod.

23 (4) EXTENSION OF ELECTION PERIOD AND EF-
24 FECT ON COVERAGE.—

1 (A) IN GENERAL.—Notwithstanding sec-
2 tion 605(a) of the Employee Retirement Income
3 Security Act of 1974, section 4980B(f)(5)(A) of
4 the Internal Revenue Code of 1986, section
5 2205(a) of the Public Health Service Act, and
6 section 8905a(c)(2) of title 5, United States
7 Code, in the case of an individual who is a
8 qualified beneficiary described in paragraph
9 (3)(A) as of the date of the enactment of this
10 Act and has not made the election referred to
11 in paragraph (3)(B) as of such date, such indi-
12 vidual may elect the COBRA continuation cov-
13 erage under the COBRA continuation coverage
14 provisions containing such sections during the
15 60-day period commencing with the date on
16 which the notification required under paragraph
17 (7)(C) is provided to such individual.

18 (B) COMMENCEMENT OF COVERAGE; NO
19 REACH-BACK.—Any COBRA continuation cov-
20 erage elected by a qualified beneficiary during
21 an extended election period under subparagraph
22 (A)—

23 (i) shall commence on the date of the
24 enactment of this Act, and

1 (ii) shall not extend beyond the period
2 of COBRA continuation coverage that
3 would have been required under the appli-
4 cable COBRA continuation coverage provi-
5 sion if the coverage had been elected as re-
6 quired under such provision.

7 (C) PREEXISTING CONDITIONS.—With re-
8 spect to a qualified beneficiary who elects
9 COBRA continuation coverage pursuant to sub-
10 paragraph (A), the period—

11 (i) beginning on the date of the quali-
12 fying event, and

13 (ii) ending with the day before the
14 date of the enactment of this Act,

15 shall be disregarded for purposes of deter-
16 mining the 63-day periods referred to in section
17 701(2) of the Employee Retirement Income
18 Security Act of 1974, section 9801(c)(2) of the
19 Internal Revenue Code of 1986, and section
20 2701(c)(2) of the Public Health Service Act.

21 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
22 MIUM ASSISTANCE.—In any case in which an indi-
23 vidual requests treatment as an assistance eligible
24 individual and is denied such treatment by the group
25 health plan by reason of such individual's ineligi-

1 bility for COBRA continuation coverage, the Sec-
2 retary of Labor (or the Secretary of Health and
3 Human services in connection with COBRA continu-
4 ation coverage which is provided other than pursu-
5 ant to part 6 of subtitle B of title I of the Employee
6 Retirement Income Security Act of 1974), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary. Such Secretary
12 shall make a determination regarding such individ-
13 ual's eligibility within 10 business days after receipt
14 of such individual's application for review under this
15 paragraph.

16 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
17 OF FEDERAL AND STATE PROGRAMS.—Notwith-
18 standing any other provision of law, any premium
19 reduction with respect to an assistance eligible indi-
20 vidual under this subsection shall not be considered
21 income or resources in determining eligibility for, or
22 the amount of assistance or benefits provided under,
23 any other public benefit provided under Federal law
24 or the law of any State or political subdivision there-
25 of.

1 (7) NOTICES TO INDIVIDUALS.—

2 (A) GENERAL NOTICE.—

3 (i) IN GENERAL.—In the case of no-
4 tices provided under section 606(4) of the
5 Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1166(4)), section
7 4980B(f)(6)(D) of the Internal Revenue
8 Code of 1986, section 2206(4) of the Pub-
9 lic Health Service Act (42 U.S.C. 300bb-
10 6(4)), or section 8905a(f)(2)(A) of title 5,
11 United States Code, with respect to indi-
12 viduals who, during the period described in
13 paragraph (3)(A), become entitled to elect
14 COBRA continuation coverage, such no-
15 tices shall include an additional notifica-
16 tion to the recipient of the availability of
17 premium reduction with respect to such
18 coverage under this subsection.

19 (ii) ALTERNATIVE NOTICE.—In the
20 case of COBRA continuation coverage to
21 which the notice provision under such sec-
22 tions does not apply, the Secretary of
23 Labor, in consultation with the Secretary
24 of the Treasury and the Secretary of
25 Health and Human Services, shall, in co-

1 ordination with administrators of the
2 group health plans (or other entities) that
3 provide or administer the COBRA continu-
4 ation coverage involved, provide rules re-
5 quiring the provision of such notice.

6 (iii) FORM.—The requirement of the
7 additional notification under this subpara-
8 graph may be met by amendment of exist-
9 ing notice forms or by inclusion of a sepa-
10 rate document with the notice otherwise
11 required.

12 (B) SPECIFIC REQUIREMENTS.—Each ad-
13 ditional notification under subparagraph (A)
14 shall include—

15 (i) the forms necessary for estab-
16 lishing eligibility for premium reduction
17 under this subsection,

18 (ii) the name, address, and telephone
19 number necessary to contact the plan ad-
20 ministrator and any other person main-
21 taining relevant information in connection
22 with such premium reduction,

23 (iii) a description of the extended elec-
24 tion period provided for in paragraph
25 (4)(A),

1 (iv) a description of the obligation of
2 the qualified beneficiary under paragraph
3 (2)(C) to notify the plan providing continu-
4 ation coverage of eligibility for subsequent
5 coverage under another group health plan
6 or eligibility for benefits under title XVIII
7 of the Social Security Act and the penalty
8 provided for failure to so notify the plan,
9 and

10 (v) a description, displayed in a
11 prominent manner, of the qualified bene-
12 ficiary's right to a reduced premium and
13 any conditions on entitlement to the re-
14 duced premium.

15 (C) NOTICE RELATING TO RETROACTIVE
16 COVERAGE.—In the case of an individual de-
17 scribed in paragraph (3)(A) who has elected
18 COBRA continuation coverage as of the date of
19 enactment of this Act or an individual described
20 in paragraph (4)(A), the administrator of the
21 group health plan (or other entity) involved
22 shall provide (within 60 days after the date of
23 enactment of this Act) for the additional notifi-
24 cation required to be provided under subpara-
25 graph (A).

1 (D) MODEL NOTICES.—Not later than 30
2 days after the date of enactment of this Act,
3 the Secretary of the Labor, in consultation with
4 the Secretary of the Treasury and the Secretary
5 of Health and Human Services, shall prescribe
6 models for the additional notification required
7 under this paragraph.

8 (8) SAFEGUARDS.—The Secretary of the Treas-
9 ury shall provide such rules, procedures, regulations,
10 and other guidance as may be necessary and appro-
11 priate to prevent fraud and abuse under this sub-
12 section.

13 (9) OUTREACH.—The Secretary of Labor, in
14 consultation with the Secretary of the Treasury and
15 the Secretary of Health and Human Services, shall
16 provide outreach consisting of public education and
17 enrollment assistance relating to premium reduction
18 provided under this subsection. Such outreach shall
19 target employers, group health plan administrators,
20 public assistance programs, States, insurers, and
21 other entities as determined appropriate by such
22 Secretaries. Such outreach shall include an initial
23 focus on those individuals electing continuation cov-
24 erage who are referred to in paragraph (7)(C). In-
25 formation on such premium reduction, including en-

1 rollment, shall also be made available on website of
2 the Departments of Labor, Treasury, and Health
3 and Human Services.

4 (10) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) ADMINISTRATOR.—The term “admin-
7 istrator” has the meaning given such term in
8 section 3(16) of the Employee Retirement In-
9 come Security Act of 1974.

10 (B) COBRA CONTINUATION COVERAGE.—
11 The term “COBRA continuation coverage”
12 means continuation coverage provided pursuant
13 to part 6 of subtitle B of title I of the Em-
14 ployee Retirement Income Security Act of 1974
15 (other than under section 609), title XXII of
16 the Public Health Service Act, section 4980B of
17 the Internal Revenue Code of 1986 (other than
18 subsection (f)(1) of such section insofar as it
19 relates to pediatric vaccines), or section 8905a
20 of title 5, United States Code, or under a State
21 program that provides continuation coverage
22 comparable to such continuation coverage. Such
23 term does not include coverage under a health
24 flexible spending arrangement.

1 (C) COBRA CONTINUATION PROVISION.—
2 The term “COBRA continuation provision”
3 means the provisions of law described in sub-
4 paragraph (B).

5 (D) COVERED EMPLOYEE.—The term
6 “covered employee” has the meaning given such
7 term in section 607(2) of the Employee Retirement
8 Income Security Act of 1974.

9 (E) QUALIFIED BENEFICIARY.—The term
10 “qualified beneficiary” has the meaning given
11 such term in section 607(3) of the Employee
12 Retirement Income Security Act of 1974.

13 (F) GROUP HEALTH PLAN.—The term
14 “group health plan” has the meaning given
15 such term in section 607(1) of the Employee
16 Retirement Income Security Act of 1974.

17 (G) STATE.—The term “State” includes
18 the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, Amer-
20 ican Samoa, and the Commonwealth of the
21 Northern Mariana Islands.

22 (11) REPORTS.—

23 (A) INTERIM REPORT.—The Secretary of
24 the Treasury shall submit an interim report to
25 the Committee on Education and Labor, the

1 Committee on Ways and Means, and the Com-
2 mittee on Energy and Commerce of the House
3 of Representatives and the Committee on
4 Health, Education, Labor, and Pensions and
5 the Committee on Finance of the Senate re-
6 garding the premium reduction provided under
7 this subsection that includes—

8 (i) the number of individuals provided
9 such assistance as of the date of the re-
10 port; and

11 (ii) the total amount of expenditures
12 incurred (with administrative expenditures
13 noted separately) in connection with such
14 assistance as of the date of the report.

15 (B) FINAL REPORT.—As soon as prac-
16 ticable after the last period of COBRA continu-
17 ation coverage for which premium reduction is
18 provided under this section, the Secretary of the
19 Treasury shall submit a final report to each
20 Committee referred to in subparagraph (A) that
21 includes—

22 (i) the number of individuals provided
23 premium reduction under this section;

1 (ii) the average dollar amount
2 (monthly and annually) of premium reduc-
3 tions provided to such individuals; and

4 (iii) the total amount of expenditures
5 incurred (with administrative expenditures
6 noted separately) in connection with pre-
7 mium reduction under this section.

8 (12) COBRA PREMIUM ASSISTANCE.—

9 (A) IN GENERAL.—Subchapter B of chap-
10 ter 65 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following
12 new section:

13 **“SEC. 6431. COBRA PREMIUM ASSISTANCE.**

14 “(a) IN GENERAL.—The entity to whom premiums
15 are payable under COBRA continuation coverage shall be
16 reimbursed for the amount of premiums not paid by plan
17 beneficiaries by reason of section 3002(a) of the Health
18 Insurance Assistance for the Unemployed Act of 2009.
19 Such amount shall be treated as a credit against the re-
20 quirement of such entity to make deposits of payroll taxes
21 and the liability of such entity for payroll taxes. To the
22 extent that such amount exceeds the amount of such
23 taxes, the Secretary shall pay to such entity the amount
24 of such excess. No payment may be made under this sub-
25 section to an entity with respect to any assistance eligible

1 individual until after such entity has received the reduced
2 premium from such individual required under section
3 3002(a)(1)(A) of such Act.

4 “(b) PAYROLL TAXES.—For purposes of this section,
5 the term ‘payroll taxes’ means—

6 “(1) amounts required to be deducted and with-
7 held for the payroll period under section 3401 (relat-
8 ing to wage withholding),

9 “(2) amounts required to be deducted for the
10 payroll period under section 3102 (relating to FICA
11 employee taxes), and

12 “(3) amounts of the taxes imposed for the pay-
13 roll period under section 3111 (relating to FICA em-
14 ployer taxes).

15 “(c) TREATMENT OF CREDIT.—Except as otherwise
16 provided by the Secretary, the credit described in sub-
17 section (a) shall be applied as though the employer had
18 paid to the Secretary, on the day that the qualified bene-
19 ficiary’s premium payment is received, an amount equal
20 to such credit.

21 “(d) TREATMENT OF PAYMENT.—For purposes of
22 section 1324(b)(2) of title 31, United States Code, any
23 payment under this subsection shall be treated in the same
24 manner as a refund of the credit under section 35.

25 “(e) REPORTING.—

1 “(1) IN GENERAL.—Each entity entitled to re-
2 imbursement under subsection (a) for any period
3 shall submit such reports as the Secretary may re-
4 quire, including—

5 “(A) an attestation of involuntary termi-
6 nation of employment for each covered em-
7 ployee on the basis of whose termination entitle-
8 ment to reimbursement is claimed under sub-
9 section (a), and

10 “(B) a report of the amount of payroll
11 taxes offset under subsection (a) for the report-
12 ing period and the estimated offsets of such
13 taxes for the subsequent reporting period in
14 connection with reimbursements under sub-
15 section (a).

16 “(2) TIMING OF REPORTS RELATING TO
17 AMOUNT OF PAYROLL TAXES.— Reports required
18 under paragraph (1)(B) shall be submitted at the
19 same time as deposits of taxes imposed by chapters
20 21, 22, and 24 or at such time as is specified by the
21 Secretary.

22 “(f) REGULATIONS.—The Secretary may issue such
23 regulations or other guidance as may be necessary or ap-
24 propriate to carry out this section, including the require-
25 ment to report information or the establishment of other

1 methods for verifying the correct amounts of payments
2 and credits under this section. The Secretary shall issue
3 such regulations or guidance with respect to the applica-
4 tion of this section to group health plans that are multiem-
5 ployer plans.”.

6 (B) SOCIAL SECURITY TRUST FUNDS HELD
7 HARMLESS.—In determining any amount trans-
8 ferred or appropriated to any fund under the
9 Social Security Act, section 6431 of the Inter-
10 nal Revenue Code of 1986 shall not be taken
11 into account.

12 (C) CLERICAL AMENDMENT.—The table of
13 sections for subchapter B of chapter 65 of the
14 Internal Revenue Code of 1986 is amended by
15 adding at the end the following new item:

“Sec. 6431. COBRA premium assistance.”.

16 (D) EFFECTIVE DATE.—The amendments
17 made by this paragraph shall apply to pre-
18 miums to which subsection (a)(1)(A) applies.

19 (13) PENALTY FOR FAILURE TO NOTIFY
20 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
21 PREMIUM ASSISTANCE.—

22 (A) IN GENERAL.—Part I of subchapter B
23 of chapter 68 of the Internal Revenue Code of
24 1986 is amended by adding at the end the fol-
25 lowing new section:

1 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
2 **PLAN OF CESSATION OF ELIGIBILITY FOR**
3 **COBRA PREMIUM ASSISTANCE.**

4 “(a) IN GENERAL.—Any person required to notify a
5 group health plan under section 3002(a)(2)(C) of the
6 Health Insurance Assistance for the Unemployed Act of
7 2009 who fails to make such a notification at such time
8 and in such manner as the Secretary of Labor may require
9 shall pay a penalty of 110 percent of the premium reduc-
10 tion provided under such section after termination of eligi-
11 bility under such subsection.

12 “(b) REASONABLE CAUSE EXCEPTION.—No penalty
13 shall be imposed under subsection (a) with respect to any
14 failure if it is shown that such failure is due to reasonable
15 cause and not to willful neglect.”.

16 (B) CLERICAL AMENDMENT.—The table of
17 sections of part I of subchapter B of chapter 68
18 of such Code is amended by adding at the end
19 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility
for COBRA premium assistance.”.

20 (C) EFFECTIVE DATE.—The amendments
21 made by this paragraph shall apply to failures
22 occurring after the date of the enactment of
23 this Act.

24 (14) COORDINATION WITH HCTC.—

1 (A) IN GENERAL.—Subsection (g) of sec-
2 tion 35 of the Internal Revenue Code of 1986
3 is amended by redesignating paragraph (9) as
4 paragraph (10) and inserting after paragraph
5 (8) the following new paragraph:

6 “(9) COBRA PREMIUM ASSISTANCE.—In the
7 case of an assistance eligible individual who receives
8 premium reduction for COBRA continuation cov-
9 erage under section 3002(a) of the Health Insurance
10 Assistance for the Unemployed Act of 2009 for any
11 month during the taxable year, such individual shall
12 not be treated as an eligible individual, a certified
13 individual, or a qualifying family member for pur-
14 poses of this section or section 7527 with respect to
15 such month.”.

16 (B) EFFECTIVE DATE.—The amendment
17 made by subparagraph (A) shall apply to tax-
18 able years ending after the date of the enact-
19 ment of this Act.

20 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
21 ANCE FROM GROSS INCOME.—

22 (A) IN GENERAL.—Part III of subchapter
23 B of chapter 1 of the Internal Revenue Code of
24 1986 is amended by inserting after section
25 139B the following new section:

1 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

2 “In the case of an assistance eligible individual (as
3 defined in section 3002 of the Health Insurance Assist-
4 ance for the Unemployed Act of 2009), gross income does
5 not include any premium reduction provided under sub-
6 section (a) of such section.”.

7 (B) CLERICAL AMENDMENT.—The table of
8 sections for part III of subchapter B of chapter
9 1 of such Code is amended by inserting after
10 the item relating to section 139B the following
11 new item:

“Sec. 139C. COBRA premium assistance.”.

12 (C) EFFECTIVE DATE.—The amendments
13 made by this paragraph shall apply to taxable
14 years ending after the date of the enactment of
15 this Act.

16 (b) EXTENSION OF COBRA BENEFITS FOR OLDER
17 OR LONG-TERM EMPLOYEES.—

18 (1) ERISA AMENDMENT.—Section 602(2)(A)
19 of the Employee Retirement Income Security Act of
20 1974 is amended by adding at the end the following
21 new clauses:

22 “(x) SPECIAL RULE FOR OLDER OR
23 LONG-TERM EMPLOYEES GENERALLY.—In
24 the case of a qualifying event described in
25 section 603(2) with respect to a covered

1 employee who (as of such qualifying event)
2 has attained age 55 or has completed 10
3 or more years of service with the entity
4 that is the employer at the time of the
5 qualifying event, clauses (i) and (ii) shall
6 not apply.

7 “(xi) YEAR OF SERVICE.— For pur-
8 poses of this subparagraph, the term ‘year
9 of service’ shall have the meaning provided
10 in section 202(a)(3).”.

11 (2) IRC AMENDMENT.—Clause (i) of section
12 4980B(f)(2)(B) of the Internal Revenue Code of
13 1986 is amended by adding at the end the following
14 new subclauses:

15 “(X) SPECIAL RULE FOR OLDER
16 OR LONG-TERM EMPLOYEES GEN-
17 ERALLY.—In the case of a qualifying
18 event described in paragraph (3)(B)
19 with respect to a covered employee
20 who (as of such qualifying event) has
21 attained age 55 or has completed 10
22 or more years of service with the enti-
23 ty that is the employer at the time of
24 the qualifying event, subclauses (I)
25 and (II) shall not apply.

1 “(XI) YEAR OF SERVICE.— For
2 purposes of this clause, the term ‘year
3 of service’ shall have the meaning pro-
4 vided in section 202(a)(3) of the Em-
5 ployee Retirement Income Security
6 Act of 1974.”.

7 (3) PHSA AMENDMENT.—Section 2202(2)(A)
8 of the Public Health Service Act is amended by add-
9 ing at the end the following new clauses:

10 “(viii) SPECIAL RULE FOR OLDER OR
11 LONG-TERM EMPLOYEES GENERALLY.—In
12 the case of a qualifying event described in
13 section 2203(2) with respect to a covered
14 employee who (as of such qualifying event)
15 has attained age 55 or has completed 10
16 or more years of service with the entity
17 that is the employer at the time of the
18 qualifying event, clauses (i) and (ii) shall
19 not apply.

20 “(ix) YEAR OF SERVICE.— For pur-
21 poses of this subparagraph, the term ‘year
22 of service’ shall have the meaning provided
23 in section 202(a)(3) of the Employee Re-
24 tirement Income Security Act of 1974.”.

1 (4) EFFECTIVE DATE OF AMENDMENTS.—The
2 amendments made by this subsection shall apply to
3 periods of coverage which would (without regard to
4 the amendments made by this section) end on or
5 after the date of the enactment of this Act.

6 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
7 **FOR THE UNEMPLOYED.**

8 (a) IN GENERAL.—Section 1902 of the Social Secu-
9 rity Act (42 U.S.C. 1396b) is amended—

10 (1) in subsection (a)(10)(A)(ii)—

11 (A) by striking “or” at the end of sub-
12 clause (XVIII);

13 (B) by adding “or” at the end of subclause
14 (XIX); and

15 (C) by adding at the end the following new
16 subclause

17 “(XX) who are described in sub-
18 section (dd)(1) (relating to certain un-
19 employed individuals and their fami-
20 lies);”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(dd)(1) Individuals described in this paragraph
24 are—

25 “(A) individuals who—

1 “(i) are within one or more of the categories de-
2 scribed in paragraph (2), as elected under the State
3 plan; and

4 “(ii) meet the applicable requirements of para-
5 graph (3); and

6 “(B) individuals who—

7 “(i) are the spouse, or dependent child under
8 19 years of age, of an individual described in sub-
9 paragraph (A); and

10 “(ii) meet the requirement of paragraph (3)(B).

11 “(2) The categories of individuals described in this
12 paragraph are each of the following:

13 “(A) Individuals who are receiving unemploy-
14 ment compensation benefits.

15 “(B) Individuals who were receiving, but have
16 exhausted, unemployment compensation benefits on
17 or after July 1, 2008.

18 “(C) Individuals who are involuntarily unem-
19 ployed and were involuntarily separated from em-
20 ployment on or after September 1, 2008, and before
21 January 1, 2011, whose family gross income does
22 not exceed a percentage specified by the State (not
23 to exceed 200 percent) of the income official poverty
24 line (as defined by the Office of Management and
25 Budget, and revised annually in accordance with sec-

1 tion 673(2) of the Omnibus Budget Reconciliation
2 Act of 1981) applicable to a family of the size in-
3 volved, and who, but for subsection
4 (a)(10)(A)(ii)(XX), are not eligible for medical as-
5 sistance under this title or health assistance under
6 title XXI.

7 “(D) Individuals who are involuntarily unem-
8 ployed and were involuntarily separated from em-
9 ployment on or after September 1, 2008, and before
10 January 1, 2011, who are members of households
11 participating in the supplemental nutrition assist-
12 ance program established under the Food and Nutri-
13 tion Act of 2008 (7 U.S.C. 2011 et seq), and who,
14 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
15 ble for medical assistance under this title or health
16 assistance under title XXI.

17 A State plan may elect one or more of the categories de-
18 scribed in this paragraph but may not elect the category
19 described in subparagraph (B) unless the State plan also
20 elects the category described in subparagraph (A).

21 “(3) The requirements of this paragraph with respect
22 to an individual are the following:

23 “(A) In the case of individuals within a cat-
24 egory described in subparagraph (A) or (B) of para-
25 graph (2), the individual was involuntarily separated

1 from employment on or after September 1, 2008,
2 and before January 1, 2011, or meets such com-
3 parable requirement as the Secretary specifies
4 through rule, guidance, or otherwise in the case of
5 an individual who was an independent contractor.

6 “(B) The individual is not otherwise covered
7 under creditable coverage, as defined in section
8 2701(e) of the Public Health Service Act (42 U.S.C.
9 300gg(e)), but applied without regard to paragraph
10 (1)(F) of such section and without regard to cov-
11 erage provided by reason of the application of sub-
12 section (a)(10)(A)(ii)(XX).

13 “(4)(A) No income or resources test shall be applied
14 with respect to any category of individuals described in
15 subparagraph (A), (B), or (D) of paragraph (2) who are
16 eligible for medical assistance only by reason of the appli-
17 cation of subsection (a)(10)(A)(ii)(XX).

18 “(B) Nothing in this subsection shall be construed
19 to prevent a State from imposing a resource test for the
20 category of individuals described in paragraph (2)(C)).

21 “(C) In the case of individuals provided medical as-
22 sistance by reason of the application of subsection
23 (a)(10)(A)(ii)(XX), the requirements of subsections
24 (i)(22) and (x) shall not apply.”.

25 (b) 100 PERCENT FEDERAL MATCHING RATE.—

1 (1) FMAP FOR TIME-LIMITED PERIOD.—The
2 third sentence of section 1905(b) of such Act (42
3 U.S.C. 1396d(b)) is amended by inserting before the
4 period at the end the following: “and for items and
5 services furnished on or after the date of enactment
6 of this Act and before January 1, 2011, to individ-
7 uals who are eligible for medical assistance only by
8 reason of the application of section
9 1902(a)(10)(A)(ii)(XX)”.

10 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-
11 TRATIVE COSTS.—Notwithstanding any other provi-
12 sion of law, for purposes of applying section 1903(a)
13 of the Social Security Act (42 U.S.C. 1396b(a)),
14 with respect to expenditures incurred on or after the
15 date of the enactment of this Act and before Janu-
16 ary 1, 2011, for costs of administration (including
17 outreach and the modification and operation of eligi-
18 bility information systems) attributable to eligibility
19 determination and enrollment of individuals who are
20 eligible for medical assistance only by reason of the
21 application of section 1902(a)(10)(A)(ii)(XX) of
22 such Act, as added by subsection (a)(1), the Federal
23 matching percentage shall be 100 percent instead of
24 the matching percentage otherwise applicable.

1 (c) CONFORMING AMENDMENTS.—(1) Section
2 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-
3 ed by inserting “1902(a)(10)(A)(ii)(XX), or” after
4 “1902(a)(10)(A)(ii)(XIX),”.

5 (2) Section 1905(a) of such Act (42 U.S.C.
6 1396d(a)) is amended, in the matter preceding paragraph
7 (1)—

8 (A) by striking “or” at the end of clause (xii);

9 (B) by adding “or” at the end of clause (xiii);

10 and

11 (C) by inserting after clause (xiii) the following
12 new clause:

13 “(xiv) individuals described in section
14 1902(dd)(1),”.

15 **TITLE IV—HEALTH**

16 **INFORMATION TECHNOLOGY**

17 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

18 (a) SHORT TITLE.—This title may be cited as the
19 “Health Information Technology for Economic and Clin-
20 ical Health Act” or the “HITECH Act”.

21 (b) TABLE OF CONTENTS OF TITLE.—The table of
22 contents of this title is as follows:

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND
QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

“Sec. 3001. Office of the National Coordinator for Health Information
Technology.

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

“Sec. 3004. Process for adoption of endorsed recommendations; adoption
of initial set of standards, implementation specifications,
and certification criteria.

“Sec. 3005. Application and use of adopted standards and implementation
specifications by Federal agencies.

“Sec. 3006. Voluntary application and use of adopted standards and im-
plementation specifications by private entities.

“Sec. 3007. Federal health information technology.

“Sec. 3008. Transitions.

“Sec. 3009. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION
TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and imple-
mentation specifications.

Sec. 4112. Application to private entities.

Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.

Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

Sec. 4301. Grant, loan, and demonstration programs.

“Subtitle B—Incentives for the Use of Health Information Technology

“Sec. 3011. Immediate funding to strengthen the health information tech-
nology infrastructure.

“Sec. 3012. Health information technology implementation assistance.

“Sec. 3013. State grants to promote health information technology.

“Sec. 3014. Competitive grants to States and Indian tribes for the devel-
opment of loan programs to facilitate the widespread
adoption of certified EHR technology.

“Sec. 3015. Demonstration program to integrate information technology
into clinical education.

“Sec. 3016. Information technology professionals on health care.

“Sec. 3017. General grant and loan provisions.

“Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

- Sec. 4311. Incentives for eligible professionals.
- Sec. 4312. Incentives for hospitals.
- Sec. 4313. Treatment of payments and savings; implementation funding.
- Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle D—Privacy

- Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 4402. Notification in the case of breach.
- Sec. 4403. Education on Health Information Privacy.
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 4406. Conditions on certain contacts as part of health care operations.
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 4408. Business associate contracts required for certain entities.
- Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 4410. Improved enforcement.
- Sec. 4411. Audits.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;
EFFECTIVE DATE; REPORTS

- Sec. 4421. Relationship to other laws.
- Sec. 4422. Regulatory references.
- Sec. 4423. Effective date.
- Sec. 4424. Studies, reports, guidance.

1 **Subtitle A—Promotion of Health**
2 **Information Technology**

3 **PART 1—IMPROVING HEALTH CARE QUALITY,**
4 **SAFETY, AND EFFICIENCY**

5 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**
6 **ON.**

7 The Public Health Service Act (42 U.S.C. 201 et
8 seq.) is amended by adding at the end the following:

9 **“TITLE XXX—HEALTH INFORMA-**
10 **TION TECHNOLOGY AND**
11 **QUALITY**

12 **“SEC. 3000. DEFINITIONS.**

13 “In this title:

14 “(1) **CERTIFIED EHR TECHNOLOGY.**—The term
15 ‘certified EHR technology’ means a qualified elec-
16 tronic health record that is certified pursuant to sec-
17 tion 3001(c)(5) as meeting standards adopted under
18 section 3004 that are applicable to the type of
19 record involved (as determined by the Secretary,
20 such as an ambulatory electronic health record for
21 office-based physicians or an inpatient hospital elec-
22 tronic health record for hospitals).

23 “(2) **ENTERPRISE INTEGRATION.**—The term
24 ‘enterprise integration’ means the electronic linkage
25 of health care providers, health plans, the govern-

1 ment, and other interested parties, to enable the
2 electronic exchange and use of health information
3 among all the components in the health care infra-
4 structure in accordance with applicable law, and
5 such term includes related application protocols and
6 other related standards.

7 “(3) HEALTH CARE PROVIDER.—The term
8 ‘health care provider’ means a hospital, skilled nurs-
9 ing facility, nursing facility, home health entity or
10 other long term care facility, health care clinic, Fed-
11 erally qualified health center, group practice (as de-
12 fined in section 1877(h)(4) of the Social Security
13 Act), a pharmacist, a pharmacy, a laboratory, a phy-
14 sician (as defined in section 1861(r) of the Social
15 Security Act), a practitioner (as described in section
16 1842(b)(18)(C) of the Social Security Act), a pro-
17 vider operated by, or under contract with, the Indian
18 Health Service or by an Indian tribe (as defined in
19 the Indian Self-Determination and Education Assist-
20 ance Act), tribal organization, or urban Indian orga-
21 nization (as defined in section 4 of the Indian
22 Health Care Improvement Act), a rural health clinic,
23 a covered entity under section 340B, and any other
24 category of facility or clinician determined appro-
25 priate by the Secretary.

1 “(4) HEALTH INFORMATION.—The term ‘health
2 information’ has the meaning given such term in
3 section 1171(4) of the Social Security Act.

4 “(5) HEALTH INFORMATION TECHNOLOGY.—
5 The term ‘health information technology’ means
6 hardware, software, integrated technologies and re-
7 lated licenses, intellectual property, upgrades, and
8 packaged solutions sold as services that are specifi-
9 cally designed for use by health care entities for the
10 electronic creation, maintenance, or exchange of
11 health information.

12 “(6) HEALTH PLAN.—The term ‘health plan’
13 has the meaning given such term in section 1171(5)
14 of the Social Security Act.

15 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
16 Policy Committee’ means such Committee estab-
17 lished under section 3002(a).

18 “(8) HIT STANDARDS COMMITTEE.—The term
19 ‘HIT Standards Committee’ means such Committee
20 established under section 3003(a).

21 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
22 FORMATION.—The term ‘individually identifiable
23 health information’ has the meaning given such term
24 in section 1171(6) of the Social Security Act.

1 “(10) LABORATORY.—The term ‘laboratory’
2 has the meaning given such term in section 353(a).

3 “(11) NATIONAL COORDINATOR.—The term
4 ‘National Coordinator’ means the head of the Office
5 of the National Coordinator for Health Information
6 Technology established under section 3001(a).

7 “(12) PHARMACIST.—The term ‘pharmacist’
8 has the meaning given such term in section 804(2)
9 of the Federal Food, Drug, and Cosmetic Act.

10 “(13) QUALIFIED ELECTRONIC HEALTH
11 RECORD.—The term ‘qualified electronic health
12 record’ means an electronic record of health-related
13 information on an individual that—

14 “(A) includes patient demographic and
15 clinical health information, such as medical his-
16 tory and problem lists; and

17 “(B) has the capacity—

18 “(i) to provide clinical decision sup-
19 port;

20 “(ii) to support physician order entry;

21 “(iii) to capture and query informa-
22 tion relevant to health care quality; and

23 “(iv) to exchange electronic health in-
24 formation with, and integrate such infor-
25 mation from other sources.

1 “(14) STATE.—The term ‘State’ means each of
2 the several States, the District of Columbia, Puerto
3 Rico, the Virgin Islands, Guam, American Samoa,
4 and the Northern Mariana Islands.

5 **“Subtitle A—Promotion of Health**
6 **Information Technology**

7 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
8 **HEALTH INFORMATION TECHNOLOGY.**

9 “(a) ESTABLISHMENT.—There is established within
10 the Department of Health and Human Services an Office
11 of the National Coordinator for Health Information Tech-
12 nology (referred to in this section as the ‘Office’). The Of-
13 fice shall be headed by a National Coordinator who shall
14 be appointed by the Secretary and shall report directly to
15 the Secretary.

16 “(b) PURPOSE.—The National Coordinator shall per-
17 form the duties under subsection (c) in a manner con-
18 sistent with the development of a nationwide health infor-
19 mation technology infrastructure that allows for the elec-
20 tronic use and exchange of information and that—

21 “(1) ensures that each patient’s health informa-
22 tion is secure and protected, in accordance with ap-
23 plicable law;

1 “(2) improves health care quality, reduces med-
2 ical errors, and advances the delivery of patient-cen-
3 tered medical care;

4 “(3) reduces health care costs resulting from
5 inefficiency, medical errors, inappropriate care, du-
6 plicative care, and incomplete information;

7 “(4) provides appropriate information to help
8 guide medical decisions at the time and place of
9 care;

10 “(5) ensures the inclusion of meaningful public
11 input in such development of such infrastructure;

12 “(6) improves the coordination of care and in-
13 formation among hospitals, laboratories, physician
14 offices, and other entities through an effective infra-
15 structure for the secure and authorized exchange of
16 health care information;

17 “(7) improves public health activities and facili-
18 tates the early identification and rapid response to
19 public health threats and emergencies, including bio-
20 terror events and infectious disease outbreaks;

21 “(8) facilitates health and clinical research and
22 health care quality;

23 “(9) promotes prevention of chronic diseases;

24 “(10) promotes a more effective marketplace,
25 greater competition, greater systems analysis, in-

1 creased consumer choice, and improved outcomes in
2 health care services; and

3 “(11) improves efforts to reduce health dispari-
4 ties.

5 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

6 “(1) STANDARDS.—The National Coordinator
7 shall review and determine whether to endorse each
8 standard, implementation specification, and certifi-
9 cation criterion for the electronic exchange and use
10 of health information that is recommended by the
11 HIT Standards Committee under section 3003 for
12 purposes of adoption under section 3004. The Coor-
13 dinator shall make such determination, and report to
14 the Secretary such determination, not later than 45
15 days after the date the recommendation is received
16 by the Coordinator.

17 “(2) HIT POLICY COORDINATION.—

18 “(A) IN GENERAL.—The National Coordi-
19 nator shall coordinate health information tech-
20 nology policy and programs of the Department
21 with those of other relevant executive branch
22 agencies with a goal of avoiding duplication of
23 efforts and of helping to ensure that each agen-
24 cy undertakes health information technology ac-
25 tivities primarily within the areas of its greatest

1 expertise and technical capability and in a man-
2 ner towards a coordinated national goal.

3 “(B) HIT POLICY AND STANDARDS COM-
4 MITTEES.—The National Coordinator shall be a
5 leading member in the establishment and oper-
6 ations of the HIT Policy Committee and the
7 HIT Standards Committee and shall serve as a
8 liaison among those two Committees and the
9 Federal Government.

10 “(3) STRATEGIC PLAN.—

11 “(A) IN GENERAL.—The National Coordi-
12 nator shall, in consultation with other appro-
13 priate Federal agencies (including the National
14 Institute of Standards and Technology), update
15 the Federal Health IT Strategic Plan (devel-
16 oped as of June 3, 2008) to include specific ob-
17 jectives, milestones, and metrics with respect to
18 the following:

19 “(i) The electronic exchange and use
20 of health information and the enterprise
21 integration of such information.

22 “(ii) The utilization of an electronic
23 health record for each person in the United
24 States by 2014.

1 “(iii) The incorporation of privacy and
2 security protections for the electronic ex-
3 change of an individual’s individually iden-
4 tifiable health information.

5 “(iv) Ensuring security methods to
6 ensure appropriate authorization and elec-
7 tronic authentication of health information
8 and specifying technologies or methodolo-
9 gies for rendering health information unus-
10 able, unreadable, or indecipherable.

11 “(v) Specifying a framework for co-
12 ordination and flow of recommendations
13 and policies under this subtitle among the
14 Secretary, the National Coordinator, the
15 HIT Policy Committee, the HIT Standards
16 Committee, and other health information
17 exchanges and other relevant entities.

18 “(vi) Methods to foster the public un-
19 derstanding of health information tech-
20 nology.

21 “(vii) Strategies to enhance the use of
22 health information technology in improving
23 the quality of health care, reducing medical
24 errors, reducing health disparities, improv-

1 ing public health, and improving the con-
2 tinuity of care among health care settings.

3 “(B) COLLABORATION.—The strategic
4 plan shall be updated through collaboration of
5 public and private entities.

6 “(C) MEASURABLE OUTCOME GOALS.—
7 The strategic plan update shall include measur-
8 able outcome goals.

9 “(D) PUBLICATION.—The National Coor-
10 dinator shall republish the strategic plan, in-
11 cluding all updates.

12 “(4) WEBSITE.—The National Coordinator
13 shall maintain and frequently update an Internet
14 website on which there is posted information on the
15 work, schedules, reports, recommendations, and
16 other information to ensure transparency in pro-
17 motion of a nationwide health information tech-
18 nology infrastructure.

19 “(5) CERTIFICATION.—

20 “(A) IN GENERAL.—The National Coordi-
21 nator, in consultation with the Director of the
22 National Institute of Standards and Tech-
23 nology, shall develop a program (either directly
24 or by contract) for the voluntary certification of
25 health information technology as being in com-

1 pliance with applicable certification criteria
2 adopted under this subtitle. Such program shall
3 include testing of the technology in accordance
4 with section 4201(b) of the HITECH Act.

5 “(B) CERTIFICATION CRITERIA DE-
6 SCRIBED.—In this title, the term ‘certification
7 criteria’ means, with respect to standards and
8 implementation specifications for health infor-
9 mation technology, criteria to establish that the
10 technology meets such standards and implemen-
11 tation specifications.

12 “(6) REPORTS AND PUBLICATIONS.—

13 “(A) REPORT ON ADDITIONAL FUNDING
14 OR AUTHORITY NEEDED.—Not later than 12
15 months after the date of the enactment of this
16 title, the National Coordinator shall submit to
17 the appropriate committees of jurisdiction of
18 the House of Representatives and the Senate a
19 report on any additional funding or authority
20 the Coordinator or the HIT Policy Committee
21 or HIT Standards Committee requires to evalu-
22 ate and develop standards, implementation
23 specifications, and certification criteria, or to
24 achieve full participation of stakeholders in the
25 adoption of a nationwide health information

1 technology infrastructure that allows for the
2 electronic use and exchange of health informa-
3 tion.

4 “(B) IMPLEMENTATION REPORT.—The
5 National Coordinator shall prepare a report
6 that identifies lessons learned from major pub-
7 lic and private health care systems in their im-
8 plementation of health information technology,
9 including information on whether the tech-
10 nologies and practices developed by such sys-
11 tems may be applicable to and usable in whole
12 or in part by other health care providers.

13 “(C) ASSESSMENT OF IMPACT OF HIT ON
14 COMMUNITIES WITH HEALTH DISPARITIES AND
15 UNINSURED, UNDERINSURED, AND MEDICALLY
16 UNDERSERVED AREAS.—The National Coordi-
17 nator shall assess and publish the impact of
18 health information technology in communities
19 with health disparities and in areas with a high
20 proportion of individuals who are uninsured,
21 underinsured, and medically underserved indi-
22 viduals (including urban and rural areas) and
23 identify practices to increase the adoption of
24 such technology by health care providers in
25 such communities.

1 “(D) EVALUATION OF BENEFITS AND
2 COSTS OF THE ELECTRONIC USE AND EX-
3 CHANGE OF HEALTH INFORMATION.—The Na-
4 tional Coordinator shall evaluate and publish
5 evidence on the benefits and costs of the elec-
6 tronic use and exchange of health information
7 and assess to whom these benefits and costs ac-
8 crue.

9 “(E) RESOURCE REQUIREMENTS.—The
10 National Coordinator shall estimate and publish
11 resources required annually to reach the goal of
12 utilization of an electronic health record for
13 each person in the United States by 2014, in-
14 cluding the required level of Federal funding,
15 expectations for regional, State, and private in-
16 vestment, and the expected contributions by vol-
17 unteers to activities for the utilization of such
18 records.

19 “(7) ASSISTANCE.—The National Coordinator
20 may provide financial assistance to consumer advo-
21 cacy groups and not-for-profit entities that work in
22 the public interest for purposes of defraying the cost
23 to such groups and entities to participate under,
24 whether in whole or in part, the National Tech-
25 nology Transfer Act of 1995 (15 U.S.C. 272 note).

1 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
2 INFORMATION NETWORK.—The National Coordi-
3 nator shall establish a governance mechanism for the
4 nationwide health information network.

5 “(d) DETAIL OF FEDERAL EMPLOYEES.—

6 “(1) IN GENERAL.—Upon the request of the
7 National Coordinator, the head of any Federal agen-
8 cy is authorized to detail, with or without reimburse-
9 ment from the Office, any of the personnel of such
10 agency to the Office to assist it in carrying out its
11 duties under this section.

12 “(2) EFFECT OF DETAIL.—Any detail of per-
13 sonnel under paragraph (1) shall—

14 “(A) not interrupt or otherwise affect the
15 civil service status or privileges of the Federal
16 employee; and

17 “(B) be in addition to any other staff of
18 the Department employed by the National Co-
19 ordinator.

20 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
21 standing any other provision of law, the Office may
22 accept detailed personnel from other Federal agen-
23 cies without regard to whether the agency described
24 under paragraph (1) is reimbursed.

1 “(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
2 THE NATIONAL COORDINATOR.—Not later than 12
3 months after the date of the enactment of this title, the
4 Secretary shall appoint a Chief Privacy Officer of the Of-
5 fice of the National Coordinator, whose duty it shall be
6 to advise the National Coordinator on privacy, security,
7 and data stewardship of electronic health information and
8 to coordinate with other Federal agencies (and similar pri-
9 vacy officers in such agencies), with State and regional
10 efforts, and with foreign countries with regard to the pri-
11 vacy, security, and data stewardship of electronic individ-
12 ually identifiable health information.

13 **“SEC. 3002. HIT POLICY COMMITTEE.**

14 “(a) ESTABLISHMENT.—There is established a HIT
15 Policy Committee to make policy recommendations to the
16 National Coordinator relating to the implementation of a
17 nationwide health information technology infrastructure,
18 including implementation of the strategic plan described
19 in section 3001(e)(3).

20 “(b) DUTIES.—

21 “(1) RECOMMENDATIONS ON HEALTH INFOR-
22 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
23 Policy Committee shall recommend a policy frame-
24 work for the development and adoption of a nation-
25 wide health information technology infrastructure

1 that permits the electronic exchange and use of
2 health information as is consistent with the strategic
3 plan under section 3001(c)(3) and that includes the
4 recommendations under paragraph (2). The Com-
5 mittee shall update such recommendations and make
6 new recommendations as appropriate.

7 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-
8 MENT.—

9 “(A) IN GENERAL.—The HIT Policy Com-
10 mittee shall recommend the areas in which
11 standards, implementation specifications, and
12 certification criteria are needed for the elec-
13 tronic exchange and use of health information
14 for purposes of adoption under section 3004
15 and shall recommend an order of priority for
16 the development, harmonization, and recogni-
17 tion of such standards, specifications, and cer-
18 tification criteria among the areas so rec-
19 ommended. Such standards and implementation
20 specifications shall include named standards,
21 architectures, and software schemes for the au-
22 thentication and security of individually identifi-
23 able health information and other information
24 as needed to ensure the reproducible develop-

1 ment of common solutions across disparate en-
2 tities.

3 “(B) AREAS REQUIRED FOR CONSIDER-
4 ATION.—For purposes of subparagraph (A), the
5 HIT Policy Committee shall make recommenda-
6 tions for at least the following areas:

7 “(i) Technologies that protect the pri-
8 vacy of health information and promote se-
9 curity in a qualified electronic health
10 record, including for the segmentation and
11 protection from disclosure of specific and
12 sensitive individually identifiable health in-
13 formation with the goal of minimizing the
14 reluctance of patients to seek care (or dis-
15 close information about a condition) be-
16 cause of privacy concerns, in accordance
17 with applicable law, and for the use and
18 disclosure of limited data sets of such in-
19 formation.

20 “(ii) A nationwide health information
21 technology infrastructure that allows for
22 the electronic use and accurate exchange of
23 health information.

1 “(iii) The utilization of a certified
2 electronic health record for each person in
3 the United States by 2014.

4 “(iv) Technologies that as a part of a
5 qualified electronic health record allow for
6 an accounting of disclosures made by a
7 covered entity (as defined for purposes of
8 regulations promulgated under section
9 264(e) of the Health Insurance Portability
10 and Accountability Act of 1996) for pur-
11 poses of treatment, payment, and health
12 care operations (as such terms are defined
13 for purposes of such regulations).

14 “(v) The use of certified electronic
15 health records to improve the quality of
16 health care, such as by promoting the co-
17 ordination of health care and improving
18 continuity of health care among health
19 care providers, by reducing medical errors,
20 by improving population health, and by ad-
21 vancing research and education.

22 “(C) OTHER AREAS FOR CONSIDER-
23 ATION.—In making recommendations under
24 subparagraph (A), the HIT Policy Committee
25 may consider the following additional areas:

1 “(i) The appropriate uses of a nation-
2 wide health information infrastructure, in-
3 cluding for purposes of—

4 “(I) the collection of quality data
5 and public reporting;

6 “(II) biosurveillance and public
7 health;

8 “(III) medical and clinical re-
9 search; and

10 “(IV) drug safety.

11 “(ii) Self-service technologies that fa-
12 cilitate the use and exchange of patient in-
13 formation and reduce wait times.

14 “(iii) Telemedicine technologies, in
15 order to reduce travel requirements for pa-
16 tients in remote areas.

17 “(iv) Technologies that facilitate home
18 health care and the monitoring of patients
19 recuperating at home.

20 “(v) Technologies that help reduce
21 medical errors.

22 “(vi) Technologies that facilitate the
23 continuity of care among health settings.

24 “(vii) Technologies that meet the
25 needs of diverse populations.

1 “(viii) Any other technology that the
2 HIT Policy Committee finds to be among
3 the technologies with the greatest potential
4 to improve the quality and efficiency of
5 health care.

6 “(3) FORUM.—The HIT Policy Committee shall
7 serve as a forum for broad stakeholder input with
8 specific expertise in policies relating to the matters
9 described in paragraphs (1) and (2).

10 “(c) MEMBERSHIP AND OPERATIONS.—

11 “(1) IN GENERAL.—The National Coordinator
12 shall provide leadership in the establishment and op-
13 erations of the HIT Policy Committee.

14 “(2) MEMBERSHIP.—The membership of the
15 HIT Policy Committee shall at least reflect pro-
16 viders, ancillary healthcare workers, consumers, pur-
17 chasers, health plans, technology vendors, research-
18 ers, relevant Federal agencies, and individuals with
19 technical expertise on health care quality, privacy
20 and security, and on the electronic exchange and use
21 of health information.

22 “(3) CONSIDERATION.—The National Coordi-
23 nator shall ensure that the relevant recommenda-
24 tions and comments from the National Committee

1 on Vital and Health Statistics are considered in the
2 development of policies.

3 “(d) APPLICATION OF FACCA.—The Federal Advisory
4 Committee Act (5 U.S.C. App.), other than section 14 of
5 such Act, shall apply to the HIT Policy Committee.

6 “(e) PUBLICATION.—The Secretary shall provide for
7 publication in the Federal Register and the posting on the
8 Internet website of the Office of the National Coordinator
9 for Health Information Technology of all policy rec-
10 ommendations made by the HIT Policy Committee under
11 this section.

12 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

13 “(a) ESTABLISHMENT.—There is established a com-
14 mittee to be known as the HIT Standards Committee to
15 recommend to the National Coordinator standards, imple-
16 mentation specifications, and certification criteria for the
17 electronic exchange and use of health information for pur-
18 poses of adoption under section 3004, consistent with the
19 implementation of the strategic plan described in section
20 3001(c)(3) and beginning with the areas listed in section
21 3002(b)(2)(B) in accordance with policies developed by
22 the HIT Policy Committee.

23 “(b) DUTIES.—

24 “(1) STANDARD DEVELOPMENT.—

1 “(A) IN GENERAL.—The HIT Standards
2 Committee shall recommend to the National
3 Coordinator standards, implementation speci-
4 fications, and certification criteria described in
5 subsection (a) that have been developed, har-
6 monized, or recognized by the HIT Standards
7 Committee. The HIT Standards Committee
8 shall update such recommendations and make
9 new recommendations as appropriate, including
10 in response to a notification sent under section
11 3004(b)(2). Such recommendations shall be
12 consistent with the latest recommendations
13 made by the HIT Policy Committee.

14 “(B) PILOT TESTING OF STANDARDS AND
15 IMPLEMENTATION SPECIFICATIONS.—In the de-
16 velopment, harmonization, or recognition of
17 standards and implementation specifications,
18 the HIT Standards Committee shall, as appro-
19 priate, provide for the testing of such standards
20 and specifications by the National Institute for
21 Standards and Technology under section 4201
22 of the HITECH Act.

23 “(C) CONSISTENCY.—The standards, im-
24 plementation specifications, and certification
25 criteria recommended under this subsection

1 shall be consistent with the standards for infor-
2 mation transactions and data elements adopted
3 pursuant to section 1173 of the Social Security
4 Act.

5 “(2) FORUM.—The HIT Standards Committee
6 shall serve as a forum for the participation of a
7 broad range of stakeholders to provide input on the
8 development, harmonization, and recognition of
9 standards, implementation specifications, and certifi-
10 cation criteria necessary for the development and
11 adoption of a nationwide health information tech-
12 nology infrastructure that allows for the electronic
13 use and exchange of health information.

14 “(3) SCHEDULE.—Not later than 90 days after
15 the date of the enactment of this title, the HIT
16 Standards Committee shall develop a schedule for
17 the assessment of policy recommendations developed
18 by the HIT Policy Committee under section 3002.
19 The HIT Standards Committee shall update such
20 schedule annually. The Secretary shall publish such
21 schedule in the Federal Register.

22 “(4) PUBLIC INPUT.—The HIT Standards
23 Committee shall conduct open public meetings and
24 develop a process to allow for public comment on the
25 schedule described in paragraph (3) and rec-

1 ommendations described in this subsection. Under
2 such process comments shall be submitted in a time-
3 ly manner after the date of publication of a rec-
4 ommendation under this subsection.

5 “(c) MEMBERSHIP AND OPERATIONS.—

6 “(1) IN GENERAL.—The National Coordinator
7 shall provide leadership in the establishment and op-
8 erations of the HIT Standards Committee.

9 “(2) MEMBERSHIP.—The membership of the
10 HIT Standards Committee shall at least reflect pro-
11 viders, ancillary healthcare workers, consumers, pur-
12 chasers, health plans, technology vendors, research-
13 ers, relevant Federal agencies, and individuals with
14 technical expertise on health care quality, privacy
15 and security, and on the electronic exchange and use
16 of health information.

17 “(3) CONSIDERATION.—The National Coordi-
18 nator shall ensure that the relevant recommenda-
19 tions and comments from the National Committee
20 on Vital and Health Statistics are considered in the
21 development of standards.

22 “(4) ASSISTANCE.—For the purposes of car-
23 rying out this section, the Secretary may provide or
24 ensure that financial assistance is provided by the
25 HIT Standards Committee to defray in whole or in

1 part any membership fees or dues charged by such
2 Committee to those consumer advocacy groups and
3 not for profit entities that work in the public inter-
4 est as a part of their mission.

5 “(d) APPLICATION OF FACA.—The Federal Advisory
6 Committee Act (5 U.S.C. App.), other than section 14,
7 shall apply to the HIT Standards Committee.

8 “(e) PUBLICATION.—The Secretary shall provide for
9 publication in the Federal Register and the posting on the
10 Internet website of the Office of the National Coordinator
11 for Health Information Technology of all recommenda-
12 tions made by the HIT Standards Committee under this
13 section.

14 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
15 **COMMENDATIONS; ADOPTION OF INITIAL SET**
16 **OF STANDARDS, IMPLEMENTATION SPECI-**
17 **FICATIONS, AND CERTIFICATION CRITERIA.**

18 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-
19 OMMENDATIONS.—

20 “(1) REVIEW OF ENDORSED STANDARDS, IM-
21 PLEMENTATION SPECIFICATIONS, AND CERTIFI-
22 CATION CRITERIA.—Not later than 90 days after the
23 date of receipt of standards, implementation speci-
24 fications, or certification criteria endorsed under sec-
25 tion 3001(c), the Secretary, in consultation with rep-

1 representatives of other relevant Federal agencies, shall
2 jointly review such standards, implementation speci-
3 fications, or certification criteria and shall determine
4 whether or not to propose adoption of such stand-
5 ards, implementation specifications, or certification
6 criteria.

7 “(2) DETERMINATION TO ADOPT STANDARDS,
8 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
9 CATION CRITERIA.—If the Secretary determines—

10 “(A) to propose adoption of any grouping
11 of such standards, implementation specifica-
12 tions, or certification criteria, the Secretary
13 shall, by regulation, determine whether or not
14 to adopt such grouping of standards, implemen-
15 tation specifications, or certification criteria; or

16 “(B) not to propose adoption of any group-
17 ing of standards, implementation specifications,
18 or certification criteria, the Secretary shall no-
19 tify the National Coordinator and the HIT
20 Standards Committee in writing of such deter-
21 mination and the reasons for not proposing the
22 adoption of such recommendation.

23 “(3) PUBLICATION.—The Secretary shall pro-
24 vide for publication in the Federal Register of all de-

1 terminations made by the Secretary under para-
2 graph (1).

3 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
4 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
5 CRITERIA.—

6 “(1) IN GENERAL.—Not later than December
7 31, 2009, the Secretary shall, through the rule-
8 making process described in section 3003, adopt an
9 initial set of standards, implementation specifica-
10 tions, and certification criteria for the areas required
11 for consideration under section 3002(b)(2)(B).

12 “(2) APPLICATION OF CURRENT STANDARDS,
13 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
14 CATION CRITERIA.—The standards, implementation
15 specifications, and certification criteria adopted be-
16 fore the date of the enactment of this title through
17 the process existing through the Office of the Na-
18 tional Coordinator for Health Information Tech-
19 nology may be applied towards meeting the require-
20 ment of paragraph (1).

21 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
22 **ARDS AND IMPLEMENTATION SPECIFICA-**
23 **TIONS BY FEDERAL AGENCIES.**

24 “For requirements relating to the application and use
25 by Federal agencies of the standards and implementation

1 specifications adopted under section 3004, see section
2 4111 of the HITECH Act.

3 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
4 **ED STANDARDS AND IMPLEMENTATION**
5 **SPECIFICATIONS BY PRIVATE ENTITIES.**

6 “(a) IN GENERAL.—Except as provided under section
7 4112 of the HITECH Act, any standard or implementa-
8 tion specification adopted under section 3004 shall be vol-
9 untary with respect to private entities.

10 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-
11 title shall be construed to require that a private entity that
12 enters into a contract with the Federal Government apply
13 or use the standards and implementation specifications
14 adopted under section 3004 with respect to activities not
15 related to the contract.

16 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
17 **NOLOGY.**

18 “(a) IN GENERAL.—The National Coordinator shall
19 support the development, routine updating and provision
20 of qualified EHR technology (as defined in section 3000)
21 consistent with subsections (b) and (c) unless the Sec-
22 retary determines that the needs and demands of pro-
23 viders are being substantially and adequately met through
24 the marketplace.

1 “(b) CERTIFICATION.—In making such EHR tech-
2 nology publicly available, the National Coordinator shall
3 ensure that the qualified EHR technology described in
4 subsection (a) is certified under the program developed
5 under section 3001(c)(3) to be in compliance with applica-
6 ble standards adopted under section 3003(a).

7 “(c) AUTHORIZATION TO CHARGE A NOMINAL
8 FEE.—The National Coordinator may impose a nominal
9 fee for the adoption by a health care provider of the health
10 information technology system developed or approved
11 under subsection (a) and (b). Such fee shall take into ac-
12 count the financial circumstances of smaller providers, low
13 income providers, and providers located in rural or other
14 medically underserved areas.

15 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion shall be construed to require that a private or govern-
17 ment entity adopt or use the technology provided under
18 this section.

19 **“SEC. 3008. TRANSITIONS.**

20 “(a) ONCHIT.—To the extent consistent with sec-
21 tion 3001, all functions, personnel, assets, liabilities, and
22 administrative actions applicable to the National Coordi-
23 nator for Health Information Technology appointed under
24 Executive Order 13335 or the Office of such National Co-
25 ordinator on the date before the date of the enactment

1 of this title shall be transferred to the National Coordi-
2 nator appointed under section 3001(a) and the Office of
3 such National Coordinator as of the date of the enactment
4 of this title.

5 “(b) AHIC.—

6 “(1) To the extent consistent with sections
7 3002 and 3003, all functions, personnel, assets, and
8 liabilities applicable to the AHIC Successor, Inc.
9 doing business as the National eHealth Collaborative
10 as of the day before the date of the enactment of
11 this title shall be transferred to the HIT Policy
12 Committee or the HIT Standards Committee, estab-
13 lished under section 3002(a) or 3003(a), as appro-
14 priate, as of the date of the enactment of this title.

15 “(2) In carrying out section 3003(b)(1)(A),
16 until recommendations are made by the HIT Policy
17 Committee, recommendations of the HIT Standards
18 Committee shall be consistent with the most recent
19 recommendations made by such AHIC Successor,
20 Inc.

21 “(c) RULES OF CONSTRUCTION.—

22 “(1) ONCHIT.—Nothing in section 3001 or
23 subsection (a) shall be construed as requiring the
24 creation of a new entity to the extent that the Office
25 of the National Coordinator for Health Information

1 Technology established pursuant to Executive Order
2 13335 is consistent with the provisions of section
3 3001.

4 “(2) AHIC.—Nothing in sections 3002 or 3003
5 or subsection (b) shall be construed as prohibiting
6 the AHIC Successor, Inc. doing business as the Na-
7 tional eHealth Collaborative from modifying its char-
8 ter, duties, membership, and any other structure or
9 function required to be consistent with section 3002
10 and 3003 in a manner that would permit the Sec-
11 retary to choose to recognize such Community as the
12 HIT Policy Committee or the HIT Standards Com-
13 mittee.

14 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
15 **LAW.**

16 “(a) IN GENERAL.—With respect to the relation of
17 this title to HIPAA privacy and security law:

18 “(1) This title may not be construed as having
19 any effect on the authorities of the Secretary under
20 HIPAA privacy and security law.

21 “(2) The purposes of this title include ensuring
22 that the health information technology standards
23 and implementation specifications adopted under
24 section 3004 take into account the requirements of
25 HIPAA privacy and security law.

1 “(b) DEFINITION.—For purposes of this section, the
2 term ‘HIPAA privacy and security law’ means—

3 “(1) the provisions of part C of title XI of the
4 Social Security Act, section 264 of the Health Insur-
5 ance Portability and Accountability Act of 1996, and
6 subtitle D of title IV of the HITECH Act; and

7 “(2) regulations under such provisions.

8 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

9 “There is authorized to be appropriated to the Office
10 of the National Coordinator for Health Information Tech-
11 nology to carry out this subtitle \$250,000,000 for fiscal
12 year 2009.”.

13 **SEC. 4102. TECHNICAL AMENDMENT.**

14 Section 1171(5) of the Social Security Act (42 U.S.C.
15 1320d) is amended by striking “or C” and inserting “C,
16 or D”.

17 **PART 2—APPLICATION AND USE OF ADOPTED**
18 **HEALTH INFORMATION TECHNOLOGY**
19 **STANDARDS; REPORTS**

20 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**
21 **ADOPTED STANDARDS AND IMPLEMENTA-**
22 **TION SPECIFICATIONS.**

23 (a) SPENDING ON HEALTH INFORMATION TECH-
24 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-
25 ecutive Order issued on August 22, 2006, relating to pro-

1 moting quality and efficient health care in Federal govern-
2 ment administered or sponsored health care programs) im-
3 plements, acquires, or upgrades health information tech-
4 nology systems used for the direct exchange of individually
5 identifiable health information between agencies and with
6 non-Federal entities, it shall utilize, where available,
7 health information technology systems and products that
8 meet standards and implementation specifications adopted
9 under section 3004(b) of the Public Health Service Act,
10 as added by section 4101.

11 (b) FEDERAL INFORMATION COLLECTION ACTIVI-
12 TIES.—With respect to a standard or implementation
13 specification adopted under section 3004(b) of the Public
14 Health Service Act, as added by section 4101, the Presi-
15 dent shall take measures to ensure that Federal activities
16 involving the broad collection and submission of health in-
17 formation are consistent with such standard or implemen-
18 tation specification, respectively, within three years after
19 the date of such adoption.

20 (c) APPLICATION OF DEFINITIONS.—The definitions
21 contained in section 3000 of the Public Health Service
22 Act, as added by section 4101, shall apply for purposes
23 of this part.

1 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

2 Each agency (as defined in such Executive Order
3 issued on August 22, 2006, relating to promoting quality
4 and efficient health care in Federal government adminis-
5 tered or sponsored health care programs) shall require in
6 contracts or agreements with health care providers, health
7 plans, or health insurance issuers that as each provider,
8 plan, or issuer implements, acquires, or upgrades health
9 information technology systems, it shall utilize, where
10 available, health information technology systems and prod-
11 ucts that meet standards and implementation specifica-
12 tions adopted under section 3004(b) of the Public Health
13 Service Act, as added by section 4101.

14 **SEC. 4113. STUDY AND REPORTS.**

15 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-
16 TEM.—Not later than 2 years after the date of the enact-
17 ment of this Act and annually thereafter, the Secretary
18 of Health and Human Services shall submit to the appro-
19 priate committees of jurisdiction of the House of Rep-
20 resentatives and the Senate a report that—

21 (1) describes the specific actions that have been
22 taken by the Federal Government and private enti-
23 ties to facilitate the adoption of a nationwide system
24 for the electronic use and exchange of health infor-
25 mation;

1 (2) describes barriers to the adoption of such a
2 nationwide system; and

3 (3) contains recommendations to achieve full
4 implementation of such a nationwide system.

5 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-
6 PORT.—

7 (1) STUDY.—The Secretary of Health and
8 Human Services shall carry out, or contract with a
9 private entity to carry out, a study that examines
10 methods to create efficient reimbursement incentives
11 for improving health care quality in Federally quali-
12 fied health centers, rural health clinics, and free
13 clinics.

14 (2) REPORT.—Not later than 2 years after the
15 date of the enactment of this Act, the Secretary of
16 Health and Human Services shall submit to the ap-
17 propriate committees of jurisdiction of the House of
18 Representatives and the Senate a report on the
19 study carried out under paragraph (1).

20 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
21 PORT.—

22 (1) IN GENERAL.—The Secretary of Health and
23 Human Services shall carry out, or contract with a
24 private entity to carry out, a study of matters relat-
25 ing to the potential use of new aging services tech-

1 nology to assist seniors, individuals with disabilities,
2 and their caregivers throughout the aging process.

3 (2) MATTERS TO BE STUDIED.—The study
4 under paragraph (1) shall include—

5 (A) an evaluation of—

6 (i) methods for identifying current,
7 emerging, and future health technology
8 that can be used to meet the needs of sen-
9 iors and individuals with disabilities and
10 their caregivers across all aging services
11 settings, as specified by the Secretary;

12 (ii) methods for fostering scientific in-
13 novation with respect to aging services
14 technology within the business and aca-
15 demic communities; and

16 (iii) developments in aging services
17 technology in other countries that may be
18 applied in the United States; and

19 (B) identification of—

20 (i) barriers to innovation in aging
21 services technology and devising strategies
22 for removing such barriers; and

23 (ii) barriers to the adoption of aging
24 services technology by health care pro-

1 viders and consumers and devising strate-
2 gies to removing such barriers.

3 (3) REPORT.—Not later than 24 months after
4 the date of the enactment of this Act, the Secretary
5 shall submit to the appropriate committees of juris-
6 diction of the House of Representatives and of the
7 Senate a report on the study carried out under para-
8 graph (1).

9 (4) DEFINITIONS.—For purposes of this sub-
10 section:

11 (A) AGING SERVICES TECHNOLOGY.—The
12 term “aging services technology” means health
13 technology that meets the health care needs of
14 seniors, individuals with disabilities, and the
15 caregivers of such seniors and individuals.

16 (B) SENIOR.—The term “senior” has such
17 meaning as specified by the Secretary.

18 **Subtitle B—Testing of Health**
19 **Information Technology**

20 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**
21 **TECHNOLOGY TESTING.**

22 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
23 TATION SPECIFICATIONS.—In coordination with the HIT
24 Standards Committee established under section 3003 of
25 the Public Health Service Act, as added by section 4101,

1 with respect to the development of standards and imple-
2 mentation specifications under such section, the Director
3 of the National Institute for Standards and Technology
4 shall test such standards and implementation specifica-
5 tions, as appropriate, in order to assure the efficient im-
6 plementation and use of such standards and implementa-
7 tion specifications.

8 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
9 tion with the HIT Standards Committee established under
10 section 3003 of the Public Health Service Act, as added
11 by section 4101, with respect to the development of stand-
12 ards and implementation specifications under such sec-
13 tion, the Director of the National Institute of Standards
14 and Technology shall support the establishment of a con-
15 formance testing infrastructure, including the develop-
16 ment of technical test beds. The development of this con-
17 formance testing infrastructure may include a program to
18 accredit independent, non-Federal laboratories to perform
19 testing.

20 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

21 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
22 GRATION RESEARCH CENTERS.—

23 (1) IN GENERAL.—The Director of the National
24 Institute of Standards and Technology, in consulta-
25 tion with the Director of the National Science Foun-

1 dation and other appropriate Federal agencies, shall
2 establish a program of assistance to institutions of
3 higher education (or consortia thereof which may in-
4 clude nonprofit entities and Federal Government
5 laboratories) to establish multidisciplinary Centers
6 for Health Care Information Enterprise Integration.

7 (2) REVIEW; COMPETITION.—Grants shall be
8 awarded under this subsection on a merit-reviewed,
9 competitive basis.

10 (3) PURPOSE.—The purposes of the Centers de-
11 scribed in paragraph (1) shall be—

12 (A) to generate innovative approaches to
13 health care information enterprise integration
14 by conducting cutting-edge, multidisciplinary
15 research on the systems challenges to health
16 care delivery; and

17 (B) the development and use of health in-
18 formation technologies and other complemen-
19 tary fields.

20 (4) RESEARCH AREAS.—Research areas may in-
21 clude—

22 (A) interfaces between human information
23 and communications technology systems;

24 (B) voice-recognition systems;

1 (C) software that improves interoperability
2 and connectivity among health information sys-
3 tems;

4 (D) software dependability in systems crit-
5 ical to health care delivery;

6 (E) measurement of the impact of informa-
7 tion technologies on the quality and productivity
8 of health care;

9 (F) health information enterprise manage-
10 ment;

11 (G) health information technology security
12 and integrity; and

13 (H) relevant health information technology
14 to reduce medical errors.

15 (5) APPLICATIONS.—An institution of higher
16 education (or a consortium thereof) seeking funding
17 under this subsection shall submit an application to
18 the Director of the National Institute of Standards
19 and Technology at such time, in such manner, and
20 containing such information as the Director may re-
21 quire. The application shall include, at a minimum,
22 a description of—

23 (A) the research projects that will be un-
24 dertaken by the Center established pursuant to

1 assistance under paragraph (1) and the respec-
2 tive contributions of the participating entities;

3 (B) how the Center will promote active col-
4 laboration among scientists and engineers from
5 different disciplines, such as information tech-
6 nology, biologic sciences, management, social
7 sciences, and other appropriate disciplines;

8 (C) technology transfer activities to dem-
9 onstrate and diffuse the research results, tech-
10 nologies, and knowledge; and

11 (D) how the Center will contribute to the
12 education and training of researchers and other
13 professionals in fields relevant to health infor-
14 mation enterprise integration.

15 (b) NATIONAL INFORMATION TECHNOLOGY RE-
16 SEARCH AND DEVELOPMENT PROGRAM.—The National
17 High-Performance Computing Program established by
18 section 101 of the High-Performance Computing Act of
19 1991 (15 U.S.C. 5511) shall coordinate Federal research
20 and development programs related to the development and
21 deployment of health information technology, including ac-
22 tivities related to—

23 (1) computer infrastructure;

24 (2) data security;

1 (3) development of large-scale, distributed, reli-
2 able computing systems;

3 (4) wired, wireless, and hybrid high-speed net-
4 working;

5 (5) development of software and software-inten-
6 sive systems;

7 (6) human-computer interaction and informa-
8 tion management technologies; and

9 (7) the social and economic implications of in-
10 formation technology.

11 **Subtitle C—Incentives for the Use**
12 **of Health Information Technology**

13 **PART I—GRANTS AND LOANS FUNDING**

14 **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**
15 **GRAMS.**

16 Title XXX of the Public Health Service Act, as added
17 by section 4101, is amended by adding at the end the fol-
18 lowing new subtitle:

19 **“Subtitle B—Incentives for the Use**
20 **of Health Information Technology**

21 **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**
22 **HEALTH INFORMATION TECHNOLOGY INFRA-**
23 **STRUCTURE.**

24 “(a) IN GENERAL.—The Secretary of Health and
25 Human Services shall, using amounts appropriated under

1 section 3018, invest in the infrastructure necessary to
2 allow for and promote the electronic exchange and use of
3 health information for each individual in the United States
4 consistent with the goals outlined in the strategic plan de-
5 veloped by the National Coordinator (and as available)
6 under section 3001. To the greatest extent practicable, the
7 Secretary shall ensure that any funds so appropriated
8 shall be used for the acquisition of health information
9 technology that meets standards and certification criteria
10 adopted before the date of the enactment of this title until
11 such date as the standards are adopted under section
12 3004. The Secretary shall invest funds through the dif-
13 ferent agencies with expertise in such goals, such as the
14 Office of the National Coordinator for Health Information
15 Technology, the Health Resources and Services Adminis-
16 tration, the Agency for Healthcare Research and Quality,
17 the Centers of Medicare & Medicaid Services, the Centers
18 for Disease Control and Prevention, and the Indian
19 Health Service to support the following:

20 “(1) Health information technology architecture
21 that will support the nationwide electronic exchange
22 and use of health information in a secure, private,
23 and accurate manner, including connecting health
24 information exchanges, and which may include up-
25 dating and implementing the infrastructure nec-

1 essary within different agencies of the Department
2 of Health and Human Services to support the elec-
3 tronic use and exchange of health information.

4 “(2) Development and adoption of appropriate
5 certified electronic health records for categories of
6 providers not eligible for support under title XVIII
7 or XIX of the Social Security Act for the adoption
8 of such records.

9 “(3) Training on and dissemination of informa-
10 tion on best practices to integrate health information
11 technology, including electronic health records, into
12 a provider’s delivery of care, consistent with best
13 practices learned from the Health Information Tech-
14 nology Research Center developed under section 302,
15 including community health centers receiving assist-
16 ance under section 330 of the Public Health Service
17 Act, covered entities under section 340B of such
18 Act, and providers participating in one or more of
19 the programs under titles XVIII, XIX, and XXI of
20 the Social Security Act (relating to Medicare, Med-
21 icaid, and the State Children’s Health Insurance
22 Program).

23 “(4) Infrastructure and tools for the promotion
24 of telemedicine, including coordination among Fed-
25 eral agencies in the promotion of telemedicine.

1 “(5) Promotion of the interoperability of clinical
2 data repositories or registries.

3 “(6) Promotion of technologies and best prac-
4 tices that enhance the protection of health informa-
5 tion by all holders of individually identifiable health
6 information.

7 “(7) Improve and expand the use of health in-
8 formation technology by public health departments.

9 “(8) Provide \$300 million to support regional
10 or sub-national efforts towards health information
11 exchange.

12 “(b) **COORDINATION.**—The Secretary shall ensure
13 funds under this section are used in a coordinated manner
14 with other health information promotion activities.

15 “(c) **ADDITIONAL USE OF FUNDS.**—In addition to
16 using funds as provided in subsection (a), the Secretary
17 may use amounts appropriated under section 3018 to
18 carry out activities that are provided for under laws in
19 effect on the date of the enactment of this title.

20 **“SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**
21 **MENTATION ASSISTANCE.**

22 “(a) **HEALTH INFORMATION TECHNOLOGY EXTEN-**
23 **SION PROGRAM.**—To assist health care providers to adopt,
24 implement, and effectively use certified EHR technology
25 that allows for the electronic exchange and use of health

1 information, the Secretary, acting through the Office of
2 the National Coordinator, shall establish a health informa-
3 tion technology extension program to provide health infor-
4 mation technology assistance services to be carried out
5 through the Department of Health and Human Services.
6 The National Coordinator shall consult with other Federal
7 agencies with demonstrated experience and expertise in in-
8 formation technology services, such as the National Insti-
9 tute of Standards and Technology, in developing and im-
10 plementing this program.

11 “(b) HEALTH INFORMATION TECHNOLOGY RE-
12 SEARCH CENTER.—

13 “(1) IN GENERAL.—The Secretary shall create
14 a Health Information Technology Research Center
15 (in this section referred to as the ‘Center’) to pro-
16 vide technical assistance and develop or recognize
17 best practices to support and accelerate efforts to
18 adopt, implement, and effectively utilize health infor-
19 mation technology that allows for the electronic ex-
20 change and use of information in compliance with
21 standards, implementation specifications, and certifi-
22 cation criteria adopted under section 3004(b).

23 “(2) INPUT.—The Center shall incorporate
24 input from—

1 “(A) other Federal agencies with dem-
2 onstrated experience and expertise in informa-
3 tion technology services such as the National
4 Institute of Standards and Technology;

5 “(B) users of health information tech-
6 nology, such as providers and their support and
7 clerical staff and others involved in the care and
8 care coordination of patients, from the health
9 care and health information technology indus-
10 try; and

11 “(C) others as appropriate.

12 “(3) PURPOSES.—The purposes of the Center
13 are to—

14 “(A) provide a forum for the exchange of
15 knowledge and experience;

16 “(B) accelerate the transfer of lessons
17 learned from existing public and private sector
18 initiatives, including those currently receiving
19 Federal financial support;

20 “(C) assemble, analyze, and widely dis-
21 seminate evidence and experience related to the
22 adoption, implementation, and effective use of
23 health information technology that allows for
24 the electronic exchange and use of information

1 including through the regional centers described
2 in subsection (c);

3 “(D) provide technical assistance for the
4 establishment and evaluation of regional and
5 local health information networks to facilitate
6 the electronic exchange of information across
7 health care settings and improve the quality of
8 health care;

9 “(E) provide technical assistance for the
10 development and dissemination of solutions to
11 barriers to the exchange of electronic health in-
12 formation; and

13 “(F) learn about effective strategies to
14 adopt and utilize health information technology
15 in medically underserved communities.

16 “(c) HEALTH INFORMATION TECHNOLOGY RE-
17 GIONAL EXTENSION CENTERS.—

18 “(1) IN GENERAL.—The Secretary shall provide
19 assistance for the creation and support of regional
20 centers (in this subsection referred to as ‘regional
21 centers’) to provide technical assistance and dissemi-
22 nate best practices and other information learned
23 from the Center to support and accelerate efforts to
24 adopt, implement, and effectively utilize health infor-
25 mation technology that allows for the electronic ex-

1 change and use of information in compliance with
2 standards, implementation specifications, and certifi-
3 cation criteria adopted under section 3004. Activities
4 conducted under this subsection shall be consistent
5 with the strategic plan developed by the National
6 Coordinator, (and, as available) under section 3001.

7 “(2) AFFILIATION.—Regional centers shall be
8 affiliated with any US-based nonprofit institution or
9 organization, or group thereof, that applies and is
10 awarded financial assistance under this section. Indi-
11 vidual awards shall be decided on the basis of merit.

12 “(3) OBJECTIVE.—The objective of the regional
13 centers is to enhance and promote the adoption of
14 health information technology through—

15 “(A) assistance with the implementation,
16 effective use, upgrading, and ongoing mainte-
17 nance of health information technology, includ-
18 ing electronic health records, to healthcare pro-
19 viders nationwide;

20 “(B) broad participation of individuals
21 from industry, universities, and State govern-
22 ments;

23 “(C) active dissemination of best practices
24 and research on the implementation, effective
25 use, upgrading, and ongoing maintenance of

1 health information technology, including elec-
2 tronic health records, to health care providers
3 in order to improve the quality of healthcare
4 and protect the privacy and security of health
5 information;

6 “(D) participation, to the extent prac-
7 ticable, in health information exchanges; and

8 “(E) utilization, when appropriate, of the
9 expertise and capability that exists in federal
10 agencies other than the Department; and

11 “(F) integration of health information
12 technology, including electronic health records,
13 into the initial and ongoing training of health
14 professionals and others in the healthcare in-
15 dustry that would be instrumental to improving
16 the quality of healthcare through the smooth
17 and accurate electronic use and exchange of
18 health information.

19 “(4) REGIONAL ASSISTANCE.—Each regional
20 center shall aim to provide assistance and education
21 to all providers in a region, but shall prioritize any
22 direct assistance first to the following:

23 “(A) Public or not-for-profit hospitals or
24 critical access hospitals.

1 “(B) Federally qualified health centers (as
2 defined in section 1861(aa)(4) of the Social Se-
3 curity Act).

4 “(C) Entities that are located in rural and
5 other areas that serve uninsured, underinsured,
6 and medically underserved individuals (regard-
7 less of whether such area is urban or rural).

8 “(D) Individual or small group practices
9 (or a consortium thereof) that are primarily fo-
10 cused on primary care.

11 “(5) FINANCIAL SUPPORT.—The Secretary may
12 provide financial support to any regional center cre-
13 ated under this subsection for a period not to exceed
14 four years. The Secretary may not provide more
15 than 50 percent of the capital and annual operating
16 and maintenance funds required to create and main-
17 tain such a center, except in an instance of national
18 economic conditions which would render this cost-
19 share requirement detrimental to the program and
20 upon notification to Congress as to the justification
21 to waive the cost-share requirement.

22 “(6) NOTICE OF PROGRAM DESCRIPTION AND
23 AVAILABILITY OF FUNDS.—The Secretary shall pub-
24 lish in the Federal Register, not later than 90 days
25 after the date of the enactment of this Act, a draft

1 description of the program for establishing regional
2 centers under this subsection. Such description shall
3 include the following:

4 “(A) A detailed explanation of the program
5 and the programs goals.

6 “(B) Procedures to be followed by the ap-
7 plicants.

8 “(C) Criteria for determining qualified ap-
9 plicants.

10 “(D) Maximum support levels expected to
11 be available to centers under the program.

12 “(7) APPLICATION REVIEW.—The Secretary
13 shall subject each application under this subsection
14 to merit review. In making a decision whether to ap-
15 prove such application and provide financial support,
16 the Secretary shall consider at a minimum the mer-
17 its of the application, including those portions of the
18 application regarding—

19 “(A) the ability of the applicant to provide
20 assistance under this subsection and utilization
21 of health information technology appropriate to
22 the needs of particular categories of health care
23 providers;

24 “(B) the types of service to be provided to
25 health care providers;

1 “(C) geographical diversity and extent of
2 service area; and

3 “(D) the percentage of funding and
4 amount of in-kind commitment from other
5 sources.

6 “(8) BIENNIAL EVALUATION.—Each regional
7 center which receives financial assistance under this
8 subsection shall be evaluated biennially by an evalua-
9 tion panel appointed by the Secretary. Each evalua-
10 tion panel shall be composed of private experts, none
11 of whom shall be connected with the center involved,
12 and of Federal officials. Each evaluation panel shall
13 measure the involved center’s performance against
14 the objective specified in paragraph (3). The Sec-
15 retary shall not continue to provide funding to a re-
16 gional center unless its evaluation is overall positive.

17 “(9) CONTINUING SUPPORT.—After the second
18 year of assistance under this subsection a regional
19 center may receive additional support under this
20 subsection if it has received positive evaluations and
21 a finding by the Secretary that continuation of Fed-
22 eral funding to the center was in the best interest
23 of provision of health information technology exten-
24 sion services.

1 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**
2 **MATION TECHNOLOGY.**

3 “(a) IN GENERAL.—The Secretary, acting through
4 the National Coordinator, shall establish a program in ac-
5 cordance with this section to facilitate and expand the
6 electronic movement and use of health information among
7 organizations according to nationally recognized stand-
8 ards.

9 “(b) PLANNING GRANTS.—The Secretary may award
10 a grant to a State or qualified State-designated entity (as
11 described in subsection (d)) that submits an application
12 to the Secretary at such time, in such manner, and con-
13 taining such information as the Secretary may specify, for
14 the purpose of planning activities described in subsection
15 (b).

16 “(c) IMPLEMENTATION GRANTS.—The Secretary
17 may award a grant to a State or qualified State designated
18 entity that—

19 “(1) has submitted, and the Secretary has ap-
20 proved, a plan described in subsection (c) (regardless
21 of whether such plan was prepared using amounts
22 awarded under paragraph (1)); and

23 “(2) submits an application at such time, in
24 such manner, and containing such information as
25 the Secretary may specify.

1 “(d) USE OF FUNDS.—Amounts received under a
2 grant under subsection (a)(3) shall be used to conduct ac-
3 tivities to facilitate and expand the electronic movement
4 and use of health information among organizations ac-
5 cording to nationally recognized standards through activi-
6 ties that include—

7 “(1) enhancing broad and varied participation
8 in the authorized and secure nationwide electronic
9 use and exchange of health information;

10 “(2) identifying State or local resources avail-
11 able towards a nationwide effort to promote health
12 information technology;

13 “(3) complementing other Federal grants, pro-
14 grams, and efforts towards the promotion of health
15 information technology;

16 “(4) providing technical assistance for the de-
17 velopment and dissemination of solutions to barriers
18 to the exchange of electronic health information;

19 “(5) promoting effective strategies to adopt and
20 utilize health information technology in medically
21 underserved communities;

22 “(6) assisting patients in utilizing health infor-
23 mation technology;

24 “(7) encouraging clinicians to work with Health
25 Information Technology Regional Extension Centers

1 as described in section 3012, to the extent they are
2 available and valuable;

3 “(8) supporting public health agencies’ author-
4 ized use of and access to electronic health informa-
5 tion;

6 “(9) promoting the use of electronic health
7 records for quality improvement including through
8 quality measures reporting; and

9 “(10) such other activities as the Secretary may
10 specify.

11 “(e) PLAN.—

12 “(1) IN GENERAL.—A plan described in this
13 subsection is a plan that describes the activities to
14 be carried out by a State or by the qualified State-
15 designated entity within such State to facilitate and
16 expand the electronic movement and use of health
17 information among organizations according to na-
18 tionally recognized standards and implementation
19 specifications.

20 “(2) REQUIRED ELEMENTS.—A plan described
21 in paragraph (1) shall—

22 “(A) be pursued in the public interest;

23 “(B) be consistent with the strategic plan
24 developed by the National Coordinator, (and, as
25 available) under section 3001;

1 “(C) include a description of the ways the
2 State or qualified State-designated entity will
3 carry out the activities described in subsection
4 (b); and

5 “(D) contain such elements as the Sec-
6 retary may require.

7 “(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
8 purposes of this section, to be a qualified State-designated
9 entity, with respect to a State, an entity shall—

10 “(1) be designated by the State as eligible to
11 receive awards under this section;

12 “(2) be a not-for-profit entity with broad stake-
13 holder representation on its governing board;

14 “(3) demonstrate that one of its principal goals
15 is to use information technology to improve health
16 care quality and efficiency through the authorized
17 and secure electronic exchange and use of health in-
18 formation;

19 “(4) adopt nondiscrimination and conflict of in-
20 terest policies that demonstrate a commitment to
21 open, fair, and nondiscriminatory participation by
22 stakeholders; and

23 “(5) conform to such other requirements as the
24 Secretary may establish.

1 “(g) REQUIRED CONSULTATION.—In carrying out
2 activities described in subsections (a)(2) and (a)(3), a
3 State or qualified State-designated entity shall consult
4 with and consider the recommendations of—

5 “(1) health care providers (including providers
6 that provide services to low income and underserved
7 populations);

8 “(2) health plans;

9 “(3) patient or consumer organizations that
10 represent the population to be served;

11 “(4) health information technology vendors;

12 “(5) health care purchasers and employers;

13 “(6) public health agencies;

14 “(7) health professions schools, universities and
15 colleges;

16 “(8) clinical researchers;

17 “(9) other users of health information tech-
18 nology such as the support and clerical staff of pro-
19 viders and others involved in the care and care co-
20 ordination of patients; and

21 “(10) such other entities, as may be determined
22 appropriate by the Secretary.

23 “(h) CONTINUOUS IMPROVEMENT.—The Secretary
24 shall annually evaluate the activities conducted under this
25 section and shall, in awarding grants under this section,

1 implement the lessons learned from such evaluation in a
2 manner so that awards made subsequent to each such
3 evaluation are made in a manner that, in the determina-
4 tion of the Secretary, will lead towards the greatest im-
5 provement in quality of care, decrease in costs, and the
6 most effective authorized and secure electronic exchange
7 of health information.

8 “(i) REQUIRED MATCH.—

9 “(1) IN GENERAL.—For a fiscal year (begin-
10 ning with fiscal year 2011), the Secretary may not
11 make a grant under subsection (a) to a State unless
12 the State agrees to make available non-Federal con-
13 tributions (which may include in-kind contributions)
14 toward the costs of a grant awarded under sub-
15 section (a)(3) in an amount equal to—

16 “(A) for fiscal year 2011, not less than \$1
17 for each \$10 of Federal funds provided under
18 the grant;

19 “(B) for fiscal year 2012, not less than \$1
20 for each \$7 of Federal funds provided under
21 the grant; and

22 “(C) for fiscal year 2013 and each subse-
23 quent fiscal year, not less than \$1 for each \$3
24 of Federal funds provided under the grant.

1 “(2) AUTHORITY TO REQUIRE STATE MATCH
2 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
3 any fiscal year during the grant program under this
4 section before fiscal year 2011, the Secretary may
5 determine the extent to which there shall be required
6 a non-Federal contribution from a State receiving a
7 grant under this section.

8 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
9 **TRIBES FOR THE DEVELOPMENT OF LOAN**
10 **PROGRAMS TO FACILITATE THE WIDE-**
11 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**
12 **NOLOGY.**

13 “(a) IN GENERAL.—The National Coordinator may
14 award competitive grants to eligible entities for the estab-
15 lishment of programs for loans to health care providers
16 to conduct the activities described in subsection (e).

17 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of
18 this subsection, the term ‘eligible entity’ means a State
19 or Indian tribe (as defined in the Indian Self-Determina-
20 tion and Education Assistance Act) that—

21 “(1) submits to the National Coordinator an
22 application at such time, in such manner, and con-
23 taining such information as the National Coordi-
24 nator may require;

1 “(2) submits to the National Coordinator a
2 strategic plan in accordance with subsection (d) and
3 provides to the National Coordinator assurances that
4 the entity will update such plan annually in accord-
5 ance with such subsection;

6 “(3) provides assurances to the National Coor-
7 dinator that the entity will establish a Loan Fund
8 in accordance with subsection (c);

9 “(4) provides assurances to the National Coor-
10 dinator that the entity will not provide a loan from
11 the Loan Fund to a health care provider unless the
12 provider agrees to—

13 “(A) submit reports on quality measures
14 adopted by the Federal Government (by not
15 later than 90 days after the date on which such
16 measures are adopted), to—

17 “(i) the Director of the Centers for
18 Medicare & Medicaid Services (or his or
19 her designee), in the case of an entity par-
20 ticipating in the Medicare program under
21 title XVIII of the Social Security Act or
22 the Medicaid program under title XIX of
23 such Act; or

24 “(ii) the Secretary in the case of other
25 entities;

1 “(B) demonstrate to the satisfaction of the
2 Secretary (through criteria established by the
3 Secretary) that any certified EHR technology
4 purchased, improved, or otherwise financially
5 supported under a loan under this section is
6 used to exchange health information in a man-
7 ner that, in accordance with law and standards
8 (as adopted under section 3005) applicable to
9 the exchange of information, improves the qual-
10 ity of health care, such as promoting care co-
11 ordination; and

12 “(C) comply with such other requirements
13 as the entity or the Secretary may require;

14 “(D) include a plan on how health care
15 providers involved intend to maintain and sup-
16 port the certified EHR technology over time;

17 “(E) include a plan on how the health care
18 providers involved intend to maintain and sup-
19 port the certified EHR technology that would
20 be purchased with such loan, including the type
21 of resources expected to be involved and any
22 such other information as the State or Indian
23 Tribe, respectively, may require; and

24 “(5) agrees to provide matching funds in ac-
25 cordance with subsection (i).

1 “(c) ESTABLISHMENT OF FUND.—For purposes of
2 subsection (b)(3), an eligible entity shall establish a cer-
3 tified EHR technology loan fund (referred to in this sub-
4 section as a ‘Loan Fund’) and comply with the other re-
5 quirements contained in this section. A grant to an eligible
6 entity under this section shall be deposited in the Loan
7 Fund established by the eligible entity. No funds author-
8 ized by other provisions of this title to be used for other
9 purposes specified in this title shall be deposited in any
10 Loan Fund.

11 “(d) STRATEGIC PLAN.—

12 “(1) IN GENERAL.—For purposes of subsection
13 (b)(2), a strategic plan of an eligible entity under
14 this subsection shall identify the intended uses of
15 amounts available to the Loan Fund of such entity.

16 “(2) CONTENTS.—A strategic plan under para-
17 graph (1), with respect to a Loan Fund of an eligi-
18 ble entity, shall include for a year the following:

19 “(A) A list of the projects to be assisted
20 through the Loan Fund during such year.

21 “(B) A description of the criteria and
22 methods established for the distribution of
23 funds from the Loan Fund during the year.

1 “(C) A description of the financial status
2 of the Loan Fund as of the date of submission
3 of the plan.

4 “(D) The short-term and long-term goals
5 of the Loan Fund.

6 “(e) USE OF FUNDS.—Amounts deposited in a Loan
7 Fund, including loan repayments and interest earned on
8 such amounts, shall be used only for awarding loans or
9 loan guarantees, making reimbursements described in sub-
10 section (g)(4)(A), or as a source of reserve and security
11 for leveraged loans, the proceeds of which are deposited
12 in the Loan Fund established under subsection (a). Loans
13 under this section may be used by a health care provider
14 to—

15 “(1) facilitate the purchase of certified EHR
16 technology;

17 “(2) enhance the utilization of certified EHR
18 technology;

19 “(3) train personnel in the use of such tech-
20 nology; or

21 “(4) improve the secure electronic exchange of
22 health information.

23 “(f) TYPES OF ASSISTANCE.—Except as otherwise
24 limited by applicable State law, amounts deposited into a

1 Loan Fund under this subsection may only be used for
2 the following:

3 “(1) To award loans that comply with the fol-
4 lowing:

5 “(A) The interest rate for each loan shall
6 not exceed the market interest rate.

7 “(B) The principal and interest payments
8 on each loan shall commence not later than 1
9 year after the date the loan was awarded, and
10 each loan shall be fully amortized not later than
11 10 years after the date of the loan.

12 “(C) The Loan Fund shall be credited with
13 all payments of principal and interest on each
14 loan awarded from the Loan Fund.

15 “(2) To guarantee, or purchase insurance for,
16 a local obligation (all of the proceeds of which fi-
17 nance a project eligible for assistance under this
18 subsection) if the guarantee or purchase would im-
19 prove credit market access or reduce the interest
20 rate applicable to the obligation involved.

21 “(3) As a source of revenue or security for the
22 payment of principal and interest on revenue or gen-
23 eral obligation bonds issued by the eligible entity if
24 the proceeds of the sale of the bonds will be depos-
25 ited into the Loan Fund.

1 “(4) To earn interest on the amounts deposited
2 into the Loan Fund.

3 “(5) To make reimbursements described in sub-
4 section (g)(4)(A).

5 “(g) ADMINISTRATION OF LOAN FUNDS.—

6 “(1) COMBINED FINANCIAL ADMINISTRATION.—

7 An eligible entity may (as a convenience and to
8 avoid unnecessary administrative costs) combine, in
9 accordance with applicable State law, the financial
10 administration of a Loan Fund established under
11 this subsection with the financial administration of
12 any other revolving fund established by the entity if
13 otherwise not prohibited by the law under which the
14 Loan Fund was established.

15 “(2) COST OF ADMINISTERING FUND.—Each el-
16 igible entity may annually use not to exceed 4 per-
17 cent of the funds provided to the entity under a
18 grant under this subsection to pay the reasonable
19 costs of the administration of the programs under
20 this section, including the recovery of reasonable
21 costs expended to establish a Loan Fund which are
22 incurred after the date of the enactment of this title.

23 “(3) GUIDANCE AND REGULATIONS.—The Na-
24 tional Coordinator shall publish guidance and pro-

1 mulgate regulations as may be necessary to carry
2 out the provisions of this section, including—

3 “(A) provisions to ensure that each eligible
4 entity commits and expends funds allotted to
5 the entity under this subsection as efficiently as
6 possible in accordance with this title and appli-
7 cable State laws; and

8 “(B) guidance to prevent waste, fraud, and
9 abuse.

10 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

11 “(A) IN GENERAL.—A Loan Fund estab-
12 lished under this subsection may accept con-
13 tributions from private sector entities, except
14 that such entities may not specify the recipient
15 or recipients of any loan issued under this sub-
16 section. An eligible entity may agree to reim-
17 burse a private sector entity for any contribu-
18 tion made under this subparagraph, except that
19 the amount of such reimbursement may not be
20 greater than the principal amount of the con-
21 tribution made.

22 “(B) AVAILABILITY OF INFORMATION.—
23 An eligible entity shall make publicly available
24 the identity of, and amount contributed by, any
25 private sector entity under subparagraph (A)

1 and may issue letters of commendation or make
2 other awards (that have no financial value) to
3 any such entity.

4 “(h) MATCHING REQUIREMENTS.—

5 “(1) IN GENERAL.—The National Coordinator
6 may not make a grant under subsection (a) to an el-
7 igible entity unless the entity agrees to make avail-
8 able (directly or through donations from public or
9 private entities) non-Federal contributions in cash to
10 the costs of carrying out the activities for which the
11 grant is awarded in an amount equal to not less
12 than \$1 for each \$5 of Federal funds provided under
13 the grant.

14 “(2) DETERMINATION OF AMOUNT OF NON-
15 FEDERAL CONTRIBUTION.—In determining the
16 amount of non-Federal contributions that an eligible
17 entity has provided pursuant to subparagraph (A),
18 the National Coordinator may not include any
19 amounts provided to the entity by the Federal Gov-
20 ernment.

21 “(i) EFFECTIVE DATE.—The Secretary may not
22 make an award under this section prior to January 1,
23 2010.

1 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
2 **FORMATION TECHNOLOGY INTO CLINICAL**
3 **EDUCATION.**

4 “(a) IN GENERAL.—The Secretary may award grants
5 under this section to carry out demonstration projects to
6 develop academic curricula integrating certified EHR
7 technology in the clinical education of health professionals.
8 Such awards shall be made on a competitive basis and
9 pursuant to peer review.

10 “(b) ELIGIBILITY.—To be eligible to receive a grant
11 under subsection (a), an entity shall—

12 “(1) submit to the Secretary an application at
13 such time, in such manner, and containing such in-
14 formation as the Secretary may require;

15 “(2) submit to the Secretary a strategic plan
16 for integrating certified EHR technology in the clin-
17 ical education of health professionals to reduce med-
18 ical errors and enhance health care quality;

19 “(3) be—

20 “(A) a school of medicine, osteopathic
21 medicine, dentistry, or pharmacy, a graduate
22 program in behavioral or mental health, or any
23 other graduate health professions school;

24 “(B) a graduate school of nursing or phy-
25 sician assistant studies;

1 “(C) a consortium of two or more schools
2 described in subparagraph (A) or (B); or

3 “(D) an institution with a graduate med-
4 ical education program in medicine, osteopathic
5 medicine, dentistry, pharmacy, nursing, or phy-
6 sician assistance studies.

7 “(4) provide for the collection of data regarding
8 the effectiveness of the demonstration project to be
9 funded under the grant in improving the safety of
10 patients, the efficiency of health care delivery, and
11 in increasing the likelihood that graduates of the
12 grantee will adopt and incorporate certified EHR
13 technology, in the delivery of health care services;
14 and

15 “(5) provide matching funds in accordance with
16 subsection (d).

17 “(c) USE OF FUNDS.—

18 “(1) IN GENERAL.—With respect to a grant
19 under subsection (a), an eligible entity shall—

20 “(A) use grant funds in collaboration with
21 2 or more disciplines; and

22 “(B) use grant funds to integrate certified
23 EHR technology into community-based clinical
24 education.

1 “(2) LIMITATION.—An eligible entity shall not
2 use amounts received under a grant under sub-
3 section (a) to purchase hardware, software, or serv-
4 ices.

5 “(d) FINANCIAL SUPPORT.—The Secretary may not
6 provide more than 50 percent of the costs of any activity
7 for which assistance is provided under subsection (a), ex-
8 cept in an instance of national economic conditions which
9 would render the cost-share requirement under this sub-
10 section detrimental to the program and upon notification
11 to Congress as to the justification to waive the cost-share
12 requirement.

13 “(e) EVALUATION.—The Secretary shall take such
14 action as may be necessary to evaluate the projects funded
15 under this section and publish, make available, and dis-
16 seminate the results of such evaluations on as wide a basis
17 as is practicable.

18 “(f) REPORTS.—Not later than 1 year after the date
19 of enactment of this title, and annually thereafter, the Sec-
20 retary shall submit to the Committee on Health, Edu-
21 cation, Labor, and Pensions and the Committee on Fi-
22 nance of the Senate, and the Committee on Energy and
23 Commerce of the House of Representatives a report
24 that—

1 “(1) describes the specific projects established
2 under this section; and

3 “(2) contains recommendations for Congress
4 based on the evaluation conducted under subsection
5 (e).

6 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
7 **ON HEALTH CARE.**

8 “(a) IN GENERAL.—The Secretary, in consultation
9 with the Director of the National Science Foundation,
10 shall provide assistance to institutions of higher education
11 (or consortia thereof) to establish or expand medical
12 health informatics education programs, including certifi-
13 cation, undergraduate, and masters degree programs, for
14 both health care and information technology students to
15 ensure the rapid and effective utilization and development
16 of health information technologies (in the United States
17 health care infrastructure).

18 “(b) ACTIVITIES.—Activities for which assistance
19 may be provided under subsection (a) may include the fol-
20 lowing:

21 “(1) Developing and revising curricula in med-
22 ical health informatics and related disciplines.

23 “(2) Recruiting and retaining students to the
24 program involved.

1 “(3) Acquiring equipment necessary for student
2 instruction in these programs, including the installa-
3 tion of testbed networks for student use.

4 “(4) Establishing or enhancing bridge programs
5 in the health informatics fields between community
6 colleges and universities.

7 “(c) PRIORITY.—In providing assistance under sub-
8 section (a), the Secretary shall give preference to the fol-
9 lowing:

10 “(1) Existing education and training programs.

11 “(2) Programs designed to be completed in less
12 than six months.

13 “(d) FINANCIAL SUPPORT.—The Secretary may not
14 provide more than 50 percent of the costs of any activity
15 for which assistance is provided under subsection (a), ex-
16 cept in an instance of national economic conditions which
17 would render the cost-share requirement under this sub-
18 section detrimental to the program and upon notification
19 to Congress as to the justification to waive the cost-share
20 requirement.

21 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

22 “(a) REPORTS.—The Secretary may require that an
23 entity receiving assistance under this title shall submit to
24 the Secretary, not later than the date that is 1 year after

1 the date of receipt of such assistance, a report that in-
2 cludes—

3 “(1) an analysis of the effectiveness of the ac-
4 tivities for which the entity receives such assistance,
5 as compared to the goals for such activities; and

6 “(2) an analysis of the impact of the project on
7 health care quality and safety.

8 “(b) REQUIREMENT TO IMPROVE QUALITY OF CARE
9 AND DECREASE IN COSTS.—The National Coordinator
10 shall annually evaluate the activities conducted under this
11 title and shall, in awarding grants, implement the lessons
12 learned from such evaluation in a manner so that awards
13 made subsequent to each such evaluation are made in a
14 manner that, in the determination of the National Coordi-
15 nator, will result in the greatest improvement in the qual-
16 ity and efficiency of health care.

17 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

18 “For the purposes of carrying out this subtitle, there
19 is authorized to be appropriated such sums as may be nec-
20 essary for each of the fiscal years 2009 through 2013.
21 Amounts so appropriated shall remain available until ex-
22 pended.”.

1 **PART II—MEDICARE PROGRAM**

2 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

3 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
4 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
5 ing at the end the following new subsection:

6 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
7 USE OF CERTIFIED EHR TECHNOLOGY.—

8 “(1) INCENTIVE PAYMENTS.—

9 “(A) IN GENERAL.—Subject to the suc-
10 ceeding subparagraphs of this paragraph, with
11 respect to covered professional services fur-
12 nished by an eligible professional during a pay-
13 ment year (as defined in subparagraph (E)), if
14 the eligible professional is a meaningful EHR
15 user (as determined under paragraph (2)) for
16 the reporting period with respect to such year,
17 in addition to the amount otherwise paid under
18 this part, there also shall be paid to the eligible
19 professional (or to an employer or facility in the
20 cases described in clause (A) of section
21 1842(b)(6)), from the Federal Supplementary
22 Medical Insurance Trust Fund established
23 under section 1841 an amount equal to 75 per-
24 cent of the Secretary’s estimate (based on
25 claims submitted not later than 2 months after
26 the end of the payment year) of the allowed

1 charges under this part for all such covered
2 professional services furnished by the eligible
3 professional during such year.

4 “(B) LIMITATIONS ON AMOUNTS OF IN-
5 CENTIVE PAYMENTS.—

6 “(i) IN GENERAL.—In no case shall
7 the amount of the incentive payment pro-
8 vided under this paragraph for an eligible
9 professional for a payment year exceed the
10 applicable amount specified under this sub-
11 paragraph with respect to such eligible
12 professional and such year.

13 “(ii) AMOUNT.—Subject to clause
14 (iii), the applicable amount specified in this
15 subparagraph for an eligible professional is
16 as follows:

17 “(I) For the first payment year
18 for such professional, \$15,000.

19 “(II) For the second payment
20 year for such professional, \$12,000.

21 “(III) For the third payment
22 year for such professional, \$8,000.

23 “(IV) For the fourth payment
24 year for such professional, \$4,000.

1 “(V) For the fifth payment year
2 for such professional, \$2,000.

3 “(VI) For any succeeding pay-
4 ment year for such professional, \$0.

5 “(iii) PHASE DOWN FOR ELIGIBLE
6 PROFESSIONALS FIRST ADOPTING EHR
7 AFTER 2013.—If the first payment year for
8 an eligible professional is after 2013, then
9 the amount specified in this subparagraph
10 for a payment year for such professional is
11 the same as the amount specified in clause
12 (ii) for such payment year for an eligible
13 professional whose first payment year is
14 2013. If the first payment year for an eli-
15 gible professional is after 2015 then the
16 applicable amount specified in this sub-
17 paragraph for such professional for such
18 year and any subsequent year shall be \$0.

19 “(C) NON-APPLICATION TO HOSPITAL-
20 BASED ELIGIBLE PROFESSIONALS.—

21 “(i) IN GENERAL.—No incentive pay-
22 ment may be made under this paragraph
23 in the case of a hospital-based eligible pro-
24 fessional.

1 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
2 FESSIONAL.—For purposes of clause (i),
3 the term ‘hospital-based eligible profes-
4 sional’ means, with respect to covered pro-
5 fessional services furnished by an eligible
6 professional during the reporting period for
7 a payment year, an eligible professional,
8 such as a pathologist, anesthesiologist, or
9 emergency physician, who furnishes sub-
10 stantially all of such services in a hospital
11 setting (whether inpatient or outpatient)
12 and through the use of the facilities and
13 equipment, including computer equipment,
14 of the hospital.

15 “(D) PAYMENT.—

16 “(i) FORM OF PAYMENT.—The pay-
17 ment under this paragraph may be in the
18 form of a single consolidated payment or
19 in the form of such periodic installments
20 as the Secretary may specify.

21 “(ii) COORDINATION OF APPLICATION
22 OF LIMITATION FOR PROFESSIONALS IN
23 DIFFERENT PRACTICES.—In the case of an
24 eligible professional furnishing covered pro-
25 fessional services in more than one practice

1 (as specified by the Secretary), the Sec-
2 retary shall establish rules to coordinate
3 the incentive payments, including the ap-
4 plication of the limitation on amounts of
5 such incentive payments under this para-
6 graph, among such practices.

7 “(iii) COORDINATION WITH MED-
8 ICAID.—The Secretary shall seek, to the
9 maximum extent practicable, to avoid du-
10 plicative requirements from Federal and
11 State Governments to demonstrate mean-
12 ingful use of certified EHR technology
13 under this title and title XIX. In doing so,
14 the Secretary may deem satisfaction of
15 State requirements for such meaningful
16 use for a payment year under title XIX to
17 be sufficient to qualify as meaningful use
18 under this subsection and subsection (a)(7)
19 and vice versa. The Secretary may also ad-
20 just the reporting periods under such title
21 and such subsections in order to carry out
22 this clause.

23 “(E) PAYMENT YEAR DEFINED.—

1 “(i) IN GENERAL.—For purposes of
2 this subsection, the term ‘payment year’
3 means a year beginning with 2011.

4 “(ii) FIRST, SECOND, ETC. PAYMENT
5 YEAR.—The term ‘first payment year’
6 means, with respect to covered professional
7 services furnished by an eligible profes-
8 sional, the first year for which an incentive
9 payment is made for such services under
10 this subsection. The terms ‘second pay-
11 ment year’, ‘third payment year’, ‘fourth
12 payment year’, and ‘fifth payment year’
13 mean, with respect to covered professional
14 services furnished by such eligible profes-
15 sional, each successive year immediately
16 following the first payment year for such
17 professional.

18 “(2) MEANINGFUL EHR USER.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), an eligible professional shall be
21 treated as a meaningful EHR user for a report-
22 ing period for a payment year (or, for purposes
23 of subsection (a)(7), for a reporting period
24 under such subsection for a year) if each of the
25 following requirements is met:

1 “(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible profes-
3 sional demonstrates to the satisfaction of
4 the Secretary, in accordance with subpara-
5 graph (C)(i), that during such period the
6 professional is using certified EHR tech-
7 nology in a meaningful manner, which
8 shall include the use of electronic pre-
9 scribing as determined to be appropriate
10 by the Secretary.

11 “(ii) INFORMATION EXCHANGE.—The
12 eligible professional demonstrates to the
13 satisfaction of the Secretary, in accordance
14 with subparagraph (C)(i), that during such
15 period such certified EHR technology is
16 connected in a manner that provides, in
17 accordance with law and standards appli-
18 cable to the exchange of information, for
19 the electronic exchange of health informa-
20 tion to improve the quality of health care,
21 such as promoting care coordination.

22 “(iii) REPORTING ON MEASURES
23 USING EHR.—Subject to subparagraph
24 (B)(ii) and using such certified EHR tech-
25 nology, the eligible professional submits in-

1 formation for such period, in a form and
2 manner specified by the Secretary, on such
3 clinical quality measures and such other
4 measures as selected by the Secretary
5 under subparagraph (B)(i).

6 The Secretary may provide for the use of alter-
7 native means for meeting the requirements of
8 clauses (i), (ii), and (iii) in the case of an eligi-
9 ble professional furnishing covered professional
10 services in a group practice (as defined by the
11 Secretary). The Secretary shall seek to improve
12 the use of electronic health records and health
13 care quality over time by requiring more strin-
14 gent measures of meaningful use selected under
15 this paragraph.

16 “(B) REPORTING ON MEASURES.—

17 “(i) SELECTION.—The Secretary shall
18 select measures for purposes of subpara-
19 graph (A)(iii) but only consistent with the
20 following:

21 “(I) The Secretary shall provide
22 preference to clinical quality measures
23 that have been endorsed by the entity
24 with a contract with the Secretary
25 under section 1890(a).

1 “(II) Prior to any measure being
2 selected under this subparagraph, the
3 Secretary shall publish in the Federal
4 Register such measure and provide for
5 a period of public comment on such
6 measure.

7 “(ii) LIMITATION.—The Secretary
8 may not require the electronic reporting of
9 information on clinical quality measures
10 under subparagraph (A)(iii) unless the
11 Secretary has the capacity to accept the in-
12 formation electronically, which may be on
13 a pilot basis.

14 “(iii) COORDINATION OF REPORTING
15 OF INFORMATION.—In selecting such
16 measures, and in establishing the form and
17 manner for reporting measures under sub-
18 paragraph (A)(iii), the Secretary shall seek
19 to avoid redundant or duplicative reporting
20 otherwise required, including reporting
21 under subsection (k)(2)(C).

22 “(C) DEMONSTRATION OF MEANINGFUL
23 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
24 FORMATION EXCHANGE.—

1 “(i) IN GENERAL.—A professional
2 may satisfy the demonstration requirement
3 of clauses (i) and (ii) of subparagraph (A)
4 through means specified by the Secretary,
5 which may include—

6 “(I) an attestation;

7 “(II) the submission of claims
8 with appropriate coding (such as a
9 code indicating that a patient encoun-
10 ter was documented using certified
11 EHR technology);

12 “(III) a survey response;

13 “(IV) reporting under subpara-
14 graph (A)(iii); and

15 “(V) other means specified by the
16 Secretary.

17 “(ii) USE OF PART D DATA.—Not-
18 withstanding sections 1860D–15(d)(2)(B)
19 and 1860D–15(f)(2), the Secretary may
20 use data regarding drug claims submitted
21 for purposes of section 1860D–15 that are
22 necessary for purposes of subparagraph
23 (A).

24 “(3) APPLICATION.—

1 “(A) PHYSICIAN REPORTING SYSTEM
2 RULES.—Paragraphs (5), (6), and (8) of sub-
3 section (k) shall apply for purposes of this sub-
4 section in the same manner as they apply for
5 purposes of such subsection.

6 “(B) COORDINATION WITH OTHER PAY-
7 MENTS.—The provisions of this subsection shall
8 not be taken into account in applying the provi-
9 sions of subsection (m) of this section and of
10 section 1833(m) and any payment under such
11 provisions shall not be taken into account in
12 computing allowable charges under this sub-
13 section.

14 “(C) LIMITATIONS ON REVIEW.—There
15 shall be no administrative or judicial review
16 under section 1869, section 1878, or otherwise
17 of the determination of any incentive payment
18 under this subsection and the payment adjust-
19 ment under subsection (a)(7), including the de-
20 termination of a meaningful EHR user under
21 paragraph (2), a limitation under paragraph
22 (1)(B), and the exception under subsection
23 (a)(7)(B).

24 “(D) POSTING ON WEBSITE.—The Sec-
25 retary shall post on the Internet website of the

1 Centers for Medicare & Medicaid Services, in an
2 easily understandable format, a list of the
3 names, business addresses, and business phone
4 numbers of the eligible professionals who are
5 meaningful EHR users and, as determined ap-
6 propriate by the Secretary, of group practices
7 receiving incentive payments under paragraph
8 (1).

9 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
10 For purposes of this section, the term ‘certified
11 EHR technology’ means a qualified electronic health
12 record (as defined in 3000(13) of the Public Health
13 Service Act) that is certified pursuant to section
14 3001(e)(5) of such Act as meeting standards adopt-
15 ed under section 3004 of such Act that are applica-
16 ble to the type of record involved (as determined by
17 the Secretary, such as an ambulatory electronic
18 health record for office-based physicians or an inpa-
19 tient hospital electronic health record for hospitals).

20 “(5) DEFINITIONS.—For purposes of this sub-
21 section:

22 “(A) COVERED PROFESSIONAL SERV-
23 ICES.—The term ‘covered professional services’
24 has the meaning given such term in subsection
25 (k)(3).

1 “(B) ELIGIBLE PROFESSIONAL.—The term
2 ‘eligible professional’ means a physician, as de-
3 fined in section 1861(r).

4 “(C) REPORTING PERIOD.—The term ‘re-
5 porting period’ means any period (or periods),
6 with respect to a payment year, as specified by
7 the Secretary.”.

8 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
9 1848(a) of the Social Security Act (42 U.S.C. 1395w-
10 4(a)) is amended by adding at the end the following new
11 paragraph:

12 “(7) INCENTIVES FOR MEANINGFUL USE OF
13 CERTIFIED EHR TECHNOLOGY.—

14 “(A) ADJUSTMENT.—

15 “(i) IN GENERAL.—Subject to sub-
16 paragraphs (B) and (D), with respect to
17 covered professional services furnished by
18 an eligible professional during 2016 or any
19 subsequent payment year, if the eligible
20 professional is not a meaningful EHR user
21 (as determined under subsection (o)(2)) for
22 a reporting period for the year, the fee
23 schedule amount for such services fur-
24 nished by such professional during the year
25 (including the fee schedule amount for pur-

1 poses of determining a payment based on
2 such amount) shall be equal to the applica-
3 ble percent of the fee schedule amount that
4 would otherwise apply to such services
5 under this subsection (determined after ap-
6 plication of paragraph (3) but without re-
7 gard to this paragraph).

8 “(ii) APPLICABLE PERCENT.—Subject
9 to clause (iii), for purposes of clause (i),
10 the term ‘applicable percent’ means—

11 “(I) for 2016, 99 percent;

12 “(II) for 2017, 98 percent; and

13 “(III) for 2018 and each subse-
14 quent year, 97 percent.

15 “(iii) AUTHORITY TO DECREASE AP-
16 PPLICABLE PERCENTAGE FOR 2019 AND
17 SUBSEQUENT YEARS.—For 2019 and each
18 subsequent year, if the Secretary finds that
19 the proportion of eligible professionals who
20 are meaningful EHR users (as determined
21 under subsection (o)(2)) is less than 75
22 percent, the applicable percent shall be de-
23 creased by 1 percentage point from the ap-
24 plicable percent in the preceding year, but

1 in no case shall the applicable percent be
2 less than 95 percent.

3 “(B) SIGNIFICANT HARDSHIP EXCEP-
4 TION.—The Secretary may, on a case-by-case
5 basis, exempt an eligible professional from the
6 application of the payment adjustment under
7 subparagraph (A) if the Secretary determines,
8 subject to annual renewal, that compliance with
9 the requirement for being a meaningful EHR
10 user would result in a significant hardship, such
11 as in the case of an eligible professional who
12 practices in a rural area without sufficient
13 Internet access. In no case may an eligible pro-
14 fessional be granted an exemption under this
15 subparagraph for more than 5 years.

16 “(C) APPLICATION OF PHYSICIAN REPORT-
17 ING SYSTEM RULES.—Paragraphs (5), (6), and
18 (8) of subsection (k) shall apply for purposes of
19 this paragraph in the same manner as they
20 apply for purposes of such subsection.

21 “(D) NON-APPLICATION TO HOSPITAL-
22 BASED ELIGIBLE PROFESSIONALS.—No pay-
23 ment adjustment may be made under subpara-
24 graph (A) in the case of hospital-based eligible

1 professionals (as defined in subsection
2 (o)(1)(C)(ii)).

3 “(E) DEFINITIONS.—For purposes of this
4 paragraph:

5 “(i) COVERED PROFESSIONAL SERV-
6 ICES.—The term ‘covered professional
7 services’ has the meaning given such term
8 in subsection (k)(3).

9 “(ii) ELIGIBLE PROFESSIONAL.—The
10 term ‘eligible professional’ means a physi-
11 cian, as defined in section 1861(r).

12 “(iii) REPORTING PERIOD.—The term
13 ‘reporting period’ means, with respect to a
14 year, a period specified by the Secretary.”.

15 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
16 ELIGIBLE PROFESSIONALS.—Section 1853 of the Social
17 Security Act (42 U.S.C. 1395w–23) is amended by adding
18 at the end the following new subsection:

19 “(1) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
20 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
21 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
22 NOLOGY.—

23 “(1) IN GENERAL.—Subject to paragraphs (3)
24 and (4), in the case of a qualifying MA organization,
25 the provisions of sections 1848(o) and 1848(a)(7)

1 shall apply with respect to eligible professionals de-
2 scribed in paragraph (2) of the organization who the
3 organization attests under paragraph (6) to be
4 meaningful EHR users in a similar manner as they
5 apply to eligible professionals under such sections.
6 Incentive payments under paragraph (3) shall be
7 made to and payment adjustments under paragraph
8 (4) shall apply to such qualifying organizations.

9 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—

10 With respect to a qualifying MA organization, an eli-
11 gible professional described in this paragraph is an
12 eligible professional (as defined for purposes of sec-
13 tion 1848(o)) who—

14 “(A)(i) is employed by the organization; or

15 “(ii)(I) is employed by, or is a partner of,
16 an entity that through contract with the organi-
17 zation furnishes at least 80 percent of the enti-
18 ty’s patient care services to enrollees of such or-
19 ganization; and

20 “(II) furnishes at least 75 percent of the
21 professional services of the eligible professional
22 to enrollees of the organization; and

23 “(B) furnishes, on average, at least 20
24 hours per week of patient care services.

1 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
2 MENTS.—

3 “(A) IN GENERAL.—In applying section
4 1848(o) under paragraph (1), instead of the ad-
5 ditional payment amount under section
6 1848(o)(1)(A) and subject to subparagraph
7 (B), the Secretary may substitute an amount
8 determined by the Secretary to the extent fea-
9 sible and practical to be similar to the esti-
10 mated amount in the aggregate that would be
11 payable if payment for services furnished by
12 such professionals was payable under part B in-
13 stead of this part.

14 “(B) AVOIDING DUPLICATION OF PAY-
15 MENTS.—

16 “(i) IN GENERAL.—If an eligible pro-
17 fessional described in paragraph (2) is eli-
18 gible for the maximum incentive payment
19 under section 1848(o)(1)(A) for the same
20 payment period, the payment incentive
21 shall be made only under such section and
22 not under this subsection.

23 “(ii) METHODS.—In the case of an el-
24 igible professional described in paragraph
25 (2) who is eligible for an incentive payment

1 under section 1848(o)(1)(A) but is not de-
2 scribed in clause (i) for the same payment
3 period, the Secretary shall develop a proc-
4 ess—

5 “(I) to ensure that duplicate pay-
6 ments are not made with respect to
7 an eligible professional both under
8 this subsection and under section
9 1848(o)(1)(A); and

10 “(II) to collect data from Medi-
11 care Advantage organizations to en-
12 sure against such duplicate payments.

13 “(C) FIXED SCHEDULE FOR APPLICATION
14 OF LIMITATION ON INCENTIVE PAYMENTS FOR
15 ALL ELIGIBLE PROFESSIONALS.—In applying
16 section 1848(o)(1)(B)(ii) under subparagraph
17 (A), in accordance with rules specified by the
18 Secretary, a qualifying MA organization shall
19 specify a year (not earlier than 2011) that shall
20 be treated as the first payment year for all eli-
21 gible professionals with respect to such organi-
22 zation.

23 “(4) PAYMENT ADJUSTMENT.—

24 “(A) IN GENERAL.—In applying section
25 1848(a)(7) under paragraph (1), instead of the

1 payment adjustment being an applicable per-
2 cent of the fee schedule amount for a year
3 under such section, subject to subparagraph
4 (D), the payment adjustment under paragraph
5 (1) shall be equal to the percent specified in
6 subparagraph (B) for such year of the payment
7 amount otherwise provided under this section
8 for such year.

9 “(B) SPECIFIED PERCENT.—The percent
10 specified under this subparagraph for a year is
11 100 percent minus a number of percentage
12 points equal to the product of—

13 “(i) the number of percentage points
14 by which the applicable percent (under sec-
15 tion 1848(a)(7)(A)(ii)) for the year is less
16 than 100 percent; and

17 “(ii) the Medicare physician expendi-
18 ture proportion specified in subparagraph
19 (C) for the year.

20 “(C) MEDICARE PHYSICIAN EXPENDITURE
21 PROPORTION.—The Medicare physician expend-
22 iture proportion under this subparagraph for a
23 year is the Secretary’s estimate of the propor-
24 tion, of the expenditures under parts A and B
25 that are not attributable to this part, that are

1 attributable to expenditures for physicians’
2 services.

3 “(D) APPLICATION OF PAYMENT ADJUST-
4 MENT.—In the case that a qualifying MA orga-
5 nization attests that not all eligible profes-
6 sionals are meaningful EHR users with respect
7 to a year, the Secretary shall apply the payment
8 adjustment under this paragraph based on the
9 proportion of such eligible professionals that are
10 not meaningful EHR users for such year.

11 “(5) QUALIFYING MA ORGANIZATION DE-
12 FINED.—In this subsection and subsection (m), the
13 term ‘qualifying MA organization’ means a Medicare
14 Advantage organization that is organized as a health
15 maintenance organization (as defined in section
16 2791(b)(3) of the Public Health Service Act).

17 “(6) MEANINGFUL EHR USER ATTESTATION.—
18 For purposes of this subsection and subsection (m),
19 a qualifying MA organization shall submit an attes-
20 tation, in a form and manner specified by the Sec-
21 retary which may include the submission of such at-
22 testation as part of submission of the initial bid
23 under section 1854(a)(1)(A)(iv), identifying—

24 “(A) whether each eligible professional de-
25 scribed in paragraph (2), with respect to such

1 organization is a meaningful EHR user (as de-
2 fined in section 1848(o)(2)) for a year specified
3 by the Secretary; and

4 “(B) whether each eligible hospital de-
5 scribed in subsection (m)(1), with respect to
6 such organization, is a meaningful EHR user
7 (as defined in section 1886(n)(3)) for an appli-
8 cable period specified by the Secretary.”.

9 (d) CONFORMING AMENDMENTS.—Section 1853 of
10 the Social Security Act (42 U.S.C. 1395w–23) is amend-
11 ed—

12 (1) in subsection (a)(1)(A), by striking “and
13 (i)” and inserting “(i), and (l)”;

14 (2) in subsection (c)—

15 (A) in paragraph (1)(D)(i), by striking
16 “section 1886(h)” and inserting “sections
17 1848(o) and 1886(h)”;

18 (B) in paragraph (6)(A), by inserting after
19 “under part B,” the following: “excluding ex-
20 penditures attributable to subsections (a)(7)
21 and (o) of section 1848,”; and

22 (3) in subsection (f), by inserting “and for pay-
23 ments under subsection (l)” after “with the organi-
24 zation”.

1 (e) CONFORMING AMENDMENTS TO E-PRE-
2 SCRIBING.—

3 (1) Section 1848(a)(5)(A) of the Social Security
4 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

5 (A) in clause (i), by striking “or any sub-
6 sequent year” and inserting “, 2013, 2014, or
7 2015”; and

8 (B) in clause (ii), by striking “and each
9 subsequent year” and inserting “and 2015”.

10 (2) Section 1848(m)(2) of such Act (42 U.S.C.
11 1395w-4(m)(2)) is amended—

12 (A) in subparagraph (A), by striking “For
13 2009” and inserting “Subject to subparagraph
14 (D), for 2009”; and

15 (B) by adding at the end the following new
16 subparagraph:

17 “(D) LIMITATION WITH RESPECT TO EHR
18 INCENTIVE PAYMENTS.—The provisions of this
19 paragraph shall not apply to an eligible profes-
20 sional (or, in the case of a group practice under
21 paragraph (3)(C), to the group practice) if, for
22 the reporting period the eligible professional (or
23 group practice) receives an incentive payment
24 under subsection (o)(1)(A) with respect to a
25 certified EHR technology (as defined in sub-

1 section (o)(4)) that has the capability of elec-
2 tronic prescribing.”.

3 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

4 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
5 cial Security Act (42 U.S.C. 1395ww) is amended by add-
6 ing at the end the following new subsection:

7 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
8 USE OF CERTIFIED EHR TECHNOLOGY.—

9 “(1) IN GENERAL.—Subject to the succeeding
10 provisions of this subsection, with respect to inpa-
11 tient hospital services furnished by an eligible hos-
12 pital during a payment year (as defined in para-
13 graph (2)(G)), if the eligible hospital is a meaningful
14 EHR user (as determined under paragraph (3)) for
15 the reporting period with respect to such year, in ad-
16 dition to the amount otherwise paid under this sec-
17 tion, there also shall be paid to the eligible hospital,
18 from the Federal Hospital Insurance Trust Fund es-
19 tablished under section 1817, an amount equal to
20 the applicable amount specified in paragraph (2)(A)
21 for the hospital for such payment year.

22 “(2) PAYMENT AMOUNT.—

23 “(A) IN GENERAL.—Subject to the suc-
24 ceeding subparagraphs of this paragraph, the
25 applicable amount specified in this subpara-

1 graph for an eligible hospital for a payment
2 year is equal to the product of the following:

3 “(i) INITIAL AMOUNT.—The sum of—

4 “(I) the base amount specified in
5 subparagraph (B); plus

6 “(II) the discharge related
7 amount specified in subparagraph (C)
8 for a 12-month period selected by the
9 Secretary with respect to such pay-
10 ment year.

11 “(ii) MEDICARE SHARE.—The Medi-
12 care share as specified in subparagraph
13 (D) for the hospital for a period selected
14 by the Secretary with respect to such pay-
15 ment year.

16 “(iii) TRANSITION FACTOR.—The
17 transition factor specified in subparagraph
18 (E) for the hospital for the payment year.

19 “(B) BASE AMOUNT.—The base amount
20 specified in this subparagraph is \$2,000,000.

21 “(C) DISCHARGE RELATED AMOUNT.—The
22 discharge related amount specified in this sub-
23 paragraph for a 12-month period selected by
24 the Secretary shall be determined as the sum of
25 the amount, based upon total discharges (re-

1 regardless of any source of payment) for the pe-
2 riod, for each discharge up to the 23,000th dis-
3 charge as follows:

4 “(i) For the 1,150th through the
5 9,200nd discharge, \$200.

6 “(ii) For the 9,201st through the
7 13,800th discharge, 50 percent of the
8 amount specified in clause (i).

9 “(iii) For the 13,801st through the
10 23,000th discharge, 30 percent of the
11 amount specified in clause (i).

12 “(D) MEDICARE SHARE.—The Medicare
13 share specified under this subparagraph for a
14 hospital for a period selected by the Secretary
15 for a payment year is equal to the fraction—

16 “(i) the numerator of which is the
17 sum (for such period and with respect to
18 the hospital) of—

19 “(I) the number of inpatient-bed-
20 days (as established by the Secretary)
21 which are attributable to individuals
22 with respect to whom payment may be
23 made under part A; and

24 “(II) the number of inpatient-
25 bed-days (as so established) which are

1 attributable to individuals who are en-
2 rolled with a Medicare Advantage or-
3 ganization under part C; and

4 “(ii) the denominator of which is the
5 product of—

6 “(I) the total number of inpa-
7 tient-bed-days with respect to the hos-
8 pital during such period; and

9 “(II) the total amount of the hos-
10 pital’s charges during such period, not
11 including any charges that are attrib-
12 utable to charity care (as such term is
13 used for purposes of hospital cost re-
14 porting under this title), divided by
15 the total amount of the hospital’s
16 charges during such period.

17 Insofar as the Secretary determines that data
18 are not available on charity care necessary to
19 calculate the portion of the formula specified in
20 clause (ii)(II), the Secretary shall use data on
21 uncompensated care and may adjust such data
22 so as to be an appropriate proxy for charity
23 care including a downward adjustment to elimi-
24 nate bad debt data from uncompensated care
25 data. In the absence of the data necessary, with

1 respect to a hospital, for the Secretary to com-
2 pute the amount described in clause (ii)(II), the
3 amount under such clause shall be deemed to
4 be 1. In the absence of data, with respect to a
5 hospital, necessary to compute the amount de-
6 scribed in clause (i)(II), the amount under such
7 clause shall be deemed to be 0.

8 “(E) TRANSITION FACTOR SPECIFIED.—

9 “(i) IN GENERAL.—Subject to clause
10 (ii), the transition factor specified in this
11 subparagraph for an eligible hospital for a
12 payment year is as follows:

13 “(I) For the first payment year
14 for such hospital, 1.

15 “(II) For the second payment
16 year for such hospital, $\frac{3}{4}$.

17 “(III) For the third payment
18 year for such hospital, $\frac{1}{2}$.

19 “(IV) For the fourth payment
20 year for such hospital, $\frac{1}{4}$.

21 “(V) For any succeeding pay-
22 ment year for such hospital, 0.

23 “(ii) PHASE DOWN FOR ELIGIBLE
24 HOSPITALS FIRST ADOPTING EHR AFTER
25 2013.—If the first payment year for an eli-

1 gible hospital is after 2013, then the tran-
2 sition factor specified in this subparagraph
3 for a payment year for such hospital is the
4 same as the amount specified in clause (i)
5 for such payment year for an eligible hos-
6 pital for which the first payment year is
7 2013. If the first payment year for an eli-
8 gible hospital is after 2015 then the transi-
9 tion factor specified in this subparagraph
10 for such hospital and for such year and
11 any subsequent year shall be 0.

12 “(F) FORM OF PAYMENT.—The payment
13 under this subsection for a payment year may
14 be in the form of a single consolidated payment
15 or in the form of such periodic installments as
16 the Secretary may specify.

17 “(G) PAYMENT YEAR DEFINED.—

18 “(i) IN GENERAL.—For purposes of
19 this subsection, the term ‘payment year’
20 means a fiscal year beginning with fiscal
21 year 2011.

22 “(ii) FIRST, SECOND, ETC. PAYMENT
23 YEAR.—The term ‘first payment year’
24 means, with respect to inpatient hospital
25 services furnished by an eligible hospital,

1 the first fiscal year for which an incentive
2 payment is made for such services under
3 this subsection. The terms ‘second pay-
4 ment year’, ‘third payment year’, and
5 ‘fourth payment year’ mean, with respect
6 to an eligible hospital, each successive year
7 immediately following the first payment
8 year for that hospital.

9 “(3) MEANINGFUL EHR USER.—

10 “(A) IN GENERAL.—For purposes of para-
11 graph (1), an eligible hospital shall be treated
12 as a meaningful EHR user for a reporting pe-
13 riod for a payment year (or, for purposes of
14 subsection (b)(3)(B)(ix), for a reporting period
15 under such subsection for a fiscal year) if each
16 of the following requirements are met:

17 “(i) MEANINGFUL USE OF CERTIFIED
18 EHR TECHNOLOGY.—The eligible hospital
19 demonstrates to the satisfaction of the Sec-
20 retary, in accordance with subparagraph
21 (C)(i), that during such period the hospital
22 is using certified EHR technology in a
23 meaningful manner.

24 “(ii) INFORMATION EXCHANGE.—The
25 eligible hospital demonstrates to the satis-

1 faction of the Secretary, in accordance
2 with subparagraph (C)(i), that during such
3 period such certified EHR technology is
4 connected in a manner that provides, in
5 accordance with law and standards appli-
6 cable to the exchange of information, for
7 the electronic exchange of health informa-
8 tion to improve the quality of health care,
9 such as promoting care coordination.

10 “(iii) REPORTING ON MEASURES
11 USING EHR.—Subject to subparagraph
12 (B)(ii) and using such certified EHR tech-
13 nology, the eligible hospital submits infor-
14 mation for such period, in a form and
15 manner specified by the Secretary, on such
16 clinical quality measures and such other
17 measures as selected by the Secretary
18 under subparagraph (B)(i).

19 The Secretary shall seek to improve the use of
20 electronic health records and health care quality
21 over time by requiring more stringent measures
22 of meaningful use selected under this para-
23 graph.

24 “(B) REPORTING ON MEASURES.—

1 “(i) SELECTION.—The Secretary shall
2 select measures for purposes of subpara-
3 graph (A)(iii) but only consistent with the
4 following:

5 “(I) The Secretary shall provide
6 preference to clinical quality measures
7 that have been selected for purposes
8 of applying subsection (b)(3)(B)(viii)
9 or that have been endorsed by the en-
10 tity with a contract with the Secretary
11 under section 1890(a).

12 “(II) Prior to any measure (other
13 than a clinical quality measure that
14 has been selected for purposes of ap-
15 plying subsection (b)(3)(B)(viii))
16 being selected under this subpara-
17 graph, the Secretary shall publish in
18 the Federal Register such measure
19 and provide for a period of public
20 comment on such measure.

21 “(ii) LIMITATIONS.—The Secretary
22 may not require the electronic reporting of
23 information on clinical quality measures
24 under subparagraph (A)(iii) unless the
25 Secretary has the capacity to accept the in-

1 formation electronically, which may be on
2 a pilot basis.

3 “(iii) COORDINATION OF REPORTING
4 OF INFORMATION.—In selecting such
5 measures, and in establishing the form and
6 manner for reporting measures under sub-
7 paragraph (A)(iii), the Secretary shall seek
8 to avoid redundant or duplicative reporting
9 with reporting otherwise required, includ-
10 ing reporting under subsection
11 (b)(3)(B)(viii).

12 “(C) DEMONSTRATION OF MEANINGFUL
13 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
14 FORMATION EXCHANGE.—

15 “(i) IN GENERAL.—A hospital may
16 satisfy the demonstration requirement of
17 clauses (i) and (ii) of subparagraph (A)
18 through means specified by the Secretary,
19 which may include—

20 “(I) an attestation;

21 “(II) the submission of claims
22 with appropriate coding (such as a
23 code indicating that inpatient care
24 was documented using certified EHR
25 technology);

1 “(III) a survey response;
2 “(IV) reporting under subpara-
3 graph (A)(iii); and
4 “(V) other means specified by the
5 Secretary.

6 “(ii) USE OF PART D DATA.—Not-
7 withstanding sections 1860D–15(d)(2)(B)
8 and 1860D–15(f)(2), the Secretary may
9 use data regarding drug claims submitted
10 for purposes of section 1860D–15 that are
11 necessary for purposes of subparagraph
12 (A).

13 “(4) APPLICATION.—

14 “(A) LIMITATIONS ON REVIEW.—There
15 shall be no administrative or judicial review
16 under section 1869, section 1878, or otherwise
17 of the determination of any incentive payment
18 under this subsection and the payment adjust-
19 ment under subsection (b)(3)(B)(ix), including
20 the determination of a meaningful EHR user
21 under paragraph (3), determination of meas-
22 ures applicable to services furnished by eligible
23 hospitals under this subsection, and the excep-
24 tion under subsection (b)(3)(B)(ix)(II).

1 “(B) POSTING ON WEBSITE.—The Sec-
2 retary shall post on the Internet website of the
3 Centers for Medicare & Medicaid Services, in an
4 easily understandable format, a list of the
5 names of the eligible hospitals that are mean-
6 ingful EHR users under this subsection or sub-
7 section (b)(3)(B)(ix) and other relevant data as
8 determined appropriate by the Secretary. The
9 Secretary shall ensure that a hospital has the
10 opportunity to review the other relevant data
11 that are to be made public with respect to the
12 hospital prior to such data being made public.

13 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
14 The term ‘certified EHR technology’ has the mean-
15 ing given such term in section 1848(o)(4).

16 “(6) DEFINITIONS.—For purposes of this sub-
17 section:

18 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
19 gible hospital’ means a subsection (d) hospital.

20 “(B) REPORTING PERIOD.—The term ‘re-
21 porting period’ means any period (or periods),
22 with respect to a payment year, as specified by
23 the Secretary.”.

1 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—
2 Section 1886(b)(3)(B) of the Social Security Act (42
3 U.S.C. 1395ww(b)(3)(B)) is amended—

4 (1) in clause (viii)(I), by inserting “(or, begin-
5 ning with fiscal year 2016, by one-quarter)” after
6 “2.0 percentage points”; and

7 (2) by adding at the end the following new
8 clause:

9 “(ix)(I) For purposes of clause (i) for fiscal year
10 2016 and each subsequent fiscal year, in the case of an
11 eligible hospital (as defined in subsection (n)(6)(A)) that
12 is not a meaningful EHR user (as defined in subsection
13 (n)(3)) for the reporting period for such fiscal year, three-
14 quarters of the applicable percentage increase otherwise
15 applicable under clause (i) for such fiscal year shall be
16 reduced by $33\frac{1}{3}$ percent for fiscal year 2016, $66\frac{2}{3}$ per-
17 cent for fiscal year 2017, and 100 percent for fiscal year
18 2018 and each subsequent fiscal year. Such reduction
19 shall apply only with respect to the fiscal year involved
20 and the Secretary shall not take into account such reduc-
21 tion in computing the applicable percentage increase under
22 clause (i) for a subsequent fiscal year.

23 “(II) The Secretary may, on a case-by-case basis, ex-
24 empt a subsection (d) hospital from the application of sub-
25 clause (I) with respect to a fiscal year if the Secretary

1 determines, subject to annual renewal, that requiring such
2 hospital to be a meaningful EHR user during such fiscal
3 year would result in a significant hardship, such as in the
4 case of a hospital in a rural area without sufficient Inter-
5 net access. In no case may a hospital be granted an ex-
6 emption under this subclause for more than 5 years.

7 “(III) For fiscal year 2016 and each subsequent fis-
8 cal year, a State in which hospitals are paid for services
9 under section 1814(b)(3) shall adjust the payments to
10 each subsection (d) hospital in the State that is not a
11 meaningful EHR user (as defined in subsection (n)(3))
12 in a manner that is designed to result in an aggregate
13 reduction in payments to hospitals in the State that is
14 equivalent to the aggregate reduction that would have oc-
15 curred if payments had been reduced to each subsection
16 (d) hospital in the State in a manner comparable to the
17 reduction under the previous provisions of this clause. The
18 State shall report to the Secretary the methodology it will
19 use to make the payment adjustment under the previous
20 sentence.

21 “(IV) For purposes of this clause, the term ‘reporting
22 period’ means, with respect to a fiscal year, any period
23 (or periods), with respect to the fiscal year, as specified
24 by the Secretary.”.

1 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
2 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
3 rity Act (42 U.S.C. 1395w-23), as amended by section
4 4311(c), is further amended by adding at the end the fol-
5 lowing new subsection:

6 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
7 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
8 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
9 NOLOGY.—

10 “(1) APPLICATION.—Subject to paragraphs (3)
11 and (4), in the case of a qualifying MA organization,
12 the provisions of sections 1886(n) and
13 1886(b)(3)(B)(ix) shall apply with respect to eligible
14 hospitals described in paragraph (2) of the organiza-
15 tion which the organization attests under subsection
16 (l)(6) to be meaningful EHR users in a similar man-
17 ner as they apply to eligible hospitals under such
18 sections. Incentive payments under paragraph (3)
19 shall be made to and payment adjustments under
20 paragraph (4) shall apply to such qualifying organi-
21 zations.

22 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
23 respect to a qualifying MA organization, an eligible
24 hospital described in this paragraph is an eligible
25 hospital that is under common corporate governance

1 with such organization and serves individuals en-
2 rolled under an MA plan offered by such organiza-
3 tion.

4 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
5 MENTS.—

6 “(A) IN GENERAL.—In applying section
7 1886(n)(2) under paragraph (1), instead of the
8 additional payment amount under section
9 1886(n)(2), there shall be substituted an
10 amount determined by the Secretary to be simi-
11 lar to the estimated amount in the aggregate
12 that would be payable if payment for services
13 furnished by such hospitals was payable under
14 part A instead of this part. In implementing the
15 previous sentence, the Secretary—

16 “(i) shall, insofar as data to deter-
17 mine the discharge related amount under
18 section 1886(n)(2)(C) for an eligible hos-
19 pital are not available to the Secretary, use
20 such alternative data and methodology to
21 estimate such discharge related amount as
22 the Secretary determines appropriate; and

23 “(ii) shall, insofar as data to deter-
24 mine the medicare share described in sec-
25 tion 1886(n)(2)(D) for an eligible hospital

1 are not available to the Secretary, use such
2 alternative data and methodology to esti-
3 mate such share, which data and method-
4 ology may include use of the inpatient bed
5 days (or discharges) with respect to an eli-
6 gible hospital during the appropriate pe-
7 riod which are attributable to both individ-
8 uals for whom payment may be made
9 under part A or individuals enrolled in an
10 MA plan under a Medicare Advantage or-
11 ganization under this part as a proportion
12 of the total number of patient-bed-days (or
13 discharges) with respect to such hospital
14 during such period.

15 “(B) AVOIDING DUPLICATION OF PAY-
16 MENTS.—

17 “(i) IN GENERAL.—In the case of a
18 hospital that for a payment year is an eli-
19 gible hospital described in paragraph (2),
20 is an eligible hospital under section
21 1886(n), and for which at least one-third
22 of their discharges (or bed-days) of Medi-
23 care patients for the year are covered
24 under part A, payment for the payment

1 year shall be made only under section
2 1886(n) and not under this subsection.

3 “(ii) METHODS.—In the case of a
4 hospital that is an eligible hospital de-
5 scribed in paragraph (2) and also is eligi-
6 ble for an incentive payment under section
7 1886(n) but is not described in clause (i)
8 for the same payment period, the Secretary
9 shall develop a process—

10 “(I) to ensure that duplicate pay-
11 ments are not made with respect to
12 an eligible hospital both under this
13 subsection and under section 1886(n);
14 and

15 “(II) to collect data from Medi-
16 care Advantage organizations to en-
17 sure against such duplicate payments.

18 “(4) PAYMENT ADJUSTMENT.—

19 “(A) Subject to paragraph (3), in the case
20 of a qualifying MA organization (as defined in
21 section 1853(l)(5)), if, according to the attesta-
22 tion of the organization submitted under sub-
23 section (l)(6) for an applicable period, one or
24 more eligible hospitals (as defined in section
25 1886(n)(6)(A)) that are under common cor-

1 porate governance with such organization and
2 that serve individuals enrolled under a plan of-
3 fered by such organization are not meaningful
4 EHR users (as defined in section 1886(n)(3))
5 with respect to a period, the payment amount
6 payable under this section for such organization
7 for such period shall be the percent specified in
8 subparagraph (B) for such period of the pay-
9 ment amount otherwise provided under this sec-
10 tion for such period.

11 “(B) SPECIFIED PERCENT.—The percent
12 specified under this subparagraph for a year is
13 100 percent minus a number of percentage
14 points equal to the product of—

15 “(i) the number of the percentage
16 point reduction effected under section
17 1886(b)(3)(B)(ix)(I) for the period; and

18 “(ii) the Medicare hospital expendi-
19 ture proportion specified in subparagraph
20 (C) for the year.

21 “(C) MEDICARE HOSPITAL EXPENDITURE
22 PROPORTION.—The Medicare hospital expendi-
23 ture proportion under this subparagraph for a
24 year is the Secretary’s estimate of the propor-
25 tion, of the expenditures under parts A and B

1 that are not attributable to this part, that are
2 attributable to expenditures for inpatient hos-
3 pital services.

4 “(D) APPLICATION OF PAYMENT ADJUST-
5 MENT.—In the case that a qualifying MA orga-
6 nization attests that not all eligible hospitals
7 are meaningful EHR users with respect to an
8 applicable period, the Secretary shall apply the
9 payment adjustment under this paragraph
10 based on a methodology specified by the Sec-
11 retary, taking into account the proportion of
12 such eligible hospitals, or discharges from such
13 hospitals, that are not meaningful EHR users
14 for such period.”.

15 (d) CONFORMING AMENDMENTS.—

16 (1) Section 1814(b) of the Social Security Act
17 (42 U.S.C. 1395f(b)) is amended—

18 (A) in paragraph (3), in the matter pre-
19 ceding subparagraph (A), by inserting “, sub-
20 ject to section 1886(d)(3)(B)(ix)(III),” after
21 “then”; and

22 (B) by adding at the end the following:
23 “For purposes of applying paragraph (3), there
24 shall be taken into account incentive payments,

1 and payment adjustments under subsection
2 (b)(3)(B)(ix) or (n) of section 1886.”.

3 (2) Section 1851(i)(1) of the Social Security
4 Act (42 U.S.C. 1395w-21(i)(1)) is amended by
5 striking “and 1886(h)(3)(D)” and inserting
6 “1886(h)(3)(D), and 1853(m)”.

7 (3) Section 1853 of the Social Security Act (42
8 U.S.C. 1395w-23), as amended by section
9 4311(d)(1), is amended—

10 (A) in subsection (c)—

11 (i) in paragraph (1)(D)(i), by striking
12 “1848(o)” and inserting “, 1848(o), and
13 1886(n)”;

14 (ii) in paragraph (6)(A), by inserting
15 “and subsections (b)(3)(B)(ix) and (n) of
16 section 1886” after “section 1848”; and

17 (B) in subsection (f), by inserting “and
18 subsection (m)” after “under subsection (l)”.

19 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
20 **PLEMENTATION FUNDING.**

21 (a) PREMIUM HOLD HARMLESS.—

22 (1) IN GENERAL.—Section 1839(a)(1) of the
23 Social Security Act (42 U.S.C. 1395r(a)(1)) is
24 amended by adding at the end the following: “In ap-
25 plying this paragraph there shall not be taken into

1 account additional payments under section 1848(o)
2 and section 1853(l)(3) and the Government con-
3 tribution under section 1844(a)(3).”.

4 (2) PAYMENT.—Section 1844(a) of such Act
5 (42 U.S.C. 1395w(a)) is amended—

6 (A) in paragraph (2), by striking the pe-
7 riod at the end and inserting “; plus”; and

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

10 “(3) a Government contribution equal to the
11 amount of payment incentives payable under sec-
12 tions 1848(o) and 1853(l)(3).”.

13 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
14 of the Social Security Act (42 U.S.C. 1395iii), as added
15 by section 7002(a) of the Supplemental Appropriations
16 Act, 2008 (Public Law 110–252) and as amended by sec-
17 tion 188(a)(2) of the Medicare Improvements for Patients
18 and Providers Act of 2008 (Public Law 110–275; 122
19 Stat. 2589) and by section 6 of the QI Program Supple-
20 mental Funding Act of 2008, is amended—

21 (1) in subsection (a)—

22 (A) by inserting “medicare” before “fee-
23 for-service”; and

24 (B) by inserting before the period at the
25 end the following: “including, but not limited

1 to, an increase in the conversion factor under
2 section 1848(d) to address, in whole or in part,
3 any projected shortfall in the conversion factor
4 for 2014 relative to the conversion factor for
5 2008 and adjustments to payments for items
6 and services furnished by providers of services
7 and suppliers under such original medicare fee-
8 for-service program”; and
9 (2) in subsection (b)—

10 (A) in paragraph (1), by striking “during
11 fiscal year 2014,” and all that follows and in-
12 serting the following: “during—

13 “(A) fiscal year 2014, \$22,290,000,000;
14 and

15 “(B) fiscal year 2020 and each subsequent
16 fiscal year, the Secretary’s estimate, as of July
17 1 of the fiscal year, of the aggregate reduction
18 in expenditures under this title during the pre-
19 ceding fiscal year directly resulting from the re-
20 duction in payment amounts under sections
21 1848(a)(7), 1853(l)(4), 1853(m)(4), and
22 1886(b)(3)(B)(ix).”; and

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

1 “(4) NO EFFECT ON PAYMENTS IN SUBSE-
2 QUENT YEARS.—In the case that expenditures from
3 the Fund are applied to, or otherwise affect, a pay-
4 ment rate for an item or service under this title for
5 a year, the payment rate for such item or service
6 shall be computed for a subsequent year as if such
7 application or effect had never occurred.”.

8 (c) IMPLEMENTATION FUNDING.—In addition to
9 funds otherwise available, out of any funds in the Treas-
10 ury not otherwise appropriated, there are appropriated to
11 the Secretary of Health and Human Services for the Cen-
12 ter for Medicare & Medicaid Services Program Manage-
13 ment Account, \$60,000,000 for each of fiscal years 2009
14 through 2015 and \$30,000,000 for each succeeding fiscal
15 year through fiscal year 2019, which shall be available for
16 purposes of carrying out the provisions of (and amend-
17 ments made by) this part. Amounts appropriated under
18 this subsection for a fiscal year shall be available until ex-
19 pended.

20 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
21 **CENTIVES FOR PROVIDERS NOT RECEIVING**
22 **OTHER INCENTIVE PAYMENTS.**

23 (a) STUDY.—

24 (1) IN GENERAL.—The Secretary of Health and
25 Human Services shall conduct a study to determine

1 the extent to which and manner in which payment
2 incentives (such as under title XVIII or XIX of the
3 Social Security Act) and other funding for purposes
4 of implementing and using certified EHR technology
5 (as defined in section 3000 of the Public Health
6 Service Act) should be made available to health care
7 providers who are receiving minimal or no payment
8 incentives or other funding under this Act, under
9 title XVIII or XIX of the Social Security Act, or
10 otherwise, for such purposes.

11 (2) DETAILS OF STUDY.—Such study shall in-
12 clude an examination of—

13 (A) the adoption rates of certified EHR
14 technology by such health care providers;

15 (B) the clinical utility of such technology
16 by such health care providers;

17 (C) whether the services furnished by such
18 health care providers are appropriate for or
19 would benefit from the use of such technology;

20 (D) the extent to which such health care
21 providers work in settings that might otherwise
22 receive an incentive payment or other funding
23 under this Act, title XVIII or XIX of the Social
24 Security Act, or otherwise;

1 (E) the potential costs and the potential
2 benefits of making payment incentives and
3 other funding available to such health care pro-
4 viders; and

5 (F) any other issues the Secretary deems
6 to be appropriate.

7 (b) REPORT.—Not later than June 30, 2010, the
8 Secretary shall submit to Congress a report on the find-
9 ings and conclusions of the study conducted under sub-
10 section (a).

11 **PART III—MEDICAID FUNDING**

12 **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-** 13 **ATION PAYMENTS; IMPLEMENTATION FUND-** 14 **ING.**

15 (a) IN GENERAL.—Section 1903 of the Social Secu-
16 rity Act (42 U.S.C. 1396b) is amended—

17 (1) in subsection (a)(3)—

18 (A) by striking “and” at the end of sub-
19 paragraph (D);

20 (B) by striking “plus” at the end of sub-
21 paragraph (E) and inserting “and”; and

22 (C) by adding at the end the following new
23 subparagraph:

24 “(F)(i) 100 percent of so much of the
25 sums expended during such quarter as are at-

1 tributable to payments for certified EHR tech-
2 nology (and support services including mainte-
3 nance and training that is for, or is necessary
4 for the adoption and operation of, such tech-
5 nology) by Medicaid providers described in sub-
6 section (t)(1); and

7 “(ii) 90 percent of so much of the sums ex-
8 pended during such quarter as are attributable
9 to payments for reasonable administrative ex-
10 penses related to the administration of pay-
11 ments described in clause (i) if the State meets
12 the condition described in subsection (t)(9);
13 plus”; and

14 (2) by inserting after subsection (s) the fol-
15 lowing new subsection:

16 “(t)(1) For purposes of subsection (a)(3)(F), the pay-
17 ments for certified EHR technology (and support services
18 including maintenance that is for, or is necessary for the
19 operation of, such technology) by Medicaid providers de-
20 scribed in this paragraph are payments made by the State
21 in accordance with this subsection of 85 percent of the
22 net allowable costs of Medicaid providers (as defined in
23 paragraph (2)) for such technology (and support services).

24 “(2) In this subsection and subsection (a)(3)(F), the
25 term ‘Medicaid provider’ means—

1 “(A) an eligible professional (as defined in
2 paragraph (3)(B)) who is not hospital-based and has
3 at least 30 percent of the professional’s patient vol-
4 ume (as estimated in accordance with standards es-
5 tablished by the Secretary) attributable to individ-
6 uals who are receiving medical assistance under this
7 title; and

8 “(B)(i) a children’s hospital, (ii) an acute-care
9 hospital that is not described in clause (i) and that
10 has at least 10 percent of the hospital’s patient vol-
11 ume (as estimated in accordance with standards es-
12 tablished by the Secretary) attributable to individ-
13 uals who are receiving medical assistance under this
14 title, or (iii) a Federally-qualified health center or
15 rural health clinic that has at least 30 percent of the
16 center’s or clinic’s patient volume (as estimated in
17 accordance with standards established by the Sec-
18 retary) attributable to individuals who are receiving
19 medical assistance under this title.

20 A professional shall not qualify as a Medicaid provider
21 under this subsection unless the professional has waived,
22 in a manner specified by the Secretary, any right to pay-
23 ment under section 1848(o) with respect to the adoption
24 or support of certified EHR technology by the profes-
25 sional. In applying clauses (ii) and (iii) of subparagraph

1 (B), the standards established by the Secretary for patient
2 volume shall include individuals enrolled in a Medicaid
3 managed care plan (under section 1903(m) or section
4 1932).

5 “(3) In this subsection and subsection (a)(3)(F):

6 “(A) The term ‘certified EHR technology’
7 means a qualified electronic health record (as de-
8 fined in 3000(13) of the Public Health Service Act)
9 that is certified pursuant to section 3001(c)(5) of
10 such Act as meeting standards adopted under sec-
11 tion 3004 of such Act that are applicable to the type
12 of record involved (as determined by the Secretary,
13 such as an ambulatory electronic health record for
14 office-based physicians or an inpatient hospital elec-
15 tronic health record for hospitals).

16 “(B) The term ‘eligible professional’ means a
17 physician as defined in paragraphs (1) and (2) of
18 section 1861(r), and includes a nurse mid-wife and
19 a nurse practitioner.

20 “(C) The term ‘hospital-based’ means, with re-
21 spect to an eligible professional, a professional (such
22 as a pathologist, anesthesiologist, or emergency phy-
23 sician) who furnishes substantially all of the individ-
24 ual’s professional services in a hospital setting
25 (whether inpatient or outpatient) and through the

1 use of the facilities and equipment, including com-
2 puter equipment, of the hospital.

3 “(4)(A) The term ‘allowable costs’ means, with re-
4 spect to certified EHR technology of a Medicaid provider,
5 costs of such technology (and support services including
6 maintenance and training that is for, or is necessary for
7 the adoption and operation of, such technology) as deter-
8 mined by the Secretary to be reasonable.

9 “(B) The term ‘net allowable costs’ means allowable
10 costs reduced by any payment that is made to the provider
11 involved from any other source that is directly attributable
12 to payment for certified EHR technology or services de-
13 scribed in subparagraph (A).

14 “(C) In no case shall—

15 “(i) the aggregate allowable costs under this
16 subsection (covering one or more years) with respect
17 to a Medicaid provider described in paragraph
18 (2)(A) for purchase and initial implementation of
19 certified EHR technology (and services described in
20 subparagraph (A)) exceed \$25,000 or include costs
21 over a period of longer than 5 years;

22 “(ii) for costs not described in clause (i) relat-
23 ing to the operation, maintenance, or use of certified
24 EHR technology, the annual allowable costs under
25 this subsection with respect to such a Medicaid pro-

1 vider for costs not described in clause (i) for any
2 year exceed \$10,000;

3 “(iii) payment described in paragraph (1) for
4 costs described in clause (ii) be made with respect
5 to such a Medicaid provider over a period of more
6 than 5 years;

7 “(iv) the aggregate allowable costs under this
8 subsection with respect to such a Medicaid provider
9 for all costs exceed \$75,000; or

10 “(v) the allowable costs, whether for purchase
11 and initial implementation, maintenance, or other-
12 wise, for a Medicaid provider described in paragraph
13 (2)(B) exceed such aggregate or annual limitation as
14 the Secretary shall establish, based on an amount
15 determined by the Secretary as being adequate to
16 adopt and maintain certified EHR technology, con-
17 sistent with paragraph (6).

18 “(5) Payments described in paragraph (1) are not in
19 accordance with this subsection unless the following re-
20 quirements are met:

21 “(A) The State provides assurances satisfactory
22 to the Secretary that amounts received under sub-
23 section (a)(3)(F) with respect to costs of a Medicaid
24 provider are paid directly to such provider without
25 any deduction or rebate.

1 “(B) Such Medicaid provider is responsible for
2 payment of the costs described in such paragraph
3 that are not provided under this title.

4 “(C) With respect to payments to such Med-
5 icaid provider for costs other than costs related to
6 the initial adoption of certified EHR technology, the
7 Medicaid provider demonstrates meaningful use of
8 certified EHR technology through a means that is
9 approved by the State and acceptable to the Sec-
10 retary, and that may be based upon the methodolo-
11 gies applied under section 1848(o) or 1886(n).

12 “(D) To the extent specified by the Secretary,
13 the certified EHR technology is compatible with
14 State or Federal administrative management sys-
15 tems.

16 “(6)(A) In no case shall the payments described in
17 paragraph (1), with respect to a hospital, exceed in the
18 aggregate the product of—

19 “(i) the overall hospital HIT amount for the
20 hospital computed under subparagraph (B); and

21 “(ii) the Medicaid share for such hospital com-
22 puted under subparagraph (C).

23 “(B) For purposes of this paragraph, the overall hos-
24 pital HIT amount, with respect to a hospital, is the sum
25 of the applicable amounts specified in section

1 1886(n)(2)(A) for such hospital for the first 4 payment
2 years (as estimated by the Secretary) determined as if the
3 Medicare share specified in clause (ii) of such section were
4 1. The Secretary shall publish in the Federal Register the
5 overall hospital HIT amount for each hospital eligible for
6 payments under this subsection. In computing amounts
7 under clause (ii) for payment years after the first payment
8 year, the Secretary shall assume that in subsequent pay-
9 ment years discharges increase at an annual rate of 2 per-
10 cent per year.

11 “(C) The Medicaid share computed under this sub-
12 paragraph, for a hospital for a period specified by the Sec-
13 retary, shall be calculated in the same manner as the
14 Medicare share under section 1886(n)(2)(D) for such a
15 hospital and period, except that there shall be substituted
16 for the numerator under clause (i) of such section the
17 amount that is equal to the number of inpatient-bed-days
18 (as established by the Secretary) which are attributable
19 to individuals who are receiving medical assistance under
20 this title and who are not described in section
21 1886(n)(2)(D)(i). In computing inpatient-bed-days under
22 the previous sentence, the Secretary shall take into ac-
23 count inpatient-bed-days attributable to inpatient-bed-
24 days that are paid for individuals enrolled in a Medicaid

1 managed care plan (under section 1903(m) or section
2 1932).

3 “(7) With respect to health care providers other than
4 hospitals, the Secretary shall ensure coordination of the
5 different programs for payment of such health care pro-
6 viders for adoption or use of health information technology
7 (including certified EHR technology), as well as payments
8 for such health care providers provided under this title or
9 title XVIII, to assure no duplication of funding.

10 “(8) In carrying out paragraph (5)(C), the State and
11 Secretary shall seek, to the maximum extent practicable,
12 to avoid duplicative requirements from Federal and State
13 Governments to demonstrate meaningful use of certified
14 EHR technology under this title and title XVIII. In doing
15 so, the Secretary may deem satisfaction of requirements
16 for such meaningful use for a payment year under title
17 XVIII to be sufficient to qualify as meaningful use under
18 this subsection. The Secretary may also specify the report-
19 ing periods under this subsection in order to carry out this
20 paragraph.

21 “(9) In order to be provided Federal financial partici-
22 pation under subsection (a)(3)(F)(ii), a State must dem-
23 onstrate to the satisfaction of the Secretary, that the
24 State—

1 “(A) is using the funds provided for the pur-
2 poses of administering payments under this sub-
3 section, including tracking of meaningful use by
4 Medicaid providers;

5 “(B) conducting adequate oversight of the pro-
6 gram under this subsection, including routine track-
7 ing of meaningful use attestations and reporting
8 mechanisms; and

9 “(C) be pursuing initiatives to encourage the
10 adoption of certified EHR technology to promote
11 health care quality and the exchange of health care
12 information under this title, subject to applicable
13 laws and regulations governing such exchange.

14 “(10) The Secretary shall periodically submit reports
15 to the Committee on Energy and Commerce of the House
16 of Representatives and the Committee on Finance of the
17 Senate on status, progress, and oversight of payments
18 under paragraph (1).”.

19 (b) IMPLEMENTATION FUNDING.—In addition to
20 funds otherwise available, out of any funds in the Treas-
21 ury not otherwise appropriated, there are appropriated to
22 the Secretary of Health and Human Services for the Cen-
23 ter for Medicare & Medicaid Services Program Manage-
24 ment Account, \$40,000,000 for each of fiscal years 2009
25 through 2015 and \$20,000,000 for each succeeding fiscal

1 year through fiscal year 2019, which shall be available for
2 purposes of carrying out the provisions of (and the amend-
3 ments made by) this part. Amounts appropriated under
4 this subsection for a fiscal year shall be available until ex-
5 pended.

6 **Subtitle D—Privacy**

7 **SEC. 4400. DEFINITIONS.**

8 In this subtitle, except as specified otherwise:

9 (1) BREACH.—The term “breach” means the
10 unauthorized acquisition, access, use, or disclosure
11 of protected health information which compromises
12 the security, privacy, or integrity of protected health
13 information maintained by or on behalf of a person.
14 Such term does not include any unintentional acqui-
15 sition, access, use, or disclosure of such information
16 by an employee or agent of the covered entity or
17 business associate involved if such acquisition, ac-
18 cess, use, or disclosure, respectively, was made in
19 good faith and within the course and scope of the
20 employment or other contractual relationship of such
21 employee or agent, respectively, with the covered en-
22 tity or business associate and if such information is
23 not further acquired, accessed, used, or disclosed by
24 such employee or agent.

1 (2) BUSINESS ASSOCIATE.—The term “business
2 associate” has the meaning given such term in sec-
3 tion 160.103 of title 45, Code of Federal Regula-
4 tions.

5 (3) COVERED ENTITY.—The term “covered en-
6 tity” has the meaning given such term in section
7 160.103 of title 45, Code of Federal Regulations.

8 (4) DISCLOSE.—The terms “disclose” and “dis-
9 closure” have the meaning given the term “dislo-
10 sure” in section 160.103 of title 45, Code of Federal
11 Regulations.

12 (5) ELECTRONIC HEALTH RECORD.—The term
13 “electronic health record” means an electronic
14 record of health-related information on an individual
15 that is created, gathered, managed, and consulted by
16 authorized health care clinicians and staff.

17 (6) HEALTH CARE OPERATIONS.—The term
18 “health care operation” has the meaning given such
19 term in section 164.501 of title 45, Code of Federal
20 Regulations.

21 (7) HEALTH CARE PROVIDER.—The term
22 “health care provider” has the meaning given such
23 term in section 160.103 of title 45, Code of Federal
24 Regulations.

1 (8) HEALTH PLAN.—The term “health plan”
2 has the meaning given such term in section 1171(5)
3 of the Social Security Act.

4 (9) NATIONAL COORDINATOR.—The term “Na-
5 tional Coordinator” means the head of the Office of
6 the National Coordinator for Health Information
7 Technology established under section 3001(a) of the
8 Public Health Service Act, as added by section
9 4101.

10 (10) PAYMENT.—The term “payment” has the
11 meaning given such term in section 164.501 of title
12 45, Code of Federal Regulations.

13 (11) PERSONAL HEALTH RECORD.—The term
14 “personal health record” means an electronic record
15 of individually identifiable health information on an
16 individual that can be drawn from multiple sources
17 and that is managed, shared, and controlled by or
18 for the individual.

19 (12) PROTECTED HEALTH INFORMATION.—The
20 term “protected health information” has the mean-
21 ing given such term in section 160.103 of title 45,
22 Code of Federal Regulations.

23 (13) SECRETARY.—The term “Secretary”
24 means the Secretary of Health and Human Services.

1 (14) SECURITY.—The term “security” has the
2 meaning given such term in section 164.304 of title
3 45, Code of Federal Regulations.

4 (15) STATE.—The term “State” means each of
5 the several States, the District of Columbia, Puerto
6 Rico, the Virgin Islands, Guam, American Samoa,
7 and the Northern Mariana Islands.

8 (16) TREATMENT.—The term “treatment” has
9 the meaning given such term in section 164.501 of
10 title 45, Code of Federal Regulations.

11 (17) USE.—The term “use” has the meaning
12 given such term in section 160.103 of title 45, Code
13 of Federal Regulations.

14 (18) VENDOR OF PERSONAL HEALTH
15 RECORDS.—The term “vendor of personal health
16 records” means an entity, other than a covered enti-
17 ty (as defined in paragraph (3)), that offers or
18 maintains a personal health record.

1 **PART I—IMPROVED PRIVACY PROVISIONS AND**
2 **SECURITY PROVISIONS**

3 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**
4 **PENALTIES TO BUSINESS ASSOCIATES OF**
5 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
6 **SECURITY PROVISIONS.**

7 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-
8 tions 164.308, 164.310, 164.312, and 164.316 of title 45,
9 Code of Federal Regulations, shall apply to a business as-
10 sociate of a covered entity in the same manner that such
11 sections apply to the covered entity. The additional re-
12 quirements of this title that relate to security and that
13 are made applicable with respect to covered entities shall
14 also be applicable to such a business associate and shall
15 be incorporated into the business associate agreement be-
16 tween the business associate and the covered entity.

17 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-
18 ALTIES.—In the case of a business associate that violates
19 any security provision specified in subsection (a), sections
20 1176 and 1177 of the Social Security Act (42 U.S.C.
21 1320d-5, 1320d-6) shall apply to the business associate
22 with respect to such violation in the same manner such
23 sections apply to a covered entity that violates such secu-
24 rity provision.

25 (c) ANNUAL GUIDANCE.—For the first year begin-
26 ning after the date of the enactment of this Act and annu-

1 ally thereafter, the Secretary of Health and Human Serv-
2 ices shall, in consultation with industry stakeholders, an-
3 nually issue guidance on the most effective and appro-
4 priate technical safeguards for use in carrying out the sec-
5 tions referred to in subsection (a) and the security stand-
6 ards in subpart C of part 164 of title 45, Code of Federal
7 Regulations, as such provisions are in effect as of the date
8 before the enactment of this Act.

9 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

10 (a) IN GENERAL.—A covered entity that accesses,
11 maintains, retains, modifies, records, stores, destroys, or
12 otherwise holds, uses, or discloses unsecured protected
13 health information (as defined in subsection (h)(1)) shall,
14 in the case of a breach of such information that is discov-
15 ered by the covered entity, notify each individual whose
16 unsecured protected health information has been, or is
17 reasonably believed by the covered entity to have been,
18 accessed, acquired, or disclosed as a result of such breach.

19 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
20 NESS ASSOCIATE.—A business associate of a covered enti-
21 ty that accesses, maintains, retains, modifies, records,
22 stores, destroys, or otherwise holds, uses, or discloses un-
23 secured protected health information shall, following the
24 discovery of a breach of such information, notify the cov-
25 ered entity of such breach. Such notice shall include the

1 identification of each individual whose unsecured protected
2 health information has been, or is reasonably believed by
3 the business associate to have been, accessed, acquired,
4 or disclosed during such breach.

5 (c) BREACHES TREATED AS DISCOVERED.—For pur-
6 poses of this section, a breach shall be treated as discov-
7 ered by a covered entity or by a business associate as of
8 the first day on which such breach is known to such entity
9 or associate, respectively, (including any person, other
10 than the individual committing the breach, that is an em-
11 ployee, officer, or other agent of such entity or associate,
12 respectively) or should reasonably have been known to
13 such entity or associate (or person) to have occurred.

14 (d) TIMELINESS OF NOTIFICATION.—

15 (1) IN GENERAL.—Subject to subsection (g), all
16 notifications required under this section shall be
17 made without unreasonable delay and in no case
18 later than 60 calendar days after the discovery of a
19 breach by the covered entity involved (or business
20 associate involved in the case of a notification re-
21 quired under subsection (b)).

22 (2) BURDEN OF PROOF.—The covered entity in-
23 volved (or business associate involved in the case of
24 a notification required under subsection (b)), shall
25 have the burden of demonstrating that all notifica-

1 tions were made as required under this part, includ-
2 ing evidence demonstrating the necessity of any
3 delay.

4 (e) METHODS OF NOTICE.—

5 (1) INDIVIDUAL NOTICE.—Notice required
6 under this section to be provided to an individual,
7 with respect to a breach, shall be provided promptly
8 and in the following form:

9 (A) Written notification by first-class mail
10 to the individual (or the next of kin of the indi-
11 vidual if the individual is deceased) at the last
12 known address of the individual or the next of
13 kin, respectively, or, if specified as a preference
14 by the individual, by electronic mail. The notifi-
15 cation may be provided in one or more mailings
16 as information is available.

17 (B) In the case in which there is insuffi-
18 cient, or out-of-date contact information (in-
19 cluding a phone number, email address, or any
20 other form of appropriate communication) that
21 precludes direct written (or, if specified by the
22 individual under subparagraph (A), electronic)
23 notification to the individual, a substitute form
24 of notice shall be provided, including, in the
25 case that there are 10 or more individuals for

1 which there is insufficient or out-of-date contact
2 information, a conspicuous posting for a period
3 determined by the Secretary on the home page
4 of the Web site of the covered entity involved or
5 notice in major print or broadcast media, in-
6 cluding major media in geographic areas where
7 the individuals affected by the breach likely re-
8 side. Such a notice in media or web posting will
9 include a toll-free phone number where an indi-
10 vidual can learn whether or not the individual's
11 unsecured protected health information is pos-
12 sibly included in the breach.

13 (C) In any case deemed by the covered en-
14 tity involved to require urgency because of pos-
15 sible imminent misuse of unsecured protected
16 health information, the covered entity, in addi-
17 tion to notice provided under subparagraph (A),
18 may provide information to individuals by tele-
19 phone or other means, as appropriate.

20 (2) MEDIA NOTICE.—Notice shall be provided
21 to prominent media outlets serving a State or juris-
22 diction, following the discovery of a breach described
23 in subsection (a), if the unsecured protected health
24 information of more than 500 residents of such
25 State or jurisdiction is, or is reasonably believed to

1 have been, accessed, acquired, or disclosed during
2 such breach.

3 (3) NOTICE TO SECRETARY.—Notice shall be
4 provided to the Secretary by covered entities of un-
5 secured protected health information that has been
6 acquired or disclosed in a breach. If the breach was
7 with respect to 500 or more individuals than such
8 notice must be provided immediately. If the breach
9 was with respect to less than 500 individuals, the
10 covered entity involved may maintain a log of any
11 such breach occurring and annually submit such a
12 log to the Secretary documenting such breaches
13 occurring during the year involved.

14 (4) POSTING ON HHS PUBLIC WEBSITE.—The
15 Secretary shall make available to the public on the
16 Internet website of the Department of Health and
17 Human Services a list that identifies each covered
18 entity involved in a breach described in subsection
19 (a) in which the unsecured protected health informa-
20 tion of more than 500 individuals is acquired or dis-
21 closed.

22 (f) CONTENT OF NOTIFICATION.—Regardless of the
23 method by which notice is provided to individuals under
24 this section, notice of a breach shall include, to the extent
25 possible, the following:

1 (1) A brief description of what happened, in-
2 cluding the date of the breach and the date of the
3 discovery of the breach, if known.

4 (2) A description of the types of unsecured pro-
5 tected health information that were involved in the
6 breach (such as full name, Social Security number,
7 date of birth, home address, account number, or dis-
8 ability code).

9 (3) The steps individuals should take to protect
10 themselves from potential harm resulting from the
11 breach.

12 (4) A brief description of what the covered enti-
13 ty involved is doing to investigate the breach, to
14 mitigate losses, and to protect against any further
15 breaches.

16 (5) Contact procedures for individuals to ask
17 questions or learn additional information, which
18 shall include a toll-free telephone number, an e-mail
19 address, Web site, or postal address.

20 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
21 ENFORCEMENT PURPOSES.—If a law enforcement official
22 determines that a notification, notice, or posting required
23 under this section would impede a criminal investigation
24 or cause damage to national security, such notification,
25 notice, or posting shall be delayed in the same manner

1 as provided under section 164.528(a)(2) of title 45, Code
2 of Federal Regulations, in the case of a disclosure covered
3 under such section.

4 (h) UNSECURED PROTECTED HEALTH INFORMA-
5 TION.—

6 (1) DEFINITION.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), for purposes of this section, the
9 term “unsecured protected health information”
10 means protected health information that is not
11 secured through the use of a technology or
12 methodology specified by the Secretary in the
13 guidance issued under paragraph (2).

14 (B) EXCEPTION IN CASE TIMELY GUID-
15 ANCE NOT ISSUED.—In the case that the Sec-
16 retary does not issue guidance under paragraph
17 (2) by the date specified in such paragraph, for
18 purposes of this section, the term “unsecured
19 protected health information” shall mean pro-
20 tected health information that is not secured by
21 a technology standard that renders protected
22 health information unusable, unreadable, or in-
23 decipherable to unauthorized individuals and is
24 developed or endorsed by a standards devel-

1 oping organization that is accredited by the
2 American National Standards Institute.

3 (2) GUIDANCE.—For purposes of paragraph (1)
4 and section 407(f)(3), not later than the date that
5 is 60 days after the date of the enactment of this
6 Act, the Secretary shall, after consultation with
7 stakeholders, issue (and annually update) guidance
8 specifying the technologies and methodologies that
9 render protected health information unusable,
10 unreadable, or indecipherable to unauthorized indi-
11 viduals.

12 (i) REPORT TO CONGRESS ON BREACHES.—

13 (1) IN GENERAL.—Not later than 12 months
14 after the date of the enactment of this Act and an-
15 nually thereafter, the Secretary shall prepare and
16 submit to the Committee on Finance and the Com-
17 mittee on Health, Education, Labor, and Pensions
18 of the Senate and the Committee on Ways and
19 Means and the Committee on Energy and Commerce
20 of the House of Representatives a report containing
21 the information described in paragraph (2) regard-
22 ing breaches for which notice was provided to the
23 Secretary under subsection (e)(3).

1 (2) INFORMATION.—The information described
2 in this paragraph regarding breaches specified in
3 paragraph (1) shall include—

4 (A) the number and nature of such
5 breaches; and

6 (B) actions taken in response to such
7 breaches.

8 (j) REGULATIONS; EFFECTIVE DATE.—To carry out
9 this section, the Secretary of Health and Human Services
10 shall promulgate interim final regulations by not later
11 than the date that is 180 days after the date of the enact-
12 ment of this title. The provisions of this section shall apply
13 to breaches that are discovered on or after the date that
14 is 30 days after the date of publication of such interim
15 final regulations.

16 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**
17 **VACY.**

18 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not
19 later than 6 months after the date of the enactment of
20 this Act, the Secretary shall designate an individual in
21 each regional office of the Department of Health and
22 Human Services to offer guidance and education to cov-
23 ered entities, business associates, and individuals on their
24 rights and responsibilities related to Federal privacy and
25 security requirements for protected health information.

1 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
2 FORMATION.—Not later than 12 months after the date of
3 the enactment of this Act, the Office for Civil Rights with-
4 in the Department of Health and Human Services shall
5 develop and maintain a multi-faceted national education
6 initiative to enhance public transparency regarding the
7 uses of protected health information, including programs
8 to educate individuals about the potential uses of their
9 protected health information, the effects of such uses, and
10 the rights of individuals with respect to such uses. Such
11 programs shall be conducted in a variety of languages and
12 present information in a clear and understandable man-
13 ner.

14 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
15 **PENALTIES TO BUSINESS ASSOCIATES OF**
16 **COVERED ENTITIES.**

17 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
18 In the case of a business associate of a covered entity that
19 obtains or creates protected health information pursuant
20 to a written contract (or other written arrangement) de-
21 scribed in section 164.502(e)(2) of title 45, Code of Fed-
22 eral Regulations, with such covered entity, the business
23 associate may use and disclose such protected health infor-
24 mation only if such use or disclosure, respectively, is in
25 compliance with each applicable requirement of section

1 164.504(e) of such title. The additional requirements of
2 this subtitle that relate to privacy and that are made ap-
3 plicable with respect to covered entities shall also be appli-
4 cable to such a business associate and shall be incor-
5 porated into the business associate agreement between the
6 business associate and the covered entity.

7 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
8 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
9 title 45, Code of Federal Regulations, shall apply to a
10 business associate described in subsection (a), with respect
11 to compliance with such subsection, in the same manner
12 that such section applies to a covered entity, with respect
13 to compliance with the standards in sections 164.502(e)
14 and 164.504(e) of such title, except that in applying such
15 section 164.504(e)(1)(ii) each reference to the business as-
16 sociate, with respect to a contract, shall be treated as a
17 reference to the covered entity involved in such contract.

18 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
19 ALTIES.—In the case of a business associate that violates
20 any provision of subsection (a) or (b), the provisions of
21 sections 1176 and 1177 of the Social Security Act (42
22 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-
23 sociate with respect to such violation in the same manner
24 as such provisions apply to a person who violates a provi-
25 sion of part C of title XI of such Act.

1 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
2 **SALES OF HEALTH INFORMATION; ACCOUNT-**
3 **ING OF CERTAIN PROTECTED HEALTH IN-**
4 **FORMATION DISCLOSURES; ACCESS TO CER-**
5 **TAIN INFORMATION IN ELECTRONIC FOR-**
6 **MAT.**

7 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-
8 CLOSURES OF HEALTH INFORMATION.—In the case that
9 an individual requests under paragraph (a)(1)(i)(A) of
10 section 164.522 of title 45, Code of Federal Regulations,
11 that a covered entity restrict the disclosure of the pro-
12 tected health information of the individual, notwith-
13 standing paragraph (a)(1)(ii) of such section, the covered
14 entity must comply with the requested restriction if—

15 (1) except as otherwise required by law, the dis-
16 closure is to a health plan for purposes of carrying
17 out payment or health care operations (and is not
18 for purposes of carrying out treatment); and

19 (2) the protected health information pertains
20 solely to a health care item or service for which the
21 health care provider involved has been paid out of
22 pocket in full.

23 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
24 THE LIMITED DATA SET OR THE MINIMUM NEC-
25 ESSARY.—

26 (1) IN GENERAL.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), a covered entity shall be treated as
3 being in compliance with section 164.502(b)(1)
4 of title 45, Code of Federal Regulations, with
5 respect to the use, disclosure, or request of pro-
6 tected health information described in such sec-
7 tion, only if the covered entity limits such pro-
8 tected health information, to the extent prac-
9 ticable, to the limited data set (as defined in
10 section 164.514(e)(2) of such title) or, if needed
11 by such entity, to the minimum necessary to ac-
12 complish the intended purpose of such use, dis-
13 closure, or request, respectively.

14 (B) GUIDANCE.—Not later than 18
15 months after the date of the enactment of this
16 section, the Secretary shall issue guidance on
17 what constitutes “minimum necessary” for pur-
18 poses of subpart E of part 164 of title 45, Code
19 of Federal Regulation. In issuing such guidance
20 the Secretary shall take into consideration the
21 guidance under section 4424(c).

22 (C) SUNSET.—Subparagraph (A) shall not
23 apply on and after the effective date on which
24 the Secretary issues the guidance under sub-
25 paragraph (B).

1 (2) DETERMINATION OF MINIMUM NEC-
2 ESSARY.—For purposes of paragraph (1), in the
3 case of the disclosure of protected health informa-
4 tion, the covered entity or business associate dis-
5 closing such information shall determine what con-
6 stitutes the minimum necessary to accomplish the
7 intended purpose of such disclosure.

8 (3) APPLICATION OF EXCEPTIONS.—The excep-
9 tions described in section 164.502(b)(2) of title 45,
10 Code of Federal Regulations, shall apply to the re-
11 quirement under paragraph (1) as of the effective
12 date described in section 4423 in the same manner
13 that such exceptions apply to section 164.502(b)(1)
14 of such title before such date.

15 (4) RULE OF CONSTRUCTION.—Nothing in this
16 subsection shall be construed as affecting the use,
17 disclosure, or request of protected health information
18 that has been de-identified.

19 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
20 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
21 TITY USES ELECTRONIC HEALTH RECORD.—

22 (1) IN GENERAL.—In applying section 164.528
23 of title 45, Code of Federal Regulations, in the case
24 that a covered entity uses or maintains an electronic

1 health record with respect to protected health infor-
2 mation—

3 (A) the exception under paragraph
4 (a)(1)(i) of such section shall not apply to dis-
5 closures through an electronic health record
6 made by such entity of such information; and

7 (B) an individual shall have a right to re-
8 ceive an accounting of disclosures described in
9 such paragraph of such information made by
10 such covered entity during only the three years
11 prior to the date on which the accounting is re-
12 quested.

13 (2) REGULATIONS.—The Secretary shall pro-
14 mulgate regulations on what information shall be
15 collected about each disclosure referred to in para-
16 graph (1)(A) not later than 18 months after the
17 date on which the Secretary adopts standards on ac-
18 counting for disclosure described in the section
19 3002(b)(2)(B)(iv) of the Public Health Service Act,
20 as added by section 4101. Such regulations shall
21 only require such information to be collected through
22 an electronic health record in a manner that takes
23 into account the interests of individuals in learning
24 the circumstances under which their protected health
25 information is being disclosed and takes into account

1 the administrative burden of accounting for such
2 disclosures.

3 (3) CONSTRUCTION.—Nothing in this sub-
4 section shall be construed as requiring a covered en-
5 tity to account for disclosures of protected health in-
6 formation that are not made by such covered entity
7 or by a business associate acting on behalf of the
8 covered entity.

9 (4) EFFECTIVE DATE.—

10 (A) CURRENT USERS OF ELECTRONIC
11 RECORDS.—In the case of a covered entity inso-
12 far as it acquired an electronic health record as
13 of January 1, 2009, paragraph (1) shall apply
14 to disclosures, with respect to protected health
15 information, made by the covered entity from
16 such a record on and after January 1, 2014.

17 (B) OTHERS.—In the case of a covered en-
18 tity insofar as it acquires an electronic health
19 record after January 1, 2009, paragraph (1)
20 shall apply to disclosures, with respect to pro-
21 tected health information, made by the covered
22 entity from such record on and after the later
23 of the following:

24 (i) January 1, 2011; or

1 (ii) the date that it acquires an elec-
2 tronic health record.

3 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
4 later than 18 months after the date of the enactment of
5 this title, the Secretary shall promulgate regulations to
6 eliminate from the definition of health care operations
7 under section 164.501 of title 45, Code of Federal Regula-
8 tions, those activities that can reasonably and efficiently
9 be conducted through the use of information that is de-
10 identified (in accordance with the requirements of section
11 164.514(b) of such title) or that should require a valid
12 authorization for use or disclosure. In promulgating such
13 regulations, the Secretary may choose to narrow or clarify
14 activities that the Secretary chooses to retain in the defini-
15 tion of health care operations and the Secretary shall take
16 into account the report under section 424(d). In such reg-
17 ulations the Secretary shall specify the date on which such
18 regulations shall apply to disclosures made by a covered
19 entity, but in no case would such date be sooner than the
20 date that is 24 months after the date of the enactment
21 of this section.

22 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
23 RECORDS OR PROTECTED HEALTH INFORMATION OB-
24 TAINED FROM ELECTRONIC HEALTH RECORDS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), a covered entity or business associate
3 shall not directly or indirectly receive remuneration
4 in exchange for any protected health information of
5 an individual unless the covered entity obtained from
6 the individual, in accordance with section 164.508 of
7 title 45, Code of Federal Regulations, a valid au-
8 thorization that includes, in accordance with such
9 section, a specification of whether the protected
10 health information can be further exchanged for re-
11 muneration by the entity receiving protected health
12 information of that individual.

13 (2) EXCEPTIONS.—Paragraph (1) shall not
14 apply in the following cases:

15 (A) The purpose of the exchange is for re-
16 search or public health activities (as described
17 in sections 164.501, 164.512(i), and 164.512(b)
18 of title 45, Code of Federal Regulations) and
19 the price charged reflects the costs of prepara-
20 tion and transmittal of the data for such pur-
21 pose.

22 (B) The purpose of the exchange is for the
23 treatment of the individual and the price
24 charges reflects not more than the costs of

1 preparation and transmittal of the data for
2 such purpose.

3 (C) The purpose of the exchange is the
4 health care operation specifically described in
5 subparagraph (iv) of paragraph (6) of the defi-
6 nition of health care operations in section
7 164.501 of title 45, Code of Federal Regula-
8 tions.

9 (D) The purpose of the exchange is for re-
10 munerated that is provided by a covered entity
11 to a business associate for activities involving
12 the exchange of protected health information
13 that the business associate undertakes on behalf
14 of and at the specific request of the covered en-
15 tity pursuant to a business associate agreement.

16 (E) The purpose of the exchange is to pro-
17 vide an individual with a copy of the individ-
18 ual's protected health information pursuant to
19 section 164.524 of title 45, Code of Federal
20 Regulations.

21 (F) The purpose of the exchange is other-
22 wise determined by the Secretary in regulations
23 to be similarly necessary and appropriate as the
24 exceptions provided in subparagraphs (A)
25 through (E).

1 (3) REGULATIONS.—The Secretary shall pro-
2 mulgate regulations to carry out paragraph (this
3 subsection, including exceptions described in para-
4 graph (2), not later than 18 months after the date
5 of the enactment of this title.

6 (4) EFFECTIVE DATE.—Paragraph (1) shall
7 apply to exchanges occurring on or after the date
8 that is 6 months after the date of the promulgation
9 of final regulations implementing this subsection.

10 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
11 TRONIC FORMAT.—In applying section 164.524 of title
12 45, Code of Federal Regulations, in the case that a cov-
13 ered entity uses or maintains an electronic health record
14 with respect to protected health information of an indi-
15 vidual—

16 (1) the individual shall have a right to obtain
17 from such covered entity a copy of such information
18 in an electronic format; and

19 (2) notwithstanding paragraph (c)(4) of such
20 section, any fee that the covered entity may impose
21 for providing such individual with a copy of such in-
22 formation (or a summary or explanation of such in-
23 formation) if such copy (or summary or explanation)
24 is in an electronic form shall not be greater than the

1 entity's labor costs in responding to the request for
2 the copy (or summary or explanation).

3 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**
4 **OF HEALTH CARE OPERATIONS.**

5 (a) **MARKETING.**—

6 (1) **IN GENERAL.**—A communication by a cov-
7 ered entity or business associate that is about a
8 product or service and that encourages recipients of
9 the communication to purchase or use the product
10 or service shall not be considered a health care oper-
11 ation for purposes of subpart E of part 164 of title
12 45, Code of Federal Regulations, unless the commu-
13 nication is made as described in subparagraph (i),
14 (ii), or (iii) of paragraph (1) of the definition of
15 marketing in section 164.501 of such title.

16 (2) **PAYMENT FOR CERTAIN COMMUNICA-**
17 **TIONS.**—A covered entity or business associate may
18 not receive direct or indirect payment in exchange
19 for making any communication described in sub-
20 paragraph (i), (ii), or (iii) of paragraph (1) of the
21 definition of marketing in section 164.501 of title
22 45, Code of Federal Regulations, except—

23 (A) a business associate of a covered entity
24 may receive payment from the covered entity
25 for making any such communication on behalf

1 of the covered entity that is consistent with the
2 written contract (or other written arrangement)
3 described in section 164.502(e)(2) of such title
4 between such business associate and covered en-
5 tity; and

6 (B) a covered entity may receive payment
7 in exchange for making any such communica-
8 tion if the entity obtains from the recipient of
9 the communication, in accordance with section
10 164.508 of title 45, Code of Federal Regula-
11 tions, a valid authorization (as described in
12 paragraph (b) of such section) with respect to
13 such communication.

14 (b) FUNDRAISING.—Fundraising for the benefit of a
15 covered entity shall not be considered a health care oper-
16 ation for purposes of section 164.501 of title 45, Code of
17 Federal Regulations.

18 (c) EFFECTIVE DATE.—This section shall apply to
19 contracting occurring on or after the effective date speci-
20 fied under section 4423.

1 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
2 **MENT FOR VENDORS OF PERSONAL HEALTH**
3 **RECORDS AND OTHER NON-HIPAA COVERED**
4 **ENTITIES.**

5 (a) IN GENERAL.—In accordance with subsection (c),
6 each vendor of personal health records, following the dis-
7 covery of a breach of security of unsecured PHR identifi-
8 able health information that is in a personal health record
9 maintained or offered by such vendor, and each entity de-
10 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
11 lowing the discovery of a breach of security of such infor-
12 mation that is obtained through a product or service pro-
13 vided by such entity, shall—

14 (1) notify each individual who is a citizen or
15 resident of the United States whose unsecured PHR
16 identifiable health information was acquired by an
17 unauthorized person as a result of such a breach of
18 security; and

19 (2) notify the Federal Trade Commission.

20 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
21 VIDERS.—A third party service provider that provides
22 services to a vendor of personal health records or to an
23 entity described in clause (ii) or (iii) of section
24 4424(b)(1)(A) in connection with the offering or mainte-
25 nance of a personal health record or a related product or
26 service and that accesses, maintains, retains, modifies,

1 records, stores, destroys, or otherwise holds, uses, or dis-
2 closes unsecured PHR identifiable health information in
3 such a record as a result of such services shall, following
4 the discovery of a breach of security of such information,
5 notify such vendor or entity, respectively, of such breach.
6 Such notice shall include the identification of each indi-
7 vidual whose unsecured PHR identifiable health informa-
8 tion has been, or is reasonably believed to have been,
9 accessed, acquired, or disclosed during such breach.

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—

12 Subsections (c), (d), (e), and (f) of section 402 shall apply
13 to a notification required under subsection (a) and a ven-
14 dor of personal health records, an entity described in sub-
15 section (a) and a third party service provider described
16 in subsection (b), with respect to a breach of security
17 under subsection (a) of unsecured PHR identifiable health
18 information in such records maintained or offered by such
19 vendor, in a manner specified by the Federal Trade Com-
20 mission.

21 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
22 ceipt of a notification of a breach of security under sub-
23 section (a)(2), the Federal Trade Commission shall notify
24 the Secretary of such breach.

1 (e) ENFORCEMENT.—A violation of subsection (a) or
2 (b) shall be treated as an unfair and deceptive act or prac-
3 tice in violation of a regulation under section 18(a)(1)(B)
4 of the Federal Trade Commission Act (15 U.S.C.
5 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
6 tices.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) BREACH OF SECURITY.—The term “breach
9 of security” means, with respect to unsecured PHR
10 identifiable health information of an individual in a
11 personal health record, acquisition of such informa-
12 tion without the authorization of the individual.

13 (2) PHR IDENTIFIABLE HEALTH INFORMA-
14 TION.—The term “PHR identifiable health informa-
15 tion” means individually identifiable health informa-
16 tion, as defined in section 1171(6) of the Social Se-
17 curity Act (42 U.S.C. 1320d(6)), and includes, with
18 respect to an individual, information—

19 (A) that is provided by or on behalf of the
20 individual; and

21 (B) that identifies the individual or with
22 respect to which there is a reasonable basis to
23 believe that the information can be used to
24 identify the individual.

1 (3) UNSECURED PHR IDENTIFIABLE HEALTH
2 INFORMATION.—

3 (A) IN GENERAL.—Subject to subpara-
4 graph (B), the term “unsecured PHR identifi-
5 able health information” means PHR identifi-
6 able health information that is not protected
7 through the use of a technology or methodology
8 specified by the Secretary in the guidance
9 issued under section 4402(h)(2).

10 (B) EXCEPTION IN CASE TIMELY GUID-
11 ANCE NOT ISSUED.—In the case that the Sec-
12 retary does not issue guidance under section
13 4402(h)(2) by the date specified in such sec-
14 tion, for purposes of this section, the term “un-
15 secured PHR identifiable health information”
16 shall mean PHR identifiable health information
17 that is not secured by a technology standard
18 that renders protected health information unus-
19 able, unreadable, or indecipherable to unauthor-
20 ized individuals and that is developed or en-
21 dored by a standards developing organization
22 that is accredited by the American National
23 Standards Institute.

24 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

1 (1) REGULATIONS; EFFECTIVE DATE.—To
2 carry out this section, the Secretary of Health and
3 Human Services shall promulgate interim final regu-
4 lations by not later than the date that is 180 days
5 after the date of the enactment of this section. The
6 provisions of this section shall apply to breaches of
7 security that are discovered on or after the date that
8 is 30 days after the date of publication of such in-
9 terim final regulations.

10 (2) SUNSET.—The provisions of this section
11 shall not apply to breaches of security occurring on
12 or after the earlier of the following the dates:

13 (A) The date on which a standard relating
14 to requirements for entities that are not covered
15 entities that includes requirements relating to
16 breach notification has been promulgated by the
17 Secretary.

18 (B) The date on which a standard relating
19 to requirements for entities that are not covered
20 entities that includes requirements relating to
21 breach notification has been promulgated by the
22 Federal Trade Commission and has taken ef-
23 fect.

1 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
2 **FOR CERTAIN ENTITIES.**

3 Each organization, with respect to a covered entity,
4 that provides data transmission of protected health infor-
5 mation to such entity (or its business associate) and that
6 requires access on a routine basis to such protected health
7 information, such as a Health Information Exchange Or-
8 ganization, Regional Health Information Organization, E-
9 prescribing Gateway, or each vendor that contracts with
10 a covered entity to allow that covered entity to offer a per-
11 sonal health record to patients as part of its electronic
12 health record, is required to enter into a written contract
13 (or other written arrangement) described in section
14 164.502(e)(2) of title 45, Code of Federal Regulations and
15 a written contract (or other arrangement) described in
16 section 164.308(b) of such title, with such entity and shall
17 be treated as a business associate of the covered entity
18 for purposes of the provisions of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this title.

22 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
23 **DISCLOSURES CRIMINAL PENALTIES.**

24 Section 1177(a) of the Social Security Act (42 U.S.C.
25 1320d-6(a)) is amended by adding at the end the fol-
26 lowing new sentence: “For purposes of the previous sen-

1 tence, a person (including an employee or other individual)
2 shall be considered to have obtained or disclosed individ-
3 ually identifiable health information in violation of this
4 part if the information is maintained by a covered entity
5 (as defined in the HIPAA privacy regulation described in
6 section 1180(b)(3)) and the individual obtained or dis-
7 closed such information without authorization.”.

8 **SEC. 4410. IMPROVED ENFORCEMENT.**

9 (a) IN GENERAL.—Section 1176 of the Social Secu-
10 rity Act (42 U.S.C. 1320d-5) is amended—

11 (1) in subsection (b)(1), by striking “the act
12 constitutes an offense punishable under section
13 1177” and inserting “a penalty has been imposed
14 under section 1177 with respect to such act”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-
18 GLECT.—

19 “(1) IN GENERAL.—A violation of a provision
20 of this part due to willful neglect is a violation for
21 which the Secretary is required to impose a penalty
22 under subsection (a)(1).

23 “(2) REQUIRED INVESTIGATION.—For purposes
24 of paragraph (1), the Secretary shall formally inves-
25 tigate any complaint of a violation of a provision of

1 this part if a preliminary investigation of the facts
2 of the complaint indicate such a possible violation
3 due to willful neglect.”.

4 (b) EFFECTIVE DATE; REGULATIONS.—

5 (1) The amendments made by subsection (a)
6 shall apply to penalties imposed on or after the date
7 that is 24 months after the date of the enactment
8 of this title.

9 (2) Not later than 18 months after the date of
10 the enactment of this title, the Secretary of Health
11 and Human Services shall promulgate regulations to
12 implement such amendments.

13 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY
14 PENALTIES COLLECTED.—

15 (1) IN GENERAL.—Subject to the regulation
16 promulgated pursuant to paragraph (3), any civil
17 monetary penalty or monetary settlement collected
18 with respect to an offense punishable under this sub-
19 title or section 1176 of the Social Security Act (42
20 U.S.C. 1320d-5) insofar as such section relates to
21 privacy or security shall be transferred to the Office
22 of Civil Rights of the Department of Health and
23 Human Services to be used for purposes of enforcing
24 the provisions of this subtitle and subparts C and E
25 of part 164 of title 45, Code of Federal Regulations,

1 as such provisions are in effect as of the date of en-
2 actment of this Act.

3 (2) GAO REPORT.—Not later than 18 months
4 after the date of the enactment of this title, the
5 Comptroller General shall submit to the Secretary a
6 report including recommendations for a methodology
7 under which an individual who is harmed by an act
8 that constitutes an offense referred to in paragraph
9 (1) may receive a percentage of any civil monetary
10 penalty or monetary settlement collected with re-
11 spect to such offense.

12 (3) ESTABLISHMENT OF METHODOLOGY TO
13 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
14 HARMED INDIVIDUALS.—Not later than 3 years
15 after the date of the enactment of this title, the Sec-
16 retary shall establish by regulation and based on the
17 recommendations submitted under paragraph (2), a
18 methodology under which an individual who is
19 harmed by an act that constitutes an offense re-
20 ferred to in paragraph (1) may receive a percentage
21 of any civil monetary penalty or monetary settlement
22 collected with respect to such offense.

23 (4) APPLICATION OF METHODOLOGY.—The
24 methodology under paragraph (3) shall be applied
25 with respect to civil monetary penalties or monetary

1 settlements imposed on or after the effective date of
2 the regulation.

3 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
4 TARY PENALTIES.—

5 (1) IN GENERAL.—Section 1176(a)(1) of the
6 Social Security Act (42 U.S.C. 1320d-5(a)(1)) is
7 amended by striking “who violates a provision of
8 this part a penalty of not more than” and all that
9 follows and inserting the following: “who violates a
10 provision of this part—

11 “(A) in the case of a violation of such pro-
12 vision in which it is established that the person
13 did not know (and by exercising reasonable dili-
14 gence would not have known) that such person
15 violated such provision, a penalty for each such
16 violation of an amount that is at least the
17 amount described in paragraph (3)(A) but not
18 to exceed the amount described in paragraph
19 (3)(D);

20 “(B) in the case of a violation of such pro-
21 vision in which it is established that the viola-
22 tion was due to reasonable cause and not to
23 willful neglect, a penalty for each such violation
24 of an amount that is at least the amount de-

1 scribed in paragraph (3)(B) but not to exceed
2 the amount described in paragraph (3)(D); and

3 “(C) in the case of a violation of such pro-
4 vision in which it is established that the viola-
5 tion was due to willful neglect—

6 “(i) if the violation is corrected as de-
7 scribed in subsection (b)(3)(A), a penalty
8 in an amount that is at least the amount
9 described in paragraph (3)(C) but not to
10 exceed the amount described in paragraph
11 (3)(D); and

12 “(ii) if the violation is not corrected
13 as described in such subsection, a penalty
14 in an amount that is at least the amount
15 described in paragraph (3)(D).

16 In determining the amount of a penalty under
17 this section for a violation, the Secretary shall
18 base such determination on the nature and ex-
19 tent of the violation and the nature and extent
20 of the harm resulting from such violation.”.

21 (2) TIERS OF PENALTIES DESCRIBED.—Section
22 1176(a) of such Act (42 U.S.C. 1320d-5(a)) is fur-
23 ther amended by adding at the end the following
24 new paragraph:

1 “(3) TIERS OF PENALTIES DESCRIBED.—For
2 purposes of paragraph (1), with respect to a viola-
3 tion by a person of a provision of this part—

4 “(A) the amount described in this subpara-
5 graph is \$100 for each such violation, except
6 that the total amount imposed on the person
7 for all such violations of an identical require-
8 ment or prohibition during a calendar year may
9 not exceed \$25,000;

10 “(B) the amount described in this subpara-
11 graph is \$1,000 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed \$100,000;

16 “(C) the amount described in this subpara-
17 graph is \$10,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed \$250,000; and

22 “(D) the amount described in this sub-
23 paragraph is \$50,000 for each such violation,
24 except that the total amount imposed on the
25 person for all such violations of an identical re-

1 requirement or prohibition during a calendar year
2 may not exceed \$1,500,000.”.

3 (3) CONFORMING AMENDMENTS.—Section
4 1176(b) of such Act (42 U.S.C. 1320d-5(b)) is
5 amended—

6 (A) by striking paragraph (2) and redesignig-
7 nating paragraphs (3) and (4) as paragraphs
8 (2) and (3), respectively; and

9 (B) in paragraph (2), as so redesignated—

10 (i) in subparagraph (A), by striking
11 “in subparagraph (B), a penalty may not
12 be imposed under subsection (a) if” and all
13 that follows through “the failure to comply
14 is corrected” and inserting “in subpara-
15 graph (B) or subsection (a)(1)(C), a pen-
16 alty may not be imposed under subsection
17 (a) if the failure to comply is corrected”;
18 and

19 (ii) in subparagraph (B), by striking
20 “(A)(ii)” and inserting “(A)” each place it
21 appears.

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to violations occurring
24 after the date of the enactment of this title.

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS

2 GENERAL.—

3 (1) IN GENERAL.—Section 1176 of the Social
4 Security Act (42 U.S.C. 1320d–5) is amended by
5 adding at the end the following new subsection:

6 “(c) ENFORCEMENT BY STATE ATTORNEYS GEN-
7 ERAL.—

8 “(1) CIVIL ACTION.—Except as provided in
9 subsection (b), in any case in which the attorney
10 general of a State has reason to believe that an in-
11 terest of one or more of the residents of that State
12 has been or is threatened or adversely affected by
13 any person who violates a provision of this part, the
14 attorney general of the State, as *parens patriae*, may
15 bring a civil action on behalf of such residents of the
16 State in a district court of the United States of ap-
17 propriate jurisdiction—

18 “(A) to enjoin further such violation by the
19 defendant; or

20 “(B) to obtain damages on behalf of such
21 residents of the State, in an amount equal to
22 the amount determined under paragraph (2).

23 “(2) STATUTORY DAMAGES.—

24 “(A) IN GENERAL.—For purposes of para-
25 graph (1)(B), the amount determined under

1 this paragraph is the amount calculated by mul-
2 tiplied the number of violations by up to \$100.
3 For purposes of the preceding sentence, in the
4 case of a continuing violation, the number of
5 violations shall be determined consistent with
6 the HIPAA privacy regulations (as defined in
7 section 1180(b)(3)) for violations of subsection
8 (a).

9 “(B) LIMITATION.—The total amount of
10 damages imposed on the person for all viola-
11 tions of an identical requirement or prohibition
12 during a calendar year may not exceed \$25,000.

13 “(C) REDUCTION OF DAMAGES.—In as-
14 sessing damages under subparagraph (A), the
15 court may consider the factors the Secretary
16 may consider in determining the amount of a
17 civil money penalty under subsection (a) under
18 the HIPAA privacy regulations.

19 “(3) ATTORNEY FEES.—In the case of any suc-
20 cessful action under paragraph (1), the court, in its
21 discretion, may award the costs of the action and
22 reasonable attorney fees to the State.

23 “(4) NOTICE TO SECRETARY.—The State shall
24 serve prior written notice of any action under para-
25 graph (1) upon the Secretary and provide the Sec-

1 retary with a copy of its complaint, except in any
2 case in which such prior notice is not feasible, in
3 which case the State shall serve such notice imme-
4 diately upon instituting such action. The Secretary
5 shall have the right—

6 “(A) to intervene in the action;

7 “(B) upon so intervening, to be heard on
8 all matters arising therein; and

9 “(C) to file petitions for appeal.

10 “(5) CONSTRUCTION.—For purposes of bring-
11 ing any civil action under paragraph (1), nothing in
12 this section shall be construed to prevent an attor-
13 ney general of a State from exercising the powers
14 conferred on the attorney general by the laws of that
15 State.

16 “(6) VENUE; SERVICE OF PROCESS.—

17 “(A) VENUE.—Any action brought under
18 paragraph (1) may be brought in the district
19 court of the United States that meets applicable
20 requirements relating to venue under section
21 1391 of title 28, United States Code.

22 “(B) SERVICE OF PROCESS.—In an action
23 brought under paragraph (1), process may be
24 served in any district in which the defendant—

25 “(i) is an inhabitant; or

1 “(ii) maintains a physical place of
2 business.

3 “(7) LIMITATION ON STATE ACTION WHILE
4 FEDERAL ACTION IS PENDING.—If the Secretary has
5 instituted an action against a person under sub-
6 section (a) with respect to a specific violation of this
7 part, no State attorney general may bring an action
8 under this subsection against the person with re-
9 spect to such violation during the pendency of that
10 action.

11 “(8) APPLICATION OF CMP STATUTE OF LIM-
12 TATION.—A civil action may not be instituted with
13 respect to a violation of this part unless an action
14 to impose a civil money penalty may be instituted
15 under subsection (a) with respect to such violation
16 consistent with the second sentence of section
17 1128A(c)(1).”.

18 (2) CONFORMING AMENDMENTS.—Subsection
19 (b) of such section, as amended by subsection (d)(3),
20 is amended—

21 (A) in paragraph (1), by striking “A pen-
22 alty may not be imposed under subsection (a)”
23 and inserting “No penalty may be imposed
24 under subsection (a) and no damages obtained
25 under subsection (c)”;

1 (B) in paragraph (2)(A)—

2 (i) in the matter before clause (i), by
3 striking “a penalty may not be imposed
4 under subsection (a)” and inserting “no
5 penalty may be imposed under subsection
6 (a) and no damages obtained under sub-
7 section (c)”;

8 (ii) in clause (ii), by inserting “or
9 damages” after “the penalty”;

10 (C) in paragraph (2)(B)(i), by striking
11 “The period” and inserting “With respect to
12 the imposition of a penalty by the Secretary
13 under subsection (a), the period”;

14 (D) in paragraph (3), by inserting “and
15 any damages under subsection (c)” after “any
16 penalty under subsection (a)”.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to violations occurring
19 after the date of the enactment of this Act.

20 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-
21 TION.—Such section is further amended by adding at the
22 end the following new subsection:

23 “(d) ALLOWING CONTINUED USE OF CORRECTIVE
24 ACTION.—Nothing in this section shall be construed as
25 preventing the Office of Civil Rights of the Department

1 of Health and Human Services from continuing, in its dis-
2 cretion, to use corrective action without a penalty in cases
3 where the person did not know (and by exercising reason-
4 able diligence would not have known) of the violation in-
5 volved.”.

6 **SEC. 4411. AUDITS.**

7 The Secretary shall provide for periodic audits to en-
8 sure that covered entities and business associates that are
9 subject to the requirements of this subtitle and subparts
10 C and E of part 164 of title 45, Code of Federal Regula-
11 tions, as such provisions are in effect as of the date of
12 enactment of this Act, comply with such requirements.

13 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
14 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
15 **PORTS**

16 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

17 (a) APPLICATION OF HIPAA STATE PREEMPTION.—
18 Section 1178 of the Social Security Act (42 U.S.C.
19 1320d–7) shall apply to a provision or requirement under
20 this subtitle in the same manner that such section applies
21 to a provision or requirement under part C of title XI of
22 such Act or a standard or implementation specification
23 adopted or established under sections 1172 through 1174
24 of such Act.

1 (b) HEALTH INSURANCE PORTABILITY AND AC-
2 COUNTABILITY ACT.—The standards governing the pri-
3 vacy and security of individually identifiable health infor-
4 mation promulgated by the Secretary under sections
5 262(a) and 264 of the Health Insurance Portability and
6 Accountability Act of 1996 shall remain in effect to the
7 extent that they are consistent with this subtitle. The Sec-
8 retary shall by rule amend such Federal regulations as re-
9 quired to make such regulations consistent with this sub-
10 title.

11 **SEC. 4422. REGULATORY REFERENCES.**

12 Each reference in this subtitle to a provision of the
13 Code of Federal Regulations refers to such provision as
14 in effect on the date of the enactment of this title (or to
15 the most recent update of such provision).

16 **SEC. 4423. EFFECTIVE DATE.**

17 Except as otherwise specifically provided, the provi-
18 sions of part I shall take effect on the date that is 12
19 months after the date of the enactment of this title.

20 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

21 (a) REPORT ON COMPLIANCE.—

22 (1) IN GENERAL.—For the first year beginning
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Health, Education,

1 Labor, and Pensions of the Senate and the Com-
2 mittee on Ways and Means and the Committee on
3 Energy and Commerce of the House of Representa-
4 tives a report concerning complaints of alleged viola-
5 tions of law, including the provisions of this subtitle
6 as well as the provisions of subparts C and E of part
7 164 of title 45, Code of Federal Regulations, (as
8 such provisions are in effect as of the date of enact-
9 ment of this Act) relating to privacy and security of
10 health information that are received by the Secretary
11 during the year for which the report is being pre-
12 pared. Each such report shall include, with respect
13 to such complaints received during the year—

14 (A) the number of such complaints;

15 (B) the number of such complaints re-
16 solved informally, a summary of the types of
17 such complaints so resolved, and the number of
18 covered entities that received technical assist-
19 ance from the Secretary during such year in
20 order to achieve compliance with such provi-
21 sions and the types of such technical assistance
22 provided;

23 (C) the number of such complaints that
24 have resulted in the imposition of civil monetary
25 penalties or have been resolved through mone-

1 tary settlements, including the nature of the
2 complaints involved and the amount paid in
3 each penalty or settlement;

4 (D) the number of compliance reviews con-
5 ducted and the outcome of each such review;

6 (E) the number of subpoenas or inquiries
7 issued;

8 (F) the Secretary's plan for improving
9 compliance with and enforcement of such provi-
10 sions for the following year; and

11 (G) the number of audits performed and a
12 summary of audit findings pursuant to section
13 4411.

14 (2) AVAILABILITY TO PUBLIC.—Each report
15 under paragraph (1) shall be made available to the
16 public on the Internet website of the Department of
17 Health and Human Services.

18 (b) STUDY AND REPORT ON APPLICATION OF PRI-
19 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
20 COVERED ENTITIES.—

21 (1) STUDY.—Not later than one year after the
22 date of the enactment of this title, the Secretary, in
23 consultation with the Federal Trade Commission,
24 shall conduct a study, and submit a report under
25 paragraph (2), on privacy and security requirements

1 for entities that are not covered entities or business
2 associates as of the date of the enactment of this
3 title, including—

4 (A) requirements relating to security, pri-
5 vacy, and notification in the case of a breach of
6 security or privacy (including the applicability
7 of an exemption to notification in the case of
8 individually identifiable health information that
9 has been rendered unusable, unreadable, or in-
10 decipherable through technologies or methodolo-
11 gies recognized by appropriate professional or-
12 ganization or standard setting bodies to provide
13 effective security for the information) that
14 should be applied to—

15 (i) vendors of personal health records;

16 (ii) entities that offer products or
17 services through the website of a vendor of
18 personal health records;

19 (iii) entities that are not covered enti-
20 ties and that offer products or services
21 through the websites of covered entities
22 that offer individuals personal health
23 records;

24 (iv) entities that are not covered enti-
25 ties and that access information in a per-

1 sonal health record or send information to
2 a personal health record; and

3 (v) third party service providers used
4 by a vendor or entity described in clause
5 (i), (ii), (iii), or (iv) to assist in providing
6 personal health record products or services;

7 (B) a determination of which Federal gov-
8 ernment agency is best equipped to enforce
9 such requirements recommended to be applied
10 to such vendors, entities, and service providers
11 under subparagraph (A); and

12 (C) a timeframe for implementing regula-
13 tions based on such findings.

14 (2) REPORT.—The Secretary shall submit to
15 the Committee on Finance, the Committee on
16 Health, Education, Labor, and Pensions, and the
17 Committee on Commerce of the Senate and the
18 Committee on Ways and Means and the Committee
19 on Energy and Commerce of the House of Rep-
20 resentatives a report on the findings of the study
21 under paragraph (1) and shall include in such report
22 recommendations on the privacy and security re-
23 quirements described in such paragraph.

24 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
25 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—

1 Not later than 12 months after the date of the enactment
2 of this title, the Secretary shall, in consultation with stake-
3 holders, issue guidance on how best to implement the re-
4 quirements for the de-identification of protected health in-
5 formation under section 164.514(b) of title 45, Code of
6 Federal Regulations.

7 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
8 Not later than one year after the date of the enactment
9 of this title, the Comptroller General of the United States
10 shall submit to the Committee on Health, Education,
11 Labor, and Pensions of the Senate and the Committee on
12 Ways and Means and the Committee on Energy and Com-
13 merce of the House of Representatives a report on the
14 best practices related to the disclosure among health care
15 providers of protected health information of an individual
16 for purposes of treatment of such individual. Such report
17 shall include an examination of the best practices imple-
18 mented by States and by other entities, such as health
19 information exchanges and regional health information or-
20 ganizations, an examination of the extent to which such
21 best practices are successful with respect to the quality
22 of the resulting health care provided to the individual and
23 with respect to the ability of the health care provider to
24 manage such best practices, and an examination of the
25 use of electronic informed consent for disclosing protected

- 1 health information for treatment, payment, and health
- 2 care operations.

