

AMENDMENT NO. _____ Calendar No. _____

Purpose: To extend expiring provisions and for other purposes.

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

H. R. 5297

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BAUCUS to the amendment (No. 4519) proposed by Mr. REID

Viz:

1 At the end, add the following:

2 **DIVISION B—EXTENSION OF**
3 **EXPIRING PROVISIONS**

4 **SEC. 100. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE**
5 **OF CONTENTS.**

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

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in titles I, II, and IV
 3 of this division an amendment or repeal is expressed in
 4 terms of an amendment to, or repeal of, a section or other
 5 provision, the reference shall be considered to be made to
 6 a section or other provision of the Internal Revenue Code
 7 of 1986.

8 (c) TABLE OF CONTENTS.—The table of contents for
 9 this division is as follows:

DIVISION B—EXTENSION OF EXPIRING PROVISIONS

Sec. 100. 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.

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- 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.
- Sec. 232. Low-income housing grant election.

Subtitle C—Business Tax Relief

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

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- 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. Reduction in corporate rate for qualified timber gain.
- Sec. 273. 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—TECHNICAL CORRECTIONS TO PENSION FUNDING
LEGISLATION

- Sec. 301. Definition of eligible plan year.
- Sec. 302. Eligible charity plans.
- Sec. 303. Suspension of certain funding level limitations.
- Sec. 304. Optional use of 30-year amortization periods.
- Sec. 305. Transition rule for certifications of plan status.

TITLE IV—REVENUE OFFSETS

Subtitle A—Foreign Provisions

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- 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. 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.

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. Denial of deduction for punitive damages.

TITLE V—HEALTH AND OTHER ASSISTANCE

- Sec. 501. Extension of section 508 reclassifications.
- Sec. 502. Repeal of delay of RUG-IV.
- Sec. 503. Limitation on reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 504. Funding for claims reprocessing.
- Sec. 505. Medicaid and CHIP technical corrections.
- Sec. 506. Addition of inpatient drug discount program to 340B drug discount program.
- Sec. 507. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children's hospitals under the 340B drug discount program.
- Sec. 508. Conforming amendment related to waiver of coinsurance for preventive services.
- Sec. 509. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 510. Adjustment to Medicare payment localities.
- Sec. 511. Extension of ARRA increase in FMAP.

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- Sec. 512. Clarification for affiliated hospitals for distribution of additional residency positions.
- Sec. 513. Treatment of certain drugs for computation of Medicaid AMP.
- Sec. 514. Extension of the Emergency Contingency Fund.

TITLE VI—OTHER PROVISIONS

Subtitle A—General Provisions

- Sec. 601. Allocation of geothermal receipts.
- Sec. 602. Summer employment for youth.
- Sec. 603. Housing Trust Fund.
- Sec. 604. The Individual Indian Money Account Litigation Settlement Act of 2010.
- Sec. 605. Appropriation of funds for final settlement of claims from In re Black Farmers Discrimination Litigation.
- Sec. 606. 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. 607. Extension of use of 2009 poverty guidelines.
- Sec. 608. Refunds disregarded in the administration of Federal programs and federally assisted programs.
- Sec. 609. State court improvement program.
- Sec. 610. Qualifying timber contract options.
- Sec. 611. Extension and flexibility for certain allocated surface transportation programs.
- Sec. 612. Community College and Career Training Grant Program.
- Sec. 613. Extensions of duty suspensions on cotton shirting fabrics and related provisions.
- Sec. 614. Modification of Wool Apparel Manufacturers Trust Fund.
- Sec. 615. Department of Commerce Study.
- Sec. 616. ARRA planning and reporting.
- Sec. 617. Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits.
- Sec. 618. Report on tax shelter penalties and certain other enforcement actions.

Subtitle B—Additional Provisions

- Sec. 621. Sunset of temporary increase in benefits under the supplemental nutrition assistance program.
- Sec. 622. Rescissions.

TITLE VII—TRANSPARENCY REQUIREMENTS FOR FOREIGN-HELD DEBT

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

TITLE VIII—TRANSPARENCY REQUIREMENTS FOR FOREIGN-
HELD DEBT

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

TITLE IX—OFFICE OF THE HOMEOWNER ADVOCATE

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

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, 2012”.

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, 2012”;
 11 and

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

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

3 (A) by striking “January 1, 2011” and in-
 4 serting “January 1, 2012”; and

5 (B) by striking “QUALIFIED BONDS
 6 ISSUED BEFORE 2011” in the heading and in-
 7 serting “CERTAIN QUALIFIED BONDS”.

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

10 (1) by striking “The Secretary” and inserting
 11 the following:

12 “(1) IN GENERAL.—The Secretary”;

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

15 (3) by adding at the end the following new
 16 paragraph:

17 “(2) APPLICABLE PERCENTAGE.—For purposes
 18 of this subsection, the term ‘applicable percentage’
 19 means the percentage determined in accordance with
 20 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.”.

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

4 “(3) TREATMENT OF CURRENT REFUNDING
5 BONDS.—

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

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

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

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

20 “(B) APPLICABLE PERCENTAGE.—In the
21 case of a refunding bond referred to in subpara-
22 graph (A), the applicable percentage with re-
23 spect to such bond under section 6431(b) shall
24 be the lowest percentage specified in paragraph
25 (2) of such section.

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

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

10 **SEC. 102. EXEMPT-FACILITY BONDS FOR SEWAGE AND**
11 **WATER SUPPLY FACILITIES.**

12 (a) BONDS FOR WATER AND SEWAGE FACILITIES
13 EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY
14 BONDS.—

15 (1) IN GENERAL.—Paragraph (3) of section
16 146(g) is amended by inserting “(4), (5),” after
17 “(2),”.

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

21 (b) TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOV-
22 ERNMENTS.—

23 (1) IN GENERAL.—Subsection (c) of section
24 7871 is amended by adding at the end the following
25 new paragraph:

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

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

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

13 **SEC. 103. EXTENSION OF EXEMPTION FROM ALTERNATIVE**
14 **MINIMUM TAX TREATMENT FOR CERTAIN**
15 **TAX-EXEMPT BONDS.**

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

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

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

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

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

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

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

6 **SEC. 104. EXTENSION AND ADDITIONAL ALLOCATIONS OF**
7 **RECOVERY ZONE BOND AUTHORITY.**

8 (a) EXTENSION OF RECOVERY ZONE BOND AUTHOR-
9 ITY.—Section 1400U–2(b)(1) and section 1400U–
10 3(b)(1)(B) are each amended by striking “January 1,
11 2011” and inserting “January 1, 2012”.

12 (b) ADDITIONAL ALLOCATIONS OF RECOVERY ZONE
13 BOND AUTHORITY BASED ON UNEMPLOYMENT.—Section
14 1400U–1 is amended by adding at the end the following
15 new subsection:

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

18 “(1) IN GENERAL.—The Secretary shall allo-
19 cate the 2010 national recovery zone economic devel-
20 opment bond limitation and the 2010 national recov-
21 ery zone facility bond limitation among the States in
22 the proportion that each such State’s 2009 unem-
23 ployment number bears to the aggregate of the 2009
24 unemployment numbers for all of the States.

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

9 “(3) ALLOCATIONS BY STATES.—

10 “(A) IN GENERAL.—Each State with re-
11 spect to which an allocation is made under
12 paragraph (1) shall reallocate such allocation
13 among the counties and large municipalities (as
14 defined in subsection (a)(3)(B)) in such State
15 in the proportion that each such county’s or
16 municipality’s 2009 unemployment number
17 bears to the aggregate of the 2009 unemploy-
18 ment numbers for all the counties and large
19 municipalities (as so defined) in such State.

20 “(B) 2010 ALLOCATION REDUCED BY
21 AMOUNT OF PREVIOUS ALLOCATION.—Each
22 State shall reduce (but not below zero)—

23 “(i) the amount of the 2010 national
24 recovery zone economic development bond
25 limitation allocated to each county or large

1 municipality (as so defined) in such State
2 by the amount of the national recovery
3 zone economic development bond limitation
4 allocated to such county or large municipi-
5 pality under subsection (a)(3)(A) (deter-
6 mined without regard to any waiver there-
7 of), and

8 “(ii) the amount of the 2010 national
9 recovery zone facility bond limitation allo-
10 cated to each county or large municipality
11 (as so defined) in such State by the
12 amount of the national recovery zone facil-
13 ity bond limitation allocated to such county
14 or large municipality under subsection
15 (a)(3)(A) (determined without regard to
16 any waiver thereof).

17 “(C) WAIVER OF SUBALLOCATIONS.—A
18 county or municipality may waive any portion
19 of an allocation made under this paragraph. A
20 county or municipality shall be treated as hav-
21 ing waived any portion of an allocation made
22 under this paragraph which has not been allo-
23 cated to a bond issued before May 1, 2011. Any
24 allocation waived (or treated as waived) under

1 this subparagraph may be used or reallocated
2 by the State.

3 “(D) SPECIAL RULE FOR A MUNICIPALITY
4 IN A COUNTY.—In the case of any large munici-
5 pality any portion of which is in a county, such
6 portion shall be treated as part of such munici-
7 pality and not part of such county.

8 “(4) 2009 UNEMPLOYMENT NUMBER.—For
9 purposes of this subsection, the term ‘2009 unem-
10 ployment number’ means, with respect to any State,
11 county or municipality, the number of individuals in
12 such State, county, or municipality who were deter-
13 mined to be unemployed by the Bureau of Labor
14 Statistics for December 2009.

15 “(5) 2010 NATIONAL LIMITATIONS.—

16 “(A) RECOVERY ZONE ECONOMIC DEVEL-
17 OPMENT BONDS.—The 2010 national recovery
18 zone economic development bond limitation is
19 \$10,000,000,000. Any allocation of such limita-
20 tion under this subsection shall be treated for
21 purposes of section 1400U-2 in the same man-
22 ner as an allocation of national recovery zone
23 economic development bond limitation.

24 “(B) RECOVERY ZONE FACILITY BONDS.—
25 The 2010 national recovery zone facility bond

1 limitation is \$15,000,000,000. Any allocation of
2 such limitation under this subsection shall be
3 treated for purposes of section 1400U–3 in the
4 same manner as an allocation of national recov-
5 ery zone facility bond limitation.”.

6 (c) **AUTHORITY OF STATE TO WAIVE CERTAIN 2009**
7 **ALLOCATIONS.**—Subparagraph (A) of section 1400U–
8 1(a)(3) is amended by adding at the end the following:
9 “A county or municipality shall be treated as having
10 waived any portion of an allocation made under this sub-
11 paragraph which has not been allocated to a bond issued
12 before May 1, 2011. Any allocation waived (or treated as
13 waived) under this subparagraph may be used or reallo-
14 cated by the State.”.

15 **SEC. 105. ALLOWANCE OF NEW MARKETS TAX CREDIT**
16 **AGAINST ALTERNATIVE MINIMUM TAX.**

17 (a) **IN GENERAL.**—Subparagraph (B) of section
18 38(c)(4), as amended by the Patient Protection and Af-
19 fordable Care Act, is amended by redesignating clauses
20 (v) through (ix) as clauses (vi) through (x), respectively,
21 and by inserting after clause (iv) the following new clause:

22 “(v) the credit determined under sec-
23 tion 45D, but only with respect to credits
24 determined with respect to qualified equity

1 investments (as defined in section 45D(b))
2 initially made before January 1, 2012,”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to credits determined with respect
5 to qualified equity investments (as defined in section
6 45D(b) of the Internal Revenue Code of 1986) initially
7 made after March 15, 2010.

8 **SEC. 106. EXTENSION OF TAX-EXEMPT ELIGIBILITY FOR**
9 **LOANS GUARANTEED BY FEDERAL HOME**
10 **LOAN BANKS.**

11 Clause (iv) of section 149(b)(3)(A) is amended by
12 striking “December 31, 2010” and inserting “December
13 31, 2011”.

14 **SEC. 107. EXTENSION OF TEMPORARY SMALL ISSUER**
15 **RULES FOR ALLOCATION OF TAX-EXEMPT IN-**
16 **TEREST EXPENSE BY FINANCIAL INSTITU-**
17 **TIONS.**

18 (a) IN GENERAL.—Clauses (i), (ii), and (iii) of sec-
19 tion 265(b)(3)(G) are each amended by striking “or
20 2010” and inserting “, 2010, or 2011”.

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

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

4 **TITLE II—EXTENSION OF** 5 **EXPIRING PROVISIONS**

6 **Subtitle A—Energy**

7 **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT FOR NEW**
8 **QUALIFIED HYBRID MOTOR VEHICLES**
9 **OTHER THAN PASSENGER AUTOMOBILES**
10 **AND LIGHT TRUCKS.**

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

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

17 **SEC. 202. INCENTIVES FOR BIODIESEL AND RENEWABLE**
18 **DIESEL.**

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

23 (b) EXCISE TAX CREDITS AND OUTLAY PAYMENTS
24 FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIX-
25 TURES.—

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

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

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to fuel sold or used after December
9 31, 2009.

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

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

14 (1) by striking “5-year period” and inserting
15 “6-year period”; and

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

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

1 **SEC. 204. EXTENSION AND MODIFICATION OF CREDIT FOR**
2 **STEEL INDUSTRY FUEL.**

3 (a) CREDIT PERIOD.—

4 (1) IN GENERAL.—Subclause (II) of section
5 45(e)(8)(D)(ii) is amended to read as follows:

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

15 (2) CONFORMING AMENDMENT.—Section
16 45(e)(8)(D) is amended by striking clause (iii) and
17 by redesignating clause (iv) as clause (iii).

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

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

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

23 (c) CLARIFICATIONS.—

24 (1) STEEL INDUSTRY FUEL.—Subclause (I) of
25 section 45(c)(7)(C)(i) is amended by inserting “, a

1 blend of coal and petroleum coke, or other coke feed-
2 stock” after “on coal”.

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

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

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

22 “(iii) PRODUCTION AND SALE.—The
23 owner of a facility producing steel industry
24 fuel shall be treated as producing and sell-
25 ing steel industry fuel where that owner

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

11 (d) SPECIFIED CREDIT FOR PURPOSES OF ALTER-
12 NATIVE MINIMUM TAX EXCLUSION.—Subclause (II) of
13 section 38(c)(4)(B)(iii) is amended by inserting “(in the
14 case of a refined coal production facility producing steel
15 industry fuel, during the credit period set forth in section
16 45(e)(8)(D)(ii)(II))” after “service”.

17 (e) EFFECTIVE DATES.—

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

21 (2) CLARIFICATIONS.—The amendments made
22 by subsection (c) shall take effect as if included in
23 the amendments made by the Energy Improvement
24 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 thorization of the transaction under section
2 203 of the Federal Power Act (16 U.S.C.
3 824b) or by declaratory order—

4 “**(I)** is not itself a market partici-
5 pant as determined by the Commis-
6 sion, and also is not controlled by any
7 such market participant, or

8 “**(II)** to be independent from
9 market participants or to be an inde-
10 pendent transmission company within
11 the meaning of such Commission’s
12 rules applicable to independent trans-
13 mission providers, and”.

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

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

21 **(c) EFFECTIVE DATE.**—

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

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

4 **SEC. 209. SUSPENSION OF LIMITATION ON PERCENTAGE**
5 **DEPLETION FOR OIL AND GAS FROM MAR-**
6 **GINAL WELLS.**

7 (a) IN GENERAL.—Clause (ii) of section
8 613A(c)(6)(H) is amended by striking “January 1, 2010”
9 and inserting “January 1, 2011”.

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

13 **SEC. 210. DIRECT PAYMENT OF ENERGY EFFICIENT APPLI-**
14 **ANCES TAX CREDIT.**

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

1 which such return is filed. Elections under this section
2 may be made separately for 2009 and 2010, but once
3 made shall be irrevocable. No amount shall be includible
4 in gross income or alternative minimum taxable income
5 by reason of this section.

6 **SEC. 211. MODIFICATION OF STANDARDS FOR WINDOWS,**
7 **DOORS, AND SKYLIGHTS WITH RESPECT TO**
8 **THE CREDIT FOR NONBUSINESS ENERGY**
9 **PROPERTY.**

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

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

23 “(B) in the case of any component placed
24 in service after the date of the enactment of the
25 American Jobs and Closing Tax Loopholes Act

1 of 2010 and on or before the date which is 90
2 days after such date, such component meets the
3 criteria described in subparagraph (A) or is
4 equal to or below a U factor of 0.30 and SHGC
5 of 0.30, and

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

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

12 **Subtitle B—Individual Tax Relief**

13 **PART I—MISCELLANEOUS PROVISIONS**

14 **SEC. 221. DEDUCTION FOR CERTAIN EXPENSES OF ELE-** 15 **MENTARY AND SECONDARY SCHOOL TEACH-** 16 **ERS.**

17 (a) IN GENERAL.—Subparagraph (D) of section
18 62(a)(2) is amended by striking “or 2009” and inserting
19 “2009, or 2010”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 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 (c) TEMPORARY COORDINATION WITH HOPE AND
13 LIFETIME LEARNING CREDITS.—In the case of any tax-
14 payer for any taxable year beginning in 2010, no deduc-
15 tion shall be allowed under section 222 of the Internal
16 Revenue Code of 1986 if—

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

20 (2) the credit which would be allowed to the
21 taxpayer for such taxable year under section 25A of
22 such Code (determined without regard to sections
23 25A(e) and 26 of such Code).

1 **SEC. 226. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
2 **TIREMENT PLANS FOR CHARITABLE PUR-**
3 **POSES.**

4 (a) IN GENERAL.—Subparagraph (F) of section
5 408(d)(8) 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 distributions made in taxable
9 years beginning after December 31, 2009.

10 **SEC. 227. LOOK-THRU OF CERTAIN REGULATED INVEST-**
11 **MENT COMPANY STOCK IN DETERMINING**
12 **GROSS ESTATE OF NONRESIDENTS.**

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

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

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

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

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

25 “(n) ELECTION FOR DIRECT PAYMENT OF CRED-
26 IT.—

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

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

13 “(A) the sum of—

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

1 “(ii) 40 percent of the State housing
2 credit ceiling for 2010 which is attrib-
3 utable to amounts described in clauses (ii)
4 and (iv) of such subsection, plus any cred-
5 its for 2010 attributable to the application
6 of such section 702(d)(2) and 704(b), mul-
7 tiplied by

8 “(B) 10.

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

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

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

21 (1) by inserting “, plus any increase for 2009
22 or 2010 attributable to section 1400N(e) of such
23 Code (including credits made available under such
24 section as applied by reason of sections 702(d)(2)
25 and 704(b) of the Tax Extenders and Alternative

1 Minimum Tax Relief Act of 2008)” after “1986” in
2 subparagraph (A), and

3 (2) by inserting “, plus any credits for 2009 at-
4 tributable to the application of such section
5 702(d)(2) and 704(b)” after “such section” in sub-
6 paragraph (B).

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

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

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

1 **Subtitle C—Business Tax Relief**

2 **SEC. 241. RESEARCH CREDIT.**

3 (a) IN GENERAL.—Subparagraph (B) of section
4 41(h)(1) is amended by striking “December 31, 2009”
5 and inserting “December 31, 2010”.

6 (b) CONFORMING AMENDMENT.—Subparagraph (D)
7 of section 45C(b)(1) is amended by striking “December
8 31, 2009” and inserting “December 31, 2010”.

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

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

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

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

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

20 (a) IN GENERAL.—Subparagraph (F) of section
21 45D(f)(1) is amended by inserting “and 2010” after
22 “2009”.

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

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

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

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

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

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

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

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

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

20 (2) by inserting after clause (vi) the following
21 new clause:

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

24 (c) EFFECTIVE DATE.—

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

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

9 **SEC. 246. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO**
10 **ARE ACTIVE DUTY MEMBERS OF THE UNI-**
11 **FORMED SERVICES.**

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

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

18 **SEC. 247. 5-YEAR DEPRECIATION FOR FARMING BUSINESS**
19 **MACHINERY AND EQUIPMENT.**

20 (a) IN GENERAL.—Clause (vii) of section
21 168(e)(3)(B) 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 property placed in service after
25 December 31, 2009.

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

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

9 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

23 (b) EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (2) LIMITATION ON PERIOD OF GAINS.—

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

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

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

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

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

19 (e) EFFECTIVE DATES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) COMMERCIAL REVITALIZATION DEDUCTION.—

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

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

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

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

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

10 (f) EFFECTIVE DATES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(7) NO DOUBLE BENEFIT.—

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

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

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

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

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

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

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

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

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

1 terminated by not taking into account any portion of
2 such taxable year after December 31, 2010.”.

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

6 **SEC. 273. STUDY OF EXTENDED TAX EXPENDITURES.**

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

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

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

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

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

22 (b) REQUIREMENT TO REPORT.—Not later than No-
23 vember 30, 2010, the Chief of Staff of the Joint Com-
24 mittee on Taxation, in consultation with the Comptroller
25 General of the United States, shall submit to the Com-

1 mittee on Ways and Means of the House of Representa-
2 tives and the Committee on Finance of the Senate a report
3 on each tax expenditure (as defined in section 3(3) of the
4 Congressional Budget Impoundment Control Act of 1974
5 (2 U.S.C. 622(3)) extended by this title.

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

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

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

21 (2) A description of the intended purpose of the
22 tax expenditure.

23 (3) An analysis of the overall success of the tax
24 expenditure in achieving such purpose, and evidence
25 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 **TITLE III—TECHNICAL CORREC-**
2 **TIONS TO PENSION FUNDING**
3 **LEGISLATION**

4 **SEC. 301. DEFINITION OF ELIGIBLE PLAN YEAR.**

5 (a) AMENDMENT TO ERISA.—Clause (v) of section
6 303(c)(2)(D) of the Employee Retirement Income Secu-
7 rity Act of 1974 (29 U.S.C. 1083(c)(2)(D)), as added by
8 section 201(a)(1) of the Preservation of Access to Care
9 for Medicare Beneficiaries and Pension Relief Act of 2010,
10 is amended by striking “on or after the date of the enact-
11 ment of this subparagraph” and inserting “on or after
12 March 10, 2010”.

13 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
14 1986.—Clause (v) of section 430(c)(2)(D) of the Internal
15 Revenue Code of 1986, as added by section 201(b)(1) of
16 the Preservation of Access to Care for Medicare Bene-
17 ficiaries and Pension Relief Act of 2010, is amended by
18 striking “on or after the date of the enactment of this
19 subparagraph” and inserting “on or after March 10,
20 2010”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect as if included in the amend-
23 ments made by the provisions of the Preservation of Ac-
24 cess to Care for Medicare Beneficiaries and Pension Relief
25 Act of 2010 to which the amendments relate.

1 **SEC. 302. ELIGIBLE CHARITY PLANS.**

2 (a) DEFINITION OF ELIGIBLE CHARITY PLANS.—

3 (1) IN GENERAL.—Section 104(d) of the Pen-
4 sion Protection Act of 2006, as added by section
5 202(b) of the Preservation of Access to Care for
6 Medicare Beneficiaries and Pension Relief Act of
7 2010, is amended to read as follows:

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

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

14 “(2) such employees are employed in at least 20
15 States,

16 “(3) each such employee (other than a de mini-
17 mis number of employees) is employed by an em-
18 ployer described in section 501(c)(3) of such Code
19 and the primary exempt purpose of each such em-
20 ployer is to provide services with respect to children,
21 and

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

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

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection shall take effect as if included in
3 the amendment made by the provision of the Preser-
4 vation of Access to Care for Medicare Beneficiaries
5 and Pension Relief Act of 2010 to which the amend-
6 ment relates (determined after application of the
7 amendment made by subsection (c)).

8 (b) REGULATIONS.—The Secretary of the Treasury
9 may prescribe such regulations as may be necessary to
10 carry out the purposes of the amendments made by section
11 202(b) of the Preservation of Access to Care for Medicare
12 Beneficiaries and Pension Relief Act of 2010 and the
13 amendment made by subsection (a).

14 (c) APPLICATION OF NEW RULES TO ELIGIBLE
15 CHARITY PLANS.—

16 (1) IN GENERAL.—Paragraph (2) of section
17 202(c) of the Preservation of Access to Care for
18 Medicare Beneficiaries and Pension Relief Act of
19 2010 is amended to read as follows:

20 “(2) ELIGIBLE CHARITY PLANS.—The amend-
21 ments made by subsection (b) shall apply to plan
22 years beginning after December 31, 2010, except
23 that a plan sponsor may elect to apply such amend-
24 ments to plan years beginning after an earlier
25 date.”.

1 (2) **EFFECTIVE DATE.**—The amendment made
2 by this subsection shall take effect as if included in
3 the amendment made by the provision of the Preser-
4 vation of Access to Care for Medicare Beneficiaries
5 and Pension Relief Act of 2010 to which the amend-
6 ment relates.

7 **SEC. 303. SUSPENSION OF CERTAIN FUNDING LEVEL LIM-**
8 **TATIONS.**

9 (a) **LIMITATIONS ON BENEFIT ACCRUALS.**—Section
10 203 of the Worker, Retiree, and Employer Recovery Act
11 of 2008 (Public Law 110–458; 122 Stat. 5118) is amend-
12 ed—

13 (1) by striking “the first plan year beginning
14 during the period beginning on October 1, 2008, and
15 ending on September 30, 2009” and inserting “any
16 plan year beginning during the period beginning on
17 October 1, 2008, and ending on December 31,
18 2011”;

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

1 (3) by striking “for the preceding plan year is
2 greater” and inserting “for such last plan year is
3 greater”.

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

5 (1) ERISA AMENDMENT.—Section
6 206(g)(3)(E) of the Employee Retirement Income
7 Security Act of 1974 is amended by adding at the
8 end the following new sentence: “For purposes of
9 applying clause (i) in the case of payments the an-
10 nuity starting date for which occurs on or before De-
11 cember 31, 2011, payments under a social security
12 leveling option shall be treated as not in excess of
13 the monthly amount paid under a single life annuity
14 (plus an amount not in excess of a social security
15 supplement described in the last sentence of section
16 204(b)(1)(G)).”.

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

1 excess of a social security supplement described in
2 the last sentence of section 411(a)(9)).”.

3 (3) EFFECTIVE DATE.—

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

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

18 (c) REPEAL OF RELATED PROVISIONS.—The provi-
19 sions of, and the amendments made by, section 203 of
20 the Preservation of Access to Care for Medicare Bene-
21 ficiaries and Pension Relief Act of 2010 are repealed and
22 the Employee Retirement Income Security Act of 1974,
23 the Internal Revenue Code of 1986, and the Worker, Re-
24 tiree, and Employer Recovery Act of 2008 (Public Law

1 110–458; 122 Stat. 5118) shall be applied as if such sec-
2 tion had never been enacted.

3 **SEC. 304. OPTIONAL USE OF 30-YEAR AMORTIZATION PERI-**
4 **ODS.**

5 (a) REPEAL.—The provisions of, and the amend-
6 ments made by, section 211 of the Preservation of Access
7 to Care for Medicare Beneficiaries and Pension Relief Act
8 of 2010 are repealed and the Employee Retirement In-
9 come Security Act of 1974 and the Internal Revenue Code
10 of 1986 shall be applied as if such section had never been
11 enacted.

12 (b) ELECTIVE SPECIAL RELIEF RULES.—

13 (1) AMENDMENT TO ERISA.—Section 304(b) of
14 the Employee Retirement Income Security Act of
15 1974, as in effect after the application of subsection
16 (a), is amended by adding at the end the following
17 new paragraph:

18 “(8) ELECTIVE SPECIAL RELIEF RULES.—Not-
19 withstanding any other provision of this sub-
20 section—

21 “(A) AMORTIZATION OF NET INVESTMENT
22 LOSSES.—

23 “(i) IN GENERAL.—The plan sponsor
24 of a multiemployer plan with respect to
25 which the solvency test under subpara-

1 graph (B) is met may elect to treat the
2 portion of any experience loss or gain for
3 a plan year that is attributable to the allo-
4 cable portion of the net investment losses
5 incurred in either or both of the first two
6 plan years ending on or after June 30,
7 2008, as an experience loss separate from
8 other experience losses or gains to be am-
9 ortized in equal annual installments (until
10 fully amortized) over the period—

11 “(I) beginning with the plan year
12 for which the allocable portion is de-
13 termined, and

14 “(II) ending with the last plan
15 year in the 30-plan year period begin-
16 ning with the plan year following the
17 plan year in which such net invest-
18 ment loss was incurred.

19 “(ii) COORDINATION WITH EXTEN-
20 SIONS.—If an election is made under
21 clause (i) for any plan year—

22 “(I) no extension of the amorti-
23 zation period under clause (i) shall be
24 allowed under subsection (d), and

1 “(II) if an extension was granted
2 under subsection (d) for any plan year
3 before the plan year for which the
4 election under this subparagraph is
5 made, such extension shall not result
6 in such amortization period exceeding
7 30 years.

8 “(iii) DEFINITIONS AND RULES.—For
9 purposes of this subparagraph—

10 “(I) NET INVESTMENT
11 LOSSES.—The net investment loss in-
12 curred by a plan in a plan year is
13 equal to the excess of the expected
14 value of the assets as of the end of
15 the plan year over the market value of
16 the assets as of the end of the plan
17 year, including any difference attrib-
18 utable to a criminally fraudulent in-
19 vestment arrangement.

20 “(II) EXPECTED VALUE.—For
21 purposes of subclause (I), the ex-
22 pected value of the assets as of the
23 end of a plan year is the excess of the
24 market value of the assets at the be-
25 ginning of the plan year plus con-

1 tributions made during the plan year
2 over disbursements made during the
3 plan year, except that such amounts
4 shall be adjusted with interest at the
5 valuation rate to the end of the plan
6 year.

7 “(III) CRIMINALLY FRAUDULENT
8 INVESTMENT ARRANGEMENTS.—The
9 determination as to whether an ar-
10 rangement is a criminally fraudulent
11 investment arrangement shall be made
12 under rules substantially similar to
13 the rules prescribed by the Secretary
14 of the Treasury for purposes of sec-
15 tion 165 of the Internal Revenue Code
16 of 1986.

17 “(IV) AMOUNT ATTRIBUTABLE
18 TO ALLOCABLE PORTION OF NET IN-
19 VESTMENT LOSS.—The amount at-
20 tributable to the allocable portion of
21 the net investment loss for a plan year
22 shall be an amount equal to the allo-
23 cable portion of net investment loss
24 for the plan year under subclauses (V)
25 and (VI), increased with interest at

1 the valuation rate determined from
 2 the plan year after the plan year in
 3 which the net investment loss was in-
 4 curred.

5 “(V) ALLOCABLE PORTION OF
 6 NET INVESTMENT LOSSES.—Except
 7 as provided in subclause (VI), the net
 8 investment loss incurred in a plan
 9 year shall be allocated among the 5
 10 plan years following the plan year in
 11 which the investment loss is incurred
 12 in accordance with the following table:

Plan year after the plan year in which the net investment loss was incurred	Allocable portion of net investment loss
1st	1/2
2nd	0
3rd	1/6
4th	1/6
5th	1/6

13 “(VI) SPECIAL RULE FOR PLANS
 14 THAT ADOPT LONGER SMOOTHER PE-
 15 RIOD.—If a plan sponsor elects an ex-
 16 tended smoothing period for its asset
 17 valuation method under subsection
 18 (c)(2)(B), then the allocable portion of
 19 net investment loss for the first two
 20 plan years following the plan year the
 21 investment loss is incurred is the
 22 same as determined under subclause

1 (V), but the remaining $\frac{1}{2}$ of the net
2 investment loss is allocated ratably
3 over the period beginning with the
4 third plan year following the plan year
5 the net investment loss is incurred
6 and ending with the last plan year in
7 the extended smoothing period.

8 “(VII) SPECIAL RULE FOR OVER-
9 STATEMENT OF LOSS.—If, for a plan
10 year, there is an experience loss for
11 the plan and the amount described in
12 subclause (IV) exceeds the total
13 amount of the experience loss for the
14 plan year, then the excess shall be
15 treated as an experience gain.

16 “(VIII) SPECIAL RULE IN YEARS
17 FOR WHICH OVERALL EXPERIENCE IS
18 GAIN.—If, for a plan year, there is an
19 experience gain for the plan, then, in
20 addition to amortization of net invest-
21 ment losses under clause (i), the
22 amount described in subclause (IV)
23 shall be treated as an experience gain
24 in addition to any other experience
25 gain.

1 “(B) SOLVENCY TEST.—

2 “(i) IN GENERAL.—An election may
3 be made under this paragraph if the elec-
4 tion includes certification by the plan actu-
5 ary in connection with the election that the
6 plan is projected to have a funded percent-
7 age at the end of the first 15 plan years
8 that is not less than 100 percent of the
9 funded percentage for the plan year of the
10 election.

11 “(ii) FUNDED PERCENTAGE.—For
12 purposes of clause (i), the term ‘funded
13 percentage’ has the meaning provided in
14 section 305(i)(2), except that the value of
15 the plan’s assets referred to in section
16 305(i)(2)(A) shall be the market value of
17 such assets.

18 “(iii) ACTUARIAL ASSUMPTIONS.—In
19 making any certification under this sub-
20 paragraph, the plan actuary shall use the
21 same actuarial estimates, assumptions, and
22 methods as those applicable for the most
23 recent certification under section 305, ex-
24 cept that the plan actuary may take into
25 account benefit reductions and increases in

1 contribution rates, under either funding
2 improvement plans adopted under section
3 305(e) or under section 432(e) of the In-
4 ternal Revenue Code of 1986 or rehabilita-
5 tion plans adopted under section 305(e) or
6 under section 432(e) of such Code, that
7 the plan actuary reasonably anticipates will
8 occur without regard to any change in sta-
9 tus of the plan resulting from the election.

10 “(C) ADDITIONAL RESTRICTION ON BEN-
11 EFIT INCREASES.—If an election is made under
12 subparagraph (A), then, in addition to any
13 other applicable restrictions on benefit in-
14 creases, a plan amendment which is adopted on
15 or after March 10, 2010, and which increases
16 benefits may not go into effect during the pe-
17 riod beginning on such date and ending with
18 the second plan year beginning after such date
19 unless—

20 “(i) the plan actuary certifies that—

21 “(I) any such increase is paid for
22 out of additional contributions not al-
23 located to the plan immediately before
24 the election to have this paragraph
25 apply to the plan, and

1 such form and manner as the Pension
2 Benefit Guaranty Corporation may pre-
3 scribe.”.

4 (2) AMENDMENT TO INTERNAL REVENUE CODE
5 OF 1986 .—Section 431(b) of the Internal Revenue
6 Code of 1986, as in effect after the application of
7 subsection (a), is amended by adding at the end the
8 following new paragraph:

9 “(8) ELECTIVE SPECIAL RELIEF RULES.—Not-
10 withstanding any other provision of this sub-
11 section—

12 “(A) AMORTIZATION OF NET INVESTMENT
13 LOSSES.—

14 “(i) IN GENERAL.—The plan sponsor
15 of a multiemployer plan with respect to
16 which the solvency test under subpara-
17 graph (B) is met may elect to treat the
18 portion of any experience loss or gain for
19 a plan year that is attributable to the allo-
20 cable portion of the net investment losses
21 incurred in either or both of the first two
22 plan years ending on or after June 30,
23 2008, as an experience loss separate from
24 other experience losses and gains to be am-

1 ortized in equal annual installments (until
2 fully amortized) over the period—

3 “(I) beginning with the plan year
4 for which the allocable portion is de-
5 termined, and

6 “(II) ending with the last plan
7 year in the 30-plan year period begin-
8 ning with the plan year following the
9 plan year in which such net invest-
10 ment loss was incurred.

11 “(ii) COORDINATION WITH EXTEN-
12 SIONS.—If an election is made under
13 clause (i) for any plan year—

14 “(I) no extension of the amorti-
15 zation period under clause (i) shall be
16 allowed under subsection (d), and

17 “(II) if an extension was granted
18 under subsection (d) for any plan year
19 before the plan year for which the
20 election under this subparagraph is
21 made, such extension shall not result
22 in such amortization period exceeding
23 30 years.

24 “(iii) DEFINITIONS AND RULES.—For
25 purposes of this subparagraph—

1 “(I) NET INVESTMENT
2 LOSSES.—The net investment loss in-
3 curred by a plan in a plan year is
4 equal to the excess of the expected
5 value of the assets as of the end of
6 the plan year over the market value of
7 the assets as of the end of the plan
8 year, including any difference attrib-
9 utable to a criminally fraudulent in-
10 vestment arrangement.

11 “(II) EXPECTED VALUE.—For
12 purposes of subclause (I), the ex-
13 pected value of the assets as of the
14 end of a plan year is the excess of the
15 market value of the assets at the be-
16 ginning of the plan year plus con-
17 tributions made during the plan year
18 over disbursements made during the
19 plan year, except that such amounts
20 shall be adjusted with interest at the
21 valuation rate to the end of the plan
22 year.

23 “(III) CRIMINALLY FRAUDULENT
24 INVESTMENT ARRANGEMENTS.—The
25 determination as to whether an ar-

1 rangement is a criminally fraudulent
2 investment arrangement shall be made
3 under rules substantially similar to
4 the rules prescribed by the Secretary
5 for purposes of section 165.

6 “(IV) AMOUNT ATTRIBUTABLE
7 TO ALLOCABLE PORTION OF NET IN-
8 VESTMENT LOSS.—The amount at-
9 tributable to the allocable portion of
10 the net investment loss for a plan year
11 shall be an amount equal to the allo-
12 cable portion of net investment loss
13 for the plan year under subclauses (V)
14 and (VI), increased with interest at
15 the valuation rate determined from
16 the plan year after the plan year in
17 which the net investment loss was in-
18 curred.

19 “(V) ALLOCABLE PORTION OF
20 NET INVESTMENT LOSSES.—Except
21 as provided in subclause (VI), the net
22 investment loss incurred in a plan
23 year shall be allocated among the 5
24 plan years following the plan year in

1 which the investment loss is incurred
 2 in accordance with the following table:

“Plan year after the plan year in which the net investment loss was incurred	Allocable portion of net investment loss
1st	1/2
2nd	0
3rd	1/6
4th	1/6
5th	1/6

3 “(VI) SPECIAL RULE FOR PLANS
 4 THAT ADOPT LONGER SMOOTHER PE-
 5 RIOD.—If a plan sponsor elects an ex-
 6 tended smoothing period for its asset
 7 valuation method under subsection
 8 (c)(2)(B), then the allocable portion of
 9 net investment loss for the first two
 10 plan years following the plan year the
 11 investment loss is incurred is the
 12 same as determined under subclause
 13 (V), but the remaining 1/2 of the net
 14 investment loss is allocated ratably
 15 over the period beginning with the
 16 third plan year following the plan year
 17 the net investment loss is incurred
 18 and ending with the last plan year in
 19 the extended smoothing period.

20 “(VII) SPECIAL RULE FOR OVER-
 21 STATEMENT OF LOSS.—If, for a plan
 22 year, there is an experience loss for

1 the plan and the amount described in
2 subclause (IV) exceeds the total
3 amount of the experience loss for the
4 plan year, then the excess shall be
5 treated as an experience gain.

6 “(VIII) SPECIAL RULE IN YEARS
7 FOR WHICH OVERALL EXPERIENCE IS
8 GAIN.—If, for a plan year, there is an
9 experience gain for the plan, then, in
10 addition to amortization of net invest-
11 ment losses under clause (i), the
12 amount described in subclause (IV)
13 shall be treated as an experience gain
14 in addition to any other experience
15 gain.

16 “(B) SOLVENCY TEST.—

17 “(i) IN GENERAL.—An election may
18 be made under this paragraph if the elec-
19 tion includes certification by the plan actu-
20 ary in connection with the election that the
21 plan is projected to have a funded percent-
22 age at the end of the first 15 plan years
23 that is not less than 100 percent of the
24 funded percentage for the plan year of the
25 election.

1 “(ii) FUNDED PERCENTAGE.—For
2 purposes of clause (i), the term ‘funded
3 percentage’ has the meaning provided in
4 section 432(i)(2), except that the value of
5 the plan’s assets referred to in section
6 432(i)(2)(A) shall be the market value of
7 such assets.

8 “(iii) ACTUARIAL ASSUMPTIONS.—In
9 making any certification under this sub-
10 paragraph, the plan actuary shall use the
11 same actuarial estimates, assumptions, and
12 methods as those applicable for the most
13 recent certification under section 432, ex-
14 cept that the plan actuary may take into
15 account benefit reductions and increases in
16 contribution rates, under either funding
17 improvement plans adopted under section
18 432(e) or under section 305(e) of the Em-
19 ployee Retirement Income Security Act of
20 1974 or rehabilitation plans adopted under
21 section 432(e) or under section 305(e) of
22 such Act, that the plan actuary reasonably
23 anticipates will occur without regard to
24 any change in status of the plan resulting
25 from the election.

1 “(C) ADDITIONAL RESTRICTION ON BEN-
2 EFIT INCREASES.—If an election is made under
3 subparagraph (A), then, in addition to any
4 other applicable restrictions on benefit in-
5 creases, a plan amendment which is adopted on
6 or after March 10, 2010, and which increases
7 benefits may not go into effect during the pe-
8 riod beginning on such date and ending with
9 the second plan year beginning after such date
10 unless—

11 “(i) the plan actuary certifies that—

12 “(I) any such increase is paid for
13 out of additional contributions not al-
14 located to the plan immediately before
15 the election to have this paragraph
16 apply to the plan, and

17 “(II) the plan’s funded percent-
18 age and projected credit balances for
19 the first 3 plan years ending on or
20 after such date are reasonably ex-
21 pected to be at least as high as such
22 percentage and balances would have
23 been if the benefit increase had not
24 been adopted, or

1 “(ii) the amendment is required as a
2 condition of qualification under part I or
3 to comply with other applicable law.

4 “(D) TIME, FORM, AND MANNER OF ELEC-
5 TION.—An election under this paragraph shall
6 be made not later than June 30, 2011, and
7 shall be made in such form and manner as the
8 Secretary may prescribe.

9 “(E) REPORTING.—A plan sponsor of a
10 plan to which this paragraph applies shall—

11 “(i) give notice of such election to
12 participants and beneficiaries of the plan,
13 and

14 “(ii) inform the Pension Benefit
15 Guaranty Corporation of such election in
16 such form and manner as the Pension
17 Benefit Guaranty Corporation may pre-
18 scribe.”.

19 (c) ASSET SMOOTHING FOR MULTIEMPLOYER
20 PLANS.—

21 (1) AMENDMENT TO ERISA.—Section 304(c)(2)
22 of the Employee Retirement Income Security Act of
23 1974 (29 U.S.C. 1084(c)(2)) is amended—

24 (A) by redesignating subparagraph (B) as
25 subparagraph (C); and

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

3 “(B) EXTENDED ASSET SMOOTHING PE-
4 RIOD FOR CERTAIN INVESTMENT LOSSES.—The
5 Secretary of the Treasury shall not treat the
6 asset valuation method of a multiemployer plan
7 as unreasonable solely because such method
8 spreads the difference between expected and ac-
9 tual returns for either or both of the first 2
10 plan years ending on or after June 30, 2008,
11 over a period of not more than 10 years. Any
12 change in valuation method to so spread such
13 difference shall be treated as approved, but only
14 if, in the case that the plan sponsor has made
15 an election under subsection (b)(8), any result-
16 ing change in asset value is treated for pur-
17 poses of amortization as a net experience loss
18 or gain.”.

19 (2) AMENDMENT TO INTERNAL REVENUE CODE
20 OF 1986.—Section 431(c)(2) of the Internal Revenue
21 Code of 1986 is amended—

22 (A) by redesignating subparagraph (B) as
23 subparagraph (C); and

24 (B) by inserting after subparagraph (A)
25 the following new subparagraph:

1 “(B) EXTENDED ASSET SMOOTHING PE-
2 RIOD FOR CERTAIN INVESTMENT LOSSES.—The
3 Secretary shall not treat the asset valuation
4 method of a multiemployer plan as unreason-
5 able solely because such method spreads the dif-
6 ference between expected and actual returns for
7 either or both of the first 2 plan years ending
8 on or after June 30, 2008, over a period of not
9 more than 10 years. Any change in valuation
10 method to so spread such difference shall be
11 treated as approved, but only if, in the case
12 that the plan sponsor has made an election
13 under subsection (b)(8), any resulting change in
14 asset value is treated for purposes of amortiza-
15 tion as a net experience loss or gain.”.

16 (d) EFFECTIVE DATE AND SPECIAL RULES.—

17 (1) EFFECTIVE DATE.—The amendments made
18 by this section shall take effect as of the first day
19 of the first plan year beginning after June 30, 2008,
20 except that any election a plan sponsor makes pur-
21 suant to this section or the amendments made there-
22 by that affects the plan’s funding standard account
23 for any plan year beginning before October 1, 2009,
24 shall be disregarded for purposes of applying the
25 provisions of section 305 of the Employee Retire-

1 ment Income Security Act of 1974 and section 432
2 of the Internal Revenue Code of 1986 to that plan
3 year.

4 (2) DEEMED APPROVAL FOR CERTAIN FUNDING
5 METHOD CHANGES.—In the case of a multiemployer
6 plan with respect to which an election has been
7 made under section 304(b)(8) of the Employee Re-
8 tirement Income Security Act of 1974 (as amended
9 by this section) or section 431(b)(8) of the Internal
10 Revenue Code of 1986 (as so amended)—

11 (A) any change in the plan’s funding meth-
12 od for a plan year beginning on or after July
13 1, 2008, and on or before December 31, 2010,
14 from a method that does not establish a base
15 for experience gains and losses to one that does
16 establish such a base shall be treated as ap-
17 proved by the Secretary of the Treasury; and

18 (B) any resulting funding method change
19 base shall be treated for purposes of amortiza-
20 tion as a net experience loss or gain.

21 **SEC. 305. TRANSITION RULE FOR CERTIFICATIONS OF**
22 **PLAN STATUS.**

23 (a) IN GENERAL.—A plan actuary shall not be treat-
24 ed as failing to meet the requirements of section
25 305(b)(3)(A) of the Employee Retirement Income Secu-

1 rity Act of 1974 and section 432(b)(3)(A) of the Internal
2 Revenue Code of 1986 in connection with a certification
3 required under such sections the deadline for which is
4 after the date of the enactment of this Act if the plan
5 actuary makes such certification at any time earlier than
6 75 days after the date of the enactment of this Act.

7 (b) REVISION OF PRIOR CERTIFICATION.—

8 (1) IN GENERAL.—If—

9 (A) a plan sponsor makes an election
10 under section 304(b)(8) of the Employee Re-
11 tirement Income Security Act of 1974 and sec-
12 tion 431(b)(8) of the Internal Revenue Code of
13 1986, or under section 304(c)(2)(B) of such
14 Act and section 431(c)(2)(B) such Code, with
15 respect to a plan for a plan year beginning on
16 or after October 1, 2009; and

17 (B) the plan actuary's certification of the
18 plan status for such plan year (hereinafter in
19 this subsection referred to as “original certifi-
20 cation”) did not take into account any election
21 so made,

22 then the plan sponsor may direct the plan actuary
23 to make a new certification with respect to the plan
24 for the plan year which takes into account such elec-
25 tion (hereinafter in this subsection referred to as

1 “new certification”) if the plan’s status under sec-
2 tion 305 of such Act and section 432 of such Code
3 would change as a result of such election. Any such
4 new certification shall be treated as the most recent
5 certification referred to in section 304(b)(3)(B)(iii)
6 of such Act and section 431(b)(8)(B)(iii) of such
7 Code.

8 (2) DUE DATE FOR NEW CERTIFICATION.—Any
9 such new certification shall be made pursuant to sec-
10 tion 305(b)(3) of such Act and section 432(b)(3) of
11 such Code; except that any such new certification
12 shall be made not later than 75 days after the date
13 of the enactment of this Act.

14 (3) NOTICE.—

15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), any such new certification
17 shall be treated as the original certification for
18 purposes of section 305(b)(3)(D) of such Act
19 and section 432(b)(3)(D) of such Code.

20 (B) NOTICE ALREADY PROVIDED.—In any
21 case in which notice has been provided under
22 such sections with respect to the original certifi-
23 cation, not later than 30 days after the new
24 certification is made, the plan sponsor shall

1 provide notice of any change in status under
2 rules similar to the rules such sections.

3 (4) EFFECT OF CHANGE IN STATUS.—If a plan
4 ceases to be in critical status pursuant to the new
5 certification, then the plan shall, not later than 30
6 days after the due date described in paragraph (2),
7 cease any restriction of benefit payments, and im-
8 position of contribution surcharges, under section 305
9 of such Act and section 432 of such Code by reason
10 of the original certification.

11 **TITLE IV—REVENUE OFFSETS**
12 **Subtitle A—Foreign Provisions**

13 **SEC. 401. RULES TO PREVENT SPLITTING FOREIGN TAX**
14 **CREDITS FROM THE INCOME TO WHICH THEY**
15 **RELATE.**

16 (a) IN GENERAL.—Subpart A of part III of sub-
17 chapter N of chapter 1 is amended by adding at the end
18 the following new section:

19 **“SEC. 909. SUSPENSION OF TAXES AND CREDITS UNTIL RE-**
20 **LATED INCOME TAKEN INTO ACCOUNT.**

21 “(a) IN GENERAL.—If there is a foreign tax credit
22 splitting event with respect to a foreign income tax paid
23 or accrued by the taxpayer, such tax shall not be taken
24 into account for purposes of this title before the taxable

1 year in which the related income is taken into account
2 under this chapter by the taxpayer.

3 “(b) SPECIAL RULES WITH RESPECT TO SECTION
4 902 CORPORATIONS.—If there is a foreign tax credit split-
5 ting event with respect to a foreign income tax paid or
6 accrued by a section 902 corporation, such tax shall not
7 be taken into account—

8 “(1) for purposes of section 902 or 960, or

9 “(2) for purposes of determining earnings and
10 profits under section 964(a),

11 before the taxable year in which the related income is
12 taken into account under this chapter by such section 902
13 corporation or a domestic corporation which meets the
14 ownership requirements of subsection (a) or (b) of section
15 902 with respect to such section 902 corporation.

16 “(c) SPECIAL RULES.—For purposes of this sec-
17 tion—

18 “(1) APPLICATION TO PARTNERSHIPS, ETC.—In
19 the case of a partnership, subsections (a) and (b)
20 shall be applied at the partner level. Except as oth-
21 erwise provided by the Secretary, a rule similar to
22 the rule of the preceding sentence shall apply in the
23 case of any S corporation or trust.

24 “(2) TREATMENT OF FOREIGN TAXES AFTER
25 SUSPENSION.—In the case of any foreign income tax

1 not taken into account by reason of subsection (a)
2 or (b), except as otherwise provided by the Sec-
3 retary, such tax shall be so taken into account in the
4 taxable year referred to in such subsection (other
5 than for purposes of section 986(a)) as a foreign in-
6 come tax paid or accrued in such taxable year.

7 “(d) DEFINITIONS.—For purposes of this section—

8 “(1) FOREIGN TAX CREDIT SPLITTING
9 EVENT.—There is a foreign tax credit splitting event
10 with respect to a foreign income tax if the related
11 income is (or will be) taken into account under this
12 chapter by a covered person.

13 “(2) FOREIGN INCOME TAX.—The term ‘foreign
14 income tax’ means any income, war profits, or excess
15 profits tax paid or accrued to any foreign country or
16 to any possession of the United States.

17 “(3) RELATED INCOME.—The term ‘related in-
18 come’ means, with respect to any portion of any for-
19 eign income tax, the income (or, as appropriate,
20 earnings and profits) to which such portion of for-
21 eign income tax relates.

22 “(4) COVERED PERSON.—The term ‘covered
23 person’ means, with respect to any person who pays
24 or accrues a foreign income tax (hereafter in this
25 paragraph referred to as the ‘payor’)—

1 “(A) any entity in which the payor holds,
2 directly or indirectly, at least a 10 percent own-
3 ership interest (determined by vote or value),

4 “(B) any person which holds, directly or
5 indirectly, at least a 10 percent ownership in-
6 terest (determined by vote or value) in the
7 payor,

8 “(C) any person which bears a relationship
9 to the payor described in section 267(b) or
10 707(b), and

11 “(D) any other person specified by the
12 Secretary for purposes of this paragraph.

13 “(5) SECTION 902 CORPORATION.—The term
14 ‘section 902 corporation’ means any foreign corpora-
15 tion with respect to which one or more domestic cor-
16 porations meets the ownership requirements of sub-
17 section (a) or (b) of section 902.

18 “(e) REGULATIONS.—The Secretary may issue such
19 regulations or other guidance as is necessary or appro-
20 priate to carry out the purposes of this section, including
21 regulations or other guidance which provides—

22 “(1) appropriate exceptions from the provisions
23 of this section, and

24 “(2) for the proper application of this section
25 with respect to hybrid instruments.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for subpart A of part III of subchapter N of chapter 1
3 is amended by adding at the end the following new item:

“Sec. 909. Suspension of taxes and credits until related income taken into account.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to—

6 (1) foreign income taxes (as defined in section
7 909(d) of the Internal Revenue Code of 1986, as
8 added by this section) paid or accrued in taxable
9 years beginning after December 31, 2010; and

10 (2) foreign income taxes (as so defined) paid or
11 accrued by a section 902 corporation (as so defined)
12 in taxable years beginning on or before such date
13 (and not deemed paid under section 902(a) or 960
14 of such Code on or before such date), but only for
15 purposes of applying sections 902 and 960 with re-
16 spect to periods after such date.

17 Section 909(b)(2) of the Internal Revenue Code of 1986,
18 as added by this section, shall not apply to foreign income
19 taxes described in paragraph (2).

1 **SEC. 402. DENIAL OF FOREIGN TAX CREDIT WITH RESPECT**
2 **TO FOREIGN INCOME NOT SUBJECT TO**
3 **UNITED STATES TAXATION BY REASON OF**
4 **COVERED ASSET ACQUISITIONS.**

5 (a) IN GENERAL.—Section 901 is amended by redес-
6 ignating subsection (m) as subsection (n) and by inserting
7 after subsection (l) the following new subsection:

8 “(m) DENIAL OF FOREIGN TAX CREDIT WITH RE-
9 SPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED
10 STATES TAXATION BY REASON OF COVERED ASSET AC-
11 QUISTIONS.—

12 “(1) IN GENERAL.—In the case of a covered
13 asset acquisition, the disqualified portion of any for-
14 eign income tax determined with respect to the in-
15 come or gain attributable to the relevant foreign as-
16 sets—

17 “(A) shall not be taken into account in de-
18 termining the credit allowed under subsection
19 (a), and

20 “(B) in the case of a foreign income tax
21 paid by a section 902 corporation (as defined in
22 section 909(d)(5)), shall not be taken into ac-
23 count for purposes of section 902 or 960.

24 “(2) COVERED ASSET ACQUISITION.—For pur-
25 poses of this section, the term ‘covered asset acquisi-
26 tion’ means—

1 “(A) a qualified stock purchase (as defined
2 in section 338(d)(3)) to which section 338(a)
3 applies,

4 “(B) any transaction which—

5 “(i) is treated as an acquisition of as-
6 sets for purposes of this chapter, and

7 “(ii) is treated as the acquisition of
8 stock of a corporation (or is disregarded)
9 for purposes of the foreign income taxes of
10 the relevant jurisdiction,

11 “(C) any acquisition of an interest in a
12 partnership which has an election in effect
13 under section 754, and

14 “(D) to the extent provided by the Sec-
15 retary, any other similar transaction.

16 “(3) DISQUALIFIED PORTION.—For purposes of
17 this section—

18 “(A) IN GENERAL.—The term ‘disqualified
19 portion’ means, with respect to any covered
20 asset acquisition, for any taxable year, the ratio
21 (expressed as a percentage) of—

22 “(i) the aggregate basis differences
23 (but not below zero) allocable to such tax-
24 able year under subparagraph (B) with re-

1 date of such disposition shall be the
2 excess of the basis difference with re-
3 spect to such asset over the aggregate
4 basis difference with respect to such
5 asset which has been allocated under
6 clause (i) to all prior taxable years,
7 and

8 “(II) no basis difference with re-
9 spect to such asset shall be allocated
10 under clause (i) to any taxable year
11 thereafter.

12 “(C) BASIS DIFFERENCE.—

13 “(i) IN GENERAL.—The term ‘basis
14 difference’ means, with respect to any rel-
15 evant foreign asset, the excess of—

16 “(I) the adjusted basis of such
17 asset immediately after the covered
18 asset acquisition, over

19 “(II) the adjusted basis of such
20 asset immediately before the covered
21 asset acquisition.

22 “(ii) BUILT-IN LOSS ASSETS.—In the
23 case of a relevant foreign asset with re-
24 spect to which the amount described in
25 clause (i)(II) exceeds the amount described

1 in clause (i)(I), such excess shall be taken
2 into account under this subsection as a
3 basis difference of a negative amount.

4 “(iii) SPECIAL RULE FOR SECTION 338
5 ELECTIONS.—In the case of a covered
6 asset acquisition described in paragraph
7 (2)(A), the covered asset acquisition shall
8 be treated for purposes of this subpara-
9 graph as occurring at the close of the ac-
10 quisition date (as defined in section
11 338(h)(2)).

12 “(4) RELEVANT FOREIGN ASSETS.—For pur-
13 poses of this section, the term ‘relevant foreign
14 asset’ means, with respect to any covered asset ac-
15 quisition, any asset (including any goodwill, going
16 concern value, or other intangible) with respect to
17 such acquisition if income, deduction, gain, or loss
18 attributable to such asset is taken into account in
19 determining the foreign income tax referred to in
20 paragraph (1).

21 “(5) FOREIGN INCOME TAX.—For purposes of
22 this section, the term ‘foreign income tax’ means
23 any income, war profits, or excess profits tax paid
24 or accrued to any foreign country or to any posses-
25 sion of the United States.

1 “(6) TAXES ALLOWED AS A DEDUCTION, ETC.—
2 Sections 275 and 78 shall not apply to any tax
3 which is not allowable as a credit under subsection
4 (a) by reason of this subsection.

5 “(7) REGULATIONS.—The Secretary may issue
6 such regulations or other guidance as is necessary or
7 appropriate to carry out the purposes of this sub-
8 section, including to exempt from the application of
9 this subsection certain covered asset acquisitions,
10 and relevant foreign assets with respect to which the
11 basis difference is de minimis.”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by this section
15 shall apply to covered asset acquisitions (as defined
16 in section 901(m)(2) of the Internal Revenue Code
17 of 1986, as added by this section) after December
18 31, 2010.

19 (2) TRANSITION RULE.—The amendments
20 made by this section shall not apply to any covered
21 asset acquisition (as so defined) with respect to
22 which the transferor and the transferee are not re-
23 lated if such acquisition is—

1 (A) made pursuant to a written agreement
2 which was binding on January 1, 2011, and at
3 all times thereafter,

4 (B) described in a ruling request submitted
5 to the Internal Revenue Service on or before
6 May 20, 2010, or

7 (C) described on or before January 1,
8 2011, in a public announcement or in a filing
9 with the Securities and Exchange Commission.

10 (3) RELATED PERSONS.—For purposes of this
11 subsection, a person shall be treated as related to
12 another person if the relationship between such per-
13 sons is described in section 267 or 707(b) of the In-
14 ternal Revenue Code of 1986.

15 **SEC. 403. SEPARATE APPLICATION OF FOREIGN TAX CRED-**
16 **IT LIMITATION, ETC., TO ITEMS RESOURCED**
17 **UNDER TREATIES.**

18 (a) IN GENERAL.—Subsection (d) of section 904 is
19 amended by redesignating paragraph (6) as paragraph (7)
20 and by inserting after paragraph (5) the following new
21 paragraph:

22 “(6) SEPARATE APPLICATION TO ITEMS
23 RESOURCED UNDER TREATIES.—

24 “(A) IN GENERAL.—If—

1 “(i) without regard to any treaty obli-
2 gation of the United States, any item of
3 income would be treated as derived from
4 sources within the United States,

5 “(ii) under a treaty obligation of the
6 United States, such item would be treated
7 as arising from sources outside the United
8 States, and

9 “(iii) the taxpayer chooses the bene-
10 fits of such treaty obligation,
11 subsections (a), (b), and (c) of this section and
12 sections 902, 907, and 960 shall be applied sep-
13 arately with respect to each such item.

14 “(B) COORDINATION WITH OTHER PROVI-
15 SIONS.—This paragraph shall not apply to any
16 item of income to which subsection (h)(10) or
17 section 865(h) applies.

18 “(C) REGULATIONS.—The Secretary may
19 issue such regulations or other guidance as is
20 necessary or appropriate to carry out the pur-
21 poses of this paragraph, including regulations
22 or other guidance which provides that related
23 items of income may be aggregated for pur-
24 poses of this paragraph.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 **SEC. 404. LIMITATION ON THE AMOUNT OF FOREIGN TAXES**
5 **DEEMED PAID WITH RESPECT TO SECTION**
6 **956 INCLUSIONS.**

7 (a) IN GENERAL.—Section 960 is amended by adding
8 at the end the following new subsection:

9 “(c) LIMITATION WITH RESPECT TO SECTION 956
10 INCLUSIONS.—

11 “(1) IN GENERAL.—If there is included under
12 section 951(a)(1)(B) in the gross income of a do-
13 mestic corporation any amount attributable to the
14 earnings and profits of a foreign corporation which
15 is a member of a qualified group (as defined in sec-
16 tion 902(b)) with respect to the domestic corpora-
17 tion, the amount of any foreign income taxes deemed
18 to have been paid during the taxable year by such
19 domestic corporation under section 902 by reason of
20 subsection (a) with respect to such inclusion in gross
21 income shall not exceed the amount of the foreign
22 income taxes which would have been deemed to have
23 been paid during the taxable year by such domestic
24 corporation if cash in an amount equal to the
25 amount of such inclusion in gross income were dis-

1 tributed as a series of distributions (determined
2 without regard to any foreign taxes which would be
3 imposed on an actual distribution) through the chain
4 of ownership which begins with such foreign cor-
5 poration and ends with such domestic corporation.

6 “(2) **AUTHORITY TO PREVENT ABUSE.**—The
7 Secretary shall issue such regulations or other guid-
8 ance as is necessary or appropriate to carry out the
9 purposes of this subsection, including regulations or
10 other guidance which prevent the inappropriate use
11 of the foreign corporation’s foreign income taxes not
12 deemed paid by reason of paragraph (1).”.

13 (b) **EFFECTIVE DATE.**—The amendment made by
14 this section shall apply to acquisitions of United States
15 property (as defined in section 956(c) of the Internal Rev-
16 enue Code of 1986) after December 31, 2010.

17 **SEC. 405. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**
18 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

19 (a) **IN GENERAL.**—Paragraph (5) of section 304(b)
20 is amended by redesignating subparagraph (B) as sub-
21 paragraph (C) and by inserting after subparagraph (A)
22 the following new subparagraph:

23 “(B) **SPECIAL RULE IN CASE OF FOREIGN**
24 **ACQUIRING CORPORATION.**—In the case of any
25 acquisition to which subsection (a) applies in

1 which the acquiring corporation is a foreign
2 corporation, no earnings and profits shall be
3 taken into account under paragraph (2)(A)
4 (and subparagraph (A) shall not apply) if more
5 than 50 percent of the dividends arising from
6 such acquisition (determined without regard to
7 this subparagraph) would neither—

8 “(i) be subject to tax under this chap-
9 ter for the taxable year in which the divi-
10 dends arise, nor

11 “(ii) be includible in the earnings and
12 profits of a controlled foreign corporation
13 (as defined in section 957 and without re-
14 gard to section 953(c)).”.

15 (b) **EFFECTIVE DATE.**—The amendments made by
16 this section shall apply to acquisitions after the date of
17 the enactment of this Act.

18 **SEC. 406. MODIFICATION OF AFFILIATION RULES FOR PUR-**
19 **POSES OF RULES ALLOCATING INTEREST EX-**
20 **PENSE.**

21 (a) **IN GENERAL.**—Subparagraph (A) of section
22 864(e)(5) is amended by adding at the end the following:
23 “Notwithstanding the preceding sentence, a foreign cor-
24 poration shall be treated as a member of the affiliated
25 group if—

1 “(i) more than 50 percent of the gross
2 income of such foreign corporation for the
3 taxable year is effectively connected with
4 the conduct of a trade or business within
5 the United States, and

6 “(ii) at least 80 percent of either the
7 vote or value of all outstanding stock of
8 such foreign corporation is owned directly
9 or indirectly by members of the affiliated
10 group (determined with regard to this sen-
11 tence).”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to taxable years beginning after
14 the date of the enactment of this Act.

15 **SEC. 407. TERMINATION OF SPECIAL RULES FOR INTEREST**
16 **AND DIVIDENDS RECEIVED FROM PERSONS**
17 **MEETING THE 80-PERCENT FOREIGN BUSI-**
18 **NESS REQUIREMENTS.**

19 (a) IN GENERAL.—Paragraph (1) of section 861(a)
20 is amended by striking subparagraph (A) and by redesignig-
21 nating subparagraphs (B) and (C) as subparagraphs (A)
22 and (B), respectively.

23 (b) GRANDFATHER RULE WITH RESPECT TO WITH-
24 HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM

1 PERSONS MEETING THE 80-PERCENT FOREIGN BUSI-
2 NESS REQUIREMENTS.—

3 (1) IN GENERAL.—Subparagraph (B) of section
4 871(i)(2) is amended to read as follows:

5 “(B) The active foreign business percent-
6 age of—

7 “(i) any dividend paid by an existing
8 80/20 company, and

9 “(ii) any interest paid by an existing
10 80/20 company.”.

11 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
12 tion 871 is amended by redesignating subsections (l)
13 and (m) as subsections (m) and (n), respectively,
14 and by inserting after subsection (k) the following
15 new subsection:

16 “(l) RULES RELATING TO EXISTING 80/20 COMPA-
17 NIES.—For purposes of this subsection and subsection
18 (i)(2)(B)—

19 “(1) EXISTING 80/20 COMPANY.—

20 “(A) IN GENERAL.—The term ‘existing 80/
21 20 company’ means any corporation if—

22 “(i) such corporation met the 80-per-
23 cent foreign business requirements of sec-
24 tion 861(c)(1) (as in effect before the date
25 of the enactment of this subsection) for

1 such corporation's last taxable year begin-
2 ning before January 1, 2011,

3 “(ii) such corporation meets the 80-
4 percent foreign business requirements of
5 subparagraph (B) with respect to each tax-
6 able year after the taxable year referred to
7 in clause (i), and

8 “(iii) there has not been an addition
9 of a substantial line of business with re-
10 spect to such corporation after the date of
11 the enactment of this subsection.

12 “(B) FOREIGN BUSINESS REQUIRE-
13 MENTS.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (iv), a corporation meets
16 the 80-percent foreign business require-
17 ments of this subparagraph if it is shown
18 to the satisfaction of the Secretary that at
19 least 80 percent of the gross income from
20 all sources of such corporation for the test-
21 ing period is active foreign business in-
22 come.

23 “(ii) ACTIVE FOREIGN BUSINESS IN-
24 COME.—For purposes of clause (i), the

1 term ‘active foreign business income’
2 means gross income which—

3 “(I) is derived from sources out-
4 side the United States (as determined
5 under this subchapter), and

6 “(II) is attributable to the active
7 conduct of a trade or business in a
8 foreign country or possession of the
9 United States.

10 “(iii) TESTING PERIOD.—For pur-
11 poses of this subsection, the term ‘testing
12 period’ means the 3-year period ending
13 with the close of the taxable year of the
14 corporation preceding the payment (or
15 such part of such period as may be appli-
16 cable). If the corporation has no gross in-
17 come for such 3-year period (or part there-
18 of), the testing period shall be the taxable
19 year in which the payment is made.

20 “(iv) TRANSITION RULE.—In the case
21 of a taxable year for which the testing pe-
22 riod includes 1 or more taxable years be-
23 ginning before January 1, 2011—

24 “(I) a corporation meets the 80-
25 percent foreign business requirements

1 of this subparagraph if and only if the
2 weighted average of—

3 “(aa) the percentage of the
4 corporation’s gross income from
5 all sources that is active foreign
6 business income (as defined in
7 subparagraph (B) of section
8 861(c)(1) (as in effect before the
9 date of the enactment of this
10 subsection)) for the portion of
11 the testing period that includes
12 taxable years beginning before
13 January 1, 2011, and

14 “(bb) the percentage of the
15 corporation’s gross income from
16 all sources that is active foreign
17 business income (as defined in
18 clause (ii) of this subparagraph)
19 for the portion of the testing pe-
20 riod, if any, that includes taxable
21 years beginning on or after Janu-
22 ary 1, 2011,

23 is at least 80 percent, and

24 “(II) the active foreign business
25 percentage for such taxable year shall

1 equal the weighted average percentage
2 determined under subclause (I).

3 “(2) ACTIVE FOREIGN BUSINESS PERCENT-
4 AGE.—Except as provided in paragraph (1)(B)(iv),
5 the term ‘active foreign business percentage’ means,
6 with respect to any existing 80/20 company, the per-
7 centage which—

8 “(A) the active foreign business income of
9 such company for the testing period, is of

10 “(B) the gross income of such company for
11 the testing period from all sources.

12 “(3) AGGREGATION RULES.—For purposes of
13 applying paragraph (1) (other than subparagraphs
14 (A)(i) and (B)(iv) thereof) and paragraph (2)—

15 “(A) IN GENERAL.—The corporation re-
16 ferred to in paragraph (1)(A) and all of such
17 corporation’s subsidiaries shall be treated as
18 one corporation.

19 “(B) SUBSIDIARIES.—For purposes of sub-
20 paragraph (A), the term ‘subsidiary’ means any
21 corporation in which the corporation referred to
22 in subparagraph (A) owns (directly or indi-
23 rectly) stock meeting the requirements of sec-
24 tion 1504(a)(2) (determined by substituting ‘50

1 percent’ for ‘80 percent’ each place it appears
2 and without regard to section 1504(b)(3)).

3 “(4) REGULATIONS.—The Secretary may issue
4 such regulations or other guidance as is necessary or
5 appropriate to carry out the purposes of this section,
6 including regulations or other guidance which pro-
7 vide for the proper application of the aggregation
8 rules described in paragraph (3).”.

9 (c) CONFORMING AMENDMENTS.—

10 (1) Section 861 is amended by striking sub-
11 section (c) and by redesignating subsections (d), (e),
12 and (f) as subsections (c), (d), and (e), respectively.

13 (2) Paragraph (9) of section 904(h) is amended
14 to read as follows:

15 “(9) TREATMENT OF CERTAIN DOMESTIC COR-
16 PORATIONS.—In the case of any dividend treated as
17 not from sources within the United States under
18 section 861(a)(2)(A), the corporation paying such
19 dividend shall be treated for purposes of this sub-
20 section as a United States-owned foreign corpora-
21 tion.”.

22 (3) Subsection (c) of section 2104 is amended
23 in the last sentence by striking “or to a debt obliga-
24 tion of a domestic corporation” and all that follows
25 and inserting a period.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall apply to taxable years beginning after Decem-
5 ber 31, 2010.

6 (2) GRANDFATHER RULE FOR OUTSTANDING
7 DEBT OBLIGATIONS.—

8 (A) IN GENERAL.—The amendments made
9 by this section shall not apply to payments of
10 interest on obligations issued before the date of
11 the enactment of this Act.

12 (B) EXCEPTION FOR RELATED PARTY
13 DEBT.—Subparagraph (A) shall not apply to
14 any interest which is payable to a related per-
15 son (determined under rules similar to the rules
16 of section 954(d)(3)).

17 (C) SIGNIFICANT MODIFICATIONS TREAT-
18 ED AS NEW ISSUES.—For purposes of subpara-
19 graph (A), a significant modification of the
20 terms of any obligation (including any extension
21 of the term of such obligation) shall be treated
22 as a new issue.

1 **SEC. 408. LIMITATION ON EXTENSION OF STATUTE OF LIM-**
2 **TATIONS FOR FAILURE TO NOTIFY SEC-**
3 **RETARY OF CERTAIN FOREIGN TRANSFERS.**

4 (a) **IN GENERAL.**—Paragraph (8) of section 6501(c)
5 is amended—

6 (1) by striking “In the case of any information”
7 and inserting the following:

8 “(A) **IN GENERAL.**—In the case of any in-
9 formation”; and

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

11 “(B) **APPLICATION TO FAILURES DUE TO**
12 **REASONABLE CAUSE.**—If the failure to furnish
13 the information referred to in subparagraph (A)
14 is due to reasonable cause and not willful ne-
15 glect, subparagraph (A) shall apply only to the
16 item or items related to such failure.”.

17 (b) **EFFECTIVE DATE.**—The amendments made by
18 this section shall take effect as if included in section 513
19 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 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) ELECTION WITH RESPECT TO CERTAIN EX-
9 CHANGES.—Paragraph (1)(B) shall not apply to the
10 contribution of an investment services partnership
11 interest to a partnership in exchange for an interest
12 in such partnership if—

13 “(A) the taxpayer makes an irrevocable
14 election to treat the partnership interest re-
15 ceived in the exchange as an investment serv-
16 ices partnership interest, and

17 “(B) the taxpayer agrees to comply with
18 such reporting and recordkeeping requirements
19 as the Secretary may prescribe.

20 “(4) DISPOSITION OF PORTION OF INTEREST.—
21 In the case of any disposition of an investment serv-
22 ices partnership interest, the amount of net loss
23 which otherwise would have (but for subsection
24 (a)(2)(C)) applied to reduce the basis of such inter-

1 est shall be disregarded for purposes of this section
2 for all succeeding partnership taxable years.

3 “(5) DISTRIBUTIONS OF PARTNERSHIP PROP-
4 ERTY.—In the case of any distribution of property
5 by a partnership with respect to any investment
6 services partnership interest held by a partner—

7 “(A) the excess (if any) of—

8 “(i) the fair market value of such
9 property at the time of such distribution,
10 over

11 “(ii) the adjusted basis of such prop-
12 erty in the hands of the partnership,

13 shall be taken into account as an increase in
14 such partner’s distributive share of the taxable
15 income of the partnership (except to the extent
16 such excess is otherwise taken into account in
17 determining the taxable income of the partner-
18 ship),

19 “(B) such property shall be treated for
20 purposes of subpart B of part II as money dis-
21 tributed to such partner in an amount equal to
22 such fair market value, and

23 “(C) the basis of such property in the
24 hands of such partner shall be such fair market
25 value.

1 Subsection (b) of section 734 shall be applied with-
2 out regard to the preceding sentence. In the case of
3 a taxpayer which satisfies requirements similar to
4 the requirements of subparagraphs (A) and (B) of
5 paragraph (3), this paragraph and paragraph (1)(B)
6 shall not apply to the distribution of a partnership
7 interest if such distribution is in connection with a
8 contribution (or deemed contribution) of any prop-
9 erty of the partnership to which section 721 applies
10 pursuant to a transaction described in paragraph
11 (1)(B) or (2) of section 708(b).

12 “(6) APPLICATION OF SECTION 751.—

13 “(A) IN GENERAL.—In applying section
14 751, an investment services partnership interest
15 shall be treated as an inventory item.

16 “(B) EXCEPTION FOR CERTAIN DISPOSI-
17 TIONS OF INTERESTS IN A PUBLICLY TRADED
18 PARTNERSHIP.—Except as provided by the Sec-
19 retary, this paragraph shall not apply in the
20 case of any (direct or indirect) disposition of an
21 interest in a publicly traded partnership (as de-
22 fined in section 7704) which is not an invest-
23 ment services partnership interest in the hands
24 of the person disposing of such interest (or the

1 hands of the person holding such interest indi-
2 rectly).

3 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
4 EST.—For purposes of this section—

5 “(1) IN GENERAL.—The term ‘investment serv-
6 ices partnership interest’ means any interest in a
7 partnership which is held (directly or indirectly) by
8 any person if it was reasonably expected (at the time
9 that such person acquired such interest) that such
10 person (or any person related to such person) would
11 provide (directly or, to the extent provided by the
12 Secretary, indirectly) a substantial quantity of any
13 of the following services with respect to assets held
14 (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) EXCEPTION FOR PARTNERSHIPS WITH PRO
15 RATA ALLOCATIONS BASED ON CAPITAL.—Except as
16 provided by the Secretary, the term ‘investment
17 services partnership interest’ shall not include any
18 interest in a partnership if all distributions and all
19 allocations of the partnership, and of any other part-
20 nership in which the partnership directly or indi-
21 rectly holds an interest, are made pro rata on the
22 basis of the capital contributions of each partner
23 which constitute qualified capital interests under
24 subsection (d).

1 “(5) RELATED PERSONS.—A person shall be
2 treated as related to another person if the relation-
3 ship between such persons is described in section
4 267 or 707(b).

5 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
6 ESTS.—

7 “(1) IN GENERAL.—In the case of any portion
8 of an investment services partnership interest which
9 is a qualified capital interest, all items of income,
10 gain, loss, and deduction which are allocated to such
11 qualified capital interest shall not be taken into ac-
12 count under subsection (a) if—

13 “(A) allocations of items are made by the
14 partnership to such qualified capital interest in
15 the same manner as such allocations are made
16 to other qualified capital interests held by part-
17 ners who do not provide any services described
18 in subsection (c)(1) and who are not related to
19 the partner holding the qualified capital inter-
20 est, and

21 “(B) the allocations made to such other in-
22 terests are significant compared to the alloca-
23 tions made to such qualified capital interest.

24 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
25 ALLOCATION REQUIREMENTS.—To the extent pro-

1 vided by the Secretary in regulations or other guid-
2 ance—

3 “(A) ALLOCATIONS TO PORTION OF QUALI-
4 FIED CAPITAL INTEREST.—Paragraph (1) may
5 be applied separately with respect to a portion
6 of a qualified capital interest.

7 “(B) NO OR INSIGNIFICANT ALLOCATIONS
8 TO NONSERVICE PROVIDERS.—In any case in
9 which the requirements of paragraph (1)(B) are
10 not satisfied, items of income, gain, loss, and
11 deduction shall not be taken into account under
12 subsection (a) to the extent that such items are
13 properly allocable under such regulations or
14 other guidance to qualified capital interests.

15 “(C) ALLOCATIONS TO SERVICE PRO-
16 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH
17 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
18 tions shall not be treated as failing to meet the
19 requirement of paragraph (1)(A) merely be-
20 cause the allocations to the qualified capital in-
21 terest represent a lower return than the alloca-
22 tions made to the other qualified capital inter-
23 ests referred to in such paragraph.

24 “(3) SPECIAL RULE FOR CHANGES IN SERV-
25 ICES.—In the case of an interest in a partnership

1 which is not an investment services partnership in-
2 terest and which, by reason of a change in the serv-
3 ices with respect to assets held (directly or indi-
4 rectly) by the partnership, would (without regard to
5 the reasonable expectation exception of subsection
6 (c)(1)) have become such an interest—

7 “(A) notwithstanding subsection (c)(1),
8 such interest shall be treated as an investment
9 services partnership interest as of the time of
10 such change, and

11 “(B) for purposes of this subsection, the
12 qualified capital interest of the holder of such
13 partnership interest immediately after such
14 change shall not be less than the fair market
15 value of such interest (determined immediately
16 before such change).

17 “(4) SPECIAL RULE FOR TIERED PARTNER-
18 SHIPS.—Except as otherwise provided by the Sec-
19 retary, in the case of tiered partnerships, all items
20 which are allocated in a manner which meets the re-
21 quirements of paragraph (1) to qualified capital in-
22 terests in a lower-tier partnership shall retain such
23 character to the extent allocated on the basis of
24 qualified capital interests in any upper-tier partner-
25 ship.

1 “(5) EXCEPTION FOR NO-SELF-CHARGED
2 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
3 cept as otherwise provided by the Secretary, an in-
4 terest shall not fail to be treated as satisfying the
5 requirement of paragraph (1)(A) merely because the
6 allocations made by the partnership to such interest
7 do not reflect the cost of services described in sub-
8 section (c)(1) which are provided (directly or indi-
9 rectly) to the partnership by the holder of such in-
10 terest (or a related person).

11 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the
12 case of any investment services partnership interest
13 any portion of which is a qualified capital interest,
14 subsection (b) shall not apply to so much of any
15 gain or loss as bears the same proportion to the en-
16 tire amount of such gain or loss as—

17 “(A) the distributive share of gain or loss
18 that would have been allocated to the qualified
19 capital interest (consistent with the require-
20 ments of paragraph (1)) if the partnership had
21 sold all of its assets at fair market value imme-
22 diately before the disposition, bears to

23 “(B) the distributive share of gain or loss
24 that would have been so allocated to the invest-

1 ment services partnership interest of which such
2 qualified capital interest is a part.

3 “(7) QUALIFIED CAPITAL INTEREST.—For pur-
4 poses of this subsection—

5 “(A) IN GENERAL.—The term ‘qualified
6 capital interest’ means so much of a partner’s
7 interest in the capital of the partnership as is
8 attributable to—

9 “(i) the fair market value of any
10 money or other property contributed to the
11 partnership in exchange for such interest
12 (determined without regard to section
13 752(a)),

14 “(ii) any amounts which have been in-
15 cluded in gross income under section 83
16 with respect to the transfer of such inter-
17 est, and

18 “(iii) the excess (if any) of—

19 “(I) any items of income and
20 gain taken into account under section
21 702 with respect to such interest, over

22 “(II) any items of deduction and
23 loss so taken into account.

24 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
25 INTEREST.—

1 “(i) DISTRIBUTIONS AND LOSSES.—
2 The qualified capital interest shall be re-
3 duced by distributions from the partner-
4 ship with respect to such interest and by
5 the excess (if any) of the amount described
6 in subparagraph (A)(iii)(II) over the
7 amount described in subparagraph
8 (A)(iii)(I).

9 “(ii) SPECIAL RULE FOR CONTRIBU-
10 TIONS OF PROPERTY.—In the case of any
11 contribution of property described in sub-
12 paragraph (A)(i) with respect to which the
13 fair market value of such property is not
14 equal to the adjusted basis of such prop-
15 erty immediately before such contribution,
16 proper adjustments shall be made to the
17 qualified capital interest to take into ac-
18 count such difference consistent with such
19 regulations or other guidance as the Sec-
20 retary may provide.

21 “(8) TREATMENT OF CERTAIN LOANS.—

22 “(A) PROCEEDS OF PARTNERSHIP LOANS
23 NOT TREATED AS QUALIFIED CAPITAL INTER-
24 EST OF SERVICE PROVIDING PARTNERS.—For
25 purposes of this subsection, an investment serv-

1 ices partnership interest shall not be treated as
2 a qualified capital interest to the extent that
3 such interest is acquired in connection with the
4 proceeds of any loan or other advance made or
5 guaranteed, directly or indirectly, by any other
6 partner or the partnership (or any person re-
7 lated to any such other partner or the partner-
8 ship). The preceding sentence shall not apply to
9 the extent the loan or other advance is repaid
10 before the date of the enactment of this section
11 unless such repayment is made with the pro-
12 ceeds of a loan or other advance described in
13 the preceding sentence.

14 “(B) REDUCTION IN ALLOCATIONS TO
15 QUALIFIED CAPITAL INTERESTS FOR LOANS
16 FROM NONSERVICE-PROVIDING PARTNERS TO
17 THE PARTNERSHIP.—For purposes of this sub-
18 section, any loan or other advance to the part-
19 nership made or guaranteed, directly or indi-
20 rectly, by a partner not providing services de-
21 scribed in subsection (c)(1) to the partnership
22 (or any person related to such partner) shall be
23 taken into account in determining the qualified
24 capital interests of the partners in the partner-
25 ship.

1 “(e) OTHER INCOME AND GAIN IN CONNECTION
2 WITH INVESTMENT MANAGEMENT SERVICES.—

3 “(1) IN GENERAL.—If—

4 “(A) a person performs (directly or indi-
5 rectly) investment management services for any
6 entity,

7 “(B) such person holds (directly or indi-
8 rectly) a disqualified interest with respect to
9 such entity, and

10 “(C) the value of such interest (or pay-
11 ments thereunder) is substantially related to
12 the amount of income or gain (whether or not
13 realized) from the assets with respect to which
14 the investment management services are per-
15 formed,

16 any income or gain with respect to such interest
17 shall be treated as ordinary income. Rules similar to
18 the rules of subsections (a)(4) and (d) shall apply
19 for purposes of this subsection.

20 “(2) DEFINITIONS.—For purposes of this sub-
21 section—

22 “(A) DISQUALIFIED INTEREST.—

23 “(i) IN GENERAL.—The term ‘dis-
24 qualified interest’ means, with respect to
25 any entity—

1 “(I) effectively connected with
2 the conduct of a trade or business in
3 the United States, or

4 “(II) subject to a comprehensive
5 foreign income tax (as defined in sec-
6 tion 457A(d)(2)).

7 “(C) INVESTMENT MANAGEMENT SERV-
8 ICES.—The term ‘investment management serv-
9 ices’ means a substantial quantity of any of the
10 services described in subsection (c)(1).

11 “(f) REGULATIONS.—The Secretary shall prescribe
12 such regulations or other guidance as is necessary or ap-
13 propriate to carry out the purposes of this section, includ-
14 ing regulations or other guidance to—

15 “(1) provide modifications to the application of
16 this section (including treating related persons as
17 not related to one another) to the extent such modi-
18 fication is consistent with the purposes of this sec-
19 tion,

20 “(2) prevent the avoidance of the purposes of
21 this section, and

22 “(3) coordinate this section with the other pro-
23 visions of this title.

24 “(g) SPECIAL RULES FOR INDIVIDUALS.—In the case
25 of an individual—

1 “(1) IN GENERAL.—Subsection (a)(1) shall
2 apply only to the applicable percentage of the net in-
3 come or net loss referred to in such subsection.

4 “(2) DISPOSITIONS, ETC.—The amount which
5 (but for this paragraph) would be treated as ordi-
6 nary income by reason of subsection (b) or (e) shall
7 be the applicable percentage of such amount.

8 “(3) PRO RATA ALLOCATION TO ITEMS.—For
9 purposes of applying subsections (a) and (e), the ag-
10 gregate amount treated as ordinary income for any
11 such taxable year shall be allocated ratably among
12 the items of income, gain, loss, and deduction taken
13 into account in determining such amount.

14 “(4) SPECIAL RULE FOR RECOGNITION OF
15 GAIN.—Gain which (but for this section) would not
16 be recognized shall be recognized by reason of sub-
17 section (b) only to the extent that such gain is treat-
18 ed as ordinary income after application of paragraph
19 (2).

20 “(5) COORDINATION WITH LIMITATION ON
21 LOSSES.—For purposes of applying paragraph (2) of
22 subsection (a) with respect to any net loss for any
23 taxable year—

1 “(A) such paragraph shall only apply with
2 respect to the applicable percentage of such net
3 loss for such taxable year,

4 “(B) in the case of a prior partnership tax-
5 able year referred to in clause (i) or (ii) of sub-
6 paragraph (A) of such paragraph, only the ap-
7 plicable percentage (as in effect for such prior
8 taxable year) of net income or net loss for such
9 prior partnership taxable year shall be taken
10 into account, and

11 “(C) any net loss carried forward to the
12 succeeding partnership taxable year under sub-
13 paragraph (B) of such paragraph shall—

14 “(i) be taken into account in such
15 succeeding year without reduction under
16 this subsection, and

17 “(ii) in lieu of being taken into ac-
18 count as an item of loss in such succeeding
19 year, shall be taken into account—

20 “(I) as an increase in net loss or
21 as a reduction in net income (includ-
22 ing below zero), as the case may be,
23 and

1 “(II) after any reduction in the
2 amount of such net loss or net income
3 under this subsection.

4 A rule similar to the rule of the preceding sentence
5 shall apply for purposes of subsection (b)(2)(A).

6 “(6) COORDINATION WITH TREATMENT OF
7 DIVIDENDS.—Subsection (a)(4) shall only apply to
8 the applicable percentage of dividends described
9 therein.

10 “(7) APPLICABLE PERCENTAGE.—For purposes
11 of this subsection—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraphs (B) and (C), the term ‘applica-
14 ble percentage’ means 75 percent.

15 “(B) EXCEPTION FOR DISPOSITION OF AS-
16 SETS HELD BY INVESTMENT SERVICES PART-
17 NERSHIPS AT LEAST 5 YEARS.—The applicable
18 percentage shall be 50 percent with respect to
19 any net income or net loss under subsection
20 (a)(1) which is properly allocable to gain or loss
21 from the disposition (or a distribution under
22 subsection (b)(5)) of any asset (other than an
23 investment services partnership interest) which
24 has been held by the investment services part-
25 nership for at least 5 years.

1 “(C) EXCEPTION FOR DISPOSITION OF IN-
2 VESTMENT SERVICES PARTNERSHIP INTERESTS
3 HELD AT LEAST 5 YEARS.—

4 “(i) IN GENERAL.—The applicable
5 percentage shall be 50 percent with respect
6 to—

7 “(I) net income or net loss under
8 subsection (a)(1) which is properly al-
9 locable to gain or loss from the dis-
10 position (or a distribution under sub-
11 section (b)(5)) of an investment serv-
12 ices partnership interest which has
13 been held at least 5 years, and

14 “(II) gain or loss under sub-
15 section (b) on the disposition of an in-
16 vestment services partnership interest
17 which has been held for at least 5
18 years,

19 but only to the extent such gain or loss is
20 attributable to assets held by the invest-
21 ment services partnership for at least 5
22 years.

23 “(ii) APPLICATION IN THE CASE OF
24 TIERED PARTNERSHIPS, ETC.—For pur-
25 poses of determining whether the assets of

1 the investment services partnership have
2 been held for at least 5 years under clause
3 (i), an investment services partnership
4 shall be treated as owning its propor-
5 tionate share of the property of any other
6 partnership in which it has held an invest-
7 ment services partnership interest for at
8 least 5 years.

9 “(iii) REGULATIONS.—The Secretary
10 may by regulation or other guidance ex-
11 tend the application of clause (ii) to enti-
12 ties other than investment services part-
13 nerships if necessary to prevent the avoid-
14 ance of the purposes of this subparagraph.

15 “(D) TREATMENT OF GOODWILL AND
16 OTHER SECTION 197 INTANGIBLES.—For pur-
17 poses of this paragraph, in the case of any sec-
18 tion 197 intangible of an entity through which
19 services described in subparagraphs (A)
20 through (D) of subsection (c)(1) are directly or
21 indirectly provided—

22 “(i) the holding period of such intan-
23 gible shall not be less than the holding pe-
24 riod of the investment services partnership
25 interest in the partnership, and

1 “(ii) the value of such intangible shall
2 be determined in a manner consistent with
3 the regulations described in subparagraph
4 (E).

5 “(E) VALUATION METHODS.—The Sec-
6 retary shall prescribe regulations or guidance
7 which provide—

8 “(i) the acceptable valuation methods
9 for purposes of this subparagraph, except
10 that such methods shall not include any
11 valuation method which is inconsistent
12 with the method used by the taxpayer for
13 other purposes (including reporting asset
14 valuations to partners or potential partners
15 in the partnership or any related partner-
16 ship) if such inconsistent valuation method
17 would result in the treatment of a greater
18 amount of gain as attributable to a section
19 197 intangible than would result under the
20 valuation method used by the taxpayer for
21 such other purposes,

22 “(ii) circumstances under which valu-
23 ations are sufficiently independent to pro-
24 vide an accurate determination of fair mar-
25 ket value, and

1 “(iii) any information required to be
2 furnished to the Secretary by the parties to
3 the disposition with respect to such valu-
4 ation.

5 “(F) DEFINITIONS AND SPECIAL RULES.—
6 For purposes of this paragraph—

7 “(i) INVESTMENT SERVICES PARTNER-
8 SHIP.—The term ‘investment services part-
9 nership’ means, with respect to any invest-
10 ment services partnership interest, the en-
11 tity in which such interest is held.

12 “(ii) SECTION 197 INTANGIBLE.—The
13 term ‘section 197 intangible’ has the
14 meaning given such term in section 197(d).

15 “(iii) APPLICATION TO DISQUALIFIED
16 INTERESTS.—Rules similar to the rules of
17 this paragraph shall apply with respect to
18 income or gain with respect to a disquali-
19 fied interest under subsection (e).

20 “(h) CROSS REFERENCE.—For 40 percent penalty on
21 certain underpayments due to the avoidance of this sec-
22 tion, see section 6662.”.

23 (b) TREATMENT FOR PURPOSES OF SECTION
24 7704.—Subsection (d) of section 7704 is amended by add-
25 ing at the end the following new paragraph:

1 “(6) INCOME FROM INVESTMENT SERVICES
2 PARTNERSHIP INTERESTS NOT QUALIFIED.—

3 “(A) IN GENERAL.—Items of income and
4 gain shall not be treated as qualifying income
5 if such items are treated as ordinary income by
6 reason of the application of section 710 (relat-
7 ing to special rules for partners providing in-
8 vestment management services to partnership).
9 The preceding sentence shall not apply to any
10 item described in paragraph (1)(E) (or so much
11 of paragraph (1)(F) as relates to paragraph
12 (1)(E)).

13 “(B) SPECIAL RULES FOR CERTAIN PART-
14 NERSHIPS.—

15 “(i) CERTAIN PARTNERSHIPS OWNED
16 BY REAL ESTATE INVESTMENT TRUSTS.—
17 Subparagraph (A) shall not apply in the
18 case of a partnership which meets each of
19 the following requirements:

20 “(I) Such partnership is treated
21 as publicly traded under this section
22 solely by reason of interests in such
23 partnership being convertible into in-
24 terests in a real estate investment
25 trust which is publicly traded.

1 “(II) 50 percent or more of the
2 capital and profits interests of such
3 partnership are owned, directly or in-
4 directly, at all times during the tax-
5 able year by such real estate invest-
6 ment trust (determined with the ap-
7 plication of section 267(c)).

8 “(III) Such partnership meets
9 the requirements of paragraphs (2),
10 (3), and (4) of section 856(c).

11 “(ii) CERTAIN PARTNERSHIPS OWN-
12 ING OTHER PUBLICLY TRADED PARTNER-
13 SHIPS.—Subparagraph (A) shall not apply
14 in the case of a partnership which meets
15 each of the following requirements:

16 “(I) Substantially all of the as-
17 sets of such partnership consist of in-
18 terests in one or more publicly traded
19 partnerships (determined without re-
20 gard to subsection (b)(2)).

21 “(II) Substantially all of the in-
22 come of such partnership is ordinary
23 income or section 1231 gain (as de-
24 fined in section 1231(a)(3)).

1 “(C) TRANSITIONAL RULE.—Subpara-
2 graph (A) shall not apply to any taxable year
3 of the partnership beginning before the date
4 which is 10 years after the date of the enact-
5 ment of this paragraph.”.

6 (c) IMPOSITION OF PENALTY ON UNDERPAY-
7 MENTS.—

8 (1) IN GENERAL.—Subsection (b) of section
9 6662 is amended by inserting after paragraph (7)
10 the following new paragraph:

11 “(8) The application of subsection (e) of section
12 710, the regulations or other guidance prescribed
13 under section 710(f) to prevent the avoidance of the
14 purposes of section 710, or the regulations or other
15 guidance prescribed under section 710(g)(7)(E).”.

16 (2) AMOUNT OF PENALTY.—

17 (A) IN GENERAL.—Section 6662 is amend-
18 ed by adding at the end the following new sub-
19 section:

20 “(k) INCREASE IN PENALTY IN CASE OF PROPERTY
21 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
22 ICES.—In the case of any portion of an underpayment to
23 which this section applies by reason of subsection (b)(8),
24 subsection (a) shall be applied with respect to such portion
25 by substituting ‘40 percent’ for ‘20 percent’.”.

1 (B) CONFORMING AMENDMENT.—Subpara-
2 graph (B) of section 6662A(e)(2) is amended
3 by striking “or (i)” and inserting “, (i), or (k)”.

4 (3) SPECIAL RULES FOR APPLICATION OF REA-
5 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
6 tion 6664 is amended—

7 (A) by redesignating paragraphs (3) and
8 (4) as paragraphs (4) and (5), respectively;

9 (B) by striking “paragraph (3)” in para-
10 graph (5)(A), as so redesignated, and inserting
11 “paragraph (4)”; and

12 (C) by inserting after paragraph (2) the
13 following new paragraph:

14 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
15 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
16 ICES.—

17 “(A) IN GENERAL.—Paragraph (1) shall
18 not apply to any portion of an underpayment to
19 which section 6662 applies by reason of sub-
20 section (b)(8) unless—

21 “(i) the relevant facts affecting the
22 tax treatment of the item are adequately
23 disclosed,

24 “(ii) there is or was substantial au-
25 thority for such treatment, and

1 “(iii) the taxpayer reasonably believed
2 that such treatment was more likely than
3 not the proper treatment.

4 “(B) RULES RELATING TO REASONABLE
5 BELIEF.—Rules similar to the rules of sub-
6 section (d)(3) shall apply for purposes of sub-
7 paragraph (A)(iii).”.

8 (d) INCOME AND LOSS FROM INVESTMENT SERVICES
9 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
10 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

11 (1) INTERNAL REVENUE CODE.—Section
12 1402(a) is amended by striking “and” at the end of
13 paragraph (16), by striking the period at the end of
14 paragraph (17) and inserting “; and”, and by insert-
15 ing after paragraph (17) the following new para-
16 graph:

17 “(18) notwithstanding the preceding provisions
18 of this subsection, in the case of any individual en-
19 gaged in the trade or business of providing services
20 described in section 710(c)(1) with respect to any
21 entity, any amount treated as ordinary income or or-
22 dinary loss of such individual under section 710 with
23 respect to such entity shall be taken into account in
24 determining the net earnings from self-employment
25 of such individual.”.

1 (2) SOCIAL SECURITY ACT.—Section 211(a) of
2 the Social Security Act is amended by striking
3 “and” at the end of paragraph (15), by striking the
4 period at the end of paragraph (16) and inserting “;
5 and”, and by inserting after paragraph (16) the fol-
6 lowing new paragraph:

7 “(17) Notwithstanding the preceding provisions
8 of this subsection, in the case of any individual en-
9 gaged in the trade or business of providing services
10 described in section 710(c)(1) of the Internal Rev-
11 enue Code of 1986 with respect to any entity, any
12 amount treated as ordinary income or ordinary loss
13 of such individual under section 710 of such Code
14 with respect to such entity shall be taken into ac-
15 count in determining the net earnings from self-em-
16 ployment of such individual.”.

17 (e) CONFORMING AMENDMENTS.—

18 (1) Subsection (d) of section 731 is amended by
19 inserting “section 710(b)(4) (relating to distribu-
20 tions of partnership property),” after “to the extent
21 otherwise provided by”.

22 (2) Section 741 is amended by inserting “or
23 section 710 (relating to special rules for partners
24 providing investment management services to part-
25 nership)” before the period at the end.

1 (3) The table of sections for part I of sub-
2 chapter K of chapter 1 is amended by adding at the
3 end the following new item:

 “Sec. 710. Special rules for partners providing investment management services
 to partnership.”.

4 (f) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as otherwise pro-
6 vided in this subsection, the amendments made by
7 this section shall apply to taxable years ending after
8 December 31, 2010.

9 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
10 CLUDE EFFECTIVE DATE.—In applying section
11 710(a) of the Internal Revenue Code of 1986 (as
12 added by this section) in the case of any partnership
13 taxable year which includes December 31, 2010, the
14 amount of the net income referred to in such section
15 shall be treated as being the lesser of the net income
16 for the entire partnership taxable year or the net in-
17 come determined by only taking into account items
18 attributable to the portion of the partnership taxable
19 year which is after such date.

20 (3) DISPOSITIONS OF PARTNERSHIP INTER-
21 ESTS.—Section 710(b) of the Internal Revenue Code
22 of 1986 (as added by this section) shall apply to dis-
23 positions and distributions after December 31, 2010.

1 (4) OTHER INCOME AND GAIN IN CONNECTION
2 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
3 tion 710(e) of such Code (as added by this section)
4 shall take effect on December 31, 2010.

5 **Subtitle C—Corporate Provisions**

6 **SEC. 421. TREATMENT OF SECURITIES OF A CONTROLLED** 7 **CORPORATION EXCHANGED FOR ASSETS IN** 8 **CERTAIN REORGANIZATIONS.**

9 (a) IN GENERAL.—Section 361 (relating to non-
10 recognition of gain or loss to corporations; treatment of
11 distributions) is amended by adding at the end the fol-
12 lowing new subsection:

13 “(d) SPECIAL RULES FOR TRANSACTIONS INVOLVING
14 SECTION 355 DISTRIBUTIONS.—In the case of a reorga-
15 nization described in section 368(a)(1)(D) with respect to
16 which stock or securities of the corporation to which the
17 assets are transferred are distributed in a transaction
18 which qualifies under section 355—

19 “(1) this section shall be applied by substituting
20 ‘stock other than nonqualified preferred stock (as
21 defined in section 351(g)(2))’ for ‘stock or securities’
22 in subsections (a) and (b)(1), and

23 “(2) the first sentence of subsection (b)(3) shall
24 apply only to the extent that the sum of the money
25 and the fair market value of the other property

1 transferred to such creditors does not exceed the ad-
2 justed bases of such assets transferred (reduced by
3 the amount of the liabilities assumed (within the
4 meaning of section 357(c)).”.

5 (b) CONFORMING AMENDMENT.—Paragraph (3) of
6 section 361(b) is amended by striking the last sentence.

7 (c) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to exchanges after the date of the enact-
11 ment of this Act.

12 (2) TRANSITION RULE.—The amendments
13 made by this section shall not apply to any exchange
14 pursuant to a transaction which is—

15 (A) made pursuant to a written agreement
16 which was binding on March 15, 2010, and at
17 all times thereafter;

18 (B) described in a ruling request submitted
19 to the Internal Revenue Service on or before
20 such date; or

21 (C) described on or before such date in a
22 public announcement or in a filing with the Se-
23 curities and Exchange Commission.

1 **SEC. 422. TAXATION OF BOOT RECEIVED IN REORGANIZA-**
2 **TIONS.**

3 (a) IN GENERAL.—Paragraph (2) of section 356(a)
4 is amended—

5 (1) by striking “If an exchange” and inserting
6 “Except as otherwise provided by the Secretary—

7 “(A) IN GENERAL.—If an exchange”;

8 (2) by striking “then there shall be” and all
9 that follows through “February 28, 1913” and in-
10 sserting “then the amount of other property or
11 money shall be treated as a dividend to the extent
12 of the earnings and profits of the corporation”; and

13 (3) by adding at the end the following new sub-
14 paragraph:

15 “(B) CERTAIN REORGANIZATIONS.—In the
16 case of a reorganization described in section
17 368(a)(1)(D) to which section 354(b)(1) applies
18 or any other reorganization specified by the
19 Secretary, in applying subparagraph (A)—

20 “(i) the earnings and profits of each
21 corporation which is a party to the reorga-
22 nization shall be taken into account, and

23 “(ii) the amount which is a dividend
24 (and source thereof) shall be determined
25 under rules similar to the rules of para-
26 graphs (2) and (5) of section 304(b).”.

1 (b) EARNINGS AND PROFITS.—Paragraph (7) of sec-
2 tion 312(n) is amended by adding at the end the following:
3 “A similar rule shall apply to an exchange to which section
4 356(a)(1) applies.”.

5 (c) CONFORMING AMENDMENT.—Paragraph (1) of
6 section 356(a) is amended by striking “then the gain” and
7 inserting “then (except as provided in paragraph (2)) the
8 gain”.

9 (d) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to exchanges after the date of the enact-
13 ment of this Act.

14 (2) TRANSITION RULE.—The amendments
15 made by this section shall not apply to any exchange
16 between unrelated persons pursuant to a transaction
17 which is—

18 (A) made pursuant to a written agreement
19 which was binding on May 20, 2010, and at all
20 times thereafter;

21 (B) described in a ruling request submitted
22 to the Internal Revenue Service on or before
23 such date; or

1 (C) described in a public announcement or
2 filing with the Securities and Exchange Com-
3 mission on or before such date.

4 (3) RELATED PERSONS.—For purposes of this
5 subsection, a person shall be treated as related to
6 another person if the relationship between such per-
7 sons is described in section 267 or 707(b) of the In-
8 ternal Revenue Code of 1986.

9 **Subtitle D—Other Provisions**

10 **SEC. 431. MODIFICATIONS WITH RESPECT TO OIL SPILL LI-** 11 **ABILITY TRUST FUND.**

12 (a) EXTENSION OF APPLICATION OF OIL SPILL LI-
13 ABILITY TRUST FUND FINANCING RATE.—Paragraph (2)
14 of section 4611(f) is amended by striking “December 31,
15 2017” and inserting “December 31, 2020”.

16 (b) INCREASE IN OIL SPILL LIABILITY TRUST FUND
17 FINANCING RATE.—Subparagraph (B) of section
18 4611(c)(2) is amended to read as follows:

19 “(B) the Oil Spill Liability Trust Fund fi-
20 nancing rate is 69 cents a barrel.”.

21 (c) INCREASE IN PER INCIDENT LIMITATIONS ON
22 EXPENDITURES.—Subparagraph (A) of section
23 9509(c)(2) is amended—

24 (1) by striking “\$1,000,000,000” in clause (i)
25 and inserting “\$5,000,000,000”;

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

3 (3) by striking “\$1,000,000,000 PER INCIDENT,
4 ETC” in the heading and inserting “PER INCIDENT
5 LIMITATIONS”.

6 (d) EFFECTIVE DATE.—

7 (1) EXTENSION OF FINANCING RATE.—Except
8 as provided in paragraph (2), the amendments made
9 by this section shall take effect on the date of the
10 enactment of this Act.

11 (2) INCREASE IN FINANCING RATE.—The
12 amendment made by subsection (b) shall apply to
13 crude oil received and petroleum products entered
14 during calendar quarters beginning more than 60
15 days after the date of the enactment of this Act.

16 **SEC. 432. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.**

17 (a) DISALLOWANCE OF DEDUCTION FOR PUNITIVE
18 DAMAGES.—

19 (1) IN GENERAL.—Section 162(g) (relating to
20 treble damage payments under the antitrust laws) is
21 amended—

22 (A) by redesignating paragraphs (1) and
23 (2) as subparagraphs (A) and (B), respectively,

24 (B) by striking “If” and inserting:

25 “(1) TREBLE DAMAGES.—If”, and

1 (C) by adding at the end the following new
2 paragraph:

3 “(2) PUNITIVE DAMAGES.—No deduction shall
4 be allowed under this chapter for any amount paid
5 or incurred for punitive damages in connection with
6 any judgment in, or settlement of, any action. This
7 paragraph shall not apply to punitive damages de-
8 scribed in section 104(c).”.

9 (2) CONFORMING AMENDMENT.—The heading
10 for section 162(g) is amended by inserting “OR PU-
11 NITIVE DAMAGES” after “LAWS”.

12 (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES
13 PAID BY INSURER OR OTHERWISE.—

14 (1) IN GENERAL.—Part II of subchapter B of
15 chapter 1 (relating to items specifically included in
16 gross income) is amended by adding at the end the
17 following new section:

18 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
19 **ANCE OR OTHERWISE.**

20 “Gross income shall include any amount paid to or
21 on behalf of a taxpayer as insurance or otherwise by rea-
22 son of the taxpayer’s liability (or agreement) to pay puni-
23 tive damages.”.

1 (2) REPORTING REQUIREMENTS.—Section 6041
2 (relating to information at source) is amended by
3 adding at the end the following new subsection:

4 “(h) SECTION TO APPLY TO PUNITIVE DAMAGES
5 COMPENSATION.—This section shall apply to payments by
6 a person to or on behalf of another person as insurance
7 or otherwise by reason of the other person’s liability (or
8 agreement) to pay punitive damages.”.

9 (3) CONFORMING AMENDMENT.—The table of
10 sections for part II of subchapter B of chapter 1 is
11 amended by adding at the end the following new
12 item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to damages paid or incurred after
15 December 31, 2011.

16 **TITLE V—HEALTH AND OTHER** 17 **ASSISTANCE**

18 **SEC. 501. EXTENSION OF SECTION 508 RECLASSIFICATIONS.**

19 (a) IN GENERAL.—Section 106(a) of division B of
20 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
21 1395 note), as amended by section 117 of the Medicare,
22 Medicaid, and SCHIP Extension Act of 2007 (Public Law
23 110–173), section 124 of the Medicare Improvements for
24 Patients and Providers Act of 2008 (Public Law 110–
25 275), and sections 3137(a) and 10317 of Public Law 111–

1 148, is amended by striking “September 30, 2010” and
2 inserting “September 30, 2011”.

3 (b) CONFORMING AMENDMENT.—Section 117(a)(3)
4 of the Medicare, Medicaid, and SCHIP Extension Act of
5 2007 (Public Law 110–173), is amended by inserting “in
6 fiscal years 2008 and 2009” after “For purposes of imple-
7 mentation of this subsection”.

8 **SEC. 502. REPEAL OF DELAY OF RUG-IV.**

9 Effective as if included in the enactment of Public
10 Law 111–148, section 10325 of such Act is repealed.

11 **SEC. 503. LIMITATION ON REASONABLE COSTS PAYMENTS**
12 **FOR CERTAIN CLINICAL DIAGNOSTIC LAB-**
13 **ORATORY TESTS FURNISHED TO HOSPITAL**
14 **PATIENTS IN CERTAIN RURAL AREAS.**

15 Section 3122 of Public Law 111–148 is repealed and
16 the provision of law amended by such section is restored
17 as if such section had not been enacted.

18 **SEC. 504. FUNDING FOR CLAIMS REPROCESSING.**

19 For purposes of carrying out the provisions of, and
20 amendments made by, this Act that relate to title XVIII
21 of the Social Security Act, and other provisions of such
22 title that involve reprocessing of claims, there are appro-
23 priated to the Secretary of Health and Human Services
24 for the Centers for Medicare & Medicaid Services Program
25 Management Account, from amounts in the general fund

1 of the Treasury not otherwise appropriated,
2 \$175,000,000. Amounts appropriated under the preceding
3 sentence shall remain available until expended.

4 **SEC. 505. MEDICAID AND CHIP TECHNICAL CORRECTIONS.**

5 (a) REPEAL OF EXCLUSION OF CERTAIN INDIVID-
6 UALS AND ENTITIES FROM MEDICAID.—Section 6502 of
7 Public Law 111–148 is repealed and the provisions of law
8 amended by such section are restored as if such section
9 had never been enacted. Nothing in the previous sentence
10 shall affect the execution or placement of the insertion
11 made by section 6503 of such Act.

12 (b) INCOME LEVEL FOR CERTAIN CHILDREN UNDER
13 MEDICAID.—Effective as if included in the enactment of
14 Public Law 111–148, section 2001(a)(5)(B) of such Act
15 is amended by striking all that follows “is amended” and
16 inserting the following: “by inserting after ‘100 percent’
17 the following: ‘(or, beginning January 1, 2014, 133 per-
18 cent)’.”.

19 (c) CALCULATION AND PUBLICATION OF PAYMENT
20 ERROR RATE MEASUREMENT FOR CERTAIN YEARS.—
21 Section 601(b) of the Children’s Health Insurance Pro-
22 gram Reauthorization Act of 2009 (Public Law 111–3)
23 is amended by adding at the end the following: “The Sec-
24 retary is not required under this subsection to calculate

1 or publish a national or a State-specific error rate for fis-
2 cal year 2009 or fiscal year 2010.”.

3 (d) CORRECTIONS TO EXCEPTIONS TO EXCLUSION
4 OF CHILDREN OF CERTAIN EMPLOYEES.—Section
5 2110(b)(6) of the Social Security Act (42 U.S.C.
6 1397jj(b)(6)) is amended—

7 (1) in subparagraph (B)—

8 (A) by striking “PER PERSON” in the
9 heading; and

10 (B) by striking “each employee” and in-
11 sserting “employees”; and

12 (2) in subparagraph (C), by striking “, on a
13 case-by-case basis,”.

14 (e) ELECTRONIC HEALTH RECORDS.—Effective as if
15 included in the enactment of section 4201(a)(2) of the
16 American Recovery and Reinvestment Act of 2009 (Public
17 Law 111–5), section 1903(t) of the Social Security Act
18 (42 U.S.C. 1396b(t)) is amended—

19 (1) in paragraph (3)(E), by striking “reduced
20 by any payment that is made to such Medicaid pro-
21 vider from any other source (other than under this
22 subsection or by a State or local government)” and
23 inserting “reduced by the average payment the Sec-
24 retary estimates will be made to such Medicaid pro-
25 viders (determined on a percentage or other basis

1 for such classes or types of providers as the Sec-
2 retary may specify) from other sources (other than
3 under this subsection, or by the Federal government
4 or a State or local government)”; and

5 (2) in paragraph (6)(B), by inserting before the
6 period the following: “and shall be determined to
7 have met such responsibility to the extent that the
8 payment to the Medicaid provider is not in excess of
9 85 percent of the net average allowable cost”.

10 (f) NATIVE AMERICAN TECHNICAL CORRECTION.—
11 Effective as if included in the enactment of the Patient
12 Protection and Affordable Care Act (Public Law 111–
13 148), section 1101(d)(2) of such Act (42 U.S.C.
14 18001(d)(2)) is amended by inserting after “of this Act”
15 the following: “but applied without regard to subpara-
16 graph (F) of such section”.

17 (g) CORRECTIONS OF DESIGNATIONS.—

18 (1) Section 1902 of the Social Security Act (42
19 U.S.C. 1396a) is amended—

20 (A) in subsection (a)(10), in the matter
21 following subparagraph (G), by striking “and”
22 before “(XVI) the medical” and by striking
23 “(XVI) if” and inserting “(XVII) if”; and

24 (B) in subsection (ii)(2), by striking
25 “(XV)” and inserting “(XVI)”.

1 (2) Section 2107(e)(1) of the Social Security
2 Act (42 U.S.C. 1397gg(e)(1)) is amended by redesi-
3 gnating the subparagraph (N) of that section added
4 by 2101(e) of Public Law 111–148 as subparagraph
5 (O).

6 **SEC. 506. ADDITION OF INPATIENT DRUG DISCOUNT PRO-**
7 **GRAM TO 340B DRUG DISCOUNT PROGRAM.**

8 (a) ADDITION OF INPATIENT DRUG DISCOUNT.—
9 Title III of the Public Health Service Act is amended by
10 inserting after section 340B (42 U.S.C. 256b) the fol-
11 lowing:

12 **“SEC. 340B-1. DISCOUNT INPATIENT DRUGS FOR INDIVID-**
13 **UALS WITHOUT PRESCRIPTION DRUG COV-**
14 **ERAGE.**

15 “(a) REQUIREMENTS FOR AGREEMENTS WITH THE
16 SECRETARY.—

17 “(1) IN GENERAL.—

18 “(A) AGREEMENT.—The Secretary shall
19 enter into an agreement with each manufac-
20 turer of covered inpatient drugs under which
21 the amount required to be paid (taking into ac-
22 count any rebate or discount, as provided by
23 the Secretary) to the manufacturer for covered
24 inpatient drugs (other than drugs described in
25 paragraph (3)) purchased by a covered entity

1 on or after January 1, 2011, does not exceed
2 an amount equal to the average manufacturer
3 price for the drug under title XIX of the Social
4 Security Act in the preceding calendar quarter,
5 reduced by the rebate percentage described in
6 paragraph (2). For a covered inpatient drug
7 that also is a covered outpatient drug under
8 section 340B, the amount required to be paid
9 under the preceding sentence shall be equal to
10 the amount required to be paid under section
11 340B(a)(1) for such drug. The agreement with
12 a manufacturer under this subparagraph may,
13 at the discretion of the Secretary, be included
14 in the agreement with the same manufacturer
15 under section 340B.

16 “(B) CEILING PRICE.—Each such agree-
17 ment shall require that the manufacturer fur-
18 nish the Secretary with reports, on a quarterly
19 basis, of the price for each covered inpatient
20 drug subject to the agreement that, according
21 to the manufacturer, represents the maximum
22 price that covered entities may permissibly be
23 required to pay for the drug (referred to in this
24 section as the ‘ceiling price’), and shall require
25 that the manufacturer offer each covered entity

1 covered inpatient drugs for purchase at or
2 below the applicable ceiling price if such drug
3 is made available to any other purchaser at any
4 price.

5 “(C) ALLOCATION METHOD.—Each such
6 agreement shall require that, if the supply of a
7 covered inpatient drug is insufficient to meet
8 demand, then the manufacturer may use an al-
9 location method that is reported in writing to,
10 and approved by, the Secretary and does not
11 discriminate on the basis of the price paid by
12 covered entities or on any other basis related to
13 the participation of an entity in the program
14 under this section.

15 “(2) REBATE PERCENTAGE DEFINED.—

16 “(A) IN GENERAL.—For a covered inpa-
17 tient drug purchased in a calendar quarter, the
18 ‘rebate percentage’ is the amount (expressed as
19 a percentage) equal to—

20 “(i) the average total rebate required
21 under section 1927(c) of the Social Secu-
22 rity Act (or the average total rebate that
23 would be required if the drug were a cov-
24 ered outpatient drug under such section)
25 with respect to the drug (for a unit of the

1 dosage form and strength involved) during
2 the preceding calendar quarter; divided by
3 “(ii) the average manufacturer price
4 for such a unit of the drug during such
5 quarter.

6 “(B) OVER THE COUNTER DRUGS.—

7 “(i) IN GENERAL.—For purposes of
8 subparagraph (A), in the case of over the
9 counter drugs, the ‘rebate percentage’ shall
10 be determined as if the rebate required
11 under section 1927(c) of the Social Secu-
12 rity Act is based on the applicable percent-
13 age provided under section 1927(c)(3) of
14 such Act.

15 “(ii) DEFINITION.—The term ‘over
16 the counter drug’ means a drug that may
17 be sold without a prescription and which is
18 prescribed by a physician (or other persons
19 authorized to prescribe such drug under
20 State law).

21 “(3) DRUGS PROVIDED UNDER STATE MED-
22 ICAID PLANS.—Drugs described in this paragraph
23 are drugs purchased by the entity for which payment
24 is made by the State under the State plan for med-

1 ical assistance under title XIX of the Social Security
2 Act.

3 “(4) REQUIREMENTS FOR COVERED ENTI-
4 TIES.—

5 “(A) PROHIBITING DUPLICATE DISCOUNTS
6 OR REBATES.—

7 “(i) IN GENERAL.—A covered entity
8 shall not request payment under title XIX
9 of the Social Security Act for medical as-
10 sistance described in section 1905(a)(12)
11 of such Act with respect to a covered inpa-
12 tient drug that is subject to an agreement
13 under this section if the drug is subject to
14 the payment of a rebate to the State under
15 section 1927 of such Act.

16 “(ii) ESTABLISHMENT OF MECHA-
17 NISM.—The Secretary shall establish a
18 mechanism to ensure that covered entities
19 comply with clause (i). If the Secretary
20 does not establish a mechanism under the
21 previous sentence within 12 months of the
22 enactment of this section, the requirements
23 of section 1927(a)(5)(C) of the Social Se-
24 curity Act shall apply.

1 “(iii) PROHIBITING DISCLOSURE TO
2 GROUP PURCHASING ORGANIZATIONS.—In
3 the event that a covered entity is a mem-
4 ber of a group purchasing organization,
5 such entity shall not disclose the price or
6 any other information pertaining to any
7 purchases under this section directly or in-
8 directly to such group purchasing organi-
9 zation.

10 “(B) PROHIBITING RESALE, DISPENSING,
11 OR ADMINISTRATION OF DRUGS EXCEPT TO
12 CERTAIN PATIENTS.—With respect to any cov-
13 ered inpatient drug that is subject to an agree-
14 ment under this subsection, a covered entity
15 shall not dispense, administer, resell, or other-
16 wise transfer the covered inpatient drug to a
17 person unless—

18 “(i) such person is an inpatient of the
19 entity; and

20 “(ii) such person does not have health
21 plan coverage (as defined in subsection
22 (c)(3)) that provides prescription drug cov-
23 erage in the inpatient setting with respect
24 to such covered inpatient drug.

1 For purposes of clause (ii), a person shall be
2 treated as having health plan coverage (as de-
3 fined in subsection (c)(3)) with respect to a cov-
4 ered inpatient drug if benefits are not payable
5 under such coverage with respect to such drug
6 for reasons such as the application of a deduct-
7 ible or cost sharing or the use of utilization
8 management.

9 “(C) AUDITING.—A covered entity shall
10 permit the Secretary and the manufacturer of a
11 covered inpatient drug that is subject to an
12 agreement under this subsection with the entity
13 (acting in accordance with procedures estab-
14 lished by the Secretary relating to the number,
15 duration, and scope of audits) to audit at the
16 Secretary’s or the manufacturer’s expense the
17 records of the entity that directly pertain to the
18 entity’s compliance with the requirements de-
19 scribed in subparagraph (A) or (B) with respect
20 to drugs of the manufacturer. The use or dis-
21 closure of information for performance of such
22 an audit shall be treated as a use or disclosure
23 required by law for purposes of section
24 164.512(a) of title 45, Code of Federal Regula-
25 tions.

1 “(D) ADDITIONAL SANCTION FOR NON-
2 COMPLIANCE.—If the Secretary finds, after no-
3 tice and hearing, that a covered entity is in vio-
4 lation of a requirement described in subpara-
5 graph (A) or (B), the covered entity shall be
6 liable to the manufacturer of the covered inpa-
7 tient drug that is the subject of the violation in
8 an amount equal to the reduction in the price
9 of the drug (as described in subparagraph (A))
10 provided under the agreement between the Sec-
11 retary and the manufacturer under this sub-
12 section.

13 “(E) MAINTENANCE OF RECORDS.—

14 “(i) IN GENERAL.—A covered entity
15 shall establish and maintain an effective
16 recordkeeping system to comply with this
17 section and shall certify to the Secretary
18 that such entity is in compliance with sub-
19 paragraphs (A) and (B). The Secretary
20 shall require that hospitals that purchase
21 covered inpatient drugs for inpatient dis-
22 pensing or administration under this sub-
23 section appropriately segregate inventory
24 of such covered inpatient drugs, either
25 physically or electronically, from drugs for

1 outpatient use, as well as from drugs for
2 inpatient dispensing or administration to
3 individuals who have (for purposes of sub-
4 paragraph (B)) health plan coverage de-
5 scribed in clause (ii) of such subparagraph.

6 “(ii) CERTIFICATION OF NO THIRD-
7 PARTY PAYER.—A covered entity shall
8 maintain records that contain certification
9 by the covered entity that no third party
10 payment was received for any covered in-
11 patient drug that is subject to an agree-
12 ment under this subsection and that was
13 dispensed to an inpatient.

14 “(5) TREATMENT OF DISTINCT UNITS OF HOS-
15 PITALS.—In the case of a covered entity that is a
16 distinct part of a hospital, the distinct part of the
17 hospital shall not be considered a covered entity
18 under this subsection unless the hospital is otherwise
19 a covered entity under this subsection.

20 “(6) NOTICE TO MANUFACTURERS.—The Sec-
21 retary shall notify manufacturers of covered inpa-
22 tient drugs and single State agencies under section
23 1902(a)(5) of the Social Security Act of the identi-
24 ties of covered entities under this subsection, and of
25 entities that no longer meet the requirements of

1 paragraph (4), by means of timely updates of the
2 Internet website supported by the Department of
3 Health and Human Services relating to this section.

4 “(7) NO PROHIBITION ON LARGER DISCOUNT.—
5 Nothing in this subsection shall prohibit a manufac-
6 turer from charging a price for a drug that is lower
7 than the maximum price that may be charged under
8 paragraph (1).

9 “(b) COVERED ENTITY DEFINED.—In this section,
10 the term ‘covered entity’ means an entity that meets the
11 requirements described in subsection (a)(4) that has ap-
12 plied for and enrolled in the program described under this
13 section and is one of the following:

14 “(1) A subsection (d) hospital (as defined in
15 section 1886(d)(1)(B) of the Social Security Act)
16 that—

17 “(A) is owned or operated by a unit of
18 State or local government, is a public or private
19 non-profit corporation which is formally granted
20 governmental powers by a unit of State or local
21 government, or is a private nonprofit hospital
22 which has a contract with a State or local gov-
23 ernment to provide health care services to low
24 income individuals who are not entitled to bene-
25 fits under title XVIII of the Social Security Act

1 or eligible for assistance under the State plan
2 for medical assistance under title XIX of such
3 Act; and

4 “(B) for the most recent cost reporting pe-
5 riod that ended before the calendar quarter in-
6 volved, had a disproportionate share adjustment
7 percentage (as determined using the method-
8 ology under section 1886(d)(5)(F) of the Social
9 Security Act as in effect on the date of enact-
10 ment of this section) greater than 20.20 percent
11 or was described in section 1886(d)(5)(F)(i)(II)
12 of such Act (as so in effect on the date of en-
13 actment of this section).

14 “(2) A children’s hospital excluded from the
15 Medicare prospective payment system pursuant to
16 section 1886(d)(1)(B)(iii) of the Social Security Act
17 that would meet the requirements of paragraph (1),
18 including the disproportionate share adjustment per-
19 centage requirement under subparagraph (B) of
20 such paragraph, if the hospital were a subsection (d)
21 hospital as defined by section 1886(d)(1)(B) of the
22 Social Security Act.

23 “(3) A free-standing cancer hospital excluded
24 from the Medicare prospective payment system pur-
25 suant to section 1886(d)(1)(B)(v) of the Social Se-

1 security Act that would meet the requirements of
2 paragraph (1), including the disproportionate share
3 adjustment percentage requirement under subpara-
4 graph (B) of such paragraph, if the hospital were a
5 subsection (d) hospital as defined by section
6 1886(d)(1)(B) of the Social Security Act.

7 “(4) An entity that is a critical access hospital
8 (as determined under section 1820(c)(2) of the So-
9 cial Security Act), and that meets the requirements
10 of paragraph (1)(A).

11 “(5) An entity that is a rural referral center, as
12 defined by section 1886(d)(5)(C)(i) of the Social Se-
13 curity Act, or a sole community hospital, as defined
14 by section 1886(d)(5)(C)(iii) of such Act, and that
15 both meets the requirements of paragraph (1)(A)
16 and has a disproportionate share adjustment per-
17 centage equal to or greater than 8 percent.

18 “(c) OTHER DEFINITIONS.—In this section:

19 “(1) AVERAGE MANUFACTURER PRICE.—

20 “(A) IN GENERAL.—The term ‘average
21 manufacturer price’—

22 “(i) has the meaning given such term
23 in section 1927(k) of the Social Security
24 Act, except that such term shall be applied
25 under this section with respect to covered

1 inpatient drugs in the same manner (as
2 applicable) as such term is applied under
3 such section 1927(k) with respect to cov-
4 ered outpatient drugs (as defined in such
5 section); and

6 “(ii) with respect to a covered inpa-
7 tient drug for which there is no average
8 manufacturer price (as defined in clause
9 (i)), shall be the amount determined under
10 regulations promulgated by the Secretary
11 under subparagraph (B).

12 “(B) RULEMAKING.—The Secretary shall
13 by regulation, in consultation with the Adminis-
14 trator of the Centers for Medicare & Medicaid
15 Services, establish a method for determining the
16 average manufacturer price for covered inpa-
17 tient drugs for which there is no average manu-
18 facturer price (as defined in subparagraph
19 (A)(i)). Regulations promulgated with respect
20 to covered inpatient drugs under the preceding
21 sentence shall provide for the application of
22 methods for determining the average manufac-
23 turer price that are the same as the methods
24 used to determine such price in calculating re-
25 bates required for such drugs under an agree-

1 “(C) coverage under a Federal health care
2 program (as defined by section 1128B(f) of the
3 Social Security Act); or

4 “(D) such other health benefits coverage
5 as the Secretary recognizes for purposes of this
6 section.

7 “(4) MANUFACTURER.—The term ‘manufac-
8 turer’ has the meaning given such term in section
9 1927(k) of the Social Security Act.

10 “(d) PROGRAM INTEGRITY.—

11 “(1) MANUFACTURER COMPLIANCE.—

12 “(A) IN GENERAL.—From amounts appro-
13 priated under subsection (f), the Secretary shall
14 provide for improvements in compliance by
15 manufacturers with the requirements of this
16 section in order to prevent overcharges and
17 other violations of the discounted pricing re-
18 quirements specified in this section.

19 “(B) IMPROVEMENTS.—The improvements
20 described in subparagraph (A) shall include the
21 following:

22 “(i) The establishment of a process to
23 enable the Secretary to verify the accuracy
24 of ceiling prices calculated by manufactur-
25 ers under subsection (a)(1) and charged to

1 covered entities, which shall include the
2 following:

3 “(I) Developing and publishing
4 through an appropriate policy or regu-
5 latory issuance, precisely defined
6 standards and methodology for the
7 calculation of ceiling prices under
8 such subsection.

9 “(II) Comparing regularly the
10 ceiling prices calculated by the Sec-
11 retary with the quarterly pricing data
12 that is reported by manufacturers to
13 the Secretary.

14 “(III) Conducting periodic moni-
15 toring of sales transactions by covered
16 entities.

17 “(IV) Inquiring into any discrep-
18 ancies between ceiling prices and
19 manufacturer pricing data that may
20 be identified and taking, or requiring
21 manufacturers to take, corrective ac-
22 tion in response to such discrepancies,
23 including the issuance of refunds pur-
24 suant to the procedures set forth in
25 clause (ii).

1 “(ii) The establishment of procedures
2 for manufacturers to issue refunds to cov-
3 ered entities in the event that there is an
4 overcharge by the manufacturers, including
5 the following:

6 “(I) Providing the Secretary with
7 an explanation of why and how the
8 overcharge occurred, how the refunds
9 will be calculated, and to whom the
10 refunds will be issued.

11 “(II) Oversight by the Secretary
12 to ensure that the refunds are issued
13 accurately and within a reasonable pe-
14 riod of time.

15 “(iii) The provision of access through
16 the Internet website supported by the De-
17 partment of Health and Human Services
18 to the applicable ceiling prices for covered
19 inpatient drugs as calculated and verified
20 by the Secretary in accordance with this
21 section, in a manner (such as through the
22 use of password protection) that limits
23 such access to covered entities and ade-
24 quately assures security and protection of

1 privileged pricing data from unauthorized
2 re-disclosure.

3 “(iv) The development of a mecha-
4 nism by which—

5 “(I) rebates, discounts, or other
6 price concessions provided by manu-
7 facturers to other purchasers subse-
8 quent to the sale of covered inpatient
9 drugs to covered entities are reported
10 to the Secretary; and

11 “(II) appropriate credits and re-
12 funds are issued to covered entities if
13 such discounts, rebates, or other price
14 concessions have the effect of lowering
15 the applicable ceiling price for the rel-
16 evant quarter for the drugs involved.

17 “(v) Selective auditing of manufactur-
18 ers and wholesalers to ensure the integrity
19 of the drug discount program under this
20 section.

21 “(vi) The establishment of a require-
22 ment that manufacturers and wholesalers
23 use the identification system developed by
24 the Secretary for purposes of facilitating
25 the ordering, purchasing, and delivery of

1 covered inpatient drugs under this section,
2 including the processing of chargebacks for
3 such drugs.

4 “(vii) The imposition of sanctions in
5 the form of civil monetary penalties,
6 which—

7 “(I) shall be assessed according
8 to standards and procedures estab-
9 lished in regulations to be promul-
10 gated by the Secretary not later than
11 January 1, 2011;

12 “(II) shall not exceed \$10,000
13 per single dosage form of a covered
14 inpatient drug purchased by a covered
15 entity where a manufacturer know-
16 ingly charges such covered entity a
17 price for such drug that exceeds the
18 ceiling price under subsection (a)(1);
19 and

20 “(III) shall not exceed \$100,000
21 for each instance where a manufac-
22 turer withholds or provides materially
23 false information to the Secretary or
24 to covered entities under this section
25 or knowingly violates any provision of

1 this section (other than subsection
2 (a)(1)).

3 “(2) COVERED ENTITY COMPLIANCE.—

4 “(A) IN GENERAL.—From amounts appro-
5 priated under subsection (f), the Secretary shall
6 provide for improvements in compliance by cov-
7 ered entities with the requirements of this sec-
8 tion in order to prevent diversion and violations
9 of the duplicate discount provision and other re-
10 quirements specified under subsection (a)(4).

11 “(B) IMPROVEMENTS.—The improvements
12 described in subparagraph (A) shall include the
13 following:

14 “(i) The development of procedures to
15 enable and require covered entities to up-
16 date at least annually the information on
17 the Internet website supported by the De-
18 partment of Health and Human Services
19 relating to this section.

20 “(ii) The development of procedures
21 for the Secretary to verify the accuracy of
22 information regarding covered entities that
23 is listed on the website described in clause
24 (i).

1 lished in regulations promulgated by
2 the Secretary; and

3 “(II) shall not exceed \$10,000
4 for each instance where a covered en-
5 tity knowingly violates subsection
6 (a)(4)(B) or knowingly violates any
7 other provision of this section.

8 “(vi) The termination of a covered en-
9 tity’s participation in the program under
10 this section, for a period of time to be de-
11 termined by the Secretary, in cases in
12 which the Secretary determines, in accord-
13 ance with standards and procedures estab-
14 lished by regulation, that—

15 “(I) the violation by a covered
16 entity of a requirement of this section
17 was repeated and knowing; and

18 “(II) imposition of a monetary
19 penalty would be insufficient to rea-
20 sonably ensure compliance with the
21 requirements of this section.

22 “(vii) The referral of matters, as ap-
23 propriate, to the Food and Drug Adminis-
24 tration, the Office of the Inspector General
25 of the Department of Health and Human

1 Services, or other Federal or State agen-
2 cies.

3 “(3) ADMINISTRATIVE DISPUTE RESOLUTION
4 PROCESS.—From amounts appropriated under sub-
5 section (f), the Secretary may establish and imple-
6 ment an administrative process for the resolution of
7 the following:

8 “(A) Claims by covered entities that manu-
9 facturers have violated the terms of their agree-
10 ment with the Secretary under subsection
11 (a)(1).

12 “(B) Claims by manufacturers that cov-
13 ered entities have violated subsection (a)(4)(A)
14 or (a)(4)(B).

15 “(e) AUDIT AND SANCTIONS.—

16 “(1) AUDIT.—From amounts appropriated
17 under subsection (f), the Inspector General of the
18 Department of Health and Human Services (re-
19 ferred to in this subsection as the ‘Inspector Gen-
20 eral’) shall audit covered entities under this section
21 to verify compliance with criteria for eligibility and
22 participation under this section, including the
23 antidiversion prohibitions under subsection
24 (a)(4)(B), and take enforcement action or provide
25 information to the Secretary who shall take action to

1 ensure program compliance, as appropriate. A cov-
2 ered entity shall provide to the Inspector General,
3 upon request, records relevant to such audits.

4 “(2) REPORT.—For each audit conducted under
5 paragraph (1), the Inspector General shall prepare
6 and publish in a timely manner a report which shall
7 include findings and recommendations regarding—

8 “(A) the appropriateness of covered entity
9 eligibility determinations and, as applicable,
10 certifications;

11 “(B) the effectiveness of antidiversion pro-
12 hibitions; and

13 “(C) the effectiveness of restrictions on in-
14 patient dispensing and administration.

15 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to carry out this section
17 such sums as may be necessary for fiscal year 2011 and
18 each succeeding fiscal year.”.

19 (b) RULEMAKING.—Not later than January 1, 2011,
20 the Secretary shall promulgate regulations implementing
21 section 340B–1 of the Public Health Service Act (as added
22 by subsection (a)).

23 (c) CONFORMING AMENDMENT TO SECTION 340B.—
24 Paragraph (1) of section 340B(a) of the Public Health
25 Service Act (42 U.S.C. 256b(a)) is amended by adding

1 at the end the following: “Such agreement shall further
2 require that, if the supply of a covered outpatient drug
3 is insufficient to meet demand, then the manufacturer
4 may use an allocation method that is reported in writing
5 to, and approved by, the Secretary and does not discrimi-
6 nate on the basis of the price paid by covered entities or
7 on any other basis related to the participation of an entity
8 in the program under this section. The agreement with
9 a manufacturer under this paragraph may, at the discre-
10 tion of the Secretary, be included in the agreement with
11 the same manufacturer under section 340B–1.”

12 (d) CONFORMING AMENDMENTS TO MEDICAID.—
13 Section 1927 of the Social Security Act (42 U.S.C. 1396r–
14 8) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (1), in the first sentence,
17 by striking “and paragraph (6)” and inserting
18 “, paragraph (6), and paragraph (8)”; and

19 (B) by adding at the end the following new
20 paragraph:

21 “(8) LIMITATION ON PRICES OF DRUGS PUR-
22 CHASED BY 340B–1-COVERED ENTITIES.—

23 “(A) AGREEMENT WITH SECRETARY.—A
24 manufacturer meets the requirements of this
25 paragraph if the manufacturer has entered into

1 an agreement with the Secretary that meets the
 2 requirements of section 340B–1 of the Public
 3 Health Service Act with respect to covered in-
 4 patient drugs (as defined in such section) pur-
 5 chased by a 340B–1-covered entity on or after
 6 January 1, 2011.

7 “(B) 340B–1-COVERED ENTITY DE-
 8 FINED.—In this subsection, the term ‘340B–1-
 9 covered entity’ means an entity described in
 10 section 340B–1(b) of the Public Health Service
 11 Act.”; and

12 (2) in subsection (c)(1)(C)(i)(I)—

13 (A) by striking “or” before “a covered en-
 14 tity”; and

15 (B) by inserting before the semicolon the
 16 following: “, or a covered entity for a covered
 17 inpatient drug (as such terms are defined in
 18 section 340B–1of the Public Health Service
 19 Act)”.

20 **SEC. 507. CONTINUED INCLUSION OF ORPHAN DRUGS IN**
 21 **DEFINITION OF COVERED OUTPATIENT**
 22 **DRUGS WITH RESPECT TO CHILDREN’S HOS-**
 23 **PITALS UNDER THE 340B DRUG DISCOUNT**
 24 **PROGRAM.**

25 (a) DEFINITION OF COVERED OUTPATIENT DRUG.—

1 **SEC. 509. CLARIFICATION OF EFFECTIVE DATE OF PART B**
2 **SPECIAL ENROLLMENT PERIOD FOR DIS-**
3 **ABLED TRICARE BENEFICIARIES.**

4 Effective as if included in the enactment of Public
5 Law 111–148, section 3110(a)(2) of such Act is amended
6 to read as follows:

7 “(2) EFFECTIVE DATE.—The amendment made
8 by paragraph (1) shall apply to elections made after
9 the date of the enactment of this Act.”.

10 **SEC. 510. ADJUSTMENT TO MEDICARE PAYMENT LOCAL-**
11 **ITIES.**

12 (a) IN GENERAL.—Section 1848(e) of the Social Se-
13 curity Act (42 U.S.C.1395w–4(e)) is amended by adding
14 at the end the following new paragraph:

15 “(6) TRANSITION TO USE OF MSAS AS FEE
16 SCHEDULE AREAS IN CALIFORNIA.—

17 “(A) IN GENERAL.—

18 “(i) REVISION.—Subject to clause (ii)
19 and notwithstanding the previous provi-
20 sions of this subsection, for services fur-
21 nished on or after January 1, 2012, the
22 Secretary shall revise the fee schedule
23 areas used for payment under this section
24 applicable to the State of California using
25 the Metropolitan Statistical Area (MSA)

1 iterative Geographic Adjustment Factor
2 methodology as follows:

3 “(I) The Secretary shall con-
4 figure the physician fee schedule areas
5 using the Metropolitan Statistical
6 Areas (each in this paragraph referred
7 to as an ‘MSA’), as defined by the Di-
8 rector of the Office of Management
9 and Budget as of the date of the en-
10 actment of this paragraph, as the
11 basis for the fee schedule areas.

12 “(II) For purposes of this clause,
13 the Secretary shall treat all areas not
14 included in an MSA as a single rest-
15 of-State MSA and any reference in
16 this paragraph to an MSA shall be
17 deemed to include a reference to such
18 rest-of-State MSA.

19 “(III) The Secretary shall list all
20 MSAs within the State by Geographic
21 Adjustment Factor described in para-
22 graph (2) (in this paragraph referred
23 to as a ‘GAF’) in descending order.

24 “(IV) In the first iteration, the
25 Secretary shall compare the GAF of

1 the highest cost MSA in the State to
2 the weighted-average GAF of all the
3 remaining MSAs in the State. If the
4 ratio of the GAF of the highest cost
5 MSA to the weighted-average of the
6 GAF of remaining lower cost MSAs is
7 1.05 or greater, the highest cost MSA
8 shall be a separate fee schedule area.

9 “(V) In the next iteration, the
10 Secretary shall compare the GAF of
11 the MSA with the second-highest
12 GAF to the weighted-average GAF of
13 the all the remaining MSAs (excluding
14 MSAs that become separate fee sched-
15 ule areas). If the ratio of the second-
16 highest MSA’s GAF to the weighted-
17 average of the remaining lower cost
18 MSAs is 1.05 or greater, the second-
19 highest MSA shall be a separate fee
20 schedule area.

21 “(VI) The iterative process shall
22 continue until the ratio of the GAF of
23 the MSA with highest remaining GAF
24 to the weighted-average of the remain-
25 ing MSAs with lower GAFs is less

1 than 1.05, and the remaining group of
2 MSAs with lower GAFs shall be treat-
3 ed as a single rest-of-State fee sched-
4 ule area.

5 “(VII) For purposes of the
6 iterative process described in this
7 clause, if two MSAs have identical
8 GAFs, they shall be combined.

9 “(ii) TRANSITION.—For services fur-
10 nished on or after January 1, 2012, and
11 before January 1, 2017, in the State of
12 California, after calculating the work, prac-
13 tice expense, and malpractice geographic
14 indices that would otherwise be determined
15 under clauses (i), (ii), and (iii) of para-
16 graph (1)(A) for a fee schedule area deter-
17 mined under clause (i), if the index for a
18 county within a fee schedule area is less
19 than the index that would otherwise be in
20 effect for such county, the Secretary shall
21 instead apply the index that would other-
22 wise be in effect for such county.

23 “(B) SUBSEQUENT REVISIONS.—After the
24 transition described in subparagraph (A)(ii),
25 not less than every 3 years the Secretary shall

1 review and update the fee schedule areas using
2 the methodology described in subparagraph
3 (A)(i) and any updated MSAs as defined by the
4 Director of the Office of Management and
5 Budget. The Secretary shall review and make
6 any changes pursuant to such reviews concu-
7 rent with the application of the periodic review
8 of the adjustment factors required under para-
9 graph (1)(C) for California.

10 “(C) REFERENCES TO FEE SCHEDULE
11 AREAS.—Effective for services furnished on or
12 after January 1, 2012, for the State of Cali-
13 fornia, any reference in this section to a fee
14 schedule area shall be deemed a reference to a
15 fee schedule area established in accordance with
16 this paragraph.”.

17 (b) CONFORMING AMENDMENT TO DEFINITION OF
18 FEE SCHEDULE AREA.—Section 1848(j)(2) of the Social
19 Security Act (42 U.S.C. 1395w(j)(2)) is amended by strik-
20 ing “The term” and inserting “Except as provided in sub-
21 section (e)(6)(C), the term”.

22 **SEC. 511. EXTENSION OF ARRA INCREASE IN FMAP.**

23 Section 5001 of the American Recovery and Reinvest-
24 ment Act of 2009 (Public Law 111–5) is amended—

1 (1) in subsection (a)(3), by striking “first cal-
2 endar quarter” and inserting “first 3 calendar quar-
3 ters”;

4 (2) in subsection (b)—

5 (A) in paragraph (1), by striking “para-
6 graph (2)” and inserting “paragraphs (2) and
7 (3)”; and

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

9 “(3) PHASE-DOWN OF GENERAL INCREASE.—

10 “(A) SECOND QUARTER OF FISCAL YEAR
11 2011.—For each State, for the second quarter of
12 fiscal year 2011, the FMAP for the State shall
13 be increased under paragraph (1) or (2) (as ap-
14 plicable) by 3.2 percentage points.

15 “(B) THIRD QUARTER OF FISCAL YEAR
16 2011.—For each State, for the third quarter of
17 fiscal year 2011, the FMAP for the State shall
18 be increased under paragraph (1) or (2) (as ap-
19 plicable) by 1.2 percentage points.”;

20 (3) in subsection (c)—

21 (A) in paragraph (2)(B), by striking “July
22 1, 2010” and inserting “January 1, 2011”;

23 (B) in paragraph (3)(B)(i), by striking
24 “July 1, 2010” and inserting “January 1,
25 2011” each place it appears; and

1 (C) in paragraph (4)(C)(ii), by striking
2 “the 3-consecutive-month period beginning with
3 January 2010” and inserting “any 3-consecu-
4 tive-month period that begins after December
5 2009 and ends before January 2011”;

6 (4) in subsection (e), by adding at the end the
7 following:

8 “Notwithstanding paragraph (5), effective for payments
9 made on or after January 1, 2010, the increases in the
10 FMAP for a State under this section shall apply to pay-
11 ments under title XIX of such Act that are attributable
12 to expenditures for medical assistance provided to non-
13 pregnant childless adults made eligible under a State plan
14 under such title (including under any waiver under such
15 title or under section 1115 of such Act (42 U.S.C. 1315))
16 who would have been eligible for child health assistance
17 or other health benefits under eligibility standards in ef-
18 fect as of December 31, 2009, of a waiver of the State
19 child health plan under the title XXI of such Act.”;

20 (5) in subsection (g)—

21 (A) in paragraph (1), by striking “Sep-
22 tember 30, 2011” and inserting “March 31,
23 2012”;

24 (B) in paragraph (2), by inserting “of such
25 Act” after “1923”; and

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

2 “(3) CERTIFICATION BY CHIEF EXECUTIVE OF-
3 FICER.—No additional Federal funds shall be paid
4 to a State as a result of this section with respect to
5 a calendar quarter occurring during the period be-
6 ginning on January 1, 2011, and ending on June
7 30, 2011, unless, not later than 45 days after the
8 date of enactment of this paragraph, the chief execu-
9 tive officer of the State certifies that the State will
10 request and use such additional Federal funds.”;
11 and

12 (6) in subsection (h)(3), by striking “December
13 31, 2010” and inserting “June 30, 2011”.

14 **SEC. 512. CLARIFICATION FOR AFFILIATED HOSPITALS FOR**
15 **DISTRIBUTION OF ADDITIONAL RESIDENCY**
16 **POSITIONS.**

17 Effective as if included in the enactment of section
18 5503(a) of Public Law 111–148, section 1886(h)(8) of the
19 Social Security Act (42 U.S.C. 1395ww(h)(8)), as added
20 by such section 5503(a), is amended by adding at the end
21 the following new subparagraph:

22 “(I) AFFILIATION.—The provisions of this
23 paragraph shall be applied to hospitals which
24 are members of the same affiliated group (as
25 defined by the Secretary under paragraph

1 (4)(H)(ii)) and the reference resident level for
2 each such hospital shall be the reference resi-
3 dent level with respect to the cost reporting pe-
4 riod that results in the smallest difference be-
5 tween the reference resident level and the other-
6 wise applicable resident limit.”.

7 **SEC. 513. TREATMENT OF CERTAIN DRUGS FOR COMPUTA-**
8 **TION OF MEDICAID AMP.**

9 Effective as if included in the enactment of Public
10 Law 111-148, section 1927(k)(1)(B)(i)(IV) of the Social
11 Security Act (42 U.S.C. 1396r-8(k)(1)(B)(i)(IV)), as
12 amended by section 2503(a)(2)(B) of Public Law 111-148
13 and section 1101(e)(2) of Public Law 111-152, is amend-
14 ed by adding at the end the following: “, unless the drug
15 is an inhalation, infusion, instilled, implanted, or
16 injectable drug that is not generally dispensed through a
17 retail community pharmacy; and”.

18 **SEC. 514. EXTENSION OF THE EMERGENCY CONTINGENCY**
19 **FUND.**

20 (a) IN GENERAL.—Section 403(c) of the Social Secu-
21 rity Act (42 U.S.C. 603(c)) is amended—

22 (1) in paragraph (2)(A), by inserting “, and for
23 fiscal year 2011, \$1,500,000,000” before “for pay-
24 ment”;

1 (2) by striking paragraph (2)(B) and inserting
2 the following:

3 “(B) AVAILABILITY AND USE OF FUNDS.—

4 “(i) FISCAL YEARS 2009 AND 2010.—

5 The amounts appropriated to the Emer-
6 gency Fund under subparagraph (A) for
7 fiscal year 2009 shall remain available
8 through fiscal year 2010 and shall be used
9 to make grants to States in each of fiscal
10 years 2009 and 2010 in accordance with
11 paragraph (3), except that the amounts
12 shall remain available through fiscal year
13 2011 to make grants and payments to
14 States in accordance with paragraph
15 (3)(C) to cover expenditures to subsidize
16 employment positions held by individuals
17 placed in the positions before fiscal year
18 2011.

19 “(ii) FISCAL YEAR 2011.—Subject to
20 clause (iii), the amounts appropriated to
21 the Emergency Fund under subparagraph
22 (A) for fiscal year 2011 shall remain avail-
23 able through fiscal year 2012 and shall be
24 used to make grants to States based on ex-
25 penditures in fiscal year 2011 for benefits

1 and services provided in fiscal year 2011 in
2 accordance with the requirements of para-
3 graph (3).

4 “(iii) RESERVATION OF FUNDS.—Of
5 the amounts appropriated to the Emer-
6 gency Fund under subparagraph (A) for
7 fiscal year 2011, \$500,000 shall be placed
8 in reserve for use in fiscal year 2012, and
9 shall be used to award grants for any ex-
10 penditures described in this subsection in-
11 curred by States after September 30,
12 2011.”;

13 (3) in paragraph (2)(C), by striking “2010”
14 and inserting “2012”;

15 (4) in paragraph (3)—

16 (A) in clause (i) of each of subparagraphs
17 (A), (B), and (C)—

18 (i) by striking “year 2009 or 2010”
19 and inserting “years 2009 through 2011”;

20 (ii) by striking “and” at the end of
21 subclause (I);

22 (iii) by striking the period at the end
23 of subclause (II) and inserting “; and”;
24 and

1 (iv) by adding at the end the fol-
2 lowing:

3 “(III) if the quarter is in fiscal
4 year 2011, has provided the Secretary
5 with such information as the Sec-
6 retary may find necessary in order to
7 make the determinations, or take any
8 other action, described in paragraph
9 (5)(C).”; and

10 (B) in subparagraph (C), by adding at the
11 end the following:

12 “(iv) LIMITATION ON EXPENDITURES
13 FOR SUBSIDIZED EMPLOYMENT.—An ex-
14 penditure for subsidized employment shall
15 be taken into account under clause (ii)
16 only if the expenditure is used to subsidize
17 employment for—

18 “(I) a member of a needy family
19 (without regard to whether the family
20 is receiving assistance under the State
21 program funded under this part); or

22 “(II) an individual who has ex-
23 hausted (or, within 60 days, will ex-
24 haust) all rights to receive unemploy-
25 ment compensation under Federal and

1 State law, and who is a member of a
2 needy family.”;

3 (5) by striking paragraph (5) and inserting the
4 following:

5 “(5) LIMITATIONS ON PAYMENTS; ADJUSTMENT
6 AUTHORITY.—

7 “(A) FISCAL YEARS 2009 AND 2010.—The
8 total amount payable to a single State under
9 subsection (b) and this subsection for fiscal
10 years 2009 and 2010 combined shall not exceed
11 50 percent of the annual State family assist-
12 ance grant.

13 “(B) FISCAL YEAR 2011.—Subject to sub-
14 paragraph (C), the total amount payable to a
15 single State under subsection (b) and this sub-
16 section for fiscal year 2011 shall not exceed 30
17 percent of the annual State family assistance
18 grant.

19 “(C) ADJUSTMENT AUTHORITY.—If the
20 Secretary determines that the Emergency Fund
21 is at risk of being depleted before September
22 30, 2011, or that funds are available to accom-
23 modate additional State requests under this
24 subsection, the Secretary may, through program
25 instructions issued without regard to the re-

1 requirements of section 553 of title 5, United
2 States Code—

3 “(i) specify priority criteria for award-
4 ing grants to States during fiscal year
5 2011; and

6 “(ii) adjust the percentage limitation
7 applicable under subparagraph (B) with
8 respect to the total amount payable to a
9 single State for fiscal year 2011.”; and

10 (6) in paragraph (6), by inserting “or for ex-
11 penditures described in paragraph (3)(C)(iv)” before
12 the period.

13 (b) CONFORMING AMENDMENTS.—Section 2101 of
14 division B of the American Recovery and Reinvestment
15 Act of 2009 (Public Law 111–5) is amended—

16 (1) in subsection (a)(2)—

17 (A) by striking “2010” and inserting
18 “2011”; and

19 (B) by striking all that follows “repealed”
20 and inserting a period; and

21 (2) in subsection (d)(1), by striking “2010”
22 and inserting “2011”.

23 (c) PROGRAM GUIDANCE.—The Secretary of Health
24 and Human Services shall issue program guidance, with-
25 out regard to the requirements of section 553 of title 5,

1 United States Code, which ensures that the funds provided
2 under the amendments made by this section to a jurisdic-
3 tion for subsidized employment do not support any sub-
4 sidized employment position the annual salary of which
5 is greater than, at State option—

6 (1) 200 percent of the poverty line (within the
7 meaning of section 673(2) of the Omnibus Budget
8 Reconciliation Act of 1981, including any revision
9 required by such section 673(2)) for a family of 4;
10 or

11 (2) the median wage in the jurisdiction.

12 **TITLE VI—OTHER PROVISIONS**

13 **Subtitle A—General Provisions**

14 **SEC. 601. ALLOCATION OF GEOTHERMAL RECEIPTS.**

15 Notwithstanding any other provision of law, for fiscal
16 year 2010 only, all funds received from sales, bonuses,
17 royalties, and rentals under the Geothermal Steam Act of
18 1970 (30 U.S.C. 1001 et seq.) shall be deposited in the
19 Treasury, of which—

20 (1) 50 percent shall be used by the Secretary
21 of the Treasury to make payments to States within
22 the boundaries of which the leased land and geo-
23 thermal resources are located;

24 (2) 25 percent shall be used by the Secretary
25 of the Treasury to make payments to the counties

1 within the boundaries of which the leased land or
2 geothermal resources are located; and

3 (3) 25 percent shall be deposited in miscella-
4 neous receipts.

5 **SEC. 602. SUMMER EMPLOYMENT FOR YOUTH.**

6 There is appropriated, out of any funds in the Treas-
7 ury not otherwise appropriated, for an additional amount
8 for “Department of Labor—Employment and Training
9 Administration—Training and Employment Services” for
10 activities under the Workforce Investment Act of 1998
11 (“WIA”), \$1,000,000,000 shall be available for obligation
12 on the date of enactment of this Act for grants to States
13 for youth activities, including summer employment for
14 youth: *Provided*, That no portion of such funds shall be
15 reserved to carry out section 127(b)(1)(A) of the WIA:
16 *Provided further*, That for purposes of section
17 127(b)(1)(C)(iv) of the WIA, funds available for youth ac-
18 tivities shall be allotted as if the total amount available
19 for youth activities in the fiscal year does not exceed
20 \$1,000,000,000: *Provided further*, That with respect to the
21 youth activities provided with such funds, section
22 101(13)(A) of the WIA shall be applied by substituting
23 “age 24” for “age 21”: *Provided further*, That the work
24 readiness performance indicator described in section
25 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure

1 of performance used to assess the effectiveness of summer
2 employment for youth provided with such funds: *Provided*
3 *further*, That an amount that is not more than 1 percent
4 of such amount may be used for the administration, man-
5 agement, and oversight of the programs, activities, and
6 grants carried out with such funds, including the evalua-
7 tion of the use of such funds: *Provided further*, That funds
8 available under the preceding proviso, together with funds
9 described in section 801(a) of division A of the American
10 Recovery and reinvestment Act of 2009 (Public Law 111–
11 5), and funds provided in such Act under the heading
12 “Department of Labor–Departmental Management–Sala-
13 ries and Expenses”, shall remain available for obligation
14 through September 30, 2011.

15 **SEC. 603. HOUSING TRUST FUND.**

16 (a) FUNDING.—There is hereby appropriated for the
17 Housing Trust Fund established pursuant to section 1338
18 of the Federal Housing Enterprises Financial Safety and
19 Soundness Act of 1992 (12 U.S.C. 4568),
20 \$1,065,000,000, for use under such section: *Provided*,
21 That of the total amount provided under this heading,
22 \$65,000,000 shall be available to the Secretary of Housing
23 and Urban Development only for incremental project-
24 based voucher assistance to be allocated to States to be
25 used solely in conjunction with grant funds awarded under

1 such section 1338, pursuant to the formula established
2 under section 1338 and taking into account different per
3 unit subsidy needs among states, as determined by the
4 Secretary.

5 (b) AMENDMENTS.—Section 1338 of the Federal
6 Housing Enterprises Financial Safety and Soundness Act
7 of 1992 (12 U.S.C. 4568) is amended—

8 (1) in subsection (c)—

9 (A) in paragraph (4)(A) by inserting after
10 the period at the end the following: “Notwith-
11 standing any other provision of law, for the fis-
12 cal year following enactment of this sentence
13 and thereafter, the Secretary may make such
14 notice available only on the Internet at the ap-
15 propriate government website or websites or
16 through other electronic media, as determined
17 by the Secretary.”;

18 (B) in paragraph (5)(C), by striking “(8)”
19 and inserting “(9)”; and

20 (C) in paragraph (7)(A)—

21 (i) by striking “section
22 1335(a)(2)(B)” and inserting “section
23 1335(a)(1)(B)”; and

24 (ii) by inserting “the units funded
25 under” after “75 percent of”; and

1 et al., United States District Court, District of Co-
2 lumbia, Civil Action No. 96–1285 (JR).

3 (4) PLAINTIFF.—The term “Plaintiff” means a
4 member of any class certified in the Litigation.

5 (5) SECRETARY.—The term “Secretary” means
6 the Secretary of the Interior.

7 (6) SETTLEMENT.—The term “Settlement”
8 means the Class Action Settlement Agreement dated
9 December 7, 2009, in the Litigation, as modified by
10 the parties to the Litigation.

11 (7) TRUST ADMINISTRATION CLASS.—The term
12 “Trust Administration Class” means the Trust Ad-
13 ministration Class as defined in the Settlement.

14 (c) PURPOSE.—The purpose of this section is to au-
15 thorize the Settlement.

16 (d) AUTHORIZATION.—The Settlement is authorized,
17 ratified, and confirmed.

18 (e) JURISDICTIONAL PROVISIONS.—

19 (1) IN GENERAL.—Notwithstanding the limita-
20 tion of jurisdiction of district courts contained in
21 section 1346(a)(2) of title 28, United States Code,
22 the United States District Court for the District of
23 Columbia shall have jurisdiction over the claims as-
24 serted in the Amended Complaint for purposes of
25 the Settlement.

1 (2) CERTIFICATION OF TRUST ADMINISTRATION
2 CLASS.—

3 (A) IN GENERAL.—Notwithstanding the
4 requirements of the Federal Rules of Civil Pro-
5 cedure, the court overseeing the Litigation may
6 certify the Trust Administration Class.

7 (B) TREATMENT.—On certification under
8 subparagraph (A), the Trust Administration
9 Class shall be treated as a class under Federal
10 Rule of Civil Procedure 23(b)(3) for purposes
11 of the Settlement.

12 (f) TRUST LAND CONSOLIDATION.—

13 (1) TRUST LAND CONSOLIDATION FUND.—

14 (A) ESTABLISHMENT.—On final approval
15 (as defined in the Settlement) of the Settle-
16 ment, there shall be established in the Treasury
17 of the United States a fund, to be known as the
18 “Trust Land Consolidation Fund”.

19 (B) AVAILABILITY OF AMOUNTS.—
20 Amounts in the Trust Land Consolidation
21 Fund shall be made available to the Secretary
22 during the 10-year period beginning on the date
23 of final approval of the Settlement—

24 (i) to conduct the Land Consolidation
25 Program; and

1 (ii) for other costs specified in the
2 Settlement.

3 (C) DEPOSITS.—

4 (i) IN GENERAL.—On final approval
5 (as defined in the Settlement) of the Set-
6 tlement, the Secretary of the Treasury
7 shall deposit in the Trust Land Consolida-
8 tion Fund \$2,000,000,000 of the amounts
9 appropriated by section 1304 of title 31,
10 United States Code.

11 (ii) CONDITIONS MET.—The condi-
12 tions described in section 1304 of title 31,
13 United States Code, shall be considered to
14 be met for purposes of clause (i).

15 (D) TRANSFERS.—In a manner designed
16 to encourage participation in the Land Consoli-
17 dation Program, the Secretary may transfer, at
18 the discretion of the Secretary, not more than
19 \$60,000,000 of amounts in the Trust Land
20 Consolidation Fund to the Indian Education
21 Scholarship Holding Fund established under
22 paragraph 2.

23 (2) INDIAN EDUCATION SCHOLARSHIP HOLDING
24 FUND.—

1 (A) ESTABLISHMENT.—On the final ap-
2 proval (as defined in the Settlement) of the Set-
3 tlement, there shall be established in the Treas-
4 ury of the United States a fund, to be known
5 as the “Indian Education Scholarship Holding
6 Fund”.

7 (B) AVAILABILITY.—Notwithstanding any
8 other provision of law governing competition,
9 public notification, or Federal procurement or
10 assistance, amounts in the Indian Education
11 Scholarship Holding Fund shall be made avail-
12 able, without further appropriation, to the Sec-
13 retary to contribute to an Indian Education
14 Scholarship Fund, as described in the Settle-
15 ment, to provide scholarships for Native Ameri-
16 cans.

17 (3) ACQUISITION OF TRUST OR RESTRICTED
18 LAND.—The Secretary may acquire, at the discre-
19 tion of the Secretary and in accordance with the
20 Land Consolidation Program, any fractional interest
21 in trust or restricted land.

22 (4) TREATMENT OF UNLOCATABLE PLAIN-
23 TIFFS.—A Plaintiff the whereabouts of whom are
24 unknown and who, after reasonable efforts by the
25 Secretary, cannot be located during the 5 year pe-

1 riod beginning on the date of final approval (as de-
2 fined in the Settlement) of the Settlement shall be
3 considered to have accepted an offer made pursuant
4 to the Land Consolidation Program.

5 (g) TAXATION AND OTHER BENEFITS.—

6 (1) INTERNAL REVENUE CODE.—For purposes
7 of the Internal Revenue Code of 1986, amounts re-
8 ceived by an individual Indian as a lump sum or a
9 periodic payment pursuant to the Settlement—

10 (A) shall not be included in gross income;

11 and

12 (B) shall not be taken into consideration
13 for purposes of applying any provision of the
14 Internal Revenue Code of 1986 that takes into
15 account excludable income in computing ad-
16 justed gross income or modified adjusted gross
17 income, including section 86 of that Code (re-
18 lating to Social Security and tier 1 railroad re-
19 tirement benefits).

20 (2) OTHER BENEFITS.—Notwithstanding any
21 other provision of law, for purposes of determining
22 initial eligibility, ongoing eligibility, or level of bene-
23 fits under any Federal or federally assisted program,
24 amounts received by an individual Indian as a lump
25 sum or a periodic payment pursuant to the Settle-

1 ment shall not be treated for any household member,
2 during the 1-year period beginning on the date of re-
3 ceipt—

4 (A) as income for the month during which
5 the amounts were received; or

6 (B) as a resource.

7 **SEC. 605. APPROPRIATION OF FUNDS FOR FINAL SETTLE-**
8 **MENT OF CLAIMS FROM IN RE BLACK FARM-**
9 **ERS DISCRIMINATION LITIGATION.**

10 (a) DEFINITIONS.—In this section:

11 (1) SETTLEMENT AGREEMENT.—The term
12 “Settlement Agreement” means the settlement
13 agreement dated February 18, 2010 (including any
14 modifications agreed to by the parties and approved
15 by the court under that agreement) between certain
16 plaintiffs, by and through their counsel, and the Sec-
17 retary of Agriculture to resolve, fully and forever,
18 the claims raised or that could have been raised in
19 the cases consolidated in *In re Black Farmers Dis-*
20 *crimination Litigation*, No. 08–511 (D.D.C.), in-
21 cluding Pigford claims asserted under section 14012
22 of the Food, Conservation, and Energy Act of 2008
23 (Public Law 110–246; 122 Stat. 2209).

24 (2) PIGFORD CLAIM.—The term “Pigford
25 claim” has the meaning given that term in section

1 14012(a)(3) of the Food, Conservation, and Energy
2 Act of 2008 (Public Law 110–246; 122 Stat. 2210).

3 (b) APPROPRIATION OF FUNDS.—There is hereby ap-
4 propriated to the Secretary of Agriculture
5 \$1,150,000,000, to remain available until expended, to
6 carry out the terms of the Settlement Agreement if the
7 Settlement Agreement is approved by a court order that
8 is or becomes final and nonappealable. The funds appro-
9 priated by this subsection are in addition to the
10 \$100,000,000 of funds of the Commodity Credit Corpora-
11 tion made available by section 14012(i) of the Food, Con-
12 servation, and Energy Act of 2008 (Public Law 110–246;
13 122 Stat. 2212) and shall be available for obligation only
14 after those Commodity Credit Corporation funds are fully
15 obligated. If the Settlement Agreement is not approved as
16 provided in this subsection, the \$100,000,000 of funds of
17 the Commodity Credit Corporation made available by sec-
18 tion 14012(i) of the Food, Conservation, and Energy Act
19 of 2008 shall be the sole funding available for Pigford
20 claims.

21 (c) USE OF FUNDS.—The use of the funds appro-
22 priated by subsection (b) shall be subject to the express
23 terms of the Settlement Agreement.

24 (d) TREATMENT OF REMAINING FUNDS.—If any of
25 the funds appropriated by subsection (b) are not obligated

1 and expended to carry out the Settlement Agreement, the
2 Secretary of Agriculture shall return the unused funds to
3 the Treasury and may not make the unused funds avail-
4 able for any purpose related to section 14012 of the Food,
5 Conservation, and Energy Act of 2008, for any other set-
6 tlement agreement executed in *In re Black Farmers Dis-*
7 *crimination Litigation*, No. 08–511 (D.D.C.), or for any
8 other purpose.

9 (e) RULES OF CONSTRUCTION.—Nothing in this sec-
10 tion shall be construed as requiring the United States, any
11 of its officers or agencies, or any other party to enter into
12 the Settlement Agreement or any other settlement agree-
13 ment. Nothing in this section shall be construed as cre-
14 ating the basis for a Pigford claim.

15 (f) CONFORMING AMENDMENTS.—Section 14012 of
16 the Food, Conservation, and Energy Act of 2008 (Public
17 Law 110–246; 122 Stat. 2209) is amended—

18 (1) in subsection (c)(1)—

19 (A) by striking “subsection (h)” and in-
20 serting “subsection (g)”; and

21 (B) by striking “subsection (i)” and insert-
22 ing “subsection (h)”;

23 (2) by striking subsection (e);

24 (3) in subsection (g), by striking “subsection
25 (f)” and inserting “subsection (e)”;

1 (4) in subsection (i)—

2 (A) by striking “(1) IN GENERAL.—Of the
3 funds” and inserting “Of the funds”; and

4 (B) by striking paragraph (2);

5 (5) by striking subsection (j); and

6 (6) by redesignating subsections (f), (g), (h),
7 (i), and (k) as subsections (e), (f), (g), (h), and (i),
8 respectively.

9 **SEC. 606. EXPANSION OF ELIGIBILITY FOR CONCURRENT**
10 **RECEIPT OF MILITARY RETIRED PAY AND**
11 **VETERANS’ DISABILITY COMPENSATION TO**
12 **INCLUDE ALL CHAPTER 61 DISABILITY RE-**
13 **TIREES REGARDLESS OF DISABILITY RATING**
14 **PERCENTAGE OR YEARS OF SERVICE.**

15 (a) PHASED EXPANSION CONCURRENT RECEIPT.—
16 Subsection (a) of section 1414 of title 10, United States
17 Code, is amended to read as follows:

18 “(a) PAYMENT OF BOTH RETIRED PAY AND DIS-
19 ABILITY COMPENSATION.—

20 “(1) PAYMENT OF BOTH REQUIRED.—

21 “(A) IN GENERAL.—Subject to subsection
22 (b), a member or former member of the uni-
23 formed services who is entitled for any month
24 to retired pay and who is also entitled for that
25 month to veterans’ disability compensation for a

1 qualifying service-connected disability (in this
2 section referred to as a ‘qualified retiree’) is en-
3 titled to be paid both for that month without
4 regard to sections 5304 and 5305 of title 38.

5 “(B) APPLICABILITY OF FULL CONCUR-
6 RENT RECEIPT PHASE-IN REQUIREMENT.—Dur-
7 ing the period beginning on January 1, 2004,
8 and ending on December 31, 2013, payment of
9 retired pay to a qualified retiree is subject to
10 subsection (c).

11 “(C) PHASE-IN EXCEPTION FOR 100 PER-
12 CENT DISABLED RETIREES.—The payment of
13 retired pay is subject to subsection (c) only dur-
14 ing the period beginning on January 1, 2004,
15 and ending on December 31, 2004, in the case
16 of the following qualified retirees:

17 “(i) A qualified retiree receiving vet-
18 erans’ disability compensation for a dis-
19 ability rated as 100 percent.

20 “(ii) A qualified retiree receiving vet-
21 erans’ disability compensation at the rate
22 payable for a 100 percent disability by rea-
23 son of a determination of individual
24 unemployability.

1 “(D) TEMPORARY PHASE-IN EXCEPTION
2 FOR CERTAIN CHAPTER 61 DISABILITY RETIR-
3 EES; TERMINATION.—Subject to subsection (b),
4 during the period beginning on January 1,
5 2011, and ending on September 30, 2012, sub-
6 section (c) shall not apply to a qualified retiree
7 described in subparagraph (B) or (C) of para-
8 graph (2).

9 “(2) QUALIFYING SERVICE-CONNECTED DIS-
10 ABILITY DEFINED.—In this section:

11 “(A) 50 PERCENT RATING THRESHOLD.—
12 In the case of a member or former member re-
13 ceiving retired pay under any provision of law
14 other than chapter 61 of this title, or under
15 chapter 61 with 20 years or more of service
16 otherwise creditable under section 1405 or com-
17 puted under section 12732 of this title, the
18 term ‘qualifying service-connected disability’
19 means a service-connected disability or com-
20 bination of service-connected disabilities that is
21 rated as not less than 50 percent disabling by
22 the Secretary of Veterans Affairs. However,
23 during the period specified in paragraph (1)(D),
24 members or former members receiving retired
25 pay under chapter 61 with 20 years or more of

1 creditable service computed under section
2 12732 of this title, but not otherwise entitled to
3 retired pay under any other provision of this
4 title, shall qualify in accordance with subpara-
5 graphs (B) and (C).

6 “(B) INCLUSION OF MEMBERS NOT OTH-
7 ERWISE ENTITLED TO RETIRED PAY.—In the
8 case of a member or former member receiving
9 retired pay under chapter 61 of this title, but
10 who is not otherwise entitled to retired pay
11 under any other provision of this title, the term
12 ‘qualifying service-connected disability’ means a
13 service-connected disability or combination of
14 service-connected disabilities that is rated by
15 the Secretary of Veterans Affairs at the dis-
16 abling level specified in one of the following
17 clauses (which, subject to paragraph (3), is ef-
18 fective on or after the date specified in the ap-
19 plicable clause):

20 “(i) January 1, 2011, rated 100 per-
21 cent, or a rate payable at 100 percent by
22 reason of individual unemployability or
23 rated 90 percent.

24 “(ii) January 1, 2012, rated 80 per-
25 cent or 70 percent.

1 “(iii) January 1, 2013, rated 60 per-
2 cent or 50 percent.

3 “(C) ELIMINATION OF RATING THRESH-
4 OLD.—In the case of a member or former mem-
5 ber receiving retired pay under chapter 61 re-
6 gardless of being otherwise eligible for retire-
7 ment, the term ‘qualifying service-connected
8 disability’ means a service-connected disability
9 or combination of service-connected disabilities
10 that is rated by the Secretary of Veterans Af-
11 fairs at the disabling level specified in one of
12 the following clauses (which, subject to para-
13 graph (3), is effective on or after the date speci-
14 fied in the applicable clause):

15 “(i) January 1, 2014, rated 40 per-
16 cent or 30 percent.

17 “(ii) January 1, 2015, any rating.

18 “(3) LIMITED DURATION.—Notwithstanding
19 the effective date specified in each clause of subpara-
20 graphs (B) and (C) of paragraph (2), the clause—

21 “(A) shall apply only if the termination
22 date specified in paragraph (1)(D) would occur
23 during or after the calendar year specified in
24 the clause; and

1 “(B) shall not apply beyond the termi-
2 nation date specified in paragraph (1)(D).”.

3 (b) CONFORMING AMENDMENT TO SPECIAL RULES
4 FOR CHAPTER 61 DISABILITY RETIREES.—Subsection (b)
5 of such section is amended to read as follows:

6 “(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY
7 RETIREES WHEN ELIGIBILITY HAS BEEN ESTABLISHED
8 FOR SUCH RETIREES.—

9 “(1) GENERAL REDUCTION RULE.—The retired
10 pay of a member retired under chapter 61 of this
11 title is subject to reduction under sections 5304 and
12 5305 of title 38, but only to the extent that the
13 amount of the members retired pay under chapter
14 61 of this title exceeds the amount of retired pay to
15 which the member would have been entitled under
16 any other provision of law based upon the member’s
17 service in the uniformed services if the member had
18 not been retired under chapter 61 of this title.

19 “(2) CHAPTER 61 RETIREES NOT OTHERWISE
20 ENTITLED TO RETIRED PAY.—

21 “(A) BEFORE TERMINATION DATE.—If a
22 member with a qualifying service-connected dis-
23 ability (as defined in subsection (a)(2)) is re-
24 tired under chapter 61 of this title, but is not
25 otherwise entitled to retired pay under any

1 other provision of this title, and the termination
2 date specified in subsection (a)(1)(D) has not
3 occurred, the retired pay of the member is sub-
4 ject to reduction under sections 5304 and 5305
5 of title 38, but only to the extent that the
6 amount of the member's retired pay under
7 chapter 61 of this title exceeds the amount
8 equal to 2½ percent of the member's years of
9 creditable service multiplied by the member's
10 retired pay base under section 1406(b)(1) or
11 1407 of this title, whichever is applicable to the
12 member.

13 “(B) AFTER TERMINATION DATE.—Sub-
14 section (a) does not apply to a member de-
15 scribed in subparagraph (A) if the termination
16 date specified in subsection (a)(1)(D) has oc-
17 curred.”.

18 (c) CONFORMING AMENDMENT TO FULL CONCUR-
19 RENT RECEIPT PHASE-IN.—Subsection (c) of such section
20 is amended by striking “the second sentence of”.

21 (d) CLERICAL AMENDMENTS.—

22 (1) SECTION HEADING.—The heading of such
23 section is amended to read as follows:

1 **“§ 1414. Concurrent receipt of retired pay and vet-**
2 **erans’ disability compensation”.**

3 (2) TABLE OF SECTIONS.—The table of sections
4 at the beginning of chapter 71 of such title is
5 amended by striking the item related to section 1414
6 and inserting the following new item:

“1414. Concurrent receipt of retired pay and veterans’ disability compensa-
tion.”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on January 1, 2011.

9 **SEC. 607. EXTENSION OF USE OF 2009 POVERTY GUIDE-**
10 **LINES.**

11 Section 1012 of the Department of Defense Appro-
12 priations Act, 2010 (Public Law 111–118), as amended
13 by section 6 of the Continuing Extension Act of 2010
14 (Public Law 111–157), is amended—

15 (1) by striking “before May 31, 2010”; and

16 (2) by inserting “for 2011” after “until up-
17 dated poverty guidelines”.

18 **SEC. 608. REFUNDS DISREGARDED IN THE ADMINISTRA-**
19 **TION OF FEDERAL PROGRAMS AND FEDER-**
20 **ALLY ASSISTED PROGRAMS.**

21 (a) IN GENERAL.—Subchapter A of chapter 65 of the
22 Internal Revenue Code of 1986 is amended by adding at
23 the end the following new section:

1 **“SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRA-**
2 **TION OF FEDERAL PROGRAMS AND FEDER-**
3 **ALLY ASSISTED PROGRAMS.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-
5 vision of law, any refund (or advance payment with respect
6 to a refundable credit) made to any individual under this
7 title shall not be taken into account as income, and shall
8 not be taken into account as resources for a period of 12
9 months from receipt, for purposes of determining the eligi-
10 bility of such individual (or any other individual) for bene-
11 fits or assistance (or the amount or extent of benefits or
12 assistance) under any Federal program or under any State
13 or local program financed in whole or in part with Federal
14 funds.

15 “(b) TERMINATION.—Subsection (a) shall not apply
16 to any amount received after December 31, 2010.”.

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

“Sec. 6409. Refunds disregarded in the administration of Federal programs
and federally assisted programs.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to amounts received after Decem-
22 ber 31, 2009.

1 **SEC. 609. STATE COURT IMPROVEMENT PROGRAM.**

2 Section 438 of the Social Security Act (42 U.S.C.
3 629h) is amended—

4 (1) in subsection (c)(2)(A), by striking “2010”
5 and inserting “2011”; and

6 (2) in subsection (e), by striking “2010” and
7 inserting “2011”.

8 **SEC. 610. QUALIFYING TIMBER CONTRACT OPTIONS.**

9 (a) DEFINITIONS.—In this section:

10 (1) QUALIFYING CONTRACT.—The term “quali-
11 fying contract” means a contract that has not been
12 terminated by the Bureau of Land Management for
13 the sale of timber on lands administered by the Bu-
14 reau of Land Management that meets all of the fol-
15 lowing criteria:

16 (A) The contract was awarded during the
17 period beginning on January 1, 2005, and end-
18 ing on December 31, 2008.

19 (B) There is unharvested volume remain-
20 ing for the contract.

21 (C) The contract is not a salvage sale.

22 (D) The Secretary determined there is not
23 an urgent need to harvest under the contract
24 due to deteriorating timber conditions that de-
25 veloped after the award of the contract.

1 (2) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior, acting through the Di-
3 rector of Bureau of Land Management.

4 (3) TIMBER PURCHASER.—The term “timber
5 purchaser” means the party to the qualifying con-
6 tract for the sale of timber from lands administered
7 by the Bureau of Land Management.

8 (b) MARKET-RELATED CONTRACT EXTENSION OP-
9 TION.—Upon a timber purchaser’s written request, the
10 Secretary may make a one-time modification to the quali-
11 fying contract to add 3 years to the contract expiration
12 date if the written request—

13 (1) is received by the Secretary not later than
14 90 days after the date of enactment of this Act; and

15 (2) contains a provision releasing the United
16 States from all liability, including further consider-
17 ation or compensation, resulting from the modifica-
18 tion under this subsection of the term of a qualifying
19 contract.

20 (c) REPORTING.—Not later than 6 months after the
21 date of the enactment of this Act, the Secretary shall sub-
22 mit to Congress a report detailing a plan and timeline to
23 promulgate new regulations authorizing the Bureau of
24 Land Management to extend timber contracts due to
25 changes in market conditions.

1 104(b) and 144 of title 23, United States
2 Code,” and inserting “specified in section
3 105(a)(2) of title 23, United States Code
4 (except the high priority projects pro-
5 gram),”; and

6 (ii) in clause (ii) by striking “appor-
7 tioned under such sections of such Code”
8 and inserting “specified in such section
9 105(a)(2) (except the high priority projects
10 program)”;

11 (2) in paragraph (2)—

12 (A) in the matter preceding subparagraph

13 (A)—

14 (i) by striking “1301, 1302,”; and

15 (ii) by striking “1198, 1204,”; and

16 (B) in subparagraph (A)—

17 (i) in the matter preceding clause (i)
18 by striking “apportioned under sections
19 104(b) and 144 of title 23, United States
20 Code,” and inserting “specified in section
21 105(a)(2) of title 23, United States Code
22 (except the high priority projects pro-
23 gram),”; and

24 (ii) in clause (ii) by striking “appor-
25 tioned under such sections of such Code”

1 and inserting “specified in such section
2 105(a)(2) (except the high priority projects
3 program)”; and

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

5 “(5) PROJECTS OF NATIONAL AND REGIONAL
6 SIGNIFICANCE AND NATIONAL CORRIDOR INFRA-
7 STRUCTURE IMPROVEMENT PROGRAMS.—

8 “(A) REDISTRIBUTION AMONG STATES.—

9 Notwithstanding sections 1301(m) and 1302(e)
10 of SAFETEA-LU (119 Stat. 1202 and 1205),
11 the Secretary shall apportion funds authorized
12 to be appropriated under subsection (b) for the
13 projects of national and regional significance
14 program and the national corridor infrastruc-
15 ture improvement program among all States
16 such that each State’s share of the funds so ap-
17 portioned is equal to the State’s share for fiscal
18 year 2009 of funds apportioned or allocated for
19 the programs specified in section 105(a)(2) of
20 title 23, United States Code.

21 “(B) DISTRIBUTION AMONG PROGRAMS.—

22 Funds apportioned to a State pursuant to sub-
23 paragraph (A) shall be—

24 “(i) made available to the State for
25 the programs specified in section 105(a)(2)

1 of title 23, United States Code (except the
2 high priority projects program), and in the
3 same proportion for each such program
4 that—

5 “(I) the amount apportioned to
6 the State for that program for fiscal
7 year 2009; bears to

8 “(II) the amount apportioned to
9 the State for fiscal year 2009 for all
10 such programs; and

11 “(ii) administered in the same manner
12 and with the same period of availability as
13 funding is administered under programs
14 identified in clause (i).”.

15 (b) EXPENDITURE AUTHORITY FROM HIGHWAY
16 TRUST FUND.—Paragraph (1) of section 9503(c) of the
17 Internal Revenue Code of 1986 is amended by striking
18 “Surface Transportation Extension Act of 2010” and in-
19 serting “American Jobs and Closing Tax Loopholes Act
20 of 2010”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect upon the date of enactment
23 of the Surface Transportation Extension Act of 2010
24 (Public Law 111–147; 124 Stat. 78 et seq.) and shall be

1 treated as being included in that Act at the time of the
2 enactment of that Act.

3 (d) SAVINGS CLAUSE.—

4 (1) IN GENERAL.—For fiscal year 2010 and for
5 the period beginning on October 1, 2010, and ending
6 on December 31, 2010, the amount of funds appor-
7 tioned to each State under section 411(d) of the
8 Surface Transportation Extension Act of 2010
9 (Public Law 111–147) that is determined by the
10 amount that the State received or was authorized to
11 receive for fiscal year 2009 to carry out the projects
12 of national and regional significance program and
13 national corridor infrastructure improvement pro-
14 gram shall be the greater of—

15 (A) the amount that the State was author-
16 ized to receive under section 411(d) of the Sur-
17 face Transportation Extension Act of 2010 with
18 respect to each such program according to the
19 provisions of that Act, as in effect on the day
20 before the date of enactment of this Act; or

21 (B) the amount that the State is author-
22 ized to receive under section 411(d) of the Sur-
23 face Transportation Extension Act of 2010 with
24 respect to each such program pursuant to the

1 provisions of that Act, as amended by the
2 amendments made by this section.

3 (2) OBLIGATION AUTHORITY.—For fiscal year
4 2010, the amount of obligation authority distributed
5 to each State shall be the greater of—

6 (A) the amount that the State was author-
7 ized to receive pursuant to section 120(a)(4)(A)
8 (as it pertains to the Appalachian Development
9 Highway System program) of title I of division
10 A of the Consolidated Appropriations Act, 2010
11 (Public Law 111–117) and sections
12 120(a)(4)(B) and 120(a)(6) of such title, as of
13 the day before the date of enactment of this
14 Act; or

15 (B) the amount that the State is author-
16 ized to receive pursuant to section 120(a)(4)(A)
17 (as it pertains to the Appalachian Development
18 Highway System program) of title I of division
19 A of the Consolidated Appropriations Act, 2010
20 (Public Law 111–117) and sections
21 120(a)(4)(B) and 120(a)(6) of such title, as of
22 the date of enactment of this Act.

23 (3) AUTHORIZATION OF APPROPRIATIONS.—
24 There is authorized to be appropriated out of the
25 Highway Trust Fund (other than the Mass Transit

1 Account) such sums as may be necessary to carry
2 out this subsection.

3 (4) INCREASE IN OBLIGATION LIMITATION.—

4 The limitation under the heading “Federal-aid High-
5 ways (Limitation on Obligations) (Highway Trust
6 Fund)” in Public Law 111–117 is increased by such
7 sums as may be necessary to carry out this sub-
8 section.

9 (5) CONTRACT AUTHORITY.—Funds made
10 available to carry out this subsection shall be avail-
11 able for obligation and administered in the same
12 manner as if such funds were apportioned under
13 chapter 1 of title 23, United States Code.

14 (6) AMOUNTS.—The dollar amount specified in
15 section 105(d)(1) of title 23, United States Code,
16 the dollar amount specified in section 120(a)(4)(B)
17 of title I of division A of the Consolidated Appro-
18 priations Act, 2010 (Public Law 111–117), and the
19 dollar amount specified in section 120(b)(10) of
20 such title shall each be increased as necessary to
21 carry out this subsection.

1 **SEC. 612. COMMUNITY COLLEGE AND CAREER TRAINING**
2 **GRANT PROGRAM.**

3 (a) IN GENERAL.—Section 278(a) of the Trade Act
4 of 1974 (19 U.S.C. 2372(a)) is amended by adding at the
5 end the following:

6 “(3) RULE OF CONSTRUCTION.—For purposes
7 of this section, any reference to ‘workers’, ‘workers
8 eligible for training under section 236’, or any other
9 reference to workers under this section shall be
10 deemed to include individuals who are, or are likely
11 to become, eligible for unemployment compensation
12 as defined in section 85(b) of the Internal Revenue
13 Code of 1986, or who remain unemployed after ex-
14 hausting all rights to such compensation.”.

15 (b) DEFINITION OF ELIGIBLE INSTITUTION.—Sec-
16 tion 278(b)(1) of the Trade Act of 1974 (19 U.S.C.
17 2372(b)(1)) is amended—

18 (1) by striking “section 102” and inserting
19 “section 101(a)”; and

20 (2) by striking “1002” and inserting
21 “1001(a)”.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
23 279 of the Trade Act of 1974 (19 U.S.C. 2372a) is
24 amended—

25 (1) in subsection (a), by striking the last sen-
26 tence; and

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

2 “(c) ADMINISTRATIVE AND RELATED COSTS.—The
3 Secretary may retain not more than 5 percent of the funds
4 appropriated under subsection (b) for each fiscal year to
5 administer, evaluate, and establish reporting systems for
6 the Community College and Career Training Grant pro-
7 gram under section 278.

8 “(d) SUPPLEMENT NOT SUPPLANT.—Funds appro-
9 priated under subsection (b) shall be used to supplement
10 and not supplant other Federal, State, and local public
11 funds expended to support community college and career
12 training programs.

13 “(e) AVAILABILITY.—Funds appropriated under sub-
14 section (b) shall remain available for the fiscal year for
15 which the funds are appropriated and the subsequent fis-
16 cal year.”.

17 **SEC. 613. EXTENSIONS OF DUTY SUSPENSIONS ON COTTON**

18 **SHIRTING FABRICS AND RELATED PROVI-**

19 **SIONS.**

20 (a) EXTENSIONS.—Each of the following headings of
21 the Harmonized Tariff Schedule of the United States is
22 amended by striking the date in the effective date column
23 and inserting “12/31/2013”:

24 (1) Heading 9902.52.08 (relating to woven fab-
25 rics of cotton).

1 (2) Heading 9902.52.09 (relating to woven fab-
2 rics of cotton).

3 (3) Heading 9902.52.10 (relating to woven fab-
4 rics of cotton).

5 (4) Heading 9902.52.11 (relating to woven fab-
6 rics of cotton).

7 (5) Heading 9902.52.12 (relating to woven fab-
8 rics of cotton).

9 (6) Heading 9902.52.13 (relating to woven fab-
10 rics of cotton).

11 (7) Heading 9902.52.14 (relating to woven fab-
12 rics of cotton).

13 (8) Heading 9902.52.15 (relating to woven fab-
14 rics of cotton).

15 (9) Heading 9902.52.16 (relating to woven fab-
16 rics of cotton).

17 (10) Heading 9902.52.17 (relating to woven
18 fabrics of cotton).

19 (11) Heading 9902.52.18 (relating to woven
20 fabrics of cotton).

21 (12) Heading 9902.52.19 (relating to woven
22 fabrics of cotton).

23 (13) Heading 9902.52.20 (relating to woven
24 fabrics of cotton).

1 (14) Heading 9902.52.21 (relating to woven
2 fabrics of cotton).

3 (15) Heading 9902.52.22 (relating to woven
4 fabrics of cotton).

5 (16) Heading 9902.52.23 (relating to woven
6 fabrics of cotton).

7 (17) Heading 9902.52.24 (relating to woven
8 fabrics of cotton).

9 (18) Heading 9902.52.25 (relating to woven
10 fabrics of cotton).

11 (19) Heading 9902.52.26 (relating to woven
12 fabrics of cotton).

13 (20) Heading 9902.52.27 (relating to woven
14 fabrics of cotton).

15 (21) Heading 9902.52.28 (relating to woven
16 fabrics of cotton).

17 (22) Heading 9902.52.29 (relating to woven
18 fabrics of cotton).

19 (23) Heading 9902.52.30 (relating to woven
20 fabrics of cotton).

21 (24) Heading 9902.52.31 (relating to woven
22 fabrics of cotton).

23 (b) EXTENSION OF DUTY REFUNDS AND PIMA COT-
24 TON TRUST FUND; MODIFICATION OF AFFIDAVIT RE-
25 QUIREMENTS.—Section 407 of title IV of division C of the

1 Tax Relief and Health Care Act of 2006 (Public Law 109–
2 432; 120 Stat. 3060) is amended—

3 (1) in subsection (b)—

4 (A) in paragraph (1), by striking
5 “amounts determined by the Secretary” and all
6 that follows through “5208.59.80” and insert-
7 ing “amounts received in the general fund that
8 are attributable to duties received since Janu-
9 ary 1, 2004, on articles classified under heading
10 5208”; and

11 (B) in paragraph (2), by striking “October
12 1, 2008” and inserting “December 31, 2013”;
13 (2) in subsection (d)—

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 “imported cotton fabric”; and

19 (3) in subsection (f)—

20 (A) in the matter preceding paragraph (1),
21 by inserting “annually” after “provided”; and

22 (B) in paragraph (1), by inserting “during
23 the year in which the affidavit is filed and”
24 after “United States”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act and apply with respect to affidavits filed on
4 or after such date of enactment.

5 **SEC. 614. MODIFICATION OF WOOL APPAREL MANUFAC-**
6 **TURERS TRUST FUND.**

7 (a) IN GENERAL.—Section 4002(c)(2)(A) of the Mis-
8 cellaneous Trade and Technical Corrections Act of 2004
9 (Public Law 108–429; 118 Stat. 2600) is amended by
10 striking “chapter 51” and inserting “chapter 62”.

11 (b) FULL RESTORATION OF PAYMENT LEVELS IN
12 FISCAL YEAR 2010.—

13 (1) TRANSFER OF AMOUNTS.—

14 (A) IN GENERAL.—Not later than 30 days
15 after the date of the enactment of this Act, the
16 Secretary of the Treasury shall transfer to the
17 Wool Apparel Manufacturers Trust Fund, out
18 of the general fund of the Treasury of the
19 United States, amounts determined by the Sec-
20 retary of the Treasury to be equivalent to
21 amounts received in the general fund that are
22 attributable to the duty received on articles
23 classified under chapter 62 of the Harmonized
24 Tariff Schedule of the United States, subject to
25 the limitation in subparagraph (B).

1 (B) LIMITATION.—The Secretary of the
2 Treasury shall not transfer more than the
3 amount determined by the Secretary to be nec-
4 essary for—

5 (i) U.S. Customs and Border Protec-
6 tion to make payments to eligible manufac-
7 turers under section 4002(c)(3) of the Mis-
8 cellaneous Trade and Technical Correc-
9 tions Act of 2004 so that the amount of
10 such payments, when added to any other
11 payments made to eligible manufacturers
12 under section 4002(c)(3) of such Act for
13 calendar year 2010, equal the total amount
14 of payments authorized to be provided to
15 eligible manufacturers under section
16 4002(c)(3) of such Act for calendar year
17 2010; and

18 (ii) the Secretary of Commerce to pro-
19 vide grants to eligible manufacturers under
20 section 4002(c)(6) of the Miscellaneous
21 Trade and Technical Corrections Act of
22 2004 so that the amounts of such grants,
23 when added to any other grants made to
24 eligible manufacturers under section
25 4002(c)(6) of such Act for calendar year

1 2010, equal the total amount of grants au-
2 thorized to be provided to eligible manufac-
3 turers under section 4002(c)(6) of such
4 Act for calendar year 2010.

5 (2) PAYMENT OF AMOUNTS.—U.S. Customs
6 and Border Protection shall make payments de-
7 scribed in paragraph (1) to eligible manufacturers
8 not later than 30 days after such transfer of
9 amounts from the general fund of the Treasury of
10 the United States to the Wool Apparel Manufactur-
11 ers Trust Fund. The Secretary of Commerce shall
12 promptly provide grants described in paragraph (1)
13 to eligible manufacturers after such transfer of
14 amounts from the general fund of the Treasury of
15 the United States to the Wool Apparel Manufactur-
16 ers Trust Fund.

17 (c) RULE OF CONSTRUCTION.—The amendment
18 made by subsection (a) shall not be construed to affect
19 the availability of amounts transferred to the Wool Ap-
20 parel Manufacturers Trust Fund before the date of the
21 enactment of this Act.

22 **SEC. 615. DEPARTMENT OF COMMERCE STUDY.**

23 Not later than 180 days after the date of enactment
24 of this Act, the Secretary of Commerce shall report to
25 Congress detailing—

1 (1) the pattern of job loss in the New England,
2 Mid-Atlantic, and Midwest States over the past 20
3 years;

4 (2) the role of the off-shoring of manufacturing
5 jobs in overall job loss in the regions; and

6 (3) recommendations to attract industries and
7 bring jobs to the region.

8 **SEC. 616. ARRA PLANNING AND REPORTING.**

9 Section 1512 of the American Recovery and Reinvest-
10 ment Act of 2009 (Public Law 111–5; 123 Stat. 287) is
11 amended—

12 (1) in subsection (d)—

13 (A) in the subsection heading, by inserting
14 “PLANS AND” after “AGENCY”;

15 (B) by striking “Not later than” and in-
16 serting the following:

17 “(1) DEFINITION.—In this subsection, the term
18 ‘covered program’ means a program for which funds
19 are appropriated under this division—

20 “(A) in an amount that is—

21 “(i) more than \$2,000,000,000; and

22 “(ii) more than 150 percent of the
23 funds appropriated for the program for fis-
24 cal year 2008; or

1 “(B) that did not exist before the date of
2 enactment of this Act.

3 “(2) PLANS.—Not later than July 1, 2010, the
4 head of each agency that distributes recovery funds
5 shall submit to Congress and make available on the
6 website of the agency a plan for each covered pro-
7 gram, which shall, at a minimum, contain—

8 “(A) a description of the goals for the cov-
9 ered program using recovery funds;

10 “(B) a discussion of how the goals de-
11 scribed in subparagraph (A) relate to the goals
12 for ongoing activities of the covered program, if
13 applicable;

14 “(C) a description of the activities that the
15 agency will undertake to achieve the goals de-
16 scribed in subparagraph (A);

17 “(D) a description of the total recovery
18 funding for the covered program and the recov-
19 ery funding for each activity under the covered
20 program, including identifying whether the ac-
21 tivity will be carried out using grants, con-
22 tracts, or other types of funding mechanisms;

23 “(E) a schedule of milestones for major
24 phases of the activities under the covered pro-
25 gram, with planned delivery dates;

1 “(F) performance measures the agency will
2 use to track the progress of each of the activi-
3 ties under the covered program in meeting the
4 goals described in subparagraph (A), including
5 performance targets, the frequency of measure-
6 ment, and a description of the methodology for
7 each measure;

8 “(G) a description of the process of the
9 agency for the periodic review of the progress of
10 the covered program towards meeting the goals
11 described in subparagraph (A); and

12 “(H) a description of how the agency will
13 hold program managers accountable for achiev-
14 ing the goals described in subparagraph (A).

15 “(3) REPORTS.—

16 “(A) IN GENERAL.—Not later than”;
17 (C) by adding at the end the following:

18 “(B) REPORTS ON PLANS.—Not later than
19 30 days after the end of the calendar quarter
20 ending September 30, 2010, and every calendar
21 quarter thereafter during which the agency obli-
22 gates or expends recovery funds, the head of
23 each agency that developed a plan for a covered
24 program under paragraph (2) shall submit to
25 Congress and make available on a website of

1 the agency a report for each covered program
2 that—

3 “(i) discusses the progress of the
4 agency in implementing the plan;

5 “(ii) describes the progress towards
6 achieving the goals described in paragraph
7 (2)(A) for the covered program;

8 “(iii) discusses the status of each ac-
9 tivity carried out under the covered pro-
10 gram, including whether the activity is
11 completed;

12 “(iv) details the unobligated and un-
13 expired balances and total obligations and
14 outlays under the covered program;

15 “(v) discusses—

16 “(I) whether the covered program
17 has met the milestones for the covered
18 program described in paragraph
19 (2)(E);

20 “(II) if the covered program has
21 failed to meet the milestones, the rea-
22 sons why; and

23 “(III) any changes in the mile-
24 stones for the covered program, in-
25 cluding the reasons for the change;

1 “(vi) discusses the performance of the
2 covered program, including—

3 “(I) whether the covered program
4 has met the performance measures for
5 the covered program described in
6 paragraph (2)(F);

7 “(II) if the covered program has
8 failed to meet the performance meas-
9 ures, the reasons why; and

10 “(III) any trends in information
11 relating to the performance of the cov-
12 ered program; and

13 “(vii) evaluates the ability of the cov-
14 ered program to meet the goals of the cov-
15 ered program given the performance of the
16 covered program.”;

17 (2) in subsection (f)—

18 (A) by striking “Within 180 days” and in-
19 serting the following:

20 “(1) IN GENERAL.—Within 180 days”; and

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

22 “(2) PENALTIES.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graphs (B), (C), and (D), the Attorney General
25 may bring a civil action in an appropriate

1 United States district court against a recipient
2 of recovery funds from an agency that does not
3 provide the information required under sub-
4 section (c) or knowingly provides information
5 under subsection (c) that contains a material
6 omission or misstatement. In a civil action
7 under this paragraph, the court may impose a
8 civil penalty on a recipient of recovery funds in
9 an amount not more than \$250,000. Any
10 amounts received from a civil penalty under this
11 paragraph shall be deposited in the general
12 fund of the Treasury.

13 “(B) NOTIFICATION.—

14 “(i) IN GENERAL.—The head of an
15 agency shall provide a written notification
16 to a recipient of recovery funds from the
17 agency that fails to provide the informa-
18 tion required under subsection (c). A noti-
19 fication under this subparagraph shall pro-
20 vide the recipient with information on how
21 to comply with the necessary reporting re-
22 quirements and notice of the penalties for
23 failing to do so.

24 “(ii) LIMITATION.—A court may not
25 impose a civil penalty under subparagraph

1 (A) relating to the failure to provide infor-
2 mation required under subsection (c) if,
3 not later than 31 days after the date of the
4 notification under clause (i), the recipient
5 of the recovery funds provides the informa-
6 tion.

7 “(C) CONSIDERATIONS.—In determining
8 the amount of a penalty under this paragraph
9 for a recipient of recovery funds, a court shall
10 consider—

11 “(i) the number of times the recipient
12 has failed to provide the information re-
13 quired under subsection (c);

14 “(ii) the amount of recovery funds
15 provided to the recipient;

16 “(iii) whether the recipient is a gov-
17 ernment, nonprofit entity, or educational
18 institution; and

19 “(iv) whether the recipient is a small
20 business concern (as defined under section
21 3 of the Small Business Act (15 U.S.C.
22 632)), with particular consideration given
23 to businesses with not more than 50 em-
24 ployees.

1 “(D) APPLICABILITY.—This paragraph
2 shall apply to any report required to be sub-
3 mitted on or after the date of enactment of this
4 paragraph.

5 “(E) NONEXCLUSIVITY.—The imposition
6 of a civil penalty under this subsection shall not
7 preclude any other criminal, civil, or adminis-
8 trative remedy available to the United States or
9 any other person under Federal or State law.

10 “(3) TECHNICAL ASSISTANCE.—Each agency
11 distributing recovery funds shall provide technical
12 assistance, as necessary, to assist recipients of recov-
13 ery funds in complying with the requirements to pro-
14 vide information under subsection (c), which shall
15 include providing recipients with a reminder regard-
16 ing each reporting requirement.

17 “(4) PUBLIC LISTING.—

18 “(A) IN GENERAL.—Not later than 45
19 days after the end of each calendar quarter,
20 and subject to the notification requirements
21 under paragraph (2)(B), the Board shall make
22 available on the website established under sec-
23 tion 1526 a list of all recipients of recovery
24 funds that did not provide the information re-

1 required under subsection (c) for the calendar
2 quarter.

3 “(B) CONTENTS.—A list made available
4 under subparagraph (A) shall, for each recipi-
5 ent of recovery funds on the list, include the
6 name and address of the recipient, the identi-
7 fication number for the award, the amount of
8 recovery funds awarded to the recipient, a de-
9 scription of the activity for which the recovery
10 funds were provided, and, to the extent known
11 by the Board, the reason for noncompliance.

12 “(5) REGULATIONS AND REPORTING.—

13 “(A) REGULATIONS.—Not later than 90
14 days after the date of enactment of this para-
15 graph, the Attorney General, in consultation
16 with the Director of the Office of Management
17 and Budget and the Chairperson, shall promul-
18 gate regulations regarding implementation of
19 this section.

20 “(B) REPORTING.—

21 “(i) IN GENERAL.—Not later than
22 July 1, 2010, and every 3 months there-
23 after, the Director of the Office of Man-
24 agement and Budget, in consultation with
25 the Chairperson, shall submit to Congress

1 a report on the extent of noncompliance by
2 recipients of recovery funds with the re-
3 porting requirements under this section.

4 “(ii) CONTENTS.—Each report sub-
5 mitted under clause (i) shall include—

6 “(I) information, for the quarter
7 and in total, regarding the number
8 and amount of civil penalties imposed
9 and collected under this subsection,
10 sorted by agency and program;

11 “(II) information on the steps
12 taken by the Federal Government to
13 reduce the level of noncompliance; and

14 “(III) any other information de-
15 termined appropriate by the Direc-
16 tor.”; and

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

18 “(i) TERMINATION.—The reporting requirements
19 under this section shall terminate on September 30,
20 2013.”.

1 **SEC. 617. LIMITATION ON PENALTY FOR FAILURE TO DIS-**
2 **CLOSE REPORTABLE TRANSACTIONS BASED**
3 **ON RESULTING TAX BENEFITS.**

4 (a) IN GENERAL.—Subsection (b) of section 6707A
5 of the Internal Revenue Code of 1986 is amended to read
6 as follows:

7 “(b) AMOUNT OF PENALTY.—

8 “(1) IN GENERAL.—Except as otherwise pro-
9 vided in this subsection, the amount of the penalty
10 under subsection (a) with respect to any reportable
11 transaction shall be 75 percent of the decrease in
12 tax shown on the return as a result of such trans-
13 action (or which would have resulted from such
14 transaction if such transaction were respected for
15 Federal tax purposes).

16 “(2) MAXIMUM PENALTY.—The amount of the
17 penalty under subsection (a) with respect to any re-
18 portable transaction shall not exceed—

19 “(A) in the case of a listed transaction,
20 \$200,000 (\$100,000 in the case of a natural
21 person), or

22 “(B) in the case of any other reportable
23 transaction, \$50,000 (\$10,000 in the case of a
24 natural person).

25 “(3) MINIMUM PENALTY.—The amount of the
26 penalty under subsection (a) with respect to any

1 transaction shall not be less than \$10,000 (\$5,000
2 in the case of a natural person).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to penalties assessed after Decem-
5 ber 31, 2006.

6 **SEC. 618. REPORT ON TAX SHELTER PENALTIES AND CER-**
7 **TAIN OTHER ENFORCEMENT ACTIONS.**

8 (a) **IN GENERAL.**—The Commissioner of Internal
9 Revenue, in consultation with the Secretary of the Treas-
10 ury, shall submit to the Committee on Ways and Means
11 of the House of Representatives and the Committee on
12 Finance of the Senate an annual report on the penalties
13 assessed by the Internal Revenue Service during the pre-
14 ceding year under each of the following provisions of the
15 Internal Revenue Code of 1986:

16 (1) Section 6662A (relating to accuracy-related
17 penalty on understatements with respect to report-
18 able transactions).

19 (2) Section 6700(a) (relating to promoting abu-
20 sive tax shelters).

21 (3) Section 6707 (relating to failure to furnish
22 information regarding reportable transactions).

23 (4) Section 6707A (relating to failure to include
24 reportable transaction information with return).

1 (5) Section 6708 (relating to failure to main-
2 tain lists of advisees with respect to reportable
3 transactions).

4 (b) **ADDITIONAL INFORMATION.**—The report re-
5 quired under subsection (a) shall also include information
6 on the following with respect to each year:

7 (1) Any action taken under section 330(b) of
8 title 31, United States Code, with respect to any re-
9 portable transaction (as defined in section 6707A(c)
10 of the Internal Revenue Code of 1986).

11 (2) Any extension of the time for assessment of
12 tax enforced, or assessment of any amount under
13 such an extension, under paragraph (10) of section
14 6501(c) of the Internal Revenue Code of 1986.

15 (c) **DATE OF REPORT.**—The first report required
16 under subsection (a) shall be submitted not later than De-
17 cember 31, 2010.

18 **Subtitle B—Additional Provisions**

19 **SEC. 621. SUNSET OF TEMPORARY INCREASE IN BENEFITS** 20 **UNDER THE SUPPLEMENTAL NUTRITION AS-** 21 **SISTANCE PROGRAM.**

22 Section 101(a) of title I of division A of Public Law
23 111-5 (123 Stat. 120), as amended by this Act, is amend-
24 ed by striking paragraph (2) and inserting the following:

1 “(2) TERMINATION.—The authority provided by
2 this subsection shall terminate after January 31,
3 2014.”.

4 **SEC. 622. RESCISSIONS.**

5 (a) ARRA RESCISSIONS.—There are hereby re-
6 scinded the following amounts from the specified accounts:

7 (1) \$300,000,000, from unobligated balances
8 under the heading “DISTANCE LEARNING, TELE-
9 MEDICINE, AND BROADBAND PROGRAM” under the
10 heading “RURAL UTILITIES SERVICE” under the
11 heading “DEPARTMENT OF AGRICULTURE” in
12 title I of division A of the American Recovery and
13 Reinvestment Act of 2009 (Public Law 111–5; 123
14 Stat. 118).

15 (2) \$300,000,000, from unobligated balances
16 under the heading “BROADBAND TECHNOLOGY OP-
17 PORTUNITIES PROGRAM” under the heading “NA-
18 TIONAL TELECOMMUNICATIONS AND INFORMATION
19 ADMINISTRATION” under the heading “DEPART-
20 MENT OF COMMERCE” in title II of division A
21 of the American Recovery and Reinvestment Act of
22 2009 (Public Law 111–5; 123 Stat. 128).

23 (3) \$55,000,000 from unobligated balances
24 under the heading “OPERATION AND MAINTENANCE,
25 ARMY” under the heading “OPERATION AND

1 MAINTENANCE” in title III of division A of the
2 American Recovery and Reinvestment Act of 2009
3 (Public Law 111–5; 123 Stat. 132).

4 (4) \$55,000,000 from unobligated balances
5 under the heading “OPERATION AND MAINTENANCE,
6 NAVY” under the heading “OPERATION AND
7 MAINTENANCE” in title III of division A of the
8 American Recovery and Reinvestment Act of 2009
9 (Public Law 111–5; 123 Stat. 132).

10 (5) \$15,000,000 from unobligated balances
11 under the heading “OPERATION AND MAINTENANCE,
12 AIR FORCE” under the heading “OPERATION
13 AND MAINTENANCE” in title III of division A of
14 the American Recovery and Reinvestment Act of
15 2009 (Public Law 111–5; 123 Stat. 132).

16 (6) \$12,000,000 from unobligated balances
17 under the heading “OPERATION AND MAINTENANCE,
18 ARMY NATIONAL GUARD” under the heading “OP-
19 ERATION AND MAINTENANCE” in title III of
20 division A of the American Recovery and Reinvest-
21 ment Act of 2009 (Public Law 111–5; 123 Stat.
22 133).

23 (7) \$25,000,000 from unobligated balances
24 under the heading “DEFENSE HEALTH PROGRAM”
25 under the heading “OTHER DEPARTMENT OF

1 DEFENSE PROGRAMS” in title III of division A
2 of the American Recovery and Reinvestment Act of
3 2009 (Public Law 111–5; 123 Stat. 134).

4 (8) \$98,000,000 from unobligated balances,
5 other than those of the Energy Conservation Invest-
6 ment Program, under the heading “MILITARY CON-
7 STRUCTION, DEFENSE-WIDE” under the heading
8 “DEPARTMENT OF DEFENSE” in title X of di-
9 vision A of the American Recovery and Reinvest-
10 ment Act of 2009 (Public Law 111-5; 123 Stat.
11 192).

12 (9) \$1,500,000,000 from—

13 (A) unobligated balances made available
14 under the heading “BIODEFENSE COUNTER-
15 MEASURES” under the heading “EMERGENCY
16 PREPAREDNESS AND RESPONSE” under title
17 III of the Department of Homeland Security
18 Appropriation Act, 2004 (Public Law 108-90;
19 117 Stat. 1148),

20 (B) unobligated balances made available
21 under the heading “DEPARTMENT OF HEALTH
22 AND HUMAN SERVICE—PUBLIC HEALTH AND
23 SOCIAL SERVICES EMERGENCY FUND” for pan-
24 demic influenza in prior years, or

1 (C) a combination of unobligated balances
2 described in subparagraphs (A) and (B).

3 (b) ADDITIONAL RESCISSIONS.—

4 (1) Of the funds appropriated in Department of
5 Defense Appropriations Acts, the following funds are
6 hereby rescinded from the following accounts and
7 programs in the specified amounts:

8 “Other Procurement, Army, 2008/2010”,
9 \$75,000,000.

10 “Aircraft Procurement, Navy, 2008/2010”,
11 \$150,000,000.

12 “Aircraft Procurement, Air Force, 2008/
13 2010”, \$100,000,000.

14 “Other Procurement, Air Force, 2008/
15 2010”, \$50,000,000.

16 “Research, Development, Test and Evalua-
17 tion, Army, 2009/2010”, \$75,000,000.

18 “Research, Development, Test and Evalua-
19 tion, Air Force, 2009/2010”, \$150,000,000.

20 “Research, Development, Test and Evalua-
21 tion, Defense-Wide, 2009/2010”, \$125,000,000.

22 (2) Of the funds appropriated under the head-
23 ing “PROCUREMENT, MARINE CORPS” under the
24 heading “PROCUREMENT” in title IX of the Sup-
25 plemental Appropriations Act, 2008 (Public Law

1 110–252; 122 Stat. 2401) \$100,000,000 are hereby
2 rescinded.

3 (3) Of the funds appropriated under the head-
4 ing “PROCUREMENT, MARINE CORPS” under the
5 heading “PROCUREMENT” in title III of the Sup-
6 plemental Appropriations Act, 2009 (Public Law
7 111–32; 123 Stat. 1866) \$75,000,000 are hereby re-
8 scinded.

9 **TITLE VII—TRANSPARENCY RE-**
10 **QUIREMENTS FOR FOREIGN-**
11 **HELD DEBT**

12 **SEC. 701. SHORT TITLE.**

13 This title may be cited as the “Foreign-Held Debt
14 Transparency and Threat Assessment Act”.

15 **SEC. 702. DEFINITIONS.**

16 In this title:

17 (1) APPROPRIATE CONGRESSIONAL COMMIT-
18 TEES.—The term “appropriate congressional com-
19 mittees” means the following:

20 (A) The Committee on Armed Services, the
21 Committee on Foreign Relations, the Com-
22 mittee on Finance, and the Committee on the
23 Budget of the Senate.

24 (B) The Committee on Armed Services,
25 the Committee on Foreign Affairs, the Com-

1 mittee on Ways and Means, and the Committee
2 on the Budget of the House of Representatives.

3 (2) DEBT INSTRUMENTS OF THE UNITED
4 STATES.—The term “debt instruments of the United
5 States” means all bills, notes, and bonds issued or
6 guaranteed by the United States or by an entity of
7 the United States Government, including any Gov-
8 ernment-sponsored enterprise.

9 **SEC. 703. SENSE OF CONGRESS.**

10 It is the sense of Congress that—

11 (1) the growing Federal debt of the United
12 States has the potential to jeopardize the national
13 security and economic stability of the United States;

14 (2) the increasing dependence of the United
15 States on foreign creditors has the potential to make
16 the United States vulnerable to undue influence by
17 certain foreign creditors in national security and
18 economic policymaking;

19 (3) the People’s Republic of China is the largest
20 foreign creditor of the United States, in terms of its
21 overall holdings of debt instruments of the United
22 States;

23 (4) the current level of transparency in the
24 scope and extent of foreign holdings of debt instru-
25 ments of the United States is inadequate and needs

1 to be improved, particularly regarding the holdings
2 of the People's Republic of China;

3 (5) through the People's Republic of China's
4 large holdings of debt instruments of the United
5 States, China has become a super creditor of the
6 United States;

7 (6) under certain circumstances, the holdings of
8 the People's Republic of China could give China a
9 tool with which China can try to manipulate the do-
10 mestic and foreign policymaking of the United
11 States, including the United States relationship with
12 Taiwan;

13 (7) under certain circumstances, if the People's
14 Republic of China were to be displeased with a given
15 United States policy or action, China could attempt
16 to destabilize the United States economy by rapidly
17 divesting large portions of China's holdings of debt
18 instruments of the United States; and

19 (8) the People's Republic of China's expansive
20 holdings of such debt instruments of the United
21 States could potentially pose a direct threat to the
22 United States economy and to United States na-
23 tional security. This potential threat is a significant
24 issue that warrants further analysis and evaluation.

1 **SEC. 704. QUARTERLY REPORT ON RISKS POSED BY FOR-**
2 **EIGN HOLDINGS OF DEBT INSTRUMENTS OF**
3 **THE UNITED STATES.**

4 (a) **QUARTERLY REPORT.**—Not later than March 31,
5 June 30, September 30, and December 31 of each year,
6 the President shall submit to the appropriate congress-
7 sional committees a report on the risks posed by foreign
8 holdings of debt instruments of the United States, in both
9 classified and unclassified form.

10 (b) **MATTERS TO BE INCLUDED.**—Each report sub-
11 mitted under this section shall include the following:

12 (1) The most recent data available on foreign
13 holdings of debt instruments of the United States,
14 which data shall not be older than the date that is
15 7 months preceding the date of the report.

16 (2) The country of domicile of all foreign credi-
17 tors who hold debt instruments of the United States.

18 (3) The total amount of debt instruments of the
19 United States that are held by the foreign creditors,
20 broken out by the creditors' country of domicile and
21 by public, quasi-public, and private creditors.

22 (4) For each foreign country listed in para-
23 graph (3)—

24 (A) an analysis of the country's purpose in
25 holding debt instruments of the United States

1 nomic stability of the United States posed by the
2 Federal debt of the United States.

3 (2) A specific determination of whether the lev-
4 els of risk identified under paragraph (1) are sus-
5 tainable.

6 (3) If the determination under paragraph (2) is
7 that the levels of risk are unsustainable, specific rec-
8 ommendations for reducing the levels of risk to sus-
9 tainable levels, in a manner that results in a reduc-
10 tion in Federal spending.

11 **SEC. 706. CORRECTIVE ACTION TO ADDRESS UNACCEPT-**
12 **ABLE AND UNSUSTAINABLE RISKS TO**
13 **UNITED STATES NATIONAL SECURITY AND**
14 **ECONOMIC STABILITY.**

15 In any case in which the President determines under
16 section 704(b)(4)(C) that a foreign country's holdings of
17 debt instruments of the United States pose an unaccept-
18 able risk to the long-term national security or economic
19 stability of the United States, the President shall, within
20 30 days of the determination—

21 (1) formulate a plan of action to reduce the risk
22 level to an acceptable and sustainable level, in a
23 manner that results in a reduction in Federal spend-
24 ing;

1 (2) submit to the appropriate congressional
2 committees a report on the plan of action that in-
3 cludes a timeline for the implementation of the plan
4 and recommendations for any legislative action that
5 would be required to fully implement the plan; and

6 (3) move expeditiously to implement the plan in
7 order to protect the long-term national security and
8 economic stability of the United States.

9 **TITLE VIII—TRANSPARENCY RE-**
10 **QUIREMENTS FOR FOREIGN-**
11 **HELD DEBT**

12 **SEC. 801. SHORT TITLE.**

13 This title may be cited as the “Foreign-Held Debt
14 Transparency and Threat Assessment Act”.

15 **SEC. 802. DEFINITIONS.**

16 In this title:

17 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
18 **TEES.**—The term “appropriate congressional com-
19 mittees” means the following:

20 (A) The Committee on Armed Services, the
21 Committee on Foreign Relations, the Com-
22 mittee on Finance, the Committee on Banking,
23 Housing, and Urban Affairs, and the Com-
24 mittee on the Budget of the Senate.

1 (B) The Committee on Armed Services,
2 the Committee on Foreign Affairs, the Com-
3 mittee on Ways and Means, the Committee on
4 Financial Services, and the Committee on the
5 Budget of the House of Representatives.

6 (2) DEBT INSTRUMENTS OF THE UNITED
7 STATES.—The term “debt instruments of the United
8 States” means all bills, notes, and bonds held by the
9 public and issued or guaranteed by the United
10 States or by an entity of the United States Govern-
11 ment.

12 **SEC. 803. SENSE OF CONGRESS.**

13 It is the sense of Congress that—

14 (1) the growing Federal debt of the United
15 States has the potential to jeopardize the national
16 security and economic stability of the United States;

17 (2) large foreign holdings of debt instruments
18 of the United States have the potential to make the
19 United States vulnerable to undue influence by for-
20 eign creditors in national security and economic pol-
21 icymaking;

22 (3) the People’s Republic of China, Japan, and
23 the United Kingdom are the 3 largest foreign hold-
24 ers of debt instruments of the United States; and

1 (4) the current level of transparency in the
2 scope and extent of foreign holdings of debt instru-
3 ments of the United States is inadequate and needs
4 to be improved.

5 **SEC. 804. ANNUAL REPORT ON RISKS POSED BY FOREIGN**
6 **HOLDINGS OF DEBT INSTRUMENTS OF THE**
7 **UNITED STATES.**

8 (a) **ANNUAL REPORT.**—Not later than March 31 of
9 each year, the Secretary of the Treasury shall submit to
10 the appropriate congressional committees a report on the
11 risks posed by foreign holdings of debt instruments of the
12 United States, in both classified and unclassified form.

13 (b) **MATTERS TO BE INCLUDED.**—Each report sub-
14 mitted under this section shall include the following:

15 (1) The most recent data available on foreign
16 holdings of debt instruments of the United States,
17 which data shall not be older than the date that is
18 9 months preceding the date of the report.

19 (2) The total amount of debt instruments of the
20 United States that are held by foreign residents,
21 broken out by the residents' country of domicile and
22 by public and private residents.

23 (3) An analysis of the current and foreseeable
24 risks to the long-term national security and eco-

1 **SEC. 806. CORRECTIVE ACTION TO ADDRESS UNACCEPT-**
2 **ABLE RISKS TO UNITED STATES NATIONAL**
3 **SECURITY AND ECONOMIC STABILITY.**

4 If the President determines that foreign holdings of
5 debt instruments of the United States pose an unaccept-
6 able risk to the long-term national security or economic
7 stability of the United States, the President shall, within
8 30 days of the determination—

9 (1) formulate a plan of action to reduce such
10 risk;

11 (2) submit to the appropriate congressional
12 committees a report on the plan of action that in-
13 cludes a timeline for the implementation of the plan
14 and recommendations for any legislative action that
15 would be required to fully implement the plan; and

16 (3) move expeditiously to implement the plan in
17 order to protect the long-term national security and
18 economic stability of the United States.

19 **TITLE IX—OFFICE OF THE**
20 **HOMEOWNER ADVOCATE**

21 **SEC. 901. OFFICE OF THE HOMEOWNER ADVOCATE.**

22 (a) **ESTABLISHMENT.**—There is established in the
23 Department of the Treasury an office to be known as the
24 “Office of the Homeowner Advocate” (in this title referred
25 to as the “Office”).

26 (b) **DIRECTOR.**—

1 (1) IN GENERAL.—The Director of the Office of
2 the Homeowner Advocate (in this title referred to as
3 the “Director”) shall report directly to the Assistant
4 Secretary of the Treasury for Financial Stability,
5 and shall be entitled to compensation at the same
6 rate as the highest rate of basic pay established for
7 the Senior Executive Service under section 5382 of
8 title 5, United States Code.

9 (2) APPOINTMENT.—The Director shall be ap-
10 pointed by the Secretary, after consultation with the
11 Secretary of the Department of Housing and Urban
12 Development, and without regard to the provisions
13 of title 5, United States Code, relating to appoint-
14 ments in the competitive service or the Senior Exec-
15 utive Service.

16 (3) QUALIFICATIONS.—An individual appointed
17 under paragraph (2) shall have—

18 (A) experience as an advocate for home-
19 owners; and

20 (B) experience dealing with mortgage
21 servicers.

22 (4) RESTRICTION ON EMPLOYMENT.—An indi-
23 vidual may be appointed as Director only if such in-
24 dividual was not an officer or employee of either a
25 mortgage servicer or the Department of the Treas-

1 ury during the 4-year period preceding the date of
2 such appointment.

3 (5) **HIRING AUTHORITY.**—The Director shall
4 have the authority to hire staff, obtain support by
5 contract, and manage the budget of the Office of the
6 Homeowner Advocate.

7 **SEC. 902. FUNCTIONS OF THE OFFICE.**

8 (a) **IN GENERAL.**—It shall be the function of the Of-
9 fice—

10 (1) to assist homeowners, housing counselors,
11 and housing lawyers in resolving problems with the
12 Home Affordable Modification Program of the Mak-
13 ing Home Affordable initiative of the Secretary, au-
14 thorized under the Emergency Economic Stabiliza-
15 tion Act of 2008 (in this title referred to as the
16 “Home Affordable Modification Program”)

17 (2) to identify areas, both individual and sys-
18 tematic, in which homeowners, housing counselors,
19 and housing lawyers have problems in dealings with
20 the Home Affordable Modification Program;

21 (3) to the extent possible, to propose changes in
22 the administrative practices of the Home Affordable
23 Modification Program, to mitigate problems identi-
24 fied under paragraph (2);

1 (4) to identify potential legislative changes
2 which may be appropriate to mitigate such problems;
3 and

4 (5) to implement other programs and initiatives
5 that the Director deems important to assisting
6 homeowners, housing counselors, and housing law-
7 yers in resolving problems with the Home Affordable
8 Modification Program, which may include—

9 (A) running a triage hotline for home-
10 owners at risk of foreclosure;

11 (B) providing homeowners with access to
12 housing counseling programs of the Department
13 of Housing and Urban Development at no cost
14 to the homeowner;

15 (C) developing Internet tools related to the
16 Home Affordable Modification Program; and

17 (D) developing training and educational
18 materials.

19 (b) AUTHORITY.—

20 (1) IN GENERAL.—Staff designated by the Di-
21 rector shall have the authority to implement servicer
22 remedies, on a case-by-case basis, subject to the ap-
23 proval of the Assistant Secretary of the Treasury for
24 Financial Stability.

1 (2) RESOLUTION OF HOMEOWNER CON-
2 CERNS.—The Office shall, to the extent possible, re-
3 solve all homeowner concerns not later than 30 days
4 after the opening of a case with such homeowner.

5 (c) COMMENCEMENT OF OPERATIONS.—The Office
6 shall commence its operations, as required by this title,
7 not later than 3 months after the date of enactment of
8 this Act.

9 (d) SUNSET.—The Office shall cease operations as of
10 the date on which the Home Affordable Modification Pro-
11 gram ceases to operate.

12 **SEC. 903. RELATIONSHIP WITH EXISTING ENTITIES.**

13 (a) TRANSFER.—The Office shall coordinate and cen-
14 tralize all complaint escalations relating to the Home Af-
15 fordable Modification Program.

16 (b) HOTLINE.—The HOPE hotline (or any successor
17 triage hotline) shall reroute all complaints relating to the
18 Home Affordable Modification Program to the Office.

19 (c) COORDINATION.—The Office shall coordinate
20 with the compliance office of the Office of Financial Sta-
21 bility of the Department of the Treasury and the Home-
22 ownership Preservation Office of the Department of the
23 Treasury.

1 **SEC. 904. RULE OF CONSTRUCTION.**

2 Nothing in this section shall prohibit a mortgage
3 servicer from evaluating a homeowner for eligibility under
4 the Home Affordable Foreclosure Alternatives Program
5 while a case is still open with the Office of the Homeowner
6 Advocate. Nothing in this section may be construed to re-
7 lieve any loan services from otherwise applicable rules, di-
8 rectives, or similar guidance under the Home Affordable
9 Modification Program relating to the continuation or com-
10 pletion of foreclosure proceedings.

11 **SEC. 905. REPORTS TO CONGRESS.**

12 (a) TESTIMONY.—The Director shall be available to
13 testify before the Committee on Banking, Housing, and
14 Urban Affairs of the Senate and the Committee on Finan-
15 cial Services of the House of Representatives, not less fre-
16 quently than 4 times a year, or at any time at the request
17 of the Chairs of either committee.

18 (b) REPORTS.—Once annually, the Director shall
19 provide a detailed report to Congress on the Home Afford-
20 able Modification Program. Such report shall contain full
21 and substantive analysis, in addition to statistical informa-
22 tion, including, at a minimum—

23 (1) data and analysis of the types and volume
24 of complaints received from homeowners, housing
25 counselors, and housing lawyers, broken down by

1 category of servicer, except that servicers may not be
2 identified by name in the report;

3 (2) a summary of not fewer than 20 of the
4 most serious problems encountered by Home Afford-
5 able Modification Program participants, including a
6 description of the nature of such problems;

7 (3) to the extent known, identification of the 10
8 most litigated issues for Home Affordable Modifica-
9 tion Program participants, including recommenda-
10 tions for mitigating such disputes;

11 (4) data and analysis on the resolutions of the
12 complaints received from homeowners, housing coun-
13 selors, and housing lawyers;

14 (5) identification of any programs or initiatives
15 that the Office has taken to improve the Home Af-
16 fordable Modification Program;

17 (6) recommendations for such administrative
18 and legislative action as may be appropriate to re-
19 solve problems encountered by Home Affordable
20 Modification Program participants; and

21 (7) such other information as the Director may
22 deem advisable.

23 **SEC. 906. FUNDING.**

24 Amounts made available for the costs of administra-
25 tion of the Home Affordable Modification Program that

1 are not otherwise obligated shall be available to carry out
2 the duties of the Office. Funding shall be maintained at
3 levels adequate to reasonably carry out the functions of
4 the Office.

5 **SEC. 907. PROHIBITION ON PARTICIPATION IN MAKING**
6 **HOME AFFORDABLE FOR BORROWERS WHO**
7 **STRATEGICALLY DEFAULT.**

8 No mortgage may be modified under the Making
9 Home Affordable Program, or with any funds from the
10 Troubled Asset Relief Program, unless the servicer of the
11 mortgage loan has determined, in accordance with stand-
12 ards and requirements established by the Secretary of the
13 Treasury, that the mortgagor cannot afford to make pay-
14 ments under the terms of the existing mortgage loan. The
15 Secretary of the Treasury, in consultation with the Sec-
16 retary of Housing and Urban Development, shall issue
17 rules to carry out this section not later than 90 days after
18 the date of enactment of this Act. This section shall not
19 apply to any refinancing or modifications made under the
20 “FHA Program Adjustments to Support Refinancings for
21 Underwater Homeowners,” announced by the Department
22 of the Treasury and the Department of Housing and
23 Urban Development on March 26, 2010, as long as the
24 program continues to be structured so that borrowers par-
25 ticipating in the FHA refinance program cannot be in de-

1 fault on their primary mortgage at the time of refinance
2 and their eligibility in the program is not helped if they
3 are in default on their second mortgage, and thus lack
4 a strategic reason to go into default on either their first
5 or second mortgage to participate in the program.

6 **SEC. 908. PUBLIC AVAILABILITY OF INFORMATION.**

7 (a) PUBLIC AVAILABILITY OF DATA.—The Secretary
8 of the Treasury shall revise the guidelines for the Home
9 Affordable Modification Program of the Making Home Af-
10 fordable initiative of the Secretary of the Treasury, au-
11 thorized under the Emergency Economic Stabilization Act
12 of 2008 (Public Law 110–343), to establish that the data
13 collected by the Secretary of the Treasury from each mort-
14 gage servicer and lender participating in the Program is
15 made public in accordance with subsection (b).

16 (b) CONTENT.—Not more than 60 days after each
17 monthly deadline for submission of data by mortgage
18 servicers and lender participating in the program, the
19 Treasury shall make all data tables available to the public
20 at the individual record level. This data shall include but
21 not be limited to—

22 (1) higher risk loans, including loans made in
23 connection with any program to provide expanded
24 loan approvals, shall be reported separately;

25 (2) disclose—

1 (A) the rate or pace at which such mort-
2 gages are becoming seriously delinquent;

3 (B) whether such rate or pace is increasing
4 or decreasing;

5 (C) if there are certain subsets within the
6 loans covered by this section that have greater
7 or lesser rates or paces of delinquency; and

8 (D) if such subsets exist, the characteris-
9 tics of such subset of mortgages;

10 (3) with respect to the loss mitigation efforts of
11 the loan—

12 (A) the processes and practices that the re-
13 porter has in effect to minimize losses on mort-
14 gages covered by this section; and

15 (B) the manner and methods by which
16 such processes and practices are being mon-
17 itored for effectiveness;

18 (4) disclose, with respect to loans that are or
19 become 60 or more days past due, (provided that for
20 purposes of disclosure under this paragraph that
21 each loan should have a unique number that is not
22 the same as any loan number the borrower, origi-
23 nator, or servicer uses), the following attributes—

24 (A) the original loan amount;

25 (B) the current loan amount;

1 (C) the loan-to-value ratio and combined
2 loan-to-value ratio, both at origination and cur-
3 rently, and the number of liens on the property;

4 (D) the property valuation at the time of
5 origination of the loan, and all subsequent prop-
6 erty valuations and the date of each valuation;

7 (E) each relevant credit score of each bor-
8 rower obtained at any time in connection with
9 the loan, with the date of the credit score, to
10 the extent allowed by existing law;

11 (F) whether the loan has any mortgage or
12 other credit insurance or guarantee;

13 (G) the current interest rate on such loan;

14 (H) any rate caps and floors if the loan is
15 an adjustable rate mortgage loan;

16 (I) the adjustable rate mortgage index or
17 indices for such loan;

18 (J) whether the loan is currently past due,
19 and if so how many days such loan is past due;

20 (K) the total number of days the loan has
21 been past due at any time;

22 (L) whether the loan is subject to a balloon
23 payment;

24 (M) the date of each modification of the
25 loan;

1 (N) whether any amounts of loan principal
2 has been deferred or written off, and if so, the
3 date and amount of each deferral and the date
4 and amount of each writedown;

5 (O) whether the interest rate was changed
6 from a rate that could adjust to a fixed rate,
7 and if so, the period of time for which the rate
8 will be fixed;

9 (P) the amount by which the interest rate
10 on the loan was reduced, and for what period
11 of time it was reduced;

12 (Q) if the interest rate was reduced or
13 fixed for a period of time less than the remain-
14 ing loan term, on what dates, and to what
15 rates, could the rate potentially increase in the
16 future;

17 (R) whether the loan term was modified,
18 and if so, whether it was extended or shortened,
19 and by what amount of time;

20 (S) whether the loan is in the process of
21 foreclosure or similar procedure, whether judi-
22 cial or otherwise; and

23 (T) whether a foreclosure or similar proce-
24 dure, whether judicial or otherwise, has been
25 completed.

1 (c) GUIDELINES AND REGULATIONS.—The Secretary
2 of the Treasury shall establish guidelines and regulations
3 necessary—

4 (1) to ensure that the privacy of individual con-
5 sumers is appropriately protected in the reports
6 under this section;

7 (2) to make the data reported under this sub-
8 section available on a public website with no cost to
9 access the data, in a consistent format;

10 (3) to update the data no less frequently than
11 monthly;

12 (4) to establish procedures for disclosing such
13 data to the public on a public website with no cost
14 to access the data; and

15 (5) to allow the Secretary to make such dele-
16 tions as the Secretary may determine to be appro-
17 priate to protect any privacy interest of any loan
18 modification applicant, including the deletion or al-
19 teration of the applicant's name and identification
20 number.

21 (d) EXCEPTION.—No data shall have to be disclosed
22 if it voids or violates existing contracts between the Sec-
23 retary of Treasury and mortgage servicers as part of the
24 Making Home Affordable Program.