

111TH CONGRESS
1ST SESSION

H. R. 598

[Report No. 111-]

To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2009

Mr. RANGEL (for himself, Mr. STARK, and Mr. McDERMOTT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, Science and Technology, Education and Labor, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JANUARY --, 2009

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on January 16, 2009]

A BILL

To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—TAX PROVISIONS**

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

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

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

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

Sec. 1000. Short title, etc.

Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Increase in earned income tax credit.

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

Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

Subtitle D—Housing Incentives

Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.

Sec. 1302. Coordination of low-income housing credit and low-income housing grants.

Subtitle E—Tax Incentives for Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

Sec. 1401. Special allowance for certain property acquired during 2009.

Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1411. 5-year carryback of operating losses.

Sec. 1412. Exception for TARP recipients.

PART 3—INCENTIVES FOR NEW JOBS

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

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

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

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.

Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.

Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1511. Qualified school construction bonds.

Sec. 1512. Extension and expansion of qualified zone academy bonds.

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

Sec. 1521. Taxable bond option for governmental bonds.

PART 4—RECOVERY ZONE BONDS

Sec. 1531. Recovery zone bonds.

Sec. 1532. Tribal economic development bonds.

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

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

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

Sec. 1601. Extension of credit for electricity produced from certain renewable resources.

Sec. 1602. Election of investment credit in lieu of production credit.

Sec. 1603. Repeal of certain limitations on credit for renewable energy property.

Sec. 1604. Coordination with renewable energy grants.

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

Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.

Sec. 1612. Increased limitation and expansion of qualified energy conservation bonds.

PART 3—ENERGY CONSERVATION INCENTIVES

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

PART 4—ENERGY RESEARCH INCENTIVES

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

*Subtitle H—Other Provisions**PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS*

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

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

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

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

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

PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT

- Sec. 1731. Study of economic, employment, and related effects of this Act.*

1 ***Subtitle A—Making Work Pay***

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

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

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

7 *“(a) ALLOWANCE OF CREDIT.—In the case of an eligi-*
 8 *ble individual, there shall be allowed as a credit against*
 9 *the tax imposed by this subtitle for the taxable year an*
 10 *amount equal to the lesser of—*

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

3 “(2) \$500 (\$1,000 in the case of a joint return).

4 “(b) *LIMITATION BASED ON MODIFIED ADJUSTED*
5 *GROSS INCOME.*—

6 “(1) *IN GENERAL.*—*The amount allowable as a*
7 *credit under subsection (a) (determined without re-*
8 *gard to this paragraph) for the taxable year shall be*
9 *reduced (but not below zero) by 2 percent of so much*
10 *of the taxpayer’s modified adjusted gross income as*
11 *exceeds \$75,000 (\$150,000 in the case of a joint re-*
12 *turn).*

13 “(2) *MODIFIED ADJUSTED GROSS INCOME.*—*For*
14 *purposes of subparagraph (A), the term ‘modified ad-*
15 *justed gross income’ means the adjusted gross income*
16 *of the taxpayer for the taxable year increased by any*
17 *amount excluded from gross income under section*
18 *911, 931, or 933.*

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

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

22 “(A) *any nonresident alien individual,*

23 “(B) *any individual with respect to whom*
24 *a deduction under section 151 is allowable to an-*
25 *other taxpayer for a taxable year beginning in*

1 *the calendar year in which the individual's tax-*
2 *able year begins, and*

3 “(C) *an estate or trust.*

4 *Such term shall not include any individual unless the*
5 *requirements of section 32(c)(1)(E) are met with re-*
6 *spect to such individual.*

7 “(2) *EARNED INCOME.—The term ‘earned in-*
8 *come’ has the meaning given such term by section*
9 *32(c)(2), except that such term shall not include net*
10 *earnings from self-employment which are not taken*
11 *into account in computing taxable income. For pur-*
12 *poses of the preceding sentence, any amount excluded*
13 *from gross income by reason of section 112 shall be*
14 *treated as earned income which is taken into account*
15 *in computing taxable income for the taxable year.*

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

18 (b) *TREATMENT OF POSSESSIONS.—*

19 (1) *PAYMENTS TO POSSESSIONS.—*

20 (A) *MIRROR CODE POSSESSION.—The Sec-*
21 *retary of the Treasury shall pay to each posses-*
22 *sion of the United States with a mirror code tax*
23 *system amounts equal to the loss to that posses-*
24 *sion by reason of the amendments made by this*
25 *section with respect to taxable years beginning*

1 *in 2009 and 2010. Such amounts shall be deter-*
2 *mined by the Secretary of the Treasury based on*
3 *information provided by the government of the*
4 *respective possession.*

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

22 *(2) COORDINATION WITH CREDIT ALLOWED*
23 *AGAINST UNITED STATES INCOME TAXES.—No credit*
24 *shall be allowed against United States income taxes*
25 *for any taxable year under section 36A of the Internal*

1 *Revenue Code of 1986 (as added by this section) to*
2 *any person—*

3 *(A) to whom a credit is allowed against*
4 *taxes imposed by the possession by reason of the*
5 *amendments made by this section for such tax-*
6 *able year, or*

7 *(B) who is eligible for a payment under a*
8 *plan described in paragraph (1)(B) with respect*
9 *to such taxable year.*

10 (3) *DEFINITIONS AND SPECIAL RULES.—*

11 *(A) POSSESSION OF THE UNITED STATES.—*
12 *For purposes of this subsection, the term “posses-*
13 *sion of the United States” includes the Common-*
14 *wealth of Puerto Rico and the Commonwealth of*
15 *the Northern Mariana Islands.*

16 *(B) MIRROR CODE TAX SYSTEM.—For pur-*
17 *poses of this subsection, the term “mirror code*
18 *tax system” means, with respect to any posses-*
19 *sion of the United States, the income tax system*
20 *of such possession if the income tax liability of*
21 *the residents of such possession under such sys-*
22 *tem is determined by reference to the income tax*
23 *laws of the United States as if such possession*
24 *were the United States.*

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

8 (c) *REFUNDS DISREGARDED IN THE ADMINISTRATION*
9 *OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PRO-*
10 *GRAMS.*—*Any credit or refund allowed or made to any indi-*
11 *vidual by reason of section 36A of the Internal Revenue*
12 *Code of 1986 (as added by this section) or by reason of sub-*
13 *section (b) of this section shall not be taken into account*
14 *as income and shall not be taken into account as resources*
15 *for the month of receipt and the following 2 months, for*
16 *purposes of determining the eligibility of such individual*
17 *or any other individual for benefits or assistance, or the*
18 *amount or extent of benefits or assistance, under any Fed-*
19 *eral program or under any State or local program financed*
20 *in whole or in part with Federal funds.*

21 (d) *CONFORMING AMENDMENTS.*—

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

24 (2) *Section 1324(b)(2) of title 31, United States*
25 *Code, is amended by inserting “36A,” after “36.”*

1 (3) *The table of sections for subpart C of part IV*
2 *of subchapter A of chapter 1 is amended by inserting*
3 *after the item relating to section 36 the following new*
4 *item:*

 “*Sec. 36A. Making work pay credit.*”.

5 (e) *EFFECTIVE DATE.*—*This section shall apply to tax-*
6 *able years beginning after December 31, 2008.*

7 ***Subtitle B—Additional Tax Relief***
8 ***for Families With Children***

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

10 (a) *IN GENERAL.*—*Subsection (b) of section 32 is*
11 *amended by adding at the end the following new paragraph:*

12 “(3) *SPECIAL RULES FOR 2009 AND 2010.*—*In the*
13 *case of any taxable year beginning in 2009 or 2010—*

14 “(A) *INCREASED CREDIT PERCENTAGE FOR*
15 *3 OR MORE QUALIFYING CHILDREN.*—*In the case*
16 *of a taxpayer with 3 or more qualifying chil-*
17 *dren, the credit percentage is 45 percent.*

18 “(B) *REDUCTION OF MARRIAGE PENALTY.*—

19 “(i) *IN GENERAL.*—*The dollar amount*
20 *in effect under paragraph (2)(B) shall be*
21 *\$5,000.*

22 “(ii) *INFLATION ADJUSTMENT.*—*In the*
23 *case of any taxable year beginning in 2010,*
24 *the \$5,000 amount in clause (i) shall be in-*
25 *creased by an amount equal to—*

1 “(I) such dollar amount, multi-
2 plied by

3 “(II) the cost of living adjustment
4 determined under section 1(f)(3) for
5 the calendar year in which the taxable
6 year begins determined by substituting
7 ‘calendar year 2008’ for ‘calendar year
8 1992’ in subparagraph (B) thereof.

9 “(iii) *ROUNDING*.—Subparagraph (A)
10 of subsection (j)(2) shall apply after taking
11 into account any increase under clause
12 (ii).”.

13 (b) *EFFECTIVE DATE*.—The amendments made by this
14 section shall apply to taxable years beginning after Decem-
15 ber 31, 2008.

16 **SEC. 1102. INCREASE OF REFUNDABLE PORTION OF CHILD**
17 **CREDIT.**

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

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

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

4 ***Subtitle C—American Opportunity***
5 ***Tax Credit***

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

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

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

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

15 “(A) 100 percent of so much of the qualified
16 tuition and related expenses paid by the tax-
17 payer during the taxable year (for education fur-
18 nished to the eligible student during any aca-
19 demic period beginning in such taxable year) as
20 does not exceed \$2,000, plus

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

23 “(2) *CREDIT ALLOWED FOR FIRST 4 YEARS OF*
24 *POST-SECONDARY EDUCATION.*—Subparagraphs (A)

1 *and (C) of subsection (b)(2) shall be applied by sub-*
2 *stituting ‘4’ for ‘2’.*

3 *“(3) QUALIFIED TUITION AND RELATED EX-*
4 *PENSES TO INCLUDE REQUIRED COURSE MATE-*
5 *RIALS.—Subsection (f)(1)(A) shall be applied by sub-*
6 *stituting ‘tuition, fees, and course materials’ for ‘tui-*
7 *tion and fees’.*

8 *“(4) INCREASE IN AGI LIMITS FOR HOPE SCHOL-*
9 *ARSHIP CREDIT.—In lieu of applying subsection (d)*
10 *with respect to the Hope Scholarship Credit, such*
11 *credit (determined without regard to this paragraph)*
12 *shall be reduced (but not below zero) by the amount*
13 *which bears the same ratio to such credit (as so deter-*
14 *mined) as—*

15 *“(A) the excess of—*

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

19 *“(ii) \$80,000 (\$160,000 in the case of*
20 *a joint return), bears to*

21 *“(B) \$10,000 (\$20,000 in the case of a joint*
22 *return).*

23 *“(5) CREDIT ALLOWED AGAINST ALTERNATIVE*
24 *MINIMUM TAX.—In the case of a taxable year to which*
25 *section 26(a)(2) does not apply, so much of the credit*

1 *allowed under subsection (a) as is attributable to the*
2 *Hope Scholarship Credit shall not exceed the excess*
3 *of—*

4 *“(A) the sum of the regular tax liability (as*
5 *defined in section 26(b)) plus the tax imposed by*
6 *section 55, over*

7 *“(B) the sum of the credits allowable under*
8 *this subpart (other than this subsection and sec-*
9 *tions 23, 25D, and 30D) and section 27 for the*
10 *taxable year.*

11 *Any reference in this section or section 24, 25, 26,*
12 *25B, 904, or 1400C to a credit allowable under this*
13 *subsection shall be treated as a reference to so much*
14 *of the credit allowable under subsection (a) as is at-*
15 *tributable to the Hope Scholarship Credit.*

16 *“(6) PORTION OF CREDIT MADE REFUNDABLE.—*
17 *40 percent of so much of the credit allowed under sub-*
18 *section (a) as is attributable to the Hope Scholarship*
19 *Credit (determined after application of paragraph (4)*
20 *and without regard to this paragraph and section*
21 *26(a)(2) or paragraph (5), as the case may be) shall*
22 *be treated as a credit allowable under subpart C (and*
23 *not allowed under subsection (a)). The preceding sen-*
24 *tence shall not apply to any taxpayer for any taxable*

1 *year if such taxpayer is a child to whom subsection*
2 *(g) of section 1 applies for such taxable year.*

3 *“(7) COORDINATION WITH MIDWESTERN DIS-*
4 *ASTER AREA BENEFITS.—In the case of a taxpayer*
5 *with respect to whom section 702(a)(1)(B) of the*
6 *Heartland Disaster Tax Relief Act of 2008 applies for*
7 *any taxable year, such taxpayer may elect to waive*
8 *the application of this subsection to such taxpayer for*
9 *such taxable year.”.*

10 *(b) CONFORMING AMENDMENTS.—*

11 *(1) Section 24(b)(3)(B) is amended by inserting*
12 *“25A(i),” after “23,”.*

13 *(2) Section 25(e)(1)(C)(ii) is amended by insert-*
14 *ing “25A(i),” after “24,”.*

15 *(3) Section 26(a)(1) is amended by inserting*
16 *“25A(i),” after “24,”.*

17 *(4) Section 25B(g)(2) is amended by inserting*
18 *“25A(i),” after “23,”.*

19 *(5) Section 904(i) is amended by inserting*
20 *“25A(i),” after “24,”.*

21 *(6) Section 1400C(d)(2) is amended by inserting*
22 *“25A(i),” after “24,”.*

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

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2008.*

4 (d) *APPLICATION OF EGTRRA SUNSET.*—*The amend-*
5 *ment made by subsection (b)(1) shall be subject to title IX*
6 *of the Economic Growth and Tax Relief Reconciliation Act*
7 *of 2001 in the same manner as the provision of such Act*
8 *to which such amendment relates.*

9 (e) *TREASURY STUDIES REGARDING EDUCATION IN-*
10 *CENTIVES.*—

11 (1) *STUDY REGARDING COORDINATION WITH*
12 *NON-TAX EDUCATIONAL INCENTIVES.*—*The Secretary*
13 *of the Treasury, or the Secretary's delegate, shall*
14 *study how to coordinate the credit allowed under sec-*
15 *tion 25A of the Internal Revenue Code of 1986 with*
16 *the Federal Pell Grant program under section 401 of*
17 *the Higher Education Act of 1965.*

18 (2) *STUDY REGARDING IMPOSITION OF COMMU-*
19 *NITY SERVICE REQUIREMENTS.*—*The Secretary of the*
20 *Treasury, or the Secretary's delegate, shall study the*
21 *feasibility of requiring students to perform commu-*
22 *nity service as a condition of taking their tuition and*
23 *related expenses into account under section 25A of the*
24 *Internal Revenue Code of 1986.*

1 (3) *REPORT.*—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary of the
3 Treasury, or the Secretary’s delegate, shall report to
4 Congress on the results of the studies conducted under
5 this paragraph.

6 ***Subtitle D—Housing Incentives***

7 ***SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-TIME***
8 ***HOMEBUYER CREDIT.***

9 (a) *IN GENERAL.*—Paragraph (4) of section 36(f) is
10 amended by adding at the end the following new subpara-
11 graph:

12 “(D) *WAIVER OF RECAPTURE FOR PUR-*
13 *CHASES IN 2009.*—In the case of any credit al-
14 lowed with respect to the purchase of a principal
15 residence after December 31, 2008, and before
16 July 1, 2009—

17 “(i) paragraph (1) shall not apply,
18 and

19 “(ii) paragraph (2) shall apply only if
20 the disposition or cessation described in
21 paragraph (2) with respect to such residence
22 occurs during the 36-month period begin-
23 ning on the date of the purchase of such res-
24 idence by the taxpayer.”.

1 (b) *CONFORMING AMENDMENT.*—*Subsection (g) of sec-*
2 *tion 36 is amended by striking “subsection (c)” and insert-*
3 *ing “subsections (e) and (f)(4)(D)”.*

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
5 *section shall apply to residences purchased after December*
6 *31, 2008.*

7 **SEC. 1302. COORDINATION OF LOW-INCOME HOUSING**
8 **CREDIT AND LOW-INCOME HOUSING GRANTS.**

9 *Subsection (i) of section 42 of the Internal Revenue*
10 *Code of 1986 is amended by adding at the end the following*
11 *new paragraph:*

12 “(9) *COORDINATION WITH LOW-INCOME HOUSING*
13 *GRANTS.*—

14 “(A) *REDUCTION IN STATE HOUSING CRED-*
15 *IT CEILING FOR LOW-INCOME HOUSING GRANTS*
16 *RECEIVED IN 2009.*—*For purposes of this section,*
17 *the amounts described in clauses (i) through (iv)*
18 *of subsection (h)(3)(C) with respect to any State*
19 *for 2009 shall each be reduced by so much of*
20 *such amount as is taken into account in deter-*
21 *mining the amount of any grant to such State*
22 *under section 1711 of the American Recovery*
23 *and Reinvestment Tax Act of 2009.*

24 “(B) *SPECIAL RULE FOR BASIS.*—*Basis of a*
25 *qualified low-income building shall not be re-*

1 duced by the amount of any grant described in
2 subparagraph (A).”.

3 ***Subtitle E—Tax Incentives for***
4 ***Business***

5 ***PART 1—TEMPORARY INVESTMENT INCENTIVES***

6 ***SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY***

7 ***ACQUIRED DURING 2009.***

8 (a) *IN GENERAL.*—Paragraph (2) of section 168(k) is
9 amended—

10 (1) by striking “January 1, 2010” and inserting
11 “January 1, 2011”, and

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

14 (b) *CONFORMING AMENDMENTS.*—

15 (1) The heading for subsection (k) of section 168
16 is amended by striking “JANUARY 1, 2009” and in-
17 serting “JANUARY 1, 2010”.

18 (2) The heading for clause (ii) of section
19 168(k)(2)(B) is amended by striking “PRE-JANUARY 1,
20 2009” and inserting “PRE-JANUARY 1, 2010”.

21 (3) Subparagraph (D) of section 168(k)(4) is
22 amended—

23 (A) by striking “and” at the end of clause
24 (i),

1 (B) by redesignating clause (ii) as clause
2 (v), and

3 (C) by inserting after clause (i) the fol-
4 lowing new clauses:

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

8 “(iii) ‘January 1, 2009’ shall be sub-
9 stituted for ‘January 1, 2010’ each place it
10 appears,

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

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

17 (5) Clause (ii) of section 168(n)(2)(C) is amend-
18 ed by striking “January 1, 2009” and inserting
19 “January 1, 2010”.

20 (6) Subparagraph (B) of section 1400N(d)(3) is
21 amended by striking “January 1, 2009” and insert-
22 ing “January 1, 2010”.

23 (c) *EFFECTIVE DATES.*—

24 (1) *IN GENERAL.*—*Except as provided in para-*
25 *graph (2), the amendments made by this section shall*

1 *apply to property placed in service after December*
2 *31, 2008, in taxable years ending after such date.*

3 (2) **TECHNICAL AMENDMENT.**—*Section*
4 *168(k)(4)(D)(ii) of the Internal Revenue Code of*
5 *1986, as added by subsection (b)(3)(C), shall apply to*
6 *taxable years ending after March 31, 2008.*

7 **SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
8 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
9 **NESS ASSETS.**

10 (a) *IN GENERAL.*—*Paragraph (7) of section 179(b) is*
11 *amended—*

12 (1) *by striking “2008” and inserting “2008, or*
13 *2009”, and*

14 (2) *by striking “2008” in the heading thereof and*
15 *inserting “2008, AND 2009”.*

16 (b) *EFFECTIVE DATE.*—*The amendments made by this*
17 *section shall apply to taxable years beginning after Decem-*
18 *ber 31, 2008.*

19 **PART 2—5-YEAR CARRYBACK OF OPERATING**
20 **LOSSES**

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

22 (a) *IN GENERAL.*—*Subparagraph (H) of section*
23 *172(b)(1) is amended to read as follows:*

24 “(H) *CARRYBACK FOR 2008 AND 2009 NET*
25 *OPERATING LOSSES.*—

1 “(i) *IN GENERAL.*—*In the case of an*
2 *applicable 2008 or 2009 net operating loss*
3 *with respect to which the taxpayer has elect-*
4 *ed the application of this subparagraph—*

5 “(I) *such net operating loss shall*
6 *be reduced by 10 percent of such loss*
7 *(determined without regard to this sub-*
8 *paragraph),*

9 “(II) *subparagraph (A)(i) shall be*
10 *applied by substituting any whole*
11 *number elected by the taxpayer which*
12 *is more than 2 and less than 6 for ‘2’,*

13 “(III) *subparagraph (E)(ii) shall*
14 *be applied by substituting the whole*
15 *number which is one less than the*
16 *whole number substituted under sub-*
17 *clause (II) for ‘2’, and*

18 “(IV) *subparagraph (F) shall not*
19 *apply.*

20 “(ii) *APPLICABLE 2008 OR 2009 NET OP-*
21 *ERATING LOSS.*—*For purposes of this sub-*
22 *paragraph, the term ‘applicable 2008 or*
23 *2009 net operating loss’ means—*

1 “(I) the taxpayer’s net operating
2 loss for any taxable year ending in
3 2008 or 2009, or

4 “(II) if the taxpayer elects to have
5 this subclause apply in lieu of sub-
6 clause (I), the taxpayer’s net operating
7 loss for any taxable year beginning in
8 2008 or 2009.

9 “(iii) *ELECTION*.—Any election under
10 this subparagraph shall be made in such
11 manner as may be prescribed by the Sec-
12 retary, and shall be made by the due date
13 (including extension of time) for filing the
14 taxpayer’s return for the taxable year of the
15 net operating loss. Any such election, once
16 made, shall be irrevocable.

17 “(iv) *COORDINATION WITH ALTER-*
18 *NATIVE TAX NET OPERATING LOSS DEDUC-*
19 *TION*.—In the case of a taxpayer who elects
20 to have clause (ii)(II) apply, section
21 56(d)(1)(A)(ii) shall be applied by sub-
22 stituting ‘ending during 2001 or 2002 or
23 beginning during 2008 or 2009’ for ‘ending
24 during 2001, 2002, 2008, or 2009’.”.

1 **(b) ALTERNATIVE TAX NET OPERATING LOSS DEDUC-**
2 **TION.**—*Subclause (I) of section 56(d)(1)(A)(ii) is amended*
3 *to read as follows:*

4 *“(I) the amount of such deduction*
5 *attributable to the sum of carrybacks of*
6 *net operating losses from taxable years*
7 *ending during 2001, 2002, 2008, or*
8 *2009 and carryovers of net operating*
9 *losses to such taxable years, or”.*

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

13 **“(4) CARRYBACK FOR 2008 AND 2009 LOSSES.**—

14 **“(A) IN GENERAL.**—*In the case of an appli-*
15 *cable 2008 or 2009 loss from operations with re-*
16 *spect to which the taxpayer has elected the appli-*
17 *cation of this paragraph—*

18 *“(i) such loss from operations shall be*
19 *reduced by 10 percent of such loss (deter-*
20 *mined without regard to this paragraph),*
21 *and*

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

1 “(B) *APPLICABLE 2008 OR 2009 LOSS FROM*
2 *OPERATIONS.—For purposes of this paragraph,*
3 *the term ‘applicable 2008 or 2009 loss from oper-*
4 *ations’ means—*

5 “(i) *the taxpayer’s loss from operations*
6 *for any taxable year ending in 2008 or*
7 *2009, or*

8 “(ii) *if the taxpayer elects to have this*
9 *clause apply in lieu of clause (i), the tax-*
10 *payer’s loss from operations for any taxable*
11 *year beginning in 2008 or 2009.*

12 “(C) *ELECTION.—Any election under this*
13 *paragraph shall be made in such manner as may*
14 *be prescribed by the Secretary, and shall be made*
15 *by the due date (including extension of time) for*
16 *filing the taxpayer’s return for the taxable year*
17 *of the loss from operations. Any such election,*
18 *once made, shall be irrevocable.*

19 “(D) *COORDINATION WITH ALTERNATIVE*
20 *TAX NET OPERATING LOSS DEDUCTION.—In the*
21 *case of a taxpayer who elects to have subpara-*
22 *graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall*
23 *be applied by substituting ‘ending during 2001*
24 *or 2002 or beginning during 2008 or 2009’ for*
25 *‘ending during 2001, 2002, 2008, or 2009’.*”.

1 (d) *CONFORMING AMENDMENT.*—Section 172 is
2 amended by striking subsection (k).

3 (e) *EFFECTIVE DATE.*—

4 (1) *IN GENERAL.*—Except as otherwise provided
5 in this subsection, the amendments made by this sec-
6 tion shall apply to net operating losses arising in tax-
7 able years ending after December 31, 2007.

8 (2) *ALTERNATIVE TAX NET OPERATING LOSS DE-*
9 *DUCTION.*—The amendment made by subsection (b)
10 shall apply to taxable years ending after 1997.

11 (3) *LOSS FROM OPERATIONS OF LIFE INSURANCE*
12 *COMPANIES.*—The amendment made by subsection (d)
13 shall apply to losses from operations arising in tax-
14 able years ending after December 31, 2007.

15 (4) *TRANSITIONAL RULE.*—In the case of a net
16 operating loss (or, in the case of a life insurance com-
17 pany, a loss from operations) for a taxable year end-
18 ing before the date of the enactment of this Act—

19 (A) any election made under section
20 172(b)(3) or 810(b)(3) of the Internal Revenue
21 Code of 1986 with respect to such loss may (not-
22 withstanding such section) be revoked before the
23 applicable date,

24 (B) any election made under section
25 172(b)(1)(H) or 810(b)(4) of such Code with re-

1 *spect to such loss shall (notwithstanding such*
2 *section) be treated as timely made if made before*
3 *the applicable date, and*

4 *(C) any application under section 6411(a)*
5 *of such Code with respect to such loss shall be*
6 *treated as timely filed if filed before the applica-*
7 *ble date.*

8 *For purposes of this paragraph, the term “applicable*
9 *date” means the date which is 60 days after the date*
10 *of the enactment of this Act.*

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

12 *The amendments made by this part shall not apply*
13 *to—*

14 *(1) any taxpayer if—*

15 *(A) the Federal Government acquires, at*
16 *any time, an equity interest in the taxpayer*
17 *pursuant to the Emergency Economic Stabiliza-*
18 *tion Act of 2008, or*

19 *(B) the Federal Government acquires, at*
20 *any time, any warrant (or other right) to ac-*
21 *quire any equity interest with respect to the tax-*
22 *payer pursuant to such Act,*

23 *(2) the Federal National Mortgage Association*
24 *and the Federal Home Loan Mortgage Corporation,*
25 *and*

1 (3) any taxpayer which at any time in 2008 or
2 2009 is a member of the same affiliated group (as de-
3 fined in section 1504 of the Internal Revenue Code of
4 1986, determined without regard to subsection (b)
5 thereof) as a taxpayer described in paragraph (1) or
6 (2).

7 **PART 3—INCENTIVES FOR NEW JOBS**

8 **SEC. 1421. INCENTIVES TO HIRE UNEMPLOYED VETERANS**
9 **AND DISCONNECTED YOUTH.**

10 (a) *IN GENERAL.*—Subsection (d) of section 51 is
11 amended by adding at the end the following new paragraph:

12 “(14) *CREDIT ALLOWED FOR UNEMPLOYED VET-*
13 *ERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR*
14 *2010.*—

15 “(A) *IN GENERAL.*—Any unemployed vet-
16 *eran or disconnected youth who begins work for*
17 *the employer during 2009 or 2010 shall be treat-*
18 *ed as a member of a targeted group for purposes*
19 *of this subpart.*

20 “(B) *DEFINITIONS.*—For purposes of this
21 *paragraph—*

22 “(i) *UNEMPLOYED VETERAN.*—The
23 *term ‘unemployed veteran’ means any vet-*
24 *eran (as defined in paragraph (3)(B), deter-*
25 *mined without regard to clause (ii) thereof)*

1 *who is certified by the designated local*
2 *agency as—*

3 “(I) *having been discharged or re-*
4 *leased from active duty in the Armed*
5 *Forces during 2008, 2009, or 2010,*
6 *and*

7 “(II) *being in receipt of unem-*
8 *ployment compensation under State or*
9 *Federal law for not less than 4 weeks*
10 *during the 1-year period ending on the*
11 *hiring date.*

12 “(ii) *DISCONNECTED YOUTH.—The*
13 *term ‘disconnected youth’ means any indi-*
14 *vidual who is certified by the designated*
15 *local agency—*

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

18 “(II) *as not regularly attending*
19 *any secondary, technical, or post-sec-*
20 *ondary school during the 6-month pe-*
21 *riod preceding the hiring date,*

22 “(III) *as not regularly employed*
23 *during such 6-month period, and*

1 “(IV) as not readily employable
2 by reason of lacking a sufficient num-
3 ber of basic skills.”.

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

7 **PART 4—CLARIFICATION OF REGULATIONS RE-**
8 **LATED TO LIMITATIONS ON CERTAIN BUILT-**
9 **IN LOSSES FOLLOWING AN OWNERSHIP**
10 **CHANGE**

11 **SEC. 1431. CLARIFICATION OF REGULATIONS RELATED TO**
12 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
13 **FOLLOWING AN OWNERSHIP CHANGE.**

14 (a) *FINDINGS.*—Congress finds as follows:

15 (1) *The delegation of authority to the Secretary*
16 *of the Treasury under section 382(m) of the Internal*
17 *Revenue Code of 1986 does not authorize the Sec-*
18 *retary to provide exemptions or special rules that are*
19 *restricted to particular industries or classes of tax-*
20 *payers.*

21 (2) *Internal Revenue Service Notice 2008–83 is*
22 *inconsistent with the congressional intent in enacting*
23 *such section 382(m).*

24 (3) *The legal authority to prescribe Internal Rev-*
25 *enue Service Notice 2008–83 is doubtful.*

1 (4) *However, as taxpayers should generally be*
2 *able to rely on guidance issued by the Secretary of the*
3 *Treasury legislation is necessary to clarify the force*
4 *and effect of Internal Revenue Service Notice 2008–*
5 *83 and restore the proper application under the Inter-*
6 *nal Revenue Code of 1986 of the limitation on built-*
7 *in losses following an ownership change of a bank.*

8 (b) *DETERMINATION OF FORCE AND EFFECT OF IN-*
9 *TERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING*
10 *BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES*
11 *FOLLOWING OWNERSHIP CHANGE.—*

12 (1) *IN GENERAL.—Internal Revenue Service No-*
13 *tice 2008–83—*

14 (A) *shall be deemed to have the force and ef-*
15 *fect of law with respect to any ownership change*
16 *(as defined in section 382(g) of the Internal Rev-*
17 *enue Code of 1986) occurring on or before Janu-*
18 *ary 16, 2009, and*

19 (B) *shall have no force or effect with respect*
20 *to any ownership change after such date.*

21 (2) *BINDING CONTRACTS.—Notwithstanding*
22 *paragraph (1), Internal Revenue Service Notice*
23 *2008–83 shall have the force and effect of law with re-*
24 *spect to any ownership change (as so defined) which*
25 *occurs after January 16, 2009 if such change—*

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

3 (B) is pursuant to a written agreement en-
4 tered into on or before such date and such agree-
5 ment was described on or before such date in a
6 public announcement or in a filing with the Se-
7 curities and Exchange Commission required by
8 reason of such ownership change.

9 ***Subtitle F—Fiscal Relief for State***
10 ***and Local Governments***

11 ***PART 1—IMPROVED MARKETABILITY FOR TAX-***
12 ***EXEMPT BONDS***

13 ***SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-***
14 ***EXEMPT INTEREST EXPENSE OF FINANCIAL***
15 ***INSTITUTIONS.***

16 (a) *IN GENERAL.*—Subsection (b) of section 265 is
17 amended by adding at the end the following new paragraph:

18 “*(7) DE MINIMIS EXCEPTION FOR BONDS ISSUED*
19 *DURING 2009 OR 2010.*—

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

23 “*(B) LIMITATION.*—The amount of tax-ex-
24 empt obligations not taken into account by rea-
25 son of subparagraph (A) shall not exceed 2 per-

1 *cent of the amount determined under paragraph*
2 *(2)(B).*

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

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

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

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

22 (a) *IN GENERAL.*—*Paragraph (3) of section 265(b)*
23 *(relating to exception for certain tax-exempt obligations) is*
24 *amended by adding at the end the following new subpara-*
25 *graph:*

1 “(G) *SPECIAL RULES FOR OBLIGATIONS*
2 *ISSUED DURING 2009 AND 2010.*—

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

8 “(ii) *QUALIFIED 501(C)(3) BONDS*
9 *TREATED AS ISSUED BY EXEMPT ORGANIZA-*
10 *TION.*—*In the case of a qualified 501(c)(3)*
11 *bond (as defined in section 145) issued dur-*
12 *ing 2009 or 2010, this paragraph shall be*
13 *applied by treating the 501(c)(3) organiza-*
14 *tion for whose benefit such bond was issued*
15 *as the issuer.*

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

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

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

1 of the issue (determined by treating
2 each qualified portion as a separate
3 issue issued by the qualified borrower
4 with respect to which such portion re-
5 lates).

6 “(iv) *QUALIFIED FINANCING ISSUE.*—
7 For purposes of this subparagraph, the term
8 ‘qualified financing issue’ means any com-
9 posite, pooled, or other conduit financing
10 issue the proceeds of which are used directly
11 or indirectly to make or finance loans to
12 one or more ultimate borrowers each of
13 whom is a qualified borrower.

14 “(v) *QUALIFIED PORTION.*—For pur-
15 poses of this subparagraph, the term ‘quali-
16 fied portion’ means that portion of the pro-
17 ceeds which are used with respect to each
18 qualified borrower under the issue.

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

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

4 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
5 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
6 **BONDS.**

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

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

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

1 “(iv) *TAX EXEMPT INTEREST ON*
2 *BONDS ISSUED IN 2009 AND 2010.*—*Clause (i)*
3 *shall not apply in the case of any interest*
4 *on a bond issued after December 31, 2008,*
5 *and before January 1, 2011. For purposes*
6 *of the preceding sentence, a refunding bond*
7 *(whether a current or advance refunding)*
8 *shall be treated as issued on the date of the*
9 *issuance of the refunded bond (or in the case*
10 *of a series of refundings, the original*
11 *bond).”.*

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

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

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

17 (a) *IN GENERAL.*—*Subpart I of part IV of subchapter*
18 *A of chapter 1 is amended by adding at the end the fol-*
19 *lowing new section:*

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

21 “(a) *QUALIFIED SCHOOL CONSTRUCTION BOND.*—*For*
22 *purposes of this subchapter, the term ‘qualified school con-*
23 *struction bond’ means any bond issued as part of an issue*
24 *if—*

1 “(1) 100 percent of the available project proceeds
2 of such issue are to be used for the construction, reha-
3 bilitation, or repair of a public school facility or for
4 the acquisition of land on which such a facility is to
5 be constructed with part of the proceeds of such issue,

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

9 “(3) the issuer designates such bond for purposes
10 of this section.

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

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

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

23 “(c) *NATIONAL LIMITATION ON AMOUNT OF BONDS*
24 *DESIGNATED.*—*There is a national qualified school con-*

1 *struction bond limitation for each calendar year. Such lim-*
2 *itation is—*

3 “(1) \$11,000,000,000 for 2009,

4 “(2) \$11,000,000,000 for 2010, and

5 “(3) except as provided in subsection (f), zero
6 *after 2010.*

7 “(d) 60 PERCENT OF LIMITATION ALLOCATED AMONG
8 *STATES.—*

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

18 “(2) *MINIMUM ALLOCATIONS TO STATES.—*

19 “(A) *IN GENERAL.—*The Secretary shall ad-
20 *just the allocations under this subsection for any*
21 *calendar year for each State to the extent nec-*
22 *essary to ensure that the sum of—*

23 “(i) *the amount allocated to such State*
24 *under this subsection for such year, and*

1 “(ii) the aggregate amounts allocated
2 under subsection (e) to large local edu-
3 cational agencies in such State for such
4 year,

5 is not less than an amount equal to such State’s
6 adjusted minimum percentage of the amount to
7 be allocated under paragraph (1) for the cal-
8 endar year.

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

12 “(i) the minimum percentage described
13 in section 1124(d) of the Elementary and
14 Secondary Education Act of 1965 (20
15 U.S.C. 6334(d)) for such State for the most
16 recent fiscal year ending before such cal-
17 endar year, multiplied by

18 “(ii) 1.68.

19 “(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—
20 The amount to be allocated under paragraph (1) to
21 any possession of the United States other than Puerto
22 Rico shall be the amount which would have been allo-
23 cated if all allocations under paragraph (1) were
24 made on the basis of respective populations of indi-
25 viduals below the poverty line (as defined by the Of-

1 *office of Management and Budget). In making other al-*
2 *locations, the amount to be allocated under paragraph*
3 *(1) shall be reduced by the aggregate amount allocated*
4 *under this paragraph to possessions of the United*
5 *States.*

6 “(4) *ALLOCATIONS FOR INDIAN SCHOOLS.—In*
7 *addition to the amounts otherwise allocated under*
8 *this subsection, \$200,000,000 for calendar year 2009,*
9 *and \$200,000,000 for calendar year 2010, shall be al-*
10 *located by the Secretary of the Interior for purposes*
11 *of the construction, rehabilitation, and repair of*
12 *schools funded by the Bureau of Indian Affairs. In the*
13 *case of amounts allocated under the preceding sen-*
14 *tence, Indian tribal governments (as defined in sec-*
15 *tion 7701(a)(40)) shall be treated as qualified issuers*
16 *for purposes of this subchapter.*

17 “(e) *40 PERCENT OF LIMITATION ALLOCATED AMONG*
18 *LARGEST SCHOOL DISTRICTS.—*

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

24 “(2) *ALLOCATION FORMULA.—The amount to be*
25 *allocated under paragraph (1) for any calendar year*

1 *shall be allocated among large local educational agen-*
2 *cies in proportion to the respective amounts each such*
3 *agency received for Basic Grants under subpart 2 of*
4 *part A of title I of the Elementary and Secondary*
5 *Education Act of 1965 (20 U.S.C. 6331 et seq.) for*
6 *the most recent fiscal year ending before such cal-*
7 *endar year.*

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

16 “(4) *LARGE LOCAL EDUCATIONAL AGENCY.—For*
17 *purposes of this section, the term ‘large local edu-*
18 *cational agency’ means, with respect to a calendar*
19 *year, any local educational agency if such agency*
20 *is—*

21 “(A) *among the 100 local educational agen-*
22 *cies with the largest numbers of children aged 5*
23 *through 17 from families living below the pov-*
24 *erty level, as determined by the Secretary using*
25 *the most recent data available from the Depart-*

1 *ment of Commerce that are satisfactory to the*
2 *Secretary, or*

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

12 “(f) *CARRYOVER OF UNUSED LIMITATION.—If for any*
13 *calendar year—*

14 “(1) *the amount allocated under subsection (d) to*
15 *any State, exceeds*

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

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

23 “(b) *CONFORMING AMENDMENTS.—*

24 “(1) *Paragraph (1) of section 54A(d) is amended*
25 *by striking “or” at the end of subparagraph (C), by*

1 *inserting “or” at the end of subparagraph (D), and*
2 *by inserting after subparagraph (D) the following*
3 *new subparagraph:*

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

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

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

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

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

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

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

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

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

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

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

8 **(a) IN GENERAL.**—*Part IV of subchapter A of chapter*
9 *1 is amended by adding at the end the following new sub-*
10 *part:*

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

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

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

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

21 **“(b) AMOUNT OF CREDIT.**—*The amount of the credit*
22 *determined under this subsection with respect to any inter-*
23 *est payment date for a taxable governmental bond is 35*

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

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

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

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

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

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

21 *“(d) TAXABLE GOVERNMENTAL BOND.—*

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

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

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

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

8 “(A) *a taxable governmental bond shall not*
9 *be treated as federally guaranteed by reason of*
10 *the credit allowed under subsection (a) or section*
11 *6432,*

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

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

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

25 “(f) *SPECIAL RULES.—*

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

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

10 “(g) *SPECIAL RULE FOR QUALIFIED BONDS ISSUED*
11 *BEFORE 2011.—In the case of a qualified bond issued before*
12 *January 1, 2011—*

13 “(1) *ISSUER ALLOWED REFUNDABLE CREDIT.—*
14 *In lieu of any credit allowed under this section with*
15 *respect to such bond, the issuer of such bond shall be*
16 *allowed a credit as provided in section 6432.*

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

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

24 “(B) *the issuer makes an irrevocable elec-*
25 *tion to have this subsection apply.*

1 *date on which interest is payable by the issuer under the*
2 *terms of the bond.*

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

6 (c) *CONFORMING AMENDMENTS.*—

7 (1) *Section 1324(b)(2) of title 31, United States*
8 *Code, is amended by striking “or 6428” and inserting*
9 *“6428, or 6432.”*

10 (2) *Section 54A(c)(1)(B) is amended by striking*
11 *“subpart C” and inserting “subparts C and J”.*

12 (3) *Sections 54(c)(2), 1397E(c)(2), and*
13 *1400N(l)(3)(B) are each amended by striking “and I”*
14 *and inserting “, I, and J”.*

15 (4) *Section 6401(b)(1) is amended by striking*
16 *“and I” and inserting “I, and J”.*

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

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

20 (6) *The table of sections for subchapter B of*
21 *chapter 65, as amended by this Act, is amended by*
22 *adding at the end the following new item:*

“Sec. 6432. Credit for qualified bonds allowed to issuer.”

23 (d) *TRANSITIONAL COORDINATION WITH STATE*
24 *LAW.*—*Except as otherwise provided by a State after the*

1 *date of the enactment of this Act, the interest on any taxable*
2 *governmental bond (as defined in section 54AA of the Inter-*
3 *nal Revenue Code of 1986, as added by this section) and*
4 *the amount of any credit determined under such section*
5 *with respect to such bond shall be treated for purposes of*
6 *the income tax laws of such State as being exempt from*
7 *Federal income tax.*

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

11 **PART 4—RECOVERY ZONE BONDS**

12 **SEC. 1531. RECOVERY ZONE BONDS.**

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

15 **“PART III—RECOVERY ZONE BONDS**

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

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

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

16 **“SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.**

17 **“(a) ALLOCATIONS.—**

18 *“(1) IN GENERAL.—The Secretary shall allocate*
19 *the national recovery zone economic development bond*
20 *limitation and the national recovery zone facility*
21 *bond limitation among the States in the proportion*
22 *that each such State’s 2008 State employment decline*
23 *bears to the aggregate of the 2008 State employment*
24 *declines for all of the States.*

1 “(2) *2008 STATE EMPLOYMENT DECLINE.*—*For*
2 *purposes of this subsection, the term ‘2008 State em-*
3 *ployment decline’ means, with respect to any State,*
4 *the excess (if any) of—*

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

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

9 “(3) *ALLOCATIONS BY STATES.*—

10 “(A) *IN GENERAL.*—*Each State with respect*
11 *to which an allocation is made under paragraph*
12 *(1) shall reallocate such allocation among the*
13 *counties and large municipalities in such State*
14 *in the proportion the each such county’s or mu-*
15 *nicipality’s 2008 employment decline bears to*
16 *the aggregate of the 2008 employment declines*
17 *for all the counties and municipalities in such*
18 *State.*

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

23 “(C) *DETERMINATION OF LOCAL EMPLOY-*
24 *MENT DECLINES.*—*For purposes of this para-*
25 *graph, the employment decline of any municipi-*

1 *pality or county shall be determined in the same*
2 *manner as determining the State employment*
3 *decline under paragraph (2), except that in the*
4 *case of a municipality any portion of which is*
5 *in a county, such portion shall be treated as part*
6 *of such municipality and not part of such coun-*
7 *ty.*

8 “(4) *NATIONAL LIMITATIONS.—*

9 “(A) *RECOVERY ZONE ECONOMIC DEVELOP-*
10 *MENT BONDS.—There is a national recovery zone*
11 *economic development bond limitation of*
12 *\$10,000,000,000.*

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

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

18 “(1) *any area designated by the issuer as having*
19 *significant poverty, unemployment, home foreclosures,*
20 *or general distress, and*

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

1 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**

2 **BONDS.**

3 *“(a) IN GENERAL.—In the case of a recovery zone eco-*
4 *nomie development bond—*

5 *“(1) such bond shall be treated as a qualified*
6 *bond for purposes of section 6432, and*

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

9 *“(b) RECOVERY ZONE ECONOMIC DEVELOPMENT*
10 *BOND.—*

11 *“(1) IN GENERAL.—For purposes of this section,*
12 *the term ‘recovery zone economic development bond’*
13 *means any taxable governmental bond (as defined in*
14 *section 54AA(d)) issued before January 1, 2011, as*
15 *part of issue if—*

16 *“(A) 100 percent of the available project*
17 *proceeds (as defined in section 54A) of such issue*
18 *are to be used for one or more qualified economic*
19 *development purposes, and*

20 *“(B) the issuer designates such bond for*
21 *purposes of this section.*

22 *“(2) LIMITATION ON AMOUNT OF BONDS DES-*
23 *IGNATED.—The maximum aggregate face amount of*
24 *bonds which may be designated by any issuer under*
25 *paragraph (1) shall not exceed the amount of the re-*

1 *covery zone economic development bond limitation al-*
2 *located to such issuer under section 1400U-1.*

3 “(c) *QUALIFIED ECONOMIC DEVELOPMENT PUR-*
4 *POSE.—For purposes of this section, the term ‘qualified eco-*
5 *nomie development purpose’ means expenditures for pur-*
6 *poses of promoting development or other economic activity*
7 *in a recovery zone, including—*

8 “(1) *capital expenditures paid or incurred with*
9 *respect to property located in such zone,*

10 “(2) *expenditures for public infrastructure and*
11 *construction of public facilities, and*

12 “(3) *expenditures for job training and edu-*
13 *cational programs.*

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

15 “(a) *IN GENERAL.—For purposes of part IV of sub-*
16 *chapter B (relating to tax exemption requirements for State*
17 *and local bonds), the term ‘exempt facility bond’ includes*
18 *any recovery zone facility bond.*

19 “(b) *RECOVERY ZONE FACILITY BOND.—*

20 “(1) *IN GENERAL.—For purposes of this section,*
21 *the term ‘recovery zone facility bond’ means any bond*
22 *issued as part of an issue if—*

23 “(A) *95 percent or more of the net proceeds*
24 *(as defined in section 150(a)(3)) of such issue*
25 *are to be used for recovery zone property,*

1 “(B) such bond is issued before January 1,
2 2011, and

3 “(C) the issuer designates such bond for
4 purposes of this section.

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

11 “(c) *RECOVERY ZONE PROPERTY.*—*For purposes of*
12 *this section—*

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

16 “(A) such property was acquired by the tax-
17 payer by purchase (as defined in section
18 179(d)(2)) after the date on which the designa-
19 tion of the recovery zone took effect,

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

22 “(C) substantially all of the use of which is
23 in the recovery zone and is in the active conduct
24 of a qualified business by the taxpayer in such
25 zone.

1 “(2) *QUALIFIED BUSINESS.*—The term ‘qualified
2 *business*’ means any trade or business except that—

3 “(A) the rental to others of real property lo-
4 cated in a recovery zone shall be treated as a
5 qualified business only if the property is not res-
6 idential rental property (as defined in section
7 168(e)(2)), and

8 “(B) such term shall not include any trade
9 or business consisting of the operation of any fa-
10 cility described in section 144(c)(6)(B).

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

15 “(d) *NONAPPLICATION OF CERTAIN RULES.*—Sections
16 146 (relating to volume cap) and 147(d) (relating to acqui-
17 sition of existing property not permitted) shall not apply
18 to any recovery zone facility bond.”.

19 (b) *CLERICAL AMENDMENT.*—The table of parts for
20 subchapter Y of chapter 1 of such Code is amended by add-
21 ing at the end the following new item:

 “PART III. RECOVERY ZONE BONDS.”.

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

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

2 (a) *IN GENERAL.*—Section 7871 is amended by adding
3 at the end the following new subsection:

4 “(f) *TRIBAL ECONOMIC DEVELOPMENT BONDS.*—

5 “(1) *ALLOCATION OF LIMITATION.*—

6 “(A) *IN GENERAL.*—The Secretary shall al-
7 locate the national tribal economic development
8 bond limitation among the Indian tribal govern-
9 ments in such manner as the Secretary, in con-
10 sultation with the Secretary of the Interior, de-
11 termines appropriate.

12 “(B) *NATIONAL LIMITATION.*—There is a
13 national tribal economic development bond limi-
14 tation of \$2,000,000,000.

15 “(2) *BONDS TREATED AS EXEMPT FROM TAX.*—
16 In the case of a tribal economic development bond—

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

21 “(B) section 146 shall not apply.

22 “(3) *TRIBAL ECONOMIC DEVELOPMENT BOND.*—

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

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

7 “(ii) which is designated by the Indian
8 tribal government as a tribal economic de-
9 velopment bond for purposes of this sub-
10 section.

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

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

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

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

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

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

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

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

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

1 **Subtitle G—Energy Incentives**

2 **PART 1—RENEWABLE ENERGY INCENTIVES**

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

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

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

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

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

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

18 (c) *EFFECTIVE DATE.*—

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

22 (2) *TECHNICAL AMENDMENT.*—The amendment
23 made by subsubsection (b) shall take effect as if included
24 in section 102 of the Energy Improvement and Exten-
25 sion Act of 2008.

1 **SEC. 1602. ELECTION OF INVESTMENT CREDIT IN LIEU OF**
2 **PRODUCTION CREDIT.**

3 (a) *IN GENERAL.*—Subsection (a) of section 48 is
4 amended by adding at the end the following new paragraph:

5 “(5) *ELECTION TO TREAT QUALIFIED FACILITIES*
6 *AS ENERGY PROPERTY.*—

7 “(A) *IN GENERAL.*—In the case of any
8 qualified investment credit facility placed in
9 service in 2009 or 2010—

10 “(i) such facility shall be treated as en-
11 ergy property for purposes of this section,
12 and

13 “(ii) the energy percentage with respect
14 to such property shall be 30 percent.

15 “(B) *DENIAL OF PRODUCTION CREDIT.*—No
16 credit shall be allowed under section 45 for any
17 taxable year with respect to any qualified invest-
18 ment credit facility.

19 “(C) *QUALIFIED INVESTMENT CREDIT FA-*
20 *CILITY.*—For purposes of this paragraph, the
21 term ‘qualified investment credit facility’ means
22 any facility described in paragraph (1), (2), (3),
23 (4), (6), (7), (9), or (11) of section 45(d) if no
24 credit has been allowed under section 45 with re-
25 spect to such facility and the taxpayer makes an

1 *irrevocable election to have this paragraph apply*
2 *to such facility.”.*

3 **(b) EFFECTIVE DATE.**—*The amendments made by this*
4 *section shall apply to facilities placed in service after De-*
5 *cember 31, 2008.*

6 **SEC. 1603. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
7 **FOR RENEWABLE ENERGY PROPERTY.**

8 **(a) REPEAL OF LIMITATION ON CREDIT FOR QUALI-**
9 **FIED SMALL WIND ENERGY PROPERTY.**—*Paragraph (4) of*
10 *section 48(c) is amended by striking subparagraph (B) and*
11 *by redesignating subparagraphs (C) and (D) as subpara-*
12 *graphs (B) and (C).*

13 **(b) REPEAL OF LIMITATION ON PROPERTY FINANCED**
14 **BY SUBSIDIZED ENERGY FINANCING.**—

15 **(1) IN GENERAL.**—*Subsection (a) of section 48,*
16 *as amended by section 1602, is amended by striking*
17 *paragraph (4) and by redesignating paragraph (5) as*
18 *paragraph (4).*

19 **(2) CONFORMING AMENDMENTS.**—

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

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

24 **(c) EFFECTIVE DATE.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ***(b) LOANS AND GRANTS TO IMPLEMENT GREEN COM-***
2 ***MUNITY PROGRAMS.—***

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

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

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

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

1 **PART 3—ENERGY CONSERVATION INCENTIVES**

2 **SEC. 1621. EXTENSION AND MODIFICATION OF CREDIT FOR**
3 **NONBUSINESS ENERGY PROPERTY.**

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

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

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

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

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

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

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

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

3 *(a) REMOVAL OF CREDIT LIMITATION FOR PROPERTY*
4 *PLACED IN SERVICE.—*

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

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

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

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

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

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

10 *(B) by striking subparagraph (C).*

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

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

17 *(a) IN GENERAL.—Section 30C(e) is amended by add-*
18 *ing at the end the following new paragraph:*

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

23 “(A) *in the case of any such property which*
24 *does not relate to hydrogen—*

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

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

5 “(iii) subsection (b)(2) shall be applied
6 by substituting ‘\$2,000’ for ‘\$1,000’, and

7 “(B) in the case of any such property which
8 relates to hydrogen, subsection (b) shall be ap-
9 plied by substituting ‘\$200,000’ for ‘\$30,000’.”.

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

13 **PART 4—ENERGY RESEARCH INCENTIVES**

14 **SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RE-**
15 **SEARCH.**

16 (a) *IN GENERAL.*—Section 41 is amended by redesign-
17 ating subsection (h) as subsection (i) and by inserting
18 after subsection (g) the following new subsection:

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

21 “(1) *IN GENERAL.*—The credit determined under
22 subsection (a)(1) shall be increased by 20 percent of
23 the qualified energy research expenses for the taxable
24 year.

1 “(2) *QUALIFIED ENERGY RESEARCH EX-*
2 *PENSES.*—*For purposes of this subsection, the term*
3 *‘qualified energy research expenses’ means so much of*
4 *the taxpayer’s qualified research expenses as are re-*
5 *lated to the fields of fuel cells and battery technology,*
6 *renewable energy, energy conservation technology, effi-*
7 *cient transmission and distribution of electricity, and*
8 *carbon capture and sequestration.*

9 “(3) *COORDINATION WITH OTHER RESEARCH*
10 *CREDITS.*—

11 “(A) *INCREMENTAL CREDIT.*—*The amount*
12 *of qualified energy research expenses taken into*
13 *account under subsection (a)(1)(A) shall not ex-*
14 *ceed the base amount.*

15 “(B) *ALTERNATIVE SIMPLIFIED CREDIT.*—
16 *For purposes of subsection (c)(5), the amount of*
17 *qualified energy research expenses taken into ac-*
18 *count for the taxable year for which the credit is*
19 *being determined shall not exceed—*

20 “(i) *in the case of subsection (c)(5)(A),*
21 *50 percent of the average qualified research*
22 *expenses for the 3 taxable years preceding*
23 *the taxable year for which the credit is*
24 *being determined, and*

1 “(i) in the case of subsection
2 (c)(5)(B)(ii), zero.

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

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

13 (c) *EFFECTIVE DATE.*—The amendments made by this
14 section shall apply to taxable years beginning after Decem-
15 ber 31, 2008.

16 ***Subtitle H—Other Provisions***
17 ***PART 1—APPLICATION OF CERTAIN LABOR***
18 ***STANDARDS TO PROJECTS FINANCED WITH***
19 ***CERTAIN TAX-FAVORED BONDS***
20 ***SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS***
21 ***TO PROJECTS FINANCED WITH CERTAIN TAX-***
22 ***FAVORED BONDS.***

23 *Subchapter IV of chapter 31 of the title 40, United*
24 *States Code, shall apply to projects financed with the pro-*
25 *ceeds of—*

1 (1) *any qualified clean renewable energy bond*
2 *(as defined in section 54C of the Internal Revenue*
3 *Code of 1986) issued after the date of the enactment*
4 *of this Act,*

5 (2) *any qualified energy conservation bond (as*
6 *defined in section 54D of the Internal Revenue Code*
7 *of 1986) issued after the date of the enactment of this*
8 *Act,*

9 (3) *any qualified zone academy bond (as defined*
10 *in section 54E of the Internal Revenue Code of 1986)*
11 *issued after the date of the enactment of this Act,*

12 (4) *any qualified school construction bond (as*
13 *defined in section 54F of the Internal Revenue Code*
14 *of 1986), and*

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

18 **PART 2—GRANTS TO PROVIDE FINANCING FOR**

19 **LOW-INCOME HOUSING**

20 **SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING**

21 **PROJECTS IN LIEU OF LOW-INCOME HOUSING**

22 **CREDIT ALLOCATIONS FOR 2009.**

23 (a) *IN GENERAL.*—*The Secretary of the Treasury shall*
24 *make a grant to the housing credit agency of each State*

1 *in an amount equal to such State's low-income housing*
2 *grant election amount.*

3 (b) *LOW-INCOME HOUSING GRANT ELECTION*
4 *AMOUNT.*—*For purposes of this section, the term “low-in-*
5 *come housing grant election amount” means, with respect*
6 *to any State, such amount as the State may elect which*
7 *does not exceed 85 percent of the product of—*

8 (1) *the sum of—*

9 (A) *100 percent of the State housing credit*
10 *ceiling for 2009 which is attributable to amounts*
11 *described in clauses (i) and (iii) of section*
12 *42(h)(3)(C) of the Internal Revenue Code of*
13 *1986, and*

14 (B) *40 percent of the State housing credit*
15 *ceiling for 2009 which is attributable to amounts*
16 *described in clauses (ii) and (iv) of such section,*
17 *multiplied by*

18 (2) *10.*

19 (c) *SUBAWARDS FOR LOW-INCOME BUILDINGS.*—

20 (1) *IN GENERAL.*—*A State housing credit agency*
21 *receiving a grant under this section shall use such*
22 *grant to make subawards to finance the construction*
23 *or acquisition and rehabilitation of qualified low-in-*
24 *come buildings. A subaward under this section may*
25 *be made to finance a qualified low-income building*

1 *with or without an allocation under section 42 of the*
2 *Internal Revenue Code of 1986, except that a State*
3 *housing credit agency may make subawards to fi-*
4 *nance qualified low-income buildings without an allo-*
5 *cation only if it makes a determination that such use*
6 *will increase the total funds available to the State to*
7 *build and rehabilitate affordable housing. In com-*
8 *plying with such determination requirement, a State*
9 *housing credit agency shall establish a process in*
10 *which applicants that are allocated credits are re-*
11 *quired to demonstrate good faith efforts to obtain in-*
12 *vestment commitments for such credits before the*
13 *agency makes such subawards.*

14 (2) *SUBAWARDS SUBJECT TO SAME REQUIRE-*
15 *MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-*
16 *TIONS.—Any such subaward with respect to any*
17 *qualified low-income building shall be made in the*
18 *same manner and shall be subject to the same limita-*
19 *tions (including rent, income, and use restrictions on*
20 *such building) as an allocation of housing credit dol-*
21 *lar amount allocated by such State housing credit*
22 *agency under section 42 of the Internal Revenue Code*
23 *of 1986, except that such subawards shall not be lim-*
24 *ited by, or otherwise affect (except as provided in sub-*

1 *section (h)(3)(J) of such section), the State housing*
2 *credit ceiling applicable to such agency.*

3 (3) *COMPLIANCE AND ASSET MANAGEMENT.—The*
4 *State housing credit agency shall perform asset man-*
5 *agement functions to ensure compliance with section*
6 *42 of the Internal Revenue Code of 1986 and the long-*
7 *term viability of buildings funded by any subaward*
8 *under this section. The State housing credit agency*
9 *may collect reasonable fees from a subaward recipient*
10 *to cover expenses associated with the performance of*
11 *its duties under this paragraph. The State housing*
12 *credit agency may retain an agent or other private*
13 *contractor to satisfy the requirements of this para-*
14 *graph.*

15 (4) *RECAPTURE.—The State housing credit*
16 *agency shall impose conditions or restrictions, includ-*
17 *ing a requirement providing for recapture, on any*
18 *subaward under this section so as to assure that the*
19 *building with respect to which such subaward is made*
20 *remains a qualified low-income building during the*
21 *compliance period. Any such recapture shall be pay-*
22 *able to the Secretary of the Treasury for deposit in*
23 *the general fund of the Treasury and may be enforced*
24 *by means of liens or such other methods as the Sec-*
25 *retary of the Treasury determines appropriate.*

1 (d) *RETURN OF UNUSED GRANT FUNDS.*—Any grant
2 funds not used to make subawards under this section before
3 January 1, 2011, shall be returned to the Secretary of the
4 Treasury on such date. Any subawards returned to the
5 State housing credit agency on or after such date shall be
6 promptly returned to the Secretary of the Treasury. Any
7 amounts returned to the Secretary of the Treasury under
8 this subsection shall be deposited in the general fund of the
9 Treasury.

10 (e) *DEFINITIONS.*—Any term used in this section
11 which is also used in section 42 of the Internal Revenue
12 Code of 1986 shall have the same meaning for purposes of
13 this section as when used in such section 42. Any reference
14 in this section to the Secretary of the Treasury shall be
15 treated as including the Secretary's delegate.

16 (f) *APPROPRIATIONS.*—There is hereby appropriated to
17 the Secretary of the Treasury such sums as may be nec-
18 essary to carry out this section.

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

20 **PROPERTY IN LIEU OF TAX CREDITS**

21 **SEC. 1721. GRANTS FOR SPECIFIED ENERGY PROPERTY IN**

22 **LIEU OF TAX CREDITS.**

23 (a) *IN GENERAL.*—Upon application, the Secretary of
24 Energy shall, within 60 days of the application and subject
25 to the requirements of this section, provide a grant to each

1 *person who places in service specified energy property dur-*
2 *ing 2009 or 2010 to reimburse such person for a portion*
3 *of the expense of such facility as provided in subsection (b).*

4 *(b) GRANT AMOUNT.—*

5 *(1) IN GENERAL.—The amount of the grant*
6 *under subsection (a) with respect to any specified en-*
7 *ergy property shall be the applicable percentage of the*
8 *basis of such facility.*

9 *(2) APPLICABLE PERCENTAGE.—For purposes of*
10 *paragraph (1), the term “applicable percentage”*
11 *means—*

12 *(A) 30 percent in the case of any property*
13 *described in paragraphs (1) through (4) of sub-*
14 *section (c), and*

15 *(B) 10 percent in the case of any other*
16 *property.*

17 *(3) DOLLAR LIMITATIONS.—In the case of prop-*
18 *erty described in paragraph (2), (6), or (7) of sub-*
19 *section (c), the amount of any grant under this sec-*
20 *tion with respect to such property shall not exceed the*
21 *limitation described in section 48(c)(1)(B),*
22 *48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue*
23 *Code of 1986, respectively, with respect to such prop-*
24 *erty.*

1 (c) *SPECIFIED ENERGY PROPERTY.*—For purposes of
2 this section, the term “specified energy property” means
3 any of the following:

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

8 (2) *QUALIFIED FUEL CELL PROPERTY.*—Any
9 qualified fuel cell property (as defined in section
10 48(c)(1) of such Code).

11 (3) *SOLAR PROPERTY.*—Any property described
12 in clause (i) or (ii) of section 48(a)(3)(A) of such
13 Code.

14 (4) *QUALIFIED SMALL WIND ENERGY PROP-*
15 *ERTY.*—Any qualified small wind energy property (as
16 defined in section 48(c)(4) of such Code).

17 (5) *GEOHERMAL PROPERTY.*—Any property de-
18 scribed in clause (iii) of section 48(a)(3)(A) of such
19 Code.

20 (6) *QUALIFIED MICROTURBINE PROPERTY.*—Any
21 qualified microturbine property (as defined in section
22 48(c)(2) of such Code).

23 (7) *COMBINED HEAT AND POWER SYSTEM PROP-*
24 *ERTY.*—Any combined heat and power system prop-
25 erty (as defined in section 48(c)(3) of such Code).

1 (8) *GEOTHERMAL HEATPUMP PROPERTY.*—Any
2 property described in clause (vi) of section
3 48(a)(3)(A) of such Code.

4 (d) *APPLICATION OF CERTAIN RULES.*—In making
5 grants under this section, the Secretary of Energy shall
6 apply rules similar to the rules of section 50 of the Internal
7 Revenue Code of 1986. In applying such rules, if the facility
8 is disposed of, or otherwise ceases to be a qualified renewable
9 energy facility, the Secretary of Energy shall provide for
10 the recapture of the appropriate percentage of the grant
11 amount in such manner as the Secretary of Energy deter-
12 mines appropriate.

13 (e) *EXCEPTION FOR CERTAIN NON-TAXPAYERS.*—The
14 Secretary of Energy shall not make any grant under this
15 section to any Federal, State, or local government (or any
16 political subdivision, agency, or instrumentality thereof) or
17 any organization described in section 501(c) of the Internal
18 Revenue Code of 1986 and exempt from tax under section
19 501(a) of such Code.

20 (f) *DEFINITIONS.*—Terms used in this section which
21 are also used in section 45 or 48 of the Internal Revenue
22 Code of 1986 shall have the same meaning for purposes of
23 this section as when used in such section 45 or 48. Any
24 reference in this section to the Secretary of the Treasury
25 shall be treated as including the Secretary's delegate.

1 (g) *COORDINATION BETWEEN DEPARTMENTS OF*
2 *TREASURY AND ENERGY.*—*The Secretary of the Treasury*
3 *shall provide the Secretary of Energy with such technical*
4 *assistance as the Secretary of Energy may require in car-*
5 *rying out this section. The Secretary of Energy shall pro-*
6 *vide the Secretary of the Treasury with such information*
7 *as the Secretary of the Treasury may require in carrying*
8 *out the amendment made by section 1604.*

9 (h) *APPROPRIATIONS.*—*There is hereby appropriated*
10 *to the Secretary of Energy such sums as may be necessary*
11 *to carry out this section.*

12 (i) *TERMINATION.*—*The Secretary of Energy shall not*
13 *make any grant to any person under this section unless*
14 *the application of such person for such grant is received*
15 *before October 1, 2011.*

16 **PART 4—STUDY OF ECONOMIC, EMPLOYMENT,**
17 **AND RELATED EFFECTS OF THIS ACT**
18 **SEC. 1731. STUDY OF ECONOMIC, EMPLOYMENT, AND RE-**
19 **LATED EFFECTS OF THIS ACT.**

20 *On February 1, 2010, and every 3 months thereafter*
21 *in calendar year 2010, the Comptroller General of the*
22 *United States shall submit to the Committee on Ways and*
23 *Means a written report on the most recent national (and,*
24 *where available, State-by-State) information on—*

25 (1) *the economic effects of this Act;*

1 (2) *the employment effects of this Act, includ-*
2 *ing—*

3 (A) *a comparison of the number of jobs pre-*
4 *served and the number of jobs created as a result*
5 *of this Act; and*

6 (B) *a comparison of the numbers of jobs*
7 *preserved and the number of jobs created in each*
8 *of the public and private sectors;*

9 (3) *the share of tax and non-tax expenditures*
10 *provided under this Act that were spent or saved, by*
11 *group and income class;*

12 (4) *how the funds provided to States under this*
13 *Act have been spent, including a breakdown of—*

14 (A) *funds used for services provided to citi-*
15 *zens; and*

16 (B) *wages and other compensation for pub-*
17 *lic employees; and*

18 (5) *a description of any funds made available*
19 *under this Act that remain unspent, and the reasons*
20 *why.*

1 **TITLE II—ASSISTANCE FOR UN-**
2 **EMPLOYED WORKERS AND**
3 **STRUGGLING FAMILIES**

4 **SEC. 2000. SHORT TITLE.**

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

7 **Subtitle A—Unemployment**
8 **Insurance**

9 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
10 **COMPENSATION PROGRAM.**

11 *(a) IN GENERAL.—Section 4007 of the Supplemental*
12 *Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C.*
13 *3304 note), as amended by section 4 of the Unemployment*
14 *Compensation Extension Act of 2008 (Public Law 110–449;*
15 *122 Stat. 5015), is amended—*

16 *(1) by striking “March 31, 2009” each place it*
17 *appears and inserting “December 31, 2009”;*

18 *(2) in the heading for subsection (b)(2), by strik-*
19 *ing “MARCH 31, 2009” and inserting “DECEMBER 31,*
20 *2009”; and*

21 *(3) in subsection (b)(3), by striking “August 27,*
22 *2009” and inserting “May 31, 2010”.*

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

1 “(e) *TRANSFER OF FUNDS.*—Notwithstanding any
2 other provision of law, the Secretary of the Treasury shall
3 transfer from the general fund of the Treasury (from funds
4 not otherwise appropriated)—

5 “(1) to the extended unemployment compensation
6 account (as established by section 905 of the Social
7 Security Act) such sums as the Secretary of Labor es-
8 timates to be necessary to make payments to States
9 under this title by reason of the amendments made by
10 section 2001(a) of the Assistance for Unemployed
11 Workers and Struggling Families Act; and

12 “(2) to the employment security administration
13 account (as established by section 901 of the Social
14 Security Act) such sums as the Secretary of Labor es-
15 timates to be necessary for purposes of assisting
16 States in meeting administrative costs by reason of
17 the amendments referred to in paragraph (1).

18 There are appropriated from the general fund of the Treas-
19 ury, without fiscal year limitation, the sums referred to in
20 the preceding sentence and such sums shall not be required
21 to be repaid.”.

22 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
23 **BENEFITS.**

24 “(a) *FEDERAL-STATE AGREEMENTS.*—Any State which
25 desires to do so may enter into and participate in an agree-

1 *ment under this section with the Secretary of Labor (herein-*
2 *after in this section referred to as the “Secretary”). Any*
3 *State which is a party to an agreement under this section*
4 *may, upon providing 30 days’ written notice to the Sec-*
5 *retary, terminate such agreement.*

6 (b) *PROVISIONS OF AGREEMENT.—*

7 (1) *ADDITIONAL COMPENSATION.—Any agree-*
8 *ment under this section shall provide that the State*
9 *agency of the State will make payments of regular*
10 *compensation to individuals in amounts and to the*
11 *extent that they would be determined if the State law*
12 *of the State were applied, with respect to any week*
13 *for which the individual is (disregarding this section)*
14 *otherwise entitled under the State law to receive reg-*
15 *ular compensation, as if such State law had been*
16 *modified in a manner such that the amount of reg-*
17 *ular compensation (including dependents’ allowances)*
18 *payable for any week shall be equal to the amount de-*
19 *termined under the State law (before the application*
20 *of this paragraph) plus an additional \$25.*

21 (2) *ALLOWABLE METHODS OF PAYMENT.—Any*
22 *additional compensation provided for in accordance*
23 *with paragraph (1) shall be payable either—*

24 (A) *as an amount which is paid at the*
25 *same time and in the same manner as any reg-*

1 ular compensation otherwise payable for the
2 week involved; or

3 (B) at the option of the State, by payments
4 which are made separately from, but on the same
5 weekly basis as, any regular compensation other-
6 wise payable.

7 (c) *NONREDUCTION RULE.*—An agreement under this
8 section shall not apply (or shall cease to apply) with respect
9 to a State upon a determination by the Secretary that the
10 method governing the computation of regular compensation
11 under the State law of that State has been modified in a
12 manner such that—

13 (1) the average weekly benefit amount of regular
14 compensation which will be payable during the period
15 of the agreement (determined disregarding any addi-
16 tional amounts attributable to the modification de-
17 scribed in subsection (b)(1)) will be less than

18 (2) the average weekly benefit amount of regular
19 compensation which would otherwise have been pay-
20 able during such period under the State law, as in ef-
21 fect on December 31, 2008.

22 (d) *PAYMENTS TO STATES.*—

23 (1) *IN GENERAL.*—

24 (A) *FULL REIMBURSEMENT.*—There shall be
25 paid to each State which has entered into an

1 *agreement under this section an amount equal to*
2 *100 percent of—*

3 *(i) the total amount of additional com-*
4 *pen- sation (as described in subsection (b)(1))*
5 *paid to individuals by the State pursuant*
6 *to such agreement; and*

7 *(ii) any additional administrative ex-*
8 *penses incurred by the State by reason of*
9 *such agreement (as determined by the Sec-*
10 *retary).*

11 *(B) TERMS OF PAYMENTS.—Sums payable*
12 *to any State by reason of such State's having an*
13 *agreement under this section shall be payable, ei-*
14 *ther in advance or by way of reimbursement (as*
15 *determined by the Secretary), in such amounts*
16 *as the Secretary estimates the State will be enti-*
17 *tled to receive under this section for each cal-*
18 *endar month, reduced or increased, as the case*
19 *may be, by any amount by which the Secretary*
20 *finds that his estimates for any prior calendar*
21 *month were greater or less than the amounts*
22 *which should have been paid to the State. Such*
23 *estimates may be made on the basis of such sta-*
24 *tistical, sampling, or other method as may be*

1 *agreed upon by the Secretary and the State*
2 *agency of the State involved.*

3 (2) *CERTIFICATIONS.*—*The Secretary shall from*
4 *time to time certify to the Secretary of the Treasury*
5 *for payment to each State the sums payable to such*
6 *State under this section.*

7 (3) *APPROPRIATION.*—*There are appropriated*
8 *from the general fund of the Treasury, without fiscal*
9 *year limitation, such sums as may be necessary for*
10 *purposes of this subsection.*

11 (e) *APPLICABILITY.*—

12 (1) *IN GENERAL.*—*An agreement entered into*
13 *under this section shall apply to weeks of unemploy-*
14 *ment—*

15 (A) *beginning after the date on which such*
16 *agreement is entered into; and*

17 (B) *ending before January 1, 2010.*

18 (2) *TRANSITION RULE FOR INDIVIDUALS REMAIN-*
19 *ING ENTITLED TO REGULAR COMPENSATION AS OF*
20 *JANUARY 1, 2010.*—*In the case of any individual who,*
21 *as of the date specified in paragraph (1)(B), has not*
22 *yet exhausted all rights to regular compensation*
23 *under the State law of a State with respect to a ben-*
24 *efit year that began before such date, additional com-*
25 *penensation (as described in subsection (b)(1)) shall*

1 *continue to be payable to such individual for any*
2 *week beginning on or after such date for which the in-*
3 *dividual is otherwise eligible for regular compensation*
4 *with respect to such benefit year.*

5 (3) *TERMINATION.*—*Notwithstanding any other*
6 *provision of this subsection, no additional compensa-*
7 *tion (as described in subsection (b)(1)) shall be pay-*
8 *able for any week beginning after June 30, 2010.*

9 (f) *FRAUD AND OVERPAYMENTS.*—*The provisions of*
10 *section 4005 of the Supplemental Appropriations Act, 2008*
11 *(Public Law 110–252; 122 Stat. 2356) shall apply with re-*
12 *spect to additional compensation (as described in subsection*
13 *(b)(1)) to the same extent and in the same manner as in*
14 *the case of emergency unemployment compensation.*

15 (g) *APPLICATION TO OTHER UNEMPLOYMENT BENE-*
16 *FITS.*—

17 (1) *IN GENERAL.*—*Each agreement under this*
18 *section shall include provisions to provide that the*
19 *purposes of the preceding provisions of this section*
20 *shall be applied with respect to unemployment bene-*
21 *fits described in subsection (h)(3) to the same extent*
22 *and in the same manner as if those benefits were reg-*
23 *ular compensation.*

1 (2) *ELIGIBILITY AND TERMINATION RULES.*—
2 *Additional compensation (as described in subsection*
3 *(b)(1))—*

4 (A) *shall not be payable, pursuant to this*
5 *subsection, with respect to any unemployment*
6 *benefits described in subsection (h)(3) for any*
7 *week beginning on or after the date specified in*
8 *subsection (e)(1)(B), except in the case of an in-*
9 *dividual who was eligible to receive additional*
10 *compensation (as so described) in connection*
11 *with any regular compensation or any unem-*
12 *ployment benefits described in subsection (h)(3)*
13 *for any period of unemployment ending before*
14 *such date; and*

15 (B) *shall in no event be payable for any*
16 *week beginning after the date specified in sub-*
17 *section (e)(3).*

18 (h) *DEFINITIONS.*—*For purposes of this section—*

19 (1) *the terms “compensation”, “regular com-*
20 *ensation”, “benefit year”, “State”, “State agency”,*
21 *“State law”, and “week” have the respective meanings*
22 *given such terms under section 205 of the Federal-*
23 *State Extended Unemployment Compensation Act of*
24 *1970 (26 U.S.C. 3304 note);*

1 (2) *the term “emergency unemployment com-*
2 *ensation” means emergency unemployment com-*
3 *ensation under title IV of the Supplemental Appro-*
4 *ropriations Act, 2008 (Public Law 110–252; 122 Stat.*
5 *2353); and*

6 (3) *any reference to unemployment benefits de-*
7 *scribed in this paragraph shall be considered to refer*
8 *to—*

9 (A) *extended compensation (as defined by*
10 *section 205 of the Federal-State Extended Unem-*
11 *ployment Compensation Act of 1970); and*

12 (B) *unemployment compensation (as de-*
13 *finied by section 85(b) of the Internal Revenue*
14 *Code of 1986) provided under any program ad-*
15 *ministered by a State under an agreement with*
16 *the Secretary.*

17 **SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT COM-**
18 **PENSATION MODERNIZATION.**

19 (a) *IN GENERAL.—Section 903 of the Social Security*
20 *Act (42 U.S.C. 1103) is amended by adding at the end the*
21 *following:*

22 *“Special Transfers in Fiscal Years 2009, 2010, and 2011*
23 *for Modernization*

24 *“(f)(1)(A) In addition to any other amounts, the Sec-*
25 *retary of Labor shall provide for the making of unemploy-*

1 *ment compensation modernization incentive payments*
2 *(hereinafter ‘incentive payments’) to the accounts of the*
3 *States in the Unemployment Trust Fund, by transfer from*
4 *amounts reserved for that purpose in the Federal unemploy-*
5 *ment account, in accordance with succeeding provisions of*
6 *this subsection.*

7 “(B) *The maximum incentive payment allowable*
8 *under this subsection with respect to any State shall, as*
9 *determined by the Secretary of Labor, be equal to the*
10 *amount obtained by multiplying \$7,000,000,000 by the*
11 *same ratio as would apply under subsection (a)(2)(B) for*
12 *purposes of determining such State’s share of any excess*
13 *amount (as described in subsection (a)(1)) that would have*
14 *been subject to transfer to State accounts, as of October 1,*
15 *2008, under the provisions of subsection (a).*

16 “(C) *Of the maximum incentive payment determined*
17 *under subparagraph (B) with respect to a State—*

18 “(i) *one-third shall be transferred to the account*
19 *of such State upon a certification under paragraph*
20 *(4)(B) that the State law of such State meets the re-*
21 *quirements of paragraph (2); and*

22 “(ii) *the remainder shall be transferred to the ac-*
23 *count of such State upon a certification under para-*
24 *graph (4)(B) that the State law of such State meets*
25 *the requirements of paragraph (3).*

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

3 “(A) *uses a base period that includes the most*
4 *recently completed calendar quarter before the start of*
5 *the benefit year for purposes of determining eligibility*
6 *for unemployment compensation; or*

7 “(B) *provides that, in the case of an individual*
8 *who would not otherwise be eligible for unemployment*
9 *compensation under the State law because of the use*
10 *of a base period that does not include the most re-*
11 *cently completed calendar quarter before the start of*
12 *the benefit year, eligibility shall be determined using*
13 *a base period that includes such calendar quarter.*

14 “(3) *The State law of a State meets the requirements*
15 *of this paragraph if such State law includes provisions to*
16 *carry out at least 2 of the following subparagraphs:*

17 “(A) *An individual shall not be denied regular*
18 *unemployment compensation under any State law*
19 *provisions relating to availability for work, active*
20 *search for work, or refusal to accept work, solely be-*
21 *cause such individual is seeking only part-time work*
22 *(as defined by the Secretary of Labor), except that the*
23 *State law provisions carrying out this subparagraph*
24 *may exclude an individual if a majority of the weeks*

1 *of work in such individual's base period do not in-*
2 *clude part-time work (as so defined).*

3 “(B) *An individual shall not be disqualified*
4 *from regular unemployment compensation for sepa-*
5 *rating from employment if that separation is for any*
6 *compelling family reason. For purposes of this sub-*
7 *paragraph, the term ‘compelling family reason’*
8 *means the following:*

9 “(i) *Domestic violence, verified by such rea-*
10 *sonable and confidential documentation as the*
11 *State law may require, which causes the indi-*
12 *vidual reasonably to believe that such individ-*
13 *ual's continued employment would jeopardize the*
14 *safety of the individual or of any member of the*
15 *individual's immediate family (as defined by the*
16 *Secretary of Labor).*

17 “(ii) *The illness or disability of a member*
18 *of the individual's immediate family (as those*
19 *terms are defined by the Secretary of Labor).*

20 “(iii) *The need for the individual to accom-*
21 *pany such individual's spouse—*

22 “(I) *to a place from which it is im-*
23 *practical for such individual to commute;*
24 *and*

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

3 “(C) Weekly unemployment compensation is
4 payable under this subparagraph to any individual
5 who is unemployed (as determined under the State
6 unemployment compensation law), has exhausted all
7 rights to regular unemployment compensation under
8 the State law, and is enrolled and making satisfac-
9 tory progress in a State-approved training program
10 or in a job training program authorized under the
11 Workforce Investment Act of 1998. Such programs
12 shall prepare individuals who have been separated
13 from a declining occupation, or who have been invol-
14 untarily and indefinitely separated from employment
15 as a result of a permanent reduction of operations at
16 the individual’s place of employment, for entry into
17 a high-demand occupation. The amount of unemploy-
18 ment compensation payable under this subparagraph
19 to an individual for a week of unemployment shall be
20 equal to the individual’s average weekly benefit
21 amount (including dependents’ allowances) for the
22 most recent benefit year, and the total amount of un-
23 employment compensation payable under this sub-
24 paragraph to any individual shall be equal to at least
25 26 times the individual’s average weekly benefit

1 *amount (including dependents' allowances) for the*
2 *most recent benefit year.*

3 *“(D) Dependents' allowances are provided, in the*
4 *case of any individual who is entitled to receive reg-*
5 *ular unemployment compensation and who has any*
6 *dependents (as defined by State law), in an amount*
7 *equal to at least \$15 per dependent per week, subject*
8 *to any aggregate limitation on such allowances which*
9 *the State law may establish (but which aggregate lim-*
10 *itation on the total allowance for dependents paid to*
11 *an individual may not be less than \$50 for each week*
12 *of unemployment or 50 percent of the individual's*
13 *weekly benefit amount for the benefit year, whichever*
14 *is less).*

15 *“(4)(A) Any State seeking an incentive payment under*
16 *this subsection shall submit an application therefor at such*
17 *time, in such manner, and complete with such information*
18 *as the Secretary of Labor may within 60 days after the*
19 *date of the enactment of this subsection prescribe (whether*
20 *by regulation or otherwise), including information relating*
21 *to compliance with the requirements of paragraph (2) or*
22 *(3), as well as how the State intends to use the incentive*
23 *payment to improve or strengthen the State's unemploy-*
24 *ment compensation program. The Secretary of Labor shall,*
25 *within 30 days after receiving a complete application, no-*

1 *tify the State agency of the State of the Secretary's findings*
2 *with respect to the requirements of paragraph (2) or (3)*
3 *(or both).*

4 “(B)(i) *If the Secretary of Labor finds that the State*
5 *law provisions (disregarding any State law provisions*
6 *which are not then currently in effect as permanent law*
7 *or which are subject to discontinuation) meet the require-*
8 *ments of paragraph (2) or (3), as the case may be, the Sec-*
9 *retary of Labor shall thereupon make a certification to that*
10 *effect to the Secretary of the Treasury, together with a cer-*
11 *tification as to the amount of the incentive payment to be*
12 *transferred to the State account pursuant to that finding.*
13 *The Secretary of the Treasury shall make the appropriate*
14 *transfer within 7 days after receiving such certification.*

15 “(ii) *For purposes of clause (i), State law provisions*
16 *which are to take effect within 12 months after the date*
17 *of their certification under this subparagraph shall be con-*
18 *sidered to be in effect as of the date of such certification.*

19 “(C)(i) *No certification of compliance with the require-*
20 *ments of paragraph (2) or (3) may be made with respect*
21 *to any State whose State law is not otherwise eligible for*
22 *certification under section 303 or approvable under section*
23 *3304 of the Federal Unemployment Tax Act.*

24 “(ii) *No certification of compliance with the require-*
25 *ments of paragraph (3) may be made with respect to any*

1 *State whose State law is not in compliance with the re-*
2 *quirements of paragraph (2).*

3 “(iii) *No application under subparagraph (A) may be*
4 *considered if submitted before the date of the enactment of*
5 *this subsection or after the latest date necessary (as specified*
6 *by the Secretary of Labor) to ensure that all incentive pay-*
7 *ments under this subsection are made before October 1,*
8 *2011.*

9 “(5)(A) *Except as provided in subparagraph (B), any*
10 *amount transferred to the account of a State under this sub-*
11 *section may be used by such State only in the payment of*
12 *cash benefits to individuals with respect to their unemploy-*
13 *ment (including for dependents’ allowances and for unem-*
14 *ployment compensation under paragraph (3)(C)), exclusive*
15 *of expenses of administration.*

16 “(B) *A State may, subject to the same conditions as*
17 *set forth in subsection (c)(2) (excluding subparagraph (B)*
18 *thereof, and deeming the reference to ‘subsections (a) and*
19 *(b)’ in subparagraph (D) thereof to include this subsection),*
20 *use any amount transferred to the account of such State*
21 *under this subsection for the administration of its unem-*
22 *ployment compensation law and public employment offices.*

23 “(6) *Out of any money in the Federal unemployment*
24 *account not otherwise appropriated, the Secretary of the*
25 *Treasury shall reserve \$7,000,000,000 for incentive pay-*

1 *ments under this subsection. Any amount so reserved shall*
2 *not be taken into account for purposes of any determination*
3 *under section 902, 910, or 1203 of the amount in the Fed-*
4 *eral unemployment account as of any given time. Any*
5 *amount so reserved for which the Secretary of the Treasury*
6 *has not received a certification under paragraph (4)(B) by*
7 *the deadline described in paragraph (4)(C)(iii) shall, upon*
8 *the close of fiscal year 2011, become unrestricted as to use*
9 *as part of the Federal unemployment account.*

10 *“(7) For purposes of this subsection, the terms ‘benefit*
11 *year’, ‘base period’, and ‘week’ have the respective meanings*
12 *given such terms under section 205 of the Federal-State Ex-*
13 *tended Unemployment Compensation Act of 1970 (26*
14 *U.S.C. 3304 note).*

15 *“Special Transfer in Fiscal Year 2009 for Administration*

16 *“(g)(1) In addition to any other amounts, the Sec-*
17 *retary of the Treasury shall transfer from the employment*
18 *security administration account to the account of each*
19 *State in the Unemployment Trust Fund, within 30 days*
20 *after the date of the enactment of this subsection, the*
21 *amount determined with respect to such State under para-*
22 *graph (2).*

23 *“(2) The amount to be transferred under this sub-*
24 *section to a State account shall (as determined by the Sec-*
25 *retary of Labor and certified by such Secretary to the Sec-*

1 *retary of the Treasury) be equal to the amount obtained*
2 *by multiplying \$500,000,000 by the same ratio as deter-*
3 *mined under subsection (f)(1)(B) with respect to such State.*

4 *“(3) Any amount transferred to the account of a State*
5 *as a result of the enactment of this subsection may be used*
6 *by the State agency of such State only in the payment of*
7 *expenses incurred by it for—*

8 *“(A) the administration of the provisions of its*
9 *State law carrying out the purposes of subsection*
10 *(f)(2) or any subparagraph of subsection (f)(3);*

11 *“(B) improved outreach to individuals who*
12 *might be eligible for regular unemployment compensa-*
13 *tion by virtue of any provisions of the State law*
14 *which are described in subparagraph (A);*

15 *“(C) the improvement of unemployment benefit*
16 *and unemployment tax operations, including respond-*
17 *ing to increased demand for unemployment com-*
18 *ensation; and*

19 *“(D) staff-assisted reemployment services for un-*
20 *employment compensation claimants.”.*

21 *(b) REGULATIONS.—The Secretary of Labor may pre-*
22 *scribe any regulations, operating instructions, or other*
23 *guidance necessary to carry out the amendment made by*
24 *subsection (a).*

1 ***Subtitle B—Assistance for***
2 ***Vulnerable Individuals***

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

4 (a) *IN GENERAL.*—Section 403 of the Social Security
5 Act (42 U.S.C. 603) is amended by adding at the end the
6 following:

7 “(c) *EMERGENCY FUND.*—

8 “(1) *ESTABLISHMENT.*—There is established in
9 the Treasury of the United States a fund which shall
10 be known as the ‘Emergency Contingency Fund for
11 State Temporary Assistance for Needy Families Pro-
12 grams’ (in this subsection referred to as the ‘Emer-
13 gency Fund’).

14 “(2) *DEPOSITS INTO FUND.*—Out of any money
15 in the Treasury of the United States not otherwise
16 appropriated, there are appropriated such sums as
17 are necessary for payment to the Emergency Fund.

18 “(3) *GRANTS.*—

19 “(A) *GRANT RELATED TO CASELOAD IN-*
20 *CREASES.*—

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

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

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

5 “(ii) CASELOAD INCREASE REQUIRE-
6 MENT.—A State meets the requirement of
7 this clause for a quarter if the average
8 monthly assistance caseload of the State for
9 the quarter exceeds the average monthly as-
10 sistance caseload of the State for the cor-
11 responding quarter in the emergency fund
12 base year of the State.

13 “(iii) AMOUNT OF GRANT.—Subject to
14 paragraph (5), the amount of the grant to
15 be made to a State under this subparagraph
16 for a quarter shall be 80 percent of the
17 amount (if any) by which the total expendi-
18 tures of the State for basic assistance (as de-
19 fined by the Secretary) in the quarter,
20 whether under the State program funded
21 under this part or as qualified State ex-
22 penditures, exceeds the total expenditures of
23 the State for such assistance for the cor-
24 responding quarter in the emergency fund
25 base year of the State.

1 “(B) *GRANT RELATED TO INCREASED EX-*
2 *PENDITURES FOR NON-RECURRENT SHORT TERM*
3 *BENEFITS.—*

4 “(i) *IN GENERAL.—For each calendar*
5 *quarter in fiscal year 2009 or 2010, the*
6 *Secretary shall make a grant from the*
7 *Emergency Fund to each State that—*

8 “(I) *requests a grant under this*
9 *subparagraph for the quarter; and*

10 “(II) *meets the requirement of*
11 *clause (ii) for the quarter.*

12 “(ii) *NON-RECURRENT SHORT TERM*
13 *EXPENDITURE REQUIREMENT.—A State*
14 *meets the requirement of this clause for a*
15 *quarter if the total expenditures of the State*
16 *for non-recurrent short term benefits in the*
17 *quarter, whether under the State program*
18 *funded under this part or as qualified State*
19 *expenditures, exceeds the total such expendi-*
20 *tures of the State for non-recurrent short*
21 *term benefits in the corresponding quarter*
22 *in the emergency fund base year of the*
23 *State.*

24 “(iii) *AMOUNT OF GRANT.—Subject to*
25 *paragraph (5), the amount of the grant to*

1 *be made to a State under this subparagraph*
2 *for a quarter shall be an amount equal to*
3 *80 percent of the excess described in clause*
4 *(ii).*

5 “(C) *GRANT RELATED TO INCREASED EX-*
6 *PENDITURES FOR SUBSIDIZED EMPLOYMENT.—*

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

11 “(I) *requests a grant under this*
12 *subparagraph for the quarter; and*

13 “(II) *meets the requirement of*
14 *clause (ii) for the quarter.*

15 “(ii) *SUBSIDIZED EMPLOYMENT EX-*
16 *PENDITURE REQUIREMENT.—A State meets*
17 *the requirement of this clause for a quarter*
18 *if the total expenditures of the State for sub-*
19 *sidized employment in the quarter, whether*
20 *under the State program funded under this*
21 *part or as qualified State expenditures, ex-*
22 *ceeds the total of such expenditures of the*
23 *State in the corresponding quarter in the*
24 *emergency fund base year of the State.*

1 “(iii) *AMOUNT OF GRANT.*—*Subject to*
2 *paragraph (5), the amount of the grant to*
3 *be made to a State under this subparagraph*
4 *for a quarter shall be an amount equal to*
5 *80 percent of the excess described in clause*
6 *(ii).*

7 “(4) *AUTHORITY TO MAKE NECESSARY ADJUST-*
8 *MENTS TO DATA AND COLLECT NEEDED DATA.*—*In de-*
9 *termining the size of the caseload of a State and the*
10 *expenditures of a State for basic assistance, non-re-*
11 *current short-term benefits, and subsidized employ-*
12 *ment, during any period for which the State requests*
13 *funds under this subsection, and during the emer-*
14 *gency fund base year of the State, the Secretary may*
15 *make appropriate adjustments to the data to ensure*
16 *that the data reflect expenditures under the State pro-*
17 *gram funded under this part and qualified State ex-*
18 *penditures. The Secretary may develop a mechanism*
19 *for collecting expenditure data, including procedures*
20 *which allow States to make reasonable estimates, and*
21 *may set deadlines for making revisions to the data.*

22 “(5) *LIMITATION.*—*The total amount payable to*
23 *a single State under subsection (b) and this subsection*
24 *for a fiscal year shall not exceed 25 percent of the*
25 *State family assistance grant.*

1 “(6) *LIMITATIONS ON USE OF FUNDS.*—A State
2 to which an amount is paid under this subsection
3 may use the amount only as authorized by section
4 404.

5 “(7) *TIMING OF IMPLEMENTATION.*—The Sec-
6 retary shall implement this subsection as quickly as
7 reasonably possible, pursuant to appropriate guidance
8 to States.

9 “(8) *DEFINITIONS.*—In this subsection:

10 “(A) *AVERAGE MONTHLY ASSISTANCE CASE-*
11 *LOAD.*—The term ‘average monthly assistance
12 caseload’ means, with respect to a State and a
13 quarter, the number of families receiving assist-
14 ance during the quarter under the State program
15 funded under this part or as qualified State ex-
16 penditures, subject to adjustment under para-
17 graph (4).

18 “(B) *EMERGENCY FUND BASE YEAR.*—

19 “(i) *IN GENERAL.*—The term ‘emer-
20 gency fund base year’ means, with respect
21 to a State and a category described in
22 clause (ii), whichever of fiscal year 2007 or
23 2008 is the fiscal year in which the amount
24 described by the category with respect to the
25 State is the lesser.

1 “(ii) *CATEGORIES DESCRIBED.*—*The*
2 *categories described in this clause are the*
3 *following:*

4 “(I) *The average monthly assist-*
5 *ance caseload of the State.*

6 “(II) *The total expenditures of the*
7 *State for non-recurrent short term ben-*
8 *efits, whether under the State program*
9 *funded under this part or as qualified*
10 *State expenditures.*

11 “(III) *The total expenditures of*
12 *the State for subsidized employment,*
13 *whether under the State program fund-*
14 *ed under this part or as qualified State*
15 *expenditures.*

16 “(C) *QUALIFIED STATE EXPENDITURES.*—
17 *The term ‘qualified State expenditures’ has the*
18 *meaning given the term in section 409(a)(7).”.*

19 **(b) TEMPORARY MODIFICATION OF CASELOAD REDUC-**
20 **TION CREDIT.**—*Section 407(b)(3)(A)(i) of such Act (42*
21 *U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or if the*
22 *immediately preceding fiscal year is fiscal year 2009 or*
23 *2010, then, at State option, during the emergency fund base*
24 *year of the State with respect to the average monthly assist-*

1 *ance caseload of the State (within the meaning of section*
2 *403(c)(8)(B)))” before “under the State”.*

3 *(c) EFFECTIVE DATE.—The amendments made by this*
4 *section shall take effect on the date of the enactment of this*
5 *Act.*

6 **SEC. 2102. ONE-TIME EMERGENCY PAYMENT TO SSI RECIPI-**
7 **ENTS.**

8 *(a) PAYMENT AUTHORITY.—*

9 *(1) IN GENERAL.—At the earliest practicable*
10 *date in calendar year 2009 but not later than 120*
11 *days after the date of the enactment of this section,*
12 *the Commissioner of Social Security shall make a*
13 *one-time payment to each individual who is deter-*
14 *mined by the Commissioner in calendar year 2009 to*
15 *be an individual who—*

16 *(A) is entitled to a cash benefit under the*
17 *supplemental security income program under*
18 *title XVI of the Social Security Act (other than*
19 *pursuant to section 1611(e)(1)(B) of such Act)*
20 *for at least 1 day in the calendar month in*
21 *which the first payment under this section is to*
22 *be made; or*

23 *(B)(i) was entitled to such a cash benefit*
24 *(other than pursuant to section 1611(e)(1)(B) of*

1 *such Act) for at least 1 day in the 2-month pe-*
2 *riod preceding that calendar month; and*

3 *(ii) whose entitlement to that benefit ceased*
4 *in that 2-month period solely because the income*
5 *of the individual (and the income of the spouse,*
6 *if any, of the individual) exceeded the applicable*
7 *income limit described in paragraph (1)(A) or*
8 *(2)(A) of section 1611(a) of such Act.*

9 (2) *AMOUNT OF PAYMENT.*—*Subject to subsection*
10 *(b)(1) of this section, the amount of the payment shall*
11 *be—*

12 (A) *in the case of an individual eligible for*
13 *a payment under this section who does not have*
14 *a spouse eligible for such a payment, an amount*
15 *equal to the average of the cash benefits payable*
16 *in the aggregate under section 1611 or 1619(a)*
17 *of the Social Security Act to eligible individuals*
18 *who do not have an eligible spouse, for the most*
19 *recent month for which data on payment of the*
20 *benefits are available, as determined by the Com-*
21 *missioner of Social Security; or*

22 (B) *in the case of an individual eligible for*
23 *a payment under this section who has a spouse*
24 *eligible for such a payment, an amount equal to*
25 *the average of the cash benefits payable in the*

1 *aggregate under section 1611 or 1619(a) of the*
2 *Social Security Act to eligible individuals who*
3 *have an eligible spouse, for the most recent*
4 *month for which data on payment of the benefits*
5 *are available, as so determined.*

6 ***(b) ADMINISTRATIVE PROVISIONS.—***

7 ***(1) AUTHORITY TO WITHHOLD PAYMENT TO RE-***
8 ***COVER PRIOR OVERPAYMENT OF SSI BENEFITS.—****The*
9 *Commissioner of Social Security may withhold part*
10 *or all of a payment otherwise required to be made*
11 *under subsection (a) of this section to an individual,*
12 *in order to recover a prior overpayment of benefits to*
13 *the individual under the supplemental security in-*
14 *come program under title XVI of the Social Security*
15 *Act, subject to the limitations of section 1631(b) of*
16 *such Act.*

17 ***(2) PAYMENT TO BE DISREGARDED IN DETER-***
18 ***MINING UNDERPAYMENTS UNDER THE SSI PRO-***
19 ***GRAM.—****A payment under subsection (a) shall be dis-*
20 *regarded in determining whether there has been an*
21 *underpayment of benefits under the supplemental se-*
22 *curity income program under title XVI of the Social*
23 *Security Act.*

24 ***(3) NONASSIGNMENT.—****The provisions of section*
25 *1631(d) of the Social Security Act shall apply with*

1 *respect to payments under this section to the same ex-*
2 *tent as they apply in the case of title XVI of such Act.*

3 (c) *PAYMENTS TO BE DISREGARDED FOR PURPOSES*
4 *OF ALL FEDERAL AND FEDERALLY ASSISTED PRO-*
5 *GRAMS.*—*A payment under subsection (a) shall not be re-*
6 *garded as income to the recipient, and shall not be regarded*
7 *as a resource of the recipient for the month of receipt and*
8 *the following 6 months, for purposes of determining the eli-*
9 *gibility of any individual for benefits or assistance, or the*
10 *amount or extent of benefits or assistance, under any Fed-*
11 *eral program or under any State or local program financed*
12 *in whole or in part with Federal funds.*

13 (d) *APPROPRIATION.*—*Out of any sums in the Treas-*
14 *ury of the United States not otherwise appropriated, there*
15 *are appropriated such sums as may be necessary to carry*
16 *out this section.*

17 **SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD SUP-**
18 **PORT LAW.**

19 *During the period that begins with October 1, 2008,*
20 *and ends with September 30, 2010, section 455(a)(1) of the*
21 *Social Security Act shall be applied and administered as*
22 *if the phrase “from amounts paid to the State under section*
23 *458 or” did not appear in such section.*

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

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

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

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

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

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

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

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

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

17 (1) *PROVISION OF PREMIUM ASSISTANCE.*—

18 (A) *REDUCTION OF PREMIUMS PAYABLE.*—

19 *In the case of any premium for a period of cov-*
20 *erage beginning on or after the date of the enact-*
21 *ment of this Act for COBRA continuation cov-*
22 *erage with respect to any assistance eligible indi-*
23 *vidual, such individual shall be treated for pur-*

1 poses of any COBRA continuation provision as
2 having paid the amount of such premium if such
3 individual pays 35 percent of the amount of such
4 premium (as determined without regard to this
5 subsection).

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

10 (2) LIMITATION OF PERIOD OF PREMIUM ASSIST-
11 ANCE.—

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

16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage con-
19 sisting of only dental, vision, counseling, or
20 referral services (or a combination thereof),
21 coverage under a health reimbursement ar-
22 rangement or a health flexible spending ar-
23 rangement, or coverage of treatment that is
24 furnished in an on-site medical facility
25 maintained by the employer and that con-

1 *sists primarily of first-aid services, preven-*
2 *tion and wellness care, or similar care (or*
3 *a combination thereof)) or is eligible for*
4 *benefits under title XVIII of the Social Se-*
5 *curity Act, or*

6 *(ii) the earliest of—*

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

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

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

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

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

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

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

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

18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the in-
20 voluntary termination of the covered employee’s
21 employment and occurred during such period.

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

24 (A) *IN GENERAL.*—Notwithstanding section
25 605(a) of the Employee Retirement Income Secu-

1 *rity Act of 1974, section 4980B(f)(5)(A) of the*
2 *Internal Revenue Code of 1986, section 2205(a)*
3 *of the Public Health Service Act, and section*
4 *8905a(c)(2) of title 5, United States Code, in the*
5 *case of an individual who is a qualified bene-*
6 *ficiary described in paragraph (3)(A) as of the*
7 *date of the enactment of this Act and has not*
8 *made the election referred to in paragraph*
9 *(3)(B) as of such date, such individual may elect*
10 *the COBRA continuation coverage under the*
11 *COBRA continuation coverage provisions con-*
12 *taining such sections during the 60-day period*
13 *commencing with the date on which the notifica-*
14 *tion required under paragraph (7)(C) is pro-*
15 *vided to such individual.*

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

21 *(i) shall commence on the date of the*
22 *enactment of this Act, and*

23 *(ii) shall not extend beyond the period*
24 *of COBRA continuation coverage that*
25 *would have been required under the applica-*

1 *ble COBRA continuation coverage provision*
2 *if the coverage had been elected as required*
3 *under such provision.*

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

8 *(i) beginning on the date of the quali-*
9 *fying event, and*

10 *(ii) ending with the day before the date*
11 *of the enactment of this Act,*

12 *shall be disregarded for purposes of determining*
13 *the 63-day periods referred to in section 701(2)*
14 *of the Employee Retirement Income Security Act*
15 *of 1974, section 9801(c)(2) of the Internal Rev-*
16 *enue Code of 1986, and section 2701(c)(2) of the*
17 *Public Health Service Act.*

18 (5) *EXPEDITED REVIEW OF DENIALS OF PRE-*
19 *MIUM ASSISTANCE.*—*In any case in which an indi-*
20 *vidual requests treatment as an assistance eligible in-*
21 *dividual and is denied such treatment by the group*
22 *health plan by reason of such individual's ineligi-*
23 *bility for COBRA continuation coverage, the Sec-*
24 *retary of Labor (or the Secretary of Health and*
25 *Human services in connection with COBRA continu-*

1 *ation coverage which is provided other than pursuant*
2 *to part 6 of subtitle B of title I of the Employee Re-*
3 *irement Income Security Act of 1974), in consulta-*
4 *tion with the Secretary of the Treasury, shall provide*
5 *for expedited review of such denial. An individual*
6 *shall be entitled to such review upon application to*
7 *such Secretary in such form and manner as shall be*
8 *provided by such Secretary. Such Secretary shall*
9 *make a determination regarding such individual's eli-*
10 *gibility within 10 business days after receipt of such*
11 *individual's application for review under this para-*
12 *graph.*

13 *(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF*
14 *FEDERAL AND STATE PROGRAMS.—Notwithstanding*
15 *any other provision of law, any premium reduction*
16 *with respect to an assistance eligible individual under*
17 *this subsection shall not be considered income or re-*
18 *sources in determining eligibility for, or the amount*
19 *of assistance or benefits provided under, any other*
20 *public benefit provided under Federal law or the law*
21 *of any State or political subdivision thereof.*

22 *(7) NOTICES TO INDIVIDUALS.—*

23 *(A) GENERAL NOTICE.—*

24 *(i) IN GENERAL.—In the case of notices*
25 *provided under section 606(4) of the Em-*

1 *ployee Retirement Income Security Act of*
2 *1974 (29 U.S.C. 1166(4)), section*
3 *4980B(f)(6)(D) of the Internal Revenue*
4 *Code of 1986, section 2206(4) of the Public*
5 *Health Service Act (42 U.S.C. 300bb-6(4)),*
6 *or section 8905a(f)(2)(A) of title 5, United*
7 *States Code, with respect to individuals*
8 *who, during the period described in para-*
9 *graph (3)(A), become entitled to elect*
10 *COBRA continuation coverage, such notices*
11 *shall include an additional notification to*
12 *the recipient of the availability of premium*
13 *reduction with respect to such coverage*
14 *under this subsection.*

15 *(ii) ALTERNATIVE NOTICE.—In the*
16 *case of COBRA continuation coverage to*
17 *which the notice provision under such sec-*
18 *tions does not apply, the Secretary of*
19 *Labor, in consultation with the Secretary of*
20 *the Treasury and the Secretary of Health*
21 *and Human Services, shall, in coordination*
22 *with administrators of the group health*
23 *plans (or other entities) that provide or ad-*
24 *minister the COBRA continuation coverage*

1 involved, provide rules requiring the provi-
2 sion of such notice.

3 (iii) *FORM.*—The requirement of the
4 additional notification under this subpara-
5 graph may be met by amendment of exist-
6 ing notice forms or by inclusion of a sepa-
7 rate document with the notice otherwise re-
8 quired.

9 (B) *SPECIFIC REQUIREMENTS.*—Each addi-
10 tional notification under subparagraph (A) shall
11 include—

12 (i) the forms necessary for establishing
13 eligibility for premium reduction under this
14 subsection,

15 (ii) the name, address, and telephone
16 number necessary to contact the plan ad-
17 ministrators and any other person main-
18 taining relevant information in connection
19 with such premium reduction,

20 (iii) a description of the extended elec-
21 tion period provided for in paragraph
22 (4)(A),

23 (iv) a description of the obligation of
24 the qualified beneficiary under paragraph
25 (2)(C) to notify the plan providing continu-

1 *ation coverage of eligibility for subsequent*
2 *coverage under another group health plan*
3 *or eligibility for benefits under title XVIII*
4 *of the Social Security Act and the penalty*
5 *provided for failure to so notify the plan,*
6 *and*

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

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

22 *(D) MODEL NOTICES.—Not later than 30*
23 *days after the date of enactment of this Act, the*
24 *Secretary of the Labor, in consultation with the*
25 *Secretary of the Treasury and the Secretary of*

1 *Health and Human Services, shall prescribe*
2 *models for the additional notification required*
3 *under this paragraph.*

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

9 (9) *OUTREACH.*—*The Secretary of Labor, in con-*
10 *sultation with the Secretary of the Treasury and the*
11 *Secretary of Health and Human Services, shall pro-*
12 *vide outreach consisting of public education and en-*
13 *rollment assistance relating to premium reduction*
14 *provided under this subsection. Such outreach shall*
15 *target employers, group health plan administrators,*
16 *public assistance programs, States, insurers, and*
17 *other entities as determined appropriate by such Sec-*
18 *retaries. Such outreach shall include an initial focus*
19 *on those individuals electing continuation coverage*
20 *who are referred to in paragraph (7)(C). Information*
21 *on such premium reduction, including enrollment,*
22 *shall also be made available on website of the Depart-*
23 *ments of Labor, Treasury, and Health and Human*
24 *Services.*

1 (10) *DEFINITIONS.*—*For purposes of this sub-*
2 *section—*

3 (A) *ADMINISTRATOR.*—*The term “adminis-*
4 *trator” has the meaning given such term in sec-*
5 *tion 3(16) of the Employee Retirement Income*
6 *Security Act of 1974.*

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

22 (C) *COBRA CONTINUATION PROVISION.*—
23 *The term “COBRA continuation provision”*
24 *means the provisions of law described in sub-*
25 *paragraph (B).*

1 (D) *COVERED EMPLOYEE.*—The term “cov-
2 ered employee” has the meaning given such term
3 in section 607(2) of the *Employee Retirement In-*
4 *come Security Act of 1974.*

5 (E) *QUALIFIED BENEFICIARY.*—The term
6 “qualified beneficiary” has the meaning given
7 such term in section 607(3) of the *Employee Re-*
8 *tirement Income Security Act of 1974.*

9 (F) *GROUP HEALTH PLAN.*—The term
10 “group health plan” has the meaning given such
11 term in section 607(1) of the *Employee Retirement*
12 *Income Security Act of 1974.*

13 (G) *STATE.*—The term “State” includes the
14 *District of Columbia, the Commonwealth of*
15 *Puerto Rico, the Virgin Islands, Guam, Amer-*
16 *ican Samoa, and the Commonwealth of the*
17 *Northern Mariana Islands.*

18 (11) *REPORTS.*—

19 (A) *INTERIM REPORT.*—The Secretary of the
20 *Treasury shall submit an interim report to the*
21 *Committee on Education and Labor, the Com-*
22 *mittee on Ways and Means, and the Committee*
23 *on Energy and Commerce of the House of Rep-*
24 *resentatives and the Committee on Health, Edu-*
25 *cation, Labor, and Pensions and the Committee*

1 *on Finance of the Senate regarding the premium*
2 *reduction provided under this subsection that in-*
3 *cludes—*

4 *(i) the number of individuals provided*
5 *such assistance as of the date of the report;*
6 *and*

7 *(ii) the total amount of expenditures*
8 *incurred (with administrative expenditures*
9 *noted separately) in connection with such*
10 *assistance as of the date of the report.*

11 *(B) FINAL REPORT.—As soon as practicable*
12 *after the last period of COBRA continuation cov-*
13 *erage for which premium reduction is provided*
14 *under this section, the Secretary of the Treasury*
15 *shall submit a final report to each Committee re-*
16 *ferred to in subparagraph (A) that includes—*

17 *(i) the number of individuals provided*
18 *premium reduction under this section;*

19 *(ii) the average dollar amount (month-*
20 *ly and annually) of premium reductions*
21 *provided to such individuals; and*

22 *(iii) the total amount of expenditures*
23 *incurred (with administrative expenditures*
24 *noted separately) in connection with pre-*
25 *mium reduction under this section.*

1 (12) *COBRA PREMIUM ASSISTANCE.*—

2 (A) *IN GENERAL.*—Subchapter B of chapter
3 65 of the Internal Revenue Code of 1986 is
4 amended by adding at the end the following new
5 section:

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

7 “(a) *IN GENERAL.*—The entity to whom premiums are
8 payable under *COBRA* continuation coverage shall be reim-
9 bursed for the amount of premiums not paid by plan bene-
10 ficiaries by reason of section 3002(a) of the Health Insur-
11 ance Assistance for the Unemployed Act of 2009. Such
12 amount shall be treated as a credit against the requirement
13 of such entity to make deposits of payroll taxes and the li-
14 ability of such entity for payroll taxes. To the extent that
15 such amount exceeds the amount of such taxes, the Secretary
16 shall pay to such entity the amount of such excess. No pay-
17 ment may be made under this subsection to an entity with
18 respect to any assistance eligible individual until after such
19 entity has received the reduced premium from such indi-
20 vidual required under section 3002(a)(1)(A) of such Act.

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

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

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

4 “(3) amounts of the taxes imposed for the payroll
5 period under section 3111 (relating to FICA employer
6 taxes).

7 “(c) *TREATMENT OF CREDIT.*—Except as otherwise
8 provided by the Secretary, the credit described in subsection
9 (a) shall be applied as though the employer had paid to
10 the Secretary, on the day that the qualified beneficiary’s
11 premium payment is received, an amount equal to such
12 credit.

13 “(d) *TREATMENT OF PAYMENT.*—For purposes of sec-
14 tion 1324(b)(2) of title 31, United States Code, any pay-
15 ment under this section shall be treated in the same manner
16 as a refund of the credit under section 35.

17 “(e) *REPORTING.*—

18 “(1) *IN GENERAL.*—Each entity entitled to reim-
19 bursement under subsection (a) for any period shall
20 submit such reports as the Secretary may require, in-
21 cluding—

22 “(A) an attestation of involuntary termi-
23 nation of employment for each covered employee
24 on the basis of whose termination entitlement to

1 *reimbursement is claimed under subsection (a),*
2 *and*

3 *“(B) a report of the amount of payroll taxes*
4 *offset under subsection (a) for the reporting pe-*
5 *riod and the estimated offsets of such taxes for*
6 *the subsequent reporting period in connection*
7 *with reimbursements under subsection (a).*

8 *“(2) TIMING OF REPORTS RELATING TO AMOUNT*
9 *OF PAYROLL TAXES.—Reports required under para-*
10 *graph (1)(B) shall be submitted at the same time as*
11 *deposits of taxes imposed by chapters 21, 22, and 24*
12 *or at such time as is specified by the Secretary.*

13 *“(f) REGULATIONS.—The Secretary may issue such*
14 *regulations or other guidance as may be necessary or appro-*
15 *priate to carry out this section, including the requirement*
16 *to report information or the establishment of other methods*
17 *for verifying the correct amounts of payments and credits*
18 *under this section. The Secretary shall issue such regula-*
19 *tions or guidance with respect to the application of this sec-*
20 *tion to group health plans that are multiemployer plans.”.*

21 *(B) SOCIAL SECURITY TRUST FUNDS HELD*
22 *HARMLESS.—In determining any amount trans-*
23 *ferred or appropriated to any fund under the So-*
24 *cial Security Act, section 6431 of the Internal*

1 *Revenue Code of 1986 shall not be taken into ac-*
2 *count.*

3 (C) *CLERICAL AMENDMENT.*—*The table of*
4 *sections for subchapter B of chapter 65 of the In-*
5 *ternal Revenue Code of 1986 is amended by add-*
6 *ing at the end the following new item:*

 “*Sec. 6431. COBRA premium assistance.*”.

7 (D) *EFFECTIVE DATE.*—*The amendments*
8 *made by this paragraph shall apply to pre-*
9 *miums to which subsection (a)(1)(A) applies.*

10 (13) *PENALTY FOR FAILURE TO NOTIFY HEALTH*
11 *PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM*
12 *ASSISTANCE.*—

13 (A) *IN GENERAL.*—*Part I of subchapter B*
14 *of chapter 68 of the Internal Revenue Code of*
15 *1986 is amended by adding at the end the fol-*
16 *lowing new section:*

17 “**SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
18 **PLAN OF CESSATION OF ELIGIBILITY FOR**
19 **COBRA PREMIUM ASSISTANCE.**”

20 “(a) *IN GENERAL.*—*Any person required to notify a*
21 *group health plan under section 3002(a)(2)(C)) of the*
22 *Health Insurance Assistance for the Unemployed Act of*
23 *2009 who fails to make such a notification at such time*
24 *and in such manner as the Secretary of Labor may require*
25 *shall pay a penalty of 110 percent of the premium reduction*

1 *provided under such section after termination of eligibility*
2 *under such subsection.*

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

7 (B) *CLERICAL AMENDMENT.*—The table of
8 sections of part I of subchapter B of chapter 68
9 of such Code is amended by adding at the end
10 the following new item:

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

11 (C) *EFFECTIVE DATE.*—The amendments
12 made by this paragraph shall apply to failures
13 occurring after the date of the enactment of this
14 Act.

15 (14) *COORDINATION WITH HCTC.*—

16 (A) *IN GENERAL.*—Subsection (g) of section
17 35 of the Internal Revenue Code of 1986 is
18 amended by redesignating paragraph (9) as
19 paragraph (10) and inserting after paragraph
20 (8) the following new paragraph:

21 “(9) *COBRA PREMIUM ASSISTANCE.*—In the
22 case of an assistance eligible individual who receives
23 premium reduction for COBRA continuation coverage
24 under section 3002(a) of the Health Insurance Assist-

1 *ance for the Unemployed Act of 2009 for any month*
2 *during the taxable year, such individual shall not be*
3 *treated as an eligible individual, a certified indi-*
4 *vidual, or a qualifying family member for purposes*
5 *of this section or section 7527 with respect to such*
6 *month.”.*

7 (B) *EFFECTIVE DATE.*—*The amendment*
8 *made by subparagraph (A) shall apply to tax-*
9 *able years ending after the date of the enactment*
10 *of this Act.*

11 (15) *EXCLUSION OF COBRA PREMIUM ASSIST-*
12 *ANCE FROM GROSS INCOME.*—

13 (A) *IN GENERAL.*—*Part III of subchapter B*
14 *of chapter 1 of the Internal Revenue Code of*
15 *1986 is amended by inserting after section 139B*
16 *the following new section:*

17 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

18 *“In the case of an assistance eligible individual (as*
19 *defined in section 3002 of the Health Insurance Assistance*
20 *for the Unemployed Act of 2009), gross income does not in-*
21 *clude any premium reduction provided under subsection (a)*
22 *of such section.”.*

23 (B) *CLERICAL AMENDMENT.*—*The table of*
24 *sections for part III of subchapter B of chapter*
25 *1 of such Code is amended by inserting after the*

1 *item relating to section 139B the following new*
2 *item:*

 “*Sec. 139C. COBRA premium assistance.*”.

3 (C) *EFFECTIVE DATE.*—*The amendments*
4 *made by this paragraph shall apply to taxable*
5 *years ending after the date of the enactment of*
6 *this Act.*

7 (b) *EXTENSION OF COBRA BENEFITS FOR OLDER OR*
8 *LONG-TERM EMPLOYEES.*—

9 (1) *ERISA AMENDMENT.*—*Section 602(2)(A) of*
10 *the Employee Retirement Income Security Act of*
11 *1974 is amended by adding at the end the following*
12 *new clauses:*

13 “(x) *SPECIAL RULE FOR OLDER OR*
14 *LONG-TERM EMPLOYEES GENERALLY.*—*In*
15 *the case of a qualifying event described in*
16 *section 603(2) with respect to a covered em-*
17 *ployee who (as of such qualifying event) has*
18 *attained age 55 or has completed 10 or*
19 *more years of service with the entity that is*
20 *the employer at the time of the qualifying*
21 *event, clauses (i) and (ii) shall not apply.*

22 “(xi) *YEAR OF SERVICE.*—*For pur-*
23 *poses of this subparagraph, the term ‘year*
24 *of service’ shall have the meaning provided*
25 *in section 202(a)(3).”.*

1 (2) *IRC AMENDMENT.*—*Clause (i) of section*
2 *4980B(f)(2)(B) of the Internal Revenue Code of 1986*
3 *is amended by adding at the end the following new*
4 *subclauses:*

5 “(X) *SPECIAL RULE FOR OLDER*
6 *OR LONG-TERM EMPLOYEES GEN-*
7 *ERALLY.*—*In the case of a qualifying*
8 *event described in paragraph (3)(B)*
9 *with respect to a covered employee who*
10 *(as of such qualifying event) has at-*
11 *tained age 55 or has completed 10 or*
12 *more years of service with the entity*
13 *that is the employer at the time of the*
14 *qualifying event, subclauses (I) and*
15 *(II) shall not apply.*

16 “(XI) *YEAR OF SERVICE.*—*For*
17 *purposes of this clause, the term ‘year*
18 *of service’ shall have the meaning pro-*
19 *vided in section 202(a)(3) of the Em-*
20 *ployee Retirement Income Security Act*
21 *of 1974.”.*

22 (3) *PHSA AMENDMENT.*—*Section 2202(2)(A) of*
23 *the Public Health Service Act is amended by adding*
24 *at the end the following new clauses:*

1 “(viii) *SPECIAL RULE FOR OLDER OR*
2 *LONG-TERM EMPLOYEES GENERALLY.*—*In*
3 *the case of a qualifying event described in*
4 *section 2203(2) with respect to a covered*
5 *employee who (as of such qualifying event)*
6 *has attained age 55 or has completed 10 or*
7 *more years of service with the entity that is*
8 *the employer at the time of the qualifying*
9 *event, clauses (i) and (ii) shall not apply.*

10 “(ix) *YEAR OF SERVICE.*—*For pur-*
11 *poses of this subparagraph, the term ‘year*
12 *of service’ shall have the meaning provided*
13 *in section 202(a)(3) of the Employee Retirement*
14 *Income Security Act of 1974.”.*

15 (4) *EFFECTIVE DATE OF AMENDMENTS.*—*The*
16 *amendments made by this subsection shall apply to*
17 *periods of coverage which would (without regard to*
18 *the amendments made by this section) end on or after*
19 *the date of the enactment of this Act.*

20 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
21 **FOR THE UNEMPLOYED.**

22 (a) *IN GENERAL.*—*Section 1902 of the Social Security*
23 *Act (42 U.S.C. 1396b) is amended—*

24 (1) *in subsection (a)(10)(A)(ii)—*

1 (A) by striking “or” at the end of subclause

2 (XVIII);

3 (B) by adding “or” at the end of subclause

4 (XIX); and

5 (C) by adding at the end the following new

6 subclause

7 “(XX) who are described in sub-

8 section (dd)(1) (relating to certain un-

9 employed individuals and their fami-

10 lies);”; and

11 (2) by adding at the end the following new sub-

12 section:

13 “(dd)(1) Individuals described in this paragraph

14 are—

15 “(A) individuals who—

16 “(i) are within one or more of the categories de-

17 scribed in paragraph (2), as elected under the State

18 plan; and

19 “(ii) meet the applicable requirements of para-

20 graph (3); and

21 “(B) individuals who—

22 “(i) are the spouse, or dependent child under 19

23 years of age, of an individual described in subpara-

24 graph (A); and

25 “(ii) meet the requirement of paragraph (3)(B).

1 “(2) *The categories of individuals described in this*
2 *paragraph are each of the following:*

3 “(A) *Individuals who are receiving unemploy-*
4 *ment compensation benefits.*

5 “(B) *Individuals who were receiving, but have*
6 *exhausted, unemployment compensation benefits on or*
7 *after July 1, 2008.*

8 “(C) *Individuals who are involuntarily unem-*
9 *ployed and were involuntarily separated from em-*
10 *ployment on or after September 1, 2008, and before*
11 *January 1, 2011, whose family gross income does not*
12 *exceed a percentage specified by the State (not to ex-*
13 *ceed 200 percent) of the income official poverty line*
14 *(as defined by the Office of Management and Budget,*
15 *and revised annually in accordance with section*
16 *673(2) of the Omnibus Budget Reconciliation Act of*
17 *1981) applicable to a family of the size involved, and*
18 *who, but for subsection (a)(10)(A)(ii)(XX), are not el-*
19 *igible for medical assistance under this title or health*
20 *assistance under title XXI.*

21 “(D) *Individuals who are involuntarily unem-*
22 *ployed and were involuntarily separated from em-*
23 *ployment on or after September 1, 2008, and before*
24 *January 1, 2011, who are members of households par-*
25 *ticipating in the supplemental nutrition assistance*

1 *program established under the Food and Nutrition*
2 *Act of 2008 (7 U.S.C. 2011 et seq), and who, but for*
3 *subsection (a)(10)(A)(ii)(XX), are not eligible for*
4 *medical assistance under this title or health assistance*
5 *under title XXI.*

6 *A State plan may elect one or more of the categories de-*
7 *scribed in this paragraph but may not elect the category*
8 *described in subparagraph (B) unless the State plan also*
9 *elects the category described in subparagraph (A).*

10 *“(3) The requirements of this paragraph with respect*
11 *to an individual are the following:*

12 *“(A) In the case of individuals within a category*
13 *described in subparagraph (A) or (B) of paragraph*
14 *(2), the individual was involuntarily separated from*
15 *employment on or after September 1, 2008, and before*
16 *January 1, 2011, or meets such comparable require-*
17 *ment as the Secretary specifies through rule, guid-*
18 *ance, or otherwise in the case of an individual who*
19 *was an independent contractor.*

20 *“(B) The individual is not otherwise covered*
21 *under creditable coverage, as defined in section*
22 *2701(c) of the Public Health Service Act (42 U.S.C.*
23 *300gg(c)), but applied without regard to paragraph*
24 *(1)(F) of such section and without regard to coverage*

1 *provided by reason of the application of subsection*
2 *(a)(10)(A)(ii)(XX).*

3 “~~(4)~~(A) *No income or resources test shall be applied*
4 *with respect to any category of individuals described in sub-*
5 *paragraph (A), (B), or (D) of paragraph (2) who are eligi-*
6 *ble for medical assistance only by reason of the application*
7 *of subsection (a)(10)(A)(ii)(XX).*

8 “(B) *Nothing in this subsection shall be construed to*
9 *prevent a State from imposing a resource test for the cat-*
10 *egory of individuals described in paragraph (2)(C).*

11 “(C) *In the case of individuals provided medical as-*
12 *istance by reason of the application of subsection*
13 *(a)(10)(A)(ii)(XX), the requirements of subsections (i)(22)*
14 *and (x) shall not apply.”.*

15 ***(b) 100 PERCENT FEDERAL MATCHING RATE.—***

16 ***(1) FMAP FOR TIME-LIMITED PERIOD.—****The*
17 *third sentence of section 1905(b) of such Act (42*
18 *U.S.C. 1396d(b)) is amended by inserting before the*
19 *period at the end the following: “and for items and*
20 *services furnished on or after the date of enactment of*
21 *this Act and before January 1, 2011, to individuals*
22 *who are eligible for medical assistance only by reason*
23 *of the application of section 1902(a)(10)(A)(ii)(XX)”.*

24 ***(2) CERTAIN ENROLLMENT-RELATED ADMINIS-***
25 ***TRATIVE COSTS.—****Notwithstanding any other provi-*

1 *sion of law, for purposes of applying section 1903(a)*
2 *of the Social Security Act (42 U.S.C. 1396b(a)), with*
3 *respect to expenditures incurred on or after the date*
4 *of the enactment of this Act and before January 1,*
5 *2011, for costs of administration (including outreach*
6 *and the modification and operation of eligibility in-*
7 *formation systems) attributable to eligibility deter-*
8 *mination and enrollment of individuals who are eligi-*
9 *ble for medical assistance only by reason of the appli-*
10 *cation of section 1902(a)(10)(A)(ii)(XX) of such Act,*
11 *as added by subsection (a)(1), the Federal matching*
12 *percentage shall be 100 percent instead of the match-*
13 *ing percentage otherwise applicable.*

14 *(c) CONFORMING AMENDMENTS.—(1) Section*
15 *1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amended*
16 *by inserting “1902(a)(10)(A)(ii)(XX), or” after*
17 *“1902(a)(10)(A)(ii)(XIX),”.*

18 *(2) Section 1905(a) of such Act (42 U.S.C. 1396d(a))*
19 *is amended, in the matter preceding paragraph (1)—*

20 *(A) by striking “or” at the end of clause (xii);*

21 *(B) by adding “or” at the end of clause (xiii);*

22 *and*

23 *(C) by inserting after clause (xiii) the following*
24 *new clause:*

1 “(xiv) individuals described in section
2 1902(dd)(1),”.

3 **TITLE IV—HEALTH**
4 **INFORMATION TECHNOLOGY**

5 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

6 (a) *SHORT TITLE.*—This title may be cited as the
7 “Health Information Technology for Economic and Clinical
8 Health Act” or the “HITECH Act”.

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

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART 1—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

*“Sec. 3001. Office of the National Coordinator for Health Information Tech-
nology.*

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

*“Sec. 3004. Process for adoption of endorsed recommendations; adoption of
initial set of standards, implementation specifications, and
certification criteria.*

*“Sec. 3005. Application and use of adopted standards and implementation
specifications by Federal agencies.*

*“Sec. 3006. Voluntary application and use of adopted standards and imple-
mentation specifications by private entities.*

“Sec. 3007. Federal health information technology.

“Sec. 3008. Transitions.

“Sec. 3009. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

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PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

- Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.*
- Sec. 4112. Application to private entities.*
- Sec. 4113. Study and reports.*

Subtitle B—Testing of Health Information Technology

- Sec. 4201. National Institute for Standards and Technology testing.*
- Sec. 4202. Research and development programs.*

*Subtitle C—Incentives for the Use of Health Information Technology**PART I—GRANTS AND LOANS FUNDING*

- Sec. 4301. Grant, loan, and demonstration programs.*

“Subtitle B—Incentives for the Use of Health Information Technology

- “Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.*
- “Sec. 3012. Health information technology implementation assistance.*
- “Sec. 3013. State grants to promote health information technology.*
- “Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.*
- “Sec. 3015. Demonstration program to integrate information technology into clinical education.*
- “Sec. 3016. Information technology professionals on health care.*
- “Sec. 3017. General grant and loan provisions.*
- “Sec. 3018. Authorization for appropriations.*

PART II—MEDICARE PROGRAM

- Sec. 4311. Incentives for eligible professionals.*
- Sec. 4312. Incentives for hospitals.*
- Sec. 4313. Treatment of payments and savings; implementation funding.*
- Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.*

PART III—MEDICAID FUNDING

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.*

Subtitle D—Privacy

- Sec. 4400. Definitions.*

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.*
- Sec. 4402. Notification in the case of breach.*
- Sec. 4403. Education on Health Information Privacy.*
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.*

Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.

Sec. 4406. Conditions on certain contacts as part of health care operations.

Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.

Sec. 4408. Business associate contracts required for certain entities.

Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.

Sec. 4410. Improved enforcement.

Sec. 4411. Audits.

**PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;
EFFECTIVE DATE; REPORTS**

Sec. 4421. Relationship to other laws.

Sec. 4422. Regulatory references.

Sec. 4423. Effective date.

Sec. 4424. Studies, reports, guidance.

Subtitle E—Miscellaneous Medicare Provisions

Sec. 4501. Moratoria on certain Medicare regulations.

Sec. 4502. Long-term care hospital technical corrections.

1 **Subtitle A—Promotion of Health**
2 **Information Technology**

3 **PART 1—IMPROVING HEALTH CARE QUALITY,**
4 **SAFETY, AND EFFICIENCY**

5 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**
6 **ON.**

7 *The Public Health Service Act (42 U.S.C. 201 et seq.)*

8 *is amended by adding at the end the following:*

9 **“TITLE XXX—HEALTH INFORMATION**
10 **TECHNOLOGY AND**
11 **QUALITY**

12 **“SEC. 3000. DEFINITIONS.**

13 *“In this title:*

14 *“(1) CERTIFIED EHR TECHNOLOGY.—The term*
15 *‘certified EHR technology’ means a qualified elec-*

1 *tronic health record that is certified pursuant to sec-*
2 *tion 3001(c)(5) as meeting standards adopted under*
3 *section 3004 that are applicable to the type of record*
4 *involved (as determined by the Secretary, such as an*
5 *ambulatory electronic health record for office-based*
6 *physicians or an inpatient hospital electronic health*
7 *record for hospitals).*

8 *“(2) ENTERPRISE INTEGRATION.—The term ‘en-*
9 *terprise integration’ means the electronic linkage of*
10 *health care providers, health plans, the government,*
11 *and other interested parties, to enable the electronic*
12 *exchange and use of health information among all the*
13 *components in the health care infrastructure in ac-*
14 *cordance with applicable law, and such term includes*
15 *related application protocols and other related stand-*
16 *ards.*

17 *“(3) HEALTH CARE PROVIDER.—The term*
18 *‘health care provider’ means a hospital, skilled nurs-*
19 *ing facility, nursing facility, home health entity or*
20 *other long term care facility, health care clinic, Feder-*
21 *ally qualified health center, group practice (as defined*
22 *in section 1877(h)(4) of the Social Security Act), a*
23 *pharmacist, a pharmacy, a laboratory, a physician*
24 *(as defined in section 1861(r) of the Social Security*
25 *Act), a practitioner (as described in section*

1 1842(b)(18)(C) of the Social Security Act), a provider
2 operated by, or under contract with, the Indian
3 Health Service or by an Indian tribe (as defined in
4 the Indian Self-Determination and Education Assist-
5 ance Act), tribal organization, or urban Indian orga-
6 nization (as defined in section 4 of the Indian Health
7 Care Improvement Act), a rural health clinic, a cov-
8 ered entity under section 340B, and any other cat-
9 egory of facility or clinician determined appropriate
10 by the Secretary.

11 “(4) HEALTH INFORMATION.—The term ‘health
12 information’ has the meaning given such term in sec-
13 tion 1171(4) of the Social Security Act.

14 “(5) HEALTH INFORMATION TECHNOLOGY.—The
15 term ‘health information technology’ means hardware,
16 software, integrated technologies and related licenses,
17 intellectual property, upgrades, and packaged solu-
18 tions sold as services that are specifically designed for
19 use by health care entities for the electronic creation,
20 maintenance, or exchange of health information.

21 “(6) HEALTH PLAN.—The term ‘health plan’ has
22 the meaning given such term in section 1171(5) of the
23 Social Security Act.

1 “(7) *HIT POLICY COMMITTEE*.—The term ‘*HIT*
2 *Policy Committee*’ means such Committee established
3 under section 3002(a).

4 “(8) *HIT STANDARDS COMMITTEE*.—The term
5 ‘*HIT Standards Committee*’ means such Committee
6 established under section 3003(a).

7 “(9) *INDIVIDUALLY IDENTIFIABLE HEALTH IN-*
8 *FORMATION*.—The term ‘*individually identifiable*
9 *health information*’ has the meaning given such term
10 in section 1171(6) of the Social Security Act.

11 “(10) *LABORATORY*.—The term ‘*laboratory*’ has
12 the meaning given such term in section 353(a).

13 “(11) *NATIONAL COORDINATOR*.—The term ‘*Na-*
14 *tional Coordinator*’ means the head of the Office of the
15 National Coordinator for Health Information Tech-
16 nology established under section 3001(a).

17 “(12) *PHARMACIST*.—The term ‘*pharmacist*’ has
18 the meaning given such term in section 804(2) of the
19 Federal Food, Drug, and Cosmetic Act.

20 “(13) *QUALIFIED ELECTRONIC HEALTH*
21 *RECORD*.—The term ‘*qualified electronic health*
22 *record*’ means an electronic record of health-related
23 information on an individual that—

1 “(A) includes patient demographic and
2 clinical health information, such as medical his-
3 tory and problem lists; and

4 “(B) has the capacity—

5 “(i) to provide clinical decision sup-
6 port;

7 “(ii) to support physician order entry;

8 “(iii) to capture and query informa-
9 tion relevant to health care quality; and

10 “(iv) to exchange electronic health in-
11 formation with, and integrate such infor-
12 mation from other sources.

13 “(14) STATE.—The term ‘State’ means each of
14 the several States, the District of Columbia, Puerto
15 Rico, the Virgin Islands, Guam, American Samoa,
16 and the Northern Mariana Islands.

17 **“Subtitle A—Promotion of Health**
18 **Information Technology**

19 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
20 **HEALTH INFORMATION TECHNOLOGY.**

21 “(a) ESTABLISHMENT.—There is established within
22 the Department of Health and Human Services an Office
23 of the National Coordinator for Health Information Tech-
24 nology (referred to in this section as the ‘Office’). The Office
25 shall be headed by a National Coordinator who shall be ap-

1 *pointed by the Secretary and shall report directly to the*
2 *Secretary.*

3 “(b) *PURPOSE.—The National Coordinator shall per-*
4 *form the duties under subsection (c) in a manner consistent*
5 *with the development of a nationwide health information*
6 *technology infrastructure that allows for the electronic use*
7 *and exchange of information and that—*

8 “(1) *ensures that each patient’s health informa-*
9 *tion is secure and protected, in accordance with ap-*
10 *plicable law;*

11 “(2) *improves health care quality, reduces med-*
12 *ical errors, and advances the delivery of patient-cen-*
13 *tered medical care;*

14 “(3) *reduces health care costs resulting from inef-*
15 *ficiency, medical errors, inappropriate care, duplica-*
16 *tive care, and incomplete information;*

17 “(4) *provides appropriate information to help*
18 *guide medical decisions at the time and place of care;*

19 “(5) *ensures the inclusion of meaningful public*
20 *input in such development of such infrastructure;*

21 “(6) *improves the coordination of care and infor-*
22 *mation among hospitals, laboratories, physician of-*
23 *fices, and other entities through an effective infra-*
24 *structure for the secure and authorized exchange of*
25 *health care information;*

1 “(7) improves public health activities and facili-
2 tates the early identification and rapid response to
3 public health threats and emergencies, including bio-
4 terror events and infectious disease outbreaks;

5 “(8) facilitates health and clinical research and
6 health care quality;

7 “(9) promotes prevention of chronic diseases;

8 “(10) promotes a more effective marketplace,
9 greater competition, greater systems analysis, in-
10 creased consumer choice, and improved outcomes in
11 health care services; and

12 “(11) improves efforts to reduce health dispari-
13 ties.

14 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

15 “(1) STANDARDS.—The National Coordinator
16 shall review and determine whether to endorse each
17 standard, implementation specification, and certifi-
18 cation criterion for the electronic exchange and use of
19 health information that is recommended by the HIT
20 Standards Committee under section 3003 for purposes
21 of adoption under section 3004. The Coordinator shall
22 make such determination, and report to the Secretary
23 such determination, not later than 45 days after the
24 date the recommendation is received by the Coordi-
25 nator.

1 “(2) *HIT POLICY COORDINATION.*—

2 “(A) *IN GENERAL.*—*The National Coordi-*
3 *nator shall coordinate health information tech-*
4 *nology policy and programs of the Department*
5 *with those of other relevant executive branch*
6 *agencies with a goal of avoiding duplication of*
7 *efforts and of helping to ensure that each agency*
8 *undertakes health information technology activi-*
9 *ties primarily within the areas of its greatest ex-*
10 *pertise and technical capability and in a man-*
11 *ner towards a coordinated national goal.*

12 “(B) *HIT POLICY AND STANDARDS COMMIT-*
13 *TEES.*—*The National Coordinator shall be a*
14 *leading member in the establishment and oper-*
15 *ations of the HIT Policy Committee and the*
16 *HIT Standards Committee and shall serve as a*
17 *liaison among those two Committees and the*
18 *Federal Government.*

19 “(3) *STRATEGIC PLAN.*—

20 “(A) *IN GENERAL.*—*The National Coordi-*
21 *nator shall, in consultation with other appro-*
22 *priate Federal agencies (including the National*
23 *Institute of Standards and Technology), update*
24 *the Federal Health IT Strategic Plan (developed*
25 *as of June 3, 2008) to include specific objectives,*

1 *milestones, and metrics with respect to the fol-*
2 *lowing:*

3 “(i) *The electronic exchange and use of*
4 *health information and the enterprise inte-*
5 *gration of such information.*

6 “(ii) *The utilization of an electronic*
7 *health record for each person in the United*
8 *States by 2014.*

9 “(iii) *The incorporation of privacy*
10 *and security protections for the electronic*
11 *exchange of an individual’s individually*
12 *identifiable health information.*

13 “(iv) *Ensuring security methods to en-*
14 *sure appropriate authorization and elec-*
15 *tronic authentication of health information*
16 *and specifying technologies or methodologies*
17 *for rendering health information unusable,*
18 *unreadable, or indecipherable.*

19 “(v) *Specifying a framework for co-*
20 *ordination and flow of recommendations*
21 *and policies under this subtitle among the*
22 *Secretary, the National Coordinator, the*
23 *HIT Policy Committee, the HIT Standards*
24 *Committee, and other health information*
25 *exchanges and other relevant entities.*

1 “(vi) *Methods to foster the public un-*
2 *derstanding of health information tech-*
3 *nology.*

4 “(vii) *Strategies to enhance the use of*
5 *health information technology in improving*
6 *the quality of health care, reducing medical*
7 *errors, reducing health disparities, improv-*
8 *ing public health, and improving the con-*
9 *tinuity of care among health care settings.*

10 “(B) *COLLABORATION.*—*The strategic plan*
11 *shall be updated through collaboration of public*
12 *and private entities.*

13 “(C) *MEASURABLE OUTCOME GOALS.*—*The*
14 *strategic plan update shall include measurable*
15 *outcome goals.*

16 “(D) *PUBLICATION.*—*The National Coordi-*
17 *nator shall republish the strategic plan, includ-*
18 *ing all updates.*

19 “(4) *WEBSITE.*—*The National Coordinator shall*
20 *maintain and frequently update an Internet website*
21 *on which there is posted information on the work,*
22 *schedules, reports, recommendations, and other infor-*
23 *mation to ensure transparency in promotion of a na-*
24 *tionwide health information technology infrastruc-*
25 *ture.*

1 “(5) *CERTIFICATION.*—

2 “(A) *IN GENERAL.*—*The National Coordi-*
3 *nator, in consultation with the Director of the*
4 *National Institute of Standards and Technology,*
5 *shall develop a program (either directly or by*
6 *contract) for the voluntary certification of health*
7 *information technology as being in compliance*
8 *with applicable certification criteria adopted*
9 *under this subtitle. Such program shall include*
10 *testing of the technology in accordance with sec-*
11 *tion 4201(b) of the HITECH Act.*

12 “(B) *CERTIFICATION CRITERIA DE-*
13 *SCRIBED.*—*In this title, the term ‘certification*
14 *criteria’ means, with respect to standards and*
15 *implementation specifications for health infor-*
16 *mation technology, criteria to establish that the*
17 *technology meets such standards and implemen-*
18 *tation specifications.*

19 “(6) *REPORTS AND PUBLICATIONS.*—

20 “(A) *REPORT ON ADDITIONAL FUNDING OR*
21 *AUTHORITY NEEDED.*—*Not later than 12 months*
22 *after the date of the enactment of this title, the*
23 *National Coordinator shall submit to the appro-*
24 *priate committees of jurisdiction of the House of*
25 *Representatives and the Senate a report on any*

1 *additional funding or authority the Coordinator*
2 *or the HIT Policy Committee or HIT Standards*
3 *Committee requires to evaluate and develop*
4 *standards, implementation specifications, and*
5 *certification criteria, or to achieve full participa-*
6 *tion of stakeholders in the adoption of a nation-*
7 *wide health information technology infrastruc-*
8 *ture that allows for the electronic use and ex-*
9 *change of health information.*

10 “(B) *IMPLEMENTATION REPORT.—The Na-*
11 *tional Coordinator shall prepare a report that*
12 *identifies lessons learned from major public and*
13 *private health care systems in their implementa-*
14 *tion of health information technology, including*
15 *information on whether the technologies and*
16 *practices developed by such systems may be ap-*
17 *plicable to and usable in whole or in part by*
18 *other health care providers.*

19 “(C) *ASSESSMENT OF IMPACT OF HIT ON*
20 *COMMUNITIES WITH HEALTH DISPARITIES AND*
21 *UNINSURED, UNDERINSURED, AND MEDICALLY*
22 *UNDERSERVED AREAS.—The National Coordi-*
23 *nator shall assess and publish the impact of*
24 *health information technology in communities*
25 *with health disparities and in areas with a high*

1 *proportion of individuals who are uninsured,*
2 *underinsured, and medically underserved indi-*
3 *viduals (including urban and rural areas) and*
4 *identify practices to increase the adoption of*
5 *such technology by health care providers in such*
6 *communities.*

7 “(D) *EVALUATION OF BENEFITS AND COSTS*
8 *OF THE ELECTRONIC USE AND EXCHANGE OF*
9 *HEALTH INFORMATION.—The National Coordi-*
10 *nator shall evaluate and publish evidence on the*
11 *benefits and costs of the electronic use and ex-*
12 *change of health information and assess to whom*
13 *these benefits and costs accrue.*

14 “(E) *RESOURCE REQUIREMENTS.—The Na-*
15 *tional Coordinator shall estimate and publish re-*
16 *sources required annually to reach the goal of*
17 *utilization of an electronic health record for each*
18 *person in the United States by 2014, including*
19 *the required level of Federal funding, expecta-*
20 *tions for regional, State, and private investment,*
21 *and the expected contributions by volunteers to*
22 *activities for the utilization of such records.*

23 “(7) *ASSISTANCE.—The National Coordinator*
24 *may provide financial assistance to consumer advo-*
25 *cacy groups and not-for-profit entities that work in*

1 *the public interest for purposes of defraying the cost*
2 *to such groups and entities to participate under,*
3 *whether in whole or in part, the National Technology*
4 *Transfer Act of 1995 (15 U.S.C. 272 note).*

5 “(8) *GOVERNANCE FOR NATIONWIDE HEALTH IN-*
6 *FORMATION NETWORK.—The National Coordinator*
7 *shall establish a governance mechanism for the na-*
8 *tionwide health information network.*

9 “(d) *DETAIL OF FEDERAL EMPLOYEES.—*

10 “(1) *IN GENERAL.—Upon the request of the Na-*
11 *tional Coordinator, the head of any Federal agency is*
12 *authorized to detail, with or without reimbursement*
13 *from the Office, any of the personnel of such agency*
14 *to the Office to assist it in carrying out its duties*
15 *under this section.*

16 “(2) *EFFECT OF DETAIL.—Any detail of per-*
17 *sonnel under paragraph (1) shall—*

18 “(A) *not interrupt or otherwise affect the*
19 *civil service status or privileges of the Federal*
20 *employee; and*

21 “(B) *be in addition to any other staff of the*
22 *Department employed by the National Coordi-*
23 *nator.*

24 “(3) *ACCEPTANCE OF DETAILEES.—Notwith-*
25 *standing any other provision of law, the Office may*

1 *accept detailed personnel from other Federal agencies*
2 *without regard to whether the agency described under*
3 *paragraph (1) is reimbursed.*

4 “(e) *CHIEF PRIVACY OFFICER OF THE OFFICE OF THE*
5 *NATIONAL COORDINATOR.*—*Not later than 12 months after*
6 *the date of the enactment of this title, the Secretary shall*
7 *appoint a Chief Privacy Officer of the Office of the National*
8 *Coordinator, whose duty it shall be to advise the National*
9 *Coordinator on privacy, security, and data stewardship of*
10 *electronic health information and to coordinate with other*
11 *Federal agencies (and similar privacy officers in such agen-*
12 *cies), with State and regional efforts, and with foreign*
13 *countries with regard to the privacy, security, and data*
14 *stewardship of electronic individually identifiable health*
15 *information.*

16 **“SEC. 3002. HIT POLICY COMMITTEE.**

17 “(a) *ESTABLISHMENT.*—*There is established a HIT*
18 *Policy Committee to make policy recommendations to the*
19 *National Coordinator relating to the implementation of a*
20 *nationwide health information technology infrastructure,*
21 *including implementation of the strategic plan described in*
22 *section 3001(c)(3).*

23 “(b) *DUTIES.*—

24 “(1) *RECOMMENDATIONS ON HEALTH INFORMA-*
25 *TION TECHNOLOGY INFRASTRUCTURE.*—*The HIT Pol-*

1 *icy Committee shall recommend a policy framework*
2 *for the development and adoption of a nationwide*
3 *health information technology infrastructure that per-*
4 *mits the electronic exchange and use of health infor-*
5 *mation as is consistent with the strategic plan under*
6 *section 3001(c)(3) and that includes the recommenda-*
7 *tions under paragraph (2). The Committee shall up-*
8 *date such recommendations and make new rec-*
9 *ommendations as appropriate.*

10 *“(2) SPECIFIC AREAS OF STANDARD DEVELOP-*
11 *MENT.—*

12 *“(A) IN GENERAL.—The HIT Policy Com-*
13 *mittee shall recommend the areas in which*
14 *standards, implementation specifications, and*
15 *certification criteria are needed for the electronic*
16 *exchange and use of health information for pur-*
17 *poses of adoption under section 3004 and shall*
18 *recommend an order of priority for the develop-*
19 *ment, harmonization, and recognition of such*
20 *standards, specifications, and certification cri-*
21 *teria among the areas so recommended. Such*
22 *standards and implementation specifications*
23 *shall include named standards, architectures,*
24 *and software schemes for the authentication and*
25 *security of individually identifiable health infor-*

1 *mation and other information as needed to en-*
2 *sure the reproducible development of common so-*
3 *lutions across disparate entities.*

4 *“(B) AREAS REQUIRED FOR CONSIDER-*
5 *ATION.—For purposes of subparagraph (A), the*
6 *HIT Policy Committee shall make recommenda-*
7 *tions for at least the following areas:*

8 *“(i) Technologies that protect the pri-*
9 *vacancy of health information and promote se-*
10 *curity in a qualified electronic health*
11 *record, including for the segmentation and*
12 *protection from disclosure of specific and*
13 *sensitive individually identifiable health in-*
14 *formation with the goal of minimizing the*
15 *reluctance of patients to seek care (or dis-*
16 *close information about a condition) be-*
17 *cause of privacy concerns, in accordance*
18 *with applicable law, and for the use and*
19 *disclosure of limited data sets of such infor-*
20 *mation.*

21 *“(ii) A nationwide health information*
22 *technology infrastructure that allows for the*
23 *electronic use and accurate exchange of*
24 *health information.*

1 “(iii) *The utilization of a certified elec-*
2 *tronic health record for each person in the*
3 *United States by 2014.*

4 “(iv) *Technologies that as a part of a*
5 *qualified electronic health record allow for*
6 *an accounting of disclosures made by a cov-*
7 *ered entity (as defined for purposes of regu-*
8 *lations promulgated under section 264(c) of*
9 *the Health Insurance Portability and Ac-*
10 *countability Act of 1996) for purposes of*
11 *treatment, payment, and health care oper-*
12 *ations (as such terms are defined for pur-*
13 *poses of such regulations).*

14 “(v) *The use of certified electronic*
15 *health records to improve the quality of*
16 *health care, such as by promoting the co-*
17 *ordination of health care and improving*
18 *continuity of health care among health care*
19 *providers, by reducing medical errors, by*
20 *improving population health, and by ad-*
21 *vancing research and education.*

22 “(C) *OTHER AREAS FOR CONSIDERATION.—*
23 *In making recommendations under subpara-*
24 *graph (A), the HIT Policy Committee may con-*
25 *sider the following additional areas:*

1 “(i) *The appropriate uses of a nation-*
2 *wide health information infrastructure, in-*
3 *cluding for purposes of—*

4 “(I) *the collection of quality data*
5 *and public reporting;*

6 “(II) *biosurveillance and public*
7 *health;*

8 “(III) *medical and clinical re-*
9 *search; and*

10 “(IV) *drug safety.*

11 “(ii) *Self-service technologies that fa-*
12 *cilitate the use and exchange of patient in-*
13 *formation and reduce wait times.*

14 “(iii) *Telemedicine technologies, in*
15 *order to reduce travel requirements for pa-*
16 *tients in remote areas.*

17 “(iv) *Technologies that facilitate home*
18 *health care and the monitoring of patients*
19 *recuperating at home.*

20 “(v) *Technologies that help reduce med-*
21 *ical errors.*

22 “(vi) *Technologies that facilitate the*
23 *continuity of care among health settings.*

24 “(vii) *Technologies that meet the needs*
25 *of diverse populations.*

1 “(viii) *Any other technology that the*
2 *HIT Policy Committee finds to be among*
3 *the technologies with the greatest potential*
4 *to improve the quality and efficiency of*
5 *health care.*

6 “(3) *FORUM.—The HIT Policy Committee shall*
7 *serve as a forum for broad stakeholder input with spe-*
8 *cific expertise in policies relating to the matters de-*
9 *scribed in paragraphs (1) and (2).*

10 “(c) *MEMBERSHIP AND OPERATIONS.—*

11 “(1) *IN GENERAL.—The National Coordinator*
12 *shall provide leadership in the establishment and op-*
13 *erations of the HIT Policy Committee.*

14 “(2) *MEMBERSHIP.—The membership of the HIT*
15 *Policy Committee shall at least reflect providers, an-*
16 *cillary healthcare workers, consumers, purchasers,*
17 *health plans, technology vendors, researchers, relevant*
18 *Federal agencies, and individuals with technical ex-*
19 *pertise on health care quality, privacy and security,*
20 *and on the electronic exchange and use of health in-*
21 *formation.*

22 “(3) *CONSIDERATION.—The National Coordi-*
23 *nator shall ensure that the relevant recommendations*
24 *and comments from the National Committee on Vital*

1 *and Health Statistics are considered in the develop-*
2 *ment of policies.*

3 “(d) *APPLICATION OF FACA.—The Federal Advisory*
4 *Committee Act (5 U.S.C. App.), other than section 14 of*
5 *such Act, shall apply to the HIT Policy Committee.*

6 “(e) *PUBLICATION.—The Secretary shall provide for*
7 *publication in the Federal Register and the posting on the*
8 *Internet website of the Office of the National Coordinator*
9 *for Health Information Technology of all policy rec-*
10 *ommendations made by the HIT Policy Committee under*
11 *this section.*

12 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

13 “(a) *ESTABLISHMENT.—There is established a com-*
14 *mittee to be known as the HIT Standards Committee to*
15 *recommend to the National Coordinator standards, imple-*
16 *mentation specifications, and certification criteria for the*
17 *electronic exchange and use of health information for pur-*
18 *poses of adoption under section 3004, consistent with the*
19 *implementation of the strategic plan described in section*
20 *3001(c)(3) and beginning with the areas listed in section*
21 *3002(b)(2)(B) in accordance with policies developed by the*
22 *HIT Policy Committee.*

23 “(b) *DUTIES.—*

24 “(1) *STANDARD DEVELOPMENT.—*

1 “(A) *IN GENERAL.*—*The HIT Standards*
2 *Committee shall recommend to the National Co-*
3 *ordinator standards, implementation specifica-*
4 *tions, and certification criteria described in sub-*
5 *section (a) that have been developed, harmonized,*
6 *or recognized by the HIT Standards Committee.*
7 *The HIT Standards Committee shall update*
8 *such recommendations and make new rec-*
9 *ommendations as appropriate, including in re-*
10 *sponse to a notification sent under section*
11 *3004(b)(2). Such recommendations shall be con-*
12 *sistent with the latest recommendations made by*
13 *the HIT Policy Committee.*

14 “(B) *PILOT TESTING OF STANDARDS AND*
15 *IMPLEMENTATION SPECIFICATIONS.*—*In the de-*
16 *velopment, harmonization, or recognition of*
17 *standards and implementation specifications, the*
18 *HIT Standards Committee shall, as appropriate,*
19 *provide for the testing of such standards and*
20 *specifications by the National Institute for*
21 *Standards and Technology under section 4201 of*
22 *the HITECH Act.*

23 “(C) *CONSISTENCY.*—*The standards, imple-*
24 *mentation specifications, and certification cri-*
25 *teria recommended under this subsection shall be*

1 *consistent with the standards for information*
2 *transactions and data elements adopted pursu-*
3 *ant to section 1173 of the Social Security Act.*

4 “(2) *FORUM.*—*The HIT Standards Committee*
5 *shall serve as a forum for the participation of a broad*
6 *range of stakeholders to provide input on the develop-*
7 *ment, harmonization, and recognition of standards,*
8 *implementation specifications, and certification cri-*
9 *teria necessary for the development and adoption of*
10 *a nationwide health information technology infra-*
11 *structure that allows for the electronic use and ex-*
12 *change of health information.*

13 “(3) *SCHEDULE.*—*Not later than 90 days after*
14 *the date of the enactment of this title, the HIT Stand-*
15 *ards Committee shall develop a schedule for the assess-*
16 *ment of policy recommendations developed by the*
17 *HIT Policy Committee under section 3002. The HIT*
18 *Standards Committee shall update such schedule an-*
19 *nually. The Secretary shall publish such schedule in*
20 *the Federal Register.*

21 “(4) *PUBLIC INPUT.*—*The HIT Standards Com-*
22 *mittee shall conduct open public meetings and develop*
23 *a process to allow for public comment on the schedule*
24 *described in paragraph (3) and recommendations de-*
25 *scribed in this subsection. Under such process com-*

1 *ments shall be submitted in a timely manner after the*
2 *date of publication of a recommendation under this*
3 *subsection.*

4 “(c) *MEMBERSHIP AND OPERATIONS.*—

5 “(1) *IN GENERAL.*—*The National Coordinator*
6 *shall provide leadership in the establishment and op-*
7 *erations of the HIT Standards Committee.*

8 “(2) *MEMBERSHIP.*—*The membership of the HIT*
9 *Standards Committee shall at least reflect providers,*
10 *ancillary healthcare workers, consumers, purchasers,*
11 *health plans, technology vendors, researchers, relevant*
12 *Federal agencies, and individuals with technical ex-*
13 *pertise on health care quality, privacy and security,*
14 *and on the electronic exchange and use of health in-*
15 *formation.*

16 “(3) *CONSIDERATION.*—*The National Coordi-*
17 *nator shall ensure that the relevant recommendations*
18 *and comments from the National Committee on Vital*
19 *and Health Statistics are considered in the develop-*
20 *ment of standards.*

21 “(4) *ASSISTANCE.*—*For the purposes of carrying*
22 *out this section, the Secretary may provide or ensure*
23 *that financial assistance is provided by the HIT*
24 *Standards Committee to defray in whole or in part*
25 *any membership fees or dues charged by such Com-*

1 *mittee to those consumer advocacy groups and not for*
2 *profit entities that work in the public interest as a*
3 *part of their mission.*

4 *“(d) APPLICATION OF FACA.—The Federal Advisory*
5 *Committee Act (5 U.S.C. App.), other than section 14, shall*
6 *apply to the HIT Standards Committee.*

7 *“(e) PUBLICATION.—The Secretary shall provide for*
8 *publication in the Federal Register and the posting on the*
9 *Internet website of the Office of the National Coordinator*
10 *for Health Information Technology of all recommendations*
11 *made by the HIT Standards Committee under this section.*

12 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
13 **COMMENDATIONS; ADOPTION OF INITIAL SET**
14 **OF STANDARDS, IMPLEMENTATION SPECI-**
15 **FICATIONS, AND CERTIFICATION CRITERIA.**

16 *“(a) PROCESS FOR ADOPTION OF ENDORSED REC-*
17 *COMMENDATIONS.—*

18 *“(1) REVIEW OF ENDORSED STANDARDS, IMPLE-*
19 *MENTATION SPECIFICATIONS, AND CERTIFICATION CRI-*
20 *TERIA.—Not later than 90 days after the date of re-*
21 *ceipt of standards, implementation specifications, or*
22 *certification criteria endorsed under section 3001(c),*
23 *the Secretary, in consultation with representatives of*
24 *other relevant Federal agencies, shall jointly review*
25 *such standards, implementation specifications, or cer-*

1 *tification criteria and shall determine whether or not*
2 *to propose adoption of such standards, implementa-*
3 *tion specifications, or certification criteria.*

4 *“(2) DETERMINATION TO ADOPT STANDARDS, IM-*
5 *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION*
6 *CRITERIA.—If the Secretary determines—*

7 *“(A) to propose adoption of any grouping of*
8 *such standards, implementation specifications,*
9 *or certification criteria, the Secretary shall, by*
10 *regulation, determine whether or not to adopt*
11 *such grouping of standards, implementation*
12 *specifications, or certification criteria; or*

13 *“(B) not to propose adoption of any group-*
14 *ing of standards, implementation specifications,*
15 *or certification criteria, the Secretary shall no-*
16 *tify the National Coordinator and the HIT*
17 *Standards Committee in writing of such deter-*
18 *mination and the reasons for not proposing the*
19 *adoption of such recommendation.*

20 *“(3) PUBLICATION.—The Secretary shall provide*
21 *for publication in the Federal Register of all deter-*
22 *minations made by the Secretary under paragraph*
23 *(1).*

1 “(b) *ADOPTION OF INITIAL SET OF STANDARDS, IM-*
2 *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRI-*
3 *TERIA.*—

4 “(1) *IN GENERAL.*—*Not later than December 31,*
5 *2009, the Secretary shall, through the rulemaking*
6 *process described in section 3003, adopt an initial set*
7 *of standards, implementation specifications, and cer-*
8 *tification criteria for the areas required for consider-*
9 *ation under section 3002(b)(2)(B).*

10 “(2) *APPLICATION OF CURRENT STANDARDS, IM-*
11 *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION*
12 *CRITERIA.*—*The standards, implementation specifica-*
13 *tions, and certification criteria adopted before the*
14 *date of the enactment of this title through the process*
15 *existing through the Office of the National Coordi-*
16 *nator for Health Information Technology may be ap-*
17 *plied towards meeting the requirement of paragraph*
18 *(1).*

19 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
20 **ARDS AND IMPLEMENTATION SPECIFICA-**
21 **TIONS BY FEDERAL AGENCIES.**

22 “*For requirements relating to the application and use*
23 *by Federal agencies of the standards and implementation*
24 *specifications adopted under section 3004, see section 4111*
25 *of the HITECH Act.*

1 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
2 **ED STANDARDS AND IMPLEMENTATION SPEC-**
3 **IFICATIONS BY PRIVATE ENTITIES.**

4 *“(a) IN GENERAL.—Except as provided under section*
5 *4112 of the HITECH Act, any standard or implementation*
6 *specification adopted under section 3004 shall be voluntary*
7 *with respect to private entities.*

8 *“(b) RULE OF CONSTRUCTION.—Nothing in this sub-*
9 *title shall be construed to require that a private entity that*
10 *enters into a contract with the Federal Government apply*
11 *or use the standards and implementation specifications*
12 *adopted under section 3004 with respect to activities not*
13 *related to the contract.*

14 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.**

15 *“(a) IN GENERAL.—The National Coordinator shall*
16 *support the development, routine updating and provision*
17 *of qualified EHR technology (as defined in section 3000)*
18 *consistent with subsections (b) and (c) unless the Secretary*
19 *determines that the needs and demands of providers are*
20 *being substantially and adequately met through the market-*
21 *place.*

22 *“(b) CERTIFICATION.—In making such EHR tech-*
23 *nology publicly available, the National Coordinator shall*
24 *ensure that the qualified EHR technology described in sub-*
25 *section (a) is certified under the program developed under*

1 *section 3001(c)(3) to be in compliance with applicable*
2 *standards adopted under section 3003(a).*

3 “(c) *AUTHORIZATION TO CHARGE A NOMINAL FEE.—*
4 *The National Coordinator may impose a nominal fee for*
5 *the adoption by a health care provider of the health infor-*
6 *mation technology system developed or approved under sub-*
7 *section (a) and (b). Such fee shall take into account the*
8 *financial circumstances of smaller providers, low income*
9 *providers, and providers located in rural or other medically*
10 *underserved areas.*

11 “(d) *RULE OF CONSTRUCTION.—Nothing in this sec-*
12 *tion shall be construed to require that a private or govern-*
13 *ment entity adopt or use the technology provided under this*
14 *section.*

15 **“SEC. 3008. TRANSITIONS.**

16 “(a) *ONCHIT.—To the extent consistent with section*
17 *3001, all functions, personnel, assets, liabilities, and ad-*
18 *ministrative actions applicable to the National Coordinator*
19 *for Health Information Technology appointed under Execu-*
20 *tive Order 13335 or the Office of such National Coordinator*
21 *on the date before the date of the enactment of this title*
22 *shall be transferred to the National Coordinator appointed*
23 *under section 3001(a) and the Office of such National Coor-*
24 *dinator as of the date of the enactment of this title.*

25 “(b) *AHIC.—*

1 “(1) *To the extent consistent with sections 3002*
2 *and 3003, all functions, personnel, assets, and liabil-*
3 *ities applicable to the AHIC Successor, Inc. doing*
4 *business as the National eHealth Collaborative as of*
5 *the day before the date of the enactment of this title*
6 *shall be transferred to the HIT Policy Committee or*
7 *the HIT Standards Committee, established under sec-*
8 *tion 3002(a) or 3003(a), as appropriate, as of the*
9 *date of the enactment of this title.*

10 “(2) *In carrying out section 3003(b)(1)(A), until*
11 *recommendations are made by the HIT Policy Com-*
12 *mittee, recommendations of the HIT Standards Com-*
13 *mittee shall be consistent with the most recent rec-*
14 *ommendations made by such AHIC Successor, Inc.*

15 “(c) *RULES OF CONSTRUCTION.—*

16 “(1) *ONCHIT.—Nothing in section 3001 or sub-*
17 *section (a) shall be construed as requiring the cre-*
18 *ation of a new entity to the extent that the Office of*
19 *the National Coordinator for Health Information*
20 *Technology established pursuant to Executive Order*
21 *13335 is consistent with the provisions of section*
22 *3001.*

23 “(2) *AHIC.—Nothing in sections 3002 or 3003*
24 *or subsection (b) shall be construed as prohibiting the*
25 *AHIC Successor, Inc. doing business as the National*

1 *eHealth Collaborative from modifying its charter, du-*
2 *ties, membership, and any other structure or function*
3 *required to be consistent with section 3002 and 3003*
4 *in a manner that would permit the Secretary to*
5 *choose to recognize such Community as the HIT Pol-*
6 *icy Committee or the HIT Standards Committee.*

7 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
8 **LAW.**

9 *“(a) IN GENERAL.—With respect to the relation of this*
10 *title to HIPAA privacy and security law:*

11 *“(1) This title may not be construed as having*
12 *any effect on the authorities of the Secretary under*
13 *HIPAA privacy and security law.*

14 *“(2) The purposes of this title include ensuring*
15 *that the health information technology standards and*
16 *implementation specifications adopted under section*
17 *3004 take into account the requirements of HIPAA*
18 *privacy and security law.*

19 *“(b) DEFINITION.—For purposes of this section, the*
20 *term ‘HIPAA privacy and security law’ means—*

21 *“(1) the provisions of part C of title XI of the*
22 *Social Security Act, section 264 of the Health Insur-*
23 *ance Portability and Accountability Act of 1996, and*
24 *subtitle D of title IV of the HITECH Act; and*

25 *“(2) regulations under such provisions.*

1 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

2 *“There is authorized to be appropriated to the Office*
3 *of the National Coordinator for Health Information Tech-*
4 *nology to carry out this subtitle \$250,000,000 for fiscal year*
5 *2009.”.*

6 **SEC. 4102. TECHNICAL AMENDMENT.**

7 *Section 1171(5) of the Social Security Act (42 U.S.C.*
8 *1320d) is amended by striking “or C” and inserting “C,*
9 *or D”.*

10 **PART 2—APPLICATION AND USE OF ADOPTED**
11 **HEALTH INFORMATION TECHNOLOGY**
12 **STANDARDS; REPORTS**

13 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**
14 **ADOPTED STANDARDS AND IMPLEMENTA-**
15 **TION SPECIFICATIONS.**

16 *(a) SPENDING ON HEALTH INFORMATION TECH-*
17 *NOLOGY SYSTEMS.—As each agency (as defined in the Exec-*
18 *utive Order issued on August 22, 2006, relating to pro-*
19 *moting quality and efficient health care in Federal govern-*
20 *ment administered or sponsored health care programs) im-*
21 *plements, acquires, or upgrades health information tech-*
22 *nology systems used for the direct exchange of individually*
23 *identifiable health information between agencies and with*
24 *non-Federal entities, it shall utilize, where available, health*
25 *information technology systems and products that meet*
26 *standards and implementation specifications adopted under*

1 *section 3004(b) of the Public Health Service Act, as added*
2 *by section 4101.*

3 (b) *FEDERAL INFORMATION COLLECTION ACTIVI-*
4 *TIES.—With respect to a standard or implementation speci-*
5 *fication adopted under section 3004(b) of the Public Health*
6 *Service Act, as added by section 4101, the President shall*
7 *take measures to ensure that Federal activities involving*
8 *the broad collection and submission of health information*
9 *are consistent with such standard or implementation speci-*
10 *fication, respectively, within three years after the date of*
11 *such adoption.*

12 (c) *APPLICATION OF DEFINITIONS.—The definitions*
13 *contained in section 3000 of the Public Health Service Act,*
14 *as added by section 4101, shall apply for purposes of this*
15 *part.*

16 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

17 *Each agency (as defined in such Executive Order*
18 *issued on August 22, 2006, relating to promoting quality*
19 *and efficient health care in Federal government adminis-*
20 *tered or sponsored health care programs) shall require in*
21 *contracts or agreements with health care providers, health*
22 *plans, or health insurance issuers that as each provider,*
23 *plan, or issuer implements, acquires, or upgrades health in-*
24 *formation technology systems, it shall utilize, where avail-*
25 *able, health information technology systems and products*

1 *that meet standards and implementation specifications*
2 *adopted under section 3004(b) of the Public Health Service*
3 *Act, as added by section 4101.*

4 **SEC. 4113. STUDY AND REPORTS.**

5 *(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—*
6 *Not later than 2 years after the date of the enactment of*
7 *this Act and annually thereafter, the Secretary of Health*
8 *and Human Services shall submit to the appropriate com-*
9 *mittees of jurisdiction of the House of Representatives and*
10 *the Senate a report that—*

11 *(1) describes the specific actions that have been*
12 *taken by the Federal Government and private entities*
13 *to facilitate the adoption of a nationwide system for*
14 *the electronic use and exchange of health information;*

15 *(2) describes barriers to the adoption of such a*
16 *nationwide system; and*

17 *(3) contains recommendations to achieve full im-*
18 *plementation of such a nationwide system.*

19 *(b) REIMBURSEMENT INCENTIVE STUDY AND RE-*
20 *PORT.—*

21 *(1) STUDY.—The Secretary of Health and*
22 *Human Services shall carry out, or contract with a*
23 *private entity to carry out, a study that examines*
24 *methods to create efficient reimbursement incentives*
25 *for improving health care quality in Federally quali-*

1 *fied health centers, rural health clinics, and free clin-*
2 *ics.*

3 (2) *REPORT.*—*Not later than 2 years after the*
4 *date of the enactment of this Act, the Secretary of*
5 *Health and Human Services shall submit to the ap-*
6 *propriate committees of jurisdiction of the House of*
7 *Representatives and the Senate a report on the study*
8 *carried out under paragraph (1).*

9 (c) *AGING SERVICES TECHNOLOGY STUDY AND RE-*
10 *PORT.*—

11 (1) *IN GENERAL.*—*The Secretary of Health and*
12 *Human Services shall carry out, or contract with a*
13 *private entity to carry out, a study of matters relat-*
14 *ing to the potential use of new aging services tech-*
15 *nology to assist seniors, individuals with disabilities,*
16 *and their caregivers throughout the aging process.*

17 (2) *MATTERS TO BE STUDIED.*—*The study under*
18 *paragraph (1) shall include—*

19 (A) *an evaluation of—*

20 (i) *methods for identifying current,*
21 *emerging, and future health technology that*
22 *can be used to meet the needs of seniors and*
23 *individuals with disabilities and their care-*
24 *givers across all aging services settings, as*
25 *specified by the Secretary;*

1 (ii) *methods for fostering scientific in-*
2 *novation with respect to aging services tech-*
3 *nology within the business and academic*
4 *communities; and*

5 (iii) *developments in aging services*
6 *technology in other countries that may be*
7 *applied in the United States; and*

8 (B) *identification of—*

9 (i) *barriers to innovation in aging*
10 *services technology and devising strategies*
11 *for removing such barriers; and*

12 (ii) *barriers to the adoption of aging*
13 *services technology by health care providers*
14 *and consumers and devising strategies to re-*
15 *moving such barriers.*

16 (3) *REPORT.—Not later than 24 months after the*
17 *date of the enactment of this Act, the Secretary shall*
18 *submit to the appropriate committees of jurisdiction*
19 *of the House of Representatives and of the Senate a*
20 *report on the study carried out under paragraph (1).*

21 (4) *DEFINITIONS.—For purposes of this sub-*
22 *section:*

23 (A) *AGING SERVICES TECHNOLOGY.—The*
24 *term “aging services technology” means health*
25 *technology that meets the health care needs of*

1 *seniors, individuals with disabilities, and the*
2 *caregivers of such seniors and individuals.*

3 *(B) SENIOR.—The term “senior” has such*
4 *meaning as specified by the Secretary.*

5 ***Subtitle B—Testing of Health***
6 ***Information Technology***

7 ***SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND***
8 ***TECHNOLOGY TESTING.***

9 *(a) PILOT TESTING OF STANDARDS AND IMPLEMENTA-*
10 *TION SPECIFICATIONS.—In coordination with the HIT*
11 *Standards Committee established under section 3003 of the*
12 *Public Health Service Act, as added by section 4101, with*
13 *respect to the development of standards and implementation*
14 *specifications under such section, the Director of the Na-*
15 *tional Institute for Standards and Technology shall test*
16 *such standards and implementation specifications, as ap-*
17 *propriate, in order to assure the efficient implementation*
18 *and use of such standards and implementation specifica-*
19 *tions.*

20 *(b) VOLUNTARY TESTING PROGRAM.—In coordination*
21 *with the HIT Standards Committee established under sec-*
22 *tion 3003 of the Public Health Service Act, as added by*
23 *section 4101, with respect to the development of standards*
24 *and implementation specifications under such section, the*
25 *Director of the National Institute of Standards and Tech-*

1 *nology shall support the establishment of a conformance*
2 *testing infrastructure, including the development of tech-*
3 *nical test beds. The development of this conformance testing*
4 *infrastructure may include a program to accredit inde-*
5 *pendent, non-Federal laboratories to perform testing.*

6 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

7 (a) *HEALTH CARE INFORMATION ENTERPRISE INTE-*
8 *GRATION RESEARCH CENTERS.—*

9 (1) *IN GENERAL.—The Director of the National*
10 *Institute of Standards and Technology, in consulta-*
11 *tion with the Director of the National Science Foun-*
12 *dation and other appropriate Federal agencies, shall*
13 *establish a program of assistance to institutions of*
14 *higher education (or consortia thereof which may in-*
15 *clude nonprofit entities and Federal Government lab-*
16 *oratories) to establish multidisciplinary Centers for*
17 *Health Care Information Enterprise Integration.*

18 (2) *REVIEW; COMPETITION.—Grants shall be*
19 *awarded under this subsection on a merit-reviewed,*
20 *competitive basis.*

21 (3) *PURPOSE.—The purposes of the Centers de-*
22 *scribed in paragraph (1) shall be—*

23 (A) *to generate innovative approaches to*
24 *health care information enterprise integration by*
25 *conducting cutting-edge, multidisciplinary re-*

1 *search on the systems challenges to health care*
2 *delivery; and*

3 *(B) the development and use of health infor-*
4 *mation technologies and other complementary*
5 *fields.*

6 *(4) RESEARCH AREAS.—Research areas may in-*
7 *clude—*

8 *(A) interfaces between human information*
9 *and communications technology systems;*

10 *(B) voice-recognition systems;*

11 *(C) software that improves interoperability*
12 *and connectivity among health information sys-*
13 *tems;*

14 *(D) software dependability in systems crit-*
15 *ical to health care delivery;*

16 *(E) measurement of the impact of informa-*
17 *tion technologies on the quality and productivity*
18 *of health care;*

19 *(F) health information enterprise manage-*
20 *ment;*

21 *(G) health information technology security*
22 *and integrity; and*

23 *(H) relevant health information technology*
24 *to reduce medical errors.*

1 (5) *APPLICATIONS.*—*An institution of higher*
2 *education (or a consortium thereof) seeking funding*
3 *under this subsection shall submit an application to*
4 *the Director of the National Institute of Standards*
5 *and Technology at such time, in such manner, and*
6 *containing such information as the Director may re-*
7 *quire. The application shall include, at a minimum,*
8 *a description of—*

9 (A) *the research projects that will be under-*
10 *taken by the Center established pursuant to as-*
11 *sistance under paragraph (1) and the respective*
12 *contributions of the participating entities;*

13 (B) *how the Center will promote active col-*
14 *laboration among scientists and engineers from*
15 *different disciplines, such as information tech-*
16 *nology, biologic sciences, management, social*
17 *sciences, and other appropriate disciplines;*

18 (C) *technology transfer activities to dem-*
19 *onstrate and diffuse the research results, tech-*
20 *nologies, and knowledge; and*

21 (D) *how the Center will contribute to the*
22 *education and training of researchers and other*
23 *professionals in fields relevant to health informa-*
24 *tion enterprise integration.*

- 1 **(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH**
2 **AND DEVELOPMENT PROGRAM.**—*The National High-Per-*
3 *formance Computing Program established by section 101 of*
4 *the High-Performance Computing Act of 1991 (15 U.S.C.*
5 *5511) shall coordinate Federal research and development*
6 *programs related to the development and deployment of*
7 *health information technology, including activities related*
8 *to—*
- 9 (1) *computer infrastructure;*
10 (2) *data security;*
11 (3) *development of large-scale, distributed, reli-*
12 *able computing systems;*
13 (4) *wired, wireless, and hybrid high-speed net-*
14 *working;*
15 (5) *development of software and software-inten-*
16 *sive systems;*
17 (6) *human-computer interaction and informa-*
18 *tion management technologies; and*
19 (7) *the social and economic implications of in-*
20 *formation technology.*

1 ***Subtitle C—Incentives for the Use of***
2 ***Health Information Technology***

3 ***PART I—GRANTS AND LOANS FUNDING***

4 ***SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-***
5 ***GRAMS.***

6 *Title XXX of the Public Health Service Act, as added*
7 *by section 4101, is amended by adding at the end the fol-*
8 *lowing new subtitle:*

9 ***“Subtitle B—Incentives for the Use***
10 ***of Health Information Technology***

11 ***“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE***
12 ***HEALTH INFORMATION TECHNOLOGY INFRA-***
13 ***STRUCTURE.***

14 *“(a) IN GENERAL.—The Secretary of Health and*
15 *Human Services shall, using amounts appropriated under*
16 *section 3018, invest in the infrastructure necessary to allow*
17 *for and promote the electronic exchange and use of health*
18 *information for each individual in the United States con-*
19 *sistent with the goals outlined in the strategic plan devel-*
20 *oped by the National Coordinator (and as available) under*
21 *section 3001. To the greatest extent practicable, the Sec-*
22 *retary shall ensure that any funds so appropriated shall*
23 *be used for the acquisition of health information technology*
24 *that meets standards and certification criteria adopted be-*
25 *fore the date of the enactment of this title until such date*

1 *as the standards are adopted under section 3004. The Sec-*
2 *retary shall invest funds through the different agencies with*
3 *expertise in such goals, such as the Office of the National*
4 *Coordinator for Health Information Technology, the Health*
5 *Resources and Services Administration, the Agency for*
6 *Healthcare Research and Quality, the Centers of Medicare*
7 *& Medicaid Services, the Centers for Disease Control and*
8 *Prevention, and the Indian Health Service to support the*
9 *following:*

10 “(1) *Health information technology architecture*
11 *that will support the nationwide electronic exchange*
12 *and use of health information in a secure, private,*
13 *and accurate manner, including connecting health in-*
14 *formation exchanges, and which may include updat-*
15 *ing and implementing the infrastructure necessary*
16 *within different agencies of the Department of Health*
17 *and Human Services to support the electronic use*
18 *and exchange of health information.*

19 “(2) *Development and adoption of appropriate*
20 *certified electronic health records for categories of pro-*
21 *viders not eligible for support under title XVIII or*
22 *XIX of the Social Security Act for the adoption of*
23 *such records.*

24 “(3) *Training on and dissemination of informa-*
25 *tion on best practices to integrate health information*

1 *technology, including electronic health records, into a*
2 *provider's delivery of care, consistent with best prac-*
3 *tices learned from the Health Information Technology*
4 *Research Center developed under section 302, includ-*
5 *ing community health centers receiving assistance*
6 *under section 330 of the Public Health Service Act,*
7 *covered entities under section 340B of such Act, and*
8 *providers participating in one or more of the pro-*
9 *grams under titles XVIII, XIX, and XXI of the Social*
10 *Security Act (relating to Medicare, Medicaid, and the*
11 *State Children's Health Insurance Program).*

12 *“(4) Infrastructure and tools for the promotion*
13 *of telemedicine, including coordination among Fed-*
14 *eral agencies in the promotion of telemedicine.*

15 *“(5) Promotion of the interoperability of clinical*
16 *data repositories or registries.*

17 *“(6) Promotion of technologies and best practices*
18 *that enhance the protection of health information by*
19 *all holders of individually identifiable health informa-*
20 *tion.*

21 *“(7) Improve and expand the use of health infor-*
22 *mation technology by public health departments.*

23 *“(8) Provide \$300 million to support regional or*
24 *sub-national efforts towards health information ex-*
25 *change.*

1 “(1) *IN GENERAL.*—*The Secretary shall create a*
2 *Health Information Technology Research Center (in*
3 *this section referred to as the ‘Center’)* to provide tech-
4 *nical assistance and develop or recognize best prac-*
5 *tices to support and accelerate efforts to adopt, imple-*
6 *ment, and effectively utilize health information tech-*
7 *nology that allows for the electronic exchange and use*
8 *of information in compliance with standards, imple-*
9 *mentation specifications, and certification criteria*
10 *adopted under section 3004(b).*

11 “(2) *INPUT.*—*The Center shall incorporate input*
12 *from—*

13 “(A) *other Federal agencies with dem-*
14 *onstrated experience and expertise in informa-*
15 *tion technology services such as the National In-*
16 *stitute of Standards and Technology;*

17 “(B) *users of health information technology,*
18 *such as providers and their support and clerical*
19 *staff and others involved in the care and care co-*
20 *ordination of patients, from the health care and*
21 *health information technology industry; and*

22 “(C) *others as appropriate.*

23 “(3) *PURPOSES.*—*The purposes of the Center are*
24 *to—*

1 “(A) provide a forum for the exchange of
2 knowledge and experience;

3 “(B) accelerate the transfer of lessons
4 learned from existing public and private sector
5 initiatives, including those currently receiving
6 Federal financial support;

7 “(C) assemble, analyze, and widely dissemi-
8 nate evidence and experience related to the adop-
9 tion, implementation, and effective use of health
10 information technology that allows for the elec-
11 tronic exchange and use of information includ-
12 ing through the regional centers described in sub-
13 section (c);

14 “(D) provide technical assistance for the es-
15 tablishment and evaluation of regional and local
16 health information networks to facilitate the elec-
17 tronic exchange of information across health care
18 settings and improve the quality of health care;

19 “(E) provide technical assistance for the de-
20 velopment and dissemination of solutions to bar-
21 riers to the exchange of electronic health informa-
22 tion; and

23 “(F) learn about effective strategies to adopt
24 and utilize health information technology in
25 medically underserved communities.

1 “(c) *HEALTH INFORMATION TECHNOLOGY REGIONAL*
2 *EXTENSION CENTERS.*—

3 “(1) *IN GENERAL.*—*The Secretary shall provide*
4 *assistance for the creation and support of regional*
5 *centers (in this subsection referred to as ‘regional cen-*
6 *ters’)* to provide technical assistance and disseminate
7 *best practices and other information learned from the*
8 *Center to support and accelerate efforts to adopt, im-*
9 *plement, and effectively utilize health information*
10 *technology that allows for the electronic exchange and*
11 *use of information in compliance with standards, im-*
12 *plementation specifications, and certification criteria*
13 *adopted under section 3004. Activities conducted*
14 *under this subsection shall be consistent with the stra-*
15 *tegic plan developed by the National Coordinator,*
16 *(and, as available) under section 3001.*

17 “(2) *AFFILIATION.*—*Regional centers shall be af-*
18 *filiated with any US-based nonprofit institution or*
19 *organization, or group thereof, that applies and is*
20 *awarded financial assistance under this section. Indi-*
21 *vidual awards shall be decided on the basis of merit.*

22 “(3) *OBJECTIVE.*—*The objective of the regional*
23 *centers is to enhance and promote the adoption of*
24 *health information technology through—*

1 “(A) assistance with the implementation, ef-
2 fective use, upgrading, and ongoing maintenance
3 of health information technology, including elec-
4 tronic health records, to healthcare providers na-
5 tionwide;

6 “(B) broad participation of individuals
7 from industry, universities, and State govern-
8 ments;

9 “(C) active dissemination of best practices
10 and research on the implementation, effective
11 use, upgrading, and ongoing maintenance of
12 health information technology, including elec-
13 tronic health records, to health care providers in
14 order to improve the quality of healthcare and
15 protect the privacy and security of health infor-
16 mation;

17 “(D) participation, to the extent prac-
18 ticable, in health information exchanges; and

19 “(E) utilization, when appropriate, of the
20 expertise and capability that exists in federal
21 agencies other than the Department; and

22 “(F) integration of health information tech-
23 nology, including electronic health records, into
24 the initial and ongoing training of health profes-
25 sionals and others in the healthcare industry

1 *that would be instrumental to improving the*
2 *quality of healthcare through the smooth and ac-*
3 *curate electronic use and exchange of health in-*
4 *formation.*

5 “(4) *REGIONAL ASSISTANCE.—Each regional*
6 *center shall aim to provide assistance and education*
7 *to all providers in a region, but shall prioritize any*
8 *direct assistance first to the following:*

9 “(A) *Public or not-for-profit hospitals or*
10 *critical access hospitals.*

11 “(B) *Federally qualified health centers (as*
12 *defined in section 1861(aa)(4) of the Social Se-*
13 *curity Act).*

14 “(C) *Entities that are located in rural and*
15 *other areas that serve uninsured, underinsured,*
16 *and medically underserved individuals (regard-*
17 *less of whether such area is urban or rural).*

18 “(D) *Individual or small group practices*
19 *(or a consortium thereof) that are primarily fo-*
20 *cused on primary care.*

21 “(5) *FINANCIAL SUPPORT.—The Secretary may*
22 *provide financial support to any regional center cre-*
23 *ated under this subsection for a period not to exceed*
24 *four years. The Secretary may not provide more than*
25 *50 percent of the capital and annual operating and*

1 *maintenance funds required to create and maintain*
2 *such a center, except in an instance of national eco-*
3 *nomie conditions which would render this cost-share*
4 *requirement detrimental to the program and upon no-*
5 *tification to Congress as to the justification to waive*
6 *the cost-share requirement.*

7 *“(6) NOTICE OF PROGRAM DESCRIPTION AND*
8 *AVAILABILITY OF FUNDS.—The Secretary shall pub-*
9 *lish in the Federal Register, not later than 90 days*
10 *after the date of the enactment of this Act, a draft de-*
11 *scription of the program for establishing regional cen-*
12 *ters under this subsection. Such description shall in-*
13 *clude the following:*

14 *“(A) A detailed explanation of the program*
15 *and the programs goals.*

16 *“(B) Procedures to be followed by the appli-*
17 *cants.*

18 *“(C) Criteria for determining qualified ap-*
19 *plicants.*

20 *“(D) Maximum support levels expected to be*
21 *available to centers under the program.*

22 *“(7) APPLICATION REVIEW.—The Secretary shall*
23 *subject each application under this subsection to*
24 *merit review. In making a decision whether to ap-*
25 *prove such application and provide financial support,*

1 *the Secretary shall consider at a minimum the merits*
2 *of the application, including those portions of the ap-*
3 *plication regarding—*

4 *“(A) the ability of the applicant to provide*
5 *assistance under this subsection and utilization*
6 *of health information technology appropriate to*
7 *the needs of particular categories of health care*
8 *providers;*

9 *“(B) the types of service to be provided to*
10 *health care providers;*

11 *“(C) geographical diversity and extent of*
12 *service area; and*

13 *“(D) the percentage of funding and amount*
14 *of in-kind commitment from other sources.*

15 *“(8) BIENNIAL EVALUATION.—Each regional cen-*
16 *ter which receives financial assistance under this sub-*
17 *section shall be evaluated biennially by an evaluation*
18 *panel appointed by the Secretary. Each evaluation*
19 *panel shall be composed of private experts, none of*
20 *whom shall be connected with the center involved, and*
21 *of Federal officials. Each evaluation panel shall meas-*
22 *ure the involved center’s performance against the ob-*
23 *jective specified in paragraph (3). The Secretary shall*
24 *not continue to provide funding to a regional center*
25 *unless its evaluation is overall positive.*

1 “(9) *CONTINUING SUPPORT.*—*After the second*
2 *year of assistance under this subsection a regional*
3 *center may receive additional support under this sub-*
4 *section if it has received positive evaluations and a*
5 *finding by the Secretary that continuation of Federal*
6 *funding to the center was in the best interest of provi-*
7 *sion of health information technology extension serv-*
8 *ices.*

9 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMA-**
10 **TION TECHNOLOGY.**

11 “(a) *IN GENERAL.*—*The Secretary, acting through the*
12 *National Coordinator, shall establish a program in accord-*
13 *ance with this section to facilitate and expand the electronic*
14 *movement and use of health information among organiza-*
15 *tions according to nationally recognized standards.*

16 “(b) *PLANNING GRANTS.*—*The Secretary may award*
17 *a grant to a State or qualified State-designated entity (as*
18 *described in subsection (d)) that submits an application to*
19 *the Secretary at such time, in such manner, and containing*
20 *such information as the Secretary may specify, for the pur-*
21 *pose of planning activities described in subsection (b).*

22 “(c) *IMPLEMENTATION GRANTS.*—*The Secretary may*
23 *award a grant to a State or qualified State designated enti-*
24 *ty that—*

1 “(1) has submitted, and the Secretary has ap-
2 proved, a plan described in subsection (c) (regardless
3 of whether such plan was prepared using amounts
4 awarded under paragraph (1)); and

5 “(2) submits an application at such time, in
6 such manner, and containing such information as the
7 Secretary may specify.

8 “(d) *USE OF FUNDS.*—Amounts received under a
9 grant under subsection (a)(3) shall be used to conduct ac-
10 tivities to facilitate and expand the electronic movement
11 and use of health information among organizations accord-
12 ing to nationally recognized standards through activities
13 that include—

14 “(1) enhancing broad and varied participation
15 in the authorized and secure nationwide electronic use
16 and exchange of health information;

17 “(2) identifying State or local resources available
18 towards a nationwide effort to promote health infor-
19 mation technology;

20 “(3) complementing other Federal grants, pro-
21 grams, and efforts towards the promotion of health
22 information technology;

23 “(4) providing technical assistance for the devel-
24 opment and dissemination of solutions to barriers to
25 the exchange of electronic health information;

1 “(5) *promoting effective strategies to adopt and*
2 *utilize health information technology in medically un-*
3 *derserved communities;*

4 “(6) *assisting patients in utilizing health infor-*
5 *mation technology;*

6 “(7) *encouraging clinicians to work with Health*
7 *Information Technology Regional Extension Centers*
8 *as described in section 3012, to the extent they are*
9 *available and valuable;*

10 “(8) *supporting public health agencies’ author-*
11 *ized use of and access to electronic health information;*

12 “(9) *promoting the use of electronic health*
13 *records for quality improvement including through*
14 *quality measures reporting; and*

15 “(10) *such other activities as the Secretary may*
16 *specify.*

17 “(e) *PLAN.—*

18 “(1) *IN GENERAL.—A plan described in this sub-*
19 *section is a plan that describes the activities to be*
20 *carried out by a State or by the qualified State-des-*
21 *ignated entity within such State to facilitate and ex-*
22 *pand the electronic movement and use of health infor-*
23 *mation among organizations according to nationally*
24 *recognized standards and implementation specifica-*
25 *tions.*

1 “(2) *REQUIRED ELEMENTS.*—A plan described
2 in paragraph (1) shall—

3 “(A) be pursued in the public interest;

4 “(B) be consistent with the strategic plan
5 developed by the National Coordinator, (and, as
6 available) under section 3001;

7 “(C) include a description of the ways the
8 State or qualified State-designated entity will
9 carry out the activities described in subsection
10 (b); and

11 “(D) contain such elements as the Secretary
12 may require.

13 “(f) *QUALIFIED STATE-DESIGNATED ENTITY.*—For
14 purposes of this section, to be a qualified State-designated
15 entity, with respect to a State, an entity shall—

16 “(1) be designated by the State as eligible to re-
17 ceive awards under this section;

18 “(2) be a not-for-profit entity with broad stake-
19 holder representation on its governing board;

20 “(3) demonstrate that one of its principal goals
21 is to use information technology to improve health
22 care quality and efficiency through the authorized
23 and secure electronic exchange and use of health in-
24 formation;

1 “(4) adopt nondiscrimination and conflict of in-
2 terest policies that demonstrate a commitment to
3 open, fair, and nondiscriminatory participation by
4 stakeholders; and

5 “(5) conform to such other requirements as the
6 Secretary may establish.

7 “(g) *REQUIRED CONSULTATION.*—In carrying out ac-
8 tivities described in subsections (a)(2) and (a)(3), a State
9 or qualified State-designated entity shall consult with and
10 consider the recommendations of—

11 “(1) health care providers (including providers
12 that provide services to low income and underserved
13 populations);

14 “(2) health plans;

15 “(3) patient or consumer organizations that rep-
16 resent the population to be served;

17 “(4) health information technology vendors;

18 “(5) health care purchasers and employers;

19 “(6) public health agencies;

20 “(7) health professions schools, universities and
21 colleges;

22 “(8) clinical researchers;

23 “(9) other users of health information technology
24 such as the support and clerical staff of providers and

1 *others involved in the care and care coordination of*
2 *patients; and*

3 *“(10) such other entities, as may be determined*
4 *appropriate by the Secretary.*

5 *“(h) CONTINUOUS IMPROVEMENT.—The Secretary*
6 *shall annually evaluate the activities conducted under this*
7 *section and shall, in awarding grants under this section,*
8 *implement the lessons learned from such evaluation in a*
9 *manner so that awards made subsequent to each such eval-*
10 *uation are made in a manner that, in the determination*
11 *of the Secretary, will lead towards the greatest improvement*
12 *in quality of care, decrease in costs, and the most effective*
13 *authorized and secure electronic exchange of health informa-*
14 *tion.*

15 *“(i) REQUIRED MATCH.—*

16 *“(1) IN GENERAL.—For a fiscal year (beginning*
17 *with fiscal year 2011), the Secretary may not make*
18 *a grant under subsection (a) to a State unless the*
19 *State agrees to make available non-Federal contribu-*
20 *tions (which may include in-kind contributions) to-*
21 *ward the costs of a grant awarded under subsection*
22 *(a)(3) in an amount equal to—*

23 *“(A) for fiscal year 2011, not less than \$1*
24 *for each \$10 of Federal funds provided under the*
25 *grant;*

1 “(B) for fiscal year 2012, not less than \$1
2 for each \$7 of Federal funds provided under the
3 grant; and

4 “(C) for fiscal year 2013 and each subse-
5 quent fiscal year, not less than \$1 for each \$3 of
6 Federal funds provided under the grant.

7 “(2) *AUTHORITY TO REQUIRE STATE MATCH FOR*
8 *FISCAL YEARS BEFORE FISCAL YEAR 2011.*—For any
9 fiscal year during the grant program under this sec-
10 tion before fiscal year 2011, the Secretary may deter-
11 mine the extent to which there shall be required a
12 non-Federal contribution from a State receiving a
13 grant under this section.

14 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
15 **TRIBES FOR THE DEVELOPMENT OF LOAN**
16 **PROGRAMS TO FACILITATE THE WIDESPREAD**
17 **ADOPTION OF CERTIFIED EHR TECHNOLOGY.**

18 “(a) *IN GENERAL.*—The National Coordinator may
19 award competitive grants to eligible entities for the estab-
20 lishment of programs for loans to health care providers to
21 conduct the activities described in subsection (e).

22 “(b) *ELIGIBLE ENTITY DEFINED.*—For purposes of
23 this subsection, the term ‘eligible entity’ means a State or
24 Indian tribe (as defined in the Indian Self-Determination
25 and Education Assistance Act) that—

1 “(1) submits to the National Coordinator an ap-
2 plication at such time, in such manner, and con-
3 taining such information as the National Coordinator
4 may require;

5 “(2) submits to the National Coordinator a stra-
6 tegic plan in accordance with subsection (d) and pro-
7 vides to the National Coordinator assurances that the
8 entity will update such plan annually in accordance
9 with such subsection;

10 “(3) provides assurances to the National Coordi-
11 nator that the entity will establish a Loan Fund in
12 accordance with subsection (c);

13 “(4) provides assurances to the National Coordi-
14 nator that the entity will not provide a loan from the
15 Loan Fund to a health care provider unless the pro-
16 vider agrees to—

17 “(A) submit reports on quality measures
18 adopted by the Federal Government (by not later
19 than 90 days after the date on which such meas-
20 ures are adopted), to—

21 “(i) the Director of the Centers for
22 Medicare & Medicaid Services (or his or her
23 designee), in the case of an entity partici-
24 pating in the Medicare program under title
25 XVIII of the Social Security Act or the

1 *Medicaid program under title XIX of such*
2 *Act; or*

3 *“(ii) the Secretary in the case of other*
4 *entities;*

5 *“(B) demonstrate to the satisfaction of the*
6 *Secretary (through criteria established by the*
7 *Secretary) that any certified EHR technology*
8 *purchased, improved, or otherwise financially*
9 *supported under a loan under this section is*
10 *used to exchange health information in a man-*
11 *ner that, in accordance with law and standards*
12 *(as adopted under section 3005) applicable to the*
13 *exchange of information, improves the quality of*
14 *health care, such as promoting care coordination;*
15 *and*

16 *“(C) comply with such other requirements*
17 *as the entity or the Secretary may require;*

18 *“(D) include a plan on how health care pro-*
19 *viders involved intend to maintain and support*
20 *the certified EHR technology over time;*

21 *“(E) include a plan on how the health care*
22 *providers involved intend to maintain and sup-*
23 *port the certified EHR technology that would be*
24 *purchased with such loan, including the type of*
25 *resources expected to be involved and any such*

1 *other information as the State or Indian Tribe,*
2 *respectively, may require; and*

3 “(5) *agrees to provide matching funds in accord-*
4 *ance with subsection (i).*

5 “(c) *ESTABLISHMENT OF FUND.—For purposes of sub-*
6 *section (b)(3), an eligible entity shall establish a certified*
7 *EHR technology loan fund (referred to in this subsection*
8 *as a ‘Loan Fund’) and comply with the other requirements*
9 *contained in this section. A grant to an eligible entity under*
10 *this section shall be deposited in the Loan Fund established*
11 *by the eligible entity. No funds authorized by other provi-*
12 *sions of this title to be used for other purposes specified in*
13 *this title shall be deposited in any Loan Fund.*

14 “(d) *STRATEGIC PLAN.—*

15 “(1) *IN GENERAL.—For purposes of subsection*
16 *(b)(2), a strategic plan of an eligible entity under this*
17 *subsection shall identify the intended uses of amounts*
18 *available to the Loan Fund of such entity.*

19 “(2) *CONTENTS.—A strategic plan under para-*
20 *graph (1), with respect to a Loan Fund of an eligible*
21 *entity, shall include for a year the following:*

22 “(A) *A list of the projects to be assisted*
23 *through the Loan Fund during such year.*

1 “(B) A description of the criteria and meth-
2 ods established for the distribution of funds from
3 the Loan Fund during the year.

4 “(C) A description of the financial status of
5 the Loan Fund as of the date of submission of
6 the plan.

7 “(D) The short-term and long-term goals of
8 the Loan Fund.

9 “(e) USE OF FUNDS.—Amounts deposited in a Loan
10 Fund, including loan repayments and interest earned on
11 such amounts, shall be used only for awarding loans or loan
12 guarantees, making reimbursements described in subsection
13 (g)(4)(A), or as a source of reserve and security for lever-
14 aged loans, the proceeds of which are deposited in the Loan
15 Fund established under subsection (a). Loans under this
16 section may be used by a health care provider to—

17 “(1) facilitate the purchase of certified EHR
18 technology;

19 “(2) enhance the utilization of certified EHR
20 technology;

21 “(3) train personnel in the use of such tech-
22 nology; or

23 “(4) improve the secure electronic exchange of
24 health information.

1 “(f) *TYPES OF ASSISTANCE.*—*Except as otherwise lim-*
2 *ited by applicable State law, amounts deposited into a*
3 *Loan Fund under this subsection may only be used for the*
4 *following:*

5 “(1) *To award loans that comply with the fol-*
6 *lowing:*

7 “(A) *The interest rate for each loan shall*
8 *not exceed the market interest rate.*

9 “(B) *The principal and interest payments*
10 *on each loan shall commence not later than 1*
11 *year after the date the loan was awarded, and*
12 *each loan shall be fully amortized not later than*
13 *10 years after the date of the loan.*

14 “(C) *The Loan Fund shall be credited with*
15 *all payments of principal and interest on each*
16 *loan awarded from the Loan Fund.*

17 “(2) *To guarantee, or purchase insurance for, a*
18 *local obligation (all of the proceeds of which finance*
19 *a project eligible for assistance under this subsection)*
20 *if the guarantee or purchase would improve credit*
21 *market access or reduce the interest rate applicable to*
22 *the obligation involved.*

23 “(3) *As a source of revenue or security for the*
24 *payment of principal and interest on revenue or gen-*
25 *eral obligation bonds issued by the eligible entity if*

1 *the proceeds of the sale of the bonds will be deposited*
2 *into the Loan Fund.*

3 “(4) *To earn interest on the amounts deposited*
4 *into the Loan Fund.*

5 “(5) *To make reimbursements described in sub-*
6 *section (g)(4)(A).*

7 “(g) *ADMINISTRATION OF LOAN FUNDS.—*

8 “(1) *COMBINED FINANCIAL ADMINISTRATION.—*
9 *An eligible entity may (as a convenience and to avoid*
10 *unnecessary administrative costs) combine, in accord-*
11 *ance with applicable State law, the financial admin-*
12 *istration of a Loan Fund established under this sub-*
13 *section with the financial administration of any other*
14 *revolving fund established by the entity if otherwise*
15 *not prohibited by the law under which the Loan Fund*
16 *was established.*

17 “(2) *COST OF ADMINISTERING FUND.—Each eli-*
18 *gible entity may annually use not to exceed 4 percent*
19 *of the funds provided to the entity under a grant*
20 *under this subsection to pay the reasonable costs of*
21 *the administration of the programs under this section,*
22 *including the recovery of reasonable costs expended to*
23 *establish a Loan Fund which are incurred after the*
24 *date of the enactment of this title.*

1 “(3) *GUIDANCE AND REGULATIONS.*—*The Na-*
2 *tional Coordinator shall publish guidance and pro-*
3 *mulgate regulations as may be necessary to carry out*
4 *the provisions of this section, including—*

5 “(A) *provisions to ensure that each eligible*
6 *entity commits and expends funds allotted to the*
7 *entity under this subsection as efficiently as pos-*
8 *sible in accordance with this title and applicable*
9 *State laws; and*

10 “(B) *guidance to prevent waste, fraud, and*
11 *abuse.*

12 “(4) *PRIVATE SECTOR CONTRIBUTIONS.*—

13 “(A) *IN GENERAL.*—*A Loan Fund estab-*
14 *lished under this subsection may accept contribu-*
15 *tions from private sector entities, except that*
16 *such entities may not specify the recipient or re-*
17 *cipients of any loan issued under this subsection.*
18 *An eligible entity may agree to reimburse a pri-*
19 *vate sector entity for any contribution made*
20 *under this subparagraph, except that the amount*
21 *of such reimbursement may not be greater than*
22 *the principal amount of the contribution made.*

23 “(B) *AVAILABILITY OF INFORMATION.*—*An*
24 *eligible entity shall make publicly available the*
25 *identity of, and amount contributed by, any pri-*

1 *vate sector entity under subparagraph (A) and*
2 *may issue letters of commendation or make other*
3 *awards (that have no financial value) to any*
4 *such entity.*

5 “(h) *MATCHING REQUIREMENTS.*—

6 “(1) *IN GENERAL.*—*The National Coordinator*
7 *may not make a grant under subsection (a) to an eli-*
8 *gible entity unless the entity agrees to make available*
9 *(directly or through donations from public or private*
10 *entities) non-Federal contributions in cash to the costs*
11 *of carrying out the activities for which the grant is*
12 *awarded in an amount equal to not less than \$1 for*
13 *each \$5 of Federal funds provided under the grant.*

14 “(2) *DETERMINATION OF AMOUNT OF NON-FED-*
15 *ERAL CONTRIBUTION.*—*In determining the amount of*
16 *non-Federal contributions that an eligible entity has*
17 *provided pursuant to subparagraph (A), the National*
18 *Coordinator may not include any amounts provided*
19 *to the entity by the Federal Government.*

20 “(i) *EFFECTIVE DATE.*—*The Secretary may not make*
21 *an award under this section prior to January 1, 2010.*

1 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
2 **FORMATION TECHNOLOGY INTO CLINICAL**
3 **EDUCATION.**

4 *“(a) IN GENERAL.—The Secretary may award grants*
5 *under this section to carry out demonstration projects to*
6 *develop academic curricula integrating certified EHR tech-*
7 *nology in the clinical education of health professionals.*
8 *Such awards shall be made on a competitive basis and pur-*
9 *suant to peer review.*

10 *“(b) ELIGIBILITY.—To be eligible to receive a grant*
11 *under subsection (a), an entity shall—*

12 *“(1) submit to the Secretary an application at*
13 *such time, in such manner, and containing such in-*
14 *formation as the Secretary may require;*

15 *“(2) submit to the Secretary a strategic plan for*
16 *integrating certified EHR technology in the clinical*
17 *education of health professionals to reduce medical er-*
18 *rors and enhance health care quality;*

19 *“(3) be—*

20 *“(A) a school of medicine, osteopathic medi-*
21 *cine, dentistry, or pharmacy, a graduate pro-*
22 *gram in behavioral or mental health, or any*
23 *other graduate health professions school;*

24 *“(B) a graduate school of nursing or physi-*
25 *cian assistant studies;*

1 “(C) a consortium of two or more schools
2 described in subparagraph (A) or (B); or

3 “(D) an institution with a graduate med-
4 ical education program in medicine, osteopathic
5 medicine, dentistry, pharmacy, nursing, or phy-
6 sician assistance studies.

7 “(4) provide for the collection of data regarding
8 the effectiveness of the demonstration project to be
9 funded under the grant in improving the safety of pa-
10 tients, the efficiency of health care delivery, and in
11 increasing the likelihood that graduates of the grantee
12 will adopt and incorporate certified EHR technology,
13 in the delivery of health care services; and

14 “(5) provide matching funds in accordance with
15 subsection (d).

16 “(c) *USE OF FUNDS.*—

17 “(1) *IN GENERAL.*—With respect to a grant
18 under subsection (a), an eligible entity shall—

19 “(A) use grant funds in collaboration with
20 2 or more disciplines; and

21 “(B) use grant funds to integrate certified
22 EHR technology into community-based clinical
23 education.

1 “(2) *LIMITATION.*—*An eligible entity shall not*
2 *use amounts received under a grant under subsection*
3 *(a) to purchase hardware, software, or services.*

4 “(d) *FINANCIAL SUPPORT.*—*The Secretary may not*
5 *provide more than 50 percent of the costs of any activity*
6 *for which assistance is provided under subsection (a), except*
7 *in an instance of national economic conditions which would*
8 *render the cost-share requirement under this subsection det-*
9 *rimonental to the program and upon notification to Congress*
10 *as to the justification to waive the cost-share requirement.*

11 “(e) *EVALUATION.*—*The Secretary shall take such ac-*
12 *tion as may be necessary to evaluate the projects funded*
13 *under this section and publish, make available, and dis-*
14 *seminate the results of such evaluations on as wide a basis*
15 *as is practicable.*

16 “(f) *REPORTS.*—*Not later than 1 year after the date*
17 *of enactment of this title, and annually thereafter, the Sec-*
18 *retary shall submit to the Committee on Health, Education,*
19 *Labor, and Pensions and the Committee on Finance of the*
20 *Senate, and the Committee on Energy and Commerce of*
21 *the House of Representatives a report that—*

22 “(1) *describes the specific projects established*
23 *under this section; and*

1 “(2) *contains recommendations for Congress*
2 *based on the evaluation conducted under subsection*
3 *(e).*

4 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
5 **ON HEALTH CARE.**

6 “(a) *IN GENERAL.—The Secretary, in consultation*
7 *with the Director of the National Science Foundation, shall*
8 *provide assistance to institutions of higher education (or*
9 *consortia thereof) to establish or expand medical health*
10 *informatics education programs, including certification,*
11 *undergraduate, and masters degree programs, for both*
12 *health care and information technology students to ensure*
13 *the rapid and effective utilization and development of*
14 *health information technologies (in the United States health*
15 *care infrastructure).*

16 “(b) *ACTIVITIES.—Activities for which assistance may*
17 *be provided under subsection (a) may include the following:*

18 “(1) *Developing and revising curricula in med-*
19 *ical health informatics and related disciplines.*

20 “(2) *Recruiting and retaining students to the*
21 *program involved.*

22 “(3) *Acquiring equipment necessary for student*
23 *instruction in these programs, including the installa-*
24 *tion of testbed networks for student use.*

1 “(4) *Establishing or enhancing bridge programs*
2 *in the health informatics fields between community*
3 *colleges and universities.*

4 “(c) *PRIORITY.—In providing assistance under sub-*
5 *section (a), the Secretary shall give preference to the fol-*
6 *lowing:*

7 “(1) *Existing education and training programs.*

8 “(2) *Programs designed to be completed in less*
9 *than six months.*

10 “(d) *FINANCIAL SUPPORT.—The Secretary may not*
11 *provide more than 50 percent of the costs of any activity*
12 *for which assistance is provided under subsection (a), except*
13 *in an instance of national economic conditions which would*
14 *render the cost-share requirement under this subsection det-*
15 *rimental to the program and upon notification to Congress*
16 *as to the justification to waive the cost-share requirement.*

17 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

18 “(a) *REPORTS.—The Secretary may require that an*
19 *entity receiving assistance under this title shall submit to*
20 *the Secretary, not later than the date that is 1 year after*
21 *the date of receipt of such assistance, a report that in-*
22 *cludes—*

23 “(1) *an analysis of the effectiveness of the activi-*
24 *ties for which the entity receives such assistance, as*
25 *compared to the goals for such activities; and*

1 “(2) *an analysis of the impact of the project on*
2 *health care quality and safety.*”

3 “(b) *REQUIREMENT TO IMPROVE QUALITY OF CARE*
4 *AND DECREASE IN COSTS.—The National Coordinator shall*
5 *annually evaluate the activities conducted under this title*
6 *and shall, in awarding grants, implement the lessons*
7 *learned from such evaluation in a manner so that awards*
8 *made subsequent to each such evaluation are made in a*
9 *manner that, in the determination of the National Coordi-*
10 *nator, will result in the greatest improvement in the quality*
11 *and efficiency of health care.*”

12 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

13 *“For the purposes of carrying out this subtitle, there*
14 *is authorized to be appropriated such sums as may be nec-*
15 *essary for each of the fiscal years 2009 through 2013.*
16 *Amounts so appropriated shall remain available until ex-*
17 *pended.”.*”

18 **PART II—MEDICARE PROGRAM**

19 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

20 *(a) INCENTIVE PAYMENTS.—Section 1848 of the Social*
21 *Security Act (42 U.S.C. 1395w-4) is amended by adding*
22 *at the end the following new subsection:*

23 “(o) *INCENTIVES FOR ADOPTION AND MEANINGFUL*
24 *USE OF CERTIFIED EHR TECHNOLOGY.—*

25 “(1) *INCENTIVE PAYMENTS.—*

1 “(A) *IN GENERAL.*—Subject to the suc-
2 ceeding subparagraphs of this paragraph, with
3 respect to covered professional services furnished
4 by an eligible professional during a payment
5 year (as defined in subparagraph (E)), if the eli-
6 gible professional is a meaningful EHR user (as
7 determined under paragraph (2)) for the report-
8 ing period with respect to such year, in addition
9 to the amount otherwise paid under this part,
10 there also shall be paid to the eligible profes-
11 sional (or to an employer or facility in the cases
12 described in clause (A) of section 1842(b)(6)),
13 from the Federal Supplementary Medical Insur-
14 ance Trust Fund established under section 1841
15 an amount equal to 75 percent of the Secretary’s
16 estimate (based on claims submitted not later
17 than 2 months after the end of the payment
18 year) of the allowed charges under this part for
19 all such covered professional services furnished
20 by the eligible professional during such year.

21 “(B) *LIMITATIONS ON AMOUNTS OF INCEN-*
22 *TIVE PAYMENTS.*—

23 “(i) *IN GENERAL.*—In no case shall the
24 amount of the incentive payment provided
25 under this paragraph for an eligible profes-

1 *sional for a payment year exceed the appli-*
2 *cable amount specified under this subpara-*
3 *graph with respect to such eligible profes-*
4 *sional and such year.*

5 *“(ii) AMOUNT.—Subject to clause (iii),*
6 *the applicable amount specified in this sub-*
7 *paragraph for an eligible professional is as*
8 *follows:*

9 *“(I) For the first payment year*
10 *for such professional, \$15,000.*

11 *“(II) For the second payment*
12 *year for such professional, \$12,000.*

13 *“(III) For the third payment year*
14 *for such professional, \$8,000.*

15 *“(IV) For the fourth payment*
16 *year for such professional, \$4,000.*

17 *“(V) For the fifth payment year*
18 *for such professional, \$2,000.*

19 *“(VI) For any succeeding pay-*
20 *ment year for such professional, \$0.*

21 *“(iii) PHASE DOWN FOR ELIGIBLE*
22 *PROFESSIONALS FIRST ADOPTING EHR*
23 *AFTER 2013.—If the first payment year for*
24 *an eligible professional is after 2013, then*
25 *the amount specified in this subparagraph*

1 for a payment year for such professional is
2 the same as the amount specified in clause
3 (ii) for such payment year for an eligible
4 professional whose first payment year is
5 2013. If the first payment year for an eligi-
6 ble professional is after 2015 then the appli-
7 cable amount specified in this subparagraph
8 for such professional for such year and any
9 subsequent year shall be \$0.

10 “(C) *NON-APPLICATION TO HOSPITAL-BASED*
11 *ELIGIBLE PROFESSIONALS.*—

12 “(i) *IN GENERAL.*—No incentive pay-
13 ment may be made under this paragraph in
14 the case of a hospital-based eligible profes-
15 sional.

16 “(ii) *HOSPITAL-BASED ELIGIBLE PRO-*
17 *FSSIONAL.*—For purposes of clause (i), the
18 term ‘hospital-based eligible professional’
19 means, with respect to covered professional
20 services furnished by an eligible professional
21 during the reporting period for a payment
22 year, an eligible professional, such as a pa-
23 thologist, anesthesiologist, or emergency
24 physician, who furnishes substantially all of
25 such services in a hospital setting (whether

1 inpatient or outpatient) and through the
2 use of the facilities and equipment, includ-
3 ing computer equipment, of the hospital.

4 “(D) PAYMENT.—

5 “(i) FORM OF PAYMENT.—The pay-
6 ment under this paragraph may be in the
7 form of a single consolidated payment or in
8 the form of such periodic installments as the
9 Secretary may specify.

10 “(ii) COORDINATION OF APPLICATION
11 OF LIMITATION FOR PROFESSIONALS IN DIF-
12 FERENT PRACTICES.—In the case of an eli-
13 gible professional furnishing covered profes-
14 sional services in more than one practice
15 (as specified by the Secretary), the Sec-
16 retary shall establish rules to coordinate the
17 incentive payments, including the applica-
18 tion of the limitation on amounts of such
19 incentive payments under this paragraph,
20 among such practices.

21 “(iii) COORDINATION WITH MED-
22 ICAID.—The Secretary shall seek, to the
23 maximum extent practicable, to avoid du-
24 plicative requirements from Federal and
25 State Governments to demonstrate meaning-

1 *ful use of certified EHR technology under*
2 *this title and title XIX. In doing so, the*
3 *Secretary may deem satisfaction of State*
4 *requirements for such meaningful use for a*
5 *payment year under title XIX to be suffi-*
6 *cient to qualify as meaningful use under*
7 *this subsection and subsection (a)(7) and*
8 *vice versa. The Secretary may also adjust*
9 *the reporting periods under such title and*
10 *such subsections in order to carry out this*
11 *clause.*

12 “(E) *PAYMENT YEAR DEFINED.*—

13 “(i) *IN GENERAL.*—*For purposes of*
14 *this subsection, the term ‘payment year’*
15 *means a year beginning with 2011.*

16 “(ii) *FIRST, SECOND, ETC. PAYMENT*
17 *YEAR.*—*The term ‘first payment year’*
18 *means, with respect to covered professional*
19 *services furnished by an eligible profes-*
20 *sional, the first year for which an incentive*
21 *payment is made for such services under*
22 *this subsection. The terms ‘second payment*
23 *year’, ‘third payment year’, ‘fourth pay-*
24 *ment year’, and ‘fifth payment year’ mean,*
25 *with respect to covered professional services*

1 *furnished by such eligible professional, each*
2 *successive year immediately following the*
3 *first payment year for such professional.*

4 “(2) *MEANINGFUL EHR USER.*—

5 “(A) *IN GENERAL.*—*For purposes of para-*
6 *graph (1), an eligible professional shall be treat-*
7 *ed as a meaningful EHR user for a reporting*
8 *period for a payment year (or, for purposes of*
9 *subsection (a)(7), for a reporting period under*
10 *such subsection for a year) if each of the fol-*
11 *lowing requirements is met:*

12 “(i) *MEANINGFUL USE OF CERTIFIED*
13 *EHR TECHNOLOGY.*—*The eligible profes-*
14 *sional demonstrates to the satisfaction of the*
15 *Secretary, in accordance with subparagraph*
16 *(C)(i), that during such period the profes-*
17 *sional is using certified EHR technology in*
18 *a meaningful manner, which shall include*
19 *the use of electronic prescribing as deter-*
20 *mined to be appropriate by the Secretary.*

21 “(ii) *INFORMATION EXCHANGE.*—*The*
22 *eligible professional demonstrates to the sat-*
23 *isfaction of the Secretary, in accordance*
24 *with subparagraph (C)(i), that during such*
25 *period such certified EHR technology is*

1 *connected in a manner that provides, in ac-*
2 *cordance with law and standards applicable*
3 *to the exchange of information, for the elec-*
4 *tronic exchange of health information to im-*
5 *prove the quality of health care, such as*
6 *promoting care coordination.*

7 “*(iii) REPORTING ON MEASURES USING*
8 *EHR.—Subject to subparagraph (B)(ii) and*
9 *using such certified EHR technology, the el-*
10 *igible professional submits information for*
11 *such period, in a form and manner speci-*
12 *fied by the Secretary, on such clinical qual-*
13 *ity measures and such other measures as se-*
14 *lected by the Secretary under subparagraph*
15 *(B)(i).*

16 *The Secretary may provide for the use of alter-*
17 *native means for meeting the requirements of*
18 *clauses (i), (ii), and (iii) in the case of an eligi-*
19 *ble professional furnishing covered professional*
20 *services in a group practice (as defined by the*
21 *Secretary). The Secretary shall seek to improve*
22 *the use of electronic health records and health*
23 *care quality over time by requiring more strin-*
24 *gent measures of meaningful use selected under*
25 *this paragraph.*

1 “(B) *REPORTING ON MEASURES.*—

2 “(i) *SELECTION.*—*The Secretary shall*
3 *select measures for purposes of subpara-*
4 *graph (A)(iii) but only consistent with the*
5 *following:*

6 “(I) *The Secretary shall provide*
7 *preference to clinical quality measures*
8 *that have been endorsed by the entity*
9 *with a contract with the Secretary*
10 *under section 1890(a).*

11 “(II) *Prior to any measure being*
12 *selected under this subparagraph, the*
13 *Secretary shall publish in the Federal*
14 *Register such measure and provide for*
15 *a period of public comment on such*
16 *measure.*

17 “(ii) *LIMITATION.*—*The Secretary may*
18 *not require the electronic reporting of infor-*
19 *mation on clinical quality measures under*
20 *subparagraph (A)(iii) unless the Secretary*
21 *has the capacity to accept the information*
22 *electronically, which may be on a pilot*
23 *basis.*

24 “(iii) *COORDINATION OF REPORTING*
25 *OF INFORMATION.*—*In selecting such meas-*

1 *ures, and in establishing the form and man-*
2 *ner for reporting measures under subpara-*
3 *graph (A)(iii), the Secretary shall seek to*
4 *avoid redundant or duplicative reporting*
5 *otherwise required, including reporting*
6 *under subsection (k)(2)(C).*

7 *“(C) DEMONSTRATION OF MEANINGFUL USE*
8 *OF CERTIFIED EHR TECHNOLOGY AND INFORMA-*
9 *TION EXCHANGE.—*

10 *“(i) IN GENERAL.—A professional may*
11 *satisfy the demonstration requirement of*
12 *clauses (i) and (ii) of subparagraph (A)*
13 *through means specified by the Secretary,*
14 *which may include—*

15 *“(I) an attestation;*

16 *“(II) the submission of claims*
17 *with appropriate coding (such as a*
18 *code indicating that a patient encoun-*
19 *ter was documented using certified*
20 *EHR technology);*

21 *“(III) a survey response;*

22 *“(IV) reporting under subpara-*
23 *graph (A)(iii); and*

24 *“(V) other means specified by the*
25 *Secretary.*

1 “(ii) *USE OF PART D DATA.*—*Notwith-*
2 *standing sections 1860D–15(d)(2)(B) and*
3 *1860D–15(f)(2), the Secretary may use data*
4 *regarding drug claims submitted for pur-*
5 *poses of section 1860D–15 that are nec-*
6 *essary for purposes of subparagraph (A).*

7 “(3) *APPLICATION.*—

8 “(A) *PHYSICIAN REPORTING SYSTEM*
9 *RULES.*—*Paragraphs (5), (6), and (8) of sub-*
10 *section (k) shall apply for purposes of this sub-*
11 *section in the same manner as they apply for*
12 *purposes of such subsection.*

13 “(B) *COORDINATION WITH OTHER PAY-*
14 *MENTS.*—*The provisions of this subsection shall*
15 *not be taken into account in applying the provi-*
16 *sions of subsection (m) of this section and of sec-*
17 *tion 1833(m) and any payment under such pro-*
18 *visions shall not be taken into account in com-*
19 *puting allowable charges under this subsection.*

20 “(C) *LIMITATIONS ON REVIEW.*—*There shall*
21 *be no administrative or judicial review under*
22 *section 1869, section 1878, or otherwise of the de-*
23 *termination of any incentive payment under this*
24 *subsection and the payment adjustment under*
25 *subsection (a)(7), including the determination of*

1 *a meaningful EHR user under paragraph (2), a*
2 *limitation under paragraph (1)(B), and the ex-*
3 *ception under subsection (a)(7)(B).*

4 “(D) *POSTING ON WEBSITE.*—*The Secretary*
5 *shall post on the Internet website of the Centers*
6 *for Medicare & Medicaid Services, in an easily*
7 *understandable format, a list of the names, busi-*
8 *ness addresses, and business phone numbers of*
9 *the eligible professionals who are meaningful*
10 *EHR users and, as determined appropriate by*
11 *the Secretary, of group practices receiving incen-*
12 *tive payments under paragraph (1).*

13 “(4) *CERTIFIED EHR TECHNOLOGY DEFINED.*—
14 *For purposes of this section, the term ‘certified EHR*
15 *technology’ means a qualified electronic health record*
16 *(as defined in 3000(13) of the Public Health Service*
17 *Act) that is certified pursuant to section 3001(c)(5) of*
18 *such Act as meeting standards adopted under section*
19 *3004 of such Act that are applicable to the type of*
20 *record involved (as determined by the Secretary, such*
21 *as an ambulatory electronic health record for office-*
22 *based physicians or an inpatient hospital electronic*
23 *health record for hospitals).*

24 “(5) *DEFINITIONS.*—*For purposes of this sub-*
25 *section:*

1 “(A) *COVERED PROFESSIONAL SERVICES*.—
2 *The term ‘covered professional services’ has the*
3 *meaning given such term in subsection (k)(3).*

4 “(B) *ELIGIBLE PROFESSIONAL*.—*The term*
5 *‘eligible professional’ means a physician, as de-*
6 *finied in section 1861(r).*

7 “(C) *REPORTING PERIOD*.—*The term ‘re-*
8 *porting period’ means any period (or periods),*
9 *with respect to a payment year, as specified by*
10 *the Secretary.”*

11 (b) *INCENTIVE PAYMENT ADJUSTMENT*.—*Section*
12 *1848(a) of the Social Security Act (42 U.S.C. 1395w-4(a))*
13 *is amended by adding at the end the following new para-*
14 *graph:*

15 “(7) *INCENTIVES FOR MEANINGFUL USE OF CER-*
16 *TIFIED EHR TECHNOLOGY*.—

17 “(A) *ADJUSTMENT*.—

18 “(i) *IN GENERAL*.—*Subject to subpara-*
19 *graphs (B) and (D), with respect to covered*
20 *professional services furnished by an eligible*
21 *professional during 2016 or any subsequent*
22 *payment year, if the eligible professional is*
23 *not a meaningful EHR user (as determined*
24 *under subsection (o)(2)) for a reporting pe-*
25 *riod for the year, the fee schedule amount*

1 for such services furnished by such profes-
2 sional during the year (including the fee
3 schedule amount for purposes of deter-
4 mining a payment based on such amount)
5 shall be equal to the applicable percent of
6 the fee schedule amount that would other-
7 wise apply to such services under this sub-
8 section (determined after application of
9 paragraph (3) but without regard to this
10 paragraph).

11 “(ii) *APPLICABLE PERCENT.*—Subject
12 to clause (iii), for purposes of clause (i), the
13 term ‘applicable percent’ means—

14 “(I) for 2016, 99 percent;

15 “(II) for 2017, 98 percent; and

16 “(III) for 2018 and each subse-
17 quent year, 97 percent.

18 “(iii) *AUTHORITY TO DECREASE AP-*
19 *PLICABLE PERCENTAGE FOR 2019 AND SUB-*
20 *SEQUENT YEARS.*—For 2019 and each sub-
21 sequent year, if the Secretary finds that the
22 proportion of eligible professionals who are
23 meaningful *EHR* users (as determined
24 under subsection (o)(2)) is less than 75 per-
25 cent, the applicable percent shall be de-

1 *creased by 1 percentage point from the ap-*
2 *plicable percent in the preceding year, but*
3 *in no case shall the applicable percent be*
4 *less than 95 percent.*

5 “(B) *SIGNIFICANT HARDSHIP EXCEPTION.*—
6 *The Secretary may, on a case-by-case basis, ex-*
7 *empt an eligible professional from the applica-*
8 *tion of the payment adjustment under subpara-*
9 *graph (A) if the Secretary determines, subject to*
10 *annual renewal, that compliance with the re-*
11 *quirement for being a meaningful EHR user*
12 *would result in a significant hardship, such as*
13 *in the case of an eligible professional who prac-*
14 *tices in a rural area without sufficient Internet*
15 *access. In no case may an eligible professional be*
16 *granted an exemption under this subparagraph*
17 *for more than 5 years.*

18 “(C) *APPLICATION OF PHYSICIAN REPORT-*
19 *ING SYSTEM RULES.*—*Paragraphs (5), (6), and*
20 *(8) of subsection (k) shall apply for purposes of*
21 *this paragraph in the same manner as they*
22 *apply for purposes of such subsection.*

23 “(D) *NON-APPLICATION TO HOSPITAL-*
24 *BASED ELIGIBLE PROFESSIONALS.*—*No payment*
25 *adjustment may be made under subparagraph*

1 (A) *in the case of hospital-based eligible profes-*
2 *sionals (as defined in subsection (o)(1)(C)(ii)).*

3 “(E) *DEFINITIONS.—For purposes of this*
4 *paragraph:*

5 “(i) *COVERED PROFESSIONAL SERV-*
6 *ICES.—The term ‘covered professional serv-*
7 *ices’ has the meaning given such term in*
8 *subsection (k)(3).*

9 “(ii) *ELIGIBLE PROFESSIONAL.—The*
10 *term ‘eligible professional’ means a physi-*
11 *cian, as defined in section 1861(r).*

12 “(iii) *REPORTING PERIOD.—The term*
13 *‘reporting period’ means, with respect to a*
14 *year, a period specified by the Secretary.”.*

15 (c) *APPLICATION TO CERTAIN HMO-AFFILIATED ELI-*
16 *GIBLE PROFESSIONALS.—Section 1853 of the Social Secu-*
17 *rity Act (42 U.S.C. 1395w–23) is amended by adding at*
18 *the end the following new subsection:*

19 “(l) *APPLICATION OF ELIGIBLE PROFESSIONAL INCEN-*
20 *TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION*
21 *AND MEANINGFUL USE OF CERTIFIED EHR TECH-*
22 *NOLOGY.—*

23 “(1) *IN GENERAL.—Subject to paragraphs (3)*
24 *and (4), in the case of a qualifying MA organization,*
25 *the provisions of sections 1848(o) and 1848(a)(7)*

1 *shall apply with respect to eligible professionals de-*
2 *scribed in paragraph (2) of the organization who the*
3 *organization attests under paragraph (6) to be mean-*
4 *ingful EHR users in a similar manner as they apply*
5 *to eligible professionals under such sections. Incentive*
6 *payments under paragraph (3) shall be made to and*
7 *payment adjustments under paragraph (4) shall*
8 *apply to such qualifying organizations.*

9 “(2) *ELIGIBLE PROFESSIONAL DESCRIBED.—*
10 *With respect to a qualifying MA organization, an eli-*
11 *gible professional described in this paragraph is an*
12 *eligible professional (as defined for purposes of section*
13 *1848(o)) who—*

14 “(A)(i) *is employed by the organization; or*

15 “(ii)(I) *is employed by, or is a partner of,*
16 *an entity that through contract with the organi-*
17 *zation furnishes at least 80 percent of the enti-*
18 *ty’s patient care services to enrollees of such or-*
19 *ganization; and*

20 “(II) *furnishes at least 75 percent of the*
21 *professional services of the eligible professional to*
22 *enrollees of the organization; and*

23 “(B) *furnishes, on average, at least 20 hours*
24 *per week of patient care services.*

1 “(3) *ELIGIBLE PROFESSIONAL INCENTIVE PAY-*
2 *MENTS.—*

3 “(A) *IN GENERAL.—In applying section*
4 *1848(o) under paragraph (1), instead of the ad-*
5 *ditional payment amount under section*
6 *1848(o)(1)(A) and subject to subparagraph (B),*
7 *the Secretary may substitute an amount deter-*
8 *mined by the Secretary to the extent feasible and*
9 *practical to be similar to the estimated amount*
10 *in the aggregate that would be payable if pay-*
11 *ment for services furnished by such professionals*
12 *was payable under part B instead of this part.*

13 “(B) *AVOIDING DUPLICATION OF PAY-*
14 *MENTS.—*

15 “(i) *IN GENERAL.—If an eligible pro-*
16 *fessional described in paragraph (2) is eligi-*
17 *ble for the maximum incentive payment*
18 *under section 1848(o)(1)(A) for the same*
19 *payment period, the payment incentive*
20 *shall be made only under such section and*
21 *not under this subsection.*

22 “(ii) *METHODS.—In the case of an eli-*
23 *gible professional described in paragraph*
24 *(2) who is eligible for an incentive payment*
25 *under section 1848(o)(1)(A) but is not de-*

1 scribed in clause (i) for the same payment
2 period, the Secretary shall develop a proc-
3 ess—

4 “(I) to ensure that duplicate pay-
5 ments are not made with respect to an
6 eligible professional both under this
7 subsection and under section
8 1848(o)(1)(A); and

9 “(II) to collect data from Medi-
10 care Advantage organizations to ensure
11 against such duplicate payments.

12 “(C) *FIXED SCHEDULE FOR APPLICATION*
13 *OF LIMITATION ON INCENTIVE PAYMENTS FOR*
14 *ALL ELIGIBLE PROFESSIONALS.—In applying*
15 *section 1848(o)(1)(B)(ii) under subparagraph*
16 *(A), in accordance with rules specified by the*
17 *Secretary, a qualifying MA organization shall*
18 *specify a year (not earlier than 2011) that shall*
19 *be treated as the first payment year for all eligi-*
20 *ble professionals with respect to such organiza-*
21 *tion.*

22 “(4) *PAYMENT ADJUSTMENT.—*

23 “(A) *IN GENERAL.—In applying section*
24 *1848(a)(7) under paragraph (1), instead of the*
25 *payment adjustment being an applicable percent*

1 *of the fee schedule amount for a year under such*
2 *section, subject to subparagraph (D), the pay-*
3 *ment adjustment under paragraph (1) shall be*
4 *equal to the percent specified in subparagraph*
5 *(B) for such year of the payment amount other-*
6 *wise provided under this section for such year.*

7 “(B) *SPECIFIED PERCENT.*—*The percent*
8 *specified under this subparagraph for a year is*
9 *100 percent minus a number of percentage*
10 *points equal to the product of—*

11 “(i) *the number of percentage points by*
12 *which the applicable percent (under section*
13 *1848(a)(7)(A)(ii)) for the year is less than*
14 *100 percent; and*

15 “(ii) *the Medicare physician expendi-*
16 *ture proportion specified in subparagraph*
17 *(C) for the year.*

18 “(C) *MEDICARE PHYSICIAN EXPENDITURE*
19 *PROPORTION.*—*The Medicare physician expendi-*
20 *ture proportion under this subparagraph for a*
21 *year is the Secretary’s estimate of the propor-*
22 *tion, of the expenditures under parts A and B*
23 *that are not attributable to this part, that are*
24 *attributable to expenditures for physicians’ serv-*
25 *ices.*

1 “(D) *APPLICATION OF PAYMENT ADJUST-*
2 *MENT.—In the case that a qualifying MA orga-*
3 *nization attests that not all eligible professionals*
4 *are meaningful EHR users with respect to a*
5 *year, the Secretary shall apply the payment ad-*
6 *justment under this paragraph based on the pro-*
7 *portion of such eligible professionals that are not*
8 *meaningful EHR users for such year.*

9 “(5) *QUALIFYING MA ORGANIZATION DEFINED.—*
10 *In this subsection and subsection (m), the term ‘quali-*
11 *fying MA organization’ means a Medicare Advantage*
12 *organization that is organized as a health mainte-*
13 *nance organization (as defined in section 2791(b)(3)*
14 *of the Public Health Service Act).*

15 “(6) *MEANINGFUL EHR USER ATTESTATION.—*
16 *For purposes of this subsection and subsection (m), a*
17 *qualifying MA organization shall submit an attesta-*
18 *tion, in a form and manner specified by the Secretary*
19 *which may include the submission of such attestation*
20 *as part of submission of the initial bid under section*
21 *1854(a)(1)(A)(iv), identifying—*

22 “(A) *whether each eligible professional de-*
23 *scribed in paragraph (2), with respect to such*
24 *organization is a meaningful EHR user (as de-*

1 *fined in section 1848(o)(2)) for a year specified*
2 *by the Secretary; and*

3 “(B) *whether each eligible hospital described*
4 *in subsection (m)(1), with respect to such organi-*
5 *zation, is a meaningful EHR user (as defined in*
6 *section 1886(n)(3)) for an applicable period*
7 *specified by the Secretary.”.*

8 (d) *CONFORMING AMENDMENTS.—Section 1853 of the*
9 *Social Security Act (42 U.S.C. 1395w–23) is amended—*

10 (1) *in subsection (a)(1)(A), by striking “and (i)”*
11 *and inserting “(i), and (l)”;*

12 (2) *in subsection (c)—*

13 (A) *in paragraph (1)(D)(i), by striking*
14 *“section 1886(h)” and inserting “sections*
15 *1848(o) and 1886(h)”;* and

16 (B) *in paragraph (6)(A), by inserting after*
17 *“under part B,” the following: “excluding ex-*
18 *penditures attributable to subsections (a)(7) and*
19 *(o) of section 1848,”;* and

20 (3) *in subsection (f), by inserting “and for pay-*
21 *ments under subsection (l)” after “with the organiza-*
22 *tion”.*

23 (e) *CONFORMING AMENDMENTS TO E-PRESCRIBING.—*

24 (1) *Section 1848(a)(5)(A) of the Social Security*
25 *Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—*

1 (A) in clause (i), by striking “or any subse-
2 quent year” and inserting “, 2013, 2014, or
3 2015”; and

4 (B) in clause (ii), by striking “and each
5 subsequent year” and inserting “and 2015”.

6 (2) Section 1848(m)(2) of such Act (42 U.S.C.
7 1395w-4(m)(2)) is amended—

8 (A) in subparagraph (A), by striking “For
9 2009” and inserting “Subject to subparagraph
10 (D), for 2009”; and

11 (B) by adding at the end the following new
12 subparagraph:

13 “(D) *LIMITATION WITH RESPECT TO EHR*
14 *INCENTIVE PAYMENTS.—The provisions of this*
15 *paragraph shall not apply to an eligible profes-*
16 *sional (or, in the case of a group practice under*
17 *paragraph (3)(C), to the group practice) if, for*
18 *the reporting period the eligible professional (or*
19 *group practice) receives an incentive payment*
20 *under subsection (o)(1)(A) with respect to a cer-*
21 *tified EHR technology (as defined in subsection*
22 *(o)(4)) that has the capability of electronic pre-*
23 *scribing.”.*

1 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

2 (a) *INCENTIVE PAYMENT.*—Section 1886 of the Social
3 Security Act (42 U.S.C. 1395ww) is amended by adding
4 at the end the following new subsection:

5 “(n) *INCENTIVES FOR ADOPTION AND MEANINGFUL*
6 *USE OF CERTIFIED EHR TECHNOLOGY.*—

7 “(1) *IN GENERAL.*—Subject to the succeeding
8 provisions of this subsection, with respect to inpatient
9 hospital services furnished by an eligible hospital dur-
10 ing a payment year (as defined in paragraph
11 (2)(G)), if the eligible hospital is a meaningful EHR
12 user (as determined under paragraph (3)) for the re-
13 porting period with respect to such year, in addition
14 to the amount otherwise paid under this section, there
15 also shall be paid to the eligible hospital, from the
16 Federal Hospital Insurance Trust Fund established
17 under section 1817, an amount equal to the applica-
18 ble amount specified in paragraph (2)(A) for the hos-
19 pital for such payment year.

20 “(2) *PAYMENT AMOUNT.*—

21 “(A) *IN GENERAL.*—Subject to the suc-
22 ceeding subparagraphs of this paragraph, the ap-
23 plicable amount specified in this subparagraph
24 for an eligible hospital for a payment year is
25 equal to the product of the following:

26 “(i) *INITIAL AMOUNT.*—The sum of—

1 “(I) the base amount specified in
2 subparagraph (B); plus

3 “(II) the discharge related amount
4 specified in subparagraph (C) for a 12-
5 month period selected by the Secretary
6 with respect to such payment year.

7 “(ii) *MEDICARE SHARE*.—The Medi-
8 care share as specified in subparagraph (D)
9 for the hospital for a period selected by the
10 Secretary with respect to such payment
11 year.

12 “(iii) *TRANSITION FACTOR*.—The tran-
13 sition factor specified in subparagraph (E)
14 for the hospital for the payment year.

15 “(B) *BASE AMOUNT*.—The base amount
16 specified in this subparagraph is \$2,000,000.

17 “(C) *DISCHARGE RELATED AMOUNT*.—The
18 discharge related amount specified in this sub-
19 paragraph for a 12-month period selected by the
20 Secretary shall be determined as the sum of the
21 amount, based upon total discharges (regardless
22 of any source of payment) for the period, for
23 each discharge up to the 23,000th discharge as
24 follows:

1 “(i) For the 1,150th through the
2 9,200nd discharge, \$200.

3 “(ii) For the 9,201st through the
4 13,800th discharge, 50 percent of the
5 amount specified in clause (i).

6 “(iii) For the 13,801st through the
7 23,000th discharge, 30 percent of the
8 amount specified in clause (i).

9 “(D) *MEDICARE SHARE.*—The Medicare
10 share specified under this subparagraph for a
11 hospital for a period selected by the Secretary for
12 a payment year is equal to the fraction—

13 “(i) the numerator of which is the sum
14 (for such period and with respect to the hos-
15 pital) of—

16 “(I) the number of inpatient-bed-
17 days (as established by the Secretary)
18 which are attributable to individuals
19 with respect to whom payment may be
20 made under part A; and

21 “(II) the number of inpatient-bed-
22 days (as so established) which are at-
23 tributable to individuals who are en-
24 rolled with a Medicare Advantage or-
25 ganization under part C; and

1 “(ii) the denominator of which is the
2 product of—

3 “(I) the total number of inpa-
4 tient-bed-days with respect to the hos-
5 pital during such period; and

6 “(II) the total amount of the hos-
7 pital’s charges during such period, not
8 including any charges that are attrib-
9 utable to charity care (as such term is
10 used for purposes of hospital cost re-
11 porting under this title), divided by the
12 total amount of the hospital’s charges
13 during such period.

14 Insofar as the Secretary determines that data are
15 not available on charity care necessary to cal-
16 culate the portion of the formula specified in
17 clause (ii)(II), the Secretary shall use data on
18 uncompensated care and may adjust such data
19 so as to be an appropriate proxy for charity care
20 including a downward adjustment to eliminate
21 bad debt data from uncompensated care data. In
22 the absence of the data necessary, with respect to
23 a hospital, for the Secretary to compute the
24 amount described in clause (ii)(II), the amount
25 under such clause shall be deemed to be 1. In the

1 *absence of data, with respect to a hospital, nec-*
2 *essary to compute the amount described in clause*
3 *(i)(II), the amount under such clause shall be*
4 *deemed to be 0.*

5 “(E) *TRANSITION FACTOR SPECIFIED.—*

6 “*(i) IN GENERAL.—Subject to clause*
7 *(ii), the transition factor specified in this*
8 *subparagraph for an eligible hospital for a*
9 *payment year is as follows:*

10 “*(I) For the first payment year*
11 *for such hospital, 1.*

12 “*(II) For the second payment*
13 *year for such hospital, $\frac{3}{4}$.*

14 “*(III) For the third payment year*
15 *for such hospital, $\frac{1}{2}$.*

16 “*(IV) For the fourth payment*
17 *year for such hospital, $\frac{1}{4}$.*

18 “*(V) For any succeeding payment*
19 *year for such hospital, 0.*

20 “*(ii) PHASE DOWN FOR ELIGIBLE HOS-*
21 *PITALS FIRST ADOPTING EHR AFTER 2013.—*

22 *If the first payment year for an eligible hos-*
23 *pital is after 2013, then the transition fac-*
24 *tor specified in this subparagraph for a*
25 *payment year for such hospital is the same*

1 *as the amount specified in clause (i) for*
2 *such payment year for an eligible hospital*
3 *for which the first payment year is 2013. If*
4 *the first payment year for an eligible hos-*
5 *pital is after 2015 then the transition factor*
6 *specified in this subparagraph for such hos-*
7 *pital and for such year and any subsequent*
8 *year shall be 0.*

9 “(F) *FORM OF PAYMENT.*—*The payment*
10 *under this subsection for a payment year may be*
11 *in the form of a single consolidated payment or*
12 *in the form of such periodic installments as the*
13 *Secretary may specify.*

14 “(G) *PAYMENT YEAR DEFINED.*—

15 “(i) *IN GENERAL.*—*For purposes of*
16 *this subsection, the term ‘payment year’*
17 *means a fiscal year beginning with fiscal*
18 *year 2011.*

19 “(ii) *FIRST, SECOND, ETC. PAYMENT*
20 *YEAR.*—*The term ‘first payment year’*
21 *means, with respect to inpatient hospital*
22 *services furnished by an eligible hospital,*
23 *the first fiscal year for which an incentive*
24 *payment is made for such services under*
25 *this subsection. The terms ‘second payment*

1 *year*, *‘third payment year*’, and *‘fourth*
2 *payment year*’ mean, with respect to an eli-
3 *gible hospital*, each successive year imme-
4 *diately following the first payment year for*
5 *that hospital*.

6 “(3) *MEANINGFUL EHR USER*.—

7 “(A) *IN GENERAL*.—For purposes of para-
8 *graph (1)*, an eligible hospital shall be treated as
9 *a meaningful EHR user for a reporting period*
10 *for a payment year (or, for purposes of sub-*
11 *section (b)(3)(B)(ix), for a reporting period*
12 *under such subsection for a fiscal year) if each*
13 *of the following requirements are met:*

14 “(i) *MEANINGFUL USE OF CERTIFIED*
15 *EHR TECHNOLOGY*.—The eligible hospital
16 *demonstrates to the satisfaction of the Sec-*
17 *retary, in accordance with subparagraph*
18 *(C)(i), that during such period the hospital*
19 *is using certified EHR technology in a*
20 *meaningful manner.*

21 “(ii) *INFORMATION EXCHANGE*.—The
22 *eligible hospital demonstrates to the satis-*
23 *faction of the Secretary, in accordance with*
24 *subparagraph (C)(i), that during such pe-*
25 *riod such certified EHR technology is con-*

1 *nected in a manner that provides, in ac-*
2 *cordance with law and standards applicable*
3 *to the exchange of information, for the elec-*
4 *tronic exchange of health information to im-*
5 *prove the quality of health care, such as*
6 *promoting care coordination.*

7 *“(iii) REPORTING ON MEASURES USING*
8 *EHR.—Subject to subparagraph (B)(ii) and*
9 *using such certified EHR technology, the el-*
10 *igible hospital submits information for such*
11 *period, in a form and manner specified by*
12 *the Secretary, on such clinical quality*
13 *measures and such other measures as se-*
14 *lected by the Secretary under subparagraph*
15 *(B)(i).*

16 *The Secretary shall seek to improve the use of*
17 *electronic health records and health care quality*
18 *over time by requiring more stringent measures*
19 *of meaningful use selected under this paragraph.*

20 *“(B) REPORTING ON MEASURES.—*

21 *“(i) SELECTION.—The Secretary shall*
22 *select measures for purposes of subpara-*
23 *graph (A)(iii) but only consistent with the*
24 *following:*

1 “(I) *The Secretary shall provide*
2 *preference to clinical quality measures*
3 *that have been selected for purposes of*
4 *applying subsection (b)(3)(B)(viii) or*
5 *that have been endorsed by the entity*
6 *with a contract with the Secretary*
7 *under section 1890(a).*

8 “(II) *Prior to any measure (other*
9 *than a clinical quality measure that*
10 *has been selected for purposes of apply-*
11 *ing subsection (b)(3)(B)(viii)) being se-*
12 *lected under this subparagraph, the*
13 *Secretary shall publish in the Federal*
14 *Register such measure and provide for*
15 *a period of public comment on such*
16 *measure.*

17 “(ii) *LIMITATIONS.—The Secretary*
18 *may not require the electronic reporting of*
19 *information on clinical quality measures*
20 *under subparagraph (A)(iii) unless the Sec-*
21 *retary has the capacity to accept the infor-*
22 *mation electronically, which may be on a*
23 *pilot basis.*

24 “(iii) *COORDINATION OF REPORTING*
25 *OF INFORMATION.—In selecting such meas-*

1 *ures, and in establishing the form and man-*
2 *ner for reporting measures under subpara-*
3 *graph (A)(iii), the Secretary shall seek to*
4 *avoid redundant or duplicative reporting*
5 *with reporting otherwise required, including*
6 *reporting under subsection (b)(3)(B)(viii).*

7 *“(C) DEMONSTRATION OF MEANINGFUL USE*
8 *OF CERTIFIED EHR TECHNOLOGY AND INFORMA-*
9 *TION EXCHANGE.—*

10 *“(i) IN GENERAL.—A hospital may*
11 *satisfy the demonstration requirement of*
12 *clauses (i) and (ii) of subparagraph (A)*
13 *through means specified by the Secretary,*
14 *which may include—*

15 *“(I) an attestation;*

16 *“(II) the submission of claims*
17 *with appropriate coding (such as a*
18 *code indicating that inpatient care*
19 *was documented using certified EHR*
20 *technology);*

21 *“(III) a survey response;*

22 *“(IV) reporting under subpara-*
23 *graph (A)(iii); and*

24 *“(V) other means specified by the*
25 *Secretary.*

1 “(ii) *USE OF PART D DATA.*—*Notwith-*
2 *standing sections 1860D–15(d)(2)(B) and*
3 *1860D–15(f)(2), the Secretary may use data*
4 *regarding drug claims submitted for pur-*
5 *poses of section 1860D–15 that are nec-*
6 *essary for purposes of subparagraph (A).*

7 “(4) *APPLICATION.*—

8 “(A) *LIMITATIONS ON REVIEW.*—*There shall*
9 *be no administrative or judicial review under*
10 *section 1869, section 1878, or otherwise of the de-*
11 *termination of any incentive payment under this*
12 *subsection and the payment adjustment under*
13 *subsection (b)(3)(B)(ix), including the deter-*
14 *mination of a meaningful EHR user under*
15 *paragraph (3), determination of measures appli-*
16 *cable to services furnished by eligible hospitals*
17 *under this subsection, and the exception under*
18 *subsection (b)(3)(B)(ix)(II).*

19 “(B) *POSTING ON WEBSITE.*—*The Secretary*
20 *shall post on the Internet website of the Centers*
21 *for Medicare & Medicaid Services, in an easily*
22 *understandable format, a list of the names of the*
23 *eligible hospitals that are meaningful EHR users*
24 *under this subsection or subsection (b)(3)(B)(ix)*
25 *and other relevant data as determined appro-*

1 *priate by the Secretary. The Secretary shall en-*
2 *sure that a hospital has the opportunity to re-*
3 *view the other relevant data that are to be made*
4 *public with respect to the hospital prior to such*
5 *data being made public.*

6 “(5) *CERTIFIED EHR TECHNOLOGY DEFINED.*—
7 *The term ‘certified EHR technology’ has the meaning*
8 *given such term in section 1848(o)(4).*

9 “(6) *DEFINITIONS.*—*For purposes of this sub-*
10 *section:*

11 “(A) *ELIGIBLE HOSPITAL.*—*The term ‘eligi-*
12 *ble hospital’ means a subsection (d) hospital.*

13 “(B) *REPORTING PERIOD.*—*The term ‘re-*
14 *porting period’ means any period (or periods),*
15 *with respect to a payment year, as specified by*
16 *the Secretary.”.*

17 (b) *INCENTIVE MARKET BASKET ADJUSTMENT.*—*Sec-*
18 *tion 1886(b)(3)(B) of the Social Security Act (42 U.S.C.*
19 *1395ww(b)(3)(B)) is amended—*

20 (1) *in clause (viii)(I), by inserting “(or, begin-*
21 *ning with fiscal year 2016, by one-quarter)” after*
22 *“2.0 percentage points”; and*

23 (2) *by adding at the end the following new*
24 *clause:*

1 “(ix)(I) For purposes of clause (i) for fiscal year 2016
2 and each subsequent fiscal year, in the case of an eligible
3 hospital (as defined in subsection (n)(6)(A)) that is not a
4 meaningful EHR user (as defined in subsection (n)(3)) for
5 the reporting period for such fiscal year, three-quarters of
6 the applicable percentage increase otherwise applicable
7 under clause (i) for such fiscal year shall be reduced by
8 $33\frac{1}{3}$ percent for fiscal year 2016, $66\frac{2}{3}$ percent for fiscal
9 year 2017, and 100 percent for fiscal year 2018 and each
10 subsequent fiscal year. Such reduction shall apply only with
11 respect to the fiscal year involved and the Secretary shall
12 not take into account such reduction in computing the ap-
13 plicable percentage increase under clause (i) for a subse-
14 quent fiscal year.

15 “(II) The Secretary may, on a case-by-case basis, ex-
16 empt a subsection (d) hospital from the application of sub-
17 clause (I) with respect to a fiscal year if the Secretary deter-
18 mines, subject to annual renewal, that requiring such hos-
19 pital to be a meaningful EHR user during such fiscal year
20 would result in a significant hardship, such as in the case
21 of a hospital in a rural area without sufficient Internet ac-
22 cess. In no case may a hospital be granted an exemption
23 under this subclause for more than 5 years.

24 “(III) For fiscal year 2016 and each subsequent fiscal
25 year, a State in which hospitals are paid for services under

1 *section 1814(b)(3) shall adjust the payments to each sub-*
2 *section (d) hospital in the State that is not a meaningful*
3 *EHR user (as defined in subsection (n)(3)) in a manner*
4 *that is designed to result in an aggregate reduction in pay-*
5 *ments to hospitals in the State that is equivalent to the ag-*
6 *gregate reduction that would have occurred if payments had*
7 *been reduced to each subsection (d) hospital in the State*
8 *in a manner comparable to the reduction under the pre-*
9 *vious provisions of this clause. The State shall report to*
10 *the Secretary the methodology it will use to make the pay-*
11 *ment adjustment under the previous sentence.*

12 “(IV) *For purposes of this clause, the term ‘reporting*
13 *period’ means, with respect to a fiscal year, any period (or*
14 *periods), with respect to the fiscal year, as specified by the*
15 *Secretary.*”.

16 (c) *APPLICATION TO CERTAIN HMO-AFFILIATED ELI-*
17 *GIBLE HOSPITALS.—Section 1853 of the Social Security*
18 *Act (42 U.S.C. 1395w-23), as amended by section 4311(c),*
19 *is further amended by adding at the end the following new*
20 *subsection:*

21 “(m) *APPLICATION OF ELIGIBLE HOSPITAL INCEN-*
22 *TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION*
23 *AND MEANINGFUL USE OF CERTIFIED EHR TECH-*
24 *NOLOGY.—*

1 “(1) *APPLICATION.*—Subject to paragraphs (3)
2 and (4), in the case of a qualifying MA organization,
3 the provisions of sections 1886(n) and
4 1886(b)(3)(B)(ix) shall apply with respect to eligible
5 hospitals described in paragraph (2) of the organiza-
6 tion which the organization attests under subsection
7 (l)(6) to be meaningful EHR users in a similar man-
8 ner as they apply to eligible hospitals under such sec-
9 tions. Incentive payments under paragraph (3) shall
10 be made to and payment adjustments under para-
11 graph (4) shall apply to such qualifying organiza-
12 tions.

13 “(2) *ELIGIBLE HOSPITAL DESCRIBED.*—With re-
14 spect to a qualifying MA organization, an eligible
15 hospital described in this paragraph is an eligible
16 hospital that is under common corporate governance
17 with such organization and serves individuals en-
18 rolled under an MA plan offered by such organiza-
19 tion.

20 “(3) *ELIGIBLE HOSPITAL INCENTIVE PAY-*
21 *MENTS.*—

22 “(A) *IN GENERAL.*—In applying section
23 1886(n)(2) under paragraph (1), instead of the
24 additional payment amount under section
25 1886(n)(2), there shall be substituted an amount

1 *determined by the Secretary to be similar to the*
2 *estimated amount in the aggregate that would be*
3 *payable if payment for services furnished by*
4 *such hospitals was payable under part A instead*
5 *of this part. In implementing the previous sen-*
6 *tence, the Secretary—*

7 *“(i) shall, insofar as data to determine*
8 *the discharge related amount under section*
9 *1886(n)(2)(C) for an eligible hospital are*
10 *not available to the Secretary, use such al-*
11 *ternative data and methodology to estimate*
12 *such discharge related amount as the Sec-*
13 *retary determines appropriate; and*

14 *“(ii) shall, insofar as data to deter-*
15 *mine the medicare share described in sec-*
16 *tion 1886(n)(2)(D) for an eligible hospital*
17 *are not available to the Secretary, use such*
18 *alternative data and methodology to esti-*
19 *mate such share, which data and method-*
20 *ology may include use of the inpatient bed*
21 *days (or discharges) with respect to an eli-*
22 *gible hospital during the appropriate period*
23 *which are attributable to both individuals*
24 *for whom payment may be made under*
25 *part A or individuals enrolled in an MA*

1 *plan under a Medicare Advantage organiza-*
2 *tion under this part as a proportion of the*
3 *total number of patient-bed-days (or dis-*
4 *charges) with respect to such hospital dur-*
5 *ing such period.*

6 “(B) *AVOIDING DUPLICATION OF PAY-*
7 *MENTS.—*

8 “(i) *IN GENERAL.—In the case of a*
9 *hospital that for a payment year is an eli-*
10 *gible hospital described in paragraph (2), is*
11 *an eligible hospital under section 1886(n),*
12 *and for which at least one-third of their dis-*
13 *charges (or bed-days) of Medicare patients*
14 *for the year are covered under part A, pay-*
15 *ment for the payment year shall be made*
16 *only under section 1886(n) and not under*
17 *this subsection.*

18 “(ii) *METHODS.—In the case of a hos-*
19 *pital that is an eligible hospital described*
20 *in paragraph (2) and also is eligible for an*
21 *incentive payment under section 1886(n)*
22 *but is not described in clause (i) for the*
23 *same payment period, the Secretary shall*
24 *develop a process—*

1 “(I) to ensure that duplicate pay-
2 ments are not made with respect to an
3 eligible hospital both under this sub-
4 section and under section 1886(n); and

5 “(II) to collect data from Medi-
6 care Advantage organizations to ensure
7 against such duplicate payments.

8 “(4) PAYMENT ADJUSTMENT.—

9 “(A) Subject to paragraph (3), in the case
10 of a qualifying MA organization (as defined in
11 section 1853(l)(5)), if, according to the attesta-
12 tion of the organization submitted under sub-
13 section (l)(6) for an applicable period, one or
14 more eligible hospitals (as defined in section
15 1886(n)(6)(A)) that are under common corporate
16 governance with such organization and that
17 serve individuals enrolled under a plan offered
18 by such organization are not meaningful EHR
19 users (as defined in section 1886(n)(3)) with re-
20 spect to a period, the payment amount payable
21 under this section for such organization for such
22 period shall be the percent specified in subpara-
23 graph (B) for such period of the payment
24 amount otherwise provided under this section for
25 such period.

1 “(B) *SPECIFIED PERCENT.*—*The percent*
2 *specified under this subparagraph for a year is*
3 *100 percent minus a number of percentage*
4 *points equal to the product of—*

5 “(i) *the number of the percentage point*
6 *reduction effected under section*
7 *1886(b)(3)(B)(ix)(I) for the period; and*

8 “(ii) *the Medicare hospital expenditure*
9 *proportion specified in subparagraph (C)*
10 *for the year.*

11 “(C) *MEDICARE HOSPITAL EXPENDITURE*
12 *PROPORTION.*—*The Medicare hospital expendi-*
13 *ture proportion under this subparagraph for a*
14 *year is the Secretary’s estimate of the propor-*
15 *tion, of the expenditures under parts A and B*
16 *that are not attributable to this part, that are*
17 *attributable to expenditures for inpatient hos-*
18 *pital services.*

19 “(D) *APPLICATION OF PAYMENT ADJUST-*
20 *MENT.*—*In the case that a qualifying MA orga-*
21 *nization attests that not all eligible hospitals are*
22 *meaningful EHR users with respect to an appli-*
23 *cable period, the Secretary shall apply the pay-*
24 *ment adjustment under this paragraph based on*
25 *a methodology specified by the Secretary, taking*

1 *into account the proportion of such eligible hos-*
2 *pitals, or discharges from such hospitals, that are*
3 *not meaningful EHR users for such period.”.*

4 *(d) CONFORMING AMENDMENTS.—*

5 *(1) Section 1814(b) of the Social Security Act*
6 *(42 U.S.C. 1395f(b)) is amended—*

7 *(A) in paragraph (3), in the matter pre-*
8 *ceding subparagraph (A), by inserting “, subject*
9 *to section 1886(d)(3)(B)(ix)(III),” after “then”;*
10 *and*

11 *(B) by adding at the end the following:*
12 *“For purposes of applying paragraph (3), there*
13 *shall be taken into account incentive payments,*
14 *and payment adjustments under subsection*
15 *(b)(3)(B)(ix) or (n) of section 1886.”.*

16 *(2) Section 1851(i)(1) of the Social Security Act*
17 *(42 U.S.C. 1395w–21(i)(1)) is amended by striking*
18 *“and 1886(h)(3)(D)” and inserting “1886(h)(3)(D),*
19 *and 1853(m)”.*

20 *(3) Section 1853 of the Social Security Act (42*
21 *U.S.C. 1395w–23), as amended by section 4311(d)(1),*
22 *is amended—*

23 *(A) in subsection (c)—*

1 (i) in paragraph (1)(D)(i), by striking
2 “1848(o)” and inserting “; 1848(o), and
3 1886(n)”; and

4 (ii) in paragraph (6)(A), by inserting
5 “and subsections (b)(3)(B)(ix) and (n) of
6 section 1886” after “section 1848”; and

7 (B) in subsection (f), by inserting “and sub-
8 section (m)” after “under subsection (l)”.

9 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IMPLE-**
10 **MENTATION FUNDING.**

11 (a) *PREMIUM HOLD HARMLESS.*—

12 (1) *IN GENERAL.*—Section 1839(a)(1) of the So-
13 cial Security Act (42 U.S.C. 1395r(a)(1)) is amended
14 by adding at the end the following: “In applying this
15 paragraph there shall not be taken into account addi-
16 tional payments under section 1848(o) and section
17 1853(l)(3) and the Government contribution under
18 section 1844(a)(3).”.

19 (2) *PAYMENT.*—Section 1844(a) of such Act (42
20 U.S.C. 1395w(a)) is amended—

21 (A) in paragraph (2), by striking the period
22 at the end and inserting “; plus”; and

23 (B) by adding at the end the following new
24 paragraph:

1 “(3) a Government contribution equal to the
2 amount of payment incentives payable under sections
3 1848(o) and 1853(l)(3).”.

4 **(b) MEDICARE IMPROVEMENT FUND.**—Section 1898 of
5 the Social Security Act (42 U.S.C. 1395iii), as added by
6 section 7002(a) of the Supplemental Appropriations Act,
7 2008 (Public Law 110–252) and as amended by section
8 188(a)(2) of the Medicare Improvements for Patients and
9 Providers Act of 2008 (Public Law 110–275; 122 Stat.
10 2589) and by section 6 of the QI Program Supplemental
11 Funding Act of 2008, is amended—

12 (1) in subsection (a)—

13 (A) by inserting “medicare” before “fee-for-
14 service”; and

15 (B) by inserting before the period at the end
16 the following: “including, but not limited to, an
17 increase in the conversion factor under section
18 1848(d) to address, in whole or in part, any pro-
19 jected shortfall in the conversion factor for 2014
20 relative to the conversion factor for 2008 and ad-
21 justments to payments for items and services fur-
22 nished by providers of services and suppliers
23 under such original medicare fee-for-service pro-
24 gram”; and

25 (2) in subsection (b)—

1 (A) in paragraph (1), by striking “during
2 fiscal year 2014,” and all that follows and in-
3 serting the following: “during—

4 “(A) fiscal year 2014, \$22,290,000,000; and

5 “(B) fiscal year 2020 and each subsequent
6 fiscal year, the Secretary’s estimate, as of July
7 1 of the fiscal year, of the aggregate reduction in
8 expenditures under this title during the pre-
9 ceding fiscal year directly resulting from the re-
10 duction in payment amounts under sections
11 1848(a)(7), 1853(l)(4), 1853(m)(4), and
12 1886(b)(3)(B)(ix).”; and

13 (B) by adding at the end the following new
14 paragraph:

15 “(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT
16 YEARS.—In the case that expenditures from the Fund
17 are applied to, or otherwise affect, a payment rate for
18 an item or service under this title for a year, the pay-
19 ment rate for such item or service shall be computed
20 for a subsequent year as if such application or effect
21 had never occurred.”.

22 (c) IMPLEMENTATION FUNDING.—In addition to funds
23 otherwise available, out of any funds in the Treasury not
24 otherwise appropriated, there are appropriated to the Sec-
25 retary of Health and Human Services for the Center for

1 *Medicare & Medicaid Services Program Management Ac-*
2 *count, \$60,000,000 for each of fiscal years 2009 through*
3 *2015 and \$30,000,000 for each succeeding fiscal year*
4 *through fiscal year 2019, which shall be available for pur-*
5 *poses of carrying out the provisions of (and amendments*
6 *made by) this part. Amounts appropriated under this sub-*
7 *section for a fiscal year shall be available until expended.*

8 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
9 **CENTIVES FOR PROVIDERS NOT RECEIVING**
10 **OTHER INCENTIVE PAYMENTS.**

11 *(a) STUDY.—*

12 *(1) IN GENERAL.—The Secretary of Health and*
13 *Human Services shall conduct a study to determine*
14 *the extent to which and manner in which payment*
15 *incentives (such as under title XVIII or XIX of the*
16 *Social Security Act) and other funding for purposes*
17 *of implementing and using certified EHR technology*
18 *(as defined in section 3000 of the Public Health Serv-*
19 *ice Act) should be made available to health care pro-*
20 *viders who are receiving minimal or no payment in-*
21 *centives or other funding under this Act, under title*
22 *XVIII or XIX of the Social Security Act, or otherwise,*
23 *for such purposes.*

24 *(2) DETAILS OF STUDY.—Such study shall in-*
25 *clude an examination of—*

1 (A) *the adoption rates of certified EHR*
2 *technology by such health care providers;*

3 (B) *the clinical utility of such technology by*
4 *such health care providers;*

5 (C) *whether the services furnished by such*
6 *health care providers are appropriate for or*
7 *would benefit from the use of such technology;*

8 (D) *the extent to which such health care*
9 *providers work in settings that might otherwise*
10 *receive an incentive payment or other funding*
11 *under this Act, title XVIII or XIX of the Social*
12 *Security Act, or otherwise;*

13 (E) *the potential costs and the potential*
14 *benefits of making payment incentives and other*
15 *funding available to such health care providers;*
16 *and*

17 (F) *any other issues the Secretary deems to*
18 *be appropriate.*

19 (b) *REPORT.—Not later than June 30, 2010, the Sec-*
20 *retary shall submit to Congress a report on the findings*
21 *and conclusions of the study conducted under subsection (a).*

1 **PART III—MEDICAID FUNDING**
2 **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-**
3 **ATION PAYMENTS; IMPLEMENTATION FUND-**
4 **ING.**

5 (a) *IN GENERAL.*—Section 1903 of the Social Security
6 *Act (42 U.S.C. 1396b) is amended—*

7 (1) *in subsection (a)(3)—*

8 (A) *by striking “and” at the end of sub-*
9 *paragraph (D);*

10 (B) *by striking “plus” at the end of sub-*
11 *paragraph (E) and inserting “and”; and*

12 (C) *by adding at the end the following new*
13 *subparagraph:*

14 “(F)(i) *100 percent of so much of the sums*
15 *expended during such quarter as are attributable*
16 *to payments for certified EHR technology (and*
17 *support services including maintenance and*
18 *training that is for, or is necessary for the adop-*
19 *tion and operation of, such technology) by Med-*
20 *icaid providers described in subsection (t)(1);*
21 *and*

22 “(i) *90 percent of so much of the sums ex-*
23 *pended during such quarter as are attributable*
24 *to payments for reasonable administrative ex-*
25 *penses related to the administration of payments*

1 *described in clause (i) if the State meets the con-*
2 *dition described in subsection (t)(9); plus”; and*
3 *(2) by inserting after subsection (s) the following*
4 *new subsection:*

5 *“(t)(1) For purposes of subsection (a)(3)(F), the pay-*
6 *ments for certified EHR technology (and support services*
7 *including maintenance that is for, or is necessary for the*
8 *operation of, such technology) by Medicaid providers de-*
9 *scribed in this paragraph are payments made by the State*
10 *in accordance with this subsection of 85 percent of the net*
11 *allowable costs of Medicaid providers (as defined in para-*
12 *graph (2)) for such technology (and support services).*

13 *“(2) In this subsection and subsection (a)(3)(F), the*
14 *term ‘Medicaid provider’ means—*

15 *“(A) an eligible professional (as defined in para-*
16 *graph (3)(B)) who is not hospital-based and has at*
17 *least 30 percent of the professional’s patient volume*
18 *(as estimated in accordance with standards estab-*
19 *lished by the Secretary) attributable to individuals*
20 *who are receiving medical assistance under this title;*
21 *and*

22 *“(B)(i) a children’s hospital, (ii) an acute-care*
23 *hospital that is not described in clause (i) and that*
24 *has at least 10 percent of the hospital’s patient vol-*
25 *ume (as estimated in accordance with standards es-*

1 *tablished by the Secretary) attributable to individuals*
2 *who are receiving medical assistance under this title,*
3 *or (iii) a Federally-qualified health center or rural*
4 *health clinic that has at least 30 percent of the cen-*
5 *ter's or clinic's patient volume (as estimated in ac-*
6 *cordance with standards established by the Secretary)*
7 *attributable to individuals who are receiving medical*
8 *assistance under this title.*

9 *A professional shall not qualify as a Medicaid provider*
10 *under this subsection unless the professional has waived, in*
11 *a manner specified by the Secretary, any right to payment*
12 *under section 1848(o) with respect to the adoption or sup-*
13 *port of certified EHR technology by the professional. In ap-*
14 *plying clauses (ii) and (iii) of subparagraph (B), the stand-*
15 *ards established by the Secretary for patient volume shall*
16 *include individuals enrolled in a Medicaid managed care*
17 *plan (under section 1903(m) or section 1932).*

18 *“(3) In this subsection and subsection (a)(3)(F):*

19 *“(A) The term ‘certified EHR technology’ means*
20 *a qualified electronic health record (as defined in*
21 *3000(13) of the Public Health Service Act) that is cer-*
22 *tified pursuant to section 3001(c)(5) of such Act as*
23 *meeting standards adopted under section 3004 of such*
24 *Act that are applicable to the type of record involved*
25 *(as determined by the Secretary, such as an ambula-*

1 *tory electronic health record for office-based physi-*
2 *cians or an inpatient hospital electronic health record*
3 *for hospitals).*

4 *“(B) The term ‘eligible professional’ means a*
5 *physician as defined in paragraphs (1) and (2) of*
6 *section 1861(r), and includes a nurse mid-wife and a*
7 *nurse practitioner.*

8 *“(C) The term ‘hospital-based’ means, with re-*
9 *spect to an eligible professional, a professional (such*
10 *as a pathologist, anesthesiologist, or emergency physi-*
11 *cian) who furnishes substantially all of the individ-*
12 *ual’s professional services in a hospital setting*
13 *(whether inpatient or outpatient) and through the use*
14 *of the facilities and equipment, including computer*
15 *equipment, of the hospital.*

16 *“(4)(A) The term ‘allowable costs’ means, with respect*
17 *to certified EHR technology of a Medicaid provider, costs*
18 *of such technology (and support services including mainte-*
19 *nance and training that is for, or is necessary for the adop-*
20 *tion and operation of, such technology) as determined by*
21 *the Secretary to be reasonable.*

22 *“(B) The term ‘net allowable costs’ means allowable*
23 *costs reduced by any payment that is made to the provider*
24 *involved from any other source that is directly attributable*

1 *to payment for certified EHR technology or services de-*
2 *scribed in subparagraph (A).*

3 “(C) *In no case shall—*

4 “(i) *the aggregate allowable costs under this sub-*
5 *section (covering one or more years) with respect to*
6 *a Medicaid provider described in paragraph (2)(A)*
7 *for purchase and initial implementation of certified*
8 *EHR technology (and services described in subpara-*
9 *graph (A)) exceed \$25,000 or include costs over a pe-*
10 *riod of longer than 5 years;*

11 “(ii) *for costs not described in clause (i) relating*
12 *to the operation, maintenance, or use of certified*
13 *EHR technology, the annual allowable costs under*
14 *this subsection with respect to such a Medicaid pro-*
15 *vider for costs not described in clause (i) for any year*
16 *exceed \$10,000;*

17 “(iii) *payment described in paragraph (1) for*
18 *costs described in clause (ii) be made with respect to*
19 *such a Medicaid provider over a period of more than*
20 *5 years;*

21 “(iv) *the aggregate allowable costs under this*
22 *subsection with respect to such a Medicaid provider*
23 *for all costs exceed \$75,000; or*

24 “(v) *the allowable costs, whether for purchase*
25 *and initial implementation, maintenance, or other-*

1 *wise, for a Medicaid provider described in paragraph*
2 *(2)(B) exceed such aggregate or annual limitation as*
3 *the Secretary shall establish, based on an amount de-*
4 *termined by the Secretary as being adequate to adopt*
5 *and maintain certified EHR technology, consistent*
6 *with paragraph (6).*

7 *“(5) Payments described in paragraph (1) are not in*
8 *accordance with this subsection unless the following require-*
9 *ments are met:*

10 *“(A) The State provides assurances satisfactory*
11 *to the Secretary that amounts received under sub-*
12 *section (a)(3)(F) with respect to costs of a Medicaid*
13 *provider are paid directly to such provider without*
14 *any deduction or rebate.*

15 *“(B) Such Medicaid provider is responsible for*
16 *payment of the costs described in such paragraph that*
17 *are not provided under this title.*

18 *“(C) With respect to payments to such Medicaid*
19 *provider for costs other than costs related to the ini-*
20 *tial adoption of certified EHR technology, the Med-*
21 *icaid provider demonstrates meaningful use of cer-*
22 *tified EHR technology through a means that is ap-*
23 *proved by the State and acceptable to the Secretary,*
24 *and that may be based upon the methodologies ap-*
25 *plied under section 1848(o) or 1886(n).*

1 “(D) To the extent specified by the Secretary, the
2 certified EHR technology is compatible with State or
3 Federal administrative management systems.

4 “(6)(A) In no case shall the payments described in
5 paragraph (1), with respect to a hospital, exceed in the ag-
6 gregate the product of—

7 “(i) the overall hospital HIT amount for the hos-
8 pital computed under subparagraph (B); and

9 “(ii) the Medicaid share for such hospital com-
10 puted under subparagraph (C).

11 “(B) For purposes of this paragraph, the overall hos-
12 pital HIT amount, with respect to a hospital, is the sum
13 of the applicable amounts specified in section 1886(n)(2)(A)
14 for such hospital for the first 4 payment years (as estimated
15 by the Secretary) determined as if the Medicare share speci-
16 fied in clause (ii) of such section were 1. The Secretary shall
17 publish in the Federal Register the overall hospital HIT
18 amount for each hospital eligible for payments under this
19 subsection. In computing amounts under clause (ii) for
20 payment years after the first payment year, the Secretary
21 shall assume that in subsequent payment years discharges
22 increase at an annual rate of 2 percent per year.

23 “(C) The Medicaid share computed under this sub-
24 paragraph, for a hospital for a period specified by the Sec-
25 retary, shall be calculated in the same manner as the Medi-

1 care share under section 1886(n)(2)(D) for such a hospital
2 and period, except that there shall be substituted for the nu-
3 merator under clause (i) of such section the amount that
4 is equal to the number of inpatient-bed-days (as established
5 by the Secretary) which are attributable to individuals who
6 are receiving medical assistance under this title and who
7 are not described in section 1886(n)(2)(D)(i). In computing
8 inpatient-bed-days under the previous sentence, the Sec-
9 retary shall take into account inpatient-bed-days attrib-
10 utable to inpatient-bed-days that are paid for individuals
11 enrolled in a Medicaid managed care plan (under section
12 1903(m) or section 1932).

13 “(7) With respect to health care providers other than
14 hospitals, the Secretary shall ensure coordination of the dif-
15 ferent programs for payment of such health care providers
16 for adoption or use of health information technology (in-
17 cluding certified EHR technology), as well as payments for
18 such health care providers provided under this title or title
19 XVIII, to assure no duplication of funding.

20 “(8) In carrying out paragraph (5)(C), the State and
21 Secretary shall seek, to the maximum extent practicable, to
22 avoid duplicative requirements from Federal and State
23 Governments to demonstrate meaningful use of certified
24 EHR technology under this title and title XVIII. In doing
25 so, the Secretary may deem satisfaction of requirements for

1 *such meaningful use for a payment year under title XVIII*
2 *to be sufficient to qualify as meaningful use under this sub-*
3 *section. The Secretary may also specify the reporting peri-*
4 *ods under this subsection in order to carry out this para-*
5 *graph.*

6 “(9) *In order to be provided Federal financial partici-*
7 *pation under subsection (a)(3)(F)(ii), a State must dem-*
8 *onstrate to the satisfaction of the Secretary, that the State—*

9 “(A) *is using the funds provided for the purposes*
10 *of administering payments under this subsection, in-*
11 *cluding tracking of meaningful use by Medicaid pro-*
12 *viders;*

13 “(B) *conducting adequate oversight of the pro-*
14 *gram under this subsection, including routine track-*
15 *ing of meaningful use attestations and reporting*
16 *mechanisms; and*

17 “(C) *be pursuing initiatives to encourage the*
18 *adoption of certified EHR technology to promote*
19 *health care quality and the exchange of health care*
20 *information under this title, subject to applicable*
21 *laws and regulations governing such exchange.*

22 “(10) *The Secretary shall periodically submit reports*
23 *to the Committee on Energy and Commerce of the House*
24 *of Representatives and the Committee on Finance of the*

1 *Senate on status, progress, and oversight of payments under*
2 *paragraph (1).”.*

3 **(b) IMPLEMENTATION FUNDING.**—*In addition to funds*
4 *otherwise available, out of any funds in the Treasury not*
5 *otherwise appropriated, there are appropriated to the Sec-*
6 *retary of Health and Human Services for the Center for*
7 *Medicare & Medicaid Services Program Management Ac-*
8 *count, \$40,000,000 for each of fiscal years 2009 through*
9 *2015 and \$20,000,000 for each succeeding fiscal year*
10 *through fiscal year 2019, which shall be available for pur-*
11 *poses of carrying out the provisions of (and the amendments*
12 *made by) this part. Amounts appropriated under this sub-*
13 *section for a fiscal year shall be available until expended.*

14 ***Subtitle D—Privacy***

15 **SEC. 4400. DEFINITIONS.**

16 *In this subtitle, except as specified otherwise:*

17 **(1) BREACH.**—*The term “breach” means the un-*
18 *authorized acquisition, access, use, or disclosure of*
19 *protected health information which compromises the*
20 *security, privacy, or integrity of protected health in-*
21 *formation maintained by or on behalf of a person.*

22 *Such term does not include any unintentional acqui-*
23 *sition, access, use, or disclosure of such information*
24 *by an employee or agent of the covered entity or busi-*
25 *ness associate involved if such acquisition, access, use,*

1 *or disclosure, respectively, was made in good faith*
2 *and within the course and scope of the employment*
3 *or other contractual relationship of such employee or*
4 *agent, respectively, with the covered entity or business*
5 *associate and if such information is not further ac-*
6 *quired, accessed, used, or disclosed by such employee*
7 *or agent.*

8 (2) *BUSINESS ASSOCIATE.*—*The term “business*
9 *associate” has the meaning given such term in section*
10 *160.103 of title 45, Code of Federal Regulations.*

11 (3) *COVERED ENTITY.*—*The term “covered enti-*
12 *ty” has the meaning given such term in section*
13 *160.103 of title 45, Code of Federal Regulations.*

14 (4) *DISCLOSE.*—*The terms “disclose” and “dis-*
15 *closure” have the meaning given the term “disclosure”*
16 *in section 160.103 of title 45, Code of Federal Regula-*
17 *tions.*

18 (5) *ELECTRONIC HEALTH RECORD.*—*The term*
19 *“electronic health record” means an electronic record*
20 *of health-related information on an individual that is*
21 *created, gathered, managed, and consulted by author-*
22 *ized health care clinicians and staff.*

23 (6) *HEALTH CARE OPERATIONS.*—*The term*
24 *“health care operation” has the meaning given such*

1 *term in section 164.501 of title 45, Code of Federal*
2 *Regulations.*

3 (7) *HEALTH CARE PROVIDER.*—*The term “health*
4 *care provider” has the meaning given such term in*
5 *section 160.103 of title 45, Code of Federal Regula-*
6 *tions.*

7 (8) *HEALTH PLAN.*—*The term “health plan” has*
8 *the meaning given such term in section 1171(5) of the*
9 *Social Security Act.*

10 (9) *NATIONAL COORDINATOR.*—*The term “Na-*
11 *tional Coordinator” means the head of the Office of*
12 *the National Coordinator for Health Information*
13 *Technology established under section 3001(a) of the*
14 *Public Health Service Act, as added by section 4101.*

15 (10) *PAYMENT.*—*The term “payment” has the*
16 *meaning given such term in section 164.501 of title*
17 *45, Code of Federal Regulations.*

18 (11) *PERSONAL HEALTH RECORD.*—*The term*
19 *“personal health record” means an electronic record of*
20 *individually identifiable health information on an in-*
21 *dividual that can be drawn from multiple sources and*
22 *that is managed, shared, and controlled by or for the*
23 *individual.*

24 (12) *PROTECTED HEALTH INFORMATION.*—*The*
25 *term “protected health information” has the meaning*

1 *given such term in section 160.103 of title 45, Code*
2 *of Federal Regulations.*

3 (13) *SECRETARY.*—*The term “Secretary” means*
4 *the Secretary of Health and Human Services.*

5 (14) *SECURITY.*—*The term “security” has the*
6 *meaning given such term in section 164.304 of title*
7 *45, Code of Federal Regulations.*

8 (15) *STATE.*—*The term “State” means each of*
9 *the several States, the District of Columbia, Puerto*
10 *Rico, the Virgin Islands, Guam, American Samoa,*
11 *and the Northern Mariana Islands.*

12 (16) *TREATMENT.*—*The term “treatment” has*
13 *the meaning given such term in section 164.501 of*
14 *title 45, Code of Federal Regulations.*

15 (17) *USE.*—*The term “use” has the meaning*
16 *given such term in section 160.103 of title 45, Code*
17 *of Federal Regulations.*

18 (18) *VENDOR OF PERSONAL HEALTH*
19 *RECORDS.*—*The term “vendor of personal health*
20 *records” means an entity, other than a covered entity*
21 *(as defined in paragraph (3)), that offers or main-*
22 *tains a personal health record.*

1 **PART I—IMPROVED PRIVACY PROVISIONS AND**
2 **SECURITY PROVISIONS**

3 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**
4 **PENALTIES TO BUSINESS ASSOCIATES OF**
5 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
6 **SECURITY PROVISIONS.**

7 (a) *APPLICATION OF SECURITY PROVISIONS.*—Sections
8 164.308, 164.310, 164.312, and 164.316 of title 45, Code
9 of Federal Regulations, shall apply to a business associate
10 of a covered entity in the same manner that such sections
11 apply to the covered entity. The additional requirements of
12 this title that relate to security and that are made applica-
13 ble with respect to covered entities shall also be applicable
14 to such a business associate and shall be incorporated into
15 the business associate agreement between the business asso-
16 ciate and the covered entity.

17 (b) *APPLICATION OF CIVIL AND CRIMINAL PEN-*
18 *ALTIES.*—In the case of a business associate that violates
19 any security provision specified in subsection (a), sections
20 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-
21 5, 1320d-6) shall apply to the business associate with re-
22 spect to such violation in the same manner such sections
23 apply to a covered entity that violates such security provi-
24 sion.

25 (c) *ANNUAL GUIDANCE.*—For the first year beginning
26 after the date of the enactment of this Act and annually

1 *thereafter, the Secretary of Health and Human Services*
2 *shall, in consultation with industry stakeholders, annually*
3 *issue guidance on the most effective and appropriate tech-*
4 *nical safeguards for use in carrying out the sections referred*
5 *to in subsection (a) and the security standards in subpart*
6 *C of part 164 of title 45, Code of Federal Regulations, as*
7 *such provisions are in effect as of the date before the enact-*
8 *ment of this Act.*

9 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

10 (a) *IN GENERAL.*—*A covered entity that accesses,*
11 *maintains, retains, modifies, records, stores, destroys, or*
12 *otherwise holds, uses, or discloses unsecured protected health*
13 *information (as defined in subsection (h)(1)) shall, in the*
14 *case of a breach of such information that is discovered by*
15 *the covered entity, notify each individual whose unsecured*
16 *protected health information has been, or is reasonably be-*
17 *lieved by the covered entity to have been, accessed, acquired,*
18 *or disclosed as a result of such breach.*

19 (b) *NOTIFICATION OF COVERED ENTITY BY BUSINESS*
20 *ASSOCIATE.*—*A business associate of a covered entity that*
21 *accesses, maintains, retains, modifies, records, stores, de-*
22 *stroys, or otherwise holds, uses, or discloses unsecured pro-*
23 *tected health information shall, following the discovery of*
24 *a breach of such information, notify the covered entity of*
25 *such breach. Such notice shall include the identification of*

1 *each individual whose unsecured protected health informa-*
2 *tion has been, or is reasonably believed by the business asso-*
3 *ciate to have been, accessed, acquired, or disclosed during*
4 *such breach.*

5 *(c) BREACHES TREATED AS DISCOVERED.—For pur-*
6 *poses of this section, a breach shall be treated as discovered*
7 *by a covered entity or by a business associate as of the first*
8 *day on which such breach is known to such entity or asso-*
9 *ciate, respectively, (including any person, other than the in-*
10 *dividual committing the breach, that is an employee, officer,*
11 *or other agent of such entity or associate, respectively) or*
12 *should reasonably have been known to such entity or asso-*
13 *ciate (or person) to have occurred.*

14 *(d) TIMELINESS OF NOTIFICATION.—*

15 *(1) IN GENERAL.—Subject to subsection (g), all*
16 *notifications required under this section shall be made*
17 *without unreasonable delay and in no case later than*
18 *60 calendar days after the discovery of a breach by*
19 *the covered entity involved (or business associate in-*
20 *volved in the case of a notification required under*
21 *subsection (b)).*

22 *(2) BURDEN OF PROOF.—The covered entity in-*
23 *volved (or business associate involved in the case of a*
24 *notification required under subsection (b)), shall have*
25 *the burden of demonstrating that all notifications*

1 *were made as required under this part, including evi-*
2 *dence demonstrating the necessity of any delay.*

3 *(e) METHODS OF NOTICE.—*

4 *(1) INDIVIDUAL NOTICE.—Notice required under*
5 *this section to be provided to an individual, with re-*
6 *spect to a breach, shall be provided promptly and in*
7 *the following form:*

8 *(A) Written notification by first-class mail*
9 *to the individual (or the next of kin of the indi-*
10 *vidual if the individual is deceased) at the last*
11 *known address of the individual or the next of*
12 *kin, respectively, or, if specified as a preference*
13 *by the individual, by electronic mail. The notifi-*
14 *cation may be provided in one or more mailings*
15 *as information is available.*

16 *(B) In the case in which there is insuffi-*
17 *cient, or out-of-date contact information (includ-*
18 *ing a phone number, email address, or any other*
19 *form of appropriate communication) that pre-*
20 *cludes direct written (or, if specified by the indi-*
21 *vidual under subparagraph (A), electronic) noti-*
22 *fication to the individual, a substitute form of*
23 *notice shall be provided, including, in the case*
24 *that there are 10 or more individuals for which*
25 *there is insufficient or out-of-date contact infor-*

1 *mation, a conspicuous posting for a period deter-*
2 *mined by the Secretary on the home page of the*
3 *Web site of the covered entity involved or notice*
4 *in major print or broadcast media, including*
5 *major media in geographic areas where the indi-*
6 *viduals affected by the breach likely reside. Such*
7 *a notice in media or web posting will include a*
8 *toll-free phone number where an individual can*
9 *learn whether or not the individual's unsecured*
10 *protected health information is possibly included*
11 *in the breach.*

12 *(C) In any case deemed by the covered enti-*
13 *ty involved to require urgency because of possible*
14 *imminent misuse of unsecured protected health*
15 *information, the covered entity, in addition to*
16 *notice provided under subparagraph (A), may*
17 *provide information to individuals by telephone*
18 *or other means, as appropriate.*

19 *(2) MEDIA NOTICE.—Notice shall be provided to*
20 *prominent media outlets serving a State or jurisdic-*
21 *tion, following the discovery of a breach described in*
22 *subsection (a), if the unsecured protected health infor-*
23 *mation of more than 500 residents of such State or*
24 *jurisdiction is, or is reasonably believed to have been,*
25 *accessed, acquired, or disclosed during such breach.*

1 (3) *NOTICE TO SECRETARY.*—Notice shall be pro-
2 vided to the Secretary by covered entities of unsecured
3 protected health information that has been acquired
4 or disclosed in a breach. If the breach was with re-
5 spect to 500 or more individuals than such notice
6 must be provided immediately. If the breach was with
7 respect to less than 500 individuals, the covered entity
8 involved may maintain a log of any such breach oc-
9 curring and annually submit such a log to the Sec-
10 retary documenting such breaches occurring during the
11 year involved.

12 (4) *POSTING ON HHS PUBLIC WEBSITE.*—The
13 Secretary shall make available to the public on the
14 Internet website of the Department of Health and
15 Human Services a list that identifies each covered en-
16 tity involved in a breach described in subsection (a)
17 in which the unsecured protected health information
18 of more than 500 individuals is acquired or disclosed.

19 (f) *CONTENT OF NOTIFICATION.*—Regardless of the
20 method by which notice is provided to individuals under
21 this section, notice of a breach shall include, to the extent
22 possible, the following:

23 (1) A brief description of what happened, includ-
24 ing the date of the breach and the date of the dis-
25 covery of the breach, if known.

1 (2) *A description of the types of unsecured pro-*
2 *ected health information that were involved in the*
3 *breach (such as full name, Social Security number,*
4 *date of birth, home address, account number, or dis-*
5 *ability code).*

6 (3) *The steps individuals should take to protect*
7 *themselves from potential harm resulting from the*
8 *breach.*

9 (4) *A brief description of what the covered entity*
10 *involved is doing to investigate the breach, to mitigate*
11 *losses, and to protect against any further breaches.*

12 (5) *Contact procedures for individuals to ask*
13 *questions or learn additional information, which shall*
14 *include a toll-free telephone number, an e-mail ad-*
15 *dress, Web site, or postal address.*

16 (g) *DELAY OF NOTIFICATION AUTHORIZED FOR LAW*
17 *ENFORCEMENT PURPOSES.—If a law enforcement official*
18 *determines that a notification, notice, or posting required*
19 *under this section would impede a criminal investigation*
20 *or cause damage to national security, such notification, no-*
21 *tice, or posting shall be delayed in the same manner as pro-*
22 *vided under section 164.528(a)(2) of title 45, Code of Fed-*
23 *eral Regulations, in the case of a disclosure covered under*
24 *such section.*

1 (h) *UNSECURED PROTECTED HEALTH INFORMA-*
2 *TION.—*

3 (1) *DEFINITION.—*

4 (A) *IN GENERAL.—Subject to subparagraph*
5 *(B), for purposes of this section, the term “unse-*
6 *cured protected health information” means pro-*
7 *ected health information that is not secured*
8 *through the use of a technology or methodology*
9 *specified by the Secretary in the guidance issued*
10 *under paragraph (2).*

11 (B) *EXCEPTION IN CASE TIMELY GUIDANCE*
12 *NOT ISSUED.—In the case that the Secretary does*
13 *not issue guidance under paragraph (2) by the*
14 *date specified in such paragraph, for purposes of*
15 *this section, the term “unsecured protected health*
16 *information” shall mean protected health infor-*
17 *mation that is not secured by a technology*
18 *standard that renders protected health informa-*
19 *tion unusable, unreadable, or indecipherable to*
20 *unauthorized individuals and is developed or en-*
21 *dorsed by a standards developing organization*
22 *that is accredited by the American National*
23 *Standards Institute.*

24 (2) *GUIDANCE.—For purposes of paragraph (1)*
25 *and section 407(f)(3), not later than the date that is*

1 60 days after the date of the enactment of this Act,
2 the Secretary shall, after consultation with stake-
3 holders, issue (and annually update) guidance speci-
4 fying the technologies and methodologies that render
5 protected health information unusable, unreadable, or
6 indecipherable to unauthorized individuals.

7 (i) *REPORT TO CONGRESS ON BREACHES.*—

8 (1) *IN GENERAL.*—Not later than 12 months
9 after the date of the enactment of this Act and annu-
10 ally thereafter, the Secretary shall prepare and sub-
11 mit to the Committee on Finance and the Committee
12 on Health, Education, Labor, and Pensions of the
13 Senate and the Committee on Ways and Means and
14 the Committee on Energy and Commerce of the House
15 of Representatives a report containing the informa-
16 tion described in paragraph (2) regarding breaches
17 for which notice was provided to the Secretary under
18 subsection (e)(3).

19 (2) *INFORMATION.*—The information described
20 in this paragraph regarding breaches specified in
21 paragraph (1) shall include—

22 (A) the number and nature of such breaches;

23 and

24 (B) actions taken in response to such
25 breaches.

1 (j) *REGULATIONS; EFFECTIVE DATE.*—To carry out
2 *this section, the Secretary of Health and Human Services*
3 *shall promulgate interim final regulations by not later than*
4 *the date that is 180 days after the date of the enactment*
5 *of this title. The provisions of this section shall apply to*
6 *breaches that are discovered on or after the date that is 30*
7 *days after the date of publication of such interim final regu-*
8 *lations.*

9 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRIVACY.**

10 (a) *REGIONAL OFFICE PRIVACY ADVISORS.*—Not later
11 *than 6 months after the date of the enactment of this Act,*
12 *the Secretary shall designate an individual in each regional*
13 *office of the Department of Health and Human Services to*
14 *offer guidance and education to covered entities, business*
15 *associates, and individuals on their rights and responsibil-*
16 *ities related to Federal privacy and security requirements*
17 *for protected health information.*

18 (b) *EDUCATION INITIATIVE ON USES OF HEALTH IN-*
19 *FORMATION.*—Not later than 12 months after the date of
20 *the enactment of this Act, the Office for Civil Rights within*
21 *the Department of Health and Human Services shall de-*
22 *velop and maintain a multi-faceted national education ini-*
23 *tiative to enhance public transparency regarding the uses*
24 *of protected health information, including programs to edu-*
25 *cate individuals about the potential uses of their protected*

1 *health information, the effects of such uses, and the rights*
2 *of individuals with respect to such uses. Such programs*
3 *shall be conducted in a variety of languages and present*
4 *information in a clear and understandable manner.*

5 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
6 **PENALTIES TO BUSINESS ASSOCIATES OF**
7 **COVERED ENTITIES.**

8 (a) *APPLICATION OF CONTRACT REQUIREMENTS.—In*
9 *the case of a business associate of a covered entity that ob-*
10 *tains or creates protected health information pursuant to*
11 *a written contract (or other written arrangement) described*
12 *in section 164.502(e)(2) of title 45, Code of Federal Regula-*
13 *tions, with such covered entity, the business associate may*
14 *use and disclose such protected health information only if*
15 *such use or disclosure, respectively, is in compliance with*
16 *each applicable requirement of section 164.504(e) of such*
17 *title. The additional requirements of this subtitle that relate*
18 *to privacy and that are made applicable with respect to*
19 *covered entities shall also be applicable to such a business*
20 *associate and shall be incorporated into the business asso-*
21 *ciate agreement between the business associate and the cov-*
22 *ered entity.*

23 (b) *APPLICATION OF KNOWLEDGE ELEMENTS ASSOCI-*
24 *ATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title*
25 *45, Code of Federal Regulations, shall apply to a business*

1 *associate described in subsection (a), with respect to compli-*
2 *ance with such subsection, in the same manner that such*
3 *section applies to a covered entity, with respect to compli-*
4 *ance with the standards in sections 164.502(e) and*
5 *164.504(e) of such title, except that in applying such section*
6 *164.504(e)(1)(ii) each reference to the business associate,*
7 *with respect to a contract, shall be treated as a reference*
8 *to the covered entity involved in such contract.*

9 (c) *APPLICATION OF CIVIL AND CRIMINAL PEN-*
10 *ALTIES.—In the case of a business associate that violates*
11 *any provision of subsection (a) or (b), the provisions of sec-*
12 *tions 1176 and 1177 of the Social Security Act (42 U.S.C.*
13 *1320d-5, 1320d-6) shall apply to the business associate with*
14 *respect to such violation in the same manner as such provi-*
15 *sions apply to a person who violates a provision of part*
16 *C of title XI of such Act.*

17 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
18 **SALES OF HEALTH INFORMATION; ACCOUNT-**
19 **ING OF CERTAIN PROTECTED HEALTH INFOR-**
20 **MATION DISCLOSURES; ACCESS TO CERTAIN**
21 **INFORMATION IN ELECTRONIC FORMAT.**

22 (a) *REQUESTED RESTRICTIONS ON CERTAIN DISCLO-*
23 *SURES OF HEALTH INFORMATION.—In the case that an in-*
24 *dividual requests under paragraph (a)(1)(i)(A) of section*
25 *164.522 of title 45, Code of Federal Regulations, that a cov-*

1 *ered entity restrict the disclosure of the protected health in-*
2 *formation of the individual, notwithstanding paragraph*
3 *(a)(1)(ii) of such section, the covered entity must comply*
4 *with the requested restriction if—*

5 *(1) except as otherwise required by law, the dis-*
6 *closure is to a health plan for purposes of carrying*
7 *out payment or health care operations (and is not for*
8 *purposes of carrying out treatment); and*

9 *(2) the protected health information pertains*
10 *solely to a health care item or service for which the*
11 *health care provider involved has been paid out of*
12 *pocket in full.*

13 *(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE*
14 *LIMITED DATA SET OR THE MINIMUM NECESSARY.—*

15 *(1) IN GENERAL.—*

16 *(A) IN GENERAL.—Subject to subparagraph*
17 *(B), a covered entity shall be treated as being in*
18 *compliance with section 164.502(b)(1) of title 45,*
19 *Code of Federal Regulations, with respect to the*
20 *use, disclosure, or request of protected health in-*
21 *formation described in such section, only if the*
22 *covered entity limits such protected health infor-*
23 *mation, to the extent practicable, to the limited*
24 *data set (as defined in section 164.514(e)(2) of*
25 *such title) or, if needed by such entity, to the*

1 *minimum necessary to accomplish the intended*
2 *purpose of such use, disclosure, or request, re-*
3 *spectively.*

4 (B) *GUIDANCE.*—*Not later than 18 months*
5 *after the date of the enactment of this section, the*
6 *Secretary shall issue guidance on what con-*
7 *stitutes “minimum necessary” for purposes of*
8 *subpart E of part 164 of title 45, Code of Fed-*
9 *eral Regulation. In issuing such guidance the*
10 *Secretary shall take into consideration the guid-*
11 *ance under section 4424(c).*

12 (C) *SUNSET.*—*Subparagraph (A) shall not*
13 *apply on and after the effective date on which*
14 *the Secretary issues the guidance under subpara-*
15 *graph (B).*

16 (2) *DETERMINATION OF MINIMUM NECESSARY.*—
17 *For purposes of paragraph (1), in the case of the dis-*
18 *closure of protected health information, the covered*
19 *entity or business associate disclosing such informa-*
20 *tion shall determine what constitutes the minimum*
21 *necessary to accomplish the intended purpose of such*
22 *disclosure.*

23 (3) *APPLICATION OF EXCEPTIONS.*—*The excep-*
24 *tions described in section 164.502(b)(2) of title 45,*
25 *Code of Federal Regulations, shall apply to the re-*

1 *quirement under paragraph (1) as of the effective date*
2 *described in section 4423 in the same manner that*
3 *such exceptions apply to section 164.502(b)(1) of such*
4 *title before such date.*

5 *(4) RULE OF CONSTRUCTION.—Nothing in this*
6 *subsection shall be construed as affecting the use, dis-*
7 *closure, or request of protected health information*
8 *that has been de-identified.*

9 *(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH IN-*
10 *FORMATION DISCLOSURES REQUIRED IF COVERED ENTITY*
11 *USES ELECTRONIC HEALTH RECORD.—*

12 *(1) IN GENERAL.—In applying section 164.528*
13 *of title 45, Code of Federal Regulations, in the case*
14 *that a covered entity uses or maintains an electronic*
15 *health record with respect to protected health informa-*
16 *tion—*

17 *(A) the exception under paragraph (a)(1)(i)*
18 *of such section shall not apply to disclosures*
19 *through an electronic health record made by such*
20 *entity of such information; and*

21 *(B) an individual shall have a right to re-*
22 *ceive an accounting of disclosures described in*
23 *such paragraph of such information made by*
24 *such covered entity during only the three years*

1 *prior to the date on which the accounting is re-*
2 *quested.*

3 (2) *REGULATIONS.*—*The Secretary shall promul-*
4 *gate regulations on what information shall be col-*
5 *lected about each disclosure referred to in paragraph*
6 *(1)(A) not later than 18 months after the date on*
7 *which the Secretary adopts standards on accounting*
8 *for disclosure described in the section*
9 *3002(b)(2)(B)(iv) of the Public Health Service Act, as*
10 *added by section 4101. Such regulations shall only re-*
11 *quire such information to be collected through an elec-*
12 *tronic health record in a manner that takes into ac-*
13 *count the interests of individuals in learning the cir-*
14 *cumstances under which their protected health infor-*
15 *mation is being disclosed and takes into account the*
16 *administrative burden of accounting for such disclo-*
17 *sures.*

18 (3) *CONSTRUCTION.*—*Nothing in this subsection*
19 *shall be construed as requiring a covered entity to ac-*
20 *count for disclosures of protected health information*
21 *that are not made by such covered entity or by a*
22 *business associate acting on behalf of the covered enti-*
23 *ty.*

24 (4) *EFFECTIVE DATE.*—

1 (A) *CURRENT USERS OF ELECTRONIC*
2 *RECORDS.*—*In the case of a covered entity inso-*
3 *far as it acquired an electronic health record as*
4 *of January 1, 2009, paragraph (1) shall apply*
5 *to disclosures, with respect to protected health in-*
6 *formation, made by the covered entity from such*
7 *a record on and after January 1, 2014.*

8 (B) *OTHERS.*—*In the case of a covered enti-*
9 *ty insofar as it acquires an electronic health*
10 *record after January 1, 2009, paragraph (1)*
11 *shall apply to disclosures, with respect to pro-*
12 *TECTED HEALTH INFORMATION, made by the covered*
13 *entity from such record on and after the later of*
14 *the following:*

15 (i) *January 1, 2011; or*

16 (ii) *the date that it acquires an elec-*
17 *tronic health record.*

18 (d) *REVIEW OF HEALTH CARE OPERATIONS.*—*Not*
19 *later than 18 months after the date of the enactment of this*
20 *title, the Secretary shall promulgate regulations to elimi-*
21 *nate from the definition of health care operations under sec-*
22 *tion 164.501 of title 45, Code of Federal Regulations, those*
23 *activities that can reasonably and efficiently be conducted*
24 *through the use of information that is de-identified (in ac-*
25 *cordance with the requirements of section 164.514(b) of such*

1 *title) or that should require a valid authorization for use*
2 *or disclosure. In promulgating such regulations, the Sec-*
3 *retary may choose to narrow or clarify activities that the*
4 *Secretary chooses to retain in the definition of health care*
5 *operations and the Secretary shall take into account the re-*
6 *port under section 424(d). In such regulations the Secretary*
7 *shall specify the date on which such regulations shall apply*
8 *to disclosures made by a covered entity, but in no case*
9 *would such date be sooner than the date that is 24 months*
10 *after the date of the enactment of this section.*

11 *(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH*
12 *RECORDS OR PROTECTED HEALTH INFORMATION OB-*
13 *TAINED FROM ELECTRONIC HEALTH RECORDS.—*

14 *(1) IN GENERAL.—Except as provided in para-*
15 *graph (2), a covered entity or business associate shall*
16 *not directly or indirectly receive remuneration in ex-*
17 *change for any protected health information of an in-*
18 *dividual unless the covered entity obtained from the*
19 *individual, in accordance with section 164.508 of title*
20 *45, Code of Federal Regulations, a valid authoriza-*
21 *tion that includes, in accordance with such section, a*
22 *specification of whether the protected health informa-*
23 *tion can be further exchanged for remuneration by the*
24 *entity receiving protected health information of that*
25 *individual.*

1 (2) *EXCEPTIONS.—Paragraph (1) shall not*
2 *apply in the following cases:*

3 (A) *The purpose of the exchange is for re-*
4 *search or public health activities (as described in*
5 *sections 164.501, 164.512(i), and 164.512(b) of*
6 *title 45, Code of Federal Regulations) and the*
7 *price charged reflects the costs of preparation*
8 *and transmittal of the data for such purpose.*

9 (B) *The purpose of the exchange is for the*
10 *treatment of the individual and the price charges*
11 *reflects not more than the costs of preparation*
12 *and transmittal of the data for such purpose.*

13 (C) *The purpose of the exchange is the*
14 *health care operation specifically described in*
15 *subparagraph (iv) of paragraph (6) of the defini-*
16 *tion of health care operations in section 164.501*
17 *of title 45, Code of Federal Regulations.*

18 (D) *The purpose of the exchange is for re-*
19 *muneration that is provided by a covered entity*
20 *to a business associate for activities involving the*
21 *exchange of protected health information that the*
22 *business associate undertakes on behalf of and at*
23 *the specific request of the covered entity pursuant*
24 *to a business associate agreement.*

1 (E) *The purpose of the exchange is to pro-*
2 *vide an individual with a copy of the individ-*
3 *ual's protected health information pursuant to*
4 *section 164.524 of title 45, Code of Federal Regu-*
5 *lations.*

6 (F) *The purpose of the exchange is otherwise*
7 *determined by the Secretary in regulations to be*
8 *similarly necessary and appropriate as the ex-*
9 *ceptions provided in subparagraphs (A) through*
10 *(E).*

11 (3) *REGULATIONS.*—*The Secretary shall promul-*
12 *gate regulations to carry out paragraph (this sub-*
13 *section, including exceptions described in paragraph*
14 *(2), not later than 18 months after the date of the en-*
15 *actment of this title.*

16 (4) *EFFECTIVE DATE.*—*Paragraph (1) shall*
17 *apply to exchanges occurring on or after the date that*
18 *is 6 months after the date of the promulgation of final*
19 *regulations implementing this subsection.*

20 (f) *ACCESS TO CERTAIN INFORMATION IN ELECTRONIC*
21 *FORMAT.*—*In applying section 164.524 of title 45, Code of*
22 *Federal Regulations, in the case that a covered entity uses*
23 *or maintains an electronic health record with respect to*
24 *protected health information of an individual—*

1 (1) *the individual shall have a right to obtain*
2 *from such covered entity a copy of such information*
3 *in an electronic format; and*

4 (2) *notwithstanding paragraph (c)(4) of such*
5 *section, any fee that the covered entity may impose*
6 *for providing such individual with a copy of such in-*
7 *formation (or a summary or explanation of such in-*
8 *formation) if such copy (or summary or explanation)*
9 *is in an electronic form shall not be greater than the*
10 *entity's labor costs in responding to the request for the*
11 *copy (or summary or explanation).*

12 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**
13 **OF HEALTH CARE OPERATIONS.**

14 (a) *MARKETING.—*

15 (1) *IN GENERAL.—A communication by a cov-*
16 *ered entity or business associate that is about a prod-*
17 *uct or service and that encourages recipients of the*
18 *communication to purchase or use the product or*
19 *service shall not be considered a health care operation*
20 *for purposes of subpart E of part 164 of title 45, Code*
21 *of Federal Regulations, unless the communication is*
22 *made as described in subparagraph (i), (ii), or (iii)*
23 *of paragraph (1) of the definition of marketing in sec-*
24 *tion 164.501 of such title.*

1 (2) *PAYMENT FOR CERTAIN COMMUNICATIONS.*—

2 *A covered entity or business associate may not receive*
3 *direct or indirect payment in exchange for making*
4 *any communication described in subparagraph (i),*
5 *(ii), or (iii) of paragraph (1) of the definition of mar-*
6 *keting in section 164.501 of title 45, Code of Federal*
7 *Regulations, except—*

8 (A) *a business associate of a covered entity*
9 *may receive payment from the covered entity for*
10 *making any such communication on behalf of the*
11 *covered entity that is consistent with the written*
12 *contract (or other written arrangement) de-*
13 *scribed in section 164.502(e)(2) of such title be-*
14 *tween such business associate and covered entity;*
15 *and*

16 (B) *a covered entity may receive payment*
17 *in exchange for making any such communication*
18 *if the entity obtains from the recipient of the*
19 *communication, in accordance with section*
20 *164.508 of title 45, Code of Federal Regulations,*
21 *a valid authorization (as described in paragraph*
22 *(b) of such section) with respect to such commu-*
23 *nication.*

24 (b) *FUNDRAISING.*—*Fundraising for the benefit of a*
25 *covered entity shall not be considered a health care oper-*

1 *ation for purposes of section 164.501 of title 45, Code of*
2 *Federal Regulations.*

3 *(c) EFFECTIVE DATE.—This section shall apply to*
4 *contracting occurring on or after the effective date specified*
5 *under section 4423.*

6 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
7 **MENT FOR VENDORS OF PERSONAL HEALTH**
8 **RECORDS AND OTHER NON-HIPAA COVERED**
9 **ENTITIES.**

10 *(a) IN GENERAL.—In accordance with subsection (c),*
11 *each vendor of personal health records, following the dis-*
12 *covery of a breach of security of unsecured PHR identifiable*
13 *health information that is in a personal health record*
14 *maintained or offered by such vendor, and each entity de-*
15 *scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-*
16 *lowing the discovery of a breach of security of such informa-*
17 *tion that is obtained through a product or service provided*
18 *by such entity, shall—*

19 *(1) notify each individual who is a citizen or*
20 *resident of the United States whose unsecured PHR*
21 *identifiable health information was acquired by an*
22 *unauthorized person as a result of such a breach of*
23 *security; and*

24 *(2) notify the Federal Trade Commission.*

1 **(b) NOTIFICATION BY THIRD PARTY SERVICE PRO-**
2 **VIDERS.**—*A third party service provider that provides serv-*
3 *ices to a vendor of personal health records or to an entity*
4 *described in clause (ii) or (iii) of section 4424(b)(1)(A) in*
5 *connection with the offering or maintenance of a personal*
6 *health record or a related product or service and that ac-*
7 *cesses, maintains, retains, modifies, records, stores, destroys,*
8 *or otherwise holds, uses, or discloses unsecured PHR identi-*
9 *fiable health information in such a record as a result of*
10 *such services shall, following the discovery of a breach of*
11 *security of such information, notify such vendor or entity,*
12 *respectively, of such breach. Such notice shall include the*
13 *identification of each individual whose unsecured PHR*
14 *identifiable health information has been, or is reasonably*
15 *believed to have been, accessed, acquired, or disclosed during*
16 *such breach.*

17 **(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS,**
18 **METHOD, AND CONTENT OF NOTIFICATIONS.**—*Subsections*
19 *(c), (d), (e), and (f) of section 402 shall apply to a notifica-*
20 *tion required under subsection (a) and a vendor of personal*
21 *health records, an entity described in subsection (a) and*
22 *a third party service provider described in subsection (b),*
23 *with respect to a breach of security under subsection (a)*
24 *of unsecured PHR identifiable health information in such*

1 *records maintained or offered by such vendor, in a manner*
2 *specified by the Federal Trade Commission.*

3 (d) *NOTIFICATION OF THE SECRETARY.*—*Upon receipt*
4 *of a notification of a breach of security under subsection*
5 *(a)(2), the Federal Trade Commission shall notify the Sec-*
6 *retary of such breach.*

7 (e) *ENFORCEMENT.*—*A violation of subsection (a) or*
8 *(b) shall be treated as an unfair and deceptive act or prac-*
9 *tice in violation of a regulation under section 18(a)(1)(B)*
10 *of the Federal Trade Commission Act (15 U.S.C.*
11 *57a(a)(1)(B)) regarding unfair or deceptive acts or prac-*
12 *tices.*

13 (f) *DEFINITIONS.*—*For purposes of this section:*

14 (1) *BREACH OF SECURITY.*—*The term “breach of*
15 *security” means, with respect to unsecured PHR*
16 *identifiable health information of an individual in a*
17 *personal health record, acquisition of such informa-*
18 *tion without the authorization of the individual.*

19 (2) *PHR IDENTIFIABLE HEALTH INFORMA-*
20 *TION.*—*The term “PHR identifiable health informa-*
21 *tion” means individually identifiable health informa-*
22 *tion, as defined in section 1171(6) of the Social Secu-*
23 *urity Act (42 U.S.C. 1320d(6)), and includes, with re-*
24 *spect to an individual, information—*

1 (A) that is provided by or on behalf of the
2 individual; and

3 (B) that identifies the individual or with
4 respect to which there is a reasonable basis to be-
5 lieve that the information can be used to identify
6 the individual.

7 (3) *UNSECURED PHR IDENTIFIABLE HEALTH IN-*
8 *FORMATION.—*

9 (A) *IN GENERAL.—*Subject to subparagraph
10 (B), the term “unsecured PHR identifiable
11 health information” means PHR identifiable
12 health information that is not protected through
13 the use of a technology or methodology specified
14 by the Secretary in the guidance issued under
15 section 4402(h)(2).

16 (B) *EXCEPTION IN CASE TIMELY GUIDANCE*
17 *NOT ISSUED.—*In the case that the Secretary does
18 not issue guidance under section 4402(h)(2) by
19 the date specified in such section, for purposes of
20 this section, the term “unsecured PHR identifi-
21 able health information” shall mean PHR iden-
22 tifiable health information that is not secured by
23 a technology standard that renders protected
24 health information unusable, unreadable, or in-
25 decipherable to unauthorized individuals and

1 *that is developed or endorsed by a standards de-*
2 *veloping organization that is accredited by the*
3 *American National Standards Institute.*

4 *(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—*

5 *(1) REGULATIONS; EFFECTIVE DATE.—To carry*
6 *out this section, the Secretary of Health and Human*
7 *Services shall promulgate interim final regulations by*
8 *not later than the date that is 180 days after the date*
9 *of the enactment of this section. The provisions of this*
10 *section shall apply to breaches of security that are*
11 *discovered on or after the date that is 30 days after*
12 *the date of publication of such interim final regula-*
13 *tions.*

14 *(2) SUNSET.—The provisions of this section shall*
15 *not apply to breaches of security occurring on or after*
16 *the earlier of the following the dates:*

17 *(A) The date on which a standard relating*
18 *to requirements for entities that are not covered*
19 *entities that includes requirements relating to*
20 *breach notification has been promulgated by the*
21 *Secretary.*

22 *(B) The date on which a standard relating*
23 *to requirements for entities that are not covered*
24 *entities that includes requirements relating to*

1 *breach notification has been promulgated by the*
2 *Federal Trade Commission and has taken effect.*

3 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
4 **FOR CERTAIN ENTITIES.**

5 *Each organization, with respect to a covered entity,*
6 *that provides data transmission of protected health infor-*
7 *mation to such entity (or its business associate) and that*
8 *requires access on a routine basis to such protected health*
9 *information, such as a Health Information Exchange Orga-*
10 *nization, Regional Health Information Organization, E-*
11 *prescribing Gateway, or each vendor that contracts with a*
12 *covered entity to allow that covered entity to offer a per-*
13 *sonal health record to patients as part of its electronic*
14 *health record, is required to enter into a written contract*
15 *(or other written arrangement) described in section*
16 *164.502(e)(2) of title 45, Code of Federal Regulations and*
17 *a written contract (or other arrangement) described in sec-*
18 *tion 164.308(b) of such title, with such entity and shall be*
19 *treated as a business associate of the covered entity for pur-*
20 *poses of the provisions of this subtitle and subparts C and*
21 *E of part 164 of title 45, Code of Federal Regulations, as*
22 *such provisions are in effect as of the date of enactment*
23 *of this title.*

1 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
2 **DISCLOSURES CRIMINAL PENALTIES.**

3 *Section 1177(a) of the Social Security Act (42 U.S.C.*
4 *1320d–6(a)) is amended by adding at the end the following*
5 *new sentence: “For purposes of the previous sentence, a per-*
6 *son (including an employee or other individual) shall be*
7 *considered to have obtained or disclosed individually identi-*
8 *fiable health information in violation of this part if the in-*
9 *formation is maintained by a covered entity (as defined in*
10 *the HIPAA privacy regulation described in section*
11 *1180(b)(3)) and the individual obtained or disclosed such*
12 *information without authorization.”.*

13 **SEC. 4410. IMPROVED ENFORCEMENT.**

14 *(a) IN GENERAL.—Section 1176 of the Social Security*
15 *Act (42 U.S.C. 1320d-5) is amended—*

16 *(1) in subsection (b)(1), by striking “the act con-*
17 *stitutes an offense punishable under section 1177”*
18 *and inserting “a penalty has been imposed under sec-*
19 *tion 1177 with respect to such act”; and*

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

22 *“(c) NONCOMPLIANCE DUE TO WILLFUL NEGLIGENCE.—*

23 *“(1) IN GENERAL.—A violation of a provision of*
24 *this part due to willful neglect is a violation for*
25 *which the Secretary is required to impose a penalty*
26 *under subsection (a)(1).*

1 “(2) *REQUIRED INVESTIGATION.*—*For purposes*
2 *of paragraph (1), the Secretary shall formally inves-*
3 *tigate any complaint of a violation of a provision of*
4 *this part if a preliminary investigation of the facts*
5 *of the complaint indicate such a possible violation*
6 *due to willful neglect.”.*

7 **(b) *EFFECTIVE DATE; REGULATIONS.***—

8 (1) *The amendments made by subsection (a)*
9 *shall apply to penalties imposed on or after the date*
10 *that is 24 months after the date of the enactment of*
11 *this title.*

12 (2) *Not later than 18 months after the date of the*
13 *enactment of this title, the Secretary of Health and*
14 *Human Services shall promulgate regulations to im-*
15 *plement such amendments.*

16 **(c) *DISTRIBUTION OF CERTAIN CIVIL MONETARY PEN-***
17 ***ALTIES COLLECTED.***—

18 (1) *IN GENERAL.*—*Subject to the regulation pro-*
19 *mulgated pursuant to paragraph (3), any civil mone-*
20 *tary penalty or monetary settlement collected with re-*
21 *spect to an offense punishable under this subtitle or*
22 *section 1176 of the Social Security Act (42 U.S.C.*
23 *1320d-5) insofar as such section relates to privacy or*
24 *security shall be transferred to the Office of Civil*
25 *Rights of the Department of Health and Human*

1 *Services to be used for purposes of enforcing the pro-*
2 *visions of this subtitle and subparts C and E of part*
3 *164 of title 45, Code of Federal Regulations, as such*
4 *provisions are in effect as of the date of enactment of*
5 *this Act.*

6 (2) *GAO REPORT.—Not later than 18 months*
7 *after the date of the enactment of this title, the Comp-*
8 *troller General shall submit to the Secretary a report*
9 *including recommendations for a methodology under*
10 *which an individual who is harmed by an act that*
11 *constitutes an offense referred to in paragraph (1)*
12 *may receive a percentage of any civil monetary pen-*
13 *alty or monetary settlement collected with respect to*
14 *such offense.*

15 (3) *ESTABLISHMENT OF METHODOLOGY TO DIS-*
16 *TRIBUTE PERCENTAGE OF CMPS COLLECTED TO*
17 *HARMED INDIVIDUALS.—Not later than 3 years after*
18 *the date of the enactment of this title, the Secretary*
19 *shall establish by regulation and based on the rec-*
20 *ommendations submitted under paragraph (2), a*
21 *methodology under which an individual who is*
22 *harmed by an act that constitutes an offense referred*
23 *to in paragraph (1) may receive a percentage of any*
24 *civil monetary penalty or monetary settlement col-*
25 *lected with respect to such offense.*

1 (4) *APPLICATION OF METHODOLOGY.*—*The meth-*
2 *odology under paragraph (3) shall be applied with re-*
3 *spect to civil monetary penalties or monetary settle-*
4 *ments imposed on or after the effective date of the reg-*
5 *ulation.*

6 (d) *TIERED INCREASE IN AMOUNT OF CIVIL MONE-*
7 *TARY PENALTIES.*—

8 (1) *IN GENERAL.*—*Section 1176(a)(1) of the So-*
9 *cial Security Act (42 U.S.C. 1320d-5(a)(1)) is*
10 *amended by striking “who violates a provision of this*
11 *part a penalty of not more than” and all that follows*
12 *and inserting the following: “who violates a provision*
13 *of this part—*

14 *“(A) in the case of a violation of such pro-*
15 *vision in which it is established that the person*
16 *did not know (and by exercising reasonable dili-*
17 *gence would not have known) that such person*
18 *violated such provision, a penalty for each such*
19 *violation of an amount that is at least the*
20 *amount described in paragraph (3)(A) but not to*
21 *exceed the amount described in paragraph*
22 *(3)(D);*

23 *“(B) in the case of a violation of such pro-*
24 *vision in which it is established that the viola-*
25 *tion was due to reasonable cause and not to will-*

1 *ful neglect, a penalty for each such violation of*
2 *an amount that is at least the amount described*
3 *in paragraph (3)(B) but not to exceed the*
4 *amount described in paragraph (3)(D); and*

5 *“(C) in the case of a violation of such provi-*
6 *sion in which it is established that the violation*
7 *was due to willful neglect—*

8 *“(i) if the violation is corrected as de-*
9 *scribed in subsection (b)(3)(A), a penalty in*
10 *an amount that is at least the amount de-*
11 *scribed in paragraph (3)(C) but not to ex-*
12 *ceed the amount described in paragraph*
13 *(3)(D); and*

14 *“(ii) if the violation is not corrected as*
15 *described in such subsection, a penalty in*
16 *an amount that is at least the amount de-*
17 *scribed in paragraph (3)(D).*

18 *In determining the amount of a penalty under*
19 *this section for a violation, the Secretary shall*
20 *base such determination on the nature and ex-*
21 *tent of the violation and the nature and extent*
22 *of the harm resulting from such violation.”.*

23 *(2) TIERS OF PENALTIES DESCRIBED.—Section*
24 *1176(a) of such Act (42 U.S.C. 1320d-5(a)) is further*

1 *amended by adding at the end the following new*
2 *paragraph:*

3 “(3) *TIERS OF PENALTIES DESCRIBED.—For*
4 *purposes of paragraph (1), with respect to a violation*
5 *by a person of a provision of this part—*

6 “(A) *the amount described in this subpara-*
7 *graph is \$100 for each such violation, except that*
8 *the total amount imposed on the person for all*
9 *such violations of an identical requirement or*
10 *prohibition during a calendar year may not ex-*
11 *ceed \$25,000;*

12 “(B) *the amount described in this subpara-*
13 *graph is \$1,000 for each such violation, except*
14 *that the total amount imposed on the person for*
15 *all such violations of an identical requirement or*
16 *prohibition during a calendar year may not ex-*
17 *ceed \$100,000;*

18 “(C) *the amount described in this subpara-*
19 *graph is \$10,000 for each such violation, except*
20 *that the total amount imposed on the person for*
21 *all such violations of an identical requirement or*
22 *prohibition during a calendar year may not ex-*
23 *ceed \$250,000; and*

24 “(D) *the amount described in this subpara-*
25 *graph is \$50,000 for each such violation, except*

1 *that the total amount imposed on the person for*
2 *all such violations of an identical requirement or*
3 *prohibition during a calendar year may not ex-*
4 *ceed \$1,500,000.”.*

5 (3) *CONFORMING AMENDMENTS.—Section*
6 *1176(b) of such Act (42 U.S.C. 1320d-5(b)) is amend-*
7 *ed—*

8 (A) *by striking paragraph (2) and redesign-*
9 *ating paragraphs (3) and (4) as paragraphs*
10 *(2) and (3), respectively; and*

11 (B) *in paragraph (2), as so redesignated—*

12 (i) *in subparagraph (A), by striking*
13 *“in subparagraph (B), a penalty may not*
14 *be imposed under subsection (a) if” and all*
15 *that follows through “the failure to comply*
16 *is corrected” and inserting “in subpara-*
17 *graph (B) or subsection (a)(1)(C), a penalty*
18 *may not be imposed under subsection (a) if*
19 *the failure to comply is corrected”; and*

20 (ii) *in subparagraph (B), by striking*
21 *“(A)(ii)” and inserting “(A)” each place it*
22 *appears.*

23 (4) *EFFECTIVE DATE.—The amendments made*
24 *by this subsection shall apply to violations occurring*
25 *after the date of the enactment of this title.*

1 (e) *ENFORCEMENT THROUGH STATE ATTORNEYS GEN-*
2 *ERAL.*—

3 (1) *IN GENERAL.*—*Section 1176 of the Social Se-*
4 *curity Act (42 U.S.C. 1320d-5) is amended by add-*
5 *ing at the end the following new subsection:*

6 “(c) *ENFORCEMENT BY STATE ATTORNEYS GEN-*
7 *ERAL.*—

8 “(1) *CIVIL ACTION.*—*Except as provided in sub-*
9 *section (b), in any case in which the attorney general*
10 *of a State has reason to believe that an interest of one*
11 *or more of the residents of that State has been or is*
12 *threatened or adversely affected by any person who*
13 *violates a provision of this part, the attorney general*
14 *of the State, as parens patriae, may bring a civil ac-*
15 *tion on behalf of such residents of the State in a dis-*
16 *trict court of the United States of appropriate juris-*
17 *isdiction—*

18 “(A) *to enjoin further such violation by the*
19 *defendant; or*

20 “(B) *to obtain damages on behalf of such*
21 *residents of the State, in an amount equal to the*
22 *amount determined under paragraph (2).*

23 “(2) *STATUTORY DAMAGES.*—

24 “(A) *IN GENERAL.*—*For purposes of para-*
25 *graph (1)(B), the amount determined under this*

1 *paragraph is the amount calculated by multi-*
2 *plying the number of violations by up to \$100.*
3 *For purposes of the preceding sentence, in the*
4 *case of a continuing violation, the number of vio-*
5 *lations shall be determined consistent with the*
6 *HIPAA privacy regulations (as defined in sec-*
7 *tion 1180(b)(3)) for violations of subsection (a).*

8 “(B) *LIMITATION.*—*The total amount of*
9 *damages imposed on the person for all violations*
10 *of an identical requirement or prohibition dur-*
11 *ing a calendar year may not exceed \$25,000.*

12 “(C) *REDUCTION OF DAMAGES.*—*In assess-*
13 *ing damages under subparagraph (A), the court*
14 *may consider the factors the Secretary may con-*
15 *sider in determining the amount of a civil*
16 *money penalty under subsection (a) under the*
17 *HIPAA privacy regulations.*

18 “(3) *ATTORNEY FEES.*—*In the case of any suc-*
19 *cessful action under paragraph (1), the court, in its*
20 *discretion, may award the costs of the action and rea-*
21 *sonable attorney fees to the State.*

22 “(4) *NOTICE TO SECRETARY.*—*The State shall*
23 *serve prior written notice of any action under para-*
24 *graph (1) upon the Secretary and provide the Sec-*
25 *retary with a copy of its complaint, except in any*

1 *case in which such prior notice is not feasible, in*
2 *which case the State shall serve such notice imme-*
3 *diately upon instituting such action. The Secretary*
4 *shall have the right—*

5 *“(A) to intervene in the action;*

6 *“(B) upon so intervening, to be heard on all*
7 *matters arising therein; and*

8 *“(C) to file petitions for appeal.*

9 *“(5) CONSTRUCTION.—For purposes of bringing*
10 *any civil action under paragraph (1), nothing in this*
11 *section shall be construed to prevent an attorney gen-*
12 *eral of a State from exercising the powers conferred*
13 *on the attorney general by the laws of that State.*

14 *“(6) VENUE; SERVICE OF PROCESS.—*

15 *“(A) VENUE.—Any action brought under*
16 *paragraph (1) may be brought in the district*
17 *court of the United States that meets applicable*
18 *requirements relating to venue under section*
19 *1391 of title 28, United States Code.*

20 *“(B) SERVICE OF PROCESS.—In an action*
21 *brought under paragraph (1), process may be*
22 *served in any district in which the defendant—*

23 *“(i) is an inhabitant; or*

24 *“(ii) maintains a physical place of*
25 *business.*

1 “(7) *LIMITATION ON STATE ACTION WHILE FED-*
2 *ERAL ACTION IS PENDING.*—*If the Secretary has insti-*
3 *tuted an action against a person under subsection (a)*
4 *with respect to a specific violation of this part, no*
5 *State attorney general may bring an action under*
6 *this subsection against the person with respect to such*
7 *violation during the pendency of that action.*

8 “(8) *APPLICATION OF CMP STATUTE OF LIMITA-*
9 *TION.*—*A civil action may not be instituted with re-*
10 *spect to a violation of this part unless an action to*
11 *impose a civil money penalty may be instituted*
12 *under subsection (a) with respect to such violation*
13 *consistent with the second sentence of section*
14 *1128A(c)(1).”.*

15 (2) *CONFORMING AMENDMENTS.*—*Subsection (b)*
16 *of such section, as amended by subsection (d)(3), is*
17 *amended—*

18 (A) *in paragraph (1), by striking “A pen-*
19 *alty may not be imposed under subsection (a)”*
20 *and inserting “No penalty may be imposed*
21 *under subsection (a) and no damages obtained*
22 *under subsection (c)”;*

23 (B) *in paragraph (2)(A)—*

24 (i) *in the matter before clause (i), by*
25 *striking “a penalty may not be imposed*

1 *under subsection (a)” and inserting “no*
2 *penalty may be imposed under subsection*
3 *(a) and no damages obtained under sub-*
4 *section (c)”;* and

5 *(ii) in clause (ii), by inserting “or*
6 *damages” after “the penalty”;*

7 *(C) in paragraph (2)(B)(i), by striking*
8 *“The period” and inserting “With respect to the*
9 *imposition of a penalty by the Secretary under*
10 *subsection (a), the period”;* and

11 *(D) in paragraph (3), by inserting “and*
12 *any damages under subsection (c)” after “any*
13 *penalty under subsection (a)”.*

14 *(3) EFFECTIVE DATE.—The amendments made*
15 *by this subsection shall apply to violations occurring*
16 *after the date of the enactment of this Act.*

17 *(f) ALLOWING CONTINUED USE OF CORRECTIVE AC-*
18 *TION.—Such section is further amended by adding at the*
19 *end the following new subsection:*

20 *“(d) ALLOWING CONTINUED USE OF CORRECTIVE AC-*
21 *TION.—Nothing in this section shall be construed as pre-*
22 *venting the Office of Civil Rights of the Department of*
23 *Health and Human Services from continuing, in its discre-*
24 *tion, to use corrective action without a penalty in cases*
25 *where the person did not know (and by exercising reason-*

1 *able diligence would not have known) of the violation in-*
2 *olved.”.*

3 **SEC. 4411. AUDITS.**

4 *The Secretary shall provide for periodic audits to en-*
5 *sure that covered entities and business associates that are*
6 *subject to the requirements of this subtitle and subparts C*
7 *and E of part 164 of title 45, Code of Federal Regulations,*
8 *as such provisions are in effect as of the date of enactment*
9 *of this Act, comply with such requirements.*

10 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
11 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
12 **PORTS**

13 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

14 *(a) APPLICATION OF HIPAA STATE PREEMPTION.—*
15 *Section 1178 of the Social Security Act (42 U.S.C. 1320d-*
16 *7) shall apply to a provision or requirement under this sub-*
17 *title in the same manner that such section applies to a pro-*
18 *vision or requirement under part C of title XI of such Act*
19 *or a standard or implementation specification adopted or*
20 *established under sections 1172 through 1174 of such Act.*

21 *(b) HEALTH INSURANCE PORTABILITY AND ACCOUNT-*
22 *ABILITY ACT.—The standards governing the privacy and*
23 *security of individually identifiable health information pro-*
24 *mulgated by the Secretary under sections 262(a) and 264*
25 *of the Health Insurance Portability and Accountability Act*

1 of 1996 shall remain in effect to the extent that they are
2 consistent with this subtitle. The Secretary shall by rule
3 amend such Federal regulations as required to make such
4 regulations consistent with this subtitle.

5 **SEC. 4422. REGULATORY REFERENCES.**

6 Each reference in this subtitle to a provision of the
7 Code of Federal Regulations refers to such provision as in
8 effect on the date of the enactment of this title (or to the
9 most recent update of such provision).

10 **SEC. 4423. EFFECTIVE DATE.**

11 Except as otherwise specifically provided, the provi-
12 sions of part I shall take effect on the date that is 12 months
13 after the date of the enactment of this title.

14 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

15 (a) *REPORT ON COMPLIANCE.*—

16 (1) *IN GENERAL.*—For the first year beginning
17 after the date of the enactment of this Act and annu-
18 ally thereafter, the Secretary shall prepare and sub-
19 mit to the Committee on Health, Education, Labor,
20 and Pensions of the Senate and the Committee on
21 Ways and Means and the Committee on Energy and
22 Commerce of the House of Representatives a report
23 concerning complaints of alleged violations of law, in-
24 cluding the provisions of this subtitle as well as the
25 provisions of subparts C and E of part 164 of title

1 45, *Code of Federal Regulations*, (as such provisions
2 are in effect as of the date of enactment of this Act)
3 relating to privacy and security of health information
4 that are received by the Secretary during the year for
5 which the report is being prepared. Each such report
6 shall include, with respect to such complaints received
7 during the year—

8 (A) the number of such complaints;

9 (B) the number of such complaints resolved
10 informally, a summary of the types of such com-
11 plaints so resolved, and the number of covered
12 entities that received technical assistance from
13 the Secretary during such year in order to
14 achieve compliance with such provisions and the
15 types of such technical assistance provided;

16 (C) the number of such complaints that
17 have resulted in the imposition of civil monetary
18 penalties or have been resolved through monetary
19 settlements, including the nature of the com-
20 plaints involved and the amount paid in each
21 penalty or settlement;

22 (D) the number of compliance reviews con-
23 ducted and the outcome of each such review;

24 (E) the number of subpoenas or inquiries
25 issued;

1 (F) the Secretary's plan for improving com-
2 pliance with and enforcement of such provisions
3 for the following year; and

4 (G) the number of audits performed and a
5 summary of audit findings pursuant to section
6 4411.

7 (2) *AVAILABILITY TO PUBLIC.*—Each report
8 under paragraph (1) shall be made available to the
9 public on the Internet website of the Department of
10 Health and Human Services.

11 (b) *STUDY AND REPORT ON APPLICATION OF PRIVACY*
12 *AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED*
13 *ENTITIES.*—

14 (1) *STUDY.*—Not later than one year after the
15 date of the enactment of this title, the Secretary, in
16 consultation with the Federal Trade Commission,
17 shall conduct a study, and submit a report under
18 paragraph (2), on privacy and security requirements
19 for entities that are not covered entities or business
20 associates as of the date of the enactment of this title,
21 including—

22 (A) requirements relating to security, pri-
23 vacy, and notification in the case of a breach of
24 security or privacy (including the applicability
25 of an exemption to notification in the case of in-

1 *dividually identifiable health information that*
2 *has been rendered unusable, unreadable, or inde-*
3 *cipherable through technologies or methodologies*
4 *recognized by appropriate professional organiza-*
5 *tion or standard setting bodies to provide effec-*
6 *tive security for the information) that should be*
7 *applied to—*

8 *(i) vendors of personal health records;*

9 *(ii) entities that offer products or serv-*
10 *ices through the website of a vendor of per-*
11 *sonal health records;*

12 *(iii) entities that are not covered enti-*
13 *ties and that offer products or services*
14 *through the websites of covered entities that*
15 *offer individuals personal health records;*

16 *(iv) entities that are not covered enti-*
17 *ties and that access information in a per-*
18 *sonal health record or send information to*
19 *a personal health record; and*

20 *(v) third party service providers used*
21 *by a vendor or entity described in clause*
22 *(i), (ii), (iii), or (iv) to assist in providing*
23 *personal health record products or services;*

24 *(B) a determination of which Federal gov-*
25 *ernment agency is best equipped to enforce such*

1 *this title, the Comptroller General of the United States shall*
2 *submit to the Committee on Health, Education, Labor, and*
3 *Pensions of the Senate and the Committee on Ways and*
4 *Means and the Committee on Energy and Commerce of the*
5 *House of Representatives a report on the best practices re-*
6 *lated to the disclosure among health care providers of pro-*
7 *TECTED health information of an individual for purposes of*
8 *treatment of such individual. Such report shall include an*
9 *examination of the best practices implemented by States*
10 *and by other entities, such as health information exchanges*
11 *and regional health information organizations, an exam-*
12 *ination of the extent to which such best practices are suc-*
13 *cessful with respect to the quality of the resulting health*
14 *care provided to the individual and with respect to the abil-*
15 *ity of the health care provider to manage such best prac-*
16 *tices, and an examination of the use of electronic informed*
17 *consent for disclosing protected health information for treat-*
18 *ment, payment, and health care operations.*

19 ***Subtitle E—Miscellaneous Medicare***
20 ***Provisions***

21 ***SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULA-***
22 ***TIONS.***

23 *(a) DELAY IN PHASE OUT OF MEDICARE HOSPICE*
24 *BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING FIS-*
25 *CAL YEAR 2009.—Notwithstanding any other provision of*

1 *law, including the final rule published on August 8, 2008,*
2 *73 Federal Register 46464 et seq., relating to Medicare Pro-*
3 *gram; Hospice Wage Index for Fiscal Year 2009, the Sec-*
4 *retary of Health and Human Services shall not phase out*
5 *or eliminate the budget neutrality adjustment factor in the*
6 *Medicare hospice wage index before October 1, 2009, and*
7 *the Secretary shall recompute and apply the final Medicare*
8 *hospice wage index for fiscal year 2009 as if there had been*
9 *no reduction in the budget neutrality adjustment factor.*

10 *(b) NON-APPLICATION OF PHASED-OUT INDIRECT*
11 *MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR*
12 *FISCAL YEAR 2009.—*

13 *(1) IN GENERAL.—Section 412.322 of title 42,*
14 *Code of Federal Regulations, shall be applied without*
15 *regard to paragraph (c) of such section, and the Sec-*
16 *retary of Health and Human Services shall recom-*
17 *pute payments for discharges occurring on or after*
18 *October 1, 2008, as if such paragraph had never been*
19 *in effect.*

20 *(2) NO EFFECT ON SUBSEQUENT YEARS.—Noth-*
21 *ing in paragraph (1) shall be construed as having*
22 *any effect on the application of paragraph (d) of sec-*
23 *tion 412.322 of title 42, Code of Federal Regulations.*

24 *(c) FUNDING FOR IMPLEMENTATION.—In addition to*
25 *funds otherwise available, for purposes of implementing the*

1 *provisions of subsections (a) and (b), including costs in-*
2 *curred in reprocessing claims in carrying out such provi-*
3 *sions, the Secretary of Health and Human Services shall*
4 *provide for the transfer from the Federal Hospital Insur-*
5 *ance Trust Fund established under section 1817 of the So-*
6 *cial Security Act (42 U.S.C. 1395i) to the Centers for Medi-*
7 *care & Medicaid Services Program Management Account*
8 *of \$2,000,000 for fiscal year 2009.*

9 **SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL COR-**
10 **RECTIONS.**

11 *(a) PAYMENT.—Subsection (c) of section 114 of the*
12 *Medicare, Medicaid, and SCHIP Extension Act of 2007*
13 *(Public Law 110–173) is amended—*

14 *(1) in paragraph (1)—*

15 *(A) by amending the heading to read as fol-*
16 *lows: “DELAY IN APPLICATION OF 25 PERCENT*
17 *PATIENT THRESHOLD PAYMENT ADJUSTMENT”;*

18 *(B) by striking “the date of the enactment*
19 *of this Act” and inserting “July 1, 2007,”; and*

20 *(C) in subparagraph (A), by inserting “or*
21 *to a long-term care hospital, or satellite facility,*
22 *that as of December 29, 2007, was co-located*
23 *with an entity that is a provider-based, off-cam-*
24 *pus location of a subsection (d) hospital which*
25 *did not provide services payable under section*

1 1886(d) of the Social Security Act at the off-
2 campus location” after “freestanding long-term
3 care hospitals”; and

4 (2) in paragraph (2)—

5 (A) in subparagraph (B)(i), by inserting
6 “or that is described in section 412.22(h)(3)(i) of
7 such title” before the period; and

8 (B) in subparagraph (C), by striking “the
9 date of the enactment of this Act” and inserting
10 “October 1, 2007 (or July 1, 2007, in the case
11 of a satellite facility described in section
12 412.22(h)(3)(i) of title 42, Code of Federal Regu-
13 lations)”.

14 (b) *MORATORIUM*.—Subsection (d)(3)(A) of such sec-
15 tion is amended by striking “if the hospital or facility” and
16 inserting “if the hospital or facility obtained a certificate
17 of need for an increase in beds that is in a State for which
18 such certificate of need is required and that was issued on
19 or after April 1, 2005, and before December 29, 2007, or
20 if the hospital or facility”.

21 (c) *EFFECTIVE DATE*.—The amendments made by this
22 section shall be effective and apply as if included in the
23 enactment of the Medicare, Medicaid, and SCHIP Exten-
24 sion Act of 2007 (Public Law 110–173).

111TH CONGRESS
1ST SESSION

H. R. 598

[Report No. 111-]

A BILL

To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.