

**AMENDMENTS TO THE SENATE AMENDMENT TO  
H.R. 4213  
OFFERED BY M . \_\_\_\_\_**

The House concurs in the Senate Amendment to H.R. 4213 with the following amendments:

In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

**1 SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

**2 TABLE OF CONTENTS.**

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

**5 (b) AMENDMENT OF 1986 CODE.**—Except as other-  
**6 wise expressly provided, whenever in titles I, II, and IV**  
**7 of this Act an amendment or repeal is expressed in terms**  
**8 of an amendment to, or repeal of, a section or other provi-**  
**9 sion, the reference shall be considered to be made to a**  
**10 section or other provision of the Internal Revenue Code**  
**11 of 1986.**

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

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

TITLE I—INFRASTRUCTURE INCENTIVES

- Sec. 101. Extension of Build America Bonds.
- Sec. 102. Exempt-facility bonds for sewage and water supply facilities.
- Sec. 103. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.
- Sec. 104. Extension and additional allocations of recovery zone bond authority.
- Sec. 105. Allowance of new markets tax credit against alternative minimum tax.
- Sec. 106. Extension of tax-exempt eligibility for loans guaranteed by Federal home loan banks.
- Sec. 107. Extension of temporary small issuer rules for allocation of tax-exempt interest expense by financial institutions.

## TITLE II—EXTENSION OF EXPIRING PROVISIONS

### Subtitle A—Energy

- Sec. 201. Alternative motor vehicle credit for new qualified hybrid motor vehicles other than passenger automobiles and light trucks.
- Sec. 202. Incentives for biodiesel and renewable diesel.
- Sec. 203. Credit for electricity produced at certain open-loop biomass facilities.
- Sec. 204. Extension and modification of credit for steel industry fuel.
- Sec. 205. Credit for producing fuel from coke or coke gas.
- Sec. 206. New energy efficient home credit.
- Sec. 207. Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures.
- Sec. 208. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
- Sec. 209. Suspension of limitation on percentage depletion for oil and gas from marginal wells.
- Sec. 210. Direct payment of energy efficient appliances tax credit.
- Sec. 211. Modification of standards for windows, doors, and skylights with respect to the credit for nonbusiness energy property.

### Subtitle B—Individual Tax Relief

#### PART I—MISCELLANEOUS PROVISIONS

- Sec. 221. Deduction for certain expenses of elementary and secondary school teachers.
- Sec. 222. Additional standard deduction for State and local real property taxes.
- Sec. 223. Deduction of State and local sales taxes.
- Sec. 224. Contributions of capital gain real property made for conservation purposes.
- Sec. 225. Above-the-line deduction for qualified tuition and related expenses.
- Sec. 226. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 227. Look-thru of certain regulated investment company stock in determining gross estate of nonresidents.

#### PART II—LOW-INCOME HOUSING CREDITS

- Sec. 231. Election for direct payment of low-income housing credit for 2010.

### Subtitle C—Business Tax Relief

- Sec. 241. Research credit.
- Sec. 242. Indian employment tax credit.

- Sec. 243. New markets tax credit.
- Sec. 244. Railroad track maintenance credit.
- Sec. 245. Mine rescue team training credit.
- Sec. 246. Employer wage credit for employees who are active duty members of the uniformed services.
- Sec. 247. 5-year depreciation for farming business machinery and equipment.
- Sec. 248. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Sec. 249. 7-year recovery period for motorsports entertainment complexes.
- Sec. 250. Accelerated depreciation for business property on an Indian reservation.
- Sec. 251. Enhanced charitable deduction for contributions of food inventory.
- Sec. 252. Enhanced charitable deduction for contributions of book inventories to public schools.
- Sec. 253. Enhanced charitable deduction for corporate contributions of computer inventory for educational purposes.
- Sec. 254. Election to expense mine safety equipment.
- Sec. 255. Special expensing rules for certain film and television productions.
- Sec. 256. Expensing of environmental remediation costs.
- Sec. 257. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 258. Modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 259. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business income.
- Sec. 260. Timber REIT modernization.
- Sec. 261. Treatment of certain dividends of regulated investment companies.
- Sec. 262. RIC qualified investment entity treatment under FIRPTA.
- Sec. 263. Exceptions for active financing income.
- Sec. 264. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
- Sec. 265. Basis adjustment to stock of S corps making charitable contributions of property.
- Sec. 266. Empowerment zone tax incentives.
- Sec. 267. Tax incentives for investment in the District of Columbia.
- Sec. 268. Renewal community tax incentives.
- Sec. 269. Temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
- Sec. 270. Payment to American Samoa in lieu of extension of economic development credit.
- Sec. 271. Election to temporarily utilize unused AMT credits determined by domestic investment.
- Sec. 272. Study of extended tax expenditures.

#### Subtitle D—Temporary Disaster Relief Provisions

##### PART I—NATIONAL DISASTER RELIEF

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

##### PART II—REGIONAL PROVISIONS

SUBPART A—NEW YORK LIBERTY ZONE

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

SUBPART B—GO ZONE

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

TITLE III—PENSION PROVISIONS

Subtitle A—Pension Funding Relief

PART 1—SINGLE-EMPLOYER PLANS

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

PART 2—MULTIEMPLOYER PLANS

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

Subtitle B—Fee Disclosure

- Sec. 321. Short title of subtitle.
- Sec. 322. Amendments to the Employee Retirement Income Security Act of 1974.
- Sec. 323. Amendments to the Internal Revenue Code of 1986.
- Sec. 324. Regulatory authority and coordination.
- Sec. 325. Effective date of subtitle.

TITLE IV—REVENUE OFFSETS

Subtitle A—Foreign Provisions

- Sec. 401. Rules to prevent splitting foreign tax credits from the income to which they relate.
- Sec. 402. Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.

- Sec. 403. Separate application of foreign tax credit limitation, etc., to items resourced under treaties.
- Sec. 404. Limitation on the amount of foreign taxes deemed paid with respect to section 956 inclusions.
- Sec. 405. Special rule with respect to certain redemptions by foreign subsidiaries.
- Sec. 406. Modification of affiliation rules for purposes of rules allocating interest expense.
- Sec. 407. Termination of special rules for interest and dividends received from persons meeting the 80-percent foreign business requirements.
- Sec. 408. Source rules for income on guarantees.
- Sec. 409. Limitation on extension of statute of limitations for failure to notify Secretary of certain foreign transfers.

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

- Sec. 411. Partnership interests transferred in connection with performance of services.
- Sec. 412. Income of partners for performing investment management services treated as ordinary income received for performance of services.
- Sec. 413. Employment tax treatment of professional service businesses.

#### Subtitle C—Corporate Provisions

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

#### Subtitle D—Other Provisions

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

### TITLE V—UNEMPLOYMENT, HEALTH, AND OTHER ASSISTANCE

#### Subtitle A—Unemployment Insurance and Other Assistance

- Sec. 501. Extension of unemployment insurance provisions.
- Sec. 502. Coordination of emergency unemployment compensation with regular compensation.
- Sec. 503. Extension of the Emergency Contingency Fund.

#### Subtitle B—Health Provisions

- Sec. 511. Extension of premium assistance for COBRA benefits.
- Sec. 512. Extension of section 508 reclassifications.
- Sec. 513. Repeal of delay of RUG-IV.
- Sec. 514. Limitation on reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 515. Funding for claims reprocessing.
- Sec. 516. Extension of ARRA increase in FMAP.
- Sec. 517. Medicaid and CHIP technical corrections.
- Sec. 518. Addition of inpatient drug discount program to 340B drug discount program.

- Sec. 519. Continued inclusion of orphan drugs in definition of covered out-patient drugs with respect to children's hospitals under the 340B drug discount program.
- Sec. 520. Conforming amendment related to waiver of coinsurance for preventive services.
- Sec. 521. Establish a CMS-IRS data match to identify fraudulent providers.
- Sec. 522. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 523. Medicare sustainable growth rate reform.
- Sec. 524. Adjustment to Medicare payment localities.
- Sec. 525. Clarification of 3-day payment window.

## TITLE VI—OTHER PROVISIONS

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

## TITLE VII—BUDGETARY PROVISIONS

- Sec. 701. Budgetary provisions.

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

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

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

7           (b) EXTENSION OF PAYMENTS TO ISSUERS.—

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

9                           (A) by striking “January 1, 2011” in sub-  
10 section (a) and inserting “January 1, 2013”,  
11 and

12                           (B) by striking “January 1, 2011” in sub-  
13 section (f)(1)(B) and inserting “a particular  
14 date”.

15                   (2) CONFORMING AMENDMENTS.—Subsection  
16 (g) of section 54AA is amended—

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

19                           (B) by striking “QUALIFIED BONDS  
20 ISSUED BEFORE 2011” in the heading and in-  
21 serting “CERTAIN QUALIFIED BONDS”.

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

24                   (1) by striking “The Secretary” and inserting  
25 the following:

1 “(1) IN GENERAL.—The Secretary”;

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

4 (3) by adding at the end the following new  
5 paragraph:

6 “(2) APPLICABLE PERCENTAGE.—For purposes  
7 of this subsection, the term ‘applicable percentage’  
8 means the percentage determined in accordance with  
9 the following table:

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

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

13 “(3) TREATMENT OF CURRENT REFUNDING  
14 BONDS.—

15 “(A) IN GENERAL.—For purposes of this  
16 subsection, the term ‘qualified bond’ includes  
17 any bond (or series of bonds) issued to refund  
18 a qualified bond if—

19 “(i) the average maturity date of the  
20 issue of which the refunding bond is a part  
21 is not later than the average maturity date  
22 of the bonds to be refunded by such issue,



1           “(ii) the amount of the refunding  
2           bond does not exceed the outstanding  
3           amount of the refunded bond, and

4           “(iii) the refunded bond is redeemed  
5           not later than 90 days after the date of the  
6           issuance of the refunding bond.

7           “(B) APPLICABLE PERCENTAGE.—In the  
8           case of a refunding bond referred to in subpara-  
9           graph (A), the applicable percentage with re-  
10          spect to such bond under section 6431(b) shall  
11          be the lowest percentage specified in paragraph  
12          (2) of such section.

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

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

1 **SEC. 102. EXEMPT-FACILITY BONDS FOR SEWAGE AND**  
2 **WATER SUPPLY FACILITIES.**

3 (a) BONDS FOR WATER AND SEWAGE FACILITIES  
4 EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY  
5 BONDS.—

6 (1) IN GENERAL.—Paragraph (3) of section  
7 146(g) is amended by inserting “(4), (5),” after  
8 “(2),”.

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

12 (b) TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOV-  
13 ERNMENTS.—

14 (1) IN GENERAL.—Subsection (c) of section  
15 7871 is amended by adding at the end the following  
16 new paragraph:

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

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

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

4 **SEC. 103. EXTENSION OF EXEMPTION FROM ALTERNATIVE**  
5 **MINIMUM TAX TREATMENT FOR CERTAIN**  
6 **TAX-EXEMPT BONDS.**

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

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

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

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

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

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

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

22 **SEC. 104. EXTENSION AND ADDITIONAL ALLOCATIONS OF**  
23 **RECOVERY ZONE BOND AUTHORITY.**

24 (a) EXTENSION OF RECOVERY ZONE BOND AUTHOR-  
25 ITY.—Section 1400U–2(b)(1) and section 1400U–

1 3(b)(1)(B) are each amended by striking “January 1,  
2 2011” and inserting “January 1, 2012”.

3 (b) ADDITIONAL ALLOCATIONS OF RECOVERY ZONE  
4 BOND AUTHORITY BASED ON UNEMPLOYMENT.—Section  
5 1400U–1 is amended by adding at the end the following  
6 new subsection:

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

9 “(1) IN GENERAL.—The Secretary shall allo-  
10 cate the 2010 national recovery zone economic devel-  
11 opment bond limitation and the 2010 national recov-  
12 ery zone facility bond limitation among the States in  
13 the proportion that each such State’s 2009 unem-  
14 ployment number bears to the aggregate of the 2009  
15 unemployment numbers for all of the States.

16 “(2) MINIMUM ALLOCATION.—The Secretary  
17 shall adjust the allocations under paragraph (1) for  
18 each State to the extent necessary to ensure that no  
19 State (prior to any reduction under paragraph (3))  
20 receives less than 0.9 percent of the 2010 national  
21 recovery zone economic development bond limitation  
22 and 0.9 percent of the 2010 national recovery zone  
23 facility bond limitation.

24 “(3) ALLOCATIONS BY STATES.—

1           “(A) IN GENERAL.—Each State with re-  
2           spect to which an allocation is made under  
3           paragraph (1) shall reallocate such allocation  
4           among the counties and large municipalities (as  
5           defined in subsection (a)(3)(B)) in such State  
6           in the proportion that each such county’s or  
7           municipality’s 2009 unemployment number  
8           bears to the aggregate of the 2009 unemploy-  
9           ment numbers for all the counties and large  
10          municipalities (as so defined) in such State.

11          “(B) 2010 ALLOCATION REDUCED BY  
12          AMOUNT OF PREVIOUS ALLOCATION.—Each  
13          State shall reduce (but not below zero)—

14                 “(i) the amount of the 2010 national  
15                 recovery zone economic development bond  
16                 limitation allocated to each county or large  
17                 municipality (as so defined) in such State  
18                 by the amount of the national recovery  
19                 zone economic development bond limitation  
20                 allocated to such county or large munic-  
21                 ipality under subsection (a)(3)(A) (deter-  
22                 mined without regard to any waiver there-  
23                 of), and

24                 “(ii) the amount of the 2010 national  
25                 recovery zone facility bond limitation allo-

1 cated to each county or large municipality  
2 (as so defined) in such State by the  
3 amount of the national recovery zone facil-  
4 ity bond limitation allocated to such county  
5 or large municipality under subsection  
6 (a)(3)(A) (determined without regard to  
7 any waiver thereof).

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

18 “(D) SPECIAL RULE FOR A MUNICIPALITY  
19 IN A COUNTY.—In the case of any large munic-  
20 ipality any portion of which is in a county, such  
21 portion shall be treated as part of such munic-  
22 ipality and not part of such county.

23 “(4) 2009 UNEMPLOYMENT NUMBER.—For  
24 purposes of this subsection, the term ‘2009 unem-  
25 ployment number’ means, with respect to any State,

1 county or municipality, the number of individuals in  
2 such State, county, or municipality who were deter-  
3 mined to be unemployed by the Bureau of Labor  
4 Statistics for December 2009.

5 “(5) 2010 NATIONAL LIMITATIONS.—

6 “(A) RECOVERY ZONE ECONOMIC DEVEL-  
7 OPMENT BONDS.—The 2010 national recovery  
8 zone economic development bond limitation is  
9 \$10,000,000,000. Any allocation of such limita-  
10 tion under this subsection shall be treated for  
11 purposes of section 1400U–2 in the same man-  
12 ner as an allocation of national recovery zone  
13 economic development bond limitation.

14 “(B) RECOVERY ZONE FACILITY BONDS.—  
15 The 2010 national recovery zone facility bond  
16 limitation is \$15,000,000,000. Any allocation of  
17 such limitation under this subsection shall be  
18 treated for purposes of section 1400U–3 in the  
19 same manner as an allocation of national recov-  
20 ery zone facility bond limitation.”.

21 (c) AUTHORITY OF STATE TO WAIVE CERTAIN 2009  
22 ALLOCATIONS.—Subparagraph (A) of section 1400U–  
23 1(a)(3) is amended by adding at the end the following:  
24 “A county or municipality shall be treated as having  
25 waived any portion of an allocation made under this sub-

1 paragraph which has not been allocated to a bond issued  
2 before May 1, 2011. Any allocation waived (or treated as  
3 waived) under this subparagraph may be used or reallo-  
4 cated by the State.”.

5 **SEC. 105. ALLOWANCE OF NEW MARKETS TAX CREDIT**  
6 **AGAINST ALTERNATIVE MINIMUM TAX.**

7 (a) **IN GENERAL.**—Subparagraph (B) of section  
8 38(c)(4), as amended by the Patient Protection and Af-  
9 fordable Care Act, is amended by redesignating clauses  
10 (v) through (ix) as clauses (vi) through (x), respectively,  
11 and by inserting after clause (iv) the following new clause:

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

17 (b) **EFFECTIVE DATE.**—The amendments made by  
18 this section shall apply to credits determined with respect  
19 to qualified equity investments (as defined in section  
20 45D(b) of the Internal Revenue Code of 1986) initially  
21 made after March 15, 2010.



1 **SEC. 106. EXTENSION OF TAX-EXEMPT ELIGIBILITY FOR**  
2 **LOANS GUARANTEED BY FEDERAL HOME**  
3 **LOAN BANKS.**

4 Clause (iv) of section 149(b)(3)(A) is amended by  
5 striking “December 31, 2010” and inserting “December  
6 31, 2011”.

7 **SEC. 107. EXTENSION OF TEMPORARY SMALL ISSUER**  
8 **RULES FOR ALLOCATION OF TAX-EXEMPT IN-**  
9 **TEREST EXPENSE BY FINANCIAL INSTITU-**  
10 **TIONS.**

11 (a) IN GENERAL.—Clauses (i), (ii), and (iii) of sec-  
12 tion 265(b)(3)(G) are each amended by striking “or  
13 2010” and inserting “, 2010, or 2011”.

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

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

1           **TITLE II—EXTENSION OF**  
2           **EXPIRING PROVISIONS**  
3           **Subtitle A—Energy**

4   **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT FOR NEW**  
5           **QUALIFIED HYBRID MOTOR VEHICLES**  
6           **OTHER THAN PASSENGER AUTOMOBILES**  
7           **AND LIGHT TRUCKS.**

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

11          (b) **EFFECTIVE DATE.**—The amendment made by  
12 this section shall apply to property purchased after De-  
13 cember 31, 2009.

14   **SEC. 202. INCENTIVES FOR BIODIESEL AND RENEWABLE**  
15           **DIESEL.**

16          (a) **CREDITS FOR BIODIESEL AND RENEWABLE DIE-**  
17 **SEL USED AS FUEL.**—Subsection (g) of section 40A is  
18 amended by striking “December 31, 2009” and inserting  
19 “December 31, 2010”.

20          (b) **EXCISE TAX CREDITS AND OUTLAY PAYMENTS**  
21 **FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIX-**  
22 **TURES.**—

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

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

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

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

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

11           (1) by striking “5-year period” and inserting  
12           “6-year period”, and

13           (2) by adding at the end the following: “In the  
14           case of the last year of the 6-year period described  
15           in the preceding sentence, the credit determined  
16           under subsection (a) with respect to electricity pro-  
17           duced during such year shall not exceed 80 percent  
18           of such credit determined without regard to this sen-  
19           tence.”.

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

23           **SEC. 204. EXTENSION AND MODIFICATION OF CREDIT FOR**  
24                                   **STEEL INDUSTRY FUEL.**

25           (a) CREDIT PERIOD.—

1           (1) IN GENERAL.—Subclause (II) of section  
2           45(e)(8)(D)(ii) is amended to read as follows:

3                           “(II) CREDIT PERIOD.—In lieu  
4                           of the 10-year period referred to in  
5                           clauses (i) and (ii)(II) of subpara-  
6                           graph (A), the credit period shall be  
7                           the period beginning on the date that  
8                           the facility first produces steel indus-  
9                           try fuel that is sold to an unrelated  
10                          person after September 30, 2008, and  
11                          ending 2 years after such date.”.

12           (2) CONFORMING AMENDMENT.—Section  
13           45(e)(8)(D) is amended by striking clause (iii) and  
14           by redesignating clause (iv) as clause (iii).

15           (b) EXTENSION OF PLACED-IN-SERVICE DATE.—  
16           Subparagraph (A) of section 45(d)(8) is amended—

17                          (1) by striking “(or any modification to a facil-  
18                          ity)”, and

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

20           (c) CLARIFICATIONS.—

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

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

4           “With respect to a facility producing steel industry  
5 fuel, no person (including a ground lessor, customer,  
6 supplier, or technology licensor) shall be treated as  
7 having an ownership interest in the facility or as  
8 otherwise entitled to the credit allowable under sub-  
9 section (a) with respect to such facility if such per-  
10 son’s rent, license fee, or other entitlement to net  
11 payments from the owner of such facility is meas-  
12 ured by a fixed dollar amount or a fixed amount per  
13 ton, or otherwise determined without regard to the  
14 profit or loss of such facility.”.

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

20                           “(iii) PRODUCTION AND SALE.—The  
21 owner of a facility producing steel industry  
22 fuel shall be treated as producing and sell-  
23 ing steel industry fuel where that owner  
24 manufactures such steel industry fuel from  
25 coal, a blend of coal and petroleum coke,

1 or other coke feedstock to which it has  
2 title. The sale of such steel industry fuel  
3 by the owner of the facility to a person  
4 who is not the owner of the facility shall  
5 not fail to qualify as a sale to an unrelated  
6 person solely because such purchaser may  
7 also be a ground lessor, supplier, or cus-  
8 tomer.”.

9 (d) SPECIFIED CREDIT FOR PURPOSES OF ALTER-  
10 NATIVE MINIMUM TAX EXCLUSION.—Subclause (II) of  
11 section 38(c)(4)(B)(iii) is amended by inserting “(in the  
12 case of a refined coal production facility producing steel  
13 industry fuel, during the credit period set forth in section  
14 45(e)(8)(D)(ii)(II))” after “service”.

15 (e) EFFECTIVE DATES.—

16 (1) IN GENERAL.—The amendments made by  
17 subsections (a), (b), and (d) shall take effect on the  
18 date of the enactment of this Act.

19 (2) CLARIFICATIONS.—The amendments made  
20 by subsection (c) shall take effect as if included in  
21 the amendments made by the Energy Improvement  
22 and Extension Act of 2008.

1 **SEC. 205. CREDIT FOR PRODUCING FUEL FROM COKE OR**  
2 **COKE GAS.**

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

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

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

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

13 (b) EFFECTIVE DATE.—The amendment made by  
14 this section shall apply to homes acquired after December  
15 31, 2009.

16 **SEC. 207. EXCISE TAX CREDITS AND OUTLAY PAYMENTS**  
17 **FOR ALTERNATIVE FUEL AND ALTERNATIVE**  
18 **FUEL MIXTURES.**

19 (a) ALTERNATIVE FUEL CREDIT.—Paragraph (5) of  
20 section 6426(d) is amended by striking “after December  
21 31, 2009” and all that follows and inserting “after—

22 “(A) September 30, 2014, in the case of  
23 liquefied hydrogen,

24 “(B) December 31, 2010, in the case of  
25 fuels described in subparagraph (A), (C), (F),  
26 or (G) of paragraph (2), and

1                   “(C) December 31, 2009, in any other  
2                   case.”.

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

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

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

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

14           (c) PAYMENT AUTHORITY.—

15                  (1) IN GENERAL.—Paragraph (6) of section  
16                  6427(e) is amended by striking “and” at the end of  
17                  subparagraph (C), by striking the period at the end  
18                  of subparagraph (D) and inserting “, and” , and by  
19                  adding at the end the following new subparagraph:

20                         “(E) any alternative fuel or alternative fuel  
21                         mixture (as so defined) involving fuel described  
22                         in subparagraph (A), (C), (F), or (G) of section  
23                         6426(d)(2) sold or used after December 31,  
24                         2010.”.



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

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

10          (e) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to fuel sold or used after December  
12 31, 2009.

13 **SEC. 208. SPECIAL RULE FOR SALES OR DISPOSITIONS TO**  
14 **IMPLEMENT FERC OR STATE ELECTRIC RE-**  
15 **STRUCTURING POLICY FOR QUALIFIED ELEC-**  
16 **TRIC UTILITIES.**

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

20          (b) MODIFICATION OF DEFINITION OF INDE-  
21 PENDENT TRANSMISSION COMPANY.—

22           (1) IN GENERAL.—Clause (i) of section  
23 451(i)(4)(B) is amended to read as follows:

24                           “(i) who the Federal Energy Regu-  
25                           latory Commission determines—

1                   “(I) in its authorization of the  
2                   transaction under section 203 of the  
3                   Federal Power Act (16 U.S.C. 824b)  
4                   or by declaratory order is not itself a  
5                   market participant within the mean-  
6                   ing of such Commission’s rules appli-  
7                   cable to independent transmission  
8                   providers and is not controlled by any  
9                   such market participant,

10                   “(II) to be independent from  
11                   market participants (within the mean-  
12                   ing of such rules), or

13                   “(III) to be an independent  
14                   transmission company (within the  
15                   meaning of such rules), and”.

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

19                   “For purposes of subparagraph (B)(i)(I), a person  
20                   shall be treated as controlled by another person if  
21                   such persons would be treated as a single employer  
22                   under section 52.”.

23                   (c) EFFECTIVE DATE.—

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

4           (2) MODIFICATIONS.—The amendments made  
5           by subsection (b) shall apply to dispositions after the  
6           date of the enactment of this Act.

7 **SEC. 209. SUSPENSION OF LIMITATION ON PERCENTAGE**  
8                           **DEPLETION FOR OIL AND GAS FROM MAR-**  
9                           **GINAL WELLS.**

10          (a) IN GENERAL.—Clause (ii) of section  
11 613A(c)(6)(H) is amended by striking “January 1, 2010”  
12 and inserting “January 1, 2011”.

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

16 **SEC. 210. DIRECT PAYMENT OF ENERGY EFFICIENT APPLI-**  
17                           **ANCES TAX CREDIT.**

18          In the case of any taxable year which includes the  
19 last day of calendar year 2009 or calendar year 2010, a  
20 taxpayer who elects to waive the credit which would other-  
21 wise be determined with respect to the taxpayer under sec-  
22 tion 45M of the Internal Revenue Code of 1986 for such  
23 taxable year shall be treated as making a payment against  
24 the tax imposed under subtitle A of such Code for such  
25 taxable year in an amount equal to 85 percent of the

1 amount of the credit which would otherwise be so deter-  
2 mined. Such payment shall be treated as made on the later  
3 of the due date of the return of such tax or the date on  
4 which such return is filed. Elections under this section  
5 may be made separately for 2009 and 2010, but once  
6 made shall be irrevocable. No amount shall be includible  
7 in gross income or alternative minimum taxable income  
8 by reason of this section.

9 **SEC. 211. MODIFICATION OF STANDARDS FOR WINDOWS,**  
10 **DOORS, AND SKYLIGHTS WITH RESPECT TO**  
11 **THE CREDIT FOR NONBUSINESS ENERGY**  
12 **PROPERTY.**

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

16 “(A) in the case of any component placed  
17 in service after the date which is 90 days after  
18 the date of the enactment of the American Jobs  
19 and Closing Tax Loopholes Act of 2010, such  
20 component meets the criteria for such compo-  
21 nents established by the 2010 Energy Star Pro-  
22 gram Requirements for Residential Windows,  
23 Doors, and Skylights, Version 5.0 (or any sub-  
24 sequent version of such requirements which is  
25 in effect after January 4, 2010),

1           “(B) in the case of any component placed  
2           in service after the date of the enactment of the  
3           American Jobs and Closing Tax Loopholes Act  
4           of 2010 and on or before the date which is 90  
5           days after such date, such component meets the  
6           criteria described in subparagraph (A) or is  
7           equal to or below a U factor of 0.30 and SHGC  
8           of 0.30, and

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

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

## 15       **Subtitle B—Individual Tax Relief**

### 16           **PART I—MISCELLANEOUS PROVISIONS**

#### 17       **SEC. 221. DEDUCTION FOR CERTAIN EXPENSES OF ELE-** 18           **MENTARY AND SECONDARY SCHOOL TEACH-** 19           **ERS.**

20          (a) IN GENERAL.—Subparagraph (D) of section  
21          62(a)(2) is amended by striking “or 2009” and inserting  
22          “2009, or 2010”.

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

1 **SEC. 222. ADDITIONAL STANDARD DEDUCTION FOR STATE**  
2 **AND LOCAL REAL PROPERTY TAXES.**

3 (a) IN GENERAL.—Subparagraph (C) of section  
4 63(c)(1) is amended by striking “or 2009” and inserting  
5 “2009, or 2010”.

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

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

10 (a) IN GENERAL.—Subparagraph (I) of section  
11 164(b)(5) is amended by striking “January 1, 2010” and  
12 inserting “January 1, 2011”.

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

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

18 (a) IN GENERAL.—Clause (vi) of section  
19 170(b)(1)(E) is amended by striking “December 31,  
20 2009” and inserting “December 31, 2010”.

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

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

4 **SEC. 225. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED**  
5 **TUITION AND RELATED EXPENSES.**

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

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

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

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

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

1 **SEC. 227. LOOK-THRU OF CERTAIN REGULATED INVEST-**  
2 **MENT COMPANY STOCK IN DETERMINING**  
3 **GROSS ESTATE OF NONRESIDENTS.**

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

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

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

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

13 (a) IN GENERAL.—Section 42 is amended by redesignig-  
14 nating subsection (n) as subsection (o) and by inserting  
15 after subsection (m) the following new subsection:

16 “(n) ELECTION FOR DIRECT PAYMENT OF CRED-  
17 IT.—

18 “(1) IN GENERAL.—The housing credit agency  
19 of each State shall be allowed a credit in an amount  
20 equal to such State’s 2010 low-income housing re-  
21 fundable credit election amount, which shall be pay-  
22 able by the Secretary as provided in paragraph (5).

23 “(2) 2010 LOW-INCOME HOUSING REFUNDABLE  
24 CREDIT ELECTION AMOUNT.—For purposes of this  
25 subsection, the term ‘2010 low-income housing re-  
26 fundable credit election amount’ means, with respect



1 to any State, such amount as the State may elect  
2 which does not exceed 85 percent of the product  
3 of—

4 “(A) the sum of—

5 “(i) 100 percent of the State housing  
6 credit ceiling for 2010 which is attrib-  
7 utable to amounts described in clauses (i)  
8 and (iii) of subsection (h)(3)(C), and

9 “(ii) 40 percent of the State housing  
10 credit ceiling for 2010 which is attrib-  
11 utable to amounts described in clauses (ii)  
12 and (iv) of such subsection, multiplied by

13 “(B) 10.

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

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

1           “(5) PAYMENT OF CREDIT; USE TO FINANCE  
2           LOW-INCOME BUILDINGS.—The Secretary shall pay  
3           to the housing credit agency of each State an  
4           amount equal to the credit allowed under paragraph  
5           (1). Rules similar to the rules of subsections (c) and  
6           (d) of section 1602 of the American Recovery and  
7           Reinvestment Tax Act of 2009 shall apply with re-  
8           spect to any payment made under this paragraph,  
9           except that such subsection (d) shall be applied by  
10          substituting ‘January 1, 2012’ for ‘January 1,  
11          2011’.”.

12          (b) CONFORMING AMENDMENT.—Section 1324(b)(2)  
13          of title 31, United States Code, is amended by inserting  
14          “42(n),” after “36C,”.

## 15           **Subtitle C—Business Tax Relief**

### 16          **SEC. 241. RESEARCH CREDIT.**

17          (a) IN GENERAL.—Subparagraph (B) of section  
18          41(h)(1) is amended by striking “December 31, 2009”  
19          and inserting “December 31, 2010”.

20          (b) CONFORMING AMENDMENT.—Subparagraph (D)  
21          of section 45C(b)(1) is amended by striking “December  
22          31, 2009” and inserting “December 31, 2010”.

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

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

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

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

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

9 (a) IN GENERAL.—Subparagraph (F) of section  
10 45D(f)(1) is amended by inserting “and 2010” after  
11 “2009”.

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

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to calendar years beginning after  
17 2009.

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

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

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

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

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

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

8 (1) by redesignating clauses (vii) through (x) as  
9 clauses (viii) through (xi), respectively, and

10 (2) by inserting after clause (vi) the following  
11 new clause:

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

14 (c) EFFECTIVE DATE.—

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

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

1 **SEC. 246. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO**  
2 **ARE ACTIVE DUTY MEMBERS OF THE UNI-**  
3 **FORMED SERVICES.**

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

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

10 **SEC. 247. 5-YEAR DEPRECIATION FOR FARMING BUSINESS**  
11 **MACHINERY AND EQUIPMENT.**

12 (a) IN GENERAL.—Clause (vii) of section  
13 168(e)(3)(B) is amended by striking “January 1, 2010”  
14 and inserting “January 1, 2011”.

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

18 **SEC. 248. 15-YEAR STRAIGHT-LINE COST RECOVERY FOR**  
19 **QUALIFIED LEASEHOLD IMPROVEMENTS,**  
20 **QUALIFIED RESTAURANT BUILDINGS AND IM-**  
21 **PROVEMENTS, AND QUALIFIED RETAIL IM-**  
22 **PROVEMENTS.**

23 (a) IN GENERAL.—Clauses (iv), (v), and (ix) of sec-  
24 tion 168(e)(3)(E) are each amended by striking “January  
25 1, 2010” and inserting “January 1, 2011”.

26 (b) CONFORMING AMENDMENTS.—

1           (1) Clause (i) of section 168(e)(7)(A) is amend-  
2           ed by striking “if such building is placed in service  
3           after December 31, 2008, and before January 1,  
4           2010.”.

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

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

10   **SEC. 249. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS**  
11                           **ENTERTAINMENT COMPLEXES.**

12           (a) IN GENERAL.—Subparagraph (D) of section  
13           168(i)(15) is amended by striking “December 31, 2009”  
14           and inserting “December 31, 2010”.

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

18   **SEC. 250. ACCELERATED DEPRECIATION FOR BUSINESS**  
19                           **PROPERTY ON AN INDIAN RESERVATION.**

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

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

1 **SEC. 251. ENHANCED CHARITABLE DEDUCTION FOR CON-**  
2 **TRIBUTIONS OF FOOD INVENTORY.**

3 (a) IN GENERAL.—Clause (iv) of section  
4 170(e)(3)(C) is amended by striking “December 31,  
5 2009” and inserting “December 31, 2010”.

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

9 **SEC. 252. ENHANCED CHARITABLE DEDUCTION FOR CON-**  
10 **TRIBUTIONS OF BOOK INVENTORIES TO PUB-**  
11 **LIC SCHOOLS.**

12 (a) IN GENERAL.—Clause (iv) of section  
13 170(e)(3)(D) is amended by striking “December 31,  
14 2009” and inserting “December 31, 2010”.

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

18 **SEC. 253. ENHANCED CHARITABLE DEDUCTION FOR COR-**  
19 **PORATE CONTRIBUTIONS OF COMPUTER IN-**  
20 **VENTORY FOR EDUCATIONAL PURPOSES.**

21 (a) IN GENERAL.—Subparagraph (G) of section  
22 170(e)(6) is amended by striking “December 31, 2009”  
23 and inserting “December 31, 2010”.

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

1 **SEC. 254. ELECTION TO EXPENSE MINE SAFETY EQUIP-**  
2 **MENT.**

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

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

9 **SEC. 255. SPECIAL EXPENSING RULES FOR CERTAIN FILM**  
10 **AND TELEVISION PRODUCTIONS.**

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

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

17 **SEC. 256. EXPENSING OF ENVIRONMENTAL REMEDIATION**  
18 **COSTS.**

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

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



1 **SEC. 257. DEDUCTION ALLOWABLE WITH RESPECT TO IN-**  
2 **COME ATTRIBUTABLE TO DOMESTIC PRO-**  
3 **DUCTION ACTIVITIES IN PUERTO RICO.**

4 (a) **IN GENERAL.**—Subparagraph (C) of section  
5 199(d)(8) is amended—

6 (1) by striking “first 4 taxable years” and in-  
7 serting “first 5 taxable years”, and

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

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

13 **SEC. 258. MODIFICATION OF TAX TREATMENT OF CERTAIN**  
14 **PAYMENTS TO CONTROLLING EXEMPT ORGA-**  
15 **NIZATIONS.**

16 (a) **IN GENERAL.**—Clause (iv) of section  
17 512(b)(13)(E) is amended by striking “December 31,  
18 2009” and inserting “December 31, 2010”.

19 (b) **EFFECTIVE DATE.**—The amendment made by  
20 this section shall apply to payments received or accrued  
21 after December 31, 2009.

1 **SEC. 259. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**  
2 **CHANGE OF CERTAIN BROWNFIELD SITES**  
3 **FROM UNRELATED BUSINESS INCOME.**

4 (a) IN GENERAL.—Subparagraph (K) of section  
5 512(b)(19) is amended by striking “December 31, 2009”  
6 and inserting “December 31, 2010”.

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

10 **SEC. 260. TIMBER REIT MODERNIZATION.**

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

14 (b) CONFORMING AMENDMENTS.—

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

20 (2) Clause (iii) of section 856(e)(5)(H) is  
21 amended by inserting “in taxable years beginning”  
22 after “dispositions”.

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

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

4           (c) EFFECTIVE DATE.—The amendments made by  
5           this section shall apply to taxable years ending after May  
6           22, 2009.

7           **SEC. 261. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**  
8           **LATED INVESTMENT COMPANIES.**

9           (a) IN GENERAL.—Paragraphs (1)(C) and (2)(C) of  
10           section 871(k) are each amended by striking “December  
11           31, 2009” and inserting “December 31, 2010”.

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

15           **SEC. 262. RIC QUALIFIED INVESTMENT ENTITY TREATMENT**  
16           **UNDER FIRPTA.**

17           (a) IN GENERAL.—Clause (ii) of section  
18           897(h)(4)(A) is amended by striking “December 31,  
19           2009” and inserting “December 31, 2010”.

20           (b) EFFECTIVE DATE.—

21           (1) IN GENERAL.—The amendment made by  
22           subsection (a) shall take effect on January 1, 2010.  
23           Notwithstanding the preceding sentence, such  
24           amendment shall not apply with respect to the with-  
25           holding requirement under section 1445 of the Inter-

1       nal Revenue Code of 1986 for any payment made  
2       before the date of the enactment of this Act.

3               (2) AMOUNTS WITHHELD ON OR BEFORE DATE  
4       OF ENACTMENT.—In the case of a regulated invest-  
5       ment company—

6               (A) which makes a distribution after De-  
7       cember 31, 2009, and before the date of the en-  
8       actment of this Act, and

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

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

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

18       (a) IN GENERAL.—Sections 953(e)(10) and  
19       954(h)(9) are each amended by striking “January 1,  
20       2010” and inserting “January 1, 2011”.

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

24       (c) EFFECTIVE DATE.—The amendments made by  
25       this section shall apply to taxable years of foreign corpora-

1 tions beginning after December 31, 2009, and to taxable  
2 years of United States shareholders with or within which  
3 any such taxable year of such foreign corporation ends.

4 **SEC. 264. LOOK-THRU TREATMENT OF PAYMENTS BE-**  
5 **TWEEN RELATED CONTROLLED FOREIGN**  
6 **CORPORATIONS UNDER FOREIGN PERSONAL**  
7 **HOLDING COMPANY RULES.**

8 (a) IN GENERAL.—Subparagraph (C) of section  
9 954(c)(6) is amended by striking “January 1, 2010” and  
10 inserting “January 1, 2011”.

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

16 **SEC. 265. BASIS ADJUSTMENT TO STOCK OF S CORPS MAK-**  
17 **ING CHARITABLE CONTRIBUTIONS OF PROP-**  
18 **ERTY.**

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

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

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

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

3 (1) by striking “December 31, 2009” in sub-  
4 section (d)(1)(A)(i) and inserting “December 31,  
5 2010”, and

6 (2) by striking the last sentence of subsection  
7 (h)(2).

8 (b) INCREASED EXCLUSION OF GAIN ON STOCK OF  
9 EMPOWERMENT ZONE BUSINESSES.—Subparagraph (C)  
10 of section 1202(a)(2) is amended—

11 (1) by striking “December 31, 2014” and in-  
12 sserting “December 31, 2015”, and

13 (2) by striking “2014” in the heading and in-  
14 sserting “2015”.

15 (c) TREATMENT OF CERTAIN TERMINATION DATES  
16 SPECIFIED IN NOMINATIONS.—In the case of a designa-  
17 tion of an empowerment zone the nomination for which  
18 included a termination date which is contemporaneous  
19 with the date specified in subparagraph (A)(i) of section  
20 1391(d)(1) of the Internal Revenue Code of 1986 (as in  
21 effect before the enactment of this Act), subparagraph (B)  
22 of such section shall not apply with respect to such des-  
23 ignation unless, after the date of the enactment of this  
24 section, the entity which made such nomination reconfirms  
25 such termination date, or amends the nomination to pro-  
26 vide for a new termination date, in such manner as the

1 Secretary of the Treasury (or the Secretary's designee)  
2 may provide.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to periods after December 31,  
5 2009.

6 **SEC. 267. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**  
7 **TRICT OF COLUMBIA.**

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

11 (b) **TAX-EXEMPT DC EMPOWERMENT ZONE**  
12 **BONDS.**—Subsection (b) of section 1400A is amended by  
13 striking “December 31, 2009” and inserting “December  
14 31, 2010”.

15 (c) **ZERO-PERCENT CAPITAL GAINS RATE.**—

16 (1) **ACQUISITION DATE.**—Paragraphs (2)(A)(i),  
17 (3)(A), (4)(A)(i), and (4)(B)(i)(I) of section  
18 1400B(b) are each amended by striking “January 1,  
19 2010” and inserting “January 1, 2011”.

20 (2) **LIMITATION ON PERIOD OF GAINS.**—

21 (A) **IN GENERAL.**—Paragraph (2) of sec-  
22 tion 1400B(e) is amended—

23 (i) by striking “December 31, 2014”  
24 and inserting “December 31, 2015”, and

1 (ii) by striking “2014” in the heading  
2 and inserting “2015”.

3 (B) PARTNERSHIPS AND S-CORPS.—Para-  
4 graph (2) of section 1400B(g) is amended by  
5 striking “December 31, 2014” and inserting  
6 “December 31, 2015”.

7 (d) FIRST-TIME HOMEBUYER CREDIT.—Subsection  
8 (i) of section 1400C is amended by striking “January 1,  
9 2010” and inserting “January 1, 2011”.

10 (e) EFFECTIVE DATES.—

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

15 (2) TAX-EXEMPT DC EMPOWERMENT ZONE  
16 BONDS.—The amendment made by subsection (b)  
17 shall apply to bonds issued after December 31,  
18 2009.

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

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



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

2 (a) IN GENERAL.—Subsection (b) of section 1400E  
3 is amended—

4 (1) by striking “December 31, 2009” in para-  
5 graphs (1)(A) and (3) and inserting “December 31,  
6 2010”, and

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

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

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

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

16 (A) by striking “December 31, 2014” and  
17 inserting “December 31, 2015”, and

18 (B) by striking “2014” in the heading and  
19 inserting “2015”.

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

23 (c) COMMERCIAL REVITALIZATION DEDUCTION.—

24 (1) IN GENERAL.—Subsection (g) of section  
25 1400I is amended by striking “December 31, 2009”  
26 and inserting “December 31, 2010”.

1           (2) CONFORMING AMENDMENT.—Subparagraph  
2           (A) of section 1400I(d)(2) is amended by striking  
3           “after 2001 and before 2010” and inserting “which  
4           begins after 2001 and before the date referred to in  
5           subsection (g)”.

6           (d) INCREASED EXPENSING UNDER SECTION 179.—  
7           Subparagraph (A) of section 1400J(b)(1) is amended by  
8           striking “January 1, 2010” and inserting “January 1,  
9           2011”.

10          (e) TREATMENT OF CERTAIN TERMINATION DATES  
11          SPECIFIED IN NOMINATIONS.—In the case of a designa-  
12          tion of a renewal community the nomination for which in-  
13          cluded a termination date which is contemporaneous with  
14          the date specified in subparagraph (A) of section  
15          1400E(b)(1) of the Internal Revenue Code of 1986 (as  
16          in effect before the enactment of this Act), subparagraph  
17          (B) of such section shall not apply with respect to such  
18          designation unless, after the date of the enactment of this  
19          section, the entity which made such nomination reconfirms  
20          such termination date, or amends the nomination to pro-  
21          vide for a new termination date, in such manner as the  
22          Secretary of the Treasury (or the Secretary’s designee)  
23          may provide.

24          (f) EFFECTIVE DATES.—

1           (1) IN GENERAL.—Except as otherwise pro-  
2           vided in this subsection, the amendments made by  
3           this section shall apply to periods after December  
4           31, 2009.

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

8           (3) COMMERCIAL REVITALIZATION DEDUC-  
9           TION.—

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

13           (B) CONFORMING AMENDMENT.—The  
14           amendment made by subsection (c)(2) shall  
15           apply to calendar years beginning after Decem-  
16           ber 31, 2009.

17 **SEC. 269. TEMPORARY INCREASE IN LIMIT ON COVER OVER**  
18 **OF RUM EXCISE TAXES TO PUERTO RICO AND**  
19 **THE VIRGIN ISLANDS.**

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

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

1 **SEC. 270. PAYMENT TO AMERICAN SAMOA IN LIEU OF EX-**  
2 **TENSION OF ECONOMIC DEVELOPMENT**  
3 **CREDIT.**

4 The Secretary of the Treasury (or his designee) shall  
5 pay \$18,000,000 to the Government of American Samoa  
6 for purposes of economic development. The payment made  
7 under the preceding sentence shall be treated for purposes  
8 of section 1324 of title 31, United States Code, as a re-  
9 fund of internal revenue collections to which such section  
10 applies.

11 **SEC. 271. ELECTION TO TEMPORARILY UTILIZE UNUSED**  
12 **AMT CREDITS DETERMINED BY DOMESTIC IN-**  
13 **VESTMENT.**

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

16 “(g) ELECTION FOR CORPORATIONS WITH NEW DO-  
17 MESTIC INVESTMENTS.—

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

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

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

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

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

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

13          “(B) which is placed in service in the  
14          United States by the taxpayer during such tax-  
15          able year.

16          “(4) CREDIT REFUNDABLE.—For purposes of  
17          subsection (b) of section 6401, the aggregate in-  
18          crease in the credits allowable under this part for  
19          any taxable year resulting from the application of  
20          this subsection shall be treated as allowed under  
21          subpart C (and not under any other subpart). For  
22          purposes of section 6425, any amount treated as so  
23          allowed shall be treated as a payment of estimated  
24          income tax for the taxable year.

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

8           “(6) TREATMENT OF CERTAIN PARTNERSHIP  
9           INVESTMENTS.—For purposes of this subsection, a  
10          corporation shall take into account its allocable  
11          share of any new domestic investments by a partner-  
12          ship for any taxable year if, and only if, more than  
13          90 percent of the capital and profits interests in  
14          such partnership are owned by such corporation (di-  
15          rectly or indirectly) at all times during such taxable  
16          year.

17          “(7) NO DOUBLE BENEFIT.—

18                 “(A) IN GENERAL.—A corporation making  
19                 an election under this subsection may not make  
20                 an election under subparagraph (H) of section  
21                 172(b)(1).

22                 “(B) SPECIAL RULES WITH RESPECT TO  
23                 TAXPAYERS PREVIOUSLY ELECTING APPLICA-  
24                 BLE NET OPERATING LOSSES.— In the case of  
25                 a corporation which made an election under

1           subparagraph (H) of section 172(b)(1) and  
2           elects the application of this subsection—

3                   “(i) ELECTION OF APPLICABLE NET  
4                   OPERATING LOSS TREATED AS RE-  
5                   VOKED.—The election under such subpara-  
6                   graph (H) shall (notwithstanding clause  
7                   (iii)(II) of such subparagraph) be treated  
8                   as having been revoked by the taxpayer.

9                   “(ii) COORDINATION WITH PROVISION  
10                  FOR EXPEDITED REFUND.—The amount  
11                  otherwise treated as a payment of esti-  
12                  mated income tax under the last sentence  
13                  of paragraph (4) shall be reduced (but not  
14                  below zero) by the aggregate increase in  
15                  unpaid tax liability determined under this  
16                  chapter by reason of the revocation of the  
17                  election under clause (i).

18                  “(iii) APPLICATION OF STATUTE OF  
19                  LIMITATIONS.—With respect to the revoca-  
20                  tion of an election under clause (i)—

21                         “(I) the statutory period for the  
22                         assessment of any deficiency attrib-  
23                         utable to such revocation shall not ex-  
24                         pire before the end of the 3-year pe-

1                   riod beginning on the date of the elec-  
2                   tion to have this subsection apply, and

3                   “**(II)** such deficiency may be as-  
4                   sessed before the expiration of such 3-  
5                   year period notwithstanding the provi-  
6                   sions of any other law or rule of law  
7                   which would otherwise prevent such  
8                   assessment.

9                   “**(C) EXCEPTION FOR ELIGIBLE SMALL**  
10                  **BUSINESSES.**—Subparagraphs (A) and (B)  
11                  shall not apply to an eligible small business as  
12                  defined in section 172(b)(1)(H)(v)(II).

13                  “**(8) REGULATIONS.**—The Secretary may issue  
14                  such regulations or other guidance as may be nec-  
15                  essary or appropriate to carry out the purposes of  
16                  this subsection, including to prevent fraud and abuse  
17                  under this subsection.”.

18                  **(b) CONFORMING AMENDMENTS.**—

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

21                   (2) Section 1324(b)(2) of title 31, United  
22                   States Code, is amended by inserting “53(g),” after  
23                   “53(e),”.



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

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

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

6 (1) Currently, the aggregate cost of Federal tax  
7 expenditures rivals, or even exceeds, the amount of  
8 total Federal discretionary spending.

9 (2) Given the escalating public debt, a critical  
10 examination of this use of taxpayer dollars is essen-  
11 tial.

12 (3) Additionally, tax expenditures can com-  
13 plicate the Internal Revenue Code of 1986 for tax-  
14 payers and complicate tax administration for the In-  
15 ternal Revenue Service.

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

20 (b) REQUIREMENT TO REPORT.—Not later than No-  
21 vember 30, 2010, the Chief of Staff of the Joint Com-  
22 mittee on Taxation, in consultation with the Comptroller  
23 General of the United States, shall submit to the Com-  
24 mittee on Ways and Means of the House of Representa-  
25 tives and the Committee on Finance of the Senate a report

1 on each tax expenditure (as defined in section 3(3) of the  
2 Congressional Budget Impoundment Control Act of 1974  
3 (2 U.S.C. 622(3)) extended by this title.

4 (c) ROLLING SUBMISSION OF REPORTS.—The Chief  
5 of Staff of the Joint Committee on Taxation shall initially  
6 submit the reports for each such tax expenditure enacted  
7 in this subtitle (relating to business tax relief) and subtitle  
8 A (relating to energy) in order of the tax expenditure in-  
9 curring the least aggregate cost to the greatest aggregate  
10 cost (determined by reference to the cost estimate of this  
11 Act by the Joint Committee on Taxation). Thereafter,  
12 such reports may be submitted in such order as the Chief  
13 of Staff determines appropriate.

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

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

19 (2) A description of the intended purpose of the  
20 tax expenditure.

21 (3) An analysis of the overall success of the tax  
22 expenditure in achieving such purpose, and evidence  
23 supporting such analysis.

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

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

7           (6) An analysis of whether the tax expenditure  
8           is the most cost-effective method for achieving the  
9           purpose for which it was intended, and a description  
10          of any more cost-effective methods through which  
11          such purpose could be accomplished.

12          (7) A description of any unintended effects of  
13          the tax expenditure that are useful in understanding  
14          the tax expenditure's overall value.

15          (8) An analysis of how the tax expenditure  
16          could be modified to better achieve its original pur-  
17          pose.

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

22          (10) A description of any unavailable informa-  
23          tion the staff of the Joint Committee on Taxation  
24          may need to complete a more thorough examination

1 and analysis of the tax expenditure, and what must  
2 be done to make such information available.

3 (e) **MINIMUM ANALYSIS BY DEADLINE.**—In the event  
4 the Chief of Staff of the Joint Committee on Taxation  
5 concludes it will not be feasible to complete all reports by  
6 the date specified in subsection (a), at a minimum, the  
7 reports for each tax expenditure enacted in this subtitle  
8 (relating to business tax relief) and subtitle A (relating  
9 to energy) shall be completed by such date.

## 10 **Subtitle D—Temporary Disaster** 11 **Relief Provisions**

### 12 **PART I—NATIONAL DISASTER RELIEF**

#### 13 **SEC. 281. WAIVER OF CERTAIN MORTGAGE REVENUE BOND** 14 **REQUIREMENTS.**

15 (a) **IN GENERAL.**—Paragraph (11) of section 143(k)  
16 is amended by striking “January 1, 2010” and inserting  
17 “January 1, 2011”.

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

23 (c) **TECHNICAL AMENDMENT.**—Subsection (k) of sec-  
24 tion 143 is amended by redesignating the second para-

1 graph (12) (relating to special rules for residences de-  
2 stroyed in federally declared disasters) as paragraph (13).

3 (d) EFFECTIVE DATES.—

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

8 (2) RESIDENCES DESTROYED IN FEDERALLY  
9 DECLARED DISASTERS.—The amendments made by  
10 subsection (b) shall apply with respect to disasters  
11 occurring after December 31, 2009.

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

16 **SEC. 282. LOSSES ATTRIBUTABLE TO FEDERALLY DE-**  
17 **CLARED DISASTERS.**

18 (a) IN GENERAL.—Subclause (I) of section  
19 165(h)(3)(B)(i) is amended by striking “January 1,  
20 2010” and inserting “January 1, 2011”.

21 (b) \$500 LIMITATION.—Paragraph (1) of section  
22 165(h) is amended by striking “December 31, 2009” and  
23 inserting “December 31, 2010”.

24 (c) EFFECTIVE DATE.—

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

4           (2) \$500 LIMITATION.—The amendment made  
5           by subsection (b) shall apply to taxable years begin-  
6           ning after December 31, 2009.

7   **SEC. 283. SPECIAL DEPRECIATION ALLOWANCE FOR QUALI-**  
8                                   **FIED DISASTER PROPERTY.**

9           (a) IN GENERAL.—Subclause (I) of section  
10          168(n)(2)(A)(ii) is amended by striking “January 1,  
11          2010” and inserting “January 1, 2011”.

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

15   **SEC. 284. NET OPERATING LOSSES ATTRIBUTABLE TO FED-**  
16                                   **ERALLY DECLARED DISASTERS.**

17          (a) IN GENERAL.—Subclause (I) of section  
18          172(j)(1)(A)(i) is amended by striking “January 1, 2010”  
19          and inserting “January 1, 2011”.

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

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

2 (a) IN GENERAL.—Subparagraph (A) of section  
3 198A(b)(2) is amended by striking “January 1, 2010”  
4 and inserting “January 1, 2011”.

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

8 **PART II—REGIONAL PROVISIONS**

9 **Subpart A—New York Liberty Zone**

10 **SEC. 291. SPECIAL DEPRECIATION ALLOWANCE FOR NON-**  
11 **RESIDENTIAL AND RESIDENTIAL REAL PROP-**  
12 **ERTY.**

13 (a) IN GENERAL.—Subparagraph (A) of section  
14 1400L(b)(2) is amended by striking “December 31, 2009”  
15 and inserting “December 31, 2010”.

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

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

20 (a) IN GENERAL.—Subparagraph (D) of section  
21 1400L(d)(2) is amended by striking “January 1, 2010”  
22 and inserting “January 1, 2011”.

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

1 **Subpart B—GO Zone**

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

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

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

9 **SEC. 296. WORK OPPORTUNITY TAX CREDIT WITH RESPECT**  
10 **TO CERTAIN INDIVIDUALS AFFECTED BY**  
11 **HURRICANE KATRINA FOR EMPLOYERS IN-**  
12 **SIDE DISASTER AREAS.**

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

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall apply to individuals hired after August  
18 27, 2009.

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

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



1 **TITLE III—PENSION PROVISIONS**

2 **Subtitle A—Pension Funding Relief**

3 **PART 1—SINGLE-EMPLOYER PLANS**

4 **SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**  
5 **FINED BENEFIT PLANS TO AMORTIZE CER-**  
6 **TAIN SHORTFALL AMORTIZATION BASES.**

7 (a) ERISA AMENDMENTS.—

8 (1) IN GENERAL.—Section 303(c)(2) of the  
9 Employee Retirement Income Security Act of 1974  
10 (29 U.S.C. 1083(c)(2)) is amended by adding at the  
11 end the following subparagraphs:

12 “(D) SPECIAL RULE.—

13 “(i) IN GENERAL.—In the case of the  
14 shortfall amortization base of a plan for  
15 any applicable plan year, the shortfall am-  
16 ortization installments are the amounts de-  
17 scribed in clause (ii) or (iii), if made appli-  
18 cable by an election under clause (iv). In  
19 the absence of a timely election, such in-  
20 stallments shall be determined without re-  
21 gard to this subparagraph.

22 “(ii) 2 PLUS 7 AMORTIZATION SCHED-  
23 ULE.—The shortfall amortization install-  
24 ments described in this clause are—

1                   “(I) in the case of the first 2  
2                   plan years in the 9-plan-year period  
3                   beginning with the applicable plan  
4                   year, interest on the shortfall amorti-  
5                   zation base (determined by using the  
6                   effective interest rate for the applica-  
7                   ble plan year), and

8                   “(II) in the case of the last 7  
9                   plan years in such 9-plan-year period,  
10                  the amounts necessary to amortize the  
11                  balance of such shortfall amortization  
12                  base in level annual installments over  
13                  such last 7 plan years (determined  
14                  using the segment rates determined  
15                  under subparagraph (C) of subsection  
16                  (h)(2) for the applicable plan year,  
17                  applied under rules similar to the  
18                  rules of subparagraph (B) of sub-  
19                  section (h)(2)).

20                  “(iii) 15-YEAR AMORTIZATION.—The  
21                  shortfall amortization installments de-  
22                  scribed in this clause are the amounts  
23                  under subparagraphs (A) and (B) deter-  
24                  mined by substituting ‘15 plan-year period’  
25                  for ‘7-plan-year period’.

1 “(iv) ELECTION.—

2 “(I) IN GENERAL.—The plan  
3 sponsor may, with respect to a plan,  
4 elect, with respect to any of not more  
5 than 2 applicable plan years, to deter-  
6 mine shortfall amortization install-  
7 ments under this subparagraph. An  
8 election under either clause (ii) or  
9 clause (iii) may be made with respect  
10 to either of such applicable plan years.

11 “(II) ELIGIBILITY FOR ELEC-  
12 TION.—An election may be made to  
13 determine shortfall amortization in-  
14 stallments under this subparagraph  
15 with respect to a plan only if, as of  
16 the date of the election—

17 “(aa) the plan sponsor is  
18 not a debtor in a case under title  
19 11, United States Code, or simi-  
20 lar Federal or State law,

21 “(bb) there are no unpaid  
22 minimum required contributions  
23 with respect to the plan for pur-  
24 poses of section 4971 of the In-  
25 ternal Revenue Code of 1986,

1           “(cc) there is no lien in  
2 favor of the plan under sub-  
3 section (k) or under section  
4 430(k) of such Code, and

5           “(dd) a distress termination  
6 has not been initiated for the  
7 plan under section 4041(c).

8           “(III) RULES RELATING TO  
9 ELECTION.—Such election shall be  
10 made at such times, and in such form  
11 and manner, as shall be prescribed by  
12 the Secretary of the Treasury and  
13 shall be irrevocable, except under such  
14 limited circumstances, and subject to  
15 such conditions, as such Secretary  
16 may prescribe.

17           “(E) APPLICABLE PLAN YEAR.—

18           “(i) IN GENERAL.—For purposes of  
19 this paragraph, the term ‘applicable plan  
20 year’ means, subject to the election of the  
21 plan sponsor under subparagraph (D)(iv),  
22 each of not more than 2 of the plan years  
23 beginning in 2008, 2009, 2010, or 2011.

24           “(ii) SPECIAL RULE RELATING TO  
25 2008.—A plan year may be elected as an

1 applicable plan year pursuant to this sub-  
2 paragraph only if the due date under sub-  
3 section (j)(1) for the payment of the min-  
4 imum required contribution for such plan  
5 year occurs on or after March 10, 2010.

6 “(F) INCREASES IN SHORTFALL AMORTI-  
7 ZATION INSTALLMENTS IN CASES OF EXCESS  
8 COMPENSATION OR CERTAIN DIVIDENDS OR  
9 STOCK REDEMPTIONS.—

10 “(i) IN GENERAL.—If, with respect to  
11 an election for an applicable plan year  
12 under subparagraph (D), there is an in-  
13 stallment acceleration amount with respect  
14 to a plan for any plan year in the restric-  
15 tion period (or if there is an installment  
16 acceleration amount carried forward to a  
17 plan year not in the restriction period),  
18 then the shortfall amortization installment  
19 otherwise determined and payable under  
20 this paragraph for such plan year shall be  
21 increased by such amount.

22 “(ii) BACK-END ADJUSTMENT TO AM-  
23 ORTIZATION SCHEDULE.—Subject to rules  
24 prescribed by the Secretary of the Treas-  
25 ury, if a shortfall amortization installment

1 with respect to any shortfall amortization  
2 base for an applicable plan year is required  
3 to be increased for any plan year under  
4 clause (i), subsequent shortfall amortiza-  
5 tion installments with respect to such base  
6 shall be reduced, in reverse order of the  
7 otherwise required installments beginning  
8 with the final scheduled installment, to the  
9 extent necessary to limit the present value  
10 of such subsequent shortfall amortization  
11 installments (after application of this sub-  
12 paragraph) to the present value of the re-  
13 maining unamortized shortfall amortization  
14 base.

15 “(iii) INSTALLMENT ACCELERATION  
16 AMOUNT.—For purposes of this subpara-  
17 graph—

18 “(I) IN GENERAL.—The term ‘in-  
19 stallment acceleration amount’ means,  
20 with respect to any plan year in a re-  
21 striction period with respect to an ap-  
22 plicable plan year, the sum of—

23 “(aa) the aggregate amount  
24 of excess employee compensation

1 determined under clause (iv) for  
2 the plan year, plus

3 “(bb) the dividend and re-  
4 demption amount determined  
5 under clause (v) for the plan  
6 year.

7 “(II) CUMULATIVE LIMITA-  
8 TION.—The installment acceleration  
9 amount for any plan year shall not ex-  
10 ceed the excess (if any) of—

11 “(aa) the sum of the short-  
12 fall amortization installments for  
13 the plan year and all preceding  
14 plan years in the amortization  
15 period elected under subpara-  
16 graph (D) with respect to the  
17 shortfall amortization base with  
18 respect to an applicable year, de-  
19 termined without regard to sub-  
20 paragraph (D) and this subpara-  
21 graph, over

22 “(bb) the sum of the short-  
23 fall amortization installments for  
24 such plan year and all such pre-  
25 ceding plan years, determined

1 after application of subparagraph  
2 (D) (and in the case of any pre-  
3 ceding plan year, after applica-  
4 tion of this subparagraph).

5 “(III) CARRYOVER OF EXCESS  
6 INSTALLMENT ACCELERATION  
7 AMOUNTS.—

8 “(aa) IN GENERAL.—If the  
9 installment acceleration amount  
10 for any plan year (determined  
11 without regard to subclause (II))  
12 exceeds the limitation under sub-  
13 clause (II), then, subject to item  
14 (bb), such excess shall be treated  
15 as an installment acceleration  
16 amount for the succeeding plan  
17 year.

18 “(bb) CAP TO APPLY.—If  
19 any amount treated as an install-  
20 ment acceleration amount under  
21 item (aa) or this item with re-  
22 spect any succeeding plan year,  
23 when added to other installment  
24 acceleration amounts (determined  
25 without regard to subclause (II))



1 with respect to the plan year, ex-  
2 ceeds the limitation under sub-  
3 clause (II), the portion of such  
4 amount representing such excess  
5 shall be treated as an installment  
6 acceleration amount with respect  
7 to the next succeeding plan year.

8 “(cc) LIMITATION ON YEARS  
9 TO WHICH AMOUNTS CARRIED  
10 FORWARD.—No amount shall be  
11 carried forward under item (aa)  
12 or (bb) to a plan year which be-  
13 gins after the last plan year in  
14 the restriction period (or after  
15 the second plan year following  
16 such last plan year in the case of  
17 an election year with respect to  
18 which 15-year amortization was  
19 elected under subparagraph  
20 (D)(iii)).

21 “(dd) ORDERING RULES.—  
22 For purposes of applying item  
23 (bb), installment acceleration  
24 amounts for the plan year (deter-  
25 mined without regard to any car-

1 ryover under this clause) shall be  
2 applied first against the limita-  
3 tion under subclause (II) and  
4 then carryovers to such plan year  
5 shall be applied against such lim-  
6 itation on a first-in, first-out  
7 basis.

8 “(iv) EXCESS EMPLOYEE COMPENSA-  
9 TION.—

10 “(I) IN GENERAL.—For purposes  
11 of this paragraph, the term ‘excess  
12 employee compensation’ means the  
13 sum of—

14 “(aa) with respect to any  
15 employee, for any plan year, the  
16 excess (if any) of—

17 “(AA) the aggregate  
18 amount includible in income  
19 under chapter 1 of the In-  
20 ternal Revenue Code of  
21 1986 for remuneration dur-  
22 ing the calendar year in  
23 which such plan year begins  
24 for services performed by  
25 the employee for the plan

1 sponsor (whether or not per-  
2 formed during such calendar  
3 year), over

4 “(BB) \$1,000,000, plus  
5 “(bb) the amount of assets  
6 set aside or reserved (directly or  
7 indirectly) in a trust (or other ar-  
8 rangement as determined by the  
9 Secretary of the Treasury), or  
10 transferred to such a trust or  
11 other arrangement, during the  
12 calendar year by a plan sponsor  
13 for purposes of paying deferred  
14 compensation of an employee  
15 under a nonqualified deferred  
16 compensation plan (as defined in  
17 section 409A of such Code) of  
18 the plan sponsor.

19 “(II) NO DOUBLE COUNTING.—  
20 No amount shall be taken into ac-  
21 count under subclause (I) more than  
22 once.

23 “(III) EMPLOYEE; REMUNERA-  
24 TION.—For purposes of this clause,  
25 the term ‘employee’ includes, with re-

1           spect to a calendar year, a self-em-  
2           ployed individual who is treated as an  
3           employee under section 401(c) of the  
4           Internal Revenue Code of 1986 for  
5           the taxable year ending during such  
6           calendar year, and the term ‘remu-  
7           neration’ shall include earned income  
8           of such an individual.

9                           “(IV)     CERTAIN     PAYMENTS  
10                          UNDER EXISTING CONTRACTS.—There  
11                          shall not be taken into account under  
12                          subclause (I)(aa) any remuneration  
13                          consisting of nonqualified deferred  
14                          compensation, restricted stock (or re-  
15                          stricted stock units), stock options, or  
16                          stock appreciation rights payable or  
17                          granted under a written binding con-  
18                          tract that was in effect on March 1,  
19                          2010, and which was not modified in  
20                          any material respect before such re-  
21                          muneration is paid.

22                          “(V)     ONLY REMUNERATION FOR  
23                          POST-2009 SERVICES COUNTED.—Re-  
24                          muneration shall be taken into ac-  
25                          count under subclause (I)(aa) only to

1 the extent attributable to services per-  
2 formed by the employee for the plan  
3 sponsor after December 31, 2009.

4 “(VI) COMMISSIONS.—

5 “(aa) IN GENERAL.—There  
6 shall not be taken into account  
7 under subclause (I)(aa) any re-  
8 muneration payable on a commis-  
9 sion basis solely on account of in-  
10 come directly generated by the  
11 individual performance of the in-  
12 dividual to whom such remunera-  
13 tion is payable.

14 “(bb) SPECIFIED EMPLOY-  
15 EES.—Item (aa) shall not apply  
16 in the case of any specified em-  
17 ployee (within the meaning of  
18 section 409A(a)(2)(B)(i) of the  
19 Internal Revenue Code of 1986)  
20 or any employee who would be  
21 such a specified employee if the  
22 plan sponsor were a corporation  
23 described in such section.

24 “(VII) INDEXING OF AMOUNT.—

25 In the case of any calendar year be-

1                   ginning after 2010, the dollar amount  
2                   under subclause (I)(aa)(BB) shall be  
3                   increased by an amount equal to—

4                               “(aa) such dollar amount,  
5                               multiplied by

6                               “(bb) the cost-of-living ad-  
7                               justment determined under sec-  
8                               tion 1(f)(3) of the Internal Rev-  
9                               enue Code of 1986 for the cal-  
10                              endar year, determined by sub-  
11                              stituting ‘calendar year 2009’ for  
12                              ‘calendar year 1992’ in subpara-  
13                              graph (B) thereof.

14                   If the amount of any increase under  
15                   clause (i) is not a multiple of \$20,000,  
16                   such increase shall be rounded to the  
17                   next lowest multiple of \$20,000.

18                               “(v) CERTAIN DIVIDENDS AND RE-  
19                   DEMPTIONS.—

20                               “(I) IN GENERAL.—The dividend  
21                               and redemption amount determined  
22                               under this clause for any plan year is  
23                               the lesser of—

24                               “(aa) the excess of—

1                   “(AA) the sum of the  
2                   dividends paid during the  
3                   plan year by the plan spon-  
4                   sor, plus the amounts paid  
5                   for the redemption of stock  
6                   of the plan sponsor re-  
7                   deemed during the plan  
8                   year, over

9                   “(BB) an amount equal  
10                  to the average of adjusted  
11                  annual net income of the  
12                  plan sponsor for the last 5  
13                  fiscal years of the plan spon-  
14                  sor ending before such plan  
15                  year, or

16                  “(bb) the sum of—

17                         “(AA) the amounts  
18                         paid for the redemption of  
19                         stock of the plan sponsor re-  
20                         deemed during the plan  
21                         year, plus

22                         “(BB) the excess of  
23                         dividends paid during the  
24                         plan year by the plan spon-

1                   sor over the dividend base  
2                   amount.

3                   “(II) DEFINITIONS.—

4                   “(aa) ADJUSTED ANNUAL  
5                   NET INCOME.—For purposes of  
6                   subelause (I)(aa)(BB), the term  
7                   ‘adjusted annual net income’ with  
8                   respect to any fiscal year means  
9                   annual net income, determined in  
10                  accordance with generally accept-  
11                  ed accounting principles (before  
12                  after-tax gain or loss on any sale  
13                  of assets), but without regard to  
14                  any reduction by reason of depre-  
15                  ciation or amortization, except  
16                  that in no event shall adjusted  
17                  annual net income for any fiscal  
18                  year be less than zero.

19                  “(bb) DIVIDEND BASE  
20                  AMOUNT.—For purposes of this  
21                  clause, the term ‘dividend base  
22                  amount’ means, with respect to a  
23                  plan year, an amount equal to  
24                  the greater of—



1                   “(AA) the median of  
2                   the amounts of the dividends  
3                   paid during each of the last  
4                   5 fiscal years of the plan  
5                   sponsor ending before such  
6                   plan year, or

7                   “(BB) the amount of  
8                   dividends paid during such  
9                   plan year on preferred stock  
10                  that was issued on or before  
11                  May 21, 2010, or that is re-  
12                  placement stock for such  
13                  preferred stock.

14                  “(III) ONLY CERTAIN POST-2009  
15                  DIVIDENDS AND REDEMPTIONS  
16                  COUNTED.—For purposes of subclause  
17                  (I) (other than for purposes of calcu-  
18                  lating the dividend base amount),  
19                  there shall only be taken into account  
20                  dividends declared, and redemptions  
21                  occurring, after February 28, 2010.

22                  “(IV) EXCEPTION FOR INTRA-  
23                  GROUP DIVIDENDS.—Dividends paid  
24                  by one member of a controlled group  
25                  (as defined in section 302(d)(3)) to

1 another member of such group shall  
2 not be taken into account under sub-  
3 clause (I).

4 “(V) EXCEPTION FOR STOCK  
5 DIVIDENDS.—Any distribution by the  
6 plan sponsor to its shareholders of  
7 stock issued by the plan sponsor shall  
8 not be taken into account under sub-  
9 clause (I).

10 “(VI) EXCEPTION FOR CERTAIN  
11 REDEMPTIONS.—Redemptions of secu-  
12 rities which are not readily tradable  
13 on an established securities market  
14 which—

15 “(aa) are made pursuant to  
16 a pension plan that is qualified  
17 under section 401 of the Internal  
18 Revenue Code of 1986 or a  
19 shareholder-approved program,

20 “(bb) are made on account  
21 of an employee’s termination of  
22 employment with the plan spon-  
23 sor, or the death or disability of  
24 a shareholder, or

1                   “(cc) were, immediately be-  
2 fore redemption, held directly or  
3 indirectly by, or for the benefit  
4 of, the Federal Government or a  
5 Federal reserve bank,  
6 shall not be taken into account under  
7 subclause (I).

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

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

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

20                   “(aa) except as provided in  
21 item (bb), the 3-year period be-  
22 ginning with the applicable plan  
23 year (or, if later, the first plan  
24 year beginning after December  
25 31, 2009), or

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

9                   “(III) ELECTIONS FOR MULTIPLE  
10                  PLANS.—If a plan sponsor makes  
11                  elections under subparagraph (D)  
12                  with respect to 2 or more plans, the  
13                  Secretary of the Treasury shall pro-  
14                  vide rules for the application of this  
15                  subparagraph to such plans, including  
16                  rules for the ratable allocation of any  
17                  installment acceleration amount  
18                  among such plans on the basis of each  
19                  plan’s relative reduction in the plan’s  
20                  shortfall amortization installment for  
21                  the first plan year in the amortization  
22                  period described in clause (i) (deter-  
23                  mined without regard to this subpara-  
24                  graph).

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

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

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

15                 (A) by redesignating subsection (k) as sub-  
16                 section (l); and

17                 (B) by inserting after subsection (j) the  
18                 following new subsection:

19          “(k) NOTICE IN CONNECTION WITH SHORTFALL AM-  
20          ORTIZATION ELECTION.—

21                 “(1) IN GENERAL.—Not later 30 days after the  
22                 date of an election under clause (iv) of section  
23                 303(c)(2)(D) in connection with a single-employer  
24                 plan, the plan administrator shall provide notice of  
25                 such election in accordance with this subsection to

1 each plan participant and beneficiary, each labor or-  
2 ganization representing such participants and bene-  
3 ficiaries, and the Pension Benefit Guaranty Corpora-  
4 tion.

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

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

11 “(B) with respect to required contribu-  
12 tions—

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

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

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

22 “(C) with respect to a plan’s funding sta-  
23 tus as of the end of the plan year preceding the  
24 applicable plan year—

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

3 “(ii) the market value of assets of the  
4 plan; and

5 “(D) with respect to installment accelera-  
6 tion amounts (as defined in section  
7 303(c)(2)(F)(iii)(I))—

8 “(i) an explanation of section  
9 303(c)(2)(F) (relating to increases in  
10 shortfall amortization installments in cases  
11 of excess compensation or certain dividends  
12 or stock redemptions); and

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

22 “(3) OTHER REQUIREMENTS.—

23 “(A) FORM.—The notice required by para-  
24 graph (1) shall be written in a manner cal-  
25 culated to be understood by the average plan

1 participant. The Secretary of the Treasury shall  
2 prescribe a model notice that a plan adminis-  
3 trator may use to satisfy the requirements of  
4 paragraph (1).

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

10 “(4) EFFECT OF EGREGIOUS FAILURE.—

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

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

21 “(i) an intentional failure (including  
22 any failure to promptly provide the re-  
23 quired notice or information after the plan  
24 administrator discovers an unintentional



1 failure to meet the requirements of this  
2 subsection),

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

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

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

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

18 (i) by striking “and” at the end of  
19 clause (i);

20 (ii) by redesignating clause (ii) as  
21 clause (iii); and

22 (iii) by inserting after clause (i) the  
23 following new clause:

24 “(ii) any excess employee compensa-  
25 tion amounts and any dividends and re-

1 demptions amounts determined under sec-  
2 tion 303(c)(2)(F) for the preceding plan  
3 year with respect to the plan, and”.

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

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

13 (4) CONFORMING AMENDMENT.—Section  
14 303(c)(1) of such Act (29 U.S.C. 1083(c)(1)) is  
15 amended by striking “the shortfall amortization  
16 bases for such plan year and each of the 6 preceding  
17 plan years” and inserting “any shortfall amortiza-  
18 tion base which has not been fully amortized under  
19 this subsection”.

20 (b) IRC AMENDMENTS.—

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

24 “(D) SPECIAL RULE.—

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

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

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

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

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

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

13 “(iv) ELECTION.—

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

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

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

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

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

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

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

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

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

6 “(E) APPLICABLE PLAN YEAR.—

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

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

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

24 “(i) IN GENERAL.—If, with respect to  
25 an election for an applicable plan year

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

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

1 graph) to the present value of the remain-  
2 ing unamortized shortfall amortization  
3 base.

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

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

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

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

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

24 “(aa) the sum of the short-  
25 fall amortization installments for



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

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

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

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

1 clause (II), then, subject to item  
2 (bb), such excess shall be treated  
3 as an installment acceleration  
4 amount for the succeeding plan  
5 year.

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

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

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

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

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

23 “(I) IN GENERAL.—For purposes  
24 of this paragraph, the term ‘excess

1 employee compensation' means the  
2 sum of—

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

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

16 “(BB) \$1,000,000, plus

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

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

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

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

19 “(IV) CERTAIN PAYMENTS  
20 UNDER EXISTING CONTRACTS.—There  
21 shall not be taken into account under  
22 subclause (I) any remuneration con-  
23 sisting of nonqualified deferred com-  
24 pensation, restricted stock (or re-  
25 stricted stock units), stock options, or

1 stock appreciation rights payable or  
2 granted under a written binding con-  
3 tract that was in effect on March 1,  
4 2010, and which was not modified in  
5 any material respect before such re-  
6 munerated is paid.

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

14 “(VI) COMMISSIONS.—

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

24 “(bb) SPECIFIED EMPLOY-  
25 EES.—Item (aa) shall not apply

1 in the case of any specified em-  
2 ployee (within the meaning of  
3 section 409A(a)(2)(B)(i)) or any  
4 employee who would be such a  
5 specified employee if the plan  
6 sponsor were a corporation de-  
7 scribed in such section.

8 “(VII) INDEXING OF AMOUNT.—

9 In the case of any calendar year be-  
10 ginning after 2010, the dollar amount  
11 under subclause (I)(aa)(BB) shall be  
12 increased by an amount equal to—

13 “(aa) such dollar amount,  
14 multiplied by

15 “(bb) the cost-of-living ad-  
16 justment determined under sec-  
17 tion 1(f)(3) for the calendar year,  
18 determined by substituting ‘cal-  
19 endar year 2009’ for ‘calendar  
20 year 1992’ in subparagraph (B)  
21 thereof.

22 If the amount of any increase under  
23 clause (i) is not a multiple of \$20,000,  
24 such increase shall be rounded to the  
25 next lowest multiple of \$20,000.

1                   “(v) CERTAIN DIVIDENDS AND RE-  
2                   DEMPTIONS.—

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

7                               “(aa) the excess of—

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

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

23                                   “(bb) the sum of—

24                                       “(AA) the amounts  
25                                       paid for the redemption of



1 stock of the plan sponsor re-  
2 deemed during the plan  
3 year, plus

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

9 “(II) DEFINITIONS.—

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

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

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

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

20                               “(III) ONLY CERTAIN POST-2009  
21                                DIVIDENDS     AND     REDEMPTIONS  
22                                COUNTED.—For purposes of subclause  
23                                (I) (other than for purposes of calcu-  
24                                lating the dividend base amount),  
25                                there shall only be taken into account

1 dividends declared, and redemptions  
2 occurring, after February 28, 2010.

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

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

16 “(VI) EXCEPTION FOR CERTAIN  
17 REDEMPTIONS.—Redemptions of secu-  
18 rities which are not readily tradable  
19 on an established securities market  
20 which—

21 “(aa) are made pursuant to  
22 a plan which is qualified under  
23 section 401 or a shareholder-ap-  
24 proved program,

1                   “(bb) are made on account  
2                   of an employee’s termination of  
3                   employment with the plan spon-  
4                   sor, or the death or disability of  
5                   a shareholder, or

6                   “(cc) were, immediately be-  
7                   fore redemption, held directly or  
8                   indirectly by, or for the benefit  
9                   of, the Federal Government or a  
10                  Federal reserve bank,

11                  shall not be taken into account under  
12                  subclause (I).

13                  “(vi) OTHER DEFINITIONS AND  
14                  RULES.—For purposes of this subpara-  
15                  graph—

16                  “(I) PLAN SPONSOR.—The term  
17                  ‘plan sponsor’ includes any group of  
18                  which the plan sponsor is a member  
19                  and which is treated as a single em-  
20                  ployer under subsection (b), (c), (m),  
21                  or (o) of section 414.

22                  “(II) RESTRICTION PERIOD.—  
23                  The term ‘restriction period’ means,  
24                  with respect to any applicable plan

1 year with respect to which an election  
2 is made under subparagraph (D)—

3 “(aa) except as provided in  
4 item (bb), the 3-year period be-  
5 ginning with the applicable plan  
6 year (or, if later, the first plan  
7 year beginning after December  
8 31, 2009), or

9 “(bb) if the plan sponsor  
10 elects 15-year amortization for  
11 the shortfall amortization base  
12 for the applicable plan year, the  
13 5-year period beginning with  
14 such plan year (or, if later, the  
15 first plan year beginning after  
16 December 31, 2009).

17 “(III) ELECTIONS FOR MULTIPLE  
18 PLANS.—If a plan sponsor makes  
19 elections under subparagraph (D)  
20 with respect to 2 or more plans, the  
21 Secretary shall provide rules for the  
22 application of this subparagraph to  
23 such plans, including rules for the rat-  
24 able allocation of any installment ac-  
25 celeration amount among such plans

1 on the basis of each plan’s relative re-  
2 duction in the plan’s shortfall amorti-  
3 zation installment for the first plan  
4 year in the amortization period de-  
5 scribed in clause (i) (determined with-  
6 out regard to this subparagraph).

7 “(G) MERGERS AND ACQUISITIONS.—The  
8 Secretary shall prescribe rules for the applica-  
9 tion of subparagraphs (D) and (F) in any case  
10 where there is a merger or acquisition involving  
11 a plan sponsor making the election under sub-  
12 paragraph (D).

13 “(H) REGULATIONS AND GUIDANCE.—The  
14 Secretary may prescribe such regulations and  
15 other guidance of general applicability as the  
16 Secretary may determine necessary to achieve  
17 the purposes of subparagraphs (D) and (F).”.

18 (2) NOTICE REQUIREMENT.—

19 (A) IN GENERAL.—Section 4980F of such  
20 Code is amended—

21 (i) by striking “subsection (e)” each  
22 place it appears in subsection (a) and  
23 paragraphs (1) and (3) of subsection (c)  
24 and inserting “subsections (e) and (f)”,

1 (ii) by striking “subsection (e)” in  
2 subsection (c)(2)(A) and inserting “sub-  
3 section (e), (f), or both, as the case may  
4 be”, and

5 (iii) by redesignating subsection (f) as  
6 subsection (g) and by inserting after sub-  
7 section (e) the following new subsection:

8 “(f) NOTICE IN CONNECTION WITH SHORTFALL AM-  
9 ORTIZATION ELECTION.—

10 “(1) IN GENERAL.—Not later 30 days after the  
11 date of an election under clause (iv) of section  
12 430(c)(2)(D) in connection with a plan, the plan ad-  
13 ministrator shall provide notice of such election in  
14 accordance with this subsection to each plan partici-  
15 pant and beneficiary, each labor organization rep-  
16 resenting such participants and beneficiaries, and  
17 the Pension Benefit Guaranty Corporation.

18 “(2) MATTERS INCLUDED IN NOTICE.—Each  
19 notice provided pursuant to this subsection shall set  
20 forth—

21 “(A) a statement that recently enacted leg-  
22 islation permits employers to delay pension  
23 funding;

24 “(B) with respect to required contribu-  
25 tions—

1                   “(i) the amount of contributions that  
2                   would have been required had the election  
3                   not been made;

4                   “(ii) the amount of the reduction in  
5                   required contributions for the applicable  
6                   plan year that occurs on account of the  
7                   election; and

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

10                  “(C) with respect to a plan’s funding sta-  
11                  tus as of the end of the plan year preceding the  
12                  applicable plan year—

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

16                   “(ii) the market value of assets of the  
17                   plan; and

18                  “(D) with respect to installment accelera-  
19                  tion amounts (as defined in section  
20                  430(c)(2)(F)(iii)(I))—

21                   “(i) an explanation of section  
22                   430(c)(2)(F) (relating to increases in  
23                   shortfall amortization installments in cases  
24                   of excess compensation or certain dividends  
25                   or stock redemptions); and



1           “(ii) a statement that increases in re-  
2           quired contributions may occur in the  
3           event of future payments of excess em-  
4           ployee compensation or certain share re-  
5           purchasing or dividend activity and that  
6           subsequent notices of any such payments  
7           or activity will be provided in the annual  
8           funding notice provided pursuant to sec-  
9           tion 101(f) of the Employee Retirement  
10          Income Security Act of 1974.

11          “(3) OTHER REQUIREMENTS.—

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

24           “(B) PROVISION TO DESIGNATED PER-  
25          SONS.—Any notice under paragraph (1) may be

1 provided to a person designated, in writing, by  
2 the person to which it would otherwise be pro-  
3 vided.”.

4 (B) CONFORMING AMENDMENT.—Sub-  
5 section (g) of section 4980F of such Code is  
6 amended by inserting “or (f)” after “subsection  
7 (e)”.

8 (3) DISREGARD OF INSTALLMENT ACCELERA-  
9 TION AMOUNTS IN DETERMINING QUARTERLY CON-  
10 TRIBUTIONS.—Section 430(j)(3) of such Code is  
11 amended by adding at the end the following new  
12 subparagraph:

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

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

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

1 **SEC. 302. APPLICATION OF EXTENDED AMORTIZATION PE-**  
2 **RIOD TO PLANS SUBJECT TO PRIOR LAW**  
3 **FUNDING RULES.**

4 (a) IN GENERAL.—Title I of the Pension Protection  
5 Act of 2006 is amended by redesignating section 107 as  
6 section 108 and by inserting the following after section  
7 106:

8 **“SEC. 107. APPLICATION OF FUNDING RELIEF TO PLANS**  
9 **WITH DELAYED EFFECTIVE DATE.**

10 “(a) ALTERNATIVE ELECTIONS.—

11 “(1) IN GENERAL.—Subject to this section, a  
12 plan sponsor of a plan to which section 104, 105, or  
13 106 of this Act applies may either elect the applica-  
14 tion of subsection (b) with respect to the plan for  
15 not more than 2 applicable plan years or elect the  
16 application of subsection (c) with respect to the plan  
17 for 1 applicable plan year.

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

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

25 “(B) there are no accumulated funding de-  
26 ficiencies (as defined in section 302(a)(2) of the

1 Employee Retirement Income Security Act of  
2 1974 (as in effect immediately before the enact-  
3 ment of this Act) or in section 412(a) of the In-  
4 ternal Revenue Code of 1986 (as so in effect))  
5 with respect to the plan,

6 “(C) there is no lien in favor of the plan  
7 under section 302(d) (as so in effect) or under  
8 section 412(n) of such Code (as so in effect),  
9 and

10 “(D) a distress termination has not been  
11 initiated for the plan under section 4041(e) of  
12 the Employee Retirement Income Security Act  
13 of 1974.

14 “(b) ALTERNATIVE ADDITIONAL FUNDING  
15 CHARGE.—If the plan sponsor elects the application of  
16 this subsection with respect to the plan, for purposes of  
17 applying section 302(d) of the Employee Retirement In-  
18 come Security Act of 1974 (as in effect before the amend-  
19 ments made by this subtitle and subtitle B) and section  
20 412(l) of the Internal Revenue Code of 1986 (as so in  
21 effect)—

22 “(1) the deficit reduction contribution under  
23 paragraph (2) of such section 302(d) and paragraph  
24 (2) of such section 412(l) for such plan for any ap-  
25 plicable plan year, shall be zero, and

1           “(2) the additional funding charge under para-  
2           graph (1) of such section 302(d) and paragraph (1)  
3           of such section 412(l) for such plan for any applica-  
4           ble plan year shall be increased by an amount equal  
5           to the installment acceleration amount (as defined in  
6           sections 303(c)(2)(F)(iii)(I) of such Act (as amend-  
7           ed by the American Jobs and Closing Tax Loopholes  
8           Act of 2010) and 430(c)(2)(F)(iii)(I) of such Code  
9           (as so amended)) with respect to the plan sponsor  
10          for such plan year, determined by treating the later  
11          of such plan year or the first plan year beginning  
12          after December 31, 2009, as the restriction period.

13          “(c) APPLICATION OF 15-YEAR AMORTIZATION.—If  
14          the plan sponsor elects the application of this subsection  
15          with respect to the plan, for purposes of applying section  
16          302(d) of such Act (as in effect before the amendments  
17          made by this subtitle and subtitle B) and section 412(l)  
18          of such Code (as so in effect)—

19                 “(1) in the case of the increased unfunded new  
20                 liability of the plan, the applicable percentage de-  
21                 scribed in paragraph (4)(C) of such section 302(d)  
22                 and paragraph (4)(C) of such section 412(l) for any  
23                 pre-effective date plan year beginning with or after  
24                 the applicable plan year shall be the ratio of—

1           “(A) the annual installments payable in  
2           each plan year if the increased unfunded new li-  
3           ability for such plan year were amortized in  
4           equal installments over the period beginning  
5           with such plan year and ending with the last  
6           plan year in the period of 15 plan years begin-  
7           ning with the applicable plan year, using an in-  
8           terest rate equal to the third segment rate de-  
9           scribed in sections 104(b), 105(b), and 106(b)  
10          of this Act, to

11           “(B) the increased unfunded new liability  
12          for such plan year,

13           “(2) in the case of the excess of the unfunded  
14          new liability over the increased unfunded new liabil-  
15          ity, such applicable percentage shall be determined  
16          without regard to this section, and

17           “(3) the additional funding charge with respect  
18          to the plan for a plan year shall be increased by an  
19          amount equal to the installment acceleration amount  
20          (as defined in section 303(c)(2)(F)(iii) of such Act  
21          (as amended by the American Jobs and Closing Tax  
22          Loopholes Act of 2010 and section 430(c)(2)(F)(iii)  
23          of such Code (as so amended)) with respect to the  
24          plan sponsor for such plan year, determined without

1 regard to subclause (II) of such sections  
2 303(c)(2)(F)(iii) and 430(c)(2)(F)(iii).

3 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
4 poses of this section—

5 “(1) APPLICABLE PLAN YEAR.—

6 “(A) IN GENERAL.—The term ‘applicable  
7 plan year’ with respect to a plan means, subject  
8 to the election of the plan sponsor under sub-  
9 section (a), a plan year beginning in 2009,  
10 2010, or 2011.

11 “(B) ELECTION.—

12 “(i) IN GENERAL.—The election de-  
13 scribed in subsection (a) shall be made at  
14 such times, and in such form and manner,  
15 as shall be prescribed by the Secretary of  
16 the Treasury.

17 “(ii) REDUCTION IN YEARS WHICH  
18 MAY BE ELECTED.—The number of appli-  
19 cable plan years for which an election may  
20 be made under section 303(c)(2)(D) of the  
21 Employee Retirement Income Security Act  
22 of 1974 (as amended by the American  
23 Jobs and Closing Tax Loopholes Act of  
24 2010) or section 430(c)(2)(D) of the Inter-  
25 nal Revenue Code of 1986 (as so amended)

1           shall be reduced by the number of applica-  
2           ble plan years for which an election under  
3           this section is made.

4           “(C) ALLOCATION OF INSTALLMENT AC-  
5           CELERATION AMOUNT FOR MULTIPLE PLAN  
6           ELECTION.—In the case of an election under  
7           this section with respect to 2 or more plans by  
8           the same plan sponsor, the installment accelera-  
9           tion amount shall be apportioned ratably with  
10          respect to such plans in proportion to the def-  
11          icit reduction contributions of the plans deter-  
12          mined without regard to subsection (b)(1).

13          “(2) PLAN SPONSOR.—The term ‘plan sponsor’  
14          shall have the meaning provided such term in section  
15          303(c)(2)(F)(vi)(I) of the Employee Retirement In-  
16          come Security Act of 1974 (as amended by the  
17          American Jobs and Closing Tax Loopholes Act of  
18          2010) and section 430(c)(2)(F)(vi)(I) of the Internal  
19          Revenue Code of 1986 (as so amended).

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



1           “(4) INCREASED UNFUNDED NEW LIABILITY.—

2           The term ‘increased unfunded new liability’ means,  
3           with respect to a year, the excess (if any) of the un-  
4           funded new liability over the amount of unfunded  
5           new liability determined as if the value of the plan’s  
6           assets determined under subsection 302(c)(2) of  
7           such Act (as in effect before the amendments made  
8           by this subtitle and subtitle B) and section  
9           412(c)(2) of such Code (as so in effect) equaled the  
10          product of the current liability of the plan for the  
11          year multiplied by the funded current liability per-  
12          centage (as defined in section 302(d)(8)(B) of such  
13          Act (as so in effect) and 412(l)(8)(B) of such Code  
14          (as so in effect)) of the plan for the second plan year  
15          preceding the first applicable plan year of such plan  
16          for which an election under this section is made.

17          “(5) OTHER DEFINITIONS.—The terms ‘un-  
18          funded new liability’ and ‘current liability’ shall have  
19          the meanings set forth in section 302(d) of such Act  
20          (as so in effect) and section 412(l) of such Code (as  
21          so in effect).

22          “(6) ADDITIONAL FUNDING CHARGE INCREASE  
23          NOT TO EXCEED RELIEF.—

24                 “(A) ELECTION UNDER SUBSECTION (B).—

25                 In the case of an election under subsection (b),

1 an increase resulting from the application of  
2 subsection (b)(2) in the additional funding  
3 charge with respect to a plan for a plan year  
4 shall not exceed the excess (if any) of—

5 “(i) the deficit reduction contribution  
6 under section 302(d)(2) of such Act (as so  
7 in effect) and section 412(l)(2) of such  
8 Code (as so in effect) for such plan year,  
9 determined as if the election had not been  
10 made, over

11 “(ii) the deficit reduction contribution  
12 under such sections for such plan (deter-  
13 mined without regard to any increase  
14 under subsection (b)(2)).

15 “(B) ELECTION UNDER SUBSECTION (C).—  
16 An increase resulting from the application of  
17 subsection (c)(3) in the additional funding  
18 charge with respect to a plan for a plan year  
19 shall not exceed the excess (if any) of—

20 “(i) the sum of the deficit reduction  
21 contributions under section 302(d)(2) of  
22 such Act (as so in effect) and section  
23 412(l)(2) of such Code (as so in effect) for  
24 such plan for such plan year and for all  
25 preceding plan years beginning with or

1 after the applicable plan year, determined  
2 as if the election had not been made, over  
3 “(ii) the sum of the deficit reduction  
4 contributions under such sections for such  
5 plan years (determined without regard to  
6 any increase under subsection (c)(3)).

7 “(e) NOTICE.—Not later 30 days after the date of  
8 an election under subsection (a) in connection with a plan,  
9 the plan administrator shall provide notice pursuant to,  
10 and subject to, rules similar to the rules of sections 204(k)  
11 of the Employee Retirement Income Security Act of 1974  
12 (as amended by the American Jobs and Closing Tax Loop-  
13 holes Act of 2010) and 4980F(f) of the Internal Revenue  
14 Code of 1986 (as so amended).”

15 (b) ELIGIBLE CHARITY PLANS.—Section 104 of such  
16 Act is amended—

17 (1) by striking “eligible cooperative plan” wher-  
18 ever it appears in subsections (a) and (b) and insert-  
19 ing “eligible cooperative plan or an eligible charity  
20 plan”, and

21 (2) by adding at the end the following new sub-  
22 section:

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

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

4           “(2) such employees are employed in at least 40  
5           States,

6           “(3) each such employee (other than a de mini-  
7           mis number of employees) is employed by an em-  
8           ployer described in section 501(c)(3) of such Code  
9           and the primary exempt purpose of each such em-  
10          ployer is to provide services with respect to children,  
11          and

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

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

17          (c) REGULATIONS.—The Secretary of the Treasury  
18 may prescribe such regulations as may be necessary to  
19 carry out the purposes of the amendments made by this  
20 section.

21          (d) EFFECTIVE DATE.—

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

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

4 **SEC. 303. SUSPENSION OF CERTAIN FUNDING LEVEL LIM-**  
5 **TATIONS.**

6           (a) LIMITATIONS ON BENEFIT ACCRUALS.—Section  
7 203 of the Worker, Retiree, and Employer Recovery Act  
8 of 2008 (Public Law 110-458; 122 Stat. 5118) is amend-  
9 ed—

10           (1) by striking “the first plan year beginning  
11           during the period beginning on October 1, 2008, and  
12           ending on September 30, 2009” and inserting “any  
13           plan year beginning during the period beginning on  
14           October 1, 2008, and ending on December 31,  
15           2011”;

16           (2) by striking “substituting” and all that fol-  
17           lows through “for such plan year” and inserting  
18           “substituting for such percentage the plan’s ad-  
19           justed funding target attainment percentage for the  
20           last plan year ending before September 30, 2009,”;  
21           and

22           (3) by striking “for the preceding plan year is  
23           greater” and inserting “for such last plan year is  
24           greater”.

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

1           (1)           ERISA           AMENDMENT.—Section  
2           206(g)(3)(E) of the Employee Retirement Income  
3           Security Act of 1974 is amended by adding at the  
4           end the following new sentence: “For purposes of  
5           applying clause (i) in the case of payments the an-  
6           nuity starting date for which occurs on or before De-  
7           cember 31, 2011, payments under a social security  
8           leveling option shall be treated as not in excess of  
9           the monthly amount paid under a single life annuity  
10          (plus an amount not in excess of a social security  
11          supplement described in the last sentence of section  
12          204(b)(1)(G)).”.

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

24           (3)           EFFECTIVE DATE.—

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

5           (B) PERMITTED APPLICATION.—A plan  
6           shall not be treated as failing to meet the re-  
7           quirements of sections 206(g) of the Employee  
8           Retirement Income Security Act of 1974 (as  
9           amended by this subsection) and section 436(d)  
10          of the Internal Revenue Code of 1986 (as so  
11          amended) if the plan sponsor elects to apply the  
12          amendments made by this subsection to pay-  
13          ments the annuity starting date for which oc-  
14          curs on or after the date of the enactment of  
15          this Act and before January 1, 2011.

16          (c) APPLICATION OF CREDIT BALANCE WITH RE-  
17          SPECT TO LIMITATIONS ON SHUTDOWN BENEFITS AND  
18          UNPREDICTABLE CONTINGENT EVENT BENEFITS.—With  
19          respect to plan years beginning on or before December 31,  
20          2011, in applying paragraph (5)(C) of subsection (g) of  
21          section 206 of the Employee Retirement Income Security  
22          Act of 1974 and subsection (f)(3) of section 436 of the  
23          Internal Revenue Code of 1986 in the case of unpredict-  
24          able contingent events (within the meaning of section  
25          206(g)(1)(C) of such Act and section 436(b)(3) of such

1 Code) occurring on or after January 1, 2010, the ref-  
2 erences, in clause (i) of such paragraph (5)(C) and sub-  
3 paragraph (A) of such subsection (f)(3), to paragraph  
4 (1)(B) of such subsection (g) and subsection (b)(2) of  
5 such section 436 shall be disregarded.

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

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

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

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

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

23 (II) the ratio for such plan for  
24 the plan year beginning after June  
25 30, 2007, and on or before June 30,



1                   2008, as determined under rules pre-  
2                   scribed by the Secretary of the Treas-  
3                   ury.

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

7                   “(I) clause (i) shall apply to plan  
8                   years beginning after December 31,  
9                   2008, and on or before December 31,  
10                  2010, and

11                  “(II) clause (i)(II) shall apply  
12                  based on the last plan year beginning  
13                  before July 1, 2007, as determined  
14                  under rules prescribed by the Sec-  
15                  retary of the Treasury.”.

16                  (b) AMENDMENT TO INTERNAL REVENUE CODE OF  
17 1986.—Paragraph (3) of section 430(f) of the Internal  
18 Revenue Code of 1986 is amended by adding the following  
19 at the end thereof:

20                  “(D) SPECIAL RULE FOR CERTAIN PLAN  
21                  YEARS.—

22                  “(i) IN GENERAL.—For purposes of  
23                  applying subparagraph (C) for plan years  
24                  beginning after June 30, 2009, and on or  
25                  before December 31, 2011, the ratio deter-

1                   mined under such subparagraph for the  
2                   preceding plan year shall be the greater  
3                   of—

4                               “(I) such ratio, as determined  
5                               without regard to this subparagraph,  
6                               or

7                               “(II) the ratio for such plan for  
8                               the plan year beginning after June  
9                               30, 2007, and on or before June 30,  
10                              2008, as determined under rules pre-  
11                              scribed by the Secretary.

12                             “(ii) SPECIAL RULE.—In the case of a  
13                             plan for which the valuation date is not the  
14                             first day of the plan year—

15                               “(I) clause (i) shall apply to plan  
16                               years beginning after December 31,  
17                               2008, and on or before December 31,  
18                               2010, and

19                               “(II) clause (i)(II) shall apply  
20                               based on the last plan year beginning  
21                               before July 1, 2007, as determined  
22                               under rules prescribed by the Sec-  
23                               retary.”.

1 **SEC. 305. INFORMATION REPORTING.**

2 (a) IN GENERAL.—Section 4010(b) of the Employee  
3 Retirement Security Act of 1974 (29 U.S.C. 1310(b)) is  
4 amended by striking paragraph (1) and inserting the fol-  
5 lowing:

6 “(1) either of the following requirements are  
7 met:

8 “(A) the funding target attainment per-  
9 centage (as defined in subsection (d)(2)(B)) at  
10 the end of the preceding plan year of a plan  
11 maintained by the contributing sponsor or any  
12 member of its controlled group is less than 80  
13 percent; or

14 “(B) the aggregate unfunded vested bene-  
15 fits (as determined under section  
16 4006(a)(3)(E)(iii)) of plans maintained by the  
17 contributing sponsor and the members of its  
18 controlled group exceed \$75,000,000 (dis-  
19 regarding plans with no unfunded vested bene-  
20 fits);”.

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

23 **SEC. 306. ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE**  
24 **CARRIER BANKRUPTCY.**

25 (a) GENERAL RULES.—

1           (1) ROLLOVER OF AIRLINE PAYMENT  
2 AMOUNT.—If a qualified airline employee receives  
3 any airline payment amount and transfers any por-  
4 tion of such amount to a traditional IRA within 180  
5 days of receipt of such amount (or, if later, within  
6 180 days of the date of the enactment of this Act),  
7 then such amount (to the extent so transferred)  
8 shall be treated as a rollover contribution described  
9 in section 402(c) of the Internal Revenue Code of  
10 1986. A qualified airline employee making such a  
11 transfer may exclude from gross income the amount  
12 transferred, in the taxable year in which the airline  
13 payment amount was paid to the qualified airline  
14 employee by the commercial passenger airline car-  
15 rier.

16           (2) TRANSFER OF AMOUNTS ATTRIBUTABLE TO  
17 AIRLINE PAYMENT AMOUNT FOLLOWING ROLLOVER  
18 TO ROTH IRA.—A qualified airline employee who has  
19 contributed an airline payment amount to a Roth  
20 IRA that is treated as a qualified rollover contribu-  
21 tion pursuant to section 125 of the Worker, Retiree,  
22 and Employer Recovery Act of 2008 may transfer to  
23 a traditional IRA, in a trustee-to-trustee transfer, all  
24 or any part of the contribution (together with any  
25 net income allocable to such contribution), and the

1 transfer to the traditional IRA will be deemed to  
2 have been made at the time of the rollover to the  
3 Roth IRA, if such transfer is made within 180 days  
4 of the date of the enactment of this Act. A qualified  
5 airline employee making such a transfer may exclude  
6 from gross income the airline payment amount pre-  
7 viously rolled over to the Roth IRA, to the extent an  
8 amount attributable to the previous rollover was  
9 transferred to a traditional IRA, in the taxable year  
10 in which the airline payment amount was paid to the  
11 qualified airline employee by the commercial pas-  
12 senger airline carrier. No amount so transferred to  
13 a traditional IRA may be treated as a qualified roll-  
14 over contribution with respect to a Roth IRA within  
15 the 5-taxable year period beginning with the taxable  
16 year in which such transfer was made.

17 (3) EXTENSION OF TIME TO FILE CLAIM FOR  
18 REFUND.—A qualified airline employee who excludes  
19 an amount from gross income in a prior taxable year  
20 under paragraph (1) or (2) may reflect such exclu-  
21 sion in a claim for refund filed within the period of  
22 limitation under section 6511(a) (or, if later, April  
23 15, 2011).

24 (b) TREATMENT OF AIRLINE PAYMENT AMOUNTS  
25 AND TRANSFERS FOR EMPLOYMENT TAXES.—For pur-

1 poses of chapter 21 of the Internal Revenue Code of 1986  
2 and section 209 of the Social Security Act, an airline pay-  
3 ment amount shall not fail to be treated as a payment  
4 of wages by the commercial passenger airline carrier to  
5 the qualified airline employee in the taxable year of pay-  
6 ment because such amount is excluded from the qualified  
7 airline employee's gross income under subsection (a).

8 (c) DEFINITIONS AND SPECIAL RULES.—For pur-  
9 poses of this section—

10 (1) AIRLINE PAYMENT AMOUNT.—

11 (A) IN GENERAL.—The term “airline pay-  
12 ment amount” means any payment of any  
13 money or other property which is payable by a  
14 commercial passenger airline carrier to a quali-  
15 fied airline employee—

16 (i) under the approval of an order of  
17 a Federal bankruptcy court in a case filed  
18 after September 11, 2001, and before Jan-  
19 uary 1, 2007, and

20 (ii) in respect of the qualified airline  
21 employee's interest in a bankruptcy claim  
22 against the carrier, any note of the carrier  
23 (or amount paid in lieu of a note being  
24 issued), or any other fixed obligation of the  
25 carrier to pay a lump sum amount.

1           The amount of such payment shall be deter-  
2           mined without regard to any requirement to de-  
3           duct and withhold tax from such payment  
4           under sections 3102(a) and 3402(a).

5           (B) EXCEPTION.—An airline payment  
6           amount shall not include any amount payable  
7           on the basis of the carrier’s future earnings or  
8           profits.

9           (2) QUALIFIED AIRLINE EMPLOYEE.—The term  
10          “qualified airline employee” means an employee or  
11          former employee of a commercial passenger airline  
12          carrier who was a participant in a defined benefit  
13          plan maintained by the carrier which—

14                 (A) is a plan described in section 401(a) of  
15                 the Internal Revenue Code of 1986 which in-  
16                 cludes a trust exempt from tax under section  
17                 501(a) of such Code, and

18                 (B) was terminated or became subject to  
19                 the restrictions contained in paragraphs (2) and  
20                 (3) of section 402(b) of the Pension Protection  
21                 Act of 2006.

22          (3) TRADITIONAL IRA.—The term “traditional  
23          IRA” means an individual retirement plan (as de-  
24          fined in section 7701(a)(37) of the Internal Revenue  
25          Code of 1986) which is not a Roth IRA.

1           (4) ROTH IRA.—The term “Roth IRA” has the  
2           meaning given such term by section 408A(b) of such  
3           Code.

4           (d) SURVIVING SPOUSE.—If a qualified airline em-  
5           ployee died after receiving an airline payment amount, or  
6           if an airline payment amount was paid to the surviving  
7           spouse of a qualified airline employee in respect of the  
8           qualified airline employee, the surviving spouse of the  
9           qualified airline employee may take all actions permitted  
10          under section 125 of the Worker, Retiree and Employer  
11          Recovery Act of 2008, or under this section, to the same  
12          extent that the qualified airline employee could have done  
13          had the qualified airline employee survived.

14          (e) EFFECTIVE DATE.—This section shall apply to  
15          transfers made after the date of the enactment of this Act  
16          with respect to airline payment amounts paid before, on,  
17          or after such date.

## 18                   **PART 2—MULTIEMPLOYER PLANS**

### 19   **SEC. 311. OPTIONAL USE OF 30-YEAR AMORTIZATION PERI-** 20                   **ODS.**

21          (a) ELECTIVE SPECIAL RELIEF RULES.—

22                  (1) ERISA AMENDMENT.—Section 304(b) of  
23                  the Employee Retirement Income Security Act of  
24                  1974 is amended by adding at the end the following  
25                  new paragraph:



1           “(8) ELECTIVE SPECIAL RELIEF RULES.—Not-  
2 withstanding any other provision of this sub-  
3 section—

4                   “(A) AMORTIZATION OF NET INVESTMENT  
5 LOSSES.—

6                           “(i) IN GENERAL.—The plan sponsor  
7 of a multiemployer plan with respect to  
8 which the solvency test under subpara-  
9 graph (B) is met may elect to treat the  
10 portion of any experience loss or gain for  
11 a plan year that is attributable to the allo-  
12 cable portion of the net investment losses  
13 incurred in either or both of the first two  
14 plan years ending on or after June 30,  
15 2008, as an experience loss separate from  
16 other experience losses or gains to be am-  
17 ortized in equal annual installments (until  
18 fully amortized) over the period—

19                                   “(I) beginning with the plan year  
20 for which the allocable portion is de-  
21 termined, and

22                                   “(II) ending with the last plan  
23 year in the 30-plan year period begin-  
24 ning with the plan year following the

1 plan year in which such net invest-  
2 ment loss was incurred.

3 “(ii) COORDINATION WITH EXTEN-  
4 SIONS.—If an election is made under  
5 clause (i) for any plan year—

6 “(I) no extension of the amorti-  
7 zation period under clause (i) shall be  
8 allowed under subsection (d), and

9 “(II) if an extension was granted  
10 under subsection (d) for any plan year  
11 before the plan year for which the  
12 election under this subparagraph is  
13 made, such extension shall not result  
14 in such amortization period exceeding  
15 30 years.

16 “(iii) DEFINITIONS AND RULES.—For  
17 purposes of this subparagraph—

18 “(I) NET INVESTMENT  
19 LOSSES.—

20 “(aa) IN GENERAL.—The  
21 net investment loss incurred by a  
22 plan in a plan year is equal to  
23 the excess of—

1                   “(AA) the expected  
2 value of the assets as of the  
3 end of the plan year, over

4                   “(BB) the market value  
5 of the assets as of the end of  
6 the plan year,

7 including any difference attrib-  
8 utable to a criminally fraudulent  
9 investment arrangement.

10                   “(bb) EXPECTED VALUE.—  
11 For purposes of item (aa), the  
12 expected value of the assets as of  
13 the end of a plan year is the ex-  
14 cess of—

15                   “(AA) the market value  
16 of the assets at the begin-  
17 ning of the plan year plus  
18 contributions made during  
19 the plan year, over

20                   “(BB) disbursements  
21 made during the plan year.

22 The amounts described in  
23 subitems (AA) and (BB) shall be  
24 adjusted with interest at the

1 valuation rate to the end of the  
2 plan year.

3 “(II) CRIMINALLY FRAUDULENT  
4 INVESTMENT ARRANGEMENTS.—The  
5 determination as to whether an ar-  
6 rangement is a criminally fraudulent  
7 investment arrangement shall be made  
8 under rules substantially similar to  
9 the rules prescribed by the Secretary  
10 of the Treasury for purposes of sec-  
11 tion 165 of the Internal Revenue Code  
12 of 1986.

13 “(III) AMOUNT ATTRIBUTABLE  
14 TO ALLOCABLE PORTION OF NET IN-  
15 VESTMENT LOSS.—The amount at-  
16 tributable to the allocable portion of  
17 the net investment loss for a plan year  
18 shall be an amount equal to the allo-  
19 cable portion of net investment loss  
20 for the plan year under subclauses  
21 (IV) and (V), increased with interest  
22 at the valuation rate determined from  
23 the plan year after the plan year in  
24 which the net investment loss was in-  
25 curred.

1                   “(IV) ALLOCABLE PORTION OF  
 2                   NET INVESTMENT LOSSES.—Except  
 3                   as provided in subclause (V), the net  
 4                   investment loss incurred in a plan  
 5                   year shall be allocated among the 5  
 6                   plan years following the plan year in  
 7                   which the investment loss is incurred

8                   in accordance with the following table:

<b>“Plan year after the plan year in which the net investment loss was incurred</b>	<b>Allocable portion of net investment loss</b>
1st .....	1/2
2nd .....	0
3rd .....	1/6
4th .....	1/6
5th .....	1/6

9                   “(V) SPECIAL RULE FOR PLANS  
 10                  THAT ADOPT LONGER SMOOTHER PE-  
 11                  RIOD.—If a plan sponsor elects an ex-  
 12                  tended smoothing period for its asset  
 13                  valuation method under subsection  
 14                  (c)(2)(B), then the allocable portion of  
 15                  net investment loss for the first two  
 16                  plan years following the plan year the  
 17                  investment loss is incurred is the  
 18                  same as determined under subclause  
 19                  (IV), but the remaining 1/2 of the net  
 20                  investment loss is allocated ratably  
 21                  over the period beginning with the

1 third plan year following the plan year  
2 the net investment loss is incurred  
3 and ending with the last plan year in  
4 the extended smoothing period.

5 “(VI) SPECIAL RULE FOR OVER-  
6 STATEMENT OF LOSS.—If, for a plan  
7 year, there is an experience loss for  
8 the plan and the amount described in  
9 subclause (III) exceeds the total  
10 amount of the experience loss for the  
11 plan year, then the excess shall be  
12 treated as an experience gain.

13 “(VII) SPECIAL RULE IN YEARS  
14 FOR WHICH OVERALL EXPERIENCE IS  
15 GAIN.—If, for a plan year, there is no  
16 experience loss for the plan, then, in  
17 addition to amortization of net invest-  
18 ment losses under clause (i), the  
19 amount described in subclause (III)  
20 shall be treated as an experience gain  
21 in addition to any other experience  
22 gain.

23 “(B) SOLVENCY TEST.—

24 “(i) IN GENERAL.—An election may  
25 be made under this paragraph if the elec-

1           tion includes certification by the plan actu-  
2           ary in connection with the election that the  
3           plan is projected to have a funded percent-  
4           age at the end of the first 15 plan years  
5           that is not less than 100 percent of the  
6           funded percentage for the plan year of the  
7           election.

8           “(ii) FUNDED PERCENTAGE.— For  
9           purposes of clause (i), the term ‘funded  
10          percentage’ has the meaning provided in  
11          section 305(i)(2), except that the value of  
12          the plan’s assets referred to in section  
13          305(i)(2)(A) shall be the market value of  
14          such assets.

15          “(iii) ACTUARIAL ASSUMPTIONS.—In  
16          making any certification under this sub-  
17          paragraph, the plan actuary shall use the  
18          same actuarial estimates, assumptions, and  
19          methods as those applicable for the most  
20          recent certification under section 305, ex-  
21          cept that the plan actuary may take into  
22          account benefit reductions and increases in  
23          contribution rates, under either funding  
24          improvement plans adopted under section  
25          305(c) or under section 432(c) of the In-

1           ternal Revenue Code of 1986 or rehabilita-  
2           tion plans adopted under section 305(e) or  
3           under section 432(e) of such Code, that  
4           the plan actuary reasonably anticipates will  
5           occur without regard to any change in sta-  
6           tus of the plan resulting from the election.

7           “(C) ADDITIONAL RESTRICTION ON BEN-  
8           EFIT INCREASES.—If an election is made under  
9           subparagraph (A), then, in addition to any  
10          other applicable restrictions on benefit in-  
11          creases, a plan amendment which is adopted on  
12          or after March 10, 2010, and which increases  
13          benefits may not go into effect during the pe-  
14          riod beginning on such date and ending with  
15          the second plan year beginning after such date  
16          unless—

17                   “(i) the plan actuary certifies that—

18                           “(I) any such increase is paid for  
19                           out of additional contributions not al-  
20                           located to the plan immediately before  
21                           the election to have this paragraph  
22                           apply to the plan, and

23                           “(II) the plan’s funded percent-  
24                           age and projected credit balances for  
25                           the first 3 plan years ending on or



1 after such date are reasonably ex-  
2 pected to be at least as high as such  
3 percentage and balances would have  
4 been if the benefit increase had not  
5 been adopted, or

6 “(ii) the amendment is required as a  
7 condition of qualification under part I of  
8 subchapter D of chapter 1 of the Internal  
9 Revenue Code of 1986 or to comply with  
10 other applicable law.

11 “(D) TIME, FORM, AND MANNER OF ELEC-  
12 TION.—An election under this paragraph shall  
13 be made not later than June 30, 2011, and  
14 shall be made in such form and manner as the  
15 Secretary of the Treasury may prescribe.

16 “(E) REPORTING.—A plan sponsor of a  
17 plan to which this paragraph applies shall—

18 “(i) give notice of such election to  
19 participants and beneficiaries of the plan,  
20 and

21 “(ii) inform the Pension Benefit  
22 Guaranty Corporation of such election in  
23 such form and manner as the Pension  
24 Benefit Guaranty Corporation may pre-  
25 scribe.”.

1           (2) IRC AMENDMENT.—Section 431(b) of the  
2 Internal Revenue Code of 1986 is amended by add-  
3 ing at the end the following new paragraph:

4           “(8) ELECTIVE SPECIAL RELIEF RULES.—Not-  
5 withstanding any other provision of this sub-  
6 section—

7           “(A) AMORTIZATION OF NET INVESTMENT  
8 LOSSES.—

9           “(i) IN GENERAL.—The plan sponsor  
10 of a multiemployer plan with respect to  
11 which the solvency test under subpara-  
12 graph (B) is met may elect to treat the  
13 portion of any experience loss or gain for  
14 a plan year that is attributable to the allo-  
15 cable portion of the net investment losses  
16 incurred in either or both of the first two  
17 plan years ending on or after June 30,  
18 2008, as an experience loss separate from  
19 other experience losses and gains to be am-  
20 ortized in equal annual installments (until  
21 fully amortized) over the period—

22           “(I) beginning with the plan year  
23 for which the allocable portion is de-  
24 termined, and

1                   “(II) ending with the last plan  
2                   year in the 30-plan year period begin-  
3                   ning with the plan year following the  
4                   plan year in which such net invest-  
5                   ment loss was incurred.

6                   “(ii) COORDINATION WITH EXTEN-  
7                   SIONS.—If an election is made under  
8                   clause (i) for any plan year—

9                   “(I) no extension of the amorti-  
10                  zation period under clause (i) shall be  
11                  allowed under subsection (d), and

12                  “(II) if an extension was granted  
13                  under subsection (d) for any plan year  
14                  before the plan year for which the  
15                  election under this subparagraph is  
16                  made, such extension shall not result  
17                  in such amortization period exceeding  
18                  30 years.

19                  “(iii) DEFINITIONS AND RULES.—For  
20                  purposes of this subparagraph—

21                  “(I)       NET       INVESTMENT  
22                  LOSSES.—

23                  “(aa) IN GENERAL.—The  
24                  net investment loss incurred by a

1 plan in a plan year is equal to  
2 the excess of—

3 “(AA) the expected  
4 value of the assets as of the  
5 end of the plan year, over

6 “(BB) the market value  
7 of the assets as of the end of  
8 the plan year,

9 including any difference attrib-  
10 utable to a criminally fraudulent  
11 investment arrangement.

12 “(bb) EXPECTED VALUE.—  
13 For purposes of item (aa), the  
14 expected value of the assets as of  
15 the end of a plan year is the ex-  
16 cess of—

17 “(AA) the market value  
18 of the assets at the begin-  
19 ning of the plan year plus  
20 contributions made during  
21 the plan year, over

22 “(BB) disbursements  
23 made during the plan year.

24 The amounts described in  
25 subitems (AA) and (BB) shall be

1 adjusted with interest at the  
2 valuation rate to the end of the  
3 plan year.

4 “(II) CRIMINALLY FRAUDULENT  
5 INVESTMENT ARRANGEMENTS.—The  
6 determination as to whether an ar-  
7 rangement is a criminally fraudulent  
8 investment arrangement shall be made  
9 under rules substantially similar to  
10 the rules prescribed by the Secretary  
11 for purposes of section 165.

12 “(III) AMOUNT ATTRIBUTABLE  
13 TO ALLOCABLE PORTION OF NET IN-  
14 VESTMENT LOSS.—The amount at-  
15 tributable to the allocable portion of  
16 the net investment loss for a plan year  
17 shall be an amount equal to the allo-  
18 cable portion of net investment loss  
19 for the plan year under subclauses  
20 (IV) and (V), increased with interest  
21 at the valuation rate determined from  
22 the plan year after the plan year in  
23 which the net investment loss was in-  
24 curred.

1                   “(IV) ALLOCABLE PORTION OF  
 2                   NET INVESTMENT LOSSES.—Except  
 3                   as provided in subclause (V), the net  
 4                   investment loss incurred in a plan  
 5                   year shall be allocated among the 5  
 6                   plan years following the plan year in  
 7                   which the investment loss is incurred

8                   in accordance with the following table:

<b>“Plan year after the plan year in which the net investment loss was incurred</b>	<b>Allocable portion of net investment loss</b>
1st .....	1/2
2nd .....	0
3rd .....	1/6
4th .....	1/6
5th .....	1/6

9                   “(V) SPECIAL RULE FOR PLANS  
 10                  THAT ADOPT LONGER SMOOTHER PE-  
 11                  RIOD.—If a plan sponsor elects an ex-  
 12                  tended smoothing period for its asset  
 13                  valuation method under subsection  
 14                  (c)(2)(B), then the allocable portion of  
 15                  net investment loss for the first two  
 16                  plan years following the plan year the  
 17                  investment loss is incurred is the  
 18                  same as determined under subclause  
 19                  (IV), but the remaining 1/2 of the net  
 20                  investment loss is allocated ratably  
 21                  over the period beginning with the

1 third plan year following the plan year  
2 the net investment loss is incurred  
3 and ending with the last plan year in  
4 the extended smoothing period.

5 “(VI) SPECIAL RULE FOR OVER-  
6 STATEMENT OF LOSS.—If, for a plan  
7 year, there is an experience loss for  
8 the plan and the amount described in  
9 subclause (III) exceeds the total  
10 amount of the experience loss for the  
11 plan year, then the excess shall be  
12 treated as an experience gain.

13 “(VII) SPECIAL RULE IN YEARS  
14 FOR WHICH OVERALL EXPERIENCE IS  
15 GAIN.—If, for a plan year, there is no  
16 experience loss for the plan, then, in  
17 addition to amortization of net invest-  
18 ment losses under clause (i), the  
19 amount described in subclause (III)  
20 shall be treated as an experience gain  
21 in addition to any other experience  
22 gain.

23 “(B) SOLVENCY TEST.—

24 “(i) IN GENERAL.—An election may  
25 be made under this paragraph if the elec-

1           tion includes certification by the plan actu-  
2           ary in connection with the election that the  
3           plan is projected to have a funded percent-  
4           age at the end of the first 15 plan years  
5           that is not less than 100 percent of the  
6           funded percentage for the plan year of the  
7           election.

8           “(ii) FUNDED PERCENTAGE.— For  
9           purposes of clause (i), the term ‘funded  
10          percentage’ has the meaning provided in  
11          section 432(i)(2), except that the value of  
12          the plan’s assets referred to in section  
13          432(i)(2)(A) shall be the market value of  
14          such assets.

15          “(iii) ACTUARIAL ASSUMPTIONS.—In  
16          making any certification under this sub-  
17          paragraph, the plan actuary shall use the  
18          same actuarial estimates, assumptions, and  
19          methods as those applicable for the most  
20          recent certification under section 432, ex-  
21          cept that the plan actuary may take into  
22          account benefit reductions and increases in  
23          contribution rates, under either funding  
24          improvement plans adopted under section  
25          432(c) or under section 305(c) of the Em-



1            ployee Retirement Income Security Act of  
2            1974 or rehabilitation plans adopted under  
3            section 432(e) or under section 305(e) of  
4            such Act, that the plan actuary reasonably  
5            anticipates will occur without regard to  
6            any change in status of the plan resulting  
7            from the election.

8            “(C) ADDITIONAL RESTRICTION ON BEN-  
9            EFIT INCREASES.—If an election is made under  
10           subparagraph (A), then, in addition to any  
11           other applicable restrictions on benefit in-  
12           creases, a plan amendment which is adopted on  
13           or after March 10, 2010, and which increases  
14           benefits may not go into effect during the pe-  
15           riod beginning on such date and ending with  
16           the second plan year beginning after such date  
17           unless—

18                    “(i) the plan actuary certifies that—  
19                            “(I) any such increase is paid for  
20                            out of additional contributions not al-  
21                            located to the plan immediately before  
22                            the election to have this paragraph  
23                            apply to the plan, and

24                            “(II) the plan’s funded percent-  
25                            age and projected credit balances for

1 the first 3 plan years ending on or  
2 after such date are reasonably ex-  
3 pected to be at least as high as such  
4 percentage and balances would have  
5 been if the benefit increase had not  
6 been adopted, or

7 “(ii) the amendment is required as a  
8 condition of qualification under part I or  
9 to comply with other applicable law.

10 “(D) TIME, FORM, AND MANNER OF ELEC-  
11 TION.—An election under this paragraph shall  
12 be made not later than June 30, 2011, and  
13 shall be made in such form and manner as the  
14 Secretary may prescribe.

15 “(E) REPORTING.—A plan sponsor of a  
16 plan to which this paragraph applies shall—

17 “(i) give notice of such election to  
18 participants and beneficiaries of the plan,  
19 and

20 “(ii) inform the Pension Benefit  
21 Guaranty Corporation of such election in  
22 such form and manner as the Pension  
23 Benefit Guaranty Corporation may pre-  
24 scribe.”.

1 (b) ASSET SMOOTHING FOR MULTIEMPLOYER  
2 PLANS.—

3 (1) ERISA AMENDMENT.—Section 304(c)(2) of  
4 the Employee Retirement Income Security Act of  
5 1974 (29 U.S.C. 1084(c)(2)) is amended—

6 (A) by redesignating subparagraph (B) as  
7 subparagraph (C); and

8 (B) by inserting after subparagraph (A)  
9 the following new subparagraph:

10 “(B) EXTENDED ASSET SMOOTHING PE-  
11 RIOD FOR CERTAIN INVESTMENT LOSSES.—The  
12 Secretary of the Treasury shall not treat the  
13 asset valuation method of a multiemployer plan  
14 as unreasonable solely because such method  
15 spreads the difference between expected and ac-  
16 tual returns for either or both of the first 2  
17 plan years ending on or after June 30, 2008,  
18 over a period of not more than 10 years. Any  
19 change in valuation method to so spread such  
20 difference shall be treated as approved, but only  
21 if, in the case that the plan sponsor has made  
22 an election under subsection (b)(8), any result-  
23 ing change in asset value is treated for pur-  
24 poses of amortization as a net experience loss  
25 or gain.”.

1           (2) IRC AMENDMENT.—Section 431(c)(2) of  
2 the Internal Revenue Code of 1986 is amended—

3           (A) by redesignating subparagraph (B) as  
4 subparagraph (C); and

5           (B) by inserting after subparagraph (A)  
6 the following new subparagraph:

7           “(B) EXTENDED ASSET SMOOTHING PE-  
8 RIOD FOR CERTAIN INVESTMENT LOSSES.—The  
9 Secretary shall not treat the asset valuation  
10 method of a multiemployer plan as unreason-  
11 able solely because such method spreads the dif-  
12 ference between expected and actual returns for  
13 either or both of the first 2 plan years ending  
14 on or after June 30, 2008, over a period of not  
15 more than 10 years. Any change in valuation  
16 method to so spread such difference shall be  
17 treated as approved, but only if, in the case  
18 that the plan sponsor has made an election  
19 under subsection (b)(8), any resulting change in  
20 asset value is treated for purposes of amortiza-  
21 tion as a net experience loss or gain.”.

22 (c) EFFECTIVE DATE AND SPECIAL RULES.—

23           (1) EFFECTIVE DATE.—The amendments made  
24 by this section shall take effect as of the first day  
25 of the first plan year beginning after June 30, 2008,

1       except that any election a plan sponsor makes pur-  
2       suant to this section or the amendments made there-  
3       by that affects the plan's funding standard account  
4       for any plan year beginning before October 1, 2009,  
5       shall be disregarded for purposes of applying the  
6       provisions of section 305 of the Employee Retire-  
7       ment Income Security Act of 1974 and section 432  
8       of the Internal Revenue Code of 1986 to that plan  
9       year.

10               (2) DEEMED APPROVAL FOR CERTAIN FUNDING  
11       METHOD CHANGES.—In the case of a multiemployer  
12       plan with respect to which an election has been  
13       made under section 304(b)(8) of the Employee Re-  
14       tirement Income Security Act of 1974 (as amended  
15       by this section) or section 431(b)(8) of the Internal  
16       Revenue Code of 1986 (as so amended)—

17                       (A) any change in the plan's funding meth-  
18       od for a plan year beginning on or after July  
19       1, 2008, and on or before December 31, 2010,  
20       from a method that does not establish a base  
21       for experience gains and losses to one that does  
22       establish such a base shall be treated as ap-  
23       proved by the Secretary of the Treasury, and

1 (B) any resulting funding method change  
2 base shall be treated for purposes of amortiza-  
3 tion as a net experience loss or gain.

4 **SEC. 312. OPTIONAL LONGER RECOVERY PERIODS FOR**  
5 **MULTIEMPLOYER PLANS IN ENDANGERED**  
6 **OR CRITICAL STATUS.**

7 (a) ERISA AMENDMENTS.—

8 (1) FUNDING IMPROVEMENT PERIOD.—Section  
9 305(c)(4) of the Employee Retirement Income Secu-  
10 rity Act of 1974 is amended—

11 (A) by redesignating subparagraphs (C)  
12 and (D) as subparagraphs (D) and (E), respec-  
13 tively; and

14 (B) by inserting after subparagraph (B)  
15 the following new subparagraph:

16 “(C) ELECTION TO EXTEND PERIOD.—The  
17 plan sponsor of an endangered or seriously en-  
18 dangered plan may elect to extend the applica-  
19 ble funding improvement period by up to 5  
20 years, reduced by any extension of the period  
21 previously elected pursuant to section 205 of  
22 the Worker, Retiree and Employer Relief Act of  
23 2008. Such an election shall be made not later  
24 than June 30, 2011, and in such form and

1 manner as the Secretary of the Treasury may  
2 prescribe.”.

3 (2) REHABILITATION PERIOD.—Section  
4 305(e)(4) of such Act is amended—

5 (A) by redesignating subparagraph (B) as  
6 subparagraph (C);

7 (B) in last sentence of subparagraph (A),  
8 by striking “subparagraph (B)” each place it  
9 appears and inserting “subparagraph (C)”; and

10 (C) by inserting after subparagraph (A)  
11 the following new subparagraph:

12 “(B) ELECTION TO EXTEND PERIOD.—The  
13 plan sponsor of a plan in critical status may  
14 elect to extend the rehabilitation period by up  
15 to five years, reduced by any extension of the  
16 period previously elected pursuant to section  
17 205 of the Worker, Retiree and Employer Re-  
18 lief Act of 2008. Such an election shall be made  
19 not later than June 30, 2011, and in such form  
20 and manner as the Secretary of the Treasury  
21 may prescribe.”.

22 (b) IRC AMENDMENTS.—

23 (1) FUNDING IMPROVEMENT PERIOD.—Section  
24 432(c)(4) of the Internal Revenue Code of 1986 is  
25 amended—

1 (A) by redesignating subparagraphs (C)  
2 and (D) as subparagraphs (D) and (E), respec-  
3 tively; and

4 (B) by inserting after subparagraph (B)  
5 the following new subparagraph:

6 “(C) ELECTION TO EXTEND PERIOD.—The  
7 plan sponsor of an endangered or seriously en-  
8 dangered plan may elect to extend the applica-  
9 ble funding improvement period by up to 5  
10 years, reduced by any extension of the period  
11 previously elected pursuant to section 205 of  
12 the Worker, Retiree and Employer Relief Act of  
13 2008. Such an election shall be made not later  
14 than June 30, 2011, and in such form and  
15 manner as the Secretary may prescribe.”.

16 (2) REHABILITATION PERIOD.—Section  
17 432(e)(4) of such Code is amended—

18 (A) by redesignating subparagraph (B) as  
19 subparagraph (C);

20 (B) in last sentence of subparagraph (A),  
21 by striking “subparagraph (B)” each place it  
22 appears and inserting “subparagraph (C)”; and

23 (C) by inserting after subparagraph (A)  
24 the following new subparagraph:



1           “(B) ELECTION TO EXTEND PERIOD.—The  
2           plan sponsor of a plan in critical status may  
3           elect to extend the rehabilitation period by up  
4           to five years, reduced by any extension of the  
5           period previously elected pursuant to section  
6           205 of the Worker, Retiree and Employer Re-  
7           lief Act of 2008. Such an election shall be made  
8           not later than June 30, 2011, and in such form  
9           and manner as the Secretary may prescribe.”.

10          (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply with respect to funding improve-  
12 ment periods and rehabilitation periods in connection with  
13 funding improvement plans and rehabilitation plans  
14 adopted or updated on or after the date of the enactment  
15 of this Act.

16 **SEC. 313. MODIFICATION OF CERTAIN AMORTIZATION EX-**  
17 **TENSIONS UNDER PRIOR LAW.**

18          (a) IN GENERAL.—In the case of an amortization ex-  
19 tension that was granted to a multiemployer plan under  
20 the terms of section 304 of the Employee Retirement In-  
21 come Security Act of 1974 (as in effect immediately prior  
22 to enactment of the Pension Protection Act of 2006) or  
23 section 412(e) of the Internal Revenue Code (as so in ef-  
24 fect), the determination of whether any financial condition  
25 on the amortization extension is satisfied shall be made

1 by assuming that for any plan year that contains some  
2 or all of the period beginning June 30, 2008, and ending  
3 October 31, 2008, the actual rate of return on the plan  
4 assets was equal to the interest rate used for purposes  
5 of charging or crediting the funding standard account in  
6 such plan year, unless the plan sponsor elects otherwise  
7 in such form and manner as shall be prescribed by the  
8 Secretary of Treasury.

9 (b) REVOCATION OF AMORTIZATION EXTENSIONS.—  
10 The plan sponsor of a multiemployer plan may, in such  
11 form and manner and after such notice as may be pre-  
12 scribed by the Secretary, revoke any amortization exten-  
13 sion described in subsection (a), effective for plan years  
14 following the date of the revocation.

15 **SEC. 314. ALTERNATIVE DEFAULT SCHEDULE FOR PLANS**  
16 **IN ENDANGERED OR CRITICAL STATUS.**

17 (a) ERISA AMENDMENTS.—

18 (1) ENDANGERED STATUS.—Section 305(c)(7)  
19 of the Employee Retirement Income Security Act of  
20 1974 (29 U.S.C. 1085(c)(7)) is amended by adding  
21 at the end the following new subparagraph:

22 “(D) ALTERNATIVE DEFAULT SCHED-  
23 ULE.—

24 “(i) IN GENERAL.—A plan sponsor  
25 may, for purposes of this paragraph, des-

1            designate an alternative schedule of contribu-  
2            tion rates and related benefit changes  
3            meeting the requirements of clause (ii) as  
4            the default schedule, in lieu of the default  
5            schedule referred to in subparagraph (A).

6            “(ii) REQUIREMENTS.—An alternative  
7            schedule designated pursuant to clause (i)  
8            meets the requirements of this clause if  
9            such schedule has been adopted in collec-  
10          tive bargaining agreements covering at  
11          least 75 percent of the active participants  
12          as of the date of the designation.”.

13          (2) CRITICAL STATUS.—Section 305(e)(3) of  
14          such Act (29 U.S.C. 1085(e)(3)) is amended by add-  
15          ing at the end the following new subparagraph:

16                  “(D) ALTERNATIVE DEFAULT SCHED-  
17                  ULE.—

18                  “(i) IN GENERAL.—A plan sponsor  
19                  may, for purposes of subparagraph (C),  
20                  designate an alternative schedule of con-  
21                  tribution rates and related benefit changes  
22                  meeting the requirements of clause (ii) as  
23                  the default schedule, in lieu of the default  
24                  schedule referred to in subparagraph  
25                  (C)(i).

1           “(ii) REQUIREMENTS.—An alternative  
2           schedule designated pursuant to clause (i)  
3           meets the requirements of this clause if  
4           such schedule has been adopted in collec-  
5           tive bargaining agreements covering at  
6           least 75 percent of the active participants  
7           as of the date of the designation.”.

8           (b) INTERNAL REVENUE CODE AMENDMENTS.—

9           (1) ENDANGERED STATUS.—Section 432(c)(7)  
10          of the Internal Revenue Code of 1986 is amended by  
11          adding at the end the following new subparagraph:

12                   “(C) ALTERNATIVE DEFAULT SCHED-  
13                   ULE.—

14                   “(i) IN GENERAL.—A plan sponsor  
15                   may, for purposes of this paragraph, des-  
16                   ignate an alternative schedule of contribu-  
17                   tion rates and related benefit changes  
18                   meeting the requirements of clause (ii) as  
19                   the default schedule, in lieu of the default  
20                   schedule referred to in subparagraph (A).

21                   “(ii) REQUIREMENTS.—An alternative  
22                   schedule designated pursuant to clause (i)  
23                   meets the requirements of this clause if  
24                   such schedule has been adopted in collec-  
25                   tive bargaining agreements covering at

1           least 75 percent of the active participants  
2           as of the date of the designation.”.

3           (2) CRITICAL STATUS.—Section 432(e)(3) of  
4           such Code is amended by adding at the end the fol-  
5           lowing new subparagraph:

6                   “(D) ALTERNATIVE DEFAULT SCHED-  
7           ULE.—

8                           “(i) IN GENERAL.—A plan sponsor  
9                           may, for purposes of subparagraph (C),  
10                           designate an alternative schedule of con-  
11                           tribution rates and related benefit changes  
12                           meeting the requirements of clause (ii) as  
13                           the default schedule, in lieu of the default  
14                           schedule referred to in subparagraph  
15                           (C)(i).

16                           “(ii) REQUIREMENTS.—An alternative  
17                           schedule designated pursuant to clause (i)  
18                           meets the requirements of this clause if  
19                           such schedule has been adopted in collec-  
20                           tive bargaining agreements covering at  
21                           least 75 percent of the active participants  
22                           as of the date of the designation.”.

23           (c) EFFECTIVE DATE.—The amendments made by  
24           this section shall apply to designations of default schedules

1 by plan sponsors on or after the date of the enactment  
2 of this Act.

3 (d) CROSS-REFERENCE.—For sunset of the amend-  
4 ments made by this section, see section 221(c) of the Pen-  
5 sion Protection Act of 2006.

6 **SEC. 315. TRANSITION RULE FOR CERTIFICATIONS OF**  
7 **PLAN STATUS.**

8 (a) IN GENERAL.—A plan actuary shall not be treat-  
9 ed as failing to meet the requirements of section  
10 305(b)(3)(A) of the Employee Retirement Income Secu-  
11 rity Act of 1974 and section 432(b)(3)(A) of the Internal  
12 Revenue Code of 1986 in connection with a certification  
13 required under such sections the deadline for which is  
14 after the date of the enactment of this Act if the plan  
15 actuary makes such certification at any time earlier than  
16 75 days after the date of the enactment of this Act.

17 (b) REVISION OF PRIOR CERTIFICATION.—

18 (1) IN GENERAL.—If—

19 (A) a plan sponsor makes an election  
20 under section 304(b)(8) of the Employee Re-  
21 tirement Income Security Act of 1974 and sec-  
22 tion 431(b)(8) of the Internal Revenue Code of  
23 1986, or under section 304(c)(2)(B) of such  
24 Act and section 432(c)(2)(B) such Code, with

1           respect to a plan for a plan year beginning on  
2           or after October 1, 2009, and

3                   (B) the plan actuary's certification of the  
4           plan status for such plan year (hereinafter in  
5           this subsection referred to as "original certifi-  
6           cation") did not take into account any election  
7           so made,

8           then the plan sponsor may direct the plan actuary  
9           to make a new certification with respect to the plan  
10          for the plan year which takes into account such elec-  
11          tion (hereinafter in this subsection referred to as  
12          "new certification") if the plan's status under sec-  
13          tion 305 of such Act and section 432 of such Code  
14          would change as a result of such election. Any such  
15          new certification shall be treated as the most recent  
16          certification referred to in section 304(b)(3)(B)(iii)  
17          of such Act and section 431(b)(8)(B)(iii) of such  
18          Code.

19                   (2) DUE DATE FOR NEW CERTIFICATION.—Any  
20          such new certification shall be made pursuant to sec-  
21          tion 305(b)(3) of such Act and section 432(b)(3) of  
22          such Code; except that any such new certification  
23          shall be made not later than 75 days after the date  
24          of the enactment of this Act.

25                   (3) NOTICE.—

1 (A) IN GENERAL.—Except as provided in  
2 subparagraph (B), any such new certification  
3 shall be treated as the original certification for  
4 purposes of section 305(b)(3)(D) of such Act  
5 and section 432(b)(3)(D) of such Code.

6 (B) NOTICE ALREADY PROVIDED.—In any  
7 case in which notice has been provided under  
8 such sections with respect to the original certifi-  
9 cation, not later than 30 days after the new  
10 certification is made, the plan sponsor shall  
11 provide notice of any change in status under  
12 rules similar to the rules such sections.

13 (4) EFFECT OF CHANGE IN STATUS.—If a plan  
14 ceases to be in critical status pursuant to the new  
15 certification, then the plan shall, not later than 30  
16 days after the due date described in paragraph (2),  
17 cease any restriction of benefit payments, and im-  
18 position of contribution surcharges, under section 305  
19 of such Act and section 432 of such Code by reason  
20 of the original certification.

## 21 **Subtitle B—Fee Disclosure**

### 22 **SEC. 321. SHORT TITLE OF SUBTITLE.**

23 This subtitle may be cited as the “Defined Contribu-  
24 tion Fee Disclosure Act of 2010”.



1 **SEC. 322. AMENDMENTS TO THE EMPLOYEE RETIREMENT**  
2 **INCOME SECURITY ACT OF 1974.**

3 (a) REQUIREMENTS RELATING TO SERVICE PRO-  
4 VIDERS AND PLAN ADMINISTRATORS OF INDIVIDUAL AC-  
5 COUNT PLANS.—

6 (1) IN GENERAL.—Part 1 of subtitle B of title  
7 I of the Employee Retirement Income Security Act  
8 of 1974 is amended—

9 (A) by redesignating section 111 (29  
10 U.S.C. 1031) as section 113; and

11 (B) by inserting after section 110 (29  
12 U.S.C. 1030) the following new sections:

13 **“SEC. 111. REQUIREMENT TO PROVIDE NOTICE OF PLAN**  
14 **FEE INFORMATION TO PLAN ADMINISTRA-**  
15 **TORS.**

16 “(a) INITIAL STATEMENT OF SERVICES PROVIDED  
17 AND REVENUES RECEIVED.—

18 “(1) IN GENERAL.—In any case in which a  
19 service provider enters into a contract or arrange-  
20 ment to provide services to an individual account  
21 plan, the service provider shall, before entering into  
22 such contract or arrangement, provide to the plan  
23 administrator a single written statement which in-  
24 cludes, with respect to the first plan year covered  
25 under such contract or arrangement, the following  
26 information:

1           “(A) A detailed description of the services  
2           which will be provided to the plan by the service  
3           provider, the amount of total expected annual  
4           revenue with respect to such services, the man-  
5           ner in which such revenue will be collected, and  
6           the extent to which such revenue varies between  
7           specific investment options.

8           “(B)(i) In the case of a service provider  
9           who is providing recordkeeping services with re-  
10          spect to any investment option, such informa-  
11          tion as is necessary for the plan administrator  
12          to satisfy the requirements of subparagraphs  
13          (B)(ii)(IV) and (C) of section 105(a)(2) and  
14          paragraphs (1) and (3) of section 112(a) with  
15          respect to such option, including specifying the  
16          method used by the service provider in dis-  
17          closing or estimating expenses under subpara-  
18          graphs (C)(iv) and (E) of section 105(a)(2).

19          “(ii) To the extent provided in regulations  
20          issued by the Secretary, clause (i) shall not  
21          apply in the case of a service provider described  
22          in such clause if the service provider receives a  
23          written notification from the plan administrator  
24          that the information described in such clause in  
25          connection with the investment option is pro-

1 vided by another service provider pursuant to a  
2 contract or arrangement to provide services to  
3 the plan.

4 “(C) A statement indicating—

5 “(i) the identity of any investment op-  
6 tions offered under the plan with respect  
7 to which the service provider provides sub-  
8 stantial investment, trustee, custodial, or  
9 administrative services, and

10 “(ii) in the case of any investment op-  
11 tion, whether the service provider expects  
12 to receive any component of total expected  
13 annual revenue described in paragraph  
14 (2)(A)(ii)(II) with respect to such option  
15 and the amount of any such component.

16 “(D) The portion of total expected annual  
17 revenue which is properly allocable to each of  
18 the following:

19 “(i) Administration and record-  
20 keeping.

21 “(ii) Investment management.

22 “(iii) Other services or amounts not  
23 described in clause (i) or (ii).

24 “(2) DEFINITION OF TOTAL EXPECTED ANNUAL  
25 REVENUE.—For purposes of this section—

1           “(A) IN GENERAL.—The term ‘total ex-  
2           pected annual revenue’ means, with respect to  
3           any plan year—

4                   “(i) any amount expected to be re-  
5                   ceived during such plan year from the plan  
6                   (including amounts paid from participant  
7                   accounts), any participant or beneficiary,  
8                   or any plan sponsor in connection with the  
9                   contract or arrangement referred to in  
10                  paragraph (1), and

11                  “(ii) any amount not taken into ac-  
12                  count under clause (i) which is expected to  
13                  be received during such plan year by the  
14                  service provider in connection with—

15                          “(I) plan administration, record-  
16                          keeping, consulting, management, or  
17                          investment or other service activities  
18                          undertaken by the service provider  
19                          with respect to the plan, or

20                          “(II) plan administration, record-  
21                          keeping, consulting, management, or  
22                          investment or other service activities  
23                          undertaken by any other person with  
24                          respect to the plan.

1           “(B) EXPRESSED AS DOLLAR AMOUNT OR  
2           PERCENTAGE OF ASSETS.—Total expected an-  
3           nual revenue and any amount indicated under  
4           paragraph (1)(C)(ii) may be expressed as a dol-  
5           lar amount or as a percentage of assets (or a  
6           combination thereof), as appropriate. To the ex-  
7           tent that total expected annual revenue is ex-  
8           pressed as a percentage of assets, such percent-  
9           age shall be properly allocated among clauses  
10          (i), (ii), and (iii) of paragraph (1)(D).

11          “(C) PROVISION OF FEE SCHEDULE FOR  
12          CERTAIN PARTICIPANT INITIATED TRANS-  
13          ACTIONS.—In the case of amounts expected to  
14          be received from participants or beneficiaries  
15          under the plan (or from an account of a partici-  
16          pant or beneficiary) as a fee or charge in con-  
17          nection with a transaction initiated by the par-  
18          ticipant (other than loads, commissions, broker-  
19          age fees, and other investment related trans-  
20          actions)—

21                 “(i) such amounts shall not be taken  
22                 into account in determining total expected  
23                 annual revenue, and

24                 “(ii) the service provider shall provide  
25                 to the plan administrator, as part of the

1 statement referred to in paragraph (1), a  
2 fee schedule which describes each such fee  
3 or charge, the amount thereof, and the  
4 manner in which such amount is collected.

5 “(D) ESTIMATIONS.—In determining  
6 under this subsection any amount which is ex-  
7 pected to be received by the service provider,  
8 the service provider shall provide a reasonable  
9 estimate of such amount and shall indicate in  
10 the statement referred to in paragraph (1)  
11 whether such amount disclosed is an estimate.  
12 Any such estimate shall be based on reasonable  
13 assumptions specified in such statement.

14 “(3) ALLOCATION RULES.—The Secretary shall  
15 provide rules for defining total expected annual rev-  
16 enue and for the appropriate and consistent alloca-  
17 tion of total expected annual revenue among clauses  
18 (i), (ii), and (iii) of paragraph (1)(D), except that  
19 the entire amount of such revenue shall be allocated  
20 among such clauses and no amount may be taken  
21 into account under more than one clause.

22 “(4) DISCLOSURE OF DIFFERENT PRICING OF  
23 INVESTMENT OPTIONS.—In the case of investment  
24 options with more than one share class or price level,  
25 the Secretary shall prescribe regulations for the dis-

1 closure of the different share classes or price levels  
2 available as part of the statement in paragraph (1).  
3 Such regulations shall provide guidance with respect  
4 to the disclosure of the basis for qualifying for such  
5 share classes or price levels, which may include  
6 amounts invested, number of participants, or other  
7 factors.

8 “(5) DISCLOSURE OF INVESTMENT TRANS-  
9 ACTION COSTS.—To the extent provided in regula-  
10 tions issued by the Secretary, a service provider shall  
11 separately disclose the transaction costs (including  
12 sales commissions) for each investment option for  
13 the preceding year.

14 “(b) ANNUAL STATEMENTS.—With respect to each  
15 plan year after the plan year covered by the statement  
16 described in subsection (a), the service provider shall pro-  
17 vide the plan administrator a single written statement  
18 which includes the information described in subsection (a)  
19 with respect to such subsequent plan year.

20 “(c) MATERIAL CHANGE STATEMENTS.—In the case  
21 of any event or other change during a plan year which  
22 causes the information included in any statement de-  
23 scribed in subsection (a) or (b) with respect to such plan  
24 year to become materially incorrect, the service provider  
25 shall provide the plan administrator a written statement

1 providing the corrected information not later than 30 days  
2 after the service provider knows, or exercising reasonable  
3 diligence would have known, of such event or other change.

4 “(d) TIME AND MANNER OF PROVIDING STATEMENT  
5 AND OTHER MATERIALS.—The statement referred to in  
6 subsections (a)(1) and (b) shall be made at such time and  
7 in such manner as the Secretary may provide. Other mate-  
8 rials required to be provided under this section shall be  
9 provided in such manner as the Secretary may provide.  
10 All information included in such statements and other ma-  
11 terials shall be presented in a manner which is easily un-  
12 derstood by the typical plan administrator.

13 “(e) EXCEPTION FOR SMALL SERVICE PROVIDERS.—  
14 The requirements of this section shall not apply with re-  
15 spect to any contract or arrangement for services provided  
16 with respect to an individual account plan for any plan  
17 year if—

18 “(1) the total annual revenue expected by the  
19 service provider to be received with respect to the  
20 plan for such plan year is less than \$5,000, and

21 “(2) the service provider provides a written  
22 statement to the plan administrator that the total  
23 annual revenue expected by the service provider to  
24 be received with respect to the plan is less than  
25 \$5,000.



1 Service providers who expect to receive de minimis annual  
2 revenue from the plan need not provide the written state-  
3 ment described in paragraph (2). The Secretary may by  
4 regulation or other guidance adjust the dollar amount  
5 specified in this subsection.

6 “(f) DEFINITION OF SERVICE PROVIDER.—For pur-  
7 poses of this section—

8 “(1) IN GENERAL.—The term ‘service provider’  
9 includes any person providing administration, rec-  
10 ordkeeping, consulting, investment management  
11 services, or investment advice to an individual ac-  
12 count plan under a contract or arrangement.

13 “(2) CONTROLLED GROUPS TREATED AS ONE  
14 SERVICE PROVIDER.—All persons which would be  
15 treated as a single employer under subsection (b) or  
16 (c) of section 414 of the Internal Revenue Code of  
17 1986 if section 1563(a)(1) of such Code were ap-  
18 plied—

19 “(A) except as provided by subparagraph  
20 (B), by substituting ‘more than 50 percent’ for  
21 ‘at least 80 percent’ each place it appears  
22 therein, or

23 “(B) for purposes of subsection  
24 (a)(1)(C)(i), by substituting ‘at least 20 per-

1 cent' for 'at least 80 percent' each place it ap-  
2 pears therein,  
3 shall be treated as one person for purposes of this  
4 section

5 **“SEC. 112. REQUIREMENT TO PROVIDE NOTICE TO PARTICI-**  
6 **PANTS OF PLAN FEE INFORMATION.**

7 “(a) DISCLOSURES TO PARTICIPANTS AND BENE-  
8 FICIARIES.—

9 “(1) ADVANCE NOTICE OF AVAILABLE INVEST-  
10 MENT OPTIONS.—

11 “(A) IN GENERAL.—The plan adminis-  
12 trator of an applicable individual account plan  
13 shall provide to the participant or beneficiary  
14 notice of the investment options available under  
15 the plan before—

16 “(i) the earliest date provided for  
17 under the plan for the participant's initial  
18 investment of any contribution made on  
19 behalf of such participant, and

20 “(ii) the effective date of any change  
21 in the list of investment options available  
22 under the plan, unless such advance notice  
23 is impracticable, and in such case, as soon  
24 as is practicable.

1                   “(B) INFORMATION INCLUDED IN NO-  
2                   TICE.—The notice required under subparagraph  
3                   (A) shall—

4                   “(i) set forth, with respect to each  
5                   available investment option—

6                   “(I) the name of the option,

7                   “(II) a general description of the  
8                   option’s investment objectives and  
9                   principal investment strategies, prin-  
10                  cipal risk and return characteristics,  
11                  and the name of the option’s invest-  
12                  ment manager,

13                  “(III) whether the investment op-  
14                  tion is designed to be a comprehen-  
15                  sive, stand-alone investment for retire-  
16                  ment that provides varying degrees of  
17                  long-term appreciation and capital  
18                  preservation through a mix of equity  
19                  and fixed income exposures,

20                  “(IV) the extent to which the in-  
21                  vestment option is actively managed  
22                  or passively managed in relation to an  
23                  index and the difference between ac-  
24                  tive management and passive manage-  
25                  ment,

1                   “(V) where, and the manner in  
2                   which, additional plan-specific, option-  
3                   specific, and generally available in-  
4                   vestment information may be ob-  
5                   tained, and

6                   “(VI) a statement explaining that  
7                   investment options should not be eval-  
8                   uated solely on the basis of the  
9                   charges for each option but should  
10                  also be based on consideration of  
11                  other key factors, including the risk  
12                  level of the option, the investment ob-  
13                  jectives of the option, historical re-  
14                  turns of the option, and the partici-  
15                  pant’s personal investment objectives,

16                  “(ii) include a statement of the right  
17                  under paragraph (2) of participants and  
18                  beneficiaries to request, and a description  
19                  of how a participant or beneficiary may re-  
20                  quest, a copy of the statements received by  
21                  the plan administrator under section 111  
22                  with respect to the plan, and

23                  “(iii) include the plan fee comparison  
24                  chart described in subparagraph (C).

25                  “(C) PLAN FEE COMPARISON CHART.—

1 “(i) IN GENERAL.—

2 “(I) IN GENERAL.—The notice  
3 provided under this paragraph shall  
4 include a plan fee comparison chart  
5 consisting of a comparison of the serv-  
6 ice and investment charges that will  
7 or could be assessed against the ac-  
8 count of the participant or beneficiary  
9 with respect to the plan year.

10 “(II) EXPRESSED AS DOLLAR  
11 AMOUNT OR FORMULA.—For purposes  
12 of this subparagraph, such charges  
13 shall be provided in the form of a dol-  
14 lar amount or as a formula (such as  
15 a percentage of assets), as appro-  
16 priate.

17 “(ii) CATEGORIZATION OF  
18 CHARGES.—The plan fee comparison chart  
19 shall provide information in relation to the  
20 following categories of charges that will or  
21 could be assessed against the account of  
22 the participant or beneficiary:

23 “(I) ASSET-BASED CHARGES SPE-  
24 CIFIC TO INVESTMENT.—Charges that  
25 vary depending on the investment op-

1 tions selected by the participant or  
2 beneficiary, including the annual oper-  
3 ating expenses of the investment op-  
4 tion and investment-specific asset-  
5 based charges (such as loads, commis-  
6 sions, brokerage fees, exchange fees,  
7 redemption fees, and surrender  
8 charges). Except as provided by the  
9 Secretary in regulations under this  
10 section, the information relating to  
11 such charges shall include a statement  
12 noting any charges for 1 or more in-  
13 vestment options which pay for serv-  
14 ices other than investment manage-  
15 ment.

16 “(II) RECURRING ASSET-BASED  
17 CHARGES NOT SPECIFIC TO INVEST-  
18 MENT.—Charges that are assessed as  
19 a percentage of the total assets in the  
20 account of the participant or bene-  
21 ficiary, regardless of the investment  
22 option selected.

23 “(III) ADMINISTRATIVE AND  
24 TRANSACTION-BASED CHARGES.—Ad-  
25 ministration and transaction-based

1 charges, including fees charged to  
2 participants to cover plan administra-  
3 tion, compliance, and recordkeeping  
4 costs, plan loan origination fees, pos-  
5 sible redemption fees, and possible  
6 surrender charges, that are not as-  
7 sessed as a percentage of the total as-  
8 sets in the account and are either  
9 automatically deducted each year or  
10 result from certain transactions en-  
11 gaged in by the participant or bene-  
12 ficiary.

13 “(IV) OTHER CHARGES.—Any  
14 other charges which may be deducted  
15 from participants’ or beneficiaries’ ac-  
16 counts and which are not described in  
17 subclauses (I), (II), and (III).

18 “(iii) FEES AND HISTORICAL RE-  
19 TURNS.—The plan fee comparison chart  
20 shall include—

21 “(I) the historical returns, net of  
22 fees and expenses, for the previous  
23 year, 5 years, and 10 years (or for the  
24 period since inception, if shorter) with  
25 respect to such investment option, and

1                   “(II) the historical returns of an  
2                   appropriate benchmark, index, or  
3                   other point of comparison for each  
4                   such period.

5                   “(D) MODEL NOTICES.—The Secretary  
6                   shall prescribe one or more model notices that  
7                   may be used for purposes of satisfying the re-  
8                   quirements of this paragraph, including model  
9                   plan fee comparison charts.

10                  “(E) ESTIMATIONS.—For purposes of pro-  
11                  viding the notice required under this paragraph,  
12                  the plan administrator may provide a reason-  
13                  able and representative estimate for any  
14                  charges or percentages disclosed under subpara-  
15                  graph (B) or (C) and shall indicate whether the  
16                  amount of any such charges or percentages dis-  
17                  closed is an estimate.

18                  “(2) DISCLOSURE OF SERVICE PROVIDER  
19                  STATEMENTS.—The plan administrator shall provide  
20                  to any participant or beneficiary a copy of any state-  
21                  ment received pursuant to section 111 within 30  
22                  days after receipt of a request for such a statement.

23                  “(3) NOTICE OF MATERIAL CHANGES.—In the  
24                  case of any event or other change which causes the  
25                  information included in any notice described in para-



1 graph (1) to become materially incorrect, the plan  
2 administrator shall provide participants and bene-  
3 ficiaries a written statement providing the corrected  
4 information not later than 30 days after the plan  
5 administrator knows, or exercising reasonable dili-  
6 gence would have known, of such event or other  
7 change.

8 “(4) TIME AND MANNER OF PROVIDING NO-  
9 TICES AND DISCLOSURES.—

10 “(A) IN GENERAL.—The notices described  
11 in paragraph (1) shall be provided at such  
12 times and in such manner as the Secretary may  
13 provide. Other notices and materials required to  
14 be provided under this subsection shall be pro-  
15 vided in such manner as the Secretary may pro-  
16 vide.

17 “(B) MANNER OF PRESENTATION.—

18 “(i) IN GENERAL.—All information in-  
19 cluded in such notices or explanations shall  
20 be presented in a manner which is easily  
21 understood by the typical participant.

22 “(ii) GENERIC EXAMPLE OF OPER-  
23 ATING EXPENSES OF INVESTMENT OP-  
24 TIONS.—The information described in  
25 paragraph (1)(C)(ii)(I) shall include a ge-

1           neric example describing the charges that  
2           would apply during an annual period with  
3           respect to a \$10,000 investment in the in-  
4           vestment option.

5           “(b) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—  
6 For purposes of this section, the term ‘applicable indi-  
7 vidual account plan’ means the portion of any individual  
8 account plan which permits a participant or beneficiary  
9 to exercise control over assets in his or her account.

10          “(c) REGULATIONS.—The Secretary shall prescribe  
11 such regulations or other guidance as may be necessary  
12 or appropriate to carry out the purposes of this section,  
13 including regulations or other guidance which—

14           “(1) provide a later deadline for providing the  
15 notice of investment menu changes described in sub-  
16 section (a)(3) in appropriate circumstances, and

17           “(2) provide guidelines, and a safe harbor, for  
18 the selection of an appropriate benchmark, index, or  
19 other point of comparison for an investment option  
20 under subsection (a)(1)(C)(iii)(II).”.

21          “(2) CLERICAL AMENDMENT.—The table of con-  
22 tents in section 1 of such Act is amended by striking  
23 the item relating to section 111 and inserting the  
24 following new items:

“Sec. 111. Requirement to provide notice of plan fee information to plan ad-  
ministrators.

“Sec. 112. Requirement to provide notice to participants of plan fee information.

“Sec. 113. Repeal and effective date.”.

1 (b) QUARTERLY BENEFIT STATEMENTS.—Section  
2 105 of such Act (29 U.S.C. 1025) is amended—

3 (1) in subsection (a)(2)—

4 (A) by redesignating subparagraph (C) as  
5 subparagraph (G);

6 (B) in subparagraph (B)(ii)—

7 (i) in subclause (II), by striking “di-  
8 versified, and” and inserting “diversified,”;

9 (ii) in subclause (III) by striking the  
10 period and inserting “, and”; and

11 (iii) by adding after subclause (III)  
12 the following new subclause:

13 “(IV) with respect to the portion  
14 of a participant’s account for which  
15 the participant has the right to direct  
16 the investment of assets, the informa-  
17 tion described in subparagraph (C).”;  
18 and

19 (C) by inserting after subparagraph (B)  
20 the following new subparagraphs:

21 “(C) QUARTERLY BENEFIT STATE-  
22 MENTS.—The plan administrator shall provide  
23 to each participant and beneficiary, at least  
24 once each calendar quarter, an explanation de-

1           scribing the investment options in which the  
2           participant's or beneficiary's account is invested  
3           as of the last day of the preceding quarter.  
4           Such explanation shall provide, to the extent  
5           applicable, the following for the preceding quar-  
6           ter:

7                   “(i) As of the last day of the quarter,  
8                   a statement of the different asset classes  
9                   that the participant's or beneficiary's ac-  
10                  count is invested in and the percentage of  
11                  the account allocated to each asset class.

12                   “(ii) A statement of the starting and  
13                   ending balance of the participant's or  
14                   beneficiary's account for such quarter.

15                   “(iii) A statement of the total con-  
16                   tributions made to the participant's or  
17                   beneficiary's account during the quarter  
18                   and a separate statement of—

19                           “(I) the amount of such contribu-  
20                           tions, and the total amount of any re-  
21                           storative payments, which were made  
22                           by the employer during the quarter,  
23                           and

1                   “(II) the amount of such con-  
2                   tributions which were made by the  
3                   employee.

4                   “(iv) A statement of the total fees and  
5                   expenses which were directly deducted  
6                   from the participant’s or beneficiary’s ac-  
7                   count during the quarter and an  
8                   itemization of such fees and expenses.

9                   “(v) A statement of the net returns  
10                  for the plan year to date, expressed as a  
11                  percentage, and a statement as to whether  
12                  the net returns include amounts described  
13                  in clause (iv).

14                  “(vi) With respect to each investment  
15                  option in which the participant or bene-  
16                  ficiary was invested as of the last day of  
17                  the quarter, the following:

18                         “(I) A statement of the percent-  
19                         age of the participant’s or bene-  
20                         ficiary’s account that is invested in  
21                         such option as of the last day of such  
22                         quarter.

23                         “(II) A statement of the starting  
24                         and ending balance of the partici-  
25                         pant’s or beneficiary’s account that is

1 invested in such option for such quar-  
2 ter.

3 “(III) A statement of the annual  
4 operating expenses of the investment  
5 option.

6 “(IV) A statement of whether the  
7 disclosure described in clause (iv) in-  
8 cludes the annual operating expenses  
9 of the investment options of the par-  
10 ticipant or beneficiary.

11 “(vii) The statement described in sec-  
12 tion 112(a)(1)(B)(i)(VI).

13 “(viii) A statement regarding how a  
14 participant or beneficiary may access the  
15 information required to be disclosed under  
16 section 112(a)(1).

17 “(D) MODEL EXPLANATIONS.—The Sec-  
18 retary shall prescribe one or more model expla-  
19 nations that may be used for purposes of satis-  
20 fying the requirements of subparagraph (C).

21 “(E) DETERMINATION OF EXPENSES.—  
22 For purposes of subparagraph (C)(v)(III)—

23 “(i) Expenses may be expressed as a  
24 dollar amount or as a percentage of assets  
25 (or a combination thereof).

1           “(ii) The plan administrator may pro-  
2           vide disclosure of the expenses for the  
3           quarter or may provide a reasonable and  
4           representative estimate of such expenses  
5           and shall indicate any such estimate as  
6           being an estimate. Any such estimate shall  
7           be based on reasonable assumptions stated  
8           together with such estimate.

9           “(iii) To the extent that estimated ex-  
10          penses are expressed as a percentage of as-  
11          sets, the disclosure shall also include one of  
12          the following, stated in dollar amounts:

13                 “(I) an estimate of the expenses  
14                 for the quarter based on the amount  
15                 invested in the option; or

16                 “(II) an example describing the  
17                 expenses that would apply during the  
18                 quarter with respect to a hypothetical  
19                 \$10,000 investment in the option.

20                 “(F) ANNUAL COMPLIANCE FOR SMALL  
21          PLANS.—A plan that has fewer than 100 par-  
22          ticipants and beneficiaries as of the first day of  
23          the plan year may provide the explanation de-  
24          scribed in subparagraph (C) on an annual rath-  
25          er than a quarterly basis.”.

1 (c) ASSISTANCE FROM THE DEPARTMENT OF  
2 LABOR.—Section 105 of such Act (29 U.S.C. 1025) is  
3 amended by adding at the end the following new sub-  
4 sections:

5 “(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-  
6 retary shall make available to employers with 100 or fewer  
7 employees—

8 “(1) educational and compliance materials de-  
9 signed to assist such employers in selecting and  
10 monitoring service providers for individual account  
11 plans which permit a participant or beneficiary to  
12 exercise control over the assets in the account of the  
13 participant or beneficiary, investment options under  
14 such plans, and charges relating to such options,  
15 and

16 “(2) services designed to assist such employers  
17 in finding and understanding affordable investment  
18 options for such plans and in comparing the invest-  
19 ment performance of, and charges for, such options  
20 on an ongoing basis against appropriate benchmarks  
21 or other appropriate measures.

22 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN  
23 PARTICIPANTS AND BENEFICIARIES.—The Secretary shall  
24 provide plan administrators and plan sponsors of indi-  
25 vidual account plans and participants and beneficiaries



1 under such plans assistance with any questions or prob-  
2 lems regarding compliance with the requirements of sub-  
3 paragraphs (B)(ii)(IV) and (C) of subsection (a)(2) and  
4 section 112.”.

5 (d) ENFORCEMENT.—

6 (1) PENALTIES.—Section 502 of such Act (29  
7 U.S.C. 1132) is amended—

8 (A) in subsection (a)(6), by striking  
9 “under paragraph (2)” and all that follows  
10 through “subsection (c)” and inserting “under  
11 paragraph (2), (4), (5), (6), (7), (8), (9), (10),  
12 (11), or (12) of subsection (c)”;

13 (B) in subsection (c), by redesignating the  
14 second paragraph (10) as paragraph (13), and  
15 by inserting after the first paragraph (10) the  
16 following new paragraphs:

17 “(11)(A) In the case of any failure by a service pro-  
18 vider (as defined in section 111(f)(1)) to provide a state-  
19 ment in violation of section 111, the service provider may  
20 be assessed by the Secretary a civil penalty of up to  
21 \$1,000 for each day in the noncompliance period.

22 “(B) For purposes of subparagraph (A), the non-  
23 compliance period with respect to the failure to provide  
24 any statement is the period beginning on the date that  
25 such statement was required to be provided and ending

1 on the date that such statement is provided or the failure  
2 is otherwise corrected.

3 “(C)(i) The total amount of a penalty assessed under  
4 this paragraph on any service provider with respect to any  
5 individual account plan for any plan year shall not exceed  
6 an amount equal to the lesser of—

7 “(I) 10 percent of the assets of the plan, deter-  
8 mined as of the first day of such plan year, or

9 “(II) \$1,000,000.

10 “(ii) No penalty shall be imposed by subparagraph  
11 (A) on any failure if—

12 “(I) the service provider subject to liability for  
13 the penalty under subparagraph (A) exercised rea-  
14 sonable diligence to meet the requirement with re-  
15 spect to which the failure relates, and

16 “(II) such service provider provides the infor-  
17 mation required under section 111 during the 30-  
18 day period beginning on the date such person knew,  
19 or exercising reasonable diligence would have known,  
20 that such failure existed.

21 “(iii) In the case of a failure which is due to reason-  
22 able cause and not to willful neglect, the Secretary may  
23 waive part or all of the penalty under subparagraph (A)  
24 to the extent that the payment of such penalty would be

1 excessive or otherwise inequitable relative to the failure in-  
2 volved.

3 “(D) The penalty imposed under this paragraph with  
4 respect to any failure shall be reduced by the amount of  
5 any tax imposed on such person with respect to such fail-  
6 ure under section 4980J of the Internal Revenue Code of  
7 1986.

8 “(12)(A) Any plan administrator with respect to a  
9 plan who fails or refuses to provide a notice, explanation,  
10 or statement to participants and beneficiaries in accord-  
11 ance with subparagraphs (B)(ii)(IV) and (C) of section  
12 105(a)(2) and section 112 may be assessed by the Sec-  
13 retary a civil penalty of up to \$110 for each day in the  
14 noncompliance period.

15 “(B) For purposes of subparagraph (A), the non-  
16 compliance period with respect to the failure to provide  
17 any notice, explanation, or statement referred to in sub-  
18 paragraph (B)(ii)(IV) or (C) of section 105(a)(2) or sec-  
19 tion 112 with respect to any participant or beneficiary is  
20 the period beginning on the date that such notice, expla-  
21 nation, or statement was required to be provided and end-  
22 ing on the date that such notice, explanation, or statement  
23 is provided or the failure is otherwise corrected.

1       “(C)(i) The total amount of penalty assessed under  
2 this paragraph with respect to any plan for any plan year  
3 shall not exceed an amount equal to the lesser of—

4               “(I) 10 percent of the assets of the plan, deter-  
5 mined as of the first day of such plan year, or

6               “(II) \$500,000.

7       “(ii) No penalty shall be imposed under subpara-  
8 graph (A) on any failure to meet the requirements of sub-  
9 paragraphs (B)(ii)(IV) and (C) of section 105(a)(2) and  
10 section 112 if—

11               “(I) any person subject to liability for the pen-  
12 alty under subparagraph (A) exercised reasonable  
13 diligence to meet such requirements, and

14               “(II) such person provides the notice, expla-  
15 nation, or statement to which the failure relates dur-  
16 ing the 30-day period beginning on the date such  
17 person knew, or exercising reasonable diligence  
18 would have known, that such failure existed.

19       “(iii) In the case of a failure which is due to reason-  
20 able cause and not to willful neglect, the Secretary shall  
21 waive part or all of the penalty under subparagraph (A)  
22 to the extent that the payment of such penalty would be  
23 excessive or otherwise inequitable relative to the failure in-  
24 volved.

1       “(iv) The penalty imposed under this paragraph with  
2 respect to any failure shall be reduced by the amount of  
3 any tax imposed on such person with respect to such fail-  
4 ure under section 4980K of the Internal Revenue Code  
5 of 1986.”.

6           (2) ENFORCEMENT COORDINATION AND RE-  
7 VIEW BY THE DEPARTMENT OF LABOR.—Section  
8 502 of such Act (29 U.S.C. 1132) is amended by  
9 adding at the end the following new subsection:

10       “(n) ENFORCEMENT COORDINATION OF CERTAIN  
11 DISCLOSURE REQUIREMENTS RELATING TO INDIVIDUAL  
12 ACCOUNT PLANS AND REVIEW BY THE DEPARTMENT OF  
13 LABOR.—

14           “(1) NOTIFICATION AND ACTION RELATING TO  
15 SERVICE PROVIDERS.—The Secretary shall notify  
16 the applicable regulatory authority in any case in  
17 which the Secretary determines that a service pro-  
18 vider is engaged in a pattern or practice that pre-  
19 cludes compliance by plan administrators with sub-  
20 paragraphs (B)(ii)(IV) and (C) of section 105(a)(2)  
21 and section 112. The Secretary shall, in consultation  
22 with the applicable authority, take such timely en-  
23 forcement action under this title as is necessary to  
24 assure that such pattern or practice ceases and de-  
25 sists and assess any appropriate penalties.

1           “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-  
2           PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-  
3           retary shall annually audit a representative sampling  
4           of individual account plans covered by this title to  
5           determine compliance with the requirements of sub-  
6           paragraphs (B)(ii)(IV) and (C) of section 105(a)(2),  
7           section 111, and section 112. The Secretary shall  
8           annually report the results of such audit and any re-  
9           lated recommendations of the Secretary to the Com-  
10          mittee on Education and Labor of the House of  
11          Representatives and the Committee on Health, Edu-  
12          cation, Labor, and Pensions of the Senate.”.

13          (e) REVIEW AND REPORT TO THE CONGRESS BY  
14          SECRETARY OF LABOR RELATING TO REPORTING AND  
15          DISCLOSURE REQUIREMENTS.—

16                (1) STUDY.—As soon as practicable after the  
17                date of the enactment of this Act, the Secretary of  
18                Labor shall review the reporting and disclosure re-  
19                quirements of part 1 of subtitle B of title I of the  
20                Employee Retirement Income Security Act of 1974  
21                and related provisions of the Pension Protection Act  
22                of 2006.

23                (2) REPORT.—Not later than 18 months after  
24                the date of the enactment of this Act, the Secretary  
25                of Labor, in consultation with the Secretary of the

1 Treasury, shall make such recommendations as the  
2 Secretary of Labor considers appropriate to the ap-  
3 propriate committees of the Congress to consolidate,  
4 simplify, standardize, and improve the applicable re-  
5 porting and disclosure requirements so as to simplify  
6 reporting for employee pension benefit plans and en-  
7 sure that needed understandable information is pro-  
8 vided to participants and beneficiaries of such plans.

9 **SEC. 323. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
10 **OF 1986.**

11 (a) IN GENERAL.—Chapter 43 of the Internal Rev-  
12 enue Code of 1986 (relating to qualified pension, etc.  
13 plans) is amended by adding at the end the following new  
14 sections:

15 **“SEC. 4980J. FAILURE TO PROVIDE NOTICE OF PLAN FEE**  
16 **INFORMATION TO PLAN ADMINISTRATORS.**

17 “(a) IMPOSITION OF TAX.—

18 “(1) IN GENERAL.—There is hereby imposed a  
19 tax on each failure of a service provider to meet the  
20 requirements of paragraph (2) with respect to any  
21 applicable defined contribution plan.

22 “(2) FAILURES DESCRIBED.—The failures de-  
23 scribed in this paragraph are—

24 “(A) any failure to provide an initial state-  
25 ment described in subsection (d),

1           “(B) any failure to provide an annual  
2           statement described in subsection (e), and

3           “(C) any failure to provide a material  
4           change statement described in subsection (f).

5           “(b) AMOUNT OF TAX.—

6           “(1) IN GENERAL.—The amount of the tax im-  
7           posed by subsection (a) on any failure shall be  
8           \$1,000 for each day in the noncompliance period.

9           “(2) NONCOMPLIANCE PERIOD.—For purposes  
10          of paragraph (1), the noncompliance period with re-  
11          spect to the failure to provide any statement is the  
12          period beginning on the date that such statement  
13          was required to be provided and ending on the date  
14          that such statement is provided or the failure is oth-  
15          erwise corrected.

16          “(c) LIMITATIONS.—

17          “(1) AGGREGATE LIMITATION.—The total  
18          amount of tax imposed by this section on any service  
19          provider with respect to any applicable defined con-  
20          tribution plan for any plan year shall not exceed an  
21          amount equal to the lesser of—

22                  “(A) 10 percent of the assets of the plan,  
23                  determined as of the first day of such plan  
24                  year, or

25                  “(B) \$1,000,000.



1           “(2) TAX NOT TO APPLY TO FAILURES COR-  
2           RECTED WITHIN 30 DAYS.—No tax shall be imposed  
3           by subsection (a) on any failure if—

4                   “(A) the service provider subject to liability  
5                   for the tax under subsection (a) exercised rea-  
6                   sonable diligence to meet the requirement with  
7                   respect to which the failure relates, and

8                   “(B) such service provider provides the in-  
9                   formation required under subsection (a) during  
10                  the 30-day period beginning on the date such  
11                  person knew, or exercising reasonable diligence  
12                  would have known, that such failure existed.

13           “(3) WAIVER BY SECRETARY.—In the case of a  
14           failure which is due to reasonable cause and not to  
15           willful neglect, the Secretary may waive part or all  
16           of the tax imposed by subsection (a) to the extent  
17           that the payment of such tax would be excessive or  
18           otherwise inequitable relative to the failure involved.

19           “(d) INITIAL STATEMENT OF SERVICES PROVIDED  
20           AND REVENUES RECEIVED.—

21                   “(1) IN GENERAL.—Before entering into any  
22                   contract or arrangement to provide services to an  
23                   applicable defined contribution plan, the service pro-  
24                   vider shall provide to the plan administrator a single  
25                   written statement which includes, with respect to the

1 first plan year covered under such contract or ar-  
2 rangement, the following:

3 “(A) A detailed description of the services  
4 which will be provided to the plan by the service  
5 provider, the amount of total expected annual  
6 revenue with respect to such services, the man-  
7 ner in which such revenue will be collected, and  
8 the extent to which such revenue varies between  
9 specific investment options.

10 “(B)(i) In the case of a service provider  
11 who is providing recordkeeping services with re-  
12 spect to any investment option, such informa-  
13 tion as is necessary for the plan administrator  
14 to satisfy the requirements of paragraphs (1),  
15 (2) and (4) of section 4980K(e) with respect to  
16 such option, including specifying the method  
17 used by the service provider in disclosing or es-  
18 timating expenses under subparagraphs (A)(iv)  
19 and (C) of such paragraph (2).

20 “(ii) To the extent provided in regulations  
21 issued by the Secretary of Labor, clause (i)  
22 shall not apply in the case of a service provider  
23 described in such clause if the service provider  
24 receives a written notification from the plan ad-  
25 ministrator that the information described in

1 such clause in connection with the investment  
2 option is provided by another service provider  
3 pursuant to a contract or arrangement to pro-  
4 vide services to the plan.

5 “(C) A statement indicating—

6 “(i) the identity of any investment op-  
7 tions offered under the plan with respect  
8 to which the service provider provides sub-  
9 stantial investment, trustee, custodial, or  
10 administrative services, and

11 “(ii) in the case of any investment op-  
12 tion, whether the service provider expects  
13 to receive any component of total expected  
14 annual revenue described in paragraph  
15 (2)(A)(ii)(II) with respect to such option  
16 and the amount of any such component.

17 “(D) The portion of total expected annual  
18 revenue which is properly allocable to each of  
19 the following:

20 “(i) Administration and record-  
21 keeping.

22 “(ii) Investment management.

23 “(iii) Other services or amounts not  
24 described in clause (i) or (ii).

1           “(2) DEFINITION OF TOTAL EXPECTED ANNUAL  
2 REVENUE.—For purposes of this section—

3           “(A) IN GENERAL.—The term ‘total ex-  
4 pected annual revenue’ means, with respect to  
5 any plan year—

6           “(i) any amount expected to be re-  
7 ceived during such plan year from the plan  
8 (including amounts paid from participant  
9 accounts), any participant or beneficiary,  
10 or any plan sponsor in connection with the  
11 contract or arrangement referred to in  
12 paragraph (1), and

13           “(ii) any amount not taken into ac-  
14 count under clause (i) which is expected to  
15 be received during such plan year by the  
16 service provider in connection with—

17           “(I) plan administration, record-  
18 keeping, consulting, management, or  
19 investment or other service activities  
20 undertaken by the service provider  
21 with respect to the plan, or

22           “(II) plan administration, record-  
23 keeping, consulting, management, or  
24 investment or other service activities

1                   undertaken by any other person with  
2                   respect to the plan.

3                   “(B) EXPRESSED AS DOLLAR AMOUNT OR  
4                   PERCENTAGE OF ASSETS.—Total expected an-  
5                   nual revenue and any amount indicated under  
6                   paragraph (1)(C)(ii) may be expressed as a dol-  
7                   lar amount or as a percentage of assets (or a  
8                   combination thereof), as appropriate. To the ex-  
9                   tent that total expected annual revenue is ex-  
10                  pressed as a percentage of assets, such percent-  
11                  age shall be properly allocated among clauses  
12                  (i), (ii), and (iii) of paragraph (1)(D).

13                  “(C) PROVISION OF FEE SCHEDULE FOR  
14                  CERTAIN PARTICIPANT INITIATED TRANS-  
15                  ACTIONS.—In the case of amounts expected to  
16                  be received from participants or beneficiaries  
17                  under the plan (or from the account of a partic-  
18                  ipant or beneficiary) as a fee or charge in con-  
19                  nection with a transaction initiated by the par-  
20                  ticipant (other than loads, commissions, broker-  
21                  age fees, and other investment related trans-  
22                  actions)—

23                  “(i) such amounts shall not be taken  
24                  into account in determining total expected  
25                  annual revenue, and

1                   “(ii) the service provider shall provide  
2                   to the plan administrator, as part of the  
3                   statement referred to in paragraph (1), a  
4                   fee schedule which describes each such fee  
5                   or charge, the amount thereof, and the  
6                   manner in which such amount is collected.

7                   “(D) ESTIMATIONS.—In determining  
8                   under this subsection any amount which is ex-  
9                   pected to be received by the service provider,  
10                  the service provider shall provide a reasonable  
11                  estimate of such amount and shall indicate in  
12                  the statement referred to in paragraph (1)  
13                  whether such amount disclosed is an estimate.  
14                  Any such estimate shall be based on reasonable  
15                  assumptions specified in such statement.

16                  “(3) ALLOCATION RULES.—The Secretary of  
17                  Labor shall provide rules for defining total expected  
18                  annual revenue and for the appropriate and con-  
19                  sistent allocation of total expected annual revenue  
20                  among clauses (i), (ii), and (iii) of paragraph (1)(D),  
21                  except that the entire amount of such revenue shall  
22                  be allocated among such clauses and no amount may  
23                  be taken into account under more than one clause.

24                  “(4) DISCLOSURE OF DIFFERENT PRICING OF  
25                  INVESTMENT OPTIONS.—In the case of investment

1 options with more than one share class or price level,  
2 the Secretary of Labor shall prescribe regulations  
3 for the disclosure of the different share classes or  
4 price levels available as part of the statement in  
5 paragraph (1). Such regulations shall provide guid-  
6 ance with respect to the disclosure of the basis for  
7 qualifying for such share classes or price levels,  
8 which may include amounts invested, number of par-  
9 ticipants, or other factors.

10 “(5) DISCLOSURE OF INVESTMENT TRANS-  
11 ACTION COSTS.—To the extent provided in regula-  
12 tions issued by the Secretary of Labor, a service pro-  
13 vider shall separately disclose the transaction costs  
14 (including sales commissions) for each investment  
15 option for the preceding year.

16 “(e) ANNUAL STATEMENTS.—With respect to each  
17 plan year after the plan year covered by the statement  
18 described in subsection (d), the service provider shall pro-  
19 vide the plan administrator a single written statement  
20 which includes the information described in subsection (d)  
21 with respect to such subsequent plan year.

22 “(f) MATERIAL CHANGE STATEMENTS.—In the case  
23 of any event or other change during a plan year which  
24 causes the information included in any statement de-  
25 scribed in subsection (d) or (e) with respect to such plan

1 year to become materially incorrect, the service provider  
2 shall provide the plan administrator a written statement  
3 providing the corrected information not later than 30 days  
4 after the service provider knows, or exercising reasonable  
5 diligence would have known, of such event or other change.

6       “(g) TIME AND MANNER OF PROVIDING STATEMENT  
7 AND OTHER MATERIALS.—The statement referred to in  
8 subsections (d)(1) and (e) shall be made at such time and  
9 in such manner as the Secretary of Labor may provide.  
10 Other materials required to be provided under this section  
11 shall be provided in such manner as such Secretary may  
12 provide. All information included in such statements and  
13 other materials shall be presented in a manner which is  
14 easily understood by the typical plan administrator.

15       “(h) EXCEPTION FOR SMALL SERVICE PRO-  
16 VIDERS.—The requirements of this section shall not apply  
17 with respect to any contract or arrangement for services  
18 provided with respect to an individual account plan for any  
19 plan year if—

20               “(1) the total annual revenue expected by the  
21 service provider to be received with respect to the  
22 plan for such plan year is less than \$5,000, and

23               “(2) the service provider provides a written  
24 statement to the plan administrator that the total  
25 annual revenue expected by the service provider to



1 be received with respect to the plan is less than  
2 \$5,000.

3 Service providers who expect to receive de minimis annual  
4 revenue from the plan need not provide the written state-  
5 ment described in paragraph (2). The Secretary of Labor  
6 may by regulation or other guidance adjust the dollar  
7 amount specified in this subsection.

8 “(i) DEFINITIONS.—For purposes of this section—

9 “(1) SERVICE PROVIDER.—

10 “(A) IN GENERAL.—The term ‘service pro-  
11 vider’ includes any person providing administra-  
12 tion, recordkeeping, consulting, investment  
13 management services, or investment advice to  
14 an applicable defined contribution plan under a  
15 contract or arrangement.

16 “(B) CONTROLLED GROUPS TREATED AS  
17 ONE SERVICE PROVIDER.—All persons which  
18 would be treated as a single employer under  
19 subsection (b) or (c) of section 414 if section  
20 1563(a)(1) were applied—

21 “(i) except as provided by subpara-  
22 graph (B), by substituting ‘more than 50  
23 percent’ for ‘at least 80 percent’ each place  
24 it appears therein, or

1                   “(ii) for purposes of subsection  
2                   (d)(1)(C)(i), by substituting ‘at least 20  
3                   percent’ for ‘at least 80 percent’ each place  
4                   it appears therein,  
5                   shall be treated as one person for purposes of  
6                   this section.

7                   “(2) APPLICABLE DEFINED CONTRIBUTION  
8                   PLAN.—The term ‘applicable defined contribution  
9                   plan’ means any defined contribution plan described  
10                  in clauses (iii) through (vi) of section 402(c)(8)(B).

11                  “(3) PLAN ADMINISTRATOR.—The term ‘plan  
12                  administrator’ has the meaning given such term by  
13                  section 414(g).

14                  **“SEC. 4980K. FAILURE TO PROVIDE NOTICE TO PARTICI-**  
15                  **PANTS OF PLAN FEE INFORMATION.**

16                  “(a) IMPOSITION OF TAX.—

17                  “(1) IN GENERAL.—There is hereby imposed a  
18                  tax on each failure of a plan administrator of an ap-  
19                  plicable defined contribution plan to meet the re-  
20                  quirements of paragraph (2) with respect to any  
21                  participant or beneficiary.

22                  “(2) FAILURES DESCRIBED.—The failures de-  
23                  scribed in this paragraph are—

1           “(A) any failure to provide an advance no-  
2           tice of available investment options described in  
3           subsection (e)(1),

4           “(B) any failure to provide an account ex-  
5           planation described in subsection (e)(2)

6           “(C) any failure to provide a service pro-  
7           vider statement referred to in subsection (e)(3),  
8           and

9           “(D) any failure to provide a notice of ma-  
10          terial change described in subsection (e)(4).

11         “(b) AMOUNT OF TAX.—

12           “(1) IN GENERAL.—The amount of the tax im-  
13           posed by subsection (a) on any failure with respect  
14           to any participant or beneficiary shall be \$100 for  
15           each day in the noncompliance period.

16           “(2) NONCOMPLIANCE PERIOD.—For purposes  
17           of paragraph (1), the noncompliance period with re-  
18           spect to the failure to provide any notice, expla-  
19           nation, or statement referred to in subsection (a)(2)  
20           with respect to any participant or beneficiary is the  
21           period beginning on the date that such notice, expla-  
22           nation, or statement was required to be provided  
23           and ending on the date that such notice, expla-  
24           nation, or statement is provided or the failure is oth-  
25           erwise corrected.

1 “(c) LIMITATIONS ON AMOUNT OF TAX.—

2 “(1) AGGREGATE LIMITATION.—The total  
3 amount of tax imposed by this section with respect  
4 to any plan for any plan year shall not exceed an  
5 amount equal to the lesser of—

6 “(A) 10 percent of the assets of the plan,  
7 determined as of the first day of such plan  
8 year, or

9 “(B) \$500,000.

10 “(2) TAX NOT TO APPLY TO FAILURES COR-  
11 RECTED WITHIN 30 DAYS.—No tax shall be imposed  
12 by subsection (a) on any failure if—

13 “(A) any person subject to liability for the  
14 tax under subsection (a) exercised reasonable  
15 diligence to meet the requirements of subsection  
16 (e), and

17 “(B) such person provides the notice, ex-  
18 planation, or statement to which the failure re-  
19 lates during the 30-day period beginning on the  
20 date such person knew, or exercising reasonable  
21 diligence would have known, that such failure  
22 existed.

23 “(3) WAIVER BY SECRETARY.—In the case of a  
24 failure which is due to reasonable cause and not to  
25 willful neglect, the Secretary shall waive part or all

1 of the tax imposed by subsection (a) to the extent  
2 that the payment of such tax would be excessive or  
3 otherwise inequitable relative to the failure involved.

4 “(d) LIABILITY FOR TAX.—The plan administrator  
5 shall be liable for the tax imposed by subsection (a).

6 “(e) DISCLOSURES TO PARTICIPANTS AND BENE-  
7 FICIARIES.—

8 “(1) ADVANCE NOTICE OF AVAILABLE INVEST-  
9 MENT OPTIONS.—

10 “(A) IN GENERAL.—The plan adminis-  
11 trator of an applicable defined contribution plan  
12 shall provide to the participant or beneficiary  
13 notice of the investment options available under  
14 the plan before—

15 “(i) the earliest date provided for  
16 under the plan for the participant’s initial  
17 investment of any contribution made on  
18 behalf of such participant, and

19 “(ii) the effective date of any change  
20 in the list of investment options available  
21 under the plan, unless such advance notice  
22 is impracticable, and in such case, as soon  
23 as is practicable.

1                   “(B) INFORMATION INCLUDED IN NO-  
2                   TICE.—The notice required under subparagraph  
3                   (A) shall—

4                   “(i) set forth, with respect to each  
5                   available investment option—

6                   “(I) the name of the option,

7                   “(II) a general description of the  
8                   option’s investment objectives and  
9                   principal investment strategies, prin-  
10                  cipal risk and return characteristics,  
11                  and the name of the option’s invest-  
12                  ment manager,

13                  “(III) whether the investment op-  
14                  tion is designed to be a comprehen-  
15                  sive, stand-alone investment for retire-  
16                  ment that provides varying degrees of  
17                  long-term appreciation and capital  
18                  preservation through a mix of equity  
19                  and fixed income exposures,

20                  “(IV) the extent to which the in-  
21                  vestment option is actively managed  
22                  or passively managed in relation to an  
23                  index and the difference between ac-  
24                  tive management and passive manage-  
25                  ment,

1                   “(V) where, and the manner in  
2                   which, additional plan-specific, option-  
3                   specific, and generally available in-  
4                   vestment information may be ob-  
5                   tained, and

6                   “(VI) a statement explaining that  
7                   investment options should not be eval-  
8                   uated solely on the basis of the  
9                   charges for each option but should  
10                  also be based on consideration of  
11                  other key factors, including the risk  
12                  level of the option, the investment ob-  
13                  jectives of the option, historical re-  
14                  turns of the option, and the partici-  
15                  pant’s personal investment objectives,

16                  “(ii) include a statement of the right  
17                  under paragraph (3) of participants and  
18                  beneficiaries to request, and a description  
19                  of how participant or beneficiary may re-  
20                  quest, a copy of the statements received by  
21                  the plan administrator under section  
22                  4980J with respect to the plan, and

23                  “(iii) include the plan fee comparison  
24                  chart described in subparagraph (C).

25                  “(C) PLAN FEE COMPARISON CHART.—

1 “(i) IN GENERAL.—

2 “(I) IN GENERAL.—The notice  
3 provided under this paragraph shall  
4 include a plan fee comparison chart  
5 consisting of a comparison of the serv-  
6 ice and investment charges that will  
7 or could be assessed against the ac-  
8 count of the participant or beneficiary  
9 with respect to the plan year.

10 “(II) EXPRESSED AS DOLLAR  
11 AMOUNT OR FORMULA.—For purposes  
12 of this subparagraph, such charges  
13 shall be provided in the form of a dol-  
14 lar amount or as a formula (such as  
15 a percentage of assets), as appro-  
16 priate.

17 “(ii) CATEGORIZATION OF  
18 CHARGES.—The plan fee comparison chart  
19 shall provide information in relation to the  
20 following categories of charges that will or  
21 could be assessed against the account of  
22 the participant or beneficiary:

23 “(I) ASSET-BASED CHARGES SPE-  
24 CIFIC TO INVESTMENT.—Charges that  
25 vary depending on the investment op-



1 tions selected by the participant or  
2 beneficiary, including the annual oper-  
3 ating expenses of the investment op-  
4 tion and investment-specific asset-  
5 based charges (such as loads, commis-  
6 sions, brokerage fees, exchange fees,  
7 redemption fees, and surrender  
8 charges). Except as provided by the  
9 Secretary of Labor in regulations  
10 under this section, the information re-  
11 lating to such charges shall include a  
12 statement noting any charges for 1 or  
13 more investment options which pay  
14 for services other than investment  
15 management.

16 “(II) RECURRING ASSET-BASED  
17 CHARGES NOT SPECIFIC TO INVEST-  
18 MENT.—Charges that are assessed as  
19 a percentage of the total assets in the  
20 account of the participant or bene-  
21 ficiary, regardless of the investment  
22 option selected.

23 “(III) ADMINISTRATIVE AND  
24 TRANSACTION-BASED CHARGES.—Ad-  
25 ministration and transaction-based

1 charges, including fees charged to  
2 participants to cover plan administra-  
3 tion, compliance, and recordkeeping  
4 costs, plan loan origination fees, pos-  
5 sible redemption fees, and possible  
6 surrender charges, that are not as-  
7 sessed as a percentage of the total as-  
8 sets in the account and are either  
9 automatically deducted each year or  
10 result from certain transactions en-  
11 gaged in by the participant or bene-  
12 ficiary.

13 “(IV) OTHER CHARGES.—Any  
14 other charges which may be deducted  
15 from participants’ or beneficiaries’ ac-  
16 counts and which are not described in  
17 subclauses (I), (II), and (III).

18 “(iii) FEES AND HISTORICAL RE-  
19 TURNS.—The plan fee comparison chart  
20 shall include—

21 “(I) the historical returns, net of  
22 fees and expenses, for the previous  
23 year, 5 years, and 10 years (or for the  
24 period since inception, if shorter) with  
25 respect to such investment option, and

1                   “(II) the historical returns of an  
2                   appropriate benchmark, index, or  
3                   other point of comparison for each  
4                   such period.

5                   “(D) MODEL NOTICES.—The Secretary of  
6                   Labor shall prescribe one or more model notices  
7                   that may be used for purposes of satisfying the  
8                   requirements of this paragraph, including model  
9                   plan fee comparison charts.

10                  “(E) ESTIMATIONS.—For purposes of pro-  
11                  viding the notice required under this paragraph,  
12                  the plan administrator may provide a reason-  
13                  able and representative estimate for any  
14                  charges or percentages disclosed under subpara-  
15                  graph (B) or (C) and shall indicate whether the  
16                  amount of any such charges or percentages dis-  
17                  closed is an estimate.

18                  “(2) QUARTERLY BENEFIT STATEMENT.—

19                  “(A) REQUIREMENTS.—The plan adminis-  
20                  trator shall provide to each participant and ben-  
21                  eficiary, at least once each calendar quarter, an  
22                  explanation describing the investment options in  
23                  which the participant’s or beneficiary’s account  
24                  is invested as of the last day of the preceding  
25                  quarter. Such explanation shall provide, to the

1 extent applicable, the following for the pre-  
2 ceding quarter:

3 “(i) As of the last day of the quarter,  
4 a statement of the different asset classes  
5 that the participant’s or beneficiary’s ac-  
6 count is invested in and the percentage of  
7 the account allocated to each asset class.

8 “(ii) A statement of the starting and  
9 ending balance of the participant’s or  
10 beneficiary’s account for such quarter.

11 “(iii) A statement of the total con-  
12 tributions made to the participant’s or  
13 beneficiary’s account during the quarter  
14 and a separate statement of—

15 “(I) the amount of such contribu-  
16 tions, and the total amount of any re-  
17 storative payments, which were made  
18 by the employer during the quarter,  
19 and

20 “(II) the amount of such con-  
21 tributions which were made by the  
22 employee.

23 “(iv) A statement of the total fees and  
24 expenses which were directly deducted  
25 from the participant’s or beneficiary’s ac-

1 count during the quarter and an  
2 itemization of such fees and expenses.

3 “(v) A statement of the net returns  
4 for the plan year to date, expressed as a  
5 percentage, and a statement as to whether  
6 the net returns include amounts described  
7 in clause (iv).

8 “(vi) With respect to each investment  
9 option in which the participant or bene-  
10 ficiary was invested as of the last day of  
11 the quarter, the following:

12 “(I) A statement of the percent-  
13 age of the participant’s or bene-  
14 ficiary’s account that is invested in  
15 such option as of the last day of such  
16 quarter.

17 “(II) A statement of the starting  
18 and ending balance of the partici-  
19 pant’s or beneficiary’s account that is  
20 invested in such option for such quar-  
21 ter.

22 “(III) A statement of the annual  
23 operating expenses of the investment  
24 option.

1                   “(IV) A statement of whether the  
2 disclosure described in clause (iv) in-  
3 cludes the annual operating expenses  
4 of the investment options of the par-  
5 ticipant or beneficiary.

6                   “(vii) The statement described in  
7 paragraph (1)(B)(i)(VI).

8                   “(viii) A statement regarding how a  
9 participant or beneficiary may access the  
10 information required to be disclosed under  
11 paragraph (1).

12                   “(B) MODEL EXPLANATIONS.—The Sec-  
13 retary of Labor shall prescribe one or more  
14 model explanations that may be used for pur-  
15 poses of satisfying the requirements of this  
16 paragraph.

17                   “(C) DETERMINATION OF EXPENSES.—  
18 For purposes of subparagraph (A)(v)(III)—

19                   “(i) Expenses may be expressed as a  
20 dollar amount or as a percentage of assets  
21 (or a combination thereof).

22                   “(ii) The plan administrator may pro-  
23 vide disclosure of the expenses for the  
24 quarter or may provide a reasonable and  
25 representative estimate of such expenses

1 and shall indicate any such estimate as  
2 being an estimate. Any such estimate shall  
3 be based on reasonable assumptions stated  
4 together with such estimate.

5 “(iii) To the extent that estimated ex-  
6 penses are expressed as a percentage of as-  
7 sets, the disclosure shall also include one of  
8 the following, stated in dollar amounts:

9 “(I) an estimate of the expenses  
10 for the quarter based on the amount  
11 invested in the option; or

12 “(II) an example describing the  
13 expenses that would apply during the  
14 quarter with respect to a hypothetical  
15 \$10,000 investment in the option.

16 “(3) DISCLOSURE OF SERVICE PROVIDER  
17 STATEMENTS.—The plan administrator shall provide  
18 to any participant or beneficiary a copy of any state-  
19 ment received pursuant to section 4980J within 30  
20 days after receipt of a request for such a statement.

21 “(4) NOTICE OF MATERIAL CHANGES.—In the  
22 case of any event or other change which causes the  
23 information included in any notice described in para-  
24 graph (1) to become materially incorrect, the plan  
25 administrator shall provide participants and bene-

1       ficiaries a written statement providing the corrected  
2       information not later than 30 days after the plan  
3       administrator knows, or exercising reasonable dili-  
4       gence would have known, of such event or other  
5       change.

6               “(5) TIME AND MANNER OF PROVIDING NO-  
7       TICES AND DISCLOSURES.—

8               “(A) IN GENERAL.—The notices described  
9       in paragraph (1) shall be provided at such  
10      times and in such manner as the Secretary of  
11      Labor may provide. Other notices and materials  
12      required to be provided under this subsection  
13      shall be provided in such manner as such Sec-  
14      retary may provide.

15              “(B) MANNER OF PRESENTATION.—

16              “(i) IN GENERAL.—All information in-  
17      cluded in such notices or explanations shall  
18      be presented in a manner which is easily  
19      understood by the typical participant.

20              “(ii) GENERIC EXAMPLE OF OPER-  
21      ATING EXPENSES OF INVESTMENT OP-  
22      TIONS.—The information described in  
23      paragraphs (1)(C)(ii)(I) shall include a ge-  
24      neric example describing the charges that  
25      would apply during an annual period with



1                   respect to a \$10,000 investment in the in-  
2                   vestment option.

3                   “(C) ANNUAL COMPLIANCE FOR SMALL  
4                   PLANS.—A plan that has fewer than 100 par-  
5                   ticipants and beneficiaries as of the first day of  
6                   the plan year may provide the explanation de-  
7                   scribed in paragraph (2) on an annual rather  
8                   than a quarterly basis.

9                   “(f) DEFINITIONS.—

10                   “(1) APPLICABLE DEFINED CONTRIBUTION  
11                   PLAN.—The term ‘applicable defined contribution  
12                   plan’ means the portion of any defined contribution  
13                   plan which—

14                   “(A) permits a participant or beneficiary  
15                   to exercise control over assets in his or her ac-  
16                   count, and

17                   “(B) is described in clauses (iii) through  
18                   (vi) of section 402(c)(8)(B).

19                   “(2) PLAN ADMINISTRATOR.—The term ‘plan  
20                   administrator’ has the meaning given such term by  
21                   section 414(g).

22                   “(g) REGULATIONS.—The Secretary of Labor shall  
23                   prescribe such regulations or other guidance as may be  
24                   necessary or appropriate to carry out the purposes of this  
25                   section, including regulations or other guidance which—

1           “(1) provide a later deadline for providing the  
2 notice of investment menu changes described in sub-  
3 section (e)(4) in appropriate circumstances, and

4           “(2) provide guidelines, and a safe harbor, for  
5 the selection of an appropriate benchmark, index, or  
6 other point of comparison for an investment option  
7 under subsection (e)(1)(C)(iii)(II).”.

8           (b) **CLERICAL AMENDMENT.**—The table of sections  
9 for chapter 43 of such Code is amended by adding at the  
10 end the following new items:

“Sec. 4980J. Failure to provide notice of plan fee information to plan adminis-  
trators.

“Sec. 4980K. Failure to provide notice to participants of plan fee informa-  
tion.”.

11 **SEC. 324. REGULATORY AUTHORITY AND COORDINATION.**

12           (a) **REGULATORY AUTHORITY.**—The Secretary of  
13 Labor shall prescribe regulations or other guidance to the  
14 extent the Secretary determines necessary or appropriate  
15 to carry out the purposes of sections 105, 111, and 112  
16 of the Employee Retirement Income Security Act of 1974  
17 and sections 4980J and 4980K of the Internal Revenue  
18 Code of 1986, including regulations or other guidance  
19 which—

20           (1) provide safe harbor and simplified methods  
21 for making the allocations described in subsection  
22 (a)(1)(D) of such section 111 and subsection  
23 (d)(1)(D) of such section 4980J, and

1           (2) provide special rules for the application of  
2 such sections to—

3           (A) investments with a guaranteed rate of  
4 return,

5           (B) investments with an insurance compo-  
6 nent, and

7           (C) employer sponsored retirement plans  
8 funded through an individual retirement ac-  
9 count.

10          (3) address notices with respect to investments  
11 provided through participant directed brokerage  
12 trading,

13          (4) address the disclosure of information that is  
14 not proprietary to the service provider, and

15          (5) provide rules to allow service providers to  
16 consolidate information to satisfy the requirements  
17 of such sections with respect to all such service pro-  
18 viders.

19          (b) CERTAIN ELECTRONIC DISCLOSURES PER-  
20 MITTED.—Any disclosure required under section 112 of  
21 the Employee Retirement Income Security Act of 1974 or  
22 section 4980K of the Internal Revenue Code of 1986 may  
23 be provided through an electronic medium under such  
24 rules as shall be prescribed under such section by the Sec-  
25 retary of Labor not later than 1 year after the date of

1 the enactment of this Act. Such rules shall be similar to  
2 those applicable under the Internal Revenue Code of 1986  
3 with respect to notices to participants in pension plans.  
4 Such Secretary shall regularly modify such rules as appro-  
5 priate to take into account new developments, including  
6 new forms of electronic media, and to fairly take into con-  
7 sideration the interests of plan sponsors, service providers,  
8 and participants. The rules prescribed by such Secretary  
9 pursuant to this subsection shall provide for a method for  
10 the typical participant or beneficiary to obtain without  
11 undue burden any such disclosure in writing on paper in  
12 lieu of receipt through an electronic medium.

13 **SEC. 325. EFFECTIVE DATE OF SUBTITLE.**

14 (a) IN GENERAL.—The amendments made by this  
15 subtitle shall apply to plan years beginning after Decem-  
16 ber 31, 2011.

17 (b) APPLICATION OF SERVICE PROVIDER DISCLO-  
18 SURES TO EXISTING CONTRACTS AND ARRANGEMENTS.—  
19 For purposes of section 111 of the Employee Retirement  
20 Income Security Act of 1974 and section 4980J of the  
21 Internal Revenue Code of 1986, any contract or arrange-  
22 ment to provide services to a plan which is in effect on  
23 January 1, 2012, shall be treated as a new contract or  
24 arrangement entered into on such date.

1     **TITLE IV—REVENUE OFFSETS**

2     **Subtitle A—Foreign Provisions**

3     **SEC. 401. RULES TO PREVENT SPLITTING FOREIGN TAX**

4                   **CREDITS FROM THE INCOME TO WHICH THEY**

5                   **RELATE.**

6           (a) IN GENERAL.—Subpart A of part III of sub-  
7 chapter N of chapter 1 is amended by adding at the end  
8 the following new section:

9     **“SEC. 909. SUSPENSION OF TAXES AND CREDITS UNTIL RE-**  
10                   **LATED INCOME TAKEN INTO ACCOUNT.**

11           “(a) IN GENERAL.—If there is a foreign tax credit  
12 splitting event with respect to a foreign income tax paid  
13 or accrued by the taxpayer, such tax shall not be taken  
14 into account for purposes of this title before the taxable  
15 year in which the related income is taken into account  
16 under this chapter by the taxpayer.

17           “(b) SPECIAL RULES WITH RESPECT TO SECTION  
18 902 CORPORATIONS.—If there is a foreign tax credit split-  
19 ting event with respect to a foreign income tax paid or  
20 accrued by a section 902 corporation, such tax shall not  
21 be taken into account—

22                   “(1) for purposes of section 902 or 960, or

23                   “(2) for purposes of determining earnings and  
24 profits under section 964(a),

1 before the taxable year in which the related income is  
2 taken into account under this chapter by such section 902  
3 corporation or a domestic corporation which meets the  
4 ownership requirements of subsection (a) or (b) of section  
5 902 with respect to such section 902 corporation.

6 “(c) SPECIAL RULES.—For purposes of this sec-  
7 tion—

8 “(1) APPLICATION TO PARTNERSHIPS, ETC.—In  
9 the case of a partnership, subsections (a) and (b)  
10 shall be applied at the partner level. Except as oth-  
11 erwise provided by the Secretary, a rule similar to  
12 the rule of the preceding sentence shall apply in the  
13 case of any S corporation or trust.

14 “(2) TREATMENT OF FOREIGN TAXES AFTER  
15 SUSPENSION.—In the case of any foreign income tax  
16 not taken into account by reason of subsection (a)  
17 or (b), except as otherwise provided by the Sec-  
18 retary, such tax shall be so taken into account in the  
19 taxable year referred to in such subsection (other  
20 than for purposes of section 986(a)) as a foreign in-  
21 come tax paid or accrued in such taxable year.

22 “(d) DEFINITIONS.—For purposes of this section—

23 “(1) FOREIGN TAX CREDIT SPLITTING  
24 EVENT.—There is a foreign tax credit splitting event  
25 with respect to a foreign income tax if the related

1 income is (or will be) taken into account under this  
2 chapter by a covered person.

3 “(2) FOREIGN INCOME TAX.—The term ‘foreign  
4 income tax’ means any income, war profits, or excess  
5 profits tax paid or accrued to any foreign country or  
6 to any possession of the United States.

7 “(3) RELATED INCOME.—The term ‘related in-  
8 come’ means, with respect to any portion of any for-  
9 eign income tax, the income (or, as appropriate,  
10 earnings and profits) to which such portion of for-  
11 eign income tax relates.

12 “(4) COVERED PERSON.—The term ‘covered  
13 person’ means, with respect to any person who pays  
14 or accrues a foreign income tax (hereafter in this  
15 paragraph referred to as the ‘payor’)—

16 “(A) any entity in which the payor holds,  
17 directly or indirectly, at least a 10 percent own-  
18 ership interest (determined by vote or value),

19 “(B) any person which holds, directly or  
20 indirectly, at least a 10 percent ownership in-  
21 terest (determined by vote or value) in the  
22 payor,

23 “(C) any person which bears a relationship  
24 to the payor described in section 267(b) or  
25 707(b), and







1       come or gain attributable to the relevant foreign as-  
2       sets—

3               “(A) shall not be taken into account in de-  
4       termining the credit allowed under subsection  
5       (a), and

6               “(B) in the case of a foreign income tax  
7       paid by a section 902 corporation (as defined in  
8       section 909(d)(5)), shall not be taken into ac-  
9       count for purposes of section 902 or 960.

10              “(2) COVERED ASSET ACQUISITION.—For pur-  
11      poses of this section, the term ‘covered asset acquisi-  
12      tion’ means—

13              “(A) a qualified stock purchase (as defined  
14      in section 338(d)(3)) to which section 338(a)  
15      applies,

16              “(B) any transaction which—

17                      “(i) is treated as an acquisition of as-  
18      sets for purposes of this chapter, and

19                      “(ii) is treated as the acquisition of  
20      stock of a corporation (or is disregarded)  
21      for purposes of the foreign income taxes of  
22      the relevant jurisdiction,

23              “(C) any acquisition of an interest in a  
24      partnership which has an election in effect  
25      under section 754, and

1           “(D) to the extent provided by the Sec-  
2           retary, any other similar transaction.

3           “(3) DISQUALIFIED PORTION.—For purposes of  
4           this section—

5           “(A) IN GENERAL.—The term ‘disqualified  
6           portion’ means, with respect to any covered  
7           asset acquisition, for any taxable year, the ratio  
8           (expressed as a percentage) of—

9           “(i) the aggregate basis differences  
10           (but not below zero) allocable to such tax-  
11           able year under subparagraph (B) with re-  
12           spect to all relevant foreign assets, divided  
13           by

14           “(ii) the income on which the foreign  
15           income tax referred to in paragraph (1) is  
16           determined (or, if the taxpayer fails to sub-  
17           stantiate such income to the satisfaction of  
18           the Secretary, such income shall be deter-  
19           mined by dividing the amount of such for-  
20           eign income tax by the highest marginal  
21           tax rate applicable to such income in the  
22           relevant jurisdiction).

23           “(B) ALLOCATION OF BASIS DIF-  
24           ERENCE.—For purposes of subparagraph  
25           (A)(i)—

1           “(i) IN GENERAL.—The basis dif-  
2           ference with respect to any relevant foreign  
3           asset shall be allocated to taxable years  
4           using the applicable cost recovery method  
5           under this chapter.

6           “(ii) SPECIAL RULE FOR DISPOSITION  
7           OF ASSETS.—Except as otherwise provided  
8           by the Secretary, in the case of the dispo-  
9           sition of any relevant foreign asset—

10           “(I) the basis difference allocated  
11           to the taxable year which includes the  
12           date of such disposition shall be the  
13           excess of the basis difference with re-  
14           spect to such asset over the aggregate  
15           basis difference with respect to such  
16           asset which has been allocated under  
17           clause (i) to all prior taxable years,  
18           and

19           “(II) no basis difference with re-  
20           spect to such asset shall be allocated  
21           under clause (i) to any taxable year  
22           thereafter.

23           “(C) BASIS DIFFERENCE.—

1           “(i) IN GENERAL.—The term ‘basis  
2 difference’ means, with respect to any rel-  
3 evant foreign asset, the excess of—

4                   “(I) the adjusted basis of such  
5 asset immediately after the covered  
6 asset acquisition, over

7                   “(II) the adjusted basis of such  
8 asset immediately before the covered  
9 asset acquisition.

10           “(ii) BUILT-IN LOSS ASSETS.—In the  
11 case of a relevant foreign asset with re-  
12 spect to which the amount described in  
13 clause (i)(II) exceeds the amount described  
14 in clause (i)(I), such excess shall be taken  
15 into account under this subsection as a  
16 basis difference of a negative amount.

17           “(iii) SPECIAL RULE FOR SECTION 338  
18 ELECTIONS.—In the case of a covered  
19 asset acquisition described in paragraph  
20 (2)(A), the covered asset acquisition shall  
21 be treated for purposes of this subpara-  
22 graph as occurring at the close of the ac-  
23 quisition date (as defined in section  
24 338(h)(2)).

1           “(4) RELEVANT FOREIGN ASSETS.—For pur-  
2           poses of this section, the term ‘relevant foreign  
3           asset’ means, with respect to any covered asset ac-  
4           quisition, any asset (including any goodwill, going  
5           concern value, or other intangible) with respect to  
6           such acquisition if income, deduction, gain, or loss  
7           attributable to such asset is taken into account in  
8           determining the foreign income tax referred to in  
9           paragraph (1).

10           “(5) FOREIGN INCOME TAX.—For purposes of  
11           this section, the term ‘foreign income tax’ means  
12           any income, war profits, or excess profits tax paid  
13           or accrued to any foreign country or to any posses-  
14           sion of the United States.

15           “(6) TAXES ALLOWED AS A DEDUCTION, ETC.—  
16           Sections 275 and 78 shall not apply to any tax  
17           which is not allowable as a credit under subsection  
18           (a) by reason of this subsection.

19           “(7) REGULATIONS.—The Secretary may issue  
20           such regulations or other guidance as is necessary or  
21           appropriate to carry out the purposes of this sub-  
22           section, including to exempt from the application of  
23           this subsection certain covered asset acquisitions,  
24           and relevant foreign assets with respect to which the  
25           basis difference is de minimis.”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-  
3 graph (2), the amendments made by this section  
4 shall apply to covered asset acquisitions (as defined  
5 in section 901(m)(2) of the Internal Revenue Code  
6 of 1986, as added by this section) after—

7 (A) May 20, 2010, if the transferor and  
8 the transferee are related, and

9 (B) the date of the enactment of this Act  
10 in any other case.

11 (2) TRANSITION RULE.—The amendments  
12 made by this section shall not apply to any covered  
13 asset acquisition (as so defined) with respect to  
14 which the transferor and the transferee are not re-  
15 lated if such acquisition is—

16 (A) made pursuant to a written agreement  
17 which was binding on May 20, 2010, and at all  
18 times thereafter,

19 (B) described in a ruling request submitted  
20 to the Internal Revenue Service on or before  
21 such date, or

22 (C) described on or before such date in a  
23 public announcement or in a filing with the Se-  
24 curities and Exchange Commission.

1           (3) RELATED PERSONS.—For purposes of this  
2 subsection, a person shall be treated as related to  
3 another person if the relationship between such per-  
4 sons is described in section 267 or 707(b) of the In-  
5 ternal Revenue Code of 1986.

6 **SEC. 403. SEPARATE APPLICATION OF FOREIGN TAX CRED-**  
7 **IT LIMITATION, ETC., TO ITEMS RESOURCED**  
8 **UNDER TREATIES.**

9           (a) IN GENERAL.—Subsection (d) of section 904 is  
10 amended by redesignating paragraph (6) as paragraph (7)  
11 and by inserting after paragraph (5) the following new  
12 paragraph:

13           “(6) SEPARATE APPLICATION TO ITEMS  
14 RESOURCED UNDER TREATIES.—

15           “(A) IN GENERAL.—If—

16                   “(i) without regard to any treaty obli-  
17 gation of the United States, any item of  
18 income would be treated as derived from  
19 sources within the United States,

20                   “(ii) under a treaty obligation of the  
21 United States, such item would be treated  
22 as arising from sources outside the United  
23 States, and

24                   “(iii) the taxpayer chooses the bene-  
25 fits of such treaty obligation,



1 subsections (a), (b), and (c) of this section and  
2 sections 902, 907, and 960 shall be applied sep-  
3 arately with respect to each such item.

4 “(B) COORDINATION WITH OTHER PROVI-  
5 SIONS.—This paragraph shall not apply to any  
6 item of income to which subsection (h)(10) or  
7 section 865(h) applies.

8 “(C) REGULATIONS.—The Secretary may  
9 issue such regulations or other guidance as is  
10 necessary or appropriate to carry out the pur-  
11 poses of this paragraph, including regulations  
12 or other guidance which provides that related  
13 items of income may be aggregated for pur-  
14 poses of this paragraph.”.

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

18 **SEC. 404. LIMITATION ON THE AMOUNT OF FOREIGN TAXES**  
19 **DEEMED PAID WITH RESPECT TO SECTION**  
20 **956 INCLUSIONS.**

21 (a) IN GENERAL.—Section 960 is amended by adding  
22 at the end the following new subsection:

23 “(c) LIMITATION WITH RESPECT TO SECTION 956  
24 INCLUSIONS.—

1           “(1) IN GENERAL.—If there is included under  
2           section 951(a)(1)(B) in the gross income of a do-  
3           mestic corporation any amount attributable to the  
4           earnings and profits of a foreign corporation which  
5           is a member of a qualified group (as defined in sec-  
6           tion 902(b)) with respect to the domestic corpora-  
7           tion, the amount of any foreign income taxes deemed  
8           to have been paid during the taxable year by such  
9           domestic corporation under section 902 by reason of  
10          subsection (a) with respect to such inclusion in gross  
11          income shall not exceed the amount of the foreign  
12          income taxes which would have been deemed to have  
13          been paid during the taxable year by such domestic  
14          corporation if cash in an amount equal to the  
15          amount of such inclusion in gross income were dis-  
16          tributed as a series of distributions (determined  
17          without regard to any foreign taxes which would be  
18          imposed on an actual distribution) through the chain  
19          of ownership which begins with such foreign cor-  
20          poration and ends with such domestic corporation.

21           “(2) AUTHORITY TO PREVENT ABUSE.—The  
22          Secretary shall issue such regulations or other guid-  
23          ance as is necessary or appropriate to carry out the  
24          purposes of this subsection, including regulations or  
25          other guidance which prevent the inappropriate use

1 of the foreign corporation's foreign income taxes not  
2 deemed paid by reason of paragraph (1).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to acquisitions of United States  
5 property (as defined in section 956(c) of the Internal Rev-  
6 enue Code of 1986) after May 20, 2010.

7 **SEC. 405. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**  
8 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

9 (a) **IN GENERAL.**—Paragraph (5) of section 304(b)  
10 is amended by redesignating subparagraph (B) as sub-  
11 paragraph (C) and by inserting after subparagraph (A)  
12 the following new subparagraph:

13 “(B) **SPECIAL RULE IN CASE OF FOREIGN**  
14 **ACQUIRING CORPORATION.**—In the case of any  
15 acquisition to which subsection (a) applies in  
16 which the acquiring corporation is a foreign  
17 corporation, no earnings and profits shall be  
18 taken into account under paragraph (2)(A)  
19 (and subparagraph (A) shall not apply) if more  
20 than 50 percent of the dividends arising from  
21 such acquisition (determined without regard to  
22 this subparagraph) would not—

23 “(i) be subject to tax under this chap-  
24 ter for the taxable year in which the divi-  
25 dends arise, or

1                   “(ii) be includible in the earnings and  
2                   profits of a controlled foreign corporation  
3                   (as defined in section 957 and without re-  
4                   gard to section 953(c)).”.

5           (b) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall apply to acquisitions after May 20, 2010.

7 **SEC. 406. MODIFICATION OF AFFILIATION RULES FOR PUR-**  
8                   **POSES OF RULES ALLOCATING INTEREST EX-**  
9                   **PENSE.**

10           (a) **IN GENERAL.**—Subparagraph (A) of section  
11 864(e)(5) is amended by adding at the end the following:  
12 “Notwithstanding the preceding sentence, a foreign cor-  
13 poration shall be treated as a member of the affiliated  
14 group if—

15                   “(i) more than 50 percent of the gross  
16                   income of such foreign corporation for the  
17                   taxable year is effectively connected with  
18                   the conduct of a trade or business within  
19                   the United States, and

20                   “(ii) at least 80 percent of either the  
21                   vote or value of all outstanding stock of  
22                   such foreign corporation is owned directly  
23                   or indirectly by members of the affiliated  
24                   group (determined with regard to this sen-  
25                   tence).”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

4 **SEC. 407. TERMINATION OF SPECIAL RULES FOR INTEREST**  
5 **AND DIVIDENDS RECEIVED FROM PERSONS**  
6 **MEETING THE 80-PERCENT FOREIGN BUSI-**  
7 **NESS REQUIREMENTS.**

8 (a) IN GENERAL.—Paragraph (1) of section 861(a)  
9 is amended by striking subparagraph (A) and by redesignig-  
10 nating subparagraphs (B) and (C) as subparagraphs (A)  
11 and (B), respectively.

12 (b) GRANDFATHER RULE WITH RESPECT TO WITH-  
13 HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM  
14 PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-  
15 NESS REQUIREMENTS.—

16 (1) IN GENERAL.—Subparagraph (B) of section  
17 871(i)(2) is amended to read as follows:

18 “(B) The active foreign business percent-  
19 age of—

20 “(i) any dividend paid by an existing  
21 80/20 company, and

22 “(ii) any interest paid by an existing  
23 80/20 company.”.

24 (2) DEFINITIONS AND SPECIAL RULES.—Sec-  
25 tion 871 is amended by redesignating subsections (1)

1 and (m) as subsections (m) and (n), respectively,  
2 and by inserting after subsection (k) the following  
3 new subsection:

4 “(l) RULES RELATING TO EXISTING 80/20 COMPA-  
5 NIES.—For purposes of this subsection and subsection  
6 (i)(2)(B)—

7 “(1) EXISTING 80/20 COMPANY.—

8 “(A) IN GENERAL.—The term ‘existing 80/  
9 20 company’ means any corporation if—

10 “(i) such corporation met the 80-per-  
11 cent foreign business requirements of sec-  
12 tion 861(c)(1) (as in effect before the en-  
13 actment of this subsection) for such cor-  
14 poration’s last taxable year beginning be-  
15 fore January 1, 2011,

16 “(ii) such corporation meets the 80-  
17 percent foreign business requirements of  
18 subparagraph (B) with respect to each tax-  
19 able year after the taxable year referred to  
20 in clause (i), and

21 “(iii) there has not been an addition  
22 of a substantial line of business with re-  
23 spect to such corporation after the date of  
24 the enactment of this subsection.

1           “(B) FOREIGN BUSINESS REQUIRE-  
2           MENTS.—

3                   “(i) IN GENERAL.—A corporation  
4                   meets the 80-percent foreign business re-  
5                   quirements of this subparagraph if it is  
6                   shown to the satisfaction of the Secretary  
7                   that at least 80 percent of the gross in-  
8                   come from all sources of such corporation  
9                   for the testing period is active foreign busi-  
10                  ness income.

11                  “(ii) ACTIVE FOREIGN BUSINESS IN-  
12                  COME.—For purposes of clause (i), the  
13                  term ‘active foreign business income’  
14                  means gross income which—

15                       “(I) is derived from sources out-  
16                       side the United States (as determined  
17                       under this subchapter), and

18                       “(II) is attributable to the active  
19                       conduct of a trade or business in a  
20                       foreign country or possession of the  
21                       United States.

22                  “(iii) TESTING PERIOD.—For pur-  
23                  poses of this subsection, the term ‘testing  
24                  period’ means the 3-year period ending  
25                  with the close of the taxable year of the

1 corporation preceding the payment (or  
2 such part of such period as may be appli-  
3 cable). If the corporation has no gross in-  
4 come for such 3-year period (or part there-  
5 of), the testing period shall be the taxable  
6 year in which the payment is made.

7 “(2) ACTIVE FOREIGN BUSINESS PERCENT-  
8 AGE.—The term ‘active foreign business percentage’  
9 means, with respect to any existing 80/20 company,  
10 the percentage which—

11 “(A) the active foreign business income of  
12 such company for the testing period, is of

13 “(B) the gross income of such company for  
14 the testing period from all sources.

15 “(3) AGGREGATION RULES.—For purposes of  
16 applying paragraph (1) (other than subparagraph  
17 (A)(i) thereof) and paragraph (2)—

18 “(A) IN GENERAL.—The corporation re-  
19 ferred to in paragraph (1)(A) and all of such  
20 corporation’s subsidiaries shall be treated as  
21 one corporation.

22 “(B) SUBSIDIARIES.—For purposes of sub-  
23 paragraph (A), the term ‘subsidiary’ means any  
24 corporation in which the corporation referred to  
25 in subparagraph (A) owns (directly or indi-



1           rectly) stock meeting the requirements of sec-  
2           tion 1504(a)(2) (determined by substituting ‘50  
3           percent’ for ‘80 percent’ each place it appears  
4           and without regard to section 1504(b)(3)).

5           “(4) REGULATIONS.—The Secretary may issue  
6           such regulations or other guidance as is necessary or  
7           appropriate to carry out the purposes of this section,  
8           including regulations or other guidance which pro-  
9           vide for the proper application of the aggregation  
10          rules described in paragraph (3).”.

11          (c) CONFORMING AMENDMENTS.—

12           (1) Section 861 is amended by striking sub-  
13          section (c) and by redesignating subsections (d), (e),  
14          and (f) as subsections (c), (d), and (e), respectively.

15           (2) Paragraph (9) of section 904(h) is amended  
16          to read as follows:

17           “(9) TREATMENT OF CERTAIN DOMESTIC COR-  
18          PORATIONS.—In the case of any dividend treated as  
19          not from sources with the United States under sec-  
20          tion 861(a)(2)(A), the corporation paying such divi-  
21          dend shall be treated for purposes of this subsection  
22          as a United States-owned foreign corporation.”.

23           (3) Subsection (c) of section 2104 is amended  
24          in the last sentence by striking “or to a debt obliga-

1       tion of a domestic corporation” and all that follows  
2       and inserting a period.

3       (d) EFFECTIVE DATE.—

4           (1) IN GENERAL.—Except as provided in para-  
5       graph (2), the amendments made by this section  
6       shall apply to taxable years beginning after Decem-  
7       ber 31, 2010.

8           (2) GRANDFATHER RULE FOR OUTSTANDING  
9       DEBT OBLIGATIONS.—

10           (A) IN GENERAL.—The amendments made  
11       by this section shall not apply to payments of  
12       interest on obligations issued before the date of  
13       the enactment of this Act.

14           (B) EXCEPTION FOR RELATED PARTY  
15       DEBT.—Subparagraph (A) shall not apply to  
16       any interest which is payable to a related per-  
17       son (determined under rules similar to the rules  
18       of section 954(d)(3)).

19           (C) SIGNIFICANT MODIFICATIONS TREAT-  
20       ED AS NEW ISSUES.—For purposes of subpara-  
21       graph (A), a significant modification of the  
22       terms of any obligation (including any extension  
23       of the term of such obligation) shall be treated  
24       as a new issue.

1 **SEC. 408. SOURCE RULES FOR INCOME ON GUARANTEES.**

2 (a) AMOUNTS SOURCED WITHIN THE UNITED  
3 STATES.—Subsection (a) of section 861 is amended by  
4 adding at the end the following new paragraph:

5 “(9) GUARANTEES.—Amounts—

6 “(A) received from noncorporate residents  
7 or domestic corporations with respect to guar-  
8 antees, and

9 “(B) paid by any foreign person with re-  
10 spect to guarantees if such amount is connected  
11 with income which is effectively connected (or  
12 treated as effectively connected) with the con-  
13 duct of a trade or business in the United  
14 States.”.

15 (b) AMOUNTS SOURCED WITHOUT THE UNITED  
16 STATES.—Subsection (a) of section 862 is amended by  
17 striking “and” at the end of paragraph (7), by striking  
18 the period at the end of paragraph (8) and inserting “;  
19 and”, and by adding at the end the following new para-  
20 graph:

21 “(9) amounts received with respect to guaran-  
22 tees other than those derived from sources within  
23 the United States as provided in section 861(a)(9).”.

24 (c) CONFORMING AMENDMENT.—Clause (ii) of sec-  
25 tion 864(c)(4)(B) is amended by striking “dividends or in-

1 terest” and inserting “dividends, interest, or amounts with  
2 respect to guarantees”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to guarantees issued after the date  
5 of the enactment of this Act.

6 **SEC. 409. LIMITATION ON EXTENSION OF STATUTE OF LIM-**  
7 **TATIONS FOR FAILURE TO NOTIFY SEC-**  
8 **RETARY OF CERTAIN FOREIGN TRANSFERS.**

9 (a) **IN GENERAL.**—Paragraph (8) of section 6501(c)  
10 is amended—

11 (1) by striking “In the case of any information”  
12 and inserting the following:

13 “(A) **IN GENERAL.**—In the case of any in-  
14 formation”, and

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

16 “(B) **APPLICATION TO FAILURES DUE TO**  
17 **REASONABLE CAUSE.**—If the failure to furnish  
18 the information referred to in subparagraph (A)  
19 is due to reasonable cause and not willful ne-  
20 glect, subparagraph (A) shall apply only to the  
21 item or items related to such failure.”.

22 (b) **EFFECTIVE DATE.**—The amendments made by  
23 this section shall take effect as if included in section 513  
24 of the Hiring Incentives to Restore Employment Act.

1 **Subtitle B—Personal Service In-**  
2 **come Earned in Pass-thru Enti-**  
3 **ties**

4 **SEC. 411. PARTNERSHIP INTERESTS TRANSFERRED IN**  
5 **CONNECTION WITH PERFORMANCE OF SERV-**  
6 **ICES.**

7 (a) MODIFICATION TO ELECTION TO INCLUDE PART-  
8 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF  
9 TRANSFER.—Subsection (c) of section 83 is amended by  
10 redesignating paragraph (4) as paragraph (5) and by in-  
11 serting after paragraph (3) the following new paragraph:

12 “(4) PARTNERSHIP INTERESTS.—Except as  
13 provided by the Secretary, in the case of any trans-  
14 fer of an interest in a partnership in connection with  
15 the provision of services to (or for the benefit of)  
16 such partnership—

17 “(A) the fair market value of such interest  
18 shall be treated for purposes of this section as  
19 being equal to the amount of the distribution  
20 which the partner would receive if the partner-  
21 ship sold (at the time of the transfer) all of its  
22 assets at fair market value and distributed the  
23 proceeds of such sale (reduced by the liabilities  
24 of the partnership) to its partners in liquidation  
25 of the partnership, and

1           “(B) the person receiving such interest  
2           shall be treated as having made the election  
3           under subsection (b)(1) unless such person  
4           makes an election under this paragraph to have  
5           such subsection not apply.”.

6           (b) CONFORMING AMENDMENT.—Paragraph (2) of  
7           section 83(b) is amended by inserting “or subsection  
8           (c)(4)(B)” after “paragraph (1)”.

9           (c) EFFECTIVE DATE.—The amendments made by  
10          this section shall apply to interests in partnerships trans-  
11          ferred after the date of the enactment of this Act.

12   **SEC. 412. INCOME OF PARTNERS FOR PERFORMING IN-**  
13                   **VESTMENT MANAGEMENT SERVICES TREAT-**  
14                   **ED AS ORDINARY INCOME RECEIVED FOR**  
15                   **PERFORMANCE OF SERVICES.**

16          (a) IN GENERAL.—Part I of subchapter K of chapter  
17          1 is amended by adding at the end the following new sec-  
18          tion:

19   **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
20                   **VESTMENT MANAGEMENT SERVICES TO**  
21                   **PARTNERSHIP.**

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

1           “(1) IN GENERAL.—Notwithstanding section  
2       702(b)—

3           “(A) any net income with respect to such  
4       interest for any partnership taxable year shall  
5       be treated as ordinary income, and

6           “(B) any net loss with respect to such in-  
7       terest for such year, to the extent not dis-  
8       allowed under paragraph (2) for such year,  
9       shall be treated as an ordinary loss.

10       All items of income, gain, deduction, and loss which  
11       are taken into account in computing net income or  
12       net loss shall be treated as ordinary income or ordi-  
13       nary loss (as the case may be).

14       “(2) TREATMENT OF LOSSES.—

15       “(A) LIMITATION.—Any net loss with re-  
16       spect to such interest shall be allowed for any  
17       partnership taxable year only to the extent that  
18       such loss does not exceed the excess (if any)  
19       of—

20           “(i) the aggregate net income with re-  
21       spect to such interest for all prior partner-  
22       ship taxable years, over

23           “(ii) the aggregate net loss with re-  
24       spect to such interest not disallowed under

1           this subparagraph for all prior partnership  
2           taxable years.

3           “(B) CARRYFORWARD.—Any net loss for  
4           any partnership taxable year which is not al-  
5           lowed by reason of subparagraph (A) shall be  
6           treated as an item of loss with respect to such  
7           partnership interest for the succeeding partner-  
8           ship taxable year.

9           “(C) BASIS ADJUSTMENT.—No adjustment  
10          to the basis of a partnership interest shall be  
11          made on account of any net loss which is not  
12          allowed by reason of subparagraph (A).

13          “(D) PRIOR PARTNERSHIP YEARS.—Any  
14          reference in this paragraph to prior partnership  
15          taxable years shall only include prior partner-  
16          ship taxable years to which this section applies.

17          “(3) NET INCOME AND LOSS.—For purposes of  
18          this section—

19                 “(A) NET INCOME.—The term ‘net in-  
20                 come’ means, with respect to any investment  
21                 services partnership interest for any partner-  
22                 ship taxable year, the excess (if any) of—

23                         “(i) all items of income and gain  
24                         taken into account by the holder of such



1 interest under section 702 with respect to  
2 such interest for such year, over

3 “(ii) all items of deduction and loss so  
4 taken into account.

5 “(B) NET LOSS.—The term ‘net loss’  
6 means, with respect to such interest for such  
7 year, the excess (if any) of the amount de-  
8 scribed in subparagraph (A)(ii) over the amount  
9 described in subparagraph (A)(i).

10 “(4) SPECIAL RULE FOR DIVIDENDS.—Any div-  
11 idend taken into account in determining net income  
12 or net loss for purposes of paragraph (1) shall not  
13 be treated as qualified dividend income for purposes  
14 of section 1(h).

15 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

16 “(1) GAIN.—Any gain on the disposition of an  
17 investment services partnership interest shall be—

18 “(A) treated as ordinary income, and

19 “(B) recognized notwithstanding any other  
20 provision of this subtitle.

21 “(2) LOSS.—Any loss on the disposition of an  
22 investment services partnership interest shall be  
23 treated as an ordinary loss to the extent of the ex-  
24 cess (if any) of—

1           “(A) the aggregate net income with respect  
2           to such interest for all partnership taxable  
3           years to which this section applies, over

4           “(B) the aggregate net loss with respect to  
5           such interest allowed under subsection (a)(2)  
6           for all partnership taxable years to which this  
7           section applies.

8           “(3) EXCEPTION FOR THE DISPOSITION OF AN  
9           INTEREST IN A PUBLICLY TRADED PARTNERSHIP BY  
10          AN INDIVIDUAL.—Paragraphs (1) and (2) shall not  
11          apply in the case of the disposition by an individual  
12          of an investment services partnership interest which  
13          is an interest in a publicly traded partnership (as  
14          defined in section 7704) if neither such individual  
15          nor any member of such individual’s family (within  
16          the meaning of section 318(a)(1)) has (at any time)  
17          provided any of the services described in subsection  
18          (c)(1) with respect to assets held (directly or indi-  
19          rectly) by such publicly traded partnership.

20          “(4) ELECTION WITH RESPECT TO CERTAIN EX-  
21          CHANGES.—Paragraph (1)(B) shall not apply to the  
22          contribution of an investment services partnership  
23          interest to a partnership in exchange for an interest  
24          in such partnership if—

1           “(A) the taxpayer makes an irrevocable  
2           election to treat the partnership interest re-  
3           ceived in the exchange as an investment serv-  
4           ices partnership interest, and

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

8           “(5) DISPOSITION OF PORTION OF INTEREST.—

9           In the case of any disposition of an investment serv-  
10          ices partnership interest, the amount of net loss  
11          which otherwise would have (but for subsection  
12          (a)(2)(C)) applied to reduce the basis of such inter-  
13          est shall be disregarded for purposes of this section  
14          for all succeeding partnership taxable years.

15          “(6) DISTRIBUTIONS OF PARTNERSHIP PROP-  
16          ERTY.—In the case of any distribution of property  
17          by a partnership with respect to any investment  
18          services partnership interest held by a partner—

19                 “(A) the excess (if any) of—

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

23                         “(ii) the adjusted basis of such prop-  
24                         erty in the hands of the partnership,

1           shall be taken into account as an increase in  
2           such partner's distributive share of the taxable  
3           income of the partnership (except to the extent  
4           such excess is otherwise taken into account in  
5           determining the taxable income of the partner-  
6           ship),

7           “(B) such property shall be treated for  
8           purposes of subpart B of part II as money dis-  
9           tributed to such partner in an amount equal to  
10          such fair market value, and

11          “(C) the basis of such property in the  
12          hands of such partner shall be such fair market  
13          value.

14          Subsection (b) of section 734 shall be applied with-  
15          out regard to the preceding sentence. In the case of  
16          a taxpayer which satisfies requirements similar to  
17          the requirements of subparagraphs (A) and (B) of  
18          paragraph (4), this paragraph and paragraph (1)(B)  
19          shall not apply to the distribution of a partnership  
20          interest if such distribution is in connection with a  
21          contribution (or deemed contribution) of any prop-  
22          erty of the partnership to which section 721 applies  
23          pursuant to a transaction described in paragraph  
24          (1)(B) or (2) of section 708(b).

1           “(7) APPLICATION OF SECTION 751.—In apply-  
2           ing section 751, an investment services partnership  
3           interest shall be treated as an inventory item.

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

6           “(1) IN GENERAL.—The term ‘investment serv-  
7           ices partnership interest’ means any interest in a  
8           partnership which is held (directly or indirectly) by  
9           any person if it was reasonably expected (at the time  
10          that such person acquired such interest) that such  
11          person (or any person related to such person) would  
12          provide (directly or indirectly) a substantial quantity  
13          of any of the following services with respect to assets  
14          held (directly or indirectly) by the partnership:

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

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

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

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

24           “(2) SPECIFIED ASSET.—The term ‘specified  
25           asset’ means securities (as defined in section

1 475(c)(2) without regard to the last sentence there-  
2 of), real estate held for rental or investment, inter-  
3 ests in partnerships, commodities (as defined in sec-  
4 tion 475(e)(2)), or options or derivative contracts  
5 with respect to any of the foregoing.

6 “(3) EXCEPTION FOR FAMILY FARMS.—The  
7 term ‘specified asset’ shall not include any farm  
8 used for farming purposes if such farm is held by  
9 a partnership all of the interests in which are held  
10 (directly or indirectly) by members of the same fam-  
11 ily. Terms used in the preceding sentence which are  
12 also used in section 2032A shall have the same  
13 meaning as when used in such section.

14 “(4) RELATED PERSONS.—A person shall be  
15 treated as related to another person if the relation-  
16 ship between such persons is described in section  
17 267 or 707(b).

18 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-  
19 ESTS.—

20 “(1) IN GENERAL.—In the case of any portion  
21 of an investment services partnership interest which  
22 is a qualified capital interest, all items of income,  
23 gain, loss, and deduction which are allocated to such  
24 qualified capital interest shall not be taken into ac-  
25 count under subsection (a) if—

1           “(A) allocations of items are made by the  
2           partnership to such qualified capital interest in  
3           the same manner as such allocations are made  
4           to other qualified capital interests held by part-  
5           ners who do not provide any services described  
6           in subsection (c)(1) and who are not related to  
7           the partner holding the qualified capital inter-  
8           est, and

9           “(B) the allocations made to such other in-  
10          terests are significant compared to the alloca-  
11          tions made to such qualified capital interest.

12          “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO  
13          ALLOCATION REQUIREMENTS.—To the extent pro-  
14          vided by the Secretary in regulations or other guid-  
15          ance—

16                 “(A) ALLOCATIONS TO PORTION OF QUALI-  
17                 FIED CAPITAL INTEREST.—Paragraph (1) may  
18                 be applied separately with respect to a portion  
19                 of a qualified capital interest.

20                 “(B) NO OR INSIGNIFICANT ALLOCATIONS  
21                 TO NONSERVICE PROVIDERS.—In any case in  
22                 which the requirements of paragraph (1)(B) are  
23                 not satisfied, items of income, gain, loss, and  
24                 deduction shall not be taken into account under  
25                 subsection (a) to the extent that such items are

1 properly allocable under such regulations or  
2 other guidance to qualified capital interests.

3 “(C) ALLOCATIONS TO SERVICE PRO-  
4 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH  
5 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-  
6 tions shall not be treated as failing to meet the  
7 requirement of paragraph (1)(A) merely be-  
8 cause the allocations to the qualified capital in-  
9 terest represent a lower return than the alloca-  
10 tions made to the other qualified capital inter-  
11 ests referred to in such paragraph.

12 “(3) SPECIAL RULE FOR CHANGES IN SERV-  
13 ICES.—In the case of an interest in a partnership  
14 which is not an investment services partnership in-  
15 terest and which, by reason of a change in the serv-  
16 ices with respect to assets held (directly or indi-  
17 rectly) by the partnership, would (without regard to  
18 the reasonable expectation exception of subsection  
19 (c)(1)) have become such an interest—

20 “(A) notwithstanding subsection (c)(1),  
21 such interest shall be treated as an investment  
22 services partnership interest as of the time of  
23 such change, and

24 “(B) for purposes of this subsection, the  
25 qualified capital interest of the holder of such



1 partnership interest immediately after such  
2 change shall not be less than the fair market  
3 value of such interest (determined immediately  
4 before such change).

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

14 “(5) EXCEPTION FOR NO-SELF-CHARGED  
15 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-  
16 cept as otherwise provided by the Secretary, an in-  
17 terest shall not fail to be treated as satisfying the  
18 requirement of paragraph (1)(A) merely because the  
19 allocations made by the partnership to such interest  
20 do not reflect the cost of services described in sub-  
21 section (c)(1) which are provided (directly or indi-  
22 rectly) to the partnership by the holder of such in-  
23 terest (or a related person).

24 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the  
25 case of any investment services partnership interest

1 any portion of which is a qualified capital interest,  
2 subsection (b) shall not apply to so much of any  
3 gain or loss as bears the same proportion to the en-  
4 tire amount of such gain or loss as—

5 “(A) the distributive share of gain or loss  
6 that would have been allocated to the qualified  
7 capital interest (consistent with the require-  
8 ments of paragraph (1)) if the partnership had  
9 sold all of its assets at fair market value imme-  
10 diately before the disposition, bears to

11 “(B) the distributive share of gain or loss  
12 that would have been so allocated to the invest-  
13 ment services partnership interest of which such  
14 qualified capital interest is a part.

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

17 “(A) IN GENERAL.—The term ‘qualified  
18 capital interest’ means so much of a partner’s  
19 interest in the capital of the partnership as is  
20 attributable to—

21 “(i) the fair market value of any  
22 money or other property contributed to the  
23 partnership in exchange for such interest  
24 (determined without regard to section  
25 752(a)),

1           “(ii) any amounts which have been in-  
2           cluded in gross income under section 83  
3           with respect to the transfer of such inter-  
4           est, and

5           “(iii) the excess (if any) of—

6                   “(I) any items of income and  
7                   gain taken into account under section  
8                   702 with respect to such interest, over

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

11           “(B) ADJUSTMENT TO QUALIFIED CAPITAL  
12           INTEREST.—

13           “(i) DISTRIBUTIONS AND LOSSES.—

14           The qualified capital interest shall be re-  
15           duced by distributions from the partner-  
16           ship with respect to such interest and by  
17           the excess (if any) of the amount described  
18           in subparagraph (A)(iii)(II) over the  
19           amount described in subparagraph  
20           (A)(iii)(I).

21           “(ii) SPECIAL RULE FOR CONTRIBU-  
22           TIONS OF PROPERTY.—In the case of any  
23           contribution of property described in sub-  
24           paragraph (A)(i) with respect to which the  
25           fair market value of such property is not

1 equal to the adjusted basis of such prop-  
2 erty immediately before such contribution,  
3 proper adjustments shall be made to the  
4 qualified capital interest to take into ac-  
5 count such difference consistent with such  
6 regulations or other guidance as the Sec-  
7 retary may provide.

8 “(8) TREATMENT OF CERTAIN LOANS.—

9 “(A) PROCEEDS OF PARTNERSHIP LOANS  
10 NOT TREATED AS QUALIFIED CAPITAL INTER-  
11 EST OF SERVICE PROVIDING PARTNERS.—For  
12 purposes of this subsection, an investment serv-  
13 ices partnership interest shall not be treated as  
14 a qualified capital interest to the extent that  
15 such interest is acquired in connection with the  
16 proceeds of any loan or other advance made or  
17 guaranteed, directly or indirectly, by any other  
18 partner or the partnership (or any person re-  
19 lated to any such other partner or the partner-  
20 ship).

21 “(B) REDUCTION IN ALLOCATIONS TO  
22 QUALIFIED CAPITAL INTERESTS FOR LOANS  
23 FROM NONSERVICE PROVIDING PARTNERS TO  
24 THE PARTNERSHIP.—For purposes of this sub-  
25 section, any loan or other advance to the part-

1           nership made or guaranteed, directly or indi-  
2           rectly, by a partner not providing services de-  
3           scribed in subsection (c)(1) to the partnership  
4           (or any person related to such partner) shall be  
5           taken into account in determining the qualified  
6           capital interests of the partners in the partner-  
7           ship.

8           “(e) OTHER INCOME AND GAIN IN CONNECTION  
9 WITH INVESTMENT MANAGEMENT SERVICES.—

10           “(1) IN GENERAL.—If—

11           “(A) a person performs (directly or indi-  
12           rectly) investment management services for any  
13           entity,

14           “(B) such person holds (directly or indi-  
15           rectly) a disqualified interest with respect to  
16           such entity, and

17           “(C) the value of such interest (or pay-  
18           ments thereunder) is substantially related to  
19           the amount of income or gain (whether or not  
20           realized) from the assets with respect to which  
21           the investment management services are per-  
22           formed,

23           any income or gain with respect to such interest  
24           shall be treated as ordinary income. Rules similar to

1 the rules of subsections (a)(4) and (d) shall apply  
2 for purposes of this subsection.

3 “(2) DEFINITIONS.—For purposes of this sub-  
4 section—

5 “(A) DISQUALIFIED INTEREST.—

6 “(i) IN GENERAL.—The term ‘dis-  
7 qualified interest’ means, with respect to  
8 any entity—

9 “(I) any interest in such entity  
10 other than indebtedness,

11 “(II) convertible or contingent  
12 debt of such entity,

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

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

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

22 “(I) a partnership interest,

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

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

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

5                   “(i) a domestic C corporation, or

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

8                   “(I) effectively connected with  
9                   the conduct of a trade or business in  
10                  the United States, or

11                  “(II) subject to a comprehensive  
12                  foreign income tax (as defined in sec-  
13                  tion 457A(d)(2)).

14                  “(C) INVESTMENT MANAGEMENT SERV-  
15                  ICES.—The term ‘investment management serv-  
16                  ices’ means a substantial quantity of any of the  
17                  services described in subsection (c)(1).

18                  “(f) REGULATIONS.—The Secretary shall prescribe  
19                  such regulations or other guidance as is necessary or ap-  
20                  propriate to carry out the purposes of this section, includ-  
21                  ing regulations or other guidance to—

22                  “(1) provide modifications to the application of  
23                  this section (including treating related persons as  
24                  not related to one another) to the extent such modi-

1       fication is consistent with the purposes of this sec-  
2       tion,

3           “(2) prevent the avoidance of the purposes of  
4       this section, and

5           “(3) coordinate this section with the other pro-  
6       visions of this title.

7       “(g) SPECIAL RULES FOR INDIVIDUALS.—In the case  
8       of an individual—

9           “(1) IN GENERAL.—Subsection (a)(1) shall  
10       apply only to the applicable percentage of the net in-  
11       come or net loss referred to in such subsection.

12           “(2) DISPOSITIONS, ETC.—The amount which  
13       (but for this paragraph) would be treated as ordi-  
14       nary income by reason of subsection (b) or (e) shall  
15       be the applicable percentage of such amount.

16           “(3) PRO RATA ALLOCATION TO ITEMS.—For  
17       purposes of applying subsections (a) and (e) the ag-  
18       gregate amount treated as ordinary income for any  
19       such taxable year shall be allocated ratably among  
20       the items of income, gain, loss, and deduction taken  
21       into account in determining such amount.

22           “(4) SPECIAL RULE FOR RECOGNITION OF  
23       GAIN.—Gain which (but for this section) would not  
24       be recognized shall be recognized by reason of sub-  
25       section (b) only to the extent that such gain is treat-



1 ed as ordinary income after application of paragraph  
2 (2).

3 “(5) COORDINATION WITH LIMITATION ON  
4 LOSSES.—For purposes of applying paragraph (2) of  
5 subsection (a) with respect to any net loss for any  
6 taxable year—

7 “(A) such paragraph shall only apply with  
8 respect to the applicable percentage of such net  
9 loss for such taxable year,

10 “(B) in the case of a prior partnership tax-  
11 able year referred to in clause (i) or (ii) of sub-  
12 paragraph (A) of such paragraph, only the ap-  
13 plicable percentage (as in effect for such prior  
14 taxable year) of net income or net loss for such  
15 prior partnership taxable year shall be taken  
16 into account, and

17 “(C) any net loss carried forward to the  
18 succeeding partnership taxable year under sub-  
19 paragraph (B) of such paragraph shall—

20 “(i) be taken into account in such  
21 succeeding year without reduction under  
22 this subsection, and

23 “(ii) in lieu of being taken into ac-  
24 count as an item of loss in such succeeding  
25 year, shall be taken into account—

1                   “(I) as an increase in net loss or  
2                   as a reduction in net income (includ-  
3                   ing below zero), as the case may, and

4                   “(II) after any reduction in the  
5                   amount of such net loss or net income  
6                   under this subsection.

7           A rule similar to the rule of the preceding sentence  
8           shall apply for purposes of subsection (b)(2)(A).

9                   “(6) COORDINATION WITH TREATMENT OF  
10                  DIVIDENDS.—Subsection (a)(4) shall only apply to  
11                  the applicable percentage of dividends described  
12                  therein.

13                  “(7) APPLICABLE PERCENTAGE.—For purposes  
14                  of this subsection, the term ‘applicable percentage’  
15                  means 75 percent (50 percent in the case of any tax-  
16                  able year beginning before January 1, 2013).

17                  “(h) CROSS REFERENCE.—For 40 percent penalty on  
18                  certain underpayments due to the avoidance of this sec-  
19                  tion, see section 6662.”.

20                  (b) TREATMENT FOR PURPOSES OF SECTION  
21                  7704.—Subsection (d) of section 7704 is amended by add-  
22                  ing at the end the following new paragraph:

23                          “(6) INCOME FROM INVESTMENT SERVICES  
24                          PARTNERSHIP INTERESTS NOT QUALIFIED.—

1           “(A) IN GENERAL.—Items of income and  
2 gain shall not be treated as qualifying income  
3 if such items are treated as ordinary income by  
4 reason of the application of section 710 (relat-  
5 ing to special rules for partners providing in-  
6 vestment management services to partnership).  
7 The preceding sentence shall not apply to any  
8 item described in paragraph (1)(E) (or so much  
9 of paragraph (1)(F) as relates to paragraph  
10 (1)(E)).

11           “(B) SPECIAL RULES FOR CERTAIN PART-  
12 NERSHIPS.—

13           “(i) CERTAIN PARTNERSHIPS OWNED  
14 BY REAL ESTATE INVESTMENT TRUSTS.—  
15 Subparagraph (A) shall not apply in the  
16 case of a partnership which meets each of  
17 the following requirements:

18           “(I) Such partnership is treated  
19 as publicly traded under this section  
20 solely by reason of interests in such  
21 partnership being convertible into in-  
22 terests in a real estate investment  
23 trust which is publicly traded.

24           “(II) 50 percent or more of the  
25 capital and profits interests of such

1 partnership are owned, directly or in-  
2 directly, at all times during the tax-  
3 able year by such real estate invest-  
4 ment trust (determined with the ap-  
5 plication of section 267(c)).

6 “(III) Such partnership meets  
7 the requirements of paragraphs (2),  
8 (3), and (4) of section 856(c).

9 “(ii) CERTAIN PARTNERSHIPS OWN-  
10 ING OTHER PUBLICLY TRADED PARTNER-  
11 SHIPS.—Subparagraph (A) shall not apply  
12 in the case of a partnership which meets  
13 each of the following requirements:

14 “(I) Substantially all of the as-  
15 sets of such partnership consist of in-  
16 terests in one or more publicly traded  
17 partnerships (determined without re-  
18 gard to subsection (b)(2)).

19 “(II) Substantially all of the in-  
20 come of such partnership is ordinary  
21 income or section 1231 gain (as de-  
22 fined in section 1231(a)(3)).

23 “(C) TRANSITIONAL RULE.—Subpara-  
24 graph (A) shall not apply to any taxable year  
25 of the partnership beginning before the date

1           which is 10 years after the date of the enact-  
2           ment of this paragraph.”.

3           (c) IMPOSITION OF PENALTY ON UNDERPAY-  
4 MENTS.—

5           (1) IN GENERAL.—Subsection (b) of section  
6           6662 is amended by inserting after paragraph (7)  
7           the following new paragraph:

8           “(8) The application of subsection (e) of section  
9           710 or the regulations prescribed under section  
10          710(f) to prevent the avoidance of the purposes of  
11          section 710.”.

12          (2) AMOUNT OF PENALTY.—

13           (A) IN GENERAL.—Section 6662 is amend-  
14           ed by adding at the end the following new sub-  
15           section:

16          “(k) INCREASE IN PENALTY IN CASE OF PROPERTY  
17 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
18 ICES.—In the case of any portion of an underpayment to  
19 which this section applies by reason of subsection (b)(8),  
20 subsection (a) shall be applied with respect to such portion  
21 by substituting ‘40 percent’ for ‘20 percent’.”.

22           (B) CONFORMING AMENDMENT.—Subpara-  
23           graph (B) of section 6662A(e)(2) is amended  
24           by striking “or (i)” and inserting “, (i), or (k)”.

1           (3) SPECIAL RULES FOR APPLICATION OF REA-  
2           SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-  
3           tion 6664 is amended—

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

6                   (B) by striking “paragraph (3)” in para-  
7                   graph (5)(A), as so redesignated, and inserting  
8                   “paragraph (4)”, and

9                   (C) by inserting after paragraph (2) the  
10                  following new paragraph:

11                 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-  
12                 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-  
13                 ICES.—

14                         “(A) IN GENERAL.—Paragraph (1) shall  
15                         not apply to any portion of an underpayment to  
16                         which this section applies by reason of sub-  
17                         section (b)(8) unless—

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

21                                 “(ii) there is or was substantial au-  
22                                 thority for such treatment, and

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

1                   “(B) RULES RELATING TO REASONABLE  
2                   BELIEF.—Rules similar to the rules of sub-  
3                   section (d)(3) shall apply for purposes of sub-  
4                   paragraph (A)(iii).”.

5                   (d) INCOME AND LOSS FROM INVESTMENT SERVICES  
6                   PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-  
7                   TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

8                   (1) INTERNAL REVENUE CODE.—Section  
9                   1402(a) is amended by striking “and” at the end of  
10                  paragraph (16), by striking the period at the end of  
11                  paragraph (17) and inserting “; and”, and by insert-  
12                  ing after paragraph (17) the following new para-  
13                  graph:

14                  “(18) notwithstanding the preceding provisions  
15                  of this subsection, in the case of any individual en-  
16                  gaged in the trade or business of providing services  
17                  described in section 710(c)(1) with respect to any  
18                  entity, any amount treated as ordinary income or or-  
19                  dinary loss of such individual under section 710 with  
20                  respect to such entity shall be taken into account in  
21                  determining the net earnings from self-employment  
22                  of such individual.”.

23                  (2) SOCIAL SECURITY ACT.—Section 211(a) of  
24                  the Social Security Act is amended by striking  
25                  “and” at the end of paragraph (15), by striking the

1 period at the end of paragraph (16) and inserting “;  
2 and”, and by inserting after paragraph (16) the fol-  
3 lowing new paragraph:

4 “(17) Notwithstanding the preceding provisions  
5 of this subsection, in the case of any individual en-  
6 gaged in the trade or business of providing services  
7 described in section 710(c)(1) of the Internal Rev-  
8 enue Code of 1986 with respect to any entity, any  
9 amount treated as ordinary income or ordinary loss  
10 of such individual under section 710 of such Code  
11 with respect to such entity shall be taken into ac-  
12 count in determining the net earnings from self-em-  
13 ployment of such individual.”.

14 (e) CONFORMING AMENDMENTS.—

15 (1) Subsection (d) of section 731 is amended by  
16 inserting “section 710(b)(4) (relating to distribu-  
17 tions of partnership property),” after “to the extent  
18 otherwise provided by”.

19 (2) Section 741 is amended by inserting “or  
20 section 710 (relating to special rules for partners  
21 providing investment management services to part-  
22 nership)” before the period at the end.

23 (3) The table of sections for part I of sub-  
24 chapter K of chapter 1 is amended by adding at the  
25 end the following new item:



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

1 (f) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as otherwise pro-  
3 vided in this subsection, the amendments made by  
4 this section shall apply to taxable years ending after  
5 the date of the enactment of this Act.

6 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-  
7 CLUDE EFFECTIVE DATE.—In applying section  
8 710(a) of the Internal Revenue Code of 1986 (as  
9 added by this section) in the case of any partnership  
10 taxable year which includes the date of the enact-  
11 ment of this Act, the amount of the net income re-  
12 ferred to in such section shall be treated as being  
13 the lesser of the net income for the entire partner-  
14 ship taxable year or the net income determined by  
15 only taking into account items attributable to the  
16 portion of the partnership taxable year which is  
17 after such date.

18 (3) DISPOSITIONS OF PARTNERSHIP INTER-  
19 ESTS.—Section 710(b) of the Internal Revenue Code  
20 of 1986 (as added by this section) shall apply to dis-  
21 positions and distributions after the date of the en-  
22 actment of this Act.

23 (4) OTHER INCOME AND GAIN IN CONNECTION  
24 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-

1       tion 710(e) of such Code (as added by this section)  
2       shall take effect on the date of the enactment of this  
3       Act.

4               (5) WAIVER OF ESTIMATED TAX PENALTIES.—  
5       No addition to tax shall be made under section 6654  
6       of such Code for any failure to pay estimated tax for  
7       a taxable year that includes the date of the enact-  
8       ment of this Act with respect to any underpayment  
9       to the extent such underpayment was created or in-  
10      creased by this section.

11 **SEC. 413. EMPLOYMENT TAX TREATMENT OF PROFES-**  
12 **SIONAL SERVICE BUSINESSES.**

13       (a) IN GENERAL.—Section 1402 is amended by add-  
14      ing at the end the following new subsection:

15       “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE  
16      BUSINESSES.—

17               “(1) SHAREHOLDERS PROVIDING SERVICES TO  
18      DISQUALIFIED S CORPORATIONS.—

19               “(A) IN GENERAL.—In the case of any dis-  
20      qualified S corporation, each shareholder of  
21      such disqualified S corporation who provides  
22      substantial services with respect to the profes-  
23      sional service business referred to in subpara-  
24      graph (C) shall take into account such share-  
25      holder’s pro rata share of all items of income or

1 loss described in section 1366 which are attrib-  
2 utable to such business in determining the  
3 shareholder's net earnings from self-employ-  
4 ment.

5 “(B) TREATMENT OF FAMILY MEMBERS.—  
6 Except as otherwise provided by the Secretary,  
7 the shareholder's pro rata share of items re-  
8 ferred to in subparagraph (A) shall be increased  
9 by the pro rata share of such items of each  
10 member of such shareholder's family (within  
11 the meaning of section 318(a)(1)) who does not  
12 provide substantial services with respect to such  
13 professional service business.

14 “(C) DISQUALIFIED S CORPORATION.—For  
15 purposes of this subsection, the term ‘disquali-  
16 fied S corporation’ means—

17 “(i) any S corporation which is a  
18 partner in a partnership which is engaged  
19 in a professional service business if sub-  
20 stantially all of the activities of such S cor-  
21 poration are performed in connection with  
22 such partnership, and

23 “(ii) any other S corporation which is  
24 engaged in a professional service business  
25 if the principal asset of such business is

1           the reputation and skill of 3 or fewer em-  
2           ployees.

3           “(2) PARTNERS.—In the case of any partner-  
4           ship which is engaged in a professional service busi-  
5           ness, subsection (a)(13) shall not apply to any part-  
6           ner who provides substantial services with respect to  
7           such professional service business.

8           “(3) PROFESSIONAL SERVICE BUSINESS.—For  
9           purposes of this subsection, the term ‘professional  
10          service business’ means any trade or business if sub-  
11          stantially all of the activities of such trade or busi-  
12          ness involve providing services in the fields of health,  
13          law, lobbying, engineering, architecture, accounting,  
14          actuarial science, performing arts, consulting, ath-  
15          letics, investment advice or management, or broker-  
16          age services.

17          “(4) REGULATIONS.—The Secretary shall pre-  
18          scribe such regulations as may be necessary or ap-  
19          propriate to carry out the purposes of this sub-  
20          section, including regulations which prevent the  
21          avoidance of the purposes of this subsection through  
22          tiered entities or otherwise.

23          “(5) CROSS REFERENCE.—For employment tax  
24          treatment of wages paid to shareholders of S cor-  
25          porations, see subtitle C.”.

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

4 “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE  
5 BUSINESSES.—

6 “(1) SHAREHOLDERS PROVIDING SERVICES TO  
7 DISQUALIFIED S CORPORATIONS.—

8 “(A) IN GENERAL.—In the case of any dis-  
9 qualified S corporation, each shareholder of  
10 such disqualified S corporation who provides  
11 substantial services with respect to the profes-  
12 sional service business referred to in subpara-  
13 graph (C) shall take into account such share-  
14 holder’s pro rata share of all items of income or  
15 loss described in section 1366 of the Internal  
16 Revenue Code of 1986 which are attributable to  
17 such business in determining the shareholder’s  
18 net earnings from self-employment.

19 “(B) TREATMENT OF FAMILY MEMBERS.—  
20 Except as otherwise provided by the Secretary  
21 of the Treasury, the shareholder’s pro rata  
22 share of items referred to in subparagraph (A)  
23 shall be increased by the pro rata share of such  
24 items of each member of such shareholder’s  
25 family (within the meaning of section 318(a)(1)

1 of the Internal Revenue Code of 1986) who  
2 does not provide substantial services with re-  
3 spect to such professional service business.

4 “(C) DISQUALIFIED S CORPORATION.—For  
5 purposes of this subsection, the term ‘disquali-  
6 fied S corporation’ means—

7 “(i) any S corporation which is a  
8 partner in a partnership which is engaged  
9 in a professional service business if sub-  
10 stantially all of the activities of such S cor-  
11 poration are performed in connection with  
12 such partnership, and

13 “(ii) any other S corporation which is  
14 engaged in a professional service business  
15 if the principal asset of such business is  
16 the reputation and skill of 3 or fewer em-  
17 ployees.

18 “(2) PARTNERS.—In the case of any partner-  
19 ship which is engaged in a professional service busi-  
20 ness, subsection (a)(12) shall not apply to any part-  
21 ner who provides substantial services with respect to  
22 such professional service business.

23 “(3) PROFESSIONAL SERVICE BUSINESS.—For  
24 purposes of this subsection, the term ‘professional  
25 service business’ means any trade or business if sub-

1       stantially all of the activities of such trade or busi-  
2       ness involve providing services in the fields of health,  
3       law, lobbying, engineering, architecture, accounting,  
4       actuarial science, performing arts, consulting, ath-  
5       letics, investment advice or management, or broker-  
6       age services.”.

7       (c) EFFECTIVE DATE.—The amendments made by  
8       this section shall apply to taxable years beginning after  
9       December 31, 2010.

## 10       **Subtitle C—Corporate Provisions**

### 11       **SEC. 421. TREATMENT OF SECURITIES OF A CONTROLLED** 12                               **CORPORATION EXCHANGED FOR ASSETS IN** 13                               **CERTAIN REORGANIZATIONS.**

14       (a) IN GENERAL.—Section 361 (relating to non-  
15       recognition of gain or loss to corporations; treatment of  
16       distributions) is amended by adding at the end the fol-  
17       lowing new subsection:

18               “(d) SPECIAL RULES FOR TRANSACTIONS INVOLVING  
19       SECTION 355 DISTRIBUTIONS.—In the case of a reorga-  
20       nization described in section 368(a)(1)(D) with respect to  
21       which stock or securities of the corporation to which the  
22       assets are transferred are distributed in a transaction  
23       which qualifies under section 355—

24                       “(1) this section shall be applied by substituting  
25       ‘stock other than nonqualified preferred stock (as

1 defined in section 351(g)(2))’ for ‘stock or securities’  
2 in subsections (a) and (b)(1), and

3 “(2) the first sentence of subsection (b)(3) shall  
4 apply only to the extent that the sum of the money  
5 and the fair market value of the other property  
6 transferred to such creditors does not exceed the ad-  
7 justed bases of such assets transferred (reduced by  
8 the amount of the liabilities assumed (within the  
9 meaning of section 357(c))).”.

10 (b) CONFORMING AMENDMENT.—Paragraph (3) of  
11 section 361(b) is amended by striking the last sentence.

12 (c) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the amendments made by this section  
15 shall apply to exchanges after the date of the enact-  
16 ment of this Act.

17 (2) TRANSITION RULE.—The amendments  
18 made by this section shall not apply to any exchange  
19 pursuant to a transaction which is—

20 (A) made pursuant to a written agreement  
21 which was binding on March 15, 2010, and at  
22 all times thereafter;

23 (B) described in a ruling request submitted  
24 to the Internal Revenue Service on or before  
25 such date; or



1 (C) described on or before such date in a  
2 public announcement or in a filing with the Se-  
3 curities and Exchange Commission.

4 **SEC. 422. TAXATION OF BOOT RECEIVED IN REORGANIZA-**  
5 **TIONS.**

6 (a) IN GENERAL.—Paragraph (2) of section 356(a)  
7 is amended—

8 (1) by striking “If an exchange” and inserting  
9 “Except as otherwise provided by the Secretary—

10 “(A) IN GENERAL.—If an exchange”,

11 (2) by striking “then there shall be” and all  
12 that follows through “February 28, 1913” and in-  
13 sserting “then the amount of other property or  
14 money shall be treated as a dividend to the extent  
15 of the earnings and profits of the corporation”, and

16 (3) by adding at the end the following new sub-  
17 paragraph:

18 “(B) CERTAIN REORGANIZATIONS.—In the  
19 case of a reorganization described in section  
20 368(a)(1)(D) to which section 354(b)(1) ap-  
21 plies, in applying subparagraph (A)—

22 “(i) the earnings and profits of each  
23 corporation which is a party to the reorga-  
24 nization shall be taken into account, and

1                   “(ii) the amount which is a dividend  
2                   (and source thereof) shall be determined  
3                   under rules similar to the rules of para-  
4                   graphs (2) and (5) of section 304(b).”.

5           (b) EARNINGS AND PROFITS.—Paragraph (7) of sec-  
6   tion 312(n) is amended by adding at the end the following:  
7   “A similar rule shall apply to an exchange to which section  
8   356(a)(1) applies.”.

9           (c) CONFORMING AMENDMENT.—Paragraph (1) of  
10   section 356(a) is amended by striking “then the gain” and  
11   inserting “then (except as provided in paragraph (2)) the  
12   gain”.

13          (d) EFFECTIVE DATE.—

14               (1) IN GENERAL.—Except as provided in para-  
15               graph (2), the amendments made by this section  
16               shall apply to exchanges after the date of the enact-  
17               ment of this Act.

18               (2) TRANSITION RULE.—The amendments  
19               made by this section shall not apply to any exchange  
20               between unrelated persons pursuant to a transaction  
21               which is—

22                       (A) made pursuant to a written agreement  
23                       which was binding on May 20, 2010, and at all  
24                       times thereafter,

1 (B) described in a ruling request submitted  
2 to the Internal Revenue Service on or before  
3 such date, or

4 (C) described in a public announcement or  
5 filing with the Securities and Exchange Com-  
6 mission on or before such date.

7 (3) RELATED PERSONS.—For purposes of this  
8 subsection, a person shall be treated as related to  
9 another person if the relationship between such per-  
10 sons is described in section 267 or 707(b) of the In-  
11 ternal Revenue Code of 1986.

## 12 **Subtitle D—Other Provisions**

### 13 **SEC. 431. MODIFICATIONS WITH RESPECT TO OIL SPILL LI-** 14 **ABILITY TRUST FUND.**

15 (a) EXTENSION OF APPLICATION OF OIL SPILL LI-  
16 ABILITY TRUST FUND FINANCING RATE.—Paragraph (2)  
17 of section 4611(f) is amended by striking “December 31,  
18 2017” and inserting “December 31, 2020”.

19 (b) INCREASE IN OIL SPILL LIABILITY TRUST FUND  
20 FINANCING RATE.—Subparagraph (B) of section  
21 4611(c)(2) is amended to read as follows:

22 “(B) the Oil Spill Liability Trust Fund fi-  
23 nancing rate is 32 cents a barrel.”

1 (c) INCREASE IN PER INCIDENT LIMITATIONS ON  
2 EXPENDITURES.—Subparagraph (A) of section  
3 9509(c)(2) is amended—

4 (1) by striking “\$1,000,000,000” in clause (i)  
5 and inserting “\$5,000,000,000”,

6 (2) by striking “\$500,000,000” in clause (ii)  
7 and inserting “\$2,500,000,000”, and

8 (3) by striking “\$1,000,000,000 PER INCIDENT,  
9 ETC” in the heading and inserting “PER INCIDENT  
10 LIMITATIONS”.

11 (d) EFFECTIVE DATE.—

12 (1) EXTENSION OF FINANCING RATE.—Except  
13 as provided in paragraph (2), the amendments made  
14 by this section shall take effect on the date of the  
15 enactment of this Act.

16 (2) INCREASE IN FINANCING RATE.—The  
17 amendment made by subsection (b) shall apply to  
18 crude oil received and petroleum products entered  
19 during calendar quarters beginning more than 60  
20 days after the date of the enactment of this Act.

21 **SEC. 432. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
22 **TAXES.**

23 The percentage under paragraph (2) of section 561  
24 of the Hiring Incentives to Restore Employment Act in

1 effect on the date of the enactment of this Act is increased  
2 by 30.5 percentage points.

3 **TITLE V—UNEMPLOYMENT,**  
4 **HEALTH, AND OTHER ASSIST-**  
5 **ANCE**

6 **Subtitle A—Unemployment**  
7 **Insurance and Other Assistance**

8 **SEC. 501. EXTENSION OF UNEMPLOYMENT INSURANCE**  
9 **PROVISIONS.**

10 (a) IN GENERAL.—(1) Section 4007 of the Supple-  
11 mental Appropriations Act, 2008 (Public Law 110–252;  
12 26 U.S.C. 3304 note) is amended—

13 (A) by striking “June 2, 2010” each place it  
14 appears and inserting “December 31, 2010”;

15 (B) in the heading for subsection (b)(2), by  
16 striking “JUNE 2, 2010” and inserting “DECEMBER  
17 31, 2010”; and

18 (C) in subsection (b)(3), by striking “November  
19 6, 2010” and inserting “May 31, 2011”.

20 (2) Section 2002(e) of the Assistance for Unemployed  
21 Workers and Struggling Families Act, as contained in  
22 Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438),  
23 is amended—

24 (A) in paragraph (1)(B), by striking “June 2,  
25 2010” and inserting “December 31, 2010”;

1 (B) in the heading for paragraph (2), by strik-  
2 ing “JUNE 2, 2010” and inserting “DECEMBER 31,  
3 2010”; and

4 (C) in paragraph (3), by striking “December 7,  
5 2010” and inserting “June 30, 2011”.

6 (3) Section 2005 of the Assistance for Unemployed  
7 Workers and Struggling Families Act, as contained in  
8 Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444),  
9 is amended—

10 (A) by striking “June 2, 2010” each place it  
11 appears and inserting “January 1, 2011”; and

12 (B) in subsection (c), by striking “November 6,  
13 2010” and inserting “June 1, 2011”.

14 (4) Section 5 of the Unemployment Compensation  
15 Extension Act of 2008 (Public Law 110–449; 26 U.S.C.  
16 3304 note) is amended by striking “November 6, 2010”  
17 and inserting “May 31, 2011”.

18 (b) FUNDING.—Section 4004(e)(1) of the Supple-  
19 mental Appropriations Act, 2008 (Public Law 110–252;  
20 26 U.S.C. 3304 note) is amended—

21 (1) in subparagraph (D), by striking “and” at  
22 the end; and

23 (2) by inserting after subparagraph (E) the fol-  
24 lowing:

1           “(F) the amendments made by section  
2           501(a)(1) of the American Jobs and Closing  
3           Tax Loopholes Act of 2010 ; and”.

4           (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect as if included in the enact-  
6 ment of the Continuing Extension Act of 2010 (Public  
7 Law 111–157).

8   **SEC. 502. COORDINATION OF EMERGENCY UNEMPLOY-**  
9                   **MENT COMPENSATION WITH REGULAR COM-**  
10                   **PENSATION.**

11           (a) CERTAIN INDIVIDUALS NOT INELIGIBLE BY REA-  
12 SON OF NEW ENTITLEMENT TO REGULAR BENEFITS.—  
13 Section 4002 of the Supplemental Appropriations Act,  
14 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is  
15 amended by adding at the end the following:

16           “(g) COORDINATION OF EMERGENCY UNEMPLOY-  
17 MENT COMPENSATION WITH REGULAR COMPENSA-  
18 TION.—

19           “(1) If—

20                   “(A) an individual has been determined to  
21 be entitled to emergency unemployment com-  
22 pensation with respect to a benefit year,

23                   “(B) that benefit year has expired,

1           “(C) that individual has remaining entitle-  
2           ment to emergency unemployment compensa-  
3           tion with respect to that benefit year, and

4           “(D) that individual would qualify for a  
5           new benefit year in which the weekly benefit  
6           amount of regular compensation is at least ei-  
7           ther \$100 or 25 percent less than the individ-  
8           ual’s weekly benefit amount in the benefit year  
9           referred to in subparagraph (A),

10          then the State shall determine eligibility for com-  
11          pensation as provided in paragraph (2).

12          “(2) For individuals described in paragraph (1),  
13          the State shall determine whether the individual is  
14          to be paid emergency unemployment compensation  
15          or regular compensation for a week of unemploy-  
16          ment using one of the following methods:

17                 “(A) The State shall, if permitted by State  
18                 law, establish a new benefit year, but defer the  
19                 payment of regular compensation with respect  
20                 to that new benefit year until exhaustion of all  
21                 emergency unemployment compensation payable  
22                 with respect to the benefit year referred to in  
23                 paragraph (1)(A);

24                 “(B) The State shall, if permitted by State  
25                 law, defer the establishment of a new benefit



1 year (which uses all the wages and employment  
2 which would have been used to establish a ben-  
3 efit year but for the application of this para-  
4 graph), until exhaustion of all emergency unem-  
5 ployment compensation payable with respect to  
6 the benefit year referred to in paragraph(1)(A);

7 “(C) The State shall pay, if permitted by  
8 State law—

9 “(i) regular compensation equal to the  
10 weekly benefit amount established under  
11 the new benefit year, and

12 “(ii) emergency unemployment com-  
13 pensation equal to the difference between  
14 that weekly benefit amount and the weekly  
15 benefit amount for the expired benefit  
16 year; or

17 “(D) The State shall determine rights to  
18 emergency unemployment compensation without  
19 regard to any rights to regular compensation if  
20 the individual elects to not file a claim for reg-  
21 ular compensation under the new benefit year.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall apply to individuals whose benefit years,  
24 as described in section 4002(g)(1)(B) the Supplemental  
25 Appropriations Act, 2008 (Public Law 110–252; 26

1 U.S.C. 3304 note), as amended by this section, expire  
2 after the date of enactment of this Act.

3 **SEC. 503. EXTENSION OF THE EMERGENCY CONTINGENCY**  
4 **FUND.**

5 (a) IN GENERAL.—Section 403(c) of the Social Secu-  
6 rity Act (42 U.S.C. 603(c)) is amended—

7 (1) in paragraph (2)(A), by inserting “, and for  
8 fiscal year 2011, \$2,500,000,000” before “for pay-  
9 ment”;

10 (2) by striking paragraph (2)(B) and inserting  
11 the following:

12 “(B) AVAILABILITY AND USE OF FUNDS.—

13 “(i) FISCAL YEARS 2009 AND 2010.—

14 The amounts appropriated to the Emer-  
15 gency Fund under subparagraph (A) for  
16 fiscal year 2009 shall remain available  
17 through fiscal year 2010 and shall be used  
18 to make grants to States in each of fiscal  
19 years 2009 and 2010 in accordance with  
20 paragraph (3), except that the amounts  
21 shall remain available through fiscal year  
22 2011 to make grants and payments to  
23 States in accordance with paragraph  
24 (3)(C) to cover expenditures to subsidize  
25 employment positions held by individuals

1 placed in the positions before fiscal year  
2 2011.

3 “(ii) FISCAL YEAR 2011.—Subject to  
4 clause (iii), the amounts appropriated to  
5 the Emergency Fund under subparagraph  
6 (A) for fiscal year 2011 shall remain avail-  
7 able through fiscal year 2012 and shall be  
8 used to make grants to States based on ex-  
9 penditures in fiscal year 2011 for benefits  
10 and services provided in fiscal year 2011 in  
11 accordance with the requirements of para-  
12 graph (3).

13 “(iii) RESERVATION OF FUNDS.—Of  
14 the amounts appropriated to the Emer-  
15 gency Fund under subparagraph (A) for  
16 fiscal year 2011, \$500,000 shall be placed  
17 in reserve for use in fiscal year 2012, and  
18 shall be used to award grants for any ex-  
19 penditures described in this subsection in-  
20 curred by States after September 30,  
21 2011.”;

22 (3) in paragraph (2)(C), by striking “2010”  
23 and inserting “2012”;

24 (4) in paragraph (3)—

1 (A) in clause (i) of each of subparagraphs  
2 (A), (B), and (C)—

3 (i) by striking “year 2009 or 2010”  
4 and inserting “years 2009 through 2011”;

5 (ii) by striking “and” at the end of  
6 subclause (I);

7 (iii) by striking the period at the end  
8 of subclause (II) and inserting “; and”;  
9 and

10 (iv) by adding at the end the fol-  
11 lowing:

12 “(III) if the quarter is in fiscal  
13 year 2011, has provided the Secretary  
14 with such information as the Sec-  
15 retary may find necessary in order to  
16 make the determinations, or take any  
17 other action, described in paragraph  
18 (5)(C).”; and

19 (B) in subparagraph (C), by adding at the  
20 end the following:

21 “(iv) LIMITATION ON EXPENDITURES  
22 FOR SUBSIDIZED EMPLOYMENT.—An ex-  
23 penditure for subsidized employment shall  
24 be taken into account under clause (ii)

1                   only if the expenditure is used to subsidize  
2                   employment for—

3                                 “(I) a member of a needy family  
4                                 (without regard to whether the family  
5                                 is receiving assistance under the State  
6                                 program funded under this part); or

7                                 “(II) an individual who has ex-  
8                                 hausted (or, within 60 days, will ex-  
9                                 haust) all rights to receive unemploy-  
10                                ment compensation under Federal and  
11                                State law, and who is a member of a  
12                                needy household.”;

13                   (5) by striking paragraph (5) and inserting the  
14                   following:

15                                 “(5) LIMITATIONS ON PAYMENTS; ADJUSTMENT  
16                   AUTHORITY.—

17                                 “(A) FISCAL YEARS 2009 AND 2010.—The  
18                                 total amount payable to a single State under  
19                                 subsection (b) and this subsection for fiscal  
20                                 years 2009 and 2010 combined shall not exceed  
21                                 50 percent of the annual State family assist-  
22                                 ance grant.

23                                 “(B) FISCAL YEAR 2011.—Subject to sub-  
24                                 paragraph (C), the total amount payable to a  
25                                 single State under subsection (b) and this sub-

1 section for fiscal year 2011 shall not exceed 30  
2 percent of the annual State family assistance  
3 grant.

4 “(C) ADJUSTMENT AUTHORITY.—If the  
5 Secretary determines that the Emergency Fund  
6 is at risk of being depleted before September  
7 30, 2011, or that funds are available to accom-  
8 modate additional State requests under this  
9 subsection, the Secretary may, through program  
10 instructions issued without regard to the re-  
11 quirements of section 553 of title 5, United  
12 States Code—

13 “(i) specify priority criteria for award-  
14 ing grants to States during fiscal year  
15 2011; and

16 “(ii) adjust the percentage limitation  
17 applicable under subparagraph (B) with  
18 respect to the total amount payable to a  
19 single State for fiscal year 2011.”; and

20 (6) in paragraph (6), by inserting “or for ex-  
21 penditures described in paragraph (3)(C)(iv)” before  
22 the period.

23 (b) CONFORMING AMENDMENTS.—Section 2101 of  
24 division B of the American Recovery and Reinvestment  
25 Act of 2009 (Public Law 111–5) is amended—

1 (1) in subsection (a)(2)—

2 (A) by striking “2010” and inserting  
3 “2011”; and

4 (B) by striking all that follows “repealed”  
5 and inserting a period; and

6 (2) in subsection (d)(1), by striking “2010”  
7 and inserting “2011”.

8 (c) PROGRAM GUIDANCE.—The Secretary of Health  
9 and Human Services shall issue program guidance, with-  
10 out regard to the requirements of section 553 of title 5,  
11 United States Code, which ensures that the funds provided  
12 under the amendments made by this section to a jurisdic-  
13 tion for subsidized employment do not support any sub-  
14 sidized employment position the annual salary of which  
15 is greater than, at State option—

16 (1) 200 percent of the poverty line (within the  
17 meaning of section 673(2) of the Omnibus Budget  
18 Reconciliation Act of 1981, including any revision  
19 required by such section 673(2)) for a family of 4;  
20 or

21 (2) the median wage in the jurisdiction.

## 1           **Subtitle B—Health Provisions**

### 2   **SEC. 511. EXTENSION OF PREMIUM ASSISTANCE FOR** 3                   **COBRA BENEFITS.**

4           (a) IN GENERAL.—Subsection (a)(3)(A) of section  
5 3001 of division B of the American Recovery and Rein-  
6 vestment Act of 2009 (Public Law 111–5), as amended  
7 by section 3(a) of the Continuing Extension Act of 2010  
8 (Public Law 111–157), is amended by striking “May 31,  
9 2010” and inserting “December 31, 2010”.

10          (b) RULES RELATING TO 2010 EXTENSION.—Sub-  
11 section (a) of section 3001 of division B of the American  
12 Recovery and Reinvestment Act of 2009 (Public Law 111-  
13 5), as amended by section 3(b) of the Continuing Exten-  
14 sion Act of 2010 (Public Law 111–157), is amended by  
15 adding at the end the following:

16                   “(19) ADDITIONAL RULES RELATED TO 2010  
17 EXTENSION.—In the case of an individual who, with  
18 regard to coverage described in paragraph (10)(B),  
19 experiences a qualifying event related to a termi-  
20 nation of employment on or after June 1, 2010, and  
21 prior to the date of the enactment of this paragraph,  
22 rules similar to those in paragraphs (4)(A) and  
23 (7)(C) shall apply with respect to all continuation  
24 coverage, including State continuation coverage pro-  
25 grams.”.



1           (c) **EFFECTIVE DATE.**—The amendments made by  
2 this section shall take effect as if included in the provisions  
3 of section 3001 of division B of the American Recovery  
4 and Reinvestment Act of 2009.

5 **SEC. 512. EXTENSION OF SECTION 508 RECLASSIFICATIONS.**

6           (a) **IN GENERAL.**—Section 106(a) of division B of  
7 the Tax Relief and Health Care Act of 2006 (42 U.S.C.  
8 1395 note), as amended by section 117 of the Medicare,  
9 Medicaid, and SCHIP Extension Act of 2007 (Public Law  
10 110–173), section 124 of the Medicare Improvements for  
11 Patients and Providers Act of 2008 (Public Law 110–  
12 275), and sections 3137(a) and 10317 of Public Law 111–  
13 148, is amended by striking “September 30, 2010” and  
14 inserting “September 30, 2011”.

15           (b) **APPLICATION.**—For fiscal year 2011, the Sec-  
16 retary of Health and Human Services may implement the  
17 amendment made by subsection (a) by posting on the  
18 Internet website of the Centers for Medicare & Medicaid  
19 Services a list of the areas and the hospitals whose reclas-  
20 sifications will be extended pursuant to such amendment.  
21 Hospitals located in or reclassified to labor market areas  
22 that are affected by such extension may terminate or with-  
23 draw their reclassifications by following the procedures in-  
24 cluded in section 412.273 of title 42, Code of Federal Reg-  
25 ulations, except that any request for such termination or

1 withdrawal must be received by the Medicare Geographic  
2 Classification Review Board not later than the date that  
3 is 5 business days after the day of such posting on the  
4 Internet website of the Centers for Medicare & Medicaid  
5 Services or June 18, 2010, whichever date is later.

6 (c) CONFORMING AMENDMENT.—Section 117(a)(3)  
7 of the Medicare, Medicaid, and SCHIP Extension Act of  
8 2007 (Public Law 110-173)), is amended by inserting “in  
9 fiscal years 2008 and 2009” after “For purposes of imple-  
10 mentation of this subsection”.

11 **SEC. 513. REPEAL OF DELAY OF RUG-IV.**

12 Effective as if included in the enactment of Public  
13 Law 111–148, section 10325 of such Act is repealed.

14 **SEC. 514. LIMITATION ON REASONABLE COSTS PAYMENTS**  
15 **FOR CERTAIN CLINICAL DIAGNOSTIC LAB-**  
16 **ORATORY TESTS FURNISHED TO HOSPITAL**  
17 **PATIENTS IN CERTAIN RURAL AREAS.**

18 Section 3122 of Public Law 111–148 is repealed and  
19 the provision of law amended by such section is restored  
20 as if such section had not been enacted.

21 **SEC. 515. FUNDING FOR CLAIMS REPROCESSING.**

22 For purposes of carrying out the provisions of, and  
23 amendments made by, this Act that relate to title XVIII  
24 of the Social Security Act, and other provisions of such  
25 title that involve reprocessing of claims, there are appro-

1 priated to the Secretary of Health and Human Services  
2 for the Centers for Medicare & Medicaid Services Program  
3 Management Account, from amounts in the general fund  
4 of the Treasury not otherwise appropriated,  
5 \$175,000,000. Amounts appropriated under the preceding  
6 sentence shall remain available until expended.

7 **SEC. 516. EXTENSION OF ARRA INCREASE IN FMAP.**

8 (a) IN GENERAL.—Section 5001 of the American Re-  
9 covery and Reinvestment Act of 2009 (Public Law 111–  
10 5) is amended—

11 (1) in subsection (a)(3), by striking “first cal-  
12 endar quarter” and inserting “first 3 calendar quar-  
13 ters”;

14 (2) in subsection (c)—

15 (A) in paragraph (2)(B), by striking “July  
16 1, 2010” and inserting “January 1, 2011”;

17 (B) in paragraph (3)(B)(i), by striking  
18 “July 1, 2010” and inserting “January 1,  
19 2011” each place it appears; and

20 (C) in paragraph (4)(C)(ii), by striking  
21 “the 3-consecutive-month period beginning with  
22 January 2010” and inserting “any 3-consecu-  
23 tive-month period that begins after December  
24 2009 and ends before January 2011”;

1           (3) in subsection (e), by adding at the end the  
2           following:

3           “Notwithstanding paragraph (5), the increases in the  
4           FMAP for a State under this section shall apply to pay-  
5           ments under title XIX of such Act that are attributable  
6           to expenditures for medical assistance provided to non-  
7           pregnant childless adults made eligible under a State plan  
8           under such title (including under any waiver under such  
9           title or under section 1115 of such Act (42 U.S.C. 1315))  
10          who would have been eligible for child health assistance  
11          or other health benefits under eligibility standards in ef-  
12          fect as of December 31, 2009, of a waiver of the State  
13          child health plan under the title XXI of such Act.”;

14          (4) in subsection (g)—

15                 (A) in paragraph (1), by striking “Sep-  
16                 tember 30, 2011” and inserting “March 31,  
17                 2012”;

18                 (B) in paragraph (2)—

19                         (i) by inserting “of such Act” after  
20                         “1923”; and

21                         (ii) by adding at the end the following  
22                         new sentence: “Voluntary contributions by  
23                         a political subdivision to the non-Federal  
24                         share of expenditures under the State  
25                         Medicaid plan or to the non-Federal share

1 of payments under section 1923 of the So-  
2 cial Security Act shall not be considered to  
3 be required contributions for purposes of  
4 this section.”; and

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

6 “(3) CERTIFICATION BY CHIEF EXECUTIVE  
7 OFFICER.—No additional Federal funds shall be  
8 paid to a State as a result of this section with  
9 respect to a calendar quarter occurring during  
10 the period beginning on January 1, 2011, and  
11 ending on June 30, 2011, unless, not later than  
12 45 days after the date of enactment of this  
13 paragraph, the chief executive officer of the  
14 State certifies that the State will request and  
15 use such additional Federal funds.”; and

16 (5) in subsection (h)(3), by striking “December  
17 31, 2010” and inserting “June 30, 2011”.

18 (b) CONFORMING AMENDMENT.—Section 1905(cc) of  
19 the Social Security Act (42 U.S.C. 1396d(cc)) is amended  
20 by striking the last sentence (relating to the treatment of  
21 voluntary contributions).

22 **SEC. 517. MEDICAID AND CHIP TECHNICAL CORRECTIONS.**

23 (a) REPEAL OF EXCLUSION OF CERTAIN INDIVID-  
24 UALS AND ENTITIES FROM MEDICAID.—Section 6502 of  
25 Public Law 111–148 is repealed and the provisions of law

1 amended by such section are restored as if such section  
2 had never been enacted. Nothing in the previous sentence  
3 shall affect the execution or placement of the insertion  
4 made by section 6503 of such Act.

5 (b) INCOME LEVEL FOR CERTAIN CHILDREN UNDER  
6 MEDICAID.—Effective as if included in the enactment of  
7 Public Law 111–148, section 2001(a)(5)(B) of such Act  
8 is amended by striking all that follows “is amended” and  
9 inserting the following: “by inserting after ‘100 percent’  
10 the following: ‘(or, beginning January 1, 2014, 133 per-  
11 cent)’.”.

12 (c) CALCULATION AND PUBLICATION OF PAYMENT  
13 ERROR RATE MEASUREMENT FOR CERTAIN YEARS.—  
14 Section 601(b) of the Children’s Health Insurance Pro-  
15 gram Reauthorization Act of 2009 (Public Law 111–3)  
16 is amended by adding at the end the following: “The Sec-  
17 retary is not required under this subsection to calculate  
18 or publish a national or a State-specific error rate for fis-  
19 cal year 2009 or fiscal year 2010.”.

20 (d) CORRECTIONS TO EXCEPTIONS TO EXCLUSION  
21 OF CHILDREN OF CERTAIN EMPLOYEES.—Section  
22 2110(b)(6) of the Social Security Act (42 U.S.C.  
23 1397jj(b)(6)) is amended—

24 (1) in subparagraph (B)—

1 (A) by striking “PER PERSON” in the  
2 heading; and

3 (B) by striking “each employee” and in-  
4 serting “employees”; and

5 (2) in subparagraph (C), by striking “, on a  
6 case-by-case basis,”.

7 (e) ELECTRONIC HEALTH RECORDS.—Effective as if  
8 included in the enactment of section 4201(a)(2) of the  
9 American Recovery and Reinvestment Act of 2009 (Public  
10 Law 111–5), section 1903(t) of the Social Security Act  
11 (42 U.S.C. 1396b(t)) is amended—

12 (1) in paragraph (3)(E), by striking “reduced  
13 by any payment that is made to such Medicaid pro-  
14 vider from any other source (other than under this  
15 subsection or by a State or local government)” and  
16 inserting “reduced by the average payment the Sec-  
17 retary estimates will be made to such Medicaid pro-  
18 viders (determined on a percentage or other basis  
19 for such classes or types of providers as the Sec-  
20 retary may specify) from other sources (other than  
21 under this subsection, or by the Federal government  
22 or a State or local government)”;

23 (2) in paragraph (6)(B), by inserting before the  
24 period the following: “and shall be determined to  
25 have met such responsibility to the extent that the

1 payment to the Medicaid provider is not in excess of  
2 85 percent of the net average allowable cost”.

3 (f) CORRECTIONS OF DESIGNATIONS.—

4 (1) Section 1902 of the Social Security Act (42  
5 U.S.C. 1396a) is amended—

6 (A) in subsection (a)(10), in the matter  
7 following subparagraph (G), by striking “and”  
8 before “(XVI) the medical” and by striking  
9 “(XVI) if” and inserting “(XVII) if”; and

10 (B) in subsection (ii)(2), by striking  
11 “(XV)” and inserting “(XVI)”.

12 (2) Section 2107(e)(1) of the Social Security  
13 Act (42 U.S.C. 1397gg(e)(1)) is amended by redesi-  
14 gnating the subparagraph (N) of that section added  
15 by 2101(e) of Public Law 111–148 as subparagraph  
16 (O).

17 **SEC. 518. ADDITION OF INPATIENT DRUG DISCOUNT PRO-**  
18 **GRAM TO 340B DRUG DISCOUNT PROGRAM.**

19 (a) ADDITION OF INPATIENT DRUG DISCOUNT.—  
20 Title III of the Public Health Service Act is amended by  
21 inserting after section 340B (42 U.S.C. 256b) the fol-  
22 lowing:



1 **“SEC. 340B-1. DISCOUNT INPATIENT DRUGS FOR INDIVID-**  
2 **UALS WITHOUT PRESCRIPTION DRUG COV-**  
3 **ERAGE.**

4 “(a) REQUIREMENTS FOR AGREEMENTS WITH THE  
5 SECRETARY.—

6 “(1) IN GENERAL.—

7 “(A) AGREEMENT.—The Secretary shall  
8 enter into an agreement with each manufac-  
9 turer of covered inpatient drugs under which  
10 the amount required to be paid (taking into ac-  
11 count any rebate or discount, as provided by  
12 the Secretary) to the manufacturer for covered  
13 inpatient drugs (other than drugs described in  
14 paragraph (3)) purchased by a covered entity  
15 on or after January 1, 2011, does not exceed  
16 an amount equal to the average manufacturer  
17 price for the drug under title XIX of the Social  
18 Security Act in the preceding calendar quarter,  
19 reduced by the rebate percentage described in  
20 paragraph (2). For a covered inpatient drug  
21 that also is a covered outpatient drug under  
22 section 340B, the amount required to be paid  
23 under the preceding sentence shall be equal to  
24 the amount required to be paid under section  
25 340B(a)(1) for such drug. The agreement with  
26 a manufacturer under this subparagraph may,

1 at the discretion of the Secretary, be included  
2 in the agreement with the same manufacturer  
3 under section 340B.

4 “(B) CEILING PRICE.—Each such agree-  
5 ment shall require that the manufacturer fur-  
6 nish the Secretary with reports, on a quarterly  
7 basis, of the price for each covered inpatient  
8 drug subject to the agreement that, according  
9 to the manufacturer, represents the maximum  
10 price that covered entities may permissibly be  
11 required to pay for the drug (referred to in this  
12 section as the ‘ceiling price’), and shall require  
13 that the manufacturer offer each covered entity  
14 covered inpatient drugs for purchase at or  
15 below the applicable ceiling price if such drug  
16 is made available to any other purchaser at any  
17 price.

18 “(C) ALLOCATION METHOD.—Each such  
19 agreement shall require that, if the supply of a  
20 covered inpatient drug is insufficient to meet  
21 demand, then the manufacturer may use an al-  
22 location method that is reported in writing to,  
23 and approved by, the Secretary and does not  
24 discriminate on the basis of the price paid by  
25 covered entities or on any other basis related to

1 the participation of an entity in the program  
2 under this section.

3 “(2) REBATE PERCENTAGE DEFINED.—

4 “(A) IN GENERAL.—For a covered inpa-  
5 tient drug purchased in a calendar quarter, the  
6 ‘rebate percentage’ is the amount (expressed as  
7 a percentage) equal to—

8 “(i) the average total rebate required  
9 under section 1927(c) of the Social Secu-  
10 rity Act (or the average total rebate that  
11 would be required if the drug were a cov-  
12 ered outpatient drug under such section)  
13 with respect to the drug (for a unit of the  
14 dosage form and strength involved) during  
15 the preceding calendar quarter; divided by

16 “(ii) the average manufacturer price  
17 for such a unit of the drug during such  
18 quarter.

19 “(B) OVER THE COUNTER DRUGS.—

20 “(i) IN GENERAL.—For purposes of  
21 subparagraph (A), in the case of over the  
22 counter drugs, the ‘rebate percentage’ shall  
23 be determined as if the rebate required  
24 under section 1927(c) of the Social Secu-  
25 rity Act is based on the applicable percent-

1           age provided under section 1927(c)(3) of  
2           such Act.

3           “(ii) DEFINITION.—The term ‘over  
4           the counter drug’ means a drug that may  
5           be sold without a prescription and which is  
6           prescribed by a physician (or other persons  
7           authorized to prescribe such drug under  
8           State law).

9           “(3) DRUGS PROVIDED UNDER STATE MED-  
10          ICAID PLANS.—Drugs described in this paragraph  
11          are drugs purchased by the entity for which payment  
12          is made by the State under the State plan for med-  
13          ical assistance under title XIX of the Social Security  
14          Act.

15          “(4) REQUIREMENTS FOR COVERED ENTI-  
16          TIES.—

17                  “(A) PROHIBITING DUPLICATE DISCOUNTS  
18                  OR REBATES.—

19                  “(i) IN GENERAL.—A covered entity  
20                  shall not request payment under title XIX  
21                  of the Social Security Act for medical as-  
22                  sistance described in section 1905(a)(12)  
23                  of such Act with respect to a drug that is  
24                  subject to an agreement under this section  
25                  if the drug is subject to the payment of a

1 rebate to the State under section 1927 of  
2 such Act.

3 “(ii) ESTABLISHMENT OF MECHA-  
4 NISM.—The Secretary shall establish a  
5 mechanism to ensure that covered entities  
6 comply with clause (i). If the Secretary  
7 does not establish a mechanism under the  
8 previous sentence within 12 months of the  
9 enactment of this section, the requirements  
10 of section 1927(a)(5)(C) of the Social Se-  
11 curity Act shall apply.

12 “(iii) PROHIBITING DISCLOSURE TO  
13 GROUP PURCHASING ORGANIZATIONS.—In  
14 the event that a covered entity is a mem-  
15 ber of a group purchasing organization,  
16 such entity shall not disclose the price or  
17 any other information pertaining to any  
18 purchases under this section directly or in-  
19 directly to such group purchasing organi-  
20 zation.

21 “(B) PROHIBITING RESALE, DISPENSING,  
22 OR ADMINISTRATION OF DRUGS EXCEPT TO  
23 CERTAIN PATIENTS.—With respect to any cov-  
24 ered inpatient drug that is subject to an agree-  
25 ment under this subsection, a covered entity

1 shall not dispense, administer, resell, or other-  
2 wise transfer the covered inpatient drug to a  
3 person unless—

4 “(i) such person is a patient of the  
5 entity; and

6 “(ii) such person does not have health  
7 plan coverage (as defined in subsection  
8 (c)(3)) that provides prescription drug cov-  
9 erage in the inpatient setting with respect  
10 to such covered inpatient drug.

11 For purposes of clause (ii), a person shall be  
12 treated as having health plan coverage (as de-  
13 fined in subsection (c)(3)) with respect to a cov-  
14 ered inpatient drug if benefits are not payable  
15 under such coverage with respect to such drug  
16 for reasons such as the application of a deduct-  
17 ible or cost sharing or the use of utilization  
18 management.

19 “(C) AUDITING.—A covered entity shall  
20 permit the Secretary and the manufacturer of a  
21 covered inpatient drug that is subject to an  
22 agreement under this subsection with the entity  
23 (acting in accordance with procedures estab-  
24 lished by the Secretary relating to the number,  
25 duration, and scope of audits) to audit at the

1 Secretary's or the manufacturer's expense the  
2 records of the entity that directly pertain to the  
3 entity's compliance with the requirements de-  
4 scribed in subparagraph (A) or (B) with respect  
5 to drugs of the manufacturer. The use or dis-  
6 closure of information for performance of such  
7 an audit shall be treated as a use or disclosure  
8 required by law for purposes of section  
9 164.512(a) of title 45, Code of Federal Regula-  
10 tions.

11 “(D) ADDITIONAL SANCTION FOR NON-  
12 COMPLIANCE.—If the Secretary finds, after no-  
13 tice and hearing, that a covered entity is in vio-  
14 lation of a requirement described in subpara-  
15 graph (A) or (B), the covered entity shall be  
16 liable to the manufacturer of the covered inpa-  
17 tient drug that is the subject of the violation in  
18 an amount equal to the reduction in the price  
19 of the drug (as described in subparagraph (A))  
20 provided under the agreement between the Sec-  
21 retary and the manufacturer under this sub-  
22 section.

23 “(E) MAINTENANCE OF RECORDS.—

24 “(i) IN GENERAL.—A covered entity  
25 shall establish and maintain an effective

1 recordkeeping system to comply with this  
2 section and shall certify to the Secretary  
3 that such entity is in compliance with sub-  
4 paragraphs (A) and (B). The Secretary  
5 shall require that hospitals that purchase  
6 covered inpatient drugs for inpatient dis-  
7 pensing or administration under this sub-  
8 section appropriately segregate inventory  
9 of such covered inpatient drugs, either  
10 physically or electronically, from drugs for  
11 outpatient use, as well as from drugs for  
12 inpatient dispensing or administration to  
13 individuals who have (for purposes of sub-  
14 paragraph (B)) health plan coverage de-  
15 scribed in clause (ii) of such subparagraph.

16 “(ii) CERTIFICATION OF NO THIRD-  
17 PARTY PAYER.—A covered entity shall  
18 maintain records that contain certification  
19 by the covered entity that no third party  
20 payment was received for any covered in-  
21 patient drug that is subject to an agree-  
22 ment under this subsection and that was  
23 dispensed to an inpatient.

24 “(5) TREATMENT OF DISTINCT UNITS OF HOS-  
25 PITALS.—In the case of a covered entity that is a



1 distinct part of a hospital, the distinct part of the  
2 hospital shall not be considered a covered entity  
3 under this subsection unless the hospital is otherwise  
4 a covered entity under this subsection.

5 “(6) NOTICE TO MANUFACTURERS.—The Sec-  
6 retary shall notify manufacturers of covered inpa-  
7 tient drugs and single State agencies under section  
8 1902(a)(5) of the Social Security Act of the identi-  
9 ties of covered entities under this subsection, and of  
10 entities that no longer meet the requirements of  
11 paragraph (4), by means of timely updates of the  
12 Internet website supported by the Department of  
13 Health and Human Services relating to this section.

14 “(7) NO PROHIBITION ON LARGER DISCOUNT.—  
15 Nothing in this subsection shall prohibit a manufac-  
16 turer from charging a price for a drug that is lower  
17 than the maximum price that may be charged under  
18 paragraph (1).

19 “(b) COVERED ENTITY DEFINED.—In this section,  
20 the term ‘covered entity’ means an entity that meets the  
21 requirements described in subsection (a)(4) and is one of  
22 the following:

23 “(1) A subsection (d) hospital (as defined in  
24 section 1886(d)(1)(B) of the Social Security Act)  
25 that—

1           “(A) is owned or operated by a unit of  
2           State or local government, is a public or private  
3           non-profit corporation which is formally granted  
4           governmental powers by a unit of State or local  
5           government, or is a private nonprofit hospital  
6           which has a contract with a State or local gov-  
7           ernment to provide health care services to low  
8           income individuals who are not entitled to bene-  
9           fits under title XVIII of the Social Security Act  
10          or eligible for assistance under the State plan  
11          for medical assistance under title XIX of such  
12          Act; and

13          “(B) for the most recent cost reporting pe-  
14          riod that ended before the calendar quarter in-  
15          volved, had a disproportionate share adjustment  
16          percentage (as determined using the method-  
17          ology under section 1886(d)(5)(F) of the Social  
18          Security Act as in effect on the date of enact-  
19          ment of this section) greater than 20.20 percent  
20          or was described in section 1886(d)(5)(F)(i)(II)  
21          of such Act (as so in effect on the date of en-  
22          actment of this section).

23          “(2) A children’s hospital excluded from the  
24          Medicare prospective payment system pursuant to  
25          section 1886(d)(1)(B)(iii) of the Social Security Act

1 that would meet the requirements of paragraph (1),  
2 including the disproportionate share adjustment per-  
3 centage requirement under subparagraph (B) of  
4 such paragraph, if the hospital were a subsection (d)  
5 hospital as defined by section 1886(d)(1)(B) of the  
6 Social Security Act.

7 “(3) A free-standing cancer hospital excluded  
8 from the Medicare prospective payment system pur-  
9 suant to section 1886(d)(1)(B)(v) of the Social Se-  
10 curity Act that would meet the requirements of  
11 paragraph (1), including the disproportionate share  
12 adjustment percentage requirement under subpara-  
13 graph (B) of such paragraph, if the hospital were a  
14 subsection (d) hospital as defined by section  
15 1886(d)(1)(B) of the Social Security Act.

16 “(4) An entity that is a critical access hospital  
17 (as determined under section 1820(c)(2) of the So-  
18 cial Security Act), and that meets the requirements  
19 of paragraph (1)(A).

20 “(5) An entity that is a rural referral center, as  
21 defined by section 1886(d)(5)(C)(i) of the Social Se-  
22 curity Act, or a sole community hospital, as defined  
23 by section 1886(d)(5)(C)(iii) of such Act, and that  
24 both meets the requirements of paragraph (1)(A)

1 and has a disproportionate share adjustment per-  
2 centage equal to or greater than 8 percent.

3 “(c) OTHER DEFINITIONS.—In this section:

4 “(1) AVERAGE MANUFACTURER PRICE.—

5 “(A) IN GENERAL.—The term ‘average  
6 manufacturer price’—

7 “(i) has the meaning given such term  
8 in section 1927(k) of the Social Security  
9 Act, except that such term shall be applied  
10 under this section with respect to covered  
11 inpatient drugs in the same manner (as  
12 applicable) as such term is applied under  
13 such section 1927(k) with respect to cov-  
14 ered outpatient drugs (as defined in such  
15 section); and

16 “(ii) with respect to a covered inpa-  
17 tient drug for which there is no average  
18 manufacturer price (as defined in clause  
19 (i)), shall be the amount determined under  
20 regulations promulgated by the Secretary  
21 under subparagraph (B).

22 “(B) RULEMAKING.—The Secretary shall  
23 by regulation, in consultation with the Adminis-  
24 trator of the Centers for Medicare & Medicaid  
25 Services, establish a method for determining the

1 average manufacturer price for covered inpa-  
2 tient drugs for which there is no average manu-  
3 facturer price (as defined in subparagraph  
4 (A)(i)). Regulations promulgated with respect  
5 to covered inpatient drugs under the preceding  
6 sentence shall provide for the application of  
7 methods for determining the average manufac-  
8 turer price that are the same as the methods  
9 used to determine such price in calculating re-  
10 bates required for such drugs under an agree-  
11 ment between a manufacturer and a State that  
12 satisfies the requirements of section 1927(b) of  
13 the Social Security Act, as applicable.

14 “(2) COVERED INPATIENT DRUG.—The term  
15 ‘covered inpatient drug’ means a drug—

16 “(A) that is described in section  
17 1927(k)(2) of the Social Security Act;

18 “(B) that, notwithstanding paragraph  
19 (3)(A) of section 1927(k) of such Act, is used  
20 in connection with an inpatient service provided  
21 by a covered entity that is enrolled to partici-  
22 pate in the drug discount program under this  
23 section; and

1           “(C) that is not purchased by the covered  
2           entity through or under contract with a group  
3           purchasing organization.

4           “(3) HEALTH PLAN COVERAGE.—The term  
5           ‘health plan coverage’ means—

6           “(A) health insurance coverage (as defined  
7           in section 2791, and including coverage under  
8           a State health benefits risk pool);

9           “(B) coverage under a group health plan  
10          (as defined in such section, and including cov-  
11          erage under a church plan, a governmental  
12          plan, or a collectively bargained plan);

13          “(C) coverage under a Federal health care  
14          program (as defined by section 1128B(f) of the  
15          Social Security Act); or

16          “(D) such other health benefits coverage  
17          as the Secretary recognizes for purposes of this  
18          section.

19          “(4) MANUFACTURER.—The term ‘manufac-  
20          turer’ has the meaning given such term in section  
21          1927(k) of the Social Security Act.

22          “(d) PROGRAM INTEGRITY.—

23                 “(1) MANUFACTURER COMPLIANCE.—

24                 “(A) IN GENERAL.—From amounts appro-  
25                 priated under subsection (f), the Secretary shall

1 provide for improvements in compliance by  
2 manufacturers with the requirements of this  
3 section in order to prevent overcharges and  
4 other violations of the discounted pricing re-  
5 quirements specified in this section.

6 “(B) IMPROVEMENTS.—The improvements  
7 described in subparagraph (A) shall include the  
8 following:

9 “(i) The establishment of a process to  
10 enable the Secretary to verify the accuracy  
11 of ceiling prices calculated by manufactur-  
12 ers under subsection (a)(1) and charged to  
13 covered entities, which shall include the  
14 following:

15 “(I) Developing and publishing  
16 through an appropriate policy or regu-  
17 latory issuance, precisely defined  
18 standards and methodology for the  
19 calculation of ceiling prices under  
20 such subsection.

21 “(II) Comparing regularly the  
22 ceiling prices calculated by the Sec-  
23 retary with the quarterly pricing data  
24 that is reported by manufacturers to  
25 the Secretary.

1                   “(III) Conducting periodic moni-  
2                   toring of sales transactions by covered  
3                   entities.

4                   “(IV) Inquiring into any discrep-  
5                   ancies between ceiling prices and  
6                   manufacturer pricing data that may  
7                   be identified and taking, or requiring  
8                   manufacturers to take, corrective ac-  
9                   tion in response to such discrepancies,  
10                  including the issuance of refunds pur-  
11                  suant to the procedures set forth in  
12                  clause (ii).

13                  “(ii) The establishment of procedures  
14                  for manufacturers to issue refunds to cov-  
15                  ered entities in the event that there is an  
16                  overcharge by the manufacturers, including  
17                  the following:

18                         “(I) Providing the Secretary with  
19                         an explanation of why and how the  
20                         overcharge occurred, how the refunds  
21                         will be calculated, and to whom the  
22                         refunds will be issued.

23                         “(II) Oversight by the Secretary  
24                         to ensure that the refunds are issued



1 accurately and within a reasonable pe-  
2 riod of time.

3 “(iii) The provision of access through  
4 the Internet website supported by the De-  
5 partment of Health and Human Services  
6 to the applicable ceiling prices for covered  
7 inpatient drugs as calculated and verified  
8 by the Secretary in accordance with this  
9 section, in a manner (such as through the  
10 use of password protection) that limits  
11 such access to covered entities and ade-  
12 quately assures security and protection of  
13 privileged pricing data from unauthorized  
14 re-disclosure.

15 “(iv) The development of a mecha-  
16 nism by which—

17 “(I) rebates, discounts, or other  
18 price concessions provided by manu-  
19 facturers to other purchasers subse-  
20 quent to the sale of covered inpatient  
21 drugs to covered entities are reported  
22 to the Secretary; and

23 “(II) appropriate credits and re-  
24 funds are issued to covered entities if  
25 such discounts, rebates, or other price

1                   concessions have the effect of lowering  
2                   the applicable ceiling price for the rel-  
3                   evant quarter for the drugs involved.

4                   “(v) Selective auditing of manufactur-  
5                   ers and wholesalers to ensure the integrity  
6                   of the drug discount program under this  
7                   section.

8                   “(vi) The establishment of a require-  
9                   ment that manufacturers and wholesalers  
10                  use the identification system developed by  
11                  the Secretary for purposes of facilitating  
12                  the ordering, purchasing, and delivery of  
13                  covered inpatient drugs under this section,  
14                  including the processing of chargebacks for  
15                  such drugs.

16                  “(vii) The imposition of sanctions in  
17                  the form of civil monetary penalties,  
18                  which—

19                         “(I) shall be assessed according  
20                         to standards and procedures estab-  
21                         lished in regulations to be promul-  
22                         gated by the Secretary not later than  
23                         January 1, 2011;

24                         “(II) shall not exceed \$10,000  
25                         per single dosage form of a covered

1 inpatient drug purchased by a covered  
2 entity where a manufacturer know-  
3 ingly charges such covered entity a  
4 price for such drug that exceeds the  
5 ceiling price under subsection (a)(1);  
6 and

7 “(III) shall not exceed \$100,000  
8 for each instance where a manufac-  
9 turer withholds or provides materially  
10 false information to the Secretary or  
11 to covered entities under this section  
12 or knowingly violates any provision of  
13 this section (other than subsection  
14 (a)(1)).

15 “(2) COVERED ENTITY COMPLIANCE.—

16 “(A) IN GENERAL.—From amounts appro-  
17 priated under subsection (f), the Secretary shall  
18 provide for improvements in compliance by cov-  
19 ered entities with the requirements of this sec-  
20 tion in order to prevent diversion and violations  
21 of the duplicate discount provision and other re-  
22 quirements specified under subsection (a)(4).

23 “(B) IMPROVEMENTS.—The improvements  
24 described in subparagraph (A) shall include the  
25 following:

1           “(i) The development of procedures to  
2           enable and require covered entities to up-  
3           date at least annually the information on  
4           the Internet website supported by the De-  
5           partment of Health and Human Services  
6           relating to this section.

7           “(ii) The development of procedures  
8           for the Secretary to verify the accuracy of  
9           information regarding covered entities that  
10          is listed on the website described in clause  
11          (i).

12          “(iii) The development of more de-  
13          tailed guidance describing methodologies  
14          and options available to covered entities for  
15          billing covered inpatient drugs to State  
16          Medicaid agencies in a manner that avoids  
17          duplicate discounts pursuant to subsection  
18          (a)(4)(A).

19          “(iv) The establishment of a single,  
20          universal, and standardized identification  
21          system by which each covered entity site  
22          and each covered entity’s purchasing sta-  
23          tus under sections 340B and this section  
24          can be identified by manufacturers, dis-  
25          tributors, covered entities, and the Sec-

1           retary for purposes of facilitating the or-  
2           dering, purchasing, and delivery of covered  
3           inpatient drugs under this section, includ-  
4           ing the processing of chargebacks for such  
5           drugs.

6           “(v) The imposition of sanctions in  
7           the form of civil monetary penalties,  
8           which—

9                       “(I) shall be assessed according  
10                      to standards and procedures estab-  
11                      lished in regulations promulgated by  
12                      the Secretary; and

13                     “(II) shall not exceed \$10,000  
14                     for each instance where a covered en-  
15                     tity knowingly violates subsection  
16                     (a)(4)(B) or knowingly violates any  
17                     other provision of this section.

18           “(vi) The termination of a covered en-  
19           tity’s participation in the program under  
20           this section, for a period of time to be de-  
21           termined by the Secretary, in cases in  
22           which the Secretary determines, in accord-  
23           ance with standards and procedures estab-  
24           lished by regulation, that—

1                   “(I) the violation by a covered  
2                   entity of a requirement of this section  
3                   was repeated and knowing; and

4                   “(II) imposition of a monetary  
5                   penalty would be insufficient to rea-  
6                   sonably ensure compliance with the  
7                   requirements of this section.

8                   “(vii) The referral of matters, as ap-  
9                   propriate, to the Food and Drug Adminis-  
10                  tration, the Office of the Inspector General  
11                  of the Department of Health and Human  
12                  Services, or other Federal or State agen-  
13                  cies.

14                  “(3) ADMINISTRATIVE DISPUTE RESOLUTION  
15                  PROCESS.—From amounts appropriated under sub-  
16                  section (f), the Secretary may establish and imple-  
17                  ment an administrative process for the resolution of  
18                  the following:

19                         “(A) Claims by covered entities that manu-  
20                         facturers have violated the terms of their agree-  
21                         ment with the Secretary under subsection  
22                         (a)(1).

23                         “(B) Claims by manufacturers that cov-  
24                         ered entities have violated subsection (a)(4)(A)  
25                         or (a)(4)(B).

1 “(e) AUDIT AND SANCTIONS.—

2 “(1) AUDIT.—From amounts appropriated  
3 under subsection (f), the Inspector General of the  
4 Department of Health and Human Services (re-  
5 ferred to in this subsection as the ‘Inspector Gen-  
6 eral’) shall audit covered entities under this section  
7 to verify compliance with criteria for eligibility and  
8 participation under this section, including the  
9 antidiversion prohibitions under subsection  
10 (a)(4)(B), and take enforcement action or provide  
11 information to the Secretary who shall take action to  
12 ensure program compliance, as appropriate. A cov-  
13 ered entity shall provide to the Inspector General,  
14 upon request, records relevant to such audits.

15 “(2) REPORT.—For each audit conducted under  
16 paragraph (1), the Inspector General shall prepare  
17 and publish in a timely manner a report which shall  
18 include findings and recommendations regarding—

19 “(A) the appropriateness of covered entity  
20 eligibility determinations and, as applicable,  
21 certifications;

22 “(B) the effectiveness of antidiversion pro-  
23 hibitions; and

24 “(C) the effectiveness of restrictions on in-  
25 patient dispensing and administration.

1       “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to carry out this section  
3 such sums as may be necessary for fiscal year 2011 and  
4 each succeeding fiscal year.”.

5       (b) RULEMAKING.—Not later than January 1, 2011,  
6 the Secretary shall promulgate regulations implementing  
7 section 340B–1 of the Public Health Service Act (as added  
8 by subsection (a)).

9       (c) CONFORMING AMENDMENT TO SECTION 340B.—  
10 Paragraph (1) of section 340B(a) of the Public Health  
11 Service Act (42 U.S.C. 256b(a)) is amended by adding  
12 at the end the following: “Such agreement shall further  
13 require that, if the supply of a covered outpatient drug  
14 is insufficient to meet demand, then the manufacturer  
15 may use an allocation method that is reported in writing  
16 to, and approved by, the Secretary and does not discrimi-  
17 nate on the basis of the price paid by covered entities or  
18 on any other basis related to the participation of an entity  
19 in the program under this section. The agreement with  
20 a manufacturer under this paragraph may, at the discre-  
21 tion of the Secretary, be included in the agreement with  
22 the same manufacturer under section 340B–1.”.

23       (d) CONFORMING AMENDMENTS TO MEDICAID.—  
24 Section 1927 of the Social Security Act (42 U.S.C. 1396r–  
25 8) is amended—



1 (1) in subsection (a)—

2 (A) in paragraph (1), in the first sentence,  
3 by striking “and paragraph (6)” and inserting  
4 “, paragraph (6), and paragraph (8)”; and

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

7 “(8) LIMITATION ON PRICES OF DRUGS PUR-  
8 CHASED BY 340B–1-COVERED ENTITIES.—

9 “(A) AGREEMENT WITH SECRETARY.—A  
10 manufacturer meets the requirements of this  
11 paragraph if the manufacturer has entered into  
12 an agreement with the Secretary that meets the  
13 requirements of section 340B–1 of the Public  
14 Health Service Act with respect to covered in-  
15 patient drugs (as defined in such section) pur-  
16 chased by a 340B–1-covered entity on or after  
17 January 1, 2011.

18 “(B) 340B–1-COVERED ENTITY DE-  
19 FINED.—In this subsection, the term ‘340B–1-  
20 covered entity’ means an entity described in  
21 section 340B–1(b) of the Public Health Service  
22 Act.”; and

23 (2) in subsection (c)(1)(C)(i)(I)—

24 (A) by striking “or” before “a covered en-  
25 tity”; and

1 (B) by inserting before the semicolon the  
2 following: “, or a covered entity for a covered  
3 inpatient drug (as such terms are defined in  
4 section 340B–1of the Public Health Service  
5 Act)”.

6 **SEC. 519. CONTINUED INCLUSION OF ORPHAN DRUGS IN**  
7 **DEFINITION OF COVERED OUTPATIENT**  
8 **DRUGS WITH RESPECT TO CHILDREN’S HOS-**  
9 **PITALS UNDER THE 340B DRUG DISCOUNT**  
10 **PROGRAM.**

11 (a) DEFINITION OF COVERED OUTPATIENT DRUG.—

12 (1) AMENDMENT.—Subsection (e) of section  
13 340B of the Public Health Service Act (42 U.S.C.  
14 256b) is amended by striking “covered entities de-  
15 scribed in subparagraph (M)”and inserting “covered  
16 entities described in subparagraph (M) (other than  
17 a children’s hospital described in subparagraph  
18 (M))”.

19 (2) EFFECTIVE DATE.—The amendment made  
20 by paragraph (1) shall take effect as if included in  
21 the enactment of section 2302 of the Health Care  
22 and Education Reconciliation Act of 2010 (Public  
23 Law 111–152).

24 (b) TECHNICAL AMENDMENT.—Subparagraph (B) of  
25 section 1927(a)(5) of the Social Security Act (42 U.S.C.

1 1396r–8(a)(5)) is amended by striking “and a children’s  
2 hospital” and all that follows through the end of the sub-  
3 paragraph and inserting a period.

4 **SEC. 520. CONFORMING AMENDMENT RELATED TO WAIVER**  
5 **OF COINSURANCE FOR PREVENTIVE SERV-**  
6 **ICES.**

7 Effective as if included in section 10501(i)(2)(A) of  
8 Public Law 111–148, section 1833(a)(3)(A) of the Social  
9 Security Act (42 U.S.C. 1395l(a)(3)(A)) is amended by  
10 striking “section 1861(s)(10)(A)” and inserting “section  
11 1861(ddd)(3)”.

12 **SEC. 521. ESTABLISH A CMS–IRS DATA MATCH TO IDENTIFY**  
13 **FRAUDULENT PROVIDERS.**

14 (a) **AUTHORITY TO DISCLOSE RETURN INFORMATION**  
15 **CONCERNING OUTSTANDING TAX DEBTS FOR PURPOSES**  
16 **OF ENHANCING MEDICARE PROGRAM INTEGRITY.—**

17 (1) **IN GENERAL.—**Section 6103(l) of the Inter-  
18 nal Revenue Code of 1986 is amended by adding at  
19 the end the following new paragraph:

20 “(22) **DISCLOSURE OF RETURN INFORMATION**  
21 **TO DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
22 **FOR PURPOSES OF ENHANCING MEDICARE PROGRAM**  
23 **INTEGRITY.—**

24 “(A) **IN GENERAL.—**The Secretary shall,  
25 upon written request from the Secretary of

1 Health and Human Services, disclose to officers  
2 and employees of the Department of Health  
3 and Human Services return information with  
4 respect to a taxpayer who has applied to enroll,  
5 or reenroll, as a provider of services or supplier  
6 under the Medicare program under title XVIII  
7 of the Social Security Act. Such return infor-  
8 mation shall be limited to—

9 “(i) the taxpayer identity information  
10 with respect to such taxpayer;

11 “(ii) the amount of the delinquent tax  
12 debt owed by that taxpayer; and

13 “(iii) the taxable year to which the de-  
14 linquent tax debt pertains.

15 “(B) RESTRICTION ON DISCLOSURE.—Re-  
16 turn information disclosed under subparagraph  
17 (A) may be used by officers and employees of  
18 the Department of Health and Human Services  
19 for the purposes of, and to the extent necessary  
20 in, establishing the taxpayer’s eligibility for en-  
21 rollment or reenrollment in the Medicare pro-  
22 gram, or in any administrative or judicial pro-  
23 ceeding relating to, or arising from, a denial of  
24 such enrollment or reenrollment, or in deter-  
25 mining the level of enhanced oversight to be ap-

1           plied with respect to such taxpayer pursuant to  
2           section 1866(j)(3) of the Social Security Act.

3           “(C) DELINQUENT TAX DEBT.—For pur-  
4           poses of this paragraph, the term ‘delinquent  
5           tax debt’ means an outstanding debt under this  
6           title for which a notice of lien has been filed  
7           pursuant to section 6323, but the term does not  
8           include a debt that is being paid in a timely  
9           manner pursuant to an agreement under sec-  
10          tion 6159 or 7122, or a debt with respect to  
11          which a collection due process hearing under  
12          section 6330 is requested, pending, or com-  
13          pleted and no payment is required.”.

14          (2) CONFORMING AMENDMENTS.—Section  
15          6103(p)(4) of such Code, as amended by sections  
16          1414 and 3308 of Public Law 111–148, in the mat-  
17          ter preceding subparagraph (A) and in subpara-  
18          graph (F)(ii), is amended by striking “or (17)” and  
19          inserting “(17), or (22)” each place it appears.

20          (b) SECRETARY’S AUTHORITY TO USE INFORMATION  
21 FROM THE DEPARTMENT OF TREASURY IN MEDICARE  
22 ENROLLMENTS AND REENROLLMENTS.—Section  
23 1866(j)(2) of the Social Security Act (42 U.S.C.  
24 1395cc(j)), as inserted by section 6401(a) of Public Law  
25 111–148, is further amended—

1           (1) by redesignating subparagraph (E) as sub-  
2           paragraph (F); and

3           (2) by inserting after subparagraph (D) the fol-  
4           lowing new subparagraph:

5                   “(E) USE OF INFORMATION FROM THE  
6           DEPARTMENT OF TREASURY CONCERNING TAX  
7           DEBTS.—In reviewing the application of a pro-  
8           vider of services or supplier to enroll or reenroll  
9           under the program under this title, the Sec-  
10          retary shall take into account the information  
11          supplied by the Secretary of the Treasury pur-  
12          suant to section 6103(l)(22) of the Internal  
13          Revenue Code of 1986, in determining whether  
14          to deny such application or to apply enhanced  
15          oversight to such provider of services or sup-  
16          plier pursuant to paragraph (3) if the Secretary  
17          determines such provider of services or supplier  
18          owes such a debt.”.

19          (c) AUTHORITY TO ADJUST PAYMENTS OF PRO-  
20          VIDERS OF SERVICES AND SUPPLIERS WITH THE SAME  
21          TAX IDENTIFICATION NUMBER FOR MEDICARE OBLIGA-  
22          TIONS.—Section 1866(j)(5) of the Social Security Act (42  
23          U.S.C. 1395cc(j)(5)), as inserted by section 6401(a) of  
24          Public Law 111–148, is amended—

1           (1) in the paragraph heading, by striking  
2           “PAST-DUE” and inserting “MEDICARE”;

3           (2) in subparagraph (A), by striking “past-due  
4           obligations described in subparagraph (B)(ii) of an”  
5           and inserting “amount described in subparagraph  
6           (B)(ii) due from such”; and

7           (3) in subparagraph (B)(ii), by striking “a  
8           past-due obligation” and inserting “an amount that  
9           is more than the amount required to be paid”.

10 **SEC. 522. CLARIFICATION OF EFFECTIVE DATE OF PART B**

11                           **SPECIAL ENROLLMENT PERIOD FOR DIS-**  
12                           **ABLED TRICARE BENEFICIARIES.**

13           Effective as if included in the enactment of Public  
14 Law 111–148, section 3110(a)(2) of such Act is amended  
15 to read as follows:

16                   “(2) EFFECTIVE DATE.—The amendment made  
17           by paragraph (1) shall apply to elections made after  
18           the date of the enactment of this Act.”.

19 **SEC. 523. MEDICARE SUSTAINABLE GROWTH RATE RE-**  
20                           **FORM.**

21           (a) TRANSITIONAL UPDATE FOR THE SECOND POR-  
22 TION OF 2010 AND 2011.—Subsection (d) of section 1848  
23 of the Social Security Act (42 U.S.C. 1395w–4) is amend-  
24 ed—

1           (1) in the heading of paragraph (10), by strik-  
2           ing “PORTION” and inserting “THE FIRST PORTION  
3           ”; and

4           (2) by adding at the end the following new  
5           paragraphs:

6           “(11) UPDATE FOR THE SECOND PORTION OF  
7           2010.—In lieu of the update to the single conversion  
8           factor established in paragraph (1)(C) that would  
9           otherwise apply for 2010 for the period beginning on  
10          June 1, 2010, and ending on December 31, 2010,  
11          the update to the single conversion factor shall be  
12          1.3 percent.

13          “(12) UPDATE FOR 2011.—In lieu of the update  
14          to the single conversion factor established in para-  
15          graph (1)(C) that would otherwise apply for 2011,  
16          the update to the single conversion factor shall be  
17          1.0 percent.”.

18          (b) REBASING SGR USING 2010 AND LIMITATION ON  
19          CUMULATIVE ADJUSTMENT PERIOD DURING SGR RE-  
20          FORM PERIOD.—

21                 (1) IN GENERAL.—Subsection (d)(4) of such  
22                 section is amended—

23                         (A) in subparagraph (B), by striking “sub-  
24                         paragraph (D)” and inserting “subparagraphs  
25                         (D) and (G)”;



1 (B) by adding at the end the following new  
2 subparagraph:

3 “(G) REBASING USING 2010 FOR UPDATE  
4 ADJUSTMENTS DURING SGR REFORM PERIOD.—  
5 In determining the update adjustment factor  
6 under subparagraph (B) for years during the  
7 SGR reform period—

8 “(i) the allowed expenditures for 2010  
9 shall be equal to the amount of the actual  
10 expenditures for physicians’ services during  
11 2010; and

12 “(ii) the reference in subparagraph  
13 (B)(ii)(I) to ‘April 1, 1996’ shall be treat-  
14 ed as a reference to ‘January 1, 2010 (or,  
15 if later, the first day of the fifth year be-  
16 fore the year involved)’.”.

17 (2) SGR REFORM PERIOD DEFINED.—Sub-  
18 section (j) of such section, as amended by subsection  
19 (d)(1), is amended by adding at the end the fol-  
20 lowing new paragraph:

21 “(6) SGR REFORM PERIOD.—The term ‘SGR  
22 reform period’ means the period beginning January  
23 1, 2012, and ending on December 31, 2013.”.

24 (c) LIMITATION ON PHYSICIANS’ SERVICES IN-  
25 CLUDED IN TARGET GROWTH RATE COMPUTATION TO

1 SERVICES COVERED UNDER PHYSICIAN FEE SCHEDULE  
2 DURING THE SGR REFORM PERIOD.—Subsection  
3 (f)(4)(A) of such section is amended to read as follows:

4 “(A) SERVICES INCLUDED IN PHYSICIANS’  
5 SERVICES.—

6 “(i) IN GENERAL.—Except as pro-  
7 vided in clause (ii), the term ‘physicians’  
8 services’ includes other items and services  
9 (such as clinical diagnostic laboratory tests  
10 and radiology services), specified by the  
11 Secretary, that are commonly performed or  
12 furnished by a physician or in a physi-  
13 cian’s office, but does not include services  
14 furnished to a Medicare Advantage plan  
15 enrollee.

16 “(ii) DURING SGR REFORM PERIOD.—  
17 Effective for services furnished on or after  
18 January 1, 2010, with respect to the appli-  
19 cation of this subsection during the SGR  
20 reform period, the term ‘physicians’ serv-  
21 ices’ includes—

22 “(I) other items and services for  
23 which payment under this part is  
24 made under the fee schedule under  
25 this section;

1                   “(II) services of practitioners de-  
2                   scribed in section 1842(b)(18)(C) for  
3                   which payment is made on a basis re-  
4                   lated to such fee schedule; and

5                   “(III) services described in sec-  
6                   tion 1861(p) (other than such services  
7                   when furnished in the facility of a  
8                   provider of services) for which pay-  
9                   ment is made on a basis related to  
10                  such fee schedule;

11                  but does not include services furnished to  
12                  a Medicare Advantage plan enrollee.”.

13                  (d) ESTABLISHMENT OF SEPARATE TARGET  
14                  GROWTH RATES FOR CATEGORIES OF SERVICES.—

15                  (1) ESTABLISHMENT OF SERVICE CAT-  
16                  EGORIES.—Subsection (j) of such section is amended  
17                  by adding after paragraph (4) the following new  
18                  paragraph:

19                  “(5) SERVICE CATEGORIES.—For services fur-  
20                  nished on or after January 1, 2010, each of the fol-  
21                  lowing categories of physicians’ services (as defined  
22                  in paragraph (3)) shall be treated as a separate  
23                  ‘service category’:

1           “(A) Evaluation and management services  
2           and preventive services that are procedure codes  
3           (for services covered under this title) for—

4                   “(i) services in the category des-  
5                   ignated Evaluation and Management in the  
6                   Health Care Common Procedure Coding  
7                   System (established by the Secretary under  
8                   subsection (c)(5) as of December 31, 2009,  
9                   and as subsequently modified by the Sec-  
10                  retary); and

11                   “(ii) preventive services (as defined in  
12                   section 1861(ddd)(3)) for which payment  
13                   is made under this section.

14           “(B) All other services not described in  
15           subparagraph (A).

16           Service categories established under this paragraph  
17           shall apply without regard to the specialty of the  
18           physician furnishing the service.”.

19           (2) ESTABLISHMENT OF SEPARATE CONVER-  
20           SION FACTORS FOR EACH SERVICE CATEGORY DUR-  
21           ING SGR REFORM PERIOD.—Subsection (d)(1) of  
22           such section is amended—

23                   (A) in subparagraph (A)—

24                           (i) by designating the sentence begin-  
25                           ning “The conversion factor” as clause (i)

1 with the heading “APPLICATION OF SIN-  
2 GLE CONVERSION FACTOR.—” and with  
3 appropriate indentation;

4 (ii) by striking “The conversion fac-  
5 tor” and inserting “Subject to clause (ii),  
6 the conversion factor”; and

7 (iii) by adding at the end the fol-  
8 lowing new clause:

9 “(ii) APPLICATION OF MULTIPLE CON-  
10 VERSION FACTORS DURING SGR REFORM  
11 PERIOD.—

12 “(I) IN GENERAL.—In applying  
13 clause (i) for years during the SGR  
14 reform period, separate conversion  
15 factors shall be established for each  
16 service category of physicians’ services  
17 (as defined in subsection (j)(5)) and  
18 any reference in this section to a con-  
19 version factor for such years shall be  
20 deemed to be a reference to the con-  
21 version factor for each of such cat-  
22 egories.

23 “(II) INITIAL CONVERSION FAC-  
24 TORS.—Such factors for 2012 shall be  
25 based upon the single conversion fac-

1 tor as in effect on December 31,  
2 2011, updated in accordance with  
3 paragraph (13) for such category for  
4 2012.

5 “(III) UPDATING OF CONVER-  
6 SION FACTORS.—Such factor for a  
7 service category for a subsequent year  
8 during the SGR reform period shall  
9 be based upon the conversion factor  
10 for such category for the previous  
11 year updated in accordance with para-  
12 graph (13) for such category for the  
13 year involved.”; and

14 (B) in subparagraph (D), by adding at the  
15 end the following: “For purposes of applying  
16 the previous sentence to a year during the SGR  
17 reform period, the reference to ‘other physi-  
18 cians’ services’ is deemed a reference to ‘physi-  
19 cians’ services described in the service category  
20 described in subsection (j)(5)(B)’.”.

21 (3) ESTABLISHING UPDATES FOR CONVERSION  
22 FACTORS FOR SERVICE CATEGORIES DURING SGR  
23 REFORM PERIOD.—Subsection (d) of such section, as  
24 amended by subsection (a), is amended—

1 (A) in paragraph (4)(C)(iii), by striking  
2 “The allowed” and inserting “Subject to para-  
3 graph (13)(B), the allowed”; and

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

6 “(13) UPDATES FOR SERVICE CATEGORIES BE-  
7 GINNING WITH 2012 DURING SGR REFORM PERIOD.—  
8 The following rules apply during the SGR reform  
9 period:

10 “(A) IN GENERAL.—In applying paragraph  
11 (4) for a year beginning with 2012, the fol-  
12 lowing rules apply:

13 “(i) APPLICATION OF SEPARATE UP-  
14 DATE ADJUSTMENTS FOR EACH SERVICE  
15 CATEGORY.—Pursuant to paragraph  
16 (1)(A)(ii)(I), the update shall be made to  
17 the conversion factor for each service cat-  
18 egory (as defined in subsection (j)(5))  
19 based upon an update adjustment factor  
20 for the respective category and year and  
21 such update adjustment factor shall be  
22 computed, for a year, separately for each  
23 service category.

24 “(ii) COMPUTATION OF ALLOWED AND  
25 ACTUAL EXPENDITURES BASED ON SERV-

1 ICE CATEGORIES.—In computing the prior  
2 year adjustment component and the cumu-  
3 lative adjustment component under clauses  
4 (i) and (ii) of paragraph (4)(B) for a serv-  
5 ice category, the following rules apply:

6 “(I) APPLICATION BASED ON  
7 SERVICE CATEGORIES.—The allowed  
8 expenditures and actual expenditures  
9 shall be the allowed and actual ex-  
10 penditures for the service category, as  
11 determined under subparagraph (B).

12 “(II) APPLICATION OF CATEGORY  
13 SPECIFIC TARGET GROWTH RATE.—  
14 The growth rate applied under clause  
15 (ii)(II) of such paragraph shall be the  
16 target growth rate for the service cat-  
17 egory involved under subsection (f)(5).

18 “(iii) NO NEGATIVE UPDATE.—In no  
19 case shall the update to any conversion  
20 factor be less than 0.

21 “(iv) MODIFICATION OF RESTRICTION  
22 ON UPDATE RESTRICTION FACTOR.—In ap-  
23 plying paragraph (4)(D), ‘-0.04’ shall be  
24 substituted for ‘-0.07’.



1           “(B) DETERMINATION OF ALLOWED EX-  
2           PENDITURES.—In applying paragraph (4) for a  
3           year beginning with 2011, notwithstanding sub-  
4           paragraph (C)(iii) of such paragraph, the al-  
5           lowed expenditures for a service category for a  
6           year is an amount computed by the Secretary  
7           as follows:

8                   “(i) FOR 2011.—For 2011:

9                           “(I) TOTAL 2010 ACTUAL EX-  
10                           PENDITURES FOR ALL SERVICES IN-  
11                           CLUDED IN SGR COMPUTATION FOR  
12                           EACH SERVICE CATEGORY.—Compute  
13                           total actual expenditures for physi-  
14                           cians’ services (as defined in sub-  
15                           section (f)(4)(A)(ii)) for 2010 for each  
16                           service category.

17                           “(II) INCREASE BY GROWTH  
18                           RATE TO OBTAIN 2011 ALLOWED EX-  
19                           PENDITURES FOR SERVICE CAT-  
20                           EGORY.—Compute allowed expendi-  
21                           tures for the service category for 2011  
22                           by increasing the allowed expenditures  
23                           for the service category for 2010 com-  
24                           puted under subclause (I) by the tar-

1                   get growth rate for such service cat-  
2                   egory under subsection (f) for 2011.

3                   “(ii) FOR 2012 AND SUBSEQUENT  
4                   YEARS DURING SGR REFORM PERIOD.—For  
5                   2012 and any subsequent year during the  
6                   SGR reform period, take the amount of al-  
7                   lowed expenditures for such category for  
8                   the preceding year (under clause (i) or this  
9                   clause) and increase it by the target  
10                  growth rate determined under subsection  
11                  (f) for such category and year.”.

12                  (4) APPLICATION OF SEPARATE TARGET  
13                  GROWTH RATES FOR EACH CATEGORY DURING SGR  
14                  REFORM PERIOD.—

15                  (A) IN GENERAL.—Subsection (f) of such  
16                  section is amended by adding at the end the fol-  
17                  lowing new paragraph:

18                  “(5) APPLICATION DURING SGR REFORM PE-  
19                  RIOD OF SEPARATE TARGET GROWTH RATES FOR  
20                  EACH SERVICE CATEGORY.—With respect to the ap-  
21                  plication of this section during the SGR reform pe-  
22                  riod, the target growth rate for a year beginning  
23                  with 2011 shall be computed and applied separately  
24                  under this subsection for each service category (as  
25                  defined in subsection (j)(5)) and shall be computed

1 using the same method for computing the growth  
2 rate under paragraph (2) except that the factor de-  
3 scribed in paragraph (2)(C) for—

4 “(A) the service category described in sub-  
5 section (j)(5)(A) shall be increased by 0.02; and

6 “(B) the service category described in sub-  
7 section (j)(5)(B) shall be increased by 0.01.”.

8 (B) USE OF TARGET GROWTH RATES DUR-  
9 ING SGR REFORM PERIOD.—Such section is fur-  
10 ther amended—

11 (i) in subsection (d)—

12 (I) in paragraph (1)(E)(ii), by in-  
13 sserting “(and the target growth rate  
14 with respect to years during the SGR  
15 reform period)” after “sustainable  
16 growth rate”; and

17 (II) in paragraph (4)(B)(ii)(II),  
18 by inserting “(or the target growth  
19 rate with respect to years during the  
20 SGR reform period)” after “sustain-  
21 able growth rate”;

22 (ii) in the heading of subsection (f),  
23 by inserting “AND TARGET GROWTH  
24 RATE” after “SUSTAINABLE GROWTH  
25 RATE”; and

1 (iii) in subsection (f)(1)—

2 (I) by striking “and” at the end  
3 of subparagraph (A);

4 (II) in subparagraph (B), by  
5 striking the period at the end and in-  
6 serting “; and”; and

7 (III) by adding at the end the  
8 following new subparagraph:

9 “(C) November 1, 2010, the target growth  
10 rate for 2011, and November 1 of each suc-  
11 ceeding year (before the last year of the SGR  
12 reform period) the target growth rate for such  
13 succeeding year and each of the 2 preceding  
14 years.”.

15 (e) NO EFFECT OF SGR REFORM PERIOD ON COM-  
16 PUTATION OF CONVERSION FACTOR AFTER SGR REFORM  
17 PERIOD.—Such section is further amended—

18 (1) in subsection (d), as amended by sub-  
19 sections (a) and (d)(3)(B) of this section, by adding  
20 at the end the following new paragraph:

21 “(14) NO EFFECT OF 2010 THROUGH 2013  
22 CHANGES ON COMPUTATION OF CONVERSION FAC-  
23 TOR FOR 2014 AND SUBSEQUENT YEARS.—The con-  
24 version factor under this subsection shall be com-  
25 puted under paragraph (1)(A) for 2014 and subse-

1       quent years as if the amendments made by sub-  
2       sections (a) through (d) of section 523 of the Amer-  
3       ican Jobs and Closing Tax Loopholes Act of 2010  
4       had never applied.”; and

5               (2) by adding at the end of subsection (f), as  
6       amended by subsection (d)(4) of this section, the fol-  
7       lowing new paragraph:

8               “(6) TEMPORARY ADJUSTMENT.—In deter-  
9       mining the growth rate under paragraph (2) for  
10       2015, the Secretary’s estimate of the percentage  
11       change otherwise determined under paragraph  
12       (2)(D) shall be reduced by 4.0 percentage points.”.

13       (f) APPLICATION TO SHARED SAVINGS PROGRAM  
14 DURING THE SGR REFORM PERIOD.—Subsection (f) of  
15 such section, as amended by subsections (d)(4)(A) and  
16 (e)(2) of this section, is further amended by adding at the  
17 end the following new paragraph:

18               “(7) APPLICATION TO SHARED SAVINGS PRO-  
19       GRAM DURING THE SGR REFORM PERIOD.—

20               “(A) IN GENERAL.—In applying this sub-  
21       section and subsection (d) to services furnished  
22       in a year during the SGR reform period by an  
23       ACO professional (as defined in section  
24       1899(h)(1) and including a physician as defined  
25       in section 1866A(a)(3)(A) for purposes of ap-

1           plying section 1899(k)) to individuals who are  
2           assigned to an accountable care organization  
3           under the shared savings program under section  
4           1899 (including subsection (k) of such section),  
5           the Secretary shall develop, not later than Jan-  
6           uary 1, 2012, and in accordance with this para-  
7           graph a method that—

8                   “(i) allows each such organization to  
9                   choose (for all years in the SGR reform pe-  
10                  riod during its agreement period under  
11                  section 1899) to have its own expenditure  
12                  target and update for such professionals  
13                  for such year, with respect to individuals  
14                  who are assigned to that organization, that  
15                  are consistent with subsection  
16                  (d)(13)(A)(iii) and the methodologies de-  
17                  scribed in this subsection and under such  
18                  program, including—

19                           “(I) the same scope of items and  
20                           services as are included in physicians’  
21                           services under paragraph (4)(A)(ii);  
22                           and

23                           “(II) the application of the same  
24                           factors under paragraph (2) to the  
25                           computation of the target growth rate

1 for such program, except that the en-  
2 rollment growth factor described in  
3 paragraph (2)(B) shall be determined  
4 by the Secretary on the basis of the  
5 annual increase in individuals as-  
6 signed to the organization; and

7 “(ii) provides that the target growth  
8 rates and conversion factors applicable to  
9 other physicians shall not apply to such  
10 professionals to the extent that the physi-  
11 cians’ services are furnished to individuals  
12 assigned to the organization.

13 “(B) APPLICATION.—In applying subpara-  
14 graph (A), the Secretary may limit the applica-  
15 tion of such subparagraph based on factors  
16 such as the number of individuals assigned to  
17 the organization involved and such other factors  
18 as the Secretary determines appropriate and  
19 may apply the difference in the update under  
20 clause (i) of such subparagraph on a claim-by-  
21 claim or lump sum basis.

22 “(C) NO APPLICATION AFTER SGR REFORM  
23 PERIOD.—Subparagraph (A) shall not apply to  
24 years after the end of the SGR reform period.”.

1 **SEC. 524. ADJUSTMENT TO MEDICARE PAYMENT LOCAL-**  
2 **ITIES.**

3 (a) IN GENERAL.—Section 1848(e) of the Social Se-  
4 curity Act (42 U.S.C.1395w-4(e)) is amended by adding  
5 at the end the following new paragraph:

6 “(6) TRANSITION TO USE OF MSAS AS FEE  
7 SCHEDULE AREAS IN CALIFORNIA.—

8 “(A) IN GENERAL.—

9 “(i) REVISION.—Subject to clause (ii)  
10 and notwithstanding the previous provi-  
11 sions of this subsection, for services fur-  
12 nished on or after January 1, 2012, the  
13 Secretary shall revise the fee schedule  
14 areas used for payment under this section  
15 applicable to the State of California using  
16 the Metropolitan Statistical Area (MSA)  
17 iterative Geographic Adjustment Factor  
18 methodology as follows:

19 “(I) The Secretary shall con-  
20 figure the physician fee schedule areas  
21 using the Metropolitan Statistical  
22 Areas (each in this paragraph referred  
23 to as an ‘MSA’), as defined by the Di-  
24 rector of the Office of Management  
25 and Budget as of the date of the en-



1 actment of this paragraph, as the  
2 basis for the fee schedule areas.

3 “(II) For purposes of this clause,  
4 the Secretary shall treat all areas not  
5 included in an MSA as a single rest-  
6 of-State MSA and any reference in  
7 this paragraph to an MSA shall be  
8 deemed to include a reference to such  
9 rest-of-State MSA.

10 “(III) The Secretary shall list all  
11 MSAs within the State by Geographic  
12 Adjustment Factor described in para-  
13 graph (2) (in this paragraph referred  
14 to as a ‘GAF’) in descending order.

15 “(IV) In the first iteration, the  
16 Secretary shall compare the GAF of  
17 the highest cost MSA in the State to  
18 the weighted-average GAF of all the  
19 remaining MSAs in the State. If the  
20 ratio of the GAF of the highest cost  
21 MSA to the weighted-average of the  
22 GAF of remaining lower cost MSAs is  
23 1.05 or greater, the highest cost MSA  
24 shall be a separate fee schedule area.

1                   “(V) In the next iteration, the  
2                   Secretary shall compare the GAF of  
3                   the MSA with the second-highest  
4                   GAF to the weighted-average GAF of  
5                   the all the remaining MSAs (excluding  
6                   MSAs that become separate fee sched-  
7                   ule areas). If the ratio of the second-  
8                   highest MSA’s GAF to the weighted-  
9                   average of the remaining lower cost  
10                  MSAs is 1.05 or greater, the second-  
11                  highest MSA shall be a separate fee  
12                  schedule area.

13                  “(VI) The iterative process shall  
14                  continue until the ratio of the GAF of  
15                  the MSA with highest remaining GAF  
16                  to the weighted-average of the remain-  
17                  ing MSAs with lower GAFs is less  
18                  than 1.05, and the remaining group of  
19                  MSAs with lower GAFs shall be treat-  
20                  ed as a single rest-of-State fee sched-  
21                  ule area.

22                  “(VII) For purposes of the  
23                  iterative process described in this  
24                  clause, if two MSAs have identical  
25                  GAFs, they shall be combined.

1                   “(ii) TRANSITION.—For services fur-  
2                   nished on or after January 1, 2012, and  
3                   before January 1, 2017, in the State of  
4                   California, after calculating the work, prac-  
5                   tice expense, and malpractice geographic  
6                   indices that would otherwise be determined  
7                   under clauses (i), (ii), and (iii) of para-  
8                   graph (1)(A) for a fee schedule area deter-  
9                   mined under clause (i), if the index for a  
10                  county within a fee schedule area is less  
11                  than the index that would otherwise be in  
12                  effect for such county, the Secretary shall  
13                  instead apply the index that would other-  
14                  wise be in effect for such county.

15                  “(B) SUBSEQUENT REVISIONS.—After the  
16                  transition described in subparagraph (A)(ii),  
17                  not less than every 3 years the Secretary shall  
18                  review and update the fee schedule areas using  
19                  the methodology described in subparagraph  
20                  (A)(i) and any updated MSAs as defined by the  
21                  Director of the Office of Management and  
22                  Budget. The Secretary shall review and make  
23                  any changes pursuant to such reviews concu-  
24                  rent with the application of the periodic review

1 of the adjustment factors required under para-  
2 graph (1)(C) for California.

3 “(C) REFERENCES TO FEE SCHEDULE  
4 AREAS.—Effective for services furnished on or  
5 after January 1, 2012, for the State of Cali-  
6 fornia, any reference in this section to a fee  
7 schedule area shall be deemed a reference to a  
8 fee schedule area established in accordance with  
9 this paragraph.”.

10 (b) CONFORMING AMENDMENT TO DEFINITION OF  
11 FEE SCHEDULE AREA.—Section 1848(j)(2) of the Social  
12 Security Act (42 U.S.C. 1395w(j)(2)) is amended by strik-  
13 ing “The term” and inserting “Except as provided in sub-  
14 section (e)(6)(C), the term”.

15 **SEC. 525. CLARIFICATION OF 3-DAY PAYMENT WINDOW.**

16 (a) IN GENERAL.—Section 1886 of the Social Secu-  
17 rity Act (42 U.S.C. 1395ww) is amended—

18 (1) by adding at the end of subsection (a)(4)  
19 the following new sentence: “In applying the first  
20 sentence of this paragraph, the term ‘other services  
21 related to the admission’ includes all services that  
22 are not diagnostic services (other than ambulance  
23 and maintenance renal dialysis services) for which  
24 payment may be made under this title that are pro-

1       vided by a hospital (or an entity wholly owned or op-  
2       erated by the hospital) to a patient—

3               “(A) on the date of the patient’s inpatient  
4       admission; or

5               “(B) during the 3 days (or, in the case of  
6       a hospital that is not a subsection (d) hospital,  
7       during the 1 day) immediately preceding the  
8       date of such admission unless the hospital dem-  
9       onstrates (in a form and manner, and at a  
10      time, specified by the Secretary) that such serv-  
11     ices are not related (as determined by the Sec-  
12     retary) to such admission.”; and

13      (2) in subsection (d)(7)—

14              (A) in subparagraph (A), by striking  
15      “and” at the end;

16              (B) in subparagraph (B), by striking the  
17      period and inserting “, and” ; and

18              (C) by adding at the end the following new  
19      subparagraph:

20              “(C) the determination of whether services  
21      provided prior to a patient’s inpatient admis-  
22      sion are related to the admission (as described  
23      in subsection (a)(4)).”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 subsection (a) shall apply to services furnished on or after  
3 the date of the enactment of this Act.

4 (c) NO REOPENING OF PREVIOUSLY BUNDLED  
5 CLAIMS.—

6 (1) IN GENERAL.—The Secretary of Health and  
7 Human Services may not reopen a claim, adjust a  
8 claim, or make a payment pursuant to any request  
9 for payment under title XVIII of the Social Security  
10 Act, submitted by an entity (including a hospital or  
11 an entity wholly owned or operated by the hospital)  
12 for services described in paragraph (2) for purposes  
13 of treating, as unrelated to a patient's inpatient ad-  
14 mission, services provided during the 3 days (or, in  
15 the case of a hospital that is not a subsection (d)  
16 hospital, during the 1 day) immediately preceding  
17 the date of the patient's inpatient admission.

18 (2) SERVICES DESCRIBED.—For purposes of  
19 paragraph (1), the services described in this para-  
20 graph are other services related to the admission (as  
21 described in section 1886(a)(4) of the Social Secu-  
22 rity Act (42 U.S.C. 1395ww(a)(4)), as amended by  
23 subsection (a)) which were previously included on a  
24 claim or request for payment submitted under part  
25 A of title XVIII of such Act for which a reopening,

1 adjustment, or request for payment under part B of  
2 such title, was not submitted prior to the date of the  
3 enactment of this Act.

4 (d) IMPLEMENTATION.—Notwithstanding any other  
5 provision of law, the Secretary of Health and Human  
6 Services may implement the provisions of this section (and  
7 amendments made by this section) by program instruction  
8 or otherwise.

9 (e) RULE OF CONSTRUCTION.—Nothing in the  
10 amendments made by this section shall be construed as  
11 changing the policy described in section 1886(a)(4) of the  
12 Social Security Act (42 U.S.C. 1395ww(a)(4)), as applied  
13 by the Secretary of Health and Human Services before  
14 the date of the enactment of this Act, with respect to diag-  
15 nostic services.

16 (f) REVISIONS TO THE MEDICARE IMPROVEMENT  
17 FUND.—Section 1898(b)(1) of the Social Security Act (42  
18 U.S.C. 1395iii(b)(1)) is amended by amending subpara-  
19 graph (A) to read as follows:

20 “(A) fiscal year 2014, \$3,950,000,000;”.

## 21 **TITLE VI—OTHER PROVISIONS**

### 22 **SEC. 601. EXTENSION OF NATIONAL FLOOD INSURANCE** 23 **PROGRAM.**

24 (a) EXTENSION.—Section 129 of the Continuing Ap-  
25 propriations Resolution, 2010 (Public Law 111-68), as

1 amended by section 7(a) of Public Law 111-157, is  
2 amended by striking “by substituting” and all that follows  
3 through the period at the end, and inserting “by sub-  
4 stituting December 31, 2010, for the date specified in each  
5 such section.”.

6 (b) EFFECTIVE DATE.—The amendments made by  
7 subsection (a) shall be considered to have taken effect on  
8 May 31, 2010.

9 **SEC. 602. ALLOCATION OF GEOTHERMAL RECEIPTS.**

10 Notwithstanding any other provision of law, for fiscal  
11 year 2010 only, all funds received from sales, bonuses,  
12 royalties, and rentals under the Geothermal Steam Act of  
13 1970 (30 U.S.C. 1001 et seq.) shall be deposited in the  
14 Treasury, of which—

15 (1) 50 percent shall be used by the Secretary  
16 of the Treasury to make payments to States within  
17 the boundaries of which the leased land and geo-  
18 thermal resources are located;

19 (2) 25 percent shall be used by the Secretary  
20 of the Treasury to make payments to the counties  
21 within the boundaries of which the leased land or  
22 geothermal resources are located; and

23 (3) 25 percent shall be deposited in miscella-  
24 neous receipts.



1 **SEC. 603. SMALL BUSINESS LOAN GUARANTEE ENHANCE-**  
2 **MENT EXTENSIONS.**

3 (a) APPROPRIATION.—There is appropriated, out of  
4 any funds in the Treasury not otherwise appropriated, for  
5 an additional amount for “Small Business Administra-  
6 tion—Business Loans Program Account”, \$505,000,000,  
7 to remain available through December 31, 2010, for the  
8 cost of—

9 (1) fee reductions and eliminations under sec-  
10 tion 501 of division A of the American Recovery and  
11 Reinvestment Act of 2009 (Public Law 111–5; 123  
12 Stat. 151), as amended by this section; and

13 (2) loan guarantees under section 502 of divi-  
14 sion A of the American Recovery and Reinvestment  
15 Act of 2009 (Public Law 111–5; 123 Stat. 152), as  
16 amended by this section.

17 Such costs, including the cost of modifying such loans,  
18 shall be as defined in section 502 of the Congressional  
19 Budget Act of 1974.

20 (b) EXTENSION OF PROGRAMS.—

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

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

6           (c) APPROPRIATION.—There is appropriated for an  
7 additional amount, out of any funds in the Treasury not  
8 otherwise appropriated, for administrative expenses to  
9 carry out sections 501 and 502 of division A of the Amer-  
10 ican Recovery and Reinvestment Act of 2009 (Public Law  
11 111–5), \$5,000,000, to remain available until expended,  
12 which may be transferred and merged with the appropria-  
13 tion for “Small Business Administration—Salaries and  
14 Expenses”.

15 **SEC. 604. EMERGENCY AGRICULTURAL DISASTER ASSIST-**  
16 **ANCE.**

17           (a) DEFINITIONS.—Except as otherwise provided in  
18 this section, in this section:

19           (1) DISASTER COUNTY.—

20           (A) IN GENERAL.—The term “disaster  
21 county” means a county included in the geo-  
22 graphic area covered by a qualifying natural  
23 disaster declaration for the 2009 crop year.

24           (B) EXCLUSION.—The term “disaster  
25 county” does not include a contiguous county.

1           (2) ELIGIBLE AQUACULTURE PRODUCER.—The  
2 term “eligible aquaculture producer” means an  
3 aquaculture producer that during the 2009 calendar  
4 year, as determined by the Secretary—

5           (A) produced an aquaculture species for  
6 which feed costs represented a substantial per-  
7 centage of the input costs of the aquaculture  
8 operation; and

9           (B) experienced a substantial price in-  
10 crease of feed costs above the previous 5-year  
11 average.

12           (3) ELIGIBLE PRODUCER.—The term “eligible  
13 producer” means an agricultural producer in a dis-  
14 aster county.

15           (4) ELIGIBLE SPECIALTY CROP PRODUCER.—  
16 The term “eligible specialty crop producer” means  
17 an agricultural producer that, for the 2009 crop  
18 year, as determined by the Secretary—

19           (A) produced, or was prevented from  
20 planting, a specialty crop; and

21           (B) experienced specialty crop losses in a  
22 disaster county due to drought, excessive rain-  
23 fall, or a related condition.

24           (5) QUALIFYING NATURAL DISASTER DECLARA-  
25 TION.—The term “qualifying natural disaster dec-

1 laration” means a natural disaster declared by the  
2 Secretary for production losses under section 321(a)  
3 of the Consolidated Farm and Rural Development  
4 Act (7 U.S.C. 1961(a)).

5 (6) SECRETARY.—The term “Secretary” means  
6 the Secretary of Agriculture.

7 (7) SPECIALTY CROP.—The term “specialty  
8 crop” has the meaning given the term in section 3  
9 of the Specialty Crops Competitiveness Act of 2004  
10 (Public Law 108–465; 7 U.S.C. 1621 note).

11 (b) SUPPLEMENTAL DIRECT PAYMENT.—

12 (1) IN GENERAL.—Of the funds of the Com-  
13 modity Credit Corporation, the Secretary shall use  
14 such sums as are necessary to make supplemental  
15 payments under sections 1103 and 1303 of the  
16 Food, Conservation, and Energy Act of 2008 (7  
17 U.S.C. 8713, 8753) to eligible producers on farms  
18 located in disaster counties that had at least 1 crop  
19 of economic significance (other than specialty crops  
20 or crops intended for grazing) suffer at least a 5-  
21 percent crop loss on a farm due to a natural dis-  
22 aster, including quality losses, as determined by the  
23 Secretary, in an amount equal to 90 percent of the  
24 direct payment the eligible producers received for the  
25 2009 crop year on the farm.

1           (2) ACRE PROGRAM.—Eligible producers that  
2           received direct payments under section 1105 of the  
3           Food, Conservation, and Energy Act of 2008 (7  
4           U.S.C. 8715) for the 2009 crop year and that other-  
5           wise meet the requirements of paragraph (1) shall  
6           be eligible to receive supplemental payments under  
7           that paragraph in an amount equal to 112.5 percent  
8           of the reduced direct payment the eligible producers  
9           received for the 2009 crop year under section 1103  
10          or 1303 of the Food, Conservation, and Energy Act  
11          of 2008 (7 U.S.C. 8713, 8753).

12          (3) RELATIONSHIP TO OTHER LAW.—Assistance  
13          received under this subsection shall be included in  
14          the calculation of farm revenue for the 2009 crop  
15          year under section 531(b)(4)(A) of the Federal Crop  
16          Insurance Act (7 U.S.C. 1531(b)(4)(A)) and section  
17          901(b)(4)(A) of the Trade Act of 1974 (19 U.S.C.  
18          2497(b)(4)(A)).

19          (c) SPECIALTY CROP ASSISTANCE.—

20               (1) IN GENERAL.—Of the funds of the Com-  
21               modity Credit Corporation, the Secretary shall use  
22               not more than \$300,000,000, to remain available  
23               until September 30, 2011, to carry out a program  
24               of grants to States to assist eligible specialty crop

1 producers for losses due to a natural disaster affect-  
2 ing the 2009 crops, of which not more than—

3 (A) \$150,000,000 shall be used to assist  
4 eligible specialty crop producers in counties that  
5 have been declared a disaster as the result of  
6 drought; and

7 (B) \$150,000,000 shall be used to assist  
8 eligible specialty crop producers in counties that  
9 have been declared a disaster as the result of  
10 excessive rainfall or a related condition.

11 (2) NOTIFICATION.—Not later than 45 days  
12 after the date of enactment of this Act, the Sec-  
13 retary shall notify the State department of agri-  
14 culture (or similar entity) in each State of the avail-  
15 ability of funds to assist eligible specialty crop pro-  
16 ducers, including such terms as are determined by  
17 the Secretary to be necessary for the equitable treat-  
18 ment of eligible specialty crop producers.

19 (3) PROVISION OF GRANTS.—

20 (A) IN GENERAL.—The Secretary shall  
21 make grants to States for disaster counties on  
22 a pro rata basis based on the value of specialty  
23 crop losses in those counties during the 2009  
24 calendar year, as determined by the Secretary.

1           (B) TIMING.—Not later than 90 days after  
2           the date of enactment of this Act, the Secretary  
3           shall make grants to States to provide assist-  
4           ance under this subsection.

5           (C) MAXIMUM GRANT.—The maximum  
6           amount of a grant made to a State for counties  
7           described in paragraph (1)(B) may not exceed  
8           \$40,000,000.

9           (4) REQUIREMENTS.—The Secretary shall  
10          make grants under this subsection only to States  
11          that demonstrate to the satisfaction of the Secretary  
12          that the State will—

13               (A) use grant funds to issue payments to  
14               eligible specialty crop producers;

15               (B) provide assistance to eligible specialty  
16               crop producers not later than 60 days after the  
17               date on which the State receives grant funds;  
18               and

19               (C) not later than 30 days after the date  
20               on which the State provides assistance to eligi-  
21               ble specialty crop producers, submit to the Sec-  
22               retary a report that describes—

23                       (i) the manner in which the State pro-  
24                       vided assistance;

1 (ii) the amounts of assistance pro-  
2 vided by type of specialty crop; and

3 (iii) the process by which the State  
4 determined the levels of assistance to eligi-  
5 ble specialty crop producers.

6 (D) RELATION TO OTHER LAW.—Assist-  
7 ance received under this subsection shall be in-  
8 cluded in the calculation of farm revenue for  
9 the 2009 crop year under section 531(b)(4)(A)  
10 of the Federal Crop Insurance Act (7 U.S.C.  
11 1531(b)(4)(A)) and section 901(b)(4)(A) of the  
12 Trade Act of 1974 (19 U.S.C. 2497(b)(4)(A)).

13 (d) COTTONSEED ASSISTANCE.—

14 (1) IN GENERAL.—Of the funds of the Com-  
15 modity Credit Corporation, the Secretary shall use  
16 not more than \$42,000,000 to provide supplemental  
17 assistance to eligible producers and first-handlers of  
18 the 2009 crop of cottonseed in a disaster county.

19 (2) GENERAL TERMS.—Except as otherwise  
20 provided in this subsection, the Secretary shall pro-  
21 vide disaster assistance under this subsection under  
22 the same terms and conditions as assistance pro-  
23 vided under section 3015 of the Emergency Agricul-  
24 tural Disaster Assistance Act of 2006 (title III of  
25 Public Law 109–234; 120 Stat. 477).



1           (3) DISTRIBUTION OF ASSISTANCE.—The Sec-  
2           retary shall distribute assistance to first handlers for  
3           the benefit of eligible producers in a disaster county  
4           in an amount equal to the product obtained by mul-  
5           tiplied—

6                   (A) the payment rate, as determined under  
7                   paragraph (4); and

8                   (B) the county-eligible production, as de-  
9                   termined under paragraph (5).

10           (4) PAYMENT RATE.—The payment rate shall  
11           be equal to the quotient obtained by dividing—

12                   (A) the total funds made available to carry  
13                   out this subsection; by

14                   (B) the sum of the county-eligible produc-  
15                   tion, as determined under paragraph (5).

16           (5) COUNTY-ELIGIBLE PRODUCTION.—The  
17           county-eligible production shall be equal to the prod-  
18           uct obtained by multiplying—

19                   (A) the number of acres planted to cotton  
20                   in the disaster county, as reported to the Sec-  
21                   retary by first handlers;

22                   (B) the expected cotton lint yield for the  
23                   disaster county, as determined by the Secretary  
24                   based on the best available information; and

1           (C) the national average seed-to-lint ratio,  
2           as determined by the Secretary based on the  
3           best available information for the 5 crop years  
4           immediately preceding the 2009 crop, excluding  
5           the year in which the average ratio was the  
6           highest and the year in which the average ratio  
7           was the lowest in such period.

8           (e) AQUACULTURE ASSISTANCE.—

9           (1) IN GENERAL.—Of the funds of the Com-  
10          modity Credit Corporation, the Secretary shall use  
11          not more than \$25,000,000, to remain available  
12          until September 30, 2011, to carry out a program  
13          of grants to States to assist eligible aquaculture pro-  
14          ducers for losses associated with high feed input  
15          costs during the 2009 calendar year.

16          (2) NOTIFICATION.—Not later than 45 days  
17          after the date of enactment of this Act, the Sec-  
18          retary shall notify the State department of agri-  
19          culture (or similar entity) in each State of the avail-  
20          ability of funds to assist eligible aquaculture pro-  
21          ducers, including such terms as are determined by  
22          the Secretary to be necessary for the equitable treat-  
23          ment of eligible aquaculture producers.

24          (3) PROVISION OF GRANTS.—

1           (A) IN GENERAL.—The Secretary shall  
2           make grants to States under this subsection on  
3           a pro rata basis based on the amount of aqua-  
4           culture feed used in each State during the 2009  
5           calendar year, as determined by the Secretary.

6           (B) TIMING.—Not later than 90 days after  
7           the date of enactment of this Act, the Secretary  
8           shall make grants to States to provide assist-  
9           ance under this subsection.

10          (4) REQUIREMENTS.—The Secretary shall  
11          make grants under this subsection only to States  
12          that demonstrate to the satisfaction of the Secretary  
13          that the State will—

14                (A) use grant funds to assist eligible aqua-  
15                culture producers;

16                (B) provide assistance to eligible aqua-  
17                culture producers not later than 60 days after  
18                the date on which the State receives grant  
19                funds; and

20                (C) not later than 30 days after the date  
21                on which the State provides assistance to eligi-  
22                ble aquaculture producers, submit to the Sec-  
23                retary a report that describes—

24                        (i) the manner in which the State pro-  
25                        vided assistance;

1 (ii) the amounts of assistance pro-  
2 vided per species of aquaculture; and

3 (iii) the process by which the State  
4 determined the levels of assistance to eligi-  
5 ble aquaculture producers.

6 (5) REDUCTION IN PAYMENTS.—An eligible  
7 aquaculture producer that receives assistance under  
8 this subsection shall not be eligible to receive any  
9 other assistance under the supplemental agricultural  
10 disaster assistance program established under sec-  
11 tion 531 of the Federal Crop Insurance Act (7  
12 U.S.C. 1531) and section 901 of the Trade Act of  
13 1974 (19 U.S.C. 2497) for any losses in 2009 relat-  
14 ing to the same species of aquaculture.

15 (6) REPORT TO CONGRESS.—Not later than  
16 240 days after the date of enactment of this Act, the  
17 Secretary shall submit to the appropriate committees  
18 of Congress a report that—

19 (A) describes in detail the manner in which  
20 this subsection has been carried out; and

21 (B) includes the information reported to  
22 the Secretary under paragraph (4)(C).

23 (f) HAWAII TRANSPORTATION COOPERATIVE.—Not-  
24 withstanding any other provision of law, the Secretary  
25 shall use \$21,000,000 of funds of the Commodity Credit

1 Corporation to make a payment to an agricultural trans-  
2 portation cooperative in the State of Hawaii, the members  
3 of which are eligible to participate in the commodity loan  
4 program of the Farm Service Agency, for assistance to  
5 maintain and develop employment.

6 (g) LIVESTOCK FORAGE DISASTER PROGRAM.—

7 (1) DEFINITION OF DISASTER COUNTY.—In  
8 this subsection:

9 (A) IN GENERAL.—The term “disaster  
10 county” means a county included in the geo-  
11 graphic area covered by a qualifying natural  
12 disaster declaration announced by the Secretary  
13 in calendar year 2009.

14 (B) INCLUSION.—The term “disaster  
15 county” includes a contiguous county.

16 (2) PAYMENTS.—Of the funds of the Com-  
17 modity Credit Corporation, the Secretary shall use  
18 not more than \$50,000,000 to carry out a program  
19 to make payments to eligible producers that had  
20 grazing losses in disaster counties in calendar year  
21 2009.

22 (3) CRITERIA.—

23 (A) IN GENERAL.—Except as provided in  
24 subparagraph (B), assistance under this sub-  
25 section shall be determined under the same cri-

1           teria as are used to carry out the programs  
2           under section 531(d) of the Federal Crop In-  
3           surance Act (7 U.S.C. 1531(d)) and section  
4           901(d) of the Trade Act of 1974 (19 U.S.C.  
5           2497(d)).

6                   (B) DROUGHT INTENSITY.—For purposes  
7           of this subsection, an eligible producer shall not  
8           be required to meet the drought intensity re-  
9           quirements of section 531(d)(3)(D)(ii) of the  
10          Federal Crop Insurance Act (7 U.S.C.  
11          1531(d)(3)(D)(ii)) and section 901(d)(3)(D)(ii)  
12          of the Trade Act of 1974 (19 U.S.C.  
13          2497(d)(3)(D)(ii)).

14                   (4) AMOUNT.—Assistance under this subsection  
15          shall be in an amount equal to 1 monthly payment  
16          using the monthly payment rate under section  
17          531(d)(3)(B) of the Federal Crop Insurance Act (7  
18          U.S.C. 1531(d)(3)(B)) and section 901(d)(3)(B) of  
19          the Trade Act of 1974 (19 U.S.C. 2497(d)(3)(B)).

20                   (5) RELATION TO OTHER LAW.—An eligible  
21          producer that receives assistance under this sub-  
22          section shall be ineligible to receive assistance for  
23          2009 grazing losses under the program carried out  
24          under section 531(d) of the Federal Crop Insurance

1 Act (7 U.S.C. 1531(d)) and section 901(d) of the  
2 Trade Act of 1974 (19 U.S.C. 2497(d)).

3 (h) EMERGENCY LOANS FOR POULTRY PRO-  
4 DUCERS.—

5 (1) DEFINITIONS.—In this subsection:

6 (A) ANNOUNCEMENT DATE.—The term  
7 “announcement date” means the date on which  
8 the Secretary announces the emergency loan  
9 program under this subsection.

10 (B) POULTRY INTEGRATOR.—The term  
11 “poultry integrator” means a poultry integrator  
12 that filed proceedings under chapter 11 of title  
13 11, United States Code, in United States Bank-  
14 ruptcy Court during the 30-day period begin-  
15 ning on December 1, 2008.

16 (2) LOAN PROGRAM.—

17 (A) IN GENERAL.—Of the funds of the  
18 Commodity Credit Corporation, the Secretary  
19 shall use not more than \$75,000,000, to remain  
20 available until expended, for the cost of making  
21 no-interest emergency loans available to poultry  
22 producers that meet the requirements of this  
23 subsection.

24 (B) TERMS AND CONDITIONS.—Except as  
25 otherwise provided in this subsection, emer-

1           agency loans under this subsection shall be sub-  
2           ject to such terms and conditions as are deter-  
3           mined by the Secretary.

4           (3) LOANS.—

5                   (A) IN GENERAL.—An emergency loan  
6           made to a poultry producer under this sub-  
7           section shall be for the purpose of providing fi-  
8           nancing to the poultry producer in response to  
9           financial losses associated with the termination  
10          or nonrenewal of any contract between the poul-  
11          try producer and a poultry integrator.

12                   (B) ELIGIBILITY.—

13                           (i) IN GENERAL.—To be eligible for  
14           an emergency loan under this subsection,  
15           not later than 90 days after the announce-  
16           ment date, a poultry producer shall submit  
17           to the Secretary evidence that—

18                                   (I) the contract of the poultry  
19           producer described in subparagraph  
20           (A) was not continued; and

21                                   (II) no similar contract has been  
22           awarded subsequently to the poultry  
23           producer.

24                           (ii) REQUIREMENT TO OFFER  
25          LOANS.—Notwithstanding any other provi-



1                   sion of law, if a poultry producer meets the  
2                   eligibility requirements described in clause  
3                   (i), subject to the availability of funds  
4                   under paragraph (2)(A), the Secretary  
5                   shall offer to make a loan under this sub-  
6                   section to the poultry producer with a min-  
7                   imum term of 2 years.

8                   (4) ADDITIONAL REQUIREMENTS.—

9                   (A) IN GENERAL.—A poultry producer  
10                  that receives an emergency loan under this sub-  
11                  section may use the emergency loan proceeds  
12                  only to repay the amount that the poultry pro-  
13                  ducer owes to any lender for the purchase, im-  
14                  provement, or operation of the poultry farm.

15                  (B) CONVERSION OF THE LOAN.—A poul-  
16                  try producer that receives an emergency loan  
17                  under this subsection shall be eligible to have  
18                  the balance of the emergency loan converted,  
19                  but not refinanced, to a loan that has the same  
20                  terms and conditions as an operating loan  
21                  under subtitle B of the Consolidated Farm and  
22                  Rural Development Act (7 U.S.C. 1941 et seq.).

23                  (i) STATE AND LOCAL GOVERNMENTS.—Section  
24                  1001(f)(6)(A) of the Food Security Act of 1985 (7 U.S.C.  
25                  1308(f)(6)(A)) is amended by inserting “(other than the

1 conservation reserve program established under sub-  
2 chapter B of chapter 1 of subtitle D of title XII of this  
3 Act)” before the period at the end.

4 (j) ADMINISTRATION.—

5 (1) REGULATIONS.—

6 (A) IN GENERAL.—As soon as practicable  
7 after the date of enactment of this Act, the Sec-  
8 retary shall promulgate such regulations as are  
9 necessary to implement this section and the  
10 amendment made by this section.

11 (B) PROCEDURE.—The promulgation of  
12 the regulations and administration of this sec-  
13 tion and the amendment made by this section  
14 shall be made without regard to—

15 (i) the notice and comment provisions  
16 of section 553 of title 5, United States  
17 Code;

18 (ii) the Statement of Policy of the  
19 Secretary of Agriculture effective July 24,  
20 1971 (36 Fed. Reg. 13804), relating to no-  
21 tices of proposed rulemaking and public  
22 participation in rulemaking; and

23 (iii) chapter 35 of title 44, United  
24 States Code (commonly known as the “Pa-  
25 perwork Reduction Act”).

1 (C) CONGRESSIONAL REVIEW OF AGENCY  
2 RULEMAKING.—In carrying out this paragraph,  
3 the Secretary shall use the authority provided  
4 under section 808 of title 5, United States  
5 Code.

6 (2) ADMINISTRATIVE COSTS.—Of the funds of  
7 the Commodity Credit Corporation, the Secretary  
8 may use up to \$10,000,000 to pay administrative  
9 costs incurred by the Secretary that are directly re-  
10 lated to carrying out this Act.

11 (3) PROHIBITION.—None of the funds of the  
12 Agricultural Disaster Relief Trust Fund established  
13 under section 902 of the Trade Act of 1974 (19  
14 U.S.C. 2497a) may be used to carry out this Act.

15 **SEC. 605. SUMMER EMPLOYMENT FOR YOUTH.**

16 There is appropriated, out of any funds in the Treas-  
17 ury not otherwise appropriated, for an additional amount  
18 for “Department of Labor—Employment and Training  
19 Administration—Training and Employment Services” for  
20 activities under the Workforce Investment Act of 1998  
21 (“WIA”), \$1,000,000,000 shall be available for obligation  
22 on the date of enactment of this Act for grants to States  
23 for youth activities, including summer employment for  
24 youth: *Provided*, That no portion of such funds shall be  
25 reserved to carry out section 127(b)(1)(A) of the WIA:

1 *Provided further*, That for purposes of section  
2 127(b)(1)(C)(iv) of the WIA, funds available for youth ac-  
3 tivities shall be allotted as if the total amount available  
4 for youth activities in the fiscal year does not exceed  
5 \$1,000,000,000: *Provided further*, That with respect to the  
6 youth activities provided with such funds, section  
7 101(13)(A) of the WIA shall be applied by substituting  
8 “age 24” for “age 21”: *Provided further*, That the work  
9 readiness performance indicator described in section  
10 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure  
11 of performance used to assess the effectiveness of summer  
12 employment for youth provided with such funds: *Provided*  
13 *further*, That an amount that is not more than 1 percent  
14 of such amount may be used for the administration, man-  
15 agement, and oversight of the programs, activities, and  
16 grants carried out with such funds, including the evalua-  
17 tion of the use of such funds: *Provided further*, That funds  
18 available under the preceding proviso, together with funds  
19 described in section 801(a) of division A of the American  
20 Recovery and reinvestment Act of 2009 (Public Law 111–  
21 5), and funds provided in such Act under the heading  
22 “Department of Labor–Departmental Management–Sala-  
23 ries and Expenses”, shall remain available for obligation  
24 through September 30, 2011.

1 **SEC. 606. HOUSING TRUST FUND.**

2 (a) FUNDING.—There is hereby appropriated for the  
3 Housing Trust Fund established pursuant to section 1338  
4 of the Federal Housing Enterprises Financial Safety and  
5 Soundness Act of 1992 (12 U.S.C. 4568),  
6 \$1,065,000,000, for use under such section: *Provided*,  
7 That of the total amount provided under this heading,  
8 \$65,000,000 shall be available to the Secretary of Housing  
9 and Urban Development only for incremental project-  
10 based voucher assistance to be allocated to States to be  
11 used solely in conjunction with grant funds awarded under  
12 such section 1338, pursuant to the formula established  
13 under section 1338 and taking into account different per  
14 unit subsidy needs among states, as determined by the  
15 Secretary.

16 (b) AMENDMENTS.—Section 1338 of the Federal  
17 Housing Enterprises Financial Safety and Soundness Act  
18 of 1992 (12 U.S.C. 4568) is amended—

19 (1) in subsection (c)—

20 (A) in paragraph (4)(A) by inserting after  
21 the period at the end the following: “Notwith-  
22 standing any other provision of law, for the fis-  
23 cal year following enactment of this sentence  
24 and thereafter, the Secretary may make such  
25 notice available only on the Internet at the ap-  
26 propriate government website or websites or

1 through other electronic media, as determined  
2 by the Secretary.”;

3 (B) in paragraph (5)(C), by striking “(8)”  
4 and inserting “(9)”; and

5 (C) in paragraph (7)(A)—

6 (i) by striking “section  
7 1335(a)(2)(B)” and inserting “section  
8 1335(a)(1)(B)”; and

9 (ii) by inserting “the units funded  
10 under” after “75 percent of”; and

11 (2) by adding at the end the following new sub-  
12 section:

13 “(k) ENVIRONMENTAL REVIEW.—For the purpose of  
14 environmental compliance review, funds awarded under  
15 this section shall be subject to section 288 of the HOME  
16 Investment Partnerships Act (12 U.S.C. 12838) and shall  
17 be treated as funds under the program established by such  
18 Act.”.

19 **SEC. 607. THE INDIVIDUAL INDIAN MONEY ACCOUNT LITI-**  
20 **GATION SETTLEMENT ACT OF 2010.**

21 (a) SHORT TITLE.—This section may be cited as the  
22 “Individual Indian Money Account Litigation Settlement  
23 Act of 2010”.

24 (b) DEFINITIONS.—In this section:

1           (1) AMENDED COMPLAINT.—The term  
2 “Amended Complaint” means the Amended Com-  
3 plaint attached to the Settlement.

4           (2) LAND CONSOLIDATION PROGRAM.—The  
5 term “Land Consolidation Program” means a pro-  
6 gram conducted in accordance with the Settlement  
7 and the Indian Land Consolidation Act (25 U.S.C.  
8 2201 et seq.) under which the Secretary may pur-  
9 chase fractional interests in trust or restricted land.

10          (3) LITIGATION.—The term “Litigation” means  
11 the case entitled *Elouise Cobell et al. v. Ken Salazar*  
12 *et al.*, United States District Court, District of Co-  
13 lumbia, Civil Action No. 96-1285 (JR).

14          (4) PLAINTIFF.—The term “Plaintiff” means a  
15 member of any class certified in the Litigation.

16          (5) SECRETARY.—The term “Secretary” means  
17 the Secretary of the Interior.

18          (6) SETTLEMENT.—The term “Settlement”  
19 means the Class Action Settlement Agreement dated  
20 December 7, 2009, in the Litigation, as modified by  
21 the parties to the Litigation.

22          (7) TRUST ADMINISTRATION CLASS.—The term  
23 “Trust Administration Class” means the Trust Ad-  
24 ministration Class as defined in the Settlement.

1 (c) PURPOSE.—The purpose of this section is to au-  
2 thorize the Settlement.

3 (d) AUTHORIZATION.—The Settlement is authorized,  
4 ratified, and confirmed.

5 (e) JURISDICTIONAL PROVISIONS.—

6 (1) IN GENERAL.—Notwithstanding the limita-  
7 tion of jurisdiction of district courts contained in  
8 section 1346(a)(2) of title 28, United States Code,  
9 the United States District Court for the District of  
10 Columbia shall have jurisdiction over the claims as-  
11 serted in the Amended Complaint for purposes of  
12 the Settlement.

13 (2) CERTIFICATION OF TRUST ADMINISTRATION  
14 CLASS.—

15 (A) IN GENERAL.—Notwithstanding the  
16 requirements of the Federal Rules of Civil Pro-  
17 cedure, the court overseeing the Litigation may  
18 certify the Trust Administration Class.

19 (B) TREATMENT.—On certification under  
20 subparagraph (A), the Trust Administration  
21 Class shall be treated as a class under Federal  
22 Rule of Civil Procedure 23(b)(3) for purposes  
23 of the Settlement.

24 (f) TRUST LAND CONSOLIDATION.—

25 (1) TRUST LAND CONSOLIDATION FUND.—



1           (A) ESTABLISHMENT.—On final approval  
2           (as defined in the Settlement) of the Settle-  
3           ment, there shall be established in the Treasury  
4           of the United States a fund, to be known as the  
5           “Trust Land Consolidation Fund”.

6           (B) AVAILABILITY OF AMOUNTS.—  
7           Amounts in the Trust Land Consolidation  
8           Fund shall be made available to the Secretary  
9           during the 10-year period beginning on the date  
10          of final approval of the Settlement—

11                 (i) to conduct the Land Consolidation  
12                 Program; and

13                 (ii) for other costs specified in the  
14                 Settlement.

15          (C) DEPOSITS.—

16                 (i) IN GENERAL.—On final approval  
17                 (as defined in the Settlement) of the Set-  
18                 tlement, the Secretary of the Treasury  
19                 shall deposit in the Trust Land Consolida-  
20                 tion Fund \$2,000,000,000 of the amounts  
21                 appropriated by section 1304 of title 31,  
22                 United States Code.

23                 (ii) CONDITIONS MET.—The condi-  
24                 tions described in section 1304 of title 31,

1 United States Code, shall be considered to  
2 be met for purposes of clause (i).

3 (D) TRANSFERS.—In a manner designed  
4 to encourage participation in the Land Consoli-  
5 dation Program, the Secretary may transfer, at  
6 the discretion of the Secretary, not more than  
7 \$60,000,000 of amounts in the Trust Land  
8 Consolidation Fund to the Indian Education  
9 Scholarship Holding Fund established under  
10 paragraph 2.

11 (2) INDIAN EDUCATION SCHOLARSHIP HOLDING  
12 FUND.—

13 (A) ESTABLISHMENT.—On the final ap-  
14 proval (as defined in the Settlement) of the Set-  
15 tlement, there shall be established in the Treas-  
16 ury of the United States a fund, to be known  
17 as the “Indian Education Scholarship Holding  
18 Fund”.

19 (B) AVAILABILITY.—Notwithstanding any  
20 other provision of law governing competition,  
21 public notification, or Federal procurement or  
22 assistance, amounts in the Indian Education  
23 Scholarship Holding Fund shall be made avail-  
24 able, without further appropriation, to the Sec-  
25 retary to contribute to an Indian Education

1           Scholarship Fund, as described in the Settle-  
2           ment, to provide scholarships for Native Ameri-  
3           cans.

4           (3) ACQUISITION OF TRUST OR RESTRICTED  
5           LAND.—The Secretary may acquire, at the discre-  
6           tion of the Secretary and in accordance with the  
7           Land Consolidation Program, any fractional interest  
8           in trust or restricted land.

9           (4) TREATMENT OF UNLOCATABLE PLAIN-  
10          TIFFS.—A Plaintiff the whereabouts of whom are  
11          unknown and who, after reasonable efforts by the  
12          Secretary, cannot be located during the 5 year pe-  
13          riod beginning on the date of final approval (as de-  
14          fined in the Settlement) of the Settlement shall be  
15          considered to have accepted an offer made pursuant  
16          to the Land Consolidation Program.

17          (g) TAXATION AND OTHER BENEFITS.—

18               (1) INTERNAL REVENUE CODE.—For purposes  
19               of the Internal Revenue Code of 1986, amounts re-  
20               ceived by an individual Indian as a lump sum or a  
21               periodic payment pursuant to the Settlement—

22                       (A) shall not be included in gross income;  
23                       and

24                       (B) shall not be taken into consideration  
25                       for purposes of applying any provision of the

1 Internal Revenue Code of 1986 that takes into  
2 account excludible income in computing ad-  
3 justed gross income or modified adjusted gross  
4 income, including section 86 of that Code (re-  
5 lating to Social Security and tier 1 railroad re-  
6 tirement benefits).

7 (2) OTHER BENEFITS.—Notwithstanding any  
8 other provision of law, for purposes of determining  
9 initial eligibility, ongoing eligibility, or level of bene-  
10 fits under any Federal or federally assisted program,  
11 amounts received by an individual Indian as a lump  
12 sum or a periodic payment pursuant to the Settle-  
13 ment shall not be treated for any household member,  
14 during the 1-year period beginning on the date of re-  
15 ceipt—

16 (A) as income for the month during which  
17 the amounts were received; or

18 (B) as a resource.

19 **SEC. 608. APPROPRIATION OF FUNDS FOR FINAL SETTLE-**  
20 **MENT OF CLAIMS FROM IN RE BLACK FARM-**  
21 **ERS DISCRIMINATION LITIGATION.**

22 (a) DEFINITIONS.—In this section:

23 (1) SETTLEMENT AGREEMENT.—The term  
24 “Settlement Agreement” means the settlement  
25 agreement dated February 18, 2010, between cer-

1       tain plaintiffs, by and through their counsel, and the  
2       Secretary of Agriculture to resolve, fully and forever,  
3       the claims raised or that could have been raised in  
4       the cases consolidated in *In re Black Farmers Dis-*  
5       *crimination Litigation*, No. 08–511 (D.D.C.), in-  
6       cluding Pigford claims asserted under section 14012  
7       of the Food, Conservation, and Energy Act of 2008  
8       (Public Law 110–246; 122 Stat. 2209).

9               (2) PIGFORD CLAIM.—The term “Pigford  
10       claim” has the meaning given that term in section  
11       14012(a)(3) of the Food, Conservation, and Energy  
12       Act of 2008 (Public Law 110–246; 122 Stat. 2210).

13       (b) APPROPRIATION OF FUNDS.—There is hereby ap-  
14       propriated to the Secretary of Agriculture  
15       \$1,150,000,000, to remain available until expended, to  
16       carry out the terms of the Settlement Agreement if the  
17       Settlement Agreement is approved by a court order that  
18       is or becomes final and nonappealable. The funds appro-  
19       priated by this subsection are in addition to the  
20       \$100,000,000 of funds of the Commodity Credit Corpora-  
21       tion made available by section 14012(i) of the Food, Con-  
22       servation, and Energy Act of 2008 (Public Law 110–246;  
23       122 Stat. 2212) and shall be available for obligation only  
24       after those Commodity Credit Corporation funds are fully  
25       obligated. If the Settlement Agreement is not approved as

1 provided in this subsection, the \$100,000,000 of funds of  
2 the Commodity Credit Corporation made available by sec-  
3 tion 14012(i) of the Food, Conservation, and Energy Act  
4 of 2008 shall be the sole funding available for Pigford  
5 claims.

6 (c) USE OF FUNDS.—The use of the funds appro-  
7 priated by subsection (b) shall be subject to the express  
8 terms of the Settlement Agreement.

9 (d) TREATMENT OF REMAINING FUNDS.—If any of  
10 the funds appropriated by subsection (b) are not obligated  
11 and expended to carry out the Settlement Agreement, the  
12 Secretary of Agriculture shall return the unused funds to  
13 the Treasury and may not make the unused funds avail-  
14 able for any purpose related to section 14012 of the Food,  
15 Conservation, and Energy Act of 2008, for any other set-  
16 tlement agreement executed in *In re Black Farmers Dis-*  
17 *crimination Litigation*, No. 08–511 (D.D.C.), or for any  
18 other purpose.

19 (e) RULES OF CONSTRUCTION.—Nothing in this sec-  
20 tion shall be construed as requiring the United States, any  
21 of its officers or agencies, or any other party to enter into  
22 the Settlement Agreement or any other settlement agree-  
23 ment. Nothing in this section shall be construed as cre-  
24 ating the basis for a Pigford claim.

1 (f) CONFORMING AMENDMENTS.—Section 14012 of  
2 the Food, Conservation, and Energy Act of 2008 (Public  
3 Law 110–246; 122 Stat. 2209) is amended—

4 (1) in subsection (c)(1)—

5 (A) by striking “subsection (h)” and in-  
6 serting “subsection (g)”; and

7 (B) by striking “subsection (i)” and insert-  
8 ing “subsection (h)”;

9 (2) by striking subsection (e);

10 (3) in subsection (g), by striking “subsection  
11 (f)” and inserting “subsection (e)”;

12 (4) in subsection (i)—

13 (A) by striking “(1) IN GENERAL.—Of the  
14 funds” and inserting “Of the funds”; and

15 (B) by striking paragraph (2);

16 (5) by striking subsection (j); and

17 (6) by redesignating subsections (f), (g), (h),  
18 (i), and (k) as subsections (e), (f), (g), (h), and (i),  
19 respectively.

1 **SEC. 609. EXPANSION OF ELIGIBILITY FOR CONCURRENT**  
2 **RECEIPT OF MILITARY RETIRED PAY AND**  
3 **VETERANS' DISABILITY COMPENSATION TO**  
4 **INCLUDE ALL CHAPTER 61 DISABILITY RE-**  
5 **TIREES REGARDLESS OF DISABILITY RATING**  
6 **PERCENTAGE OR YEARS OF SERVICE.**

7 (a) PHASED EXPANSION CONCURRENT RECEIPT.—  
8 Subsection (a) of section 1414 of title 10, United States  
9 Code, is amended to read as follows:

10 “(a) PAYMENT OF BOTH RETIRED PAY AND DIS-  
11 ABILITY COMPENSATION.—

12 “(1) PAYMENT OF BOTH REQUIRED.—

13 “(A) IN GENERAL.—Subject to subsection  
14 (b), a member or former member of the uni-  
15 formed services who is entitled for any month  
16 to retired pay and who is also entitled for that  
17 month to veterans' disability compensation for a  
18 qualifying service-connected disability (in this  
19 section referred to as a ‘qualified retiree’) is en-  
20 titled to be paid both for that month without  
21 regard to sections 5304 and 5305 of title 38.

22 “(B) APPLICABILITY OF FULL CONCUR-  
23 RENT RECEIPT PHASE-IN REQUIREMENT.—Dur-  
24 ing the period beginning on January 1, 2004,  
25 and ending on December 31, 2013, payment of



1           retired pay to a qualified retiree is subject to  
2           subsection (c).

3                   “(C) PHASE-IN EXCEPTION FOR 100 PER-  
4           CENT DISABLED RETIREES.—The payment of  
5           retired pay is subject to subsection (c) only dur-  
6           ing the period beginning on January 1, 2004,  
7           and ending on December 31, 2004, in the case  
8           of the following qualified retirees:

9                           “(i) A qualified retiree receiving vet-  
10                           erans’ disability compensation for a dis-  
11                           ability rated as 100 percent.

12                           “(ii) A qualified retiree receiving vet-  
13                           erans’ disability compensation at the rate  
14                           payable for a 100 percent disability by rea-  
15                           son of a determination of individual  
16                           unemployability.

17                   “(D) TEMPORARY PHASE-IN EXCEPTION  
18           FOR CERTAIN CHAPTER 61 DISABILITY RETIR-  
19           EES; TERMINATION.—Subject to subsection (b),  
20           during the period beginning on January 1,  
21           2011, and ending on September 30, 2012, sub-  
22           section (c) shall not apply to a qualified retiree  
23           described in subparagraph (B) or (C) of para-  
24           graph (2).

1           “(2) QUALIFYING SERVICE-CONNECTED DIS-  
2 ABILITY DEFINED.—In this section:

3           “(A) 50 PERCENT RATING THRESHOLD.—

4           In the case of a member or former member re-  
5 ceiving retired pay under any provision of law  
6 other than chapter 61 of this title, or under  
7 chapter 61 with 20 years or more of service  
8 otherwise creditable under section 1405 or com-  
9 puted under section 12732 of this title, the  
10 term ‘qualifying service-connected disability’  
11 means a service-connected disability or com-  
12 bination of service-connected disabilities that is  
13 rated as not less than 50 percent disabling by  
14 the Secretary of Veterans Affairs. However,  
15 during the period specified in paragraph (1)(D),  
16 members or former members receiving retired  
17 pay under chapter 61 with 20 years or more of  
18 creditable service computed under section  
19 12732 of this title, but not otherwise entitled to  
20 retired pay under any other provision of this  
21 title, shall qualify in accordance with subpara-  
22 graphs (B) and (C).

23           “(B) INCLUSION OF MEMBERS NOT OTH-  
24 ERWISE ENTITLED TO RETIRED PAY.—In the  
25 case of a member or former member receiving

1 retired pay under chapter 61 of this title, but  
2 who is not otherwise entitled to retired pay  
3 under any other provision of this title, the term  
4 ‘qualifying service-connected disability’ means a  
5 service-connected disability or combination of  
6 service-connected disabilities that is rated by  
7 the Secretary of Veterans Affairs at the dis-  
8 abling level specified in one of the following  
9 clauses (which, subject to paragraph (3), is ef-  
10 fective on or after the date specified in the ap-  
11 plicable clause):

12 “(i) January 1, 2011, rated 100 per-  
13 cent, or a rate payable at 100 percent by  
14 reason of individual unemployability or  
15 rated 90 percent

16 “(ii) January 1, 2012, rated 80 per-  
17 cent or 70 percent.

18 “(iii) January 1, 2013, rated 60 per-  
19 cent or 50 percent.

20 “(C) ELIMINATION OF RATING THRESH-  
21 OLD.—In the case of a member or former mem-  
22 ber receiving retired pay under chapter 61 re-  
23 gardless of being otherwise eligible for retire-  
24 ment, the term ‘qualifying service-connected  
25 disability’ means a service-connected disability

1 or combination of service-connected disabilities  
2 that is rated by the Secretary of Veterans Af-  
3 fairs at the disabling level specified in one of  
4 the following clauses (which, subject to para-  
5 graph (3), is effective on or after the date speci-  
6 fied in the applicable clause):

7 “(i) January 1, 2014, rated 40 per-  
8 cent or 30 percent.

9 “(ii) January 1, 2015, any rating.

10 “(3) LIMITED DURATION.—Notwithstanding  
11 the effective date specified in each clause of subpara-  
12 graphs (B) and (C) of paragraph (2), the clause—

13 “(A) shall apply only if the termination  
14 date specified in paragraph (1)(D) would occur  
15 during or after the calendar year specified in  
16 the clause; and

17 “(B) shall not apply beyond the termi-  
18 nation date specified in paragraph (1)(D).”.

19 (b) CONFORMING AMENDMENT TO SPECIAL RULES  
20 FOR CHAPTER 61 DISABILITY RETIREES.—Subsection (b)  
21 of such section is amended to read as follows:

22 “(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY  
23 RETIREES WHEN ELIGIBILITY HAS BEEN ESTABLISHED  
24 FOR SUCH RETIREES.—

1           “(1) GENERAL REDUCTION RULE.—The retired  
2 pay of a member retired under chapter 61 of this  
3 title is subject to reduction under sections 5304 and  
4 5305 of title 38, but only to the extent that the  
5 amount of the members retired pay under chapter  
6 61 of this title exceeds the amount of retired pay to  
7 which the member would have been entitled under  
8 any other provision of law based upon the member’s  
9 service in the uniformed services if the member had  
10 not been retired under chapter 61 of this title.

11           “(2) CHAPTER 61 RETIREES NOT OTHERWISE  
12 ENTITLED TO RETIRED PAY.—

13           “(A) BEFORE TERMINATION DATE.—If a  
14 member with a qualifying service-connected dis-  
15 ability (as defined in subsection (a)(2)) is re-  
16 tired under chapter 61 of this title, but is not  
17 otherwise entitled to retired pay under any  
18 other provision of this title, and the termination  
19 date specified in subsection (a)(1)(D) has not  
20 occurred, the retired pay of the member is sub-  
21 ject to reduction under sections 5304 and 5305  
22 of title 38, but only to the extent that the  
23 amount of the member’s retired pay under  
24 chapter 61 of this title exceeds the amount  
25 equal to 2½ percent of the member’s years of

1           creditable service multiplied by the member's  
2           retired pay base under section 1406(b)(1) or  
3           1407 of this title, whichever is applicable to the  
4           member.

5                   “(B) AFTER TERMINATION DATE.—Sub-  
6           section (a) does not apply to a member de-  
7           scribed in subparagraph (A) if the termination  
8           date specified in subsection (a)(1)(D) has oc-  
9           curred.”.

10          (c) CONFORMING AMENDMENT TO FULL CONCUR-  
11          RENT RECEIPT PHASE-IN.—Subsection (c) of such section  
12          is amended by striking “the second sentence of”.

13          (d) CLERICAL AMENDMENTS.—

14                  (1) SECTION HEADING.—The heading of such  
15          section is amended to read as follows:

16          “**§ 1414. Concurrent receipt of retired pay and vet-**  
17                          **erans' disability compensation”.**

18                  (2) TABLE OF SECTIONS.—The table of sections  
19          at the beginning of chapter 71 of such title is  
20          amended by striking the item related to section 1414  
21          and inserting the following new item:

                “1414. Concurrent receipt of retired pay and veterans' disability compensa-  
                tion.”.

22          (e) EFFECTIVE DATE.—The amendments made by  
23          this section shall take effect on January 1, 2011.

1 **SEC. 610. EXTENSION OF USE OF 2009 POVERTY GUIDE-**  
2 **LINES.**

3 Section 1012 of the Department of Defense Appro-  
4 priations Act, 2010 (Public Law 111–118), as amended  
5 by section 6 of the Continuing Extension Act of 2010  
6 (Public Law 111–157), is amended—

7 (1) by striking “before May 31, 2010”; and

8 (2) by inserting “for 2011” after “until up-  
9 dated poverty guidelines”.

10 **SEC. 611. REFUNDS DISREGARDED IN THE ADMINISTRA-**  
11 **TION OF FEDERAL PROGRAMS AND FEDER-**  
12 **ALLY ASSISTED PROGRAMS.**

13 (a) IN GENERAL.—Subchapter A of chapter 65 of the  
14 Internal Revenue Code of 1986 is amended by adding at  
15 the end the following new section:

16 **“SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRA-**  
17 **TION OF FEDERAL PROGRAMS AND FEDER-**  
18 **ALLY ASSISTED PROGRAMS.**

19 “(a) IN GENERAL.—Notwithstanding any other pro-  
20 vision of law, any refund (or advance payment with respect  
21 to a refundable credit) made to any individual under this  
22 title shall not be taken into account as income, and shall  
23 not be taken into account as resources for a period of 12  
24 months from receipt, for purposes of determining the eligi-  
25 bility of such individual (or any other individual) for bene-  
26 fits or assistance (or the amount or extent of benefits or

1 assistance) under any Federal program or under any State  
2 or local program financed in whole or in part with Federal  
3 funds.

4 “(b) **TERMINATION.**—Subsection (a) shall not apply  
5 to any amount received after December 31, 2010.”.

6 (b) **CLERICAL AMENDMENT.**—The table of sections  
7 for such subchapter is amended by adding at the end the  
8 following new item:

“Sec. 6409. Refunds disregarded in the administration of Federal programs  
and federally assisted programs.”.

9 (c) **EFFECTIVE DATE.**—The amendments made by  
10 this section shall apply to amounts received after Decem-  
11 ber 31, 2009.

12 **SEC. 612. STATE COURT IMPROVEMENT PROGRAM.**

13 Section 438 of the Social Security Act (42 U.S.C.  
14 629h) is amended—

15 (1) in subsection (c)(2)(A), by striking “2010”  
16 and inserting “2011”; and

17 (2) in subsection (e), by striking “2010” and  
18 inserting “2011”.

19 **SEC. 613. QUALIFYING TIMBER CONTRACT OPTIONS.**

20 (a) **DEFINITIONS.**—In this section:

21 (1) **QUALIFYING CONTRACT.**—The term “quali-  
22 fying contract” means a contract that has not been  
23 terminated by the Bureau of Land Management for  
24 the sale of timber on lands administered by the Bu-



1       reau of Land Management that meets all of the fol-  
2       lowing criteria:

3               (A) The contract was awarded during the  
4               period beginning on January 1, 2005, and end-  
5               ing on December 31, 2008.

6               (B) There is unharvested volume remain-  
7               ing for the contract.

8               (C) The contract is not a salvage sale.

9               (D) The Secretary determined there is not  
10              an urgent need to harvest under the contract  
11              due to deteriorating timber conditions that de-  
12              veloped after the award of the contract.

13             (2) SECRETARY.—The term “Secretary” means  
14             the Secretary of the Interior, acting through the Di-  
15             rector of Bureau of Land Management.

16             (3) TIMBER PURCHASER.—The term “timber  
17             purchaser” means the party to the qualifying con-  
18             tract for the sale of timber from lands administered  
19             by the Bureau of Land Management.

20             (b) MARKET-RELATED CONTRACT EXTENSION OP-  
21             TION.—Upon a timber purchaser’s written request, the  
22             Secretary may make a one-time modification to the quali-  
23             fying contract to add 3 years to the contract expiration  
24             date if the written request—

1           (1) is received by the Secretary not later than  
2           90 days after the date of enactment of this Act; and

3           (2) contains a provision releasing the United  
4           States from all liability, including further consider-  
5           ation or compensation, resulting from the modifica-  
6           tion under this subsection of the term of a qualifying  
7           contract.

8           (c) REPORTING.—Not later than 6 months after the  
9           date of the enactment of this Act, the Secretary shall sub-  
10          mit to Congress a report detailing a plan and timeline to  
11          promulgate new regulations authorizing the Bureau of  
12          Land Management to extend timber contracts due to  
13          changes in market conditions.

14          (d) REGULATIONS.—Not later than 2 years after the  
15          date of the enactment of this Act, the Secretary shall pro-  
16          mulgate new regulations authorizing the Bureau of Land  
17          Management to extend timber contracts due to changes  
18          in market conditions.

19          (e) NO SURRENDER OF CLAIMS.—This section shall  
20          not have the effect of surrendering any claim by the  
21          United States against any timber purchaser that arose  
22          under a timber sale contract, including a qualifying con-  
23          tract, before the date on which the Secretary adjusts the  
24          contract term under subsection (b).

1 **SEC. 614. EXTENSION AND FLEXIBILITY FOR CERTAIN AL-**  
2 **LOCATED SURFACE TRANSPORTATION PRO-**  
3 **GRAMS.**

4 (a) MODIFICATION OF ALLOCATION RULES.—Section  
5 411(d) of the Surface Transportation Extension Act of  
6 2010 (Public Law 111–147; 124 Stat. 80) is amended—

7 (1) in paragraph (1)—

8 (A) in the matter preceding subparagraph

9 (A)—

10 (i) by striking “1301, 1302,”; and

11 (ii) by striking “1198, 1204,”; and

12 (B) in subparagraph (A)—

13 (i) in the matter preceding clause (i)  
14 by striking “apportioned under sections  
15 104(b) and 144 of title 23, United States  
16 Code,” and inserting “specified in section  
17 105(a)(2) of title 23, United States Code  
18 (except the high priority projects pro-  
19 gram),”; and

20 (ii) in clause (ii) by striking “appor-  
21 tioned under such sections of such Code”  
22 and inserting “specified in such section  
23 105(a)(2) (except the high priority projects  
24 program)”; and

25 (2) in paragraph (2)—

1 (A) in the matter preceding subparagraph

2 (A)—

3 (i) by striking “1301, 1302,”; and

4 (ii) by striking “1198, 1204,”; and

5 (B) in subparagraph (A)—

6 (i) in the matter preceding clause (i)

7 by striking “apportioned under sections

8 104(b) and 144 of title 23, United States

9 Code,” and inserting “specified in section

10 105(a)(2) of title 23, United States Code

11 (except the high priority projects pro-

12 gram),”; and

13 (ii) in clause (ii) by striking “appor-

14 tioned under such sections of such Code”

15 and inserting “specified in such section

16 105(a)(2) (except the high priority projects

17 program)”; and

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

19 “(5) PROJECTS OF NATIONAL AND REGIONAL

20 SIGNIFICANCE AND NATIONAL CORRIDOR INFRA-

21 STRUCTURE IMPROVEMENT PROGRAMS.—

22 “(A) REDISTRIBUTION AMONG STATES.—

23 Notwithstanding sections 1301(m) and 1302(e)

24 of SAFETEA-LU (119 Stat. 1202 and 1205),

25 the Secretary shall apportion funds authorized

1 to be appropriated under subsection (b) for the  
2 projects of national and regional significance  
3 program and the national corridor infrastruc-  
4 ture improvement program among all States  
5 such that each State's share of the funds so ap-  
6 portioned is equal to the State's share for fiscal  
7 year 2009 of funds apportioned or allocated for  
8 the programs specified in section 105(a)(2) of  
9 title 23, United States Code.

10 “(B) DISTRIBUTION AMONG PROGRAMS.—  
11 Funds apportioned to a State pursuant to sub-  
12 paragraph (A) shall be—

13 “(i) made available to the State for  
14 the programs specified in section 105(a)(2)  
15 of title 23, United States Code (except the  
16 high priority projects program), and in the  
17 same proportion for each such program  
18 that—

19 “(I) the amount apportioned to  
20 the State for that program for fiscal  
21 year 2009; bears to

22 “(II) the amount apportioned to  
23 the State for fiscal year 2009 for all  
24 such programs; and

1                   “(ii) administered in the same manner  
2                   and with the same period of availability as  
3                   funding is administered under programs  
4                   identified in clause (i).”.

5           (b) EXPENDITURE AUTHORITY FROM HIGHWAY  
6 TRUST FUND.—Paragraph (1) of section 9503(c) of the  
7 Internal Revenue Code of 1986 is amended by striking  
8 “Surface Transportation Extension Act of 2010” and in-  
9 serting “American Jobs and Closing Tax Loopholes Act  
10 of 2010”.

11          (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect upon the date of enactment  
13 of the Surface Transportation Extension Act of 2010  
14 (Public Law 111–147; 124 Stat. 78 et seq.) and shall be  
15 treated as being included in that Act at the time of the  
16 enactment of that Act.

17 **SEC. 615. COMMUNITY COLLEGE AND CAREER TRAINING**  
18 **GRANT PROGRAM.**

19          (a) IN GENERAL.—Section 278(a) of the Trade Act  
20 of 1974 (19 U.S.C. 2372(a)) is amended by adding at the  
21 end the following:

22                   “(3) RULE OF CONSTRUCTION.—For purposes  
23                   of this section, any reference to ‘workers’, ‘workers  
24                   eligible for training under section 236’, or any other  
25                   reference to workers under this section shall be

1       deemed to include individuals who are, or are likely  
2       to become, eligible for unemployment compensation  
3       as defined in section 85(b) of the Internal Revenue  
4       Code of 1986, or who remain unemployed after ex-  
5       hausting all rights to such compensation.”.

6       (b) DEFINITION OF ELIGIBLE INSTITUTION.—Sec-  
7       tion 278(b)(1) of the Trade Act of 1974 (19 U.S.C.  
8       2372(b)(1)) is amended—

9               (1) by striking “section 102” and inserting  
10       “section 101(a)”; and

11              (2) by striking “1002” and inserting  
12       “1001(a)”.

13       (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
14       279 of the Trade Act of 1974 (19 U.S.C. 2372a) is  
15       amended—

16              (1) in subsection (a), by striking the last sen-  
17       tence; and

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

19       “(c) ADMINISTRATIVE AND RELATED COSTS.—The  
20       Secretary may retain not more than 5 percent of the funds  
21       appropriated under subsection (b) for each fiscal year to  
22       administer, evaluate, and establish reporting systems for  
23       the Community College and Career Training Grant pro-  
24       gram under section 278.

1           “(d) SUPPLEMENT NOT SUPPLANT.—Funds appro-  
2    priated under subsection (b) shall be used to supplement  
3    and not supplant other Federal, State, and local public  
4    funds expended to support community college and career  
5    training programs.

6           “(e) AVAILABILITY.—Funds appropriated under sub-  
7    section (b) shall remain available for the fiscal year for  
8    which the funds are appropriated and the subsequent fis-  
9    cal year.”.

10 **SEC. 616. EXTENSIONS OF DUTY SUSPENSIONS ON COTTON**

11                           **SHIRTING FABRICS AND RELATED PROVI-**

12                           **SIONS.**

13           (a) EXTENSIONS.—Each of the following headings of  
14    the Harmonized Tariff Schedule of the United States is  
15    amended by striking the date in the effective date column  
16    and inserting “12/31/2013”:

17                   (1) Heading 9902.52.08 (relating to woven fab-  
18    rics of cotton).

19                   (2) Heading 9902.52.09 (relating to woven fab-  
20    rics of cotton).

21                   (3) Heading 9902.52.10 (relating to woven fab-  
22    rics of cotton).

23                   (4) Heading 9902.52.11 (relating to woven fab-  
24    rics of cotton).



1 (5) Heading 9902.52.12 (relating to woven fab-  
2 rics of cotton).

3 (6) Heading 9902.52.13 (relating to woven fab-  
4 rics of cotton).

5 (7) Heading 9902.52.14 (relating to woven fab-  
6 rics of cotton).

7 (8) Heading 9902.52.15 (relating to woven fab-  
8 rics of cotton).

9 (9) Heading 9902.52.16 (relating to woven fab-  
10 rics of cotton).

11 (10) Heading 9902.52.17 (relating to woven  
12 fabrics of cotton).

13 (11) Heading 9902.52.18 (relating to woven  
14 fabrics of cotton).

15 (12) Heading 9902.52.19 (relating to woven  
16 fabrics of cotton).

17 (13) Heading 9902.52.20 (relating to woven  
18 fabrics of cotton).

19 (14) Heading 9902.52.21 (relating to woven  
20 fabrics of cotton).

21 (15) Heading 9902.52.22 (relating to woven  
22 fabrics of cotton).

23 (16) Heading 9902.52.23 (relating to woven  
24 fabrics of cotton).

1           (17) Heading 9902.52.24 (relating to woven  
2 fabrics of cotton).

3           (18) Heading 9902.52.25 (relating to woven  
4 fabrics of cotton).

5           (19) Heading 9902.52.26 (relating to woven  
6 fabrics of cotton).

7           (20) Heading 9902.52.27 (relating to woven  
8 fabrics of cotton).

9           (21) Heading 9902.52.28 (relating to woven  
10 fabrics of cotton).

11          (22) Heading 9902.52.29 (relating to woven  
12 fabrics of cotton).

13          (23) Heading 9902.52.30 (relating to woven  
14 fabrics of cotton).

15          (24) Heading 9902.52.31 (relating to woven  
16 fabrics of cotton).

17          (b) EXTENSION OF DUTY REFUNDS AND PIMA COT-  
18 TON TRUST FUND; MODIFICATION OF AFFIDAVIT RE-  
19 QUIREMENTS.—Section 407 of title IV of division C of the  
20 Tax Relief and Health Care Act of 2006 (Public Law 109–  
21 432; 120 Stat. 3060) is amended—

22           (1) in subsection (b)—

23           (A) in paragraph (1), by striking  
24 “amounts determined by the Secretary” and all  
25 that follows through “5208.59.80” and insert-

1 ing “amounts received in the general fund that  
2 are attributable to duties received since Janu-  
3 ary 1, 2004, on articles classified under heading  
4 5208”; and

5 (B) in paragraph (2), by striking “October  
6 1, 2008” and inserting “December 31, 2013”;  
7 (2) in subsection (d)—

8 (A) in the matter preceding paragraph (1),  
9 by inserting “annually” after “provided”; and

10 (B) in paragraph (1), by inserting “during  
11 the year in which the affidavit is filed and”  
12 after “imported cotton fabric”; and

13 (3) in subsection (f)—

14 (A) in the matter preceding paragraph (1),  
15 by inserting “annually” after “provided”; and

16 (B) in paragraph (1), by inserting “during  
17 the year in which the affidavit is filed and”  
18 after “United States”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect on the date of the enactment  
21 of this Act and apply with respect to affidavits filed on  
22 or after such date of enactment.

1 **SEC. 617. MODIFICATION OF WOOL APPAREL MANUFAC-**  
2 **TURERS TRUST FUND.**

3 (a) IN GENERAL.—Section 4002(c)(2)(A) of the Mis-  
4 cellaneous Trade and Technical Corrections Act of 2004  
5 (Public Law 108–429; 118 Stat. 2600) is amended by  
6 striking “chapter 51” and inserting “chapter 62”.

7 (b) FULL RESTORATION OF PAYMENT LEVELS IN  
8 FISCAL YEAR 2010.—

9 (1) TRANSFER OF AMOUNTS.—

10 (A) IN GENERAL.—Not later than 30 days  
11 after the date of the enactment of this Act, the  
12 Secretary of the Treasury shall transfer to the  
13 Wool Apparel Manufacturers Trust Fund, out  
14 of the general fund of the Treasury of the  
15 United States, amounts determined by the Sec-  
16 retary of the Treasury to be equivalent to  
17 amounts received in the general fund that are  
18 attributable to the duty received on articles  
19 classified under chapter 62 of the Harmonized  
20 Tariff Schedule of the United States, subject to  
21 the limitation in subparagraph (B).

22 (B) LIMITATION.—The Secretary of the  
23 Treasury shall not transfer more than the  
24 amount determined by the Secretary to be nec-  
25 essary for—

1 (i) U.S. Customs and Border Protec-  
2 tion to make payments to eligible manufac-  
3 turers under section 4002(c)(3) of the Mis-  
4 cellaneous Trade and Technical Correc-  
5 tions Act of 2004 so that the amount of  
6 such payments, when added to any other  
7 payments made to eligible manufacturers  
8 under section 4002(c)(3) of such Act for  
9 calendar year 2010, equal the total amount  
10 of payments authorized to be provided to  
11 eligible manufacturers under section  
12 4002(c)(3) of such Act for calendar year  
13 2010; and

14 (ii) the Secretary of Commerce to pro-  
15 vide grants to eligible manufacturers under  
16 section 4002(c)(6) of the Miscellaneous  
17 Trade and Technical Corrections Act of  
18 2004 so that the amounts of such grants,  
19 when added to any other grants made to  
20 eligible manufacturers under section  
21 4002(c)(6) of such Act for calendar year  
22 2010, equal the total amount of grants au-  
23 thorized to be provided to eligible manufac-  
24 turers under section 4002(c)(6) of such  
25 Act for calendar year 2010.

1           (2) PAYMENT OF AMOUNTS.—U.S. Customs  
2           and Border Protection shall make payments de-  
3           scribed in paragraph (1) to eligible manufacturers  
4           not later than 30 days after such transfer of  
5           amounts from the general fund of the Treasury of  
6           the United States to the Wool Apparel Manufactur-  
7           ers Trust Fund. The Secretary of Commerce shall  
8           promptly provide grants described in paragraph (1)  
9           to eligible manufacturers after such transfer of  
10          amounts from the general fund of the Treasury of  
11          the United States to the Wool Apparel Manufactur-  
12          ers Trust Fund.

13          (c) RULE OF CONSTRUCTION.—The amendment  
14          made by subsection (a) shall not be construed to affect  
15          the availability of amounts transferred to the Wool Ap-  
16          parel Manufacturers Trust Fund before the date of the  
17          enactment of this Act.

18          **SEC. 618. DEPARTMENT OF COMMERCE STUDY.**

19          Not later than 180 days after the date of enactment  
20          of this Act, the Secretary of Commerce shall report to  
21          Congress detailing—

22                 (1) the pattern of job loss in the New England,  
23                 Mid-Atlantic, and Midwest States over the past 20  
24                 years;

1           (2) the role of the off-shoring of manufacturing  
2           jobs in overall job loss in the regions; and

3           (3) recommendations to attract industries and  
4           bring jobs to the region.

5 **SEC. 619. ARRA PLANNING AND REPORTING.**

6           Section 1512 of the American Recovery and Reinvest-  
7           ment Act of 2009 (Public Law 111–5; 123 Stat. 287) is  
8           amended—

9           (1) in subsection (d)—

10                   (A) in the subsection heading, by inserting  
11                   “PLANS AND” after “AGENCY”;

12                   (B) by striking “Not later than” and in-  
13                   serting the following:

14                   “(1) DEFINITION.—In this subsection, the term  
15                   ‘covered program’ means a program for which funds  
16                   are appropriated under this division—

17                           “(A) in an amount that is—

18                                   “(i) more than \$2,000,000,000; and

19                                   “(ii) more than 150 percent of the  
20                                   funds appropriated for the program for fis-  
21                                   cal year 2008; or

22                                   “(B) that did not exist before the date of  
23                                   enactment of this Act.

24                   “(2) PLANS.—Not later than July 1, 2010, the  
25                   head of each agency that distributes recovery funds

1 shall submit to Congress and make available on the  
2 website of the agency a plan for each covered pro-  
3 gram, which shall, at a minimum, contain—

4 “(A) a description of the goals for the cov-  
5 ered program using recovery funds;

6 “(B) a discussion of how the goals de-  
7 scribed in subparagraph (A) relate to the goals  
8 for ongoing activities of the covered program, if  
9 applicable;

10 “(C) a description of the activities that the  
11 agency will undertake to achieve the goals de-  
12 scribed in subparagraph (A);

13 “(D) a description of the total recovery  
14 funding for the covered program and the recov-  
15 ery funding for each activity under the covered  
16 program, including identifying whether the ac-  
17 tivity will be carried out using grants, con-  
18 tracts, or other types of funding mechanisms;

19 “(E) a schedule of milestones for major  
20 phases of the activities under the covered pro-  
21 gram, with planned delivery dates;

22 “(F) performance measures the agency will  
23 use to track the progress of each of the activi-  
24 ties under the covered program in meeting the  
25 goals described in subparagraph (A), including



1 performance targets, the frequency of measure-  
2 ment, and a description of the methodology for  
3 each measure;

4 “(G) a description of the process of the  
5 agency for the periodic review of the progress of  
6 the covered program towards meeting the goals  
7 described in subparagraph (A); and

8 “(H) a description of how the agency will  
9 hold program managers accountable for achiev-  
10 ing the goals described in subparagraph (A).

11 “(3) REPORTS.—

12 “(A) IN GENERAL.—Not later than”;  
13 (C) by adding at the end the following:

14 “(B) REPORTS ON PLANS.—Not later than  
15 30 days after the end of the calendar quarter  
16 ending September 30, 2010, and every calendar  
17 quarter thereafter during which the agency obli-  
18 gates or expends recovery funds, the head of  
19 each agency that developed a plan for a covered  
20 program under paragraph (2) shall submit to  
21 Congress and make available on a website of  
22 the agency a report for each covered program  
23 that—

24 “(i) discusses the progress of the  
25 agency in implementing the plan;

1                   “(ii) describes the progress towards  
2 achieving the goals described in paragraph  
3 (2)(A) for the covered program;

4                   “(iii) discusses the status of each ac-  
5 tivity carried out under the covered pro-  
6 gram, including whether the activity is  
7 completed;

8                   “(iv) details the unobligated and un-  
9 expired balances and total obligations and  
10 outlays under the covered program;

11                   “(v) discusses—

12                   “(I) whether the covered program  
13 has met the milestones for the covered  
14 program described in paragraph  
15 (2)(E);

16                   “(II) if the covered program has  
17 failed to meet the milestones, the rea-  
18 sons why; and

19                   “(III) any changes in the mile-  
20 stones for the covered program, in-  
21 cluding the reasons for the change;

22                   “(vi) discusses the performance of the  
23 covered program, including—

24                   “(I) whether the covered program  
25 has met the performance measures for

1 the covered program described in  
2 paragraph (2)(F);

3 “(II) if the covered program has  
4 failed to meet the performance meas-  
5 ures, the reasons why; and

6 “(III) any trends in information  
7 relating to the performance of the cov-  
8 ered program; and

9 “(vii) evaluates the ability of the cov-  
10 ered program to meet the goals of the cov-  
11 ered program given the performance of the  
12 covered program.”;

13 (2) in subsection (f)—

14 (A) by striking “Within 180 days” and in-  
15 serting the following:

16 “(1) IN GENERAL.—Within 180 days”; and

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

18 “(2) PENALTIES.—

19 “(A) IN GENERAL.—Subject to subpara-  
20 graphs (B), (C), and (D), the Attorney General  
21 may bring a civil action in an appropriate  
22 United States district court against a recipient  
23 of recovery funds from an agency that does not  
24 provide the information required under sub-  
25 section (c) or knowingly provides information

1 under subsection (c) that contains a material  
2 omission or misstatement. In a civil action  
3 under this paragraph, the court may impose a  
4 civil penalty on a recipient of recovery funds in  
5 an amount not more than \$250,000. Any  
6 amounts received from a civil penalty under this  
7 paragraph shall be deposited in the general  
8 fund of the Treasury.

9 “(B) NOTIFICATION.—

10 “(i) IN GENERAL.—The head of an  
11 agency shall provide a written notification  
12 to a recipient of recovery funds from the  
13 agency that fails to provide the informa-  
14 tion required under subsection (c). A noti-  
15 fication under this subparagraph shall pro-  
16 vide the recipient with information on how  
17 to comply with the necessary reporting re-  
18 quirements and notice of the penalties for  
19 failing to do so.

20 “(ii) LIMITATION.—A court may not  
21 impose a civil penalty under subparagraph  
22 (A) relating to the failure to provide infor-  
23 mation required under subsection (c) if,  
24 not later than 31 days after the date of the  
25 notification under clause (i), the recipient

1 of the recovery funds provides the informa-  
2 tion.

3 “(C) CONSIDERATIONS.—In determining  
4 the amount of a penalty under this paragraph  
5 for a recipient of recovery funds, a court shall  
6 consider—

7 “(i) the number of times the recipient  
8 has failed to provide the information re-  
9 quired under subsection (c);

10 “(ii) the amount of recovery funds  
11 provided to the recipient;

12 “(iii) whether the recipient is a gov-  
13 ernment, nonprofit entity, or educational  
14 institution; and

15 “(iv) whether the recipient is a small  
16 business concern (as defined under section  
17 3 of the Small Business Act (15 U.S.C.  
18 632)), with particular consideration given  
19 to businesses with not more than 50 em-  
20 ployees.

21 “(D) APPLICABILITY.—This paragraph  
22 shall apply to any report required to be sub-  
23 mitted on or after the date of enactment of this  
24 paragraph.

1           “(E) NONEXCLUSIVITY.—The imposition  
2 of a civil penalty under this subsection shall not  
3 preclude any other criminal, civil, or adminis-  
4 trative remedy available to the United States or  
5 any other person under Federal or State law.

6           “(3) TECHNICAL ASSISTANCE.—Each agency  
7 distributing recovery funds shall provide technical  
8 assistance, as necessary, to assist recipients of recov-  
9 ery funds in complying with the requirements to pro-  
10 vide information under subsection (c), which shall  
11 include providing recipients with a reminder regard-  
12 ing each reporting requirement.

13           “(4) PUBLIC LISTING.—

14           “(A) IN GENERAL.—Not later than 45  
15 days after the end of each calendar quarter,  
16 and subject to the notification requirements  
17 under paragraph (2)(B), the Board shall make  
18 available on the website established under sec-  
19 tion 1526 a list of all recipients of recovery  
20 funds that did not provide the information re-  
21 quired under subsection (c) for the calendar  
22 quarter.

23           “(B) CONTENTS.—A list made available  
24 under subparagraph (A) shall, for each recipi-  
25 ent of recovery funds on the list, include the

1 name and address of the recipient, the identi-  
2 fication number for the award, the amount of  
3 recovery funds awarded to the recipient, a de-  
4 scription of the activity for which the recovery  
5 funds were provided, and, to the extent known  
6 by the Board, the reason for noncompliance.

7 “(5) REGULATIONS AND REPORTING.—

8 “(A) REGULATIONS.—Not later than 90  
9 days after the date of enactment of this para-  
10 graph, the Attorney General, in consultation  
11 with the Director of the Office of Management  
12 and Budget and the Chairperson, shall promul-  
13 gate regulations regarding implementation of  
14 this section.

15 “(B) REPORTING.—

16 “(i) IN GENERAL.—Not later than  
17 July 1, 2010, and every 3 months there-  
18 after, the Director of the Office of Man-  
19 agement and Budget, in consultation with  
20 the Chairperson, shall submit to Congress  
21 a report on the extent of noncompliance by  
22 recipients of recovery funds with the re-  
23 porting requirements under this section.

24 “(ii) CONTENTS.—Each report sub-  
25 mitted under clause (i) shall include—

1                   “(I) information, for the quarter  
2                   and in total, regarding the number  
3                   and amount of civil penalties imposed  
4                   and collected under this subsection,  
5                   sorted by agency and program;

6                   “(II) information on the steps  
7                   taken by the Federal Government to  
8                   reduce the level of noncompliance; and

9                   “(III) any other information de-  
10                  termined appropriate by the Direc-  
11                  tor.”; and

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

13                  “(i) TERMINATION.—The reporting requirements  
14                  under this section shall terminate on September 30,  
15                  2013.”.

## 16                   **TITLE VII—BUDGETARY** 17                   **PROVISIONS**

### 18                  **SEC. 701. BUDGETARY PROVISIONS.**

19                  (a) STATUTORY PAYGO.—The budgetary effects of  
20                  this Act, for the purpose of complying with the Statutory  
21                  Pay-As-You-Go-Act of 2010, shall be determined by ref-  
22                  erence to the latest statement titled ‘Budgetary Effects  
23                  of PAYGO Legislation’ for this Act, jointly submitted for  
24                  printing in the Congressional Record by the Chairmen of  
25                  the House and Senate Budget Committees, provided that



1 such statement has been submitted prior to the vote on  
2 passage in the House acting first on this conference report  
3 or amendment between the Houses.

4 (b) EMERGENCY DESIGNATIONS.—Sections 501,  
5 511, and 516—

6 (1) are designated as an emergency require-  
7 ment pursuant to section 4(g) of the Statutory Pay-  
8 As-You-Go Act of 2010 (Public Law 111-139; 2  
9 U.S.C. 933(g)),

10 (2) in the House of Representatives, are des-  
11 ignated as an emergency for purposes of pay-as-you-  
12 go principles, and

13 (3) in the Senate, are designated as an emer-  
14 gency requirement pursuant to section 403(a) of S.  
15 Con. Res. 13 (111th Congress), the concurrent reso-  
16 lution on the budget for fiscal year 2010.

Amend the title of the bill so as to read: “A bill to promote American jobs through increased investment in infrastructure and other job creating activities, to close tax loopholes, to eliminate tax incentives for offshoring of jobs, and for other purposes.”.

