

111TH CONGRESS
1ST SESSION

H. R. 598

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

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,*

3 **TITLE I—TAX PROVISIONS**

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

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

7 (b) REFERENCE.—Except as otherwise expressly pro-
8 vided, whenever in this title an amendment or repeal is

1 expressed in terms of an amendment to, or repeal of, a
 2 section or other provision, the reference shall be consid-
 3 ered to be made to a section or other provision of the In-
 4 ternal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents for
 6 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. Temporary increase in earned income tax credit.

Sec. 1102. Temporary 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 I—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 II—5-YEAR CARRYBACK OF OPERATING LOSSES

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

Sec. 1412. Exception for TARP recipients.

PART III—INCENTIVES FOR NEW JOBS

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

PART IV—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 I—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 II—TAX CREDIT BONDS FOR SCHOOLS

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

PART III—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

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

PART IV—RECOVERY ZONE BONDS

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

PART V—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

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

Subtitle G—Energy Incentives

PART I—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 II—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 on issuance of qualified energy conservation bonds.

PART III—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 IV—ENERGY RESEARCH INCENTIVES

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

Subtitle H—Other Provisions

PART I—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 II—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 III—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX
CREDITS

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

1 **Subtitle A—Making Work Pay**

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

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

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

7 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
8 gible 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—

11 “(1) 6.2 percent of earned income of the tax-
12 payer, or

13 “(2) \$500 (\$1,000 in the case of a joint re-
14 turn).

15 “(b) LIMITATION BASED ON MODIFIED ADJUSTED
16 GROSS INCOME.—

17 “(1) IN GENERAL.—The amount allowable as a
18 credit under subsection (a) (determined without re-
19 gard to this paragraph) for the taxable year shall be

1 reduced (but not below zero) by 2 percent of so
2 much of the taxpayer's modified adjusted gross in-
3 come as exceeds \$75,000 (\$150,000 in the case of
4 a joint return).

5 “(2) MODIFIED ADJUSTED GROSS INCOME.—
6 For purposes of subparagraph (A), the term ‘modi-
7 fied adjusted gross income’ means the adjusted
8 gross income of the taxpayer for the taxable year in-
9 creased by any amount excluded from gross income
10 under section 911, 931, or 933.

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

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

14 “(A) any nonresident alien individual,

15 “(B) any individual with respect to whom
16 a deduction under section 151 is allowable to
17 another taxpayer for a taxable year beginning
18 in the calendar year in which the individual's
19 taxable year begins, and

20 “(C) an estate or trust.

21 “(2) EARNED INCOME.—The term ‘earned in-
22 come’ has the meaning given such term by section
23 32(c)(2), except that such term shall not include net
24 earnings from self-employment which are not taken
25 into account in computing taxable income. For pur-

1 poses of the preceding sentence, any amount ex-
2 cluded from gross income by reason of section 112
3 shall be treated as earned income which is taken
4 into account in computing taxable income for the
5 taxable year.

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

8 (b) TREATMENT OF POSSESSIONS.—

9 (1) PAYMENTS TO POSSESSIONS.—

10 (A) MIRROR CODE POSSESSION.—The Sec-
11 retary of the Treasury shall pay to each posses-
12 sion of the United States with a mirror code
13 tax system amounts equal to the loss to that
14 possession by reason of the amendments made
15 by this section with respect to taxable years be-
16 ginning in 2009 and 2010. Such amounts shall
17 be determined by the Secretary of the Treasury
18 based on information provided by the govern-
19 ment of the respective possession.

20 (B) OTHER POSSESSIONS.—The Secretary
21 of the Treasury shall pay to each possession of
22 the United States which does not have a mirror
23 code tax system amounts estimated by the Sec-
24 retary of the Treasury as being equal to the ag-
25 gregate benefits that would have been provided

1 to residents of such possession by reason of the
2 amendments made by this section for taxable
3 years beginning in 2009 and 2010 if a mirror
4 code tax system had been in effect in such pos-
5 session. The preceding sentence shall not apply
6 with respect to any possession of the United
7 States unless such possession has a plan, which
8 has been approved by the Secretary of the
9 Treasury, under which such possession will
10 promptly distribute such payments to the resi-
11 dents of such possession.

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

18 (A) to whom a credit is allowed against
19 taxes imposed by the possession by reason of
20 the amendments made by this section for such
21 taxable year, or

22 (B) who is eligible for a payment under a
23 plan described in paragraph (1)(B) with respect
24 to such taxable year.

25 (3) DEFINITIONS AND SPECIAL RULES.—

1 (A) POSSESSION OF THE UNITED
2 STATES.—For purposes of this subsection, the
3 term “possession of the United States” includes
4 the Commonwealth of Puerto Rico and the
5 Commonwealth of the Northern Mariana Is-
6 lands.

7 (B) MIRROR CODE TAX SYSTEM.—For pur-
8 poses of this subsection, the term “mirror code
9 tax system” means, with respect to any posses-
10 sion of the United States, the income tax sys-
11 tem of such possession if the income tax liabil-
12 ity of the residents of such possession under
13 such system is determined by reference to the
14 income tax laws of the United States as if such
15 possession were the United States.

16 (C) TREATMENT OF PAYMENTS.—For pur-
17 poses of section 1324(b)(2) of title 31, United
18 States Code, the payments under this sub-
19 section shall be treated in the same manner as
20 a refund due from the credit allowed under sec-
21 tion 36A of the Internal Revenue Code of 1986
22 (as added by this section).

23 (c) REFUNDS DISREGARDED IN THE ADMINISTRA-
24 TION OF FEDERAL PROGRAMS AND FEDERALLY AS-
25 SISTED PROGRAMS.—Any credit or refund allowed or

1 made to any individual by reason of section 36A of the
2 Internal Revenue Code of 1986 (as added by this section)
3 or by reason of subsection (b) of this section shall not be
4 taken into account as income and shall not be taken into
5 account as resources for the month of receipt and the fol-
6 lowing 2 months, for purposes of determining the eligi-
7 bility of such individual or any other individual for benefits
8 or assistance, or the amount or extent of benefits or assist-
9 ance, under any Federal program or under any State or
10 local program financed in whole or in part with Federal
11 funds.

12 (d) CONFORMING AMENDMENTS.—

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

15 (2) Section 1324(b)(2) of title 31, United
16 States Code, is amended by inserting “36A,” after
17 “36,”.

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

“Sec. 36A. Making work pay credit.”.

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

1 **Subtitle B—Additional Tax Relief**
2 **for Families With Children**

3 **SEC. 1101. TEMPORARY INCREASE IN EARNED INCOME TAX**
4 **CREDIT.**

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

8 “(3) TEMPORARY INCREASE.—In the case of
9 any taxable year beginning in 2009 or 2010—

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

14 “(B) REDUCTION OF MARRIAGE PEN-
15 ALTY.—

16 “(i) IN GENERAL.—The dollar amount
17 in effect under paragraph (2)(B) shall be
18 \$5,000.

19 “(ii) INFLATION ADJUSTMENT.—In
20 the case of any taxable year beginning in
21 2010, the \$5,000 amount in clause (i)
22 shall be increased by an amount equal to—

23 “(I) such dollar amount, multi-
24 plied by

1 “(II) the cost of living adjust-
2 ment determined under section 1(f)(3)
3 for the calendar year in which the tax-
4 able year begins determined by sub-
5 stituting ‘calendar year 2008’ for ‘cal-
6 endar year 1992’ in subparagraph (B)
7 thereof.

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

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

15 **SEC. 1102. TEMPORARY INCREASE OF REFUNDABLE POR-**
16 **TION OF CHILD CREDIT.**

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

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

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

16 “(A) 100 percent of so much of the quali-
17 fied tuition and related expenses paid by the
18 taxpayer during the taxable year (for education
19 furnished to the eligible student during any
20 academic period beginning in such taxable year)
21 as does not exceed \$2,000, plus

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

24 “(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF
25 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
6 substituting ‘tuition, fees, and course materials’ for
7 ‘tuition and fees’.

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

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

1 the credit allowed under subsection (a) as is attrib-
2 utable to the Hope Scholarship Credit shall not ex-
3 ceed the excess of—

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

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

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

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

24 The preceding sentence shall not apply to any tax-
25 payer for any taxable year if such taxpayer is a child

1 to whom subsection (g) of section 1 applies for such
2 taxable year.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 24(b)(3)(B) is amended by inserting
5 “25A(i),” after “23,”.

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

8 (3) Section 26(a)(1) is amended by inserting
9 “25A(i),” after “24,”.

10 (4) Section 25B(g)(2) is amended by inserting
11 “25A(i),” after “23,”.

12 (5) Section 904(i) is amended by inserting
13 “25A(i),” after “24,”.

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

16 (7) Section 1324(b)(2) of title 31, United
17 States Code, is amended by inserting “25A,” before
18 “35”.

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

22 (d) APPLICATION OF EGTRRA SUNSET.—The
23 amendment made by subsection (b)(1) shall be subject to
24 title IX of the Economic Growth and Tax Relief Reconcili-

1 ation Act of 2001 in the same manner as the provision
2 of such Act to which such amendment relates.

3 (e) TREASURY STUDIES REGARDING EDUCATION IN-
4 CENTIVES.—

5 (1) STUDY REGARDING COORDINATION WITH
6 NON-TAX EDUCATIONAL INCENTIVES.—The Sec-
7 retary of the Treasury, or the Secretary’s delegate,
8 shall study how to coordinate the credit allowed
9 under section 25A of the Internal Revenue Code of
10 1986 with the Federal Pell Grant program under
11 section 401 of the Higher Education Act of 1965.

12 (2) STUDY REGARDING IMPOSITION OF COMMU-
13 NITY SERVICE REQUIREMENTS.—The Secretary of
14 the Treasury, or the Secretary’s delegate, shall study
15 the feasibility of requiring students to perform com-
16 munity service as a condition of taking their tuition
17 and related expenses into account under section 25A
18 of the Internal Revenue Code of 1986.

19 (3) REPORT.—Not later than 1 year after the
20 date of the enactment of this Act, the Secretary of
21 the Treasury, or the Secretary’s delegate, shall re-
22 port to Congress on the results of the studies con-
23 ducted under this paragraph.

1 **Subtitle D—Housing Incentives**

2 **SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-**
3 **TIME HOMEBUYER CREDIT.**

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

7 “(D) WAIVER OF RECAPTURE FOR PUR-
8 CHASES IN 2009.—In the case of any credit al-
9 lowed with respect to the purchase of a prin-
10 cipal residence after December 31, 2008, and
11 before July 1, 2009—

12 “(i) paragraph (1) shall not apply,
13 and

14 “(ii) paragraph (2) shall apply only if
15 the disposition or cessation described in
16 paragraph (2) with respect to such resi-
17 dence occurs during the 36-month period
18 beginning on the date of the purchase of
19 such residence by the taxpayer.”.

20 (b) CONFORMING AMENDMENT.—Subsection (g) of
21 section 36 is amended by striking “subsection (e)” and
22 inserting “subsections (e) and (f)(4)(D)”.

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

1 **SEC. 1302. COORDINATION OF LOW-INCOME HOUSING**
2 **CREDIT AND LOW-INCOME HOUSING GRANTS.**

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

6 “(9) COORDINATION WITH LOW-INCOME HOUS-
7 ING GRANTS.—

8 “(A) REDUCTION IN STATE HOUSING
9 CREDIT CEILING FOR LOW-INCOME HOUSING
10 GRANTS RECEIVED IN 2009.—For purposes of
11 this section, the amounts described in clauses
12 (i) through (iv) of subsection (h)(3)(C) with re-
13 spect to any State for 2009 shall each be re-
14 duced by so much of such amount as is taken
15 into account in determining the amount of any
16 grant to such State under section 1711 of the
17 American Recovery and Reinvestment Tax Act
18 of 2009.

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

1 **Subtitle E—Tax Incentives for**
2 **Business**

3 **PART I—TEMPORARY INVESTMENT INCENTIVES**

4 **SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY**
5 **ACQUIRED DURING 2009.**

6 (a) IN GENERAL.—Paragraph (2) of section 168(k)
7 is amended—

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

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

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for subsection (k) of section
14 168 is amended by striking “JANUARY 1, 2009” and
15 inserting “JANUARY 1, 2010”.

16 (2) The heading for clause (ii) of section
17 168(k)(2)(B) is amended by striking “PRE-JANUARY
18 1, 2009” and inserting “PRE-JANUARY 1, 2010”.

19 (3) Subparagraph (D) of section 168(k)(4) is
20 amended—

21 (A) by striking “and” at the end of clause

22 (i),

23 (B) by redesignating clause (ii) as clause

24 (v), and

1 (C) by inserting after clause (i) the fol-
2 lowing new clauses:

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

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

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

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

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

18 (c) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the amendments made by this section
21 shall apply to property placed in service after De-
22 cember 31, 2008, in taxable years ending after such
23 date.

24 (2) TECHNICAL AMENDMENT.—Section
25 168(k)(4)(D)(ii) of the Internal Revenue Code of

1 1986, as added by subsection (b)(3)(C), shall apply
2 to taxable years ending after March 31, 2008.

3 **SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
4 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
5 **NESS ASSETS.**

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

8 (1) by striking “2008” and inserting “2008, or
9 2009”, and

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

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

15 **PART II—5-YEAR CARRYBACK OF OPERATING**
16 **LOSSES**

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

18 (a) IN GENERAL.—Subparagraph (H) of section
19 172(b)(1) is amended to read as follows:

20 “(H) CARRYBACK FOR 2008 AND 2009 NET
21 OPERATING LOSSES.—In the case of a net oper-
22 ating loss for any taxable year ending during
23 2008 or 2009—

24 “(i) subparagraph (A)(i) shall be ap-
25 plied by substituting ‘5’ for ‘2’,

1 “(ii) subparagraph (E)(ii) shall be ap-
2 plied by substituting ‘4’ for ‘2’, and

3 “(iii) subparagraph (F) shall not
4 apply.”.

5 (b) ALTERNATIVE TAX NET OPERATING LOSS DE-
6 DEDUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is
7 amended to read as follows:

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

16 (c) ELECTION TO CARRY BACK A FEWER NUMBER
17 OF YEARS.—Subsection (k) of section 172 is amended by
18 inserting “or may elect to apply such subsection by sub-
19 stituting a whole number less than 5 for ‘5’ in such sub-
20 section” before the period at the end of the first sentence.

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

24 “(4) CARRYBACK FOR 2008 AND 2009 LOSS
25 YEARS.—In the case of a loss from operations for

1 any taxable year ending during 2008 or 2009, the
2 taxpayer may elect to apply paragraph (1)(A) by
3 substituting any whole number less than 6 for ‘3’.
4 Such election shall be made in such manner as may
5 be prescribed by the Secretary and shall be made by
6 the due date (including extensions of time) for filing
7 the taxpayer’s return for the taxable year of the loss
8 from operations. Such election, once made for any
9 taxable year, shall be irrevocable for such taxable
10 year.”.

11 (e) EFFECTIVE DATE.—

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

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

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

1 (4) TRANSITIONAL RULE.—In the case of a net
2 operating loss (or, in the case of a life insurance
3 company, a loss from operations) for a taxable year
4 ending during 2008—

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

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

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

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

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

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

25 (1) any taxpayer if—

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

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

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

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

18 **PART III—INCENTIVES FOR NEW JOBS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (B) was described on or before such date
25 in a public announcement or in a filing with the

1 Securities and Exchange Commission required
2 by reason of such ownership change.

3 **Subtitle F—Fiscal Relief for State**
4 **and Local Governments**

5 **PART I—IMPROVED MARKETABILITY FOR TAX-**
6 **EXEMPT BONDS**

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

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

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

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

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

24 “(C) REFUNDINGS.—For purposes of this
25 paragraph, a refunding bond (whether a current

1 or advance refunding) shall be treated as issued
2 on the date of the issuance of the refunded
3 bond (or in the case of a series of refundings,
4 the original bond).”.

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

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

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

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

22 “(G) SPECIAL RULES FOR OBLIGATIONS
23 ISSUED DURING 2009 AND 2010.—

24 “(i) INCREASE IN LIMITATION.—In
25 the case of obligations issued during 2009

1 or 2010, subparagraphs (C)(i), (D)(i), and
2 (D)(iii)(II) shall each be applied by sub-
3 stituting ‘\$30,000,000’ for ‘\$10,000,000’.

4 “(ii) SPECIAL RULE FOR POOLED
5 FINANCINGS.—In the case of a pooled fi-
6 nancing issue issued during 2009 or
7 2010—

8 “(I) subparagraph (F) shall not
9 apply, and

10 “(II) any obligation issued as a
11 part of such issue shall be treated as
12 a qualified tax-exempt obligation if
13 the requirements of this paragraph
14 are met with respect to each qualified
15 portion of the issue (determined by
16 treating each qualified portion as a
17 separate issue).

18 “(iii) POOLED FINANCING ISSUE.—
19 For purposes of this subparagraph, the
20 term ‘pooled financing issue’ means any
21 issue the proceeds of which are used di-
22 rectly or indirectly to make or finance
23 loans to 2 or more ultimate borrowers all
24 of whom are qualified borrowers.

1 “(iv) QUALIFIED PORTION.—For pur-
2 poses of this subparagraph, the term
3 ‘qualified portion’ means that portion of
4 the proceeds which are used with respect
5 to each qualified borrower under the issue.

6 “(v) QUALIFIED BORROWER.—For
7 purposes of this subparagraph, the term
8 ‘qualified borrower’ means a borrower
9 which is a State or political subdivision
10 thereof or an organization described in sec-
11 tion 501(c)(3) and exempt from taxation
12 under section 501(a).”.

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

16 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
17 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
18 **BONDS.**

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

23 “(vi) EXCEPTION FOR BONDS ISSUED
24 IN 2009 AND 2010.—For purposes of clause
25 (i), the term ‘private activity bond’ shall

1 not include any bond issued after Decem-
2 ber 31, 2008, and before January 1, 2011.
3 For purposes of the preceding sentence, a
4 refunding bond (whether a current or ad-
5 vance refunding) shall be treated as issued
6 on the date of the issuance of the refunded
7 bond (or in the case of a series of
8 refundings, the original bond).”.

9 (b) NO ADJUSTMENT TO ADJUSTED CURRENT
10 EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS
11 ISSUED AFTER 2008.—Subparagraph (B) of section
12 56(g)(4) is amended by adding at the end the following
13 new clause:

14 “(iv) TAX EXEMPT INTEREST ON
15 BONDS ISSUED IN 2009 AND 2010.—Clause
16 (i) shall not apply in the case of any inter-
17 est on a bond issued after December 31,
18 2008, and before January 1, 2011. For
19 purposes of the preceding sentence, a re-
20 funding bond (whether a current or ad-
21 vance refunding) shall be treated as issued
22 on the date of the issuance of the refunded
23 bond (or in the case of a series of
24 refundings, the original bond).”.

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

4 **PART II—TAX CREDIT BONDS FOR SCHOOLS**

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

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

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

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

14 “(1) 100 percent of the available project pro-
15 ceeds of such issue are to be used for the construc-
16 tion, rehabilitation, or repair of a public school facil-
17 ity or for the acquisition of land on which such a fa-
18 cility is to be constructed with part of the proceeds
19 of such issue,

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

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

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

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

9 “(2) if such issuer is a large local educational
10 agency (as defined in subsection (e)(4)) or is issuing
11 on behalf of such an agency, the limitation amount
12 allocated under subsection (e) for such calendar year
13 to such agency.

14 “(c) NATIONAL LIMITATION ON AMOUNT OF BONDS
15 DESIGNATED.—There is a national qualified school con-
16 struction bond limitation for each calendar year. Such lim-
17 itation is—

18 “(1) \$10,000,000,000 for 2009,

19 “(2) \$10,000,000,000 for 2010, and

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

22 “(d) 60 PERCENT OF LIMITATION ALLOCATED
23 AMONG STATES.—

24 “(1) IN GENERAL.—60 percent of the limitation
25 applicable under subsection (c) for any calendar year

1 shall be allocated by the Secretary among the States
2 in proportion to the respective numbers of children
3 in each State who have attained age 5 but not age
4 18 for the most recent fiscal year ending before such
5 calendar year. The limitation amount allocated to a
6 State under the preceding sentence shall be allocated
7 by the State to issuers within such State.

8 “(2) MINIMUM ALLOCATIONS TO STATES.—

9 “(A) IN GENERAL.—The Secretary shall
10 adjust the allocations under this subsection for
11 any calendar year for each State to the extent
12 necessary to ensure that the sum of—

13 “(i) the amount allocated to such
14 State under this subsection for such year,
15 and

16 “(ii) the aggregate amounts allocated
17 under subsection (e) to large local edu-
18 cational agencies in such State for such
19 year,

20 is not less than an amount equal to such
21 State’s adjusted minimum percentage of the
22 amount to be allocated under paragraph (1) for
23 the calendar year.

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

4 “(i) the minimum percentage de-
5 scribed in section 1124(d) of the Elemen-
6 tary and Secondary Education Act of 1965
7 (20 U.S.C. 6334(d)) for such State for the
8 most recent fiscal year ending before such
9 calendar year, multiplied by

10 “(ii) 1.68.

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

23 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
24 addition to the amounts otherwise allocated under
25 this subsection, \$200,000,000 for calendar year

1 2009, and \$200,000,000 for calendar year 2010,
2 shall be allocated by the Secretary of the Interior for
3 purposes of the construction, rehabilitation, and re-
4 pair of schools funded by the Bureau of Indian Af-
5 fairs. In the case of amounts allocated under the
6 preceding sentence, Indian tribal governments (as
7 defined in section 7701(a)(40)) shall be treated as
8 qualified issuers for purposes of this subchapter.

9 “(e) 40 PERCENT OF LIMITATION ALLOCATED
10 AMONG LARGEST SCHOOL DISTRICTS.—

11 “(1) IN GENERAL.—40 percent of the limitation
12 applicable under subsection (c) for any calendar year
13 shall be allocated under paragraph (2) by the Sec-
14 retary among local educational agencies which are
15 large local educational agencies for such year.

16 “(2) ALLOCATION FORMULA.—The amount to
17 be allocated under paragraph (1) for any calendar
18 year shall be allocated among large local educational
19 agencies in proportion to the respective amounts
20 each such agency received for Basic Grants under
21 subpart 2 of part A of title I of the Elementary and
22 Secondary Education Act of 1965 (20 U.S.C. 6331
23 et seq.) for the most recent fiscal year ending before
24 such calendar year.

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

9 “(4) LARGE LOCAL EDUCATIONAL AGENCY.—
10 For purposes of this section, the term ‘large local
11 educational agency’ means, with respect to a cal-
12 endar year, any local educational agency if such
13 agency is—

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

21 “(B) 1 of not more than 25 local edu-
22 cational agencies (other than those described in
23 subparagraph (A)) that the Secretary of Edu-
24 cation determines (based on the most recent
25 data available satisfactory to the Secretary) are

1 in particular need of assistance, based on a low
2 level of resources for school construction, a high
3 level of enrollment growth, or such other factors
4 as the Secretary deems appropriate.

5 “(f) CARRYOVER OF UNUSED LIMITATION.—If for
6 any calendar year—

7 “(1) the amount allocated under subsection (d)
8 to any State, exceeds

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

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

16 (b) CONFORMING AMENDMENTS.—

17 (1) Paragraph (1) of section 54A(d) is amended
18 by striking “or” at the end of subparagraph (C), by
19 inserting “or” at the end of subparagraph (D), and
20 by inserting after subparagraph (D) the following
21 new subparagraph:

22 “(E) a qualified school construction
23 bond.”.

24 (2) Subparagraph (C) of section 54A(d)(2) is
25 amended by striking “and” at the end of clause (iii),

1 by striking the period at the end of clause (iv) and
2 inserting “, and”, and by adding at the end the fol-
3 lowing new clause:

4 “(v) in the case of a qualified school
5 construction bond, a purpose specified in
6 section 54F(a)(1).”.

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

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

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

13 **SEC. 1512. EXTENSION AND EXPANSION OF QUALIFIED**
14 **ZONE ACADEMY BONDS.**

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

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

1 **PART III—TAXABLE BOND OPTION FOR**
2 **GOVERNMENTAL BONDS**
3 **SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL**
4 **BONDS.**

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

8 **“Subpart J—Taxable Bond Option for Governmental**
9 **Bonds**

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

10 **“SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL**
11 **BONDS.**

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

19 “(b) AMOUNT OF CREDIT.—The amount of the credit
20 determined under this subsection with respect to any in-
21 terest payment date for a taxable governmental bond is
22 35 percent of the amount of interest payable by the issuer
23 with respect to such date.

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

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

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

7 “(B) the sum of the credits allowable
8 under this part (other than subpart C and this
9 subpart).

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

18 “(d) TAXABLE GOVERNMENTAL BOND.—

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

23 “(A) the interest on such obligation would
24 (but for this section) be excludable from gross
25 income under section 103, and

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

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

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

9 “(B) the yield on a taxable governmental
10 bond shall be determined without regard to the
11 credit allowed under subsection (a), and

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

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

23 “(f) SPECIAL RULES.—

24 “(1) INTEREST ON TAXABLE GOVERNMENTAL
25 BONDS INCLUDIBLE IN GROSS INCOME FOR FED-

1 ERAL INCOME TAX PURPOSES.—For purposes of this
2 title, interest on any taxable governmental bond
3 shall be includible in gross income.

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

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

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

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

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

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

1 (b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE
2 2011.—Subchapter B of chapter 65 is amended by adding
3 at the end the following new section:

4 **“SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
5 **ISSUER.**

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

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

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

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

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

4 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

9 **PART IV—RECOVERY ZONE BONDS**

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

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

13 **“PART III—RECOVERY ZONE BONDS**

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

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

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

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

15 “(a) ALLOCATIONS.—

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

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

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

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

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

8 “(3) ALLOCATIONS BY STATES.—

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

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

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

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

7 “(4) NATIONAL LIMITATIONS.—

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

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

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

17 “(1) any area designated by the issuer as hav-
18 ing significant poverty, unemployment, or rate of
19 home foreclosures, and

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

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

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

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

3 “(2) subsection (b) of such section shall be ap-
4 plied by substituting ‘40 percent’ for ‘35 percent’.

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

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

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

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

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

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

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

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

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

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

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

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

15 “(b) RECOVERY ZONE FACILITY BOND.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 “PART III. RECOVERY ZONE BONDS.”.

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

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

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

1 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

2 “(1) ALLOCATION OF LIMITATION.—

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

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

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

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

19 “(B) section 146 shall not apply.

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

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

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

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

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

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

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

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

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

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

20 **PART V—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 I—RENEWABLE ENERGY INCENTIVES**

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

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

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

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

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

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

19 (c) **EFFECTIVE DATE.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) CONFORMING AMENDMENTS.—

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

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

25 (c) EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 1612. INCREASED LIMITATION ON ISSUANCE OF**
16 **QUALIFIED ENERGY CONSERVATION BONDS.**

17 Subsection (e) of section 54D is amended by adding
18 at the end the following new paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) by striking subparagraph (C).

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

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

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

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

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

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

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

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

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

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

18 **PART IV—ENERGY RESEARCH INCENTIVES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) the sum of—

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

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

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

3 (2) 10.

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

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

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

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

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

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

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

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

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

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

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

5 **PROPERTY IN LIEU OF TAX CREDITS**

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

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

15 (b) GRANT AMOUNT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **SEC. 2000. SHORT TITLE, ETC.**

9 (a) SHORT TITLE.—This title may be cited as the
 10 “Assistance for Unemployed Workers and Struggling
 11 Families Act”.

12 (b) TABLE OF CONTENTS.—The table of contents for
 13 this title is as follows:

Sec. 2000. Short title, etc.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.

Sec. 2002. Increase in unemployment compensation benefits.

Sec. 2003. Special transfers for unemployment compensation modernization.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.

Sec. 2102. One-time emergency SSI payment.

Sec. 2103. Temporary resumption of prior child support law.

14 **Subtitle A—Unemployment**
 15 **Insurance**

16 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
 17 **COMPENSATION PROGRAM.**

18 (a) IN GENERAL.—Section 4007 of the Supplemental
 19 Appropriations Act, 2008 (Public Law 110–252; 26
 20 U.S.C. 3304 note), as amended by section 4 of the Unem-

1 ployment Compensation Extension Act of 2008 (Public
2 Law 110–449; 122 Stat. 5015), is amended—

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

5 (2) in the heading for subsection (b)(2), by
6 striking “MARCH 31, 2009” and inserting “DECEM-
7 BER 31, 2009”; and

8 (3) in subsection (b)(3), by striking “August
9 27, 2009” and inserting “May 31, 2010”.

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

12 “(e) TRANSFER OF FUNDS.—Notwithstanding any
13 other provision of law, the Secretary of the Treasury shall
14 transfer from the general fund of the Treasury (from
15 funds not otherwise appropriated)—

16 “(1) to the extended unemployment compensa-
17 tion account (as established by section 905 of the
18 Social Security Act) such sums as the Secretary of
19 Labor estimates to be necessary to make payments
20 to States under this title by reason of the amend-
21 ments made by section 2001(a) of the Assistance for
22 Unemployed Workers and Struggling Families Act;
23 and

24 “(2) to the employment security administration
25 account (as established by section 901 of the Social

1 Security Act) such sums as the Secretary of Labor
2 estimates to be necessary for purposes of assisting
3 States in meeting administrative costs by reason of
4 the amendments referred to in paragraph (1).

5 There are appropriated from the general fund of the
6 Treasury, without fiscal year limitation, the sums referred
7 to in the preceding sentence and such sums shall not be
8 required to be repaid.”.

9 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
10 **BENEFITS.**

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

18 (b) **PROVISIONS OF AGREEMENT.**—

19 (1) **ADDITIONAL COMPENSATION.**—Any agree-
20 ment under this section shall provide that the State
21 agency of the State will make payments of regular
22 compensation to individuals in amounts and to the
23 extent that they would be determined if the State
24 law of the State were applied, with respect to any
25 week for which the individual is (disregarding this

1 section) otherwise entitled under the State law to re-
2 ceive regular compensation, as if such State law had
3 been modified in a manner such that the amount of
4 regular compensation (including dependents' allow-
5 ances) payable for any week shall be equal to the
6 amount determined under the State law (before the
7 application of this paragraph) plus an additional
8 \$25.

9 (2) ALLOWABLE METHODS OF PAYMENT.—Any
10 additional compensation provided for in accordance
11 with paragraph (1) shall be payable either—

12 (A) as an amount which is paid at the
13 same time and in the same manner as any reg-
14 ular compensation otherwise payable for the
15 week involved; or

16 (B) at the option of the State, by pay-
17 ments which are made separately from, but on
18 the same weekly basis as, any regular com-
19 pensation otherwise payable.

20 (c) NONREDUCTION RULE.—An agreement under
21 this section shall not apply (or shall cease to apply) with
22 respect to a State upon a determination by the Secretary
23 that the method governing the computation of regular
24 compensation under the State law of that State has been
25 modified in a manner such that—

1 (1) the average weekly benefit amount of reg-
2 ular compensation which will be payable during the
3 period of the agreement (determined disregarding
4 any additional amounts attributable to the modifica-
5 tion described in subsection (b)(1)) will be less than

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

10 (d) PAYMENTS TO STATES.—

11 (1) IN GENERAL.—

12 (A) FULL REIMBURSEMENT.—There shall
13 be paid to each State which has entered into an
14 agreement under this section an amount equal
15 to 100 percent of—

16 (i) the total amount of additional
17 compensation (as described in subsection
18 (b)(1)) paid to individuals by the State
19 pursuant to such agreement; and

20 (ii) any additional administrative ex-
21 penses incurred by the State by reason of
22 such agreement (as determined by the Sec-
23 retary).

24 (B) TERMS OF PAYMENTS.—Sums payable
25 to any State by reason of such State's having

1 an agreement under this section shall be pay-
2 able, either in advance or by way of reimburse-
3 ment (as determined by the Secretary), in such
4 amounts as the Secretary estimates the State
5 will be entitled to receive under this section for
6 each calendar month, reduced or increased, as
7 the case may be, by any amount by which the
8 Secretary finds that his estimates for any prior
9 calendar month were greater or less than the
10 amounts which should have been paid to the
11 State. Such estimates may be made on the
12 basis of such statistical, sampling, or other
13 method as may be agreed upon by the Secretary
14 and the State agency of the State involved.

15 (2) CERTIFICATIONS.—The Secretary shall
16 from time to time certify to the Secretary of the
17 Treasury for payment to each State the sums pay-
18 able to such State under this section.

19 (3) APPROPRIATION.—There are appropriated
20 from the general fund of the Treasury, without fiscal
21 year limitation, such sums as may be necessary for
22 purposes of this subsection.

23 (e) APPLICABILITY.—

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

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

6 (B) ending before January 1, 2010.

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

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

23 (f) FRAUD AND OVERPAYMENTS.—The provisions of
24 section 4005 of the Supplemental Appropriations Act,
25 2008 (Public Law 110–252; 122 Stat. 2356) shall apply

1 with respect to additional compensation (as described in
2 subsection (b)(1)) to the same extent and in the same
3 manner as in the case of emergency unemployment com-
4 pensation.

5 (g) APPLICATION TO OTHER UNEMPLOYMENT BENE-
6 FITS.—

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

14 (2) ELIGIBILITY AND TERMINATION RULES.—
15 Additional compensation (as described in subsection
16 (b)(1))—

17 (A) shall not be payable, pursuant to this
18 subsection, with respect to any unemployment
19 benefits described in subsection (h)(3) for any
20 week beginning on or after the date specified in
21 subsection (e)(1)(B), except in the case of an
22 individual who was eligible to receive additional
23 compensation (as so described) in connection
24 with any regular compensation or any unem-
25 ployment benefits described in subsection (h)(3)

1 for any period of unemployment ending before
2 such date; and

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

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

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

13 (2) the term “emergency unemployment com-
14 pensation” means emergency unemployment com-
15 pensation under title IV of the Supplemental Appro-
16 priations Act, 2008 (Public Law 110–252; 122 Stat.
17 2353); and

18 (3) any reference to unemployment benefits de-
19 scribed in this paragraph shall be considered to refer
20 to—

21 (A) extended compensation (as defined by
22 section 205 of the Federal-State Extended Un-
23 employment Compensation Act of 1970); and

24 (B) unemployment compensation (as de-
25 fined by section 85(b) of the Internal Revenue

1 Code of 1986) provided under any program ad-
2 ministered by a State under an agreement with
3 the Secretary.

4 **SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT**
5 **COMPENSATION MODERNIZATION.**

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

9 “Special Transfers in Fiscal Years 2009, 2010, and 2011
10 for Modernization

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

19 “(B) The maximum incentive payment allowable
20 under this subsection with respect to any State shall, as
21 determined by the Secretary of Labor, be equal to the
22 amount obtained by multiplying \$7,000,000,000 by the
23 same ratio as would apply under subsection (a)(2)(B) for
24 purposes of determining such State’s share of any excess
25 amount (as described in subsection (a)(1)) that would

1 have been subject to transfer to State accounts, as of Oc-
2 tober 1, 2008, under the provisions of subsection (a).

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

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

9 “(ii) the remainder shall be transferred to the
10 account of such State upon a certification under
11 paragraph (4)(B) that the State law of such State
12 meets the requirements of paragraph (3).

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

15 “(A) uses a base period that includes the most
16 recently completed calendar quarter before the start
17 of the benefit year for purposes of determining eligi-
18 bility for unemployment compensation; or

19 “(B) provides that, in the case of an individual
20 who would not otherwise be eligible for unemploy-
21 ment compensation under the State law because of
22 the use of a base period that does not include the
23 most recently completed calendar quarter before the
24 start of the benefit year, eligibility shall be deter-

1 mined using a base period that includes such cal-
2 endar quarter.

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

6 “(A) An individual shall not be denied regular
7 unemployment compensation under any State law
8 provisions relating to availability for work, active
9 search for work, or refusal to accept work, solely be-
10 cause such individual is seeking only part-time (and
11 not full-time) work, except that the State law provi-
12 sions carrying out this subparagraph may exclude an
13 individual if a majority of the weeks of work in such
14 individual’s base period do not include part-time
15 work.

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

22 “(i) Domestic violence, verified by such
23 reasonable and confidential documentation as
24 the State law may require, which causes the in-
25 dividual reasonably to believe that such individ-

1 ual’s continued employment would jeopardize
2 the safety of the individual or of any member
3 of the individual’s immediate family (as defined
4 by the Secretary of Labor).

5 “(ii) The illness or disability of a member
6 of the individual’s immediate family (as defined
7 by the Secretary of Labor).

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

10 “(I) to a place from which it is im-
11 practical for such individual to commute;
12 and

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

15 “(C) Weekly unemployment compensation is
16 payable under this subparagraph to any individual
17 who is unemployed (as determined under the State
18 unemployment compensation law), has exhausted all
19 rights to regular unemployment compensation under
20 the State law, and is enrolled and making satisfac-
21 tory progress in a State-approved training program
22 or in a job training program authorized under the
23 Workforce Investment Act of 1998. Such programs
24 shall prepare individuals who have been separated
25 from a declining occupation, or who have been invol-

1 untarily and indefinitely separated from employment
2 as a result of a permanent reduction of operations
3 at the individual's place of employment, for entry
4 into a high-demand occupation. The amount of un-
5 employment compensation payable under this sub-
6 paragraph to an individual for a week of unemploy-
7 ment shall be equal to the individual's average week-
8 ly benefit amount (including dependents' allowances)
9 for the most recent benefit year, and the total
10 amount of unemployment compensation payable
11 under this subparagraph to any individual shall be
12 equal to at least 26 times the individual's average
13 weekly benefit amount (including dependents' allow-
14 ances) for the most recent benefit year.

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

1 cent of the individual's weekly benefit amount for
2 the benefit year, whichever is less).

3 “(4)(A) Any State seeking an incentive payment
4 under this subsection shall submit an application therefor
5 at such time, in such manner, and complete with such in-
6 formation as the Secretary of Labor may within 60 days
7 after the date of the enactment of this subsection prescribe
8 (whether by regulation or otherwise), including informa-
9 tion relating to compliance with the requirements of para-
10 graph (2) or (3), as well as how the State intends to use
11 the incentive payment to improve or strengthen the State's
12 unemployment compensation program. The Secretary of
13 Labor shall, within 30 days after receiving a complete ap-
14 plication, notify the State agency of the State of the Sec-
15 retary's findings with respect to the requirements of para-
16 graph (2) or (3) (or both).

17 “(B)(i) If the Secretary of Labor finds that the State
18 law provisions (disregarding any State law provisions
19 which are not then currently in effect as permanent law
20 or which are subject to discontinuation) meet the require-
21 ments of paragraph (2) or (3), as the case may be, the
22 Secretary of Labor shall thereupon make a certification
23 to that effect to the Secretary of the Treasury, together
24 with a certification as to the amount of the incentive pay-
25 ment to be transferred to the State account pursuant to

1 that finding. The Secretary of the Treasury shall make
2 the appropriate transfer within 7 days after receiving such
3 certification.

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

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

13 “(ii) No certification of compliance with the require-
14 ments of paragraph (3) may be made with respect to any
15 State whose State law is not in compliance with the re-
16 quirements of paragraph (2).

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

23 “(5)(A) Except as provided in subparagraph (B), any
24 amount transferred to the account of a State under this
25 subsection may be used by such State only in the payment

1 of cash benefits to individuals with respect to their unem-
2 ployment (including for dependents' allowances and for
3 unemployment compensation under paragraph (3)(C)), ex-
4 clusive of expenses of administration.

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

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

1 “(7) For purposes of this subsection, the terms ‘ben-
2 efit year’, ‘base period’, and ‘week’ have the respective
3 meanings given such terms under section 205 of the Fed-
4 eral-State Extended Unemployment Compensation Act of
5 1970 (26 U.S.C. 3304 note).

6 “Special Transfer in Fiscal Year 2009 for Administration

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

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

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

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

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

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

12 “(D) staff-assisted reemployment services for
13 unemployment compensation claimants.”.

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

18 **Subtitle B—Assistance for**
19 **Vulnerable Individuals**

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

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

24 “(c) EMERGENCY FUND.—

1 “(1) ESTABLISHMENT.—There is established in
2 the Treasury of the United States a fund which
3 shall be known as the ‘Emergency Contingency
4 Fund for State Temporary Assistance for Needy
5 Families Programs’ (in this subsection referred to as
6 the ‘Emergency Fund’).

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

11 “(3) GRANTS.—

12 “(A) GRANT RELATED TO CASELOAD IN-
13 CREASES.—

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

18 “(I) requests a grant under this
19 subparagraph for the quarter; and

20 “(II) meets the requirement of
21 clause (ii) for the quarter.

22 “(ii) CASELOAD INCREASE REQUIRE-
23 MENT.—A State meets the requirement of
24 this clause for a quarter if the average
25 monthly assistance caseload of the State

1 for the quarter exceeds the average month-
2 ly assistance caseload of the State for the
3 corresponding quarter in the emergency
4 fund base year of the State.

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

18 “(B) GRANT RELATED TO INCREASED EX-
19 PENDITURES FOR NON-RECURRENT SHORT-
20 TERM BENEFITS.—

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

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

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

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

5 “(I) requests a grant under this
6 subparagraph for the quarter; and

7 “(II) meets the requirement of
8 clause (ii) for the quarter.

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

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

1 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
2 MENTS TO DATA AND COLLECT NEEDED DATA.—In
3 determining the size of the caseload of a State and
4 the expenditures of a State for basic assistance, non-
5 recurrent short-term benefits, and subsidized em-
6 ployment, during any period for which the State re-
7 quests funds under this subsection, and during the
8 emergency fund base year of the State, the Sec-
9 retary may make appropriate adjustments to the
10 data to ensure that the data reflect expenditures
11 under the State program funded under this part and
12 qualified State expenditures. The Secretary may de-
13 velop a mechanism for collecting expenditure data,
14 including procedures which allow States to make
15 reasonable estimates, and may set deadlines for
16 making revisions to the data.

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

21 “(6) LIMITATIONS ON USE OF FUNDS.—A State
22 to which an amount is paid under this subsection
23 may use the amount only as authorized by section
24 404.

1 “(7) TIMING OF IMPLEMENTATION.—The Sec-
2 retary shall implement this subsection as quickly as
3 reasonably possible, pursuant to appropriate guid-
4 ance to States.

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

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

14 “(B) EMERGENCY FUND BASE YEAR.—

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

22 “(ii) CATEGORIES DESCRIBED.—The
23 categories described in this clause are the
24 following:

1 “(I) The average monthly assist-
2 ance caseload of the State.

3 “(II) The total expenditures of
4 the State for non-recurrent short-term
5 benefits, whether under the State pro-
6 gram funded under this part or as
7 qualified State expenditures.

8 “(III) The total expenditures of
9 the State for subsidized employment,
10 whether under the State program
11 funded under this part or as qualified
12 State expenditures.

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

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

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

4 **SEC. 2102. ONE-TIME EMERGENCY SSI PAYMENT.**

5 (a) PAYMENT AUTHORITY.—

6 (1) IN GENERAL.—At the earliest practicable
7 date in calendar year 2009 but not later than 90
8 days after the date of the enactment of this section,
9 the Commissioner of Social Security shall make a
10 one-time payment, subject to subsection (b)(2) of
11 this section, to each individual who is determined by
12 the Commissioner in calendar year 2009 to be an in-
13 dividual who—

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

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

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

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

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

6 (b) ADMINISTRATIVE PROVISIONS.—

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

17 (2) AUTHORITY TO MAKE PAYMENTS OVER THE
18 COURSE OF 2 MONTHS.—The Commissioner of So-
19 cial Security may provide for payments under this
20 section to be made over the course of 2 calendar
21 months as may be necessary for the effective and ef-
22 ficient administration of this section.

23 (3) PAYMENT TO BE DISREGARDED IN DETER-
24 MINING UNDERPAYMENTS UNDER THE SSI PRO-
25 GRAM.—A payment under subsection (a) shall be

1 disregarded in determining whether there has been
2 an underpayment of benefits under the supplemental
3 security income program under title XVI of the So-
4 cial Security Act.

5 (4) NONASSIGNMENT.—The provisions of sec-
6 tion 207 of the Social Security Act shall apply with
7 respect to payments under this section to the same
8 extent as they apply in the case of title II of such
9 Act.

10 (c) PAYMENTS TO BE DISREGARDED FOR PURPOSES
11 OF ALL FEDERAL AND FEDERALLY ASSISTED PRO-
12 GRAMS.—A payment under subsection (a) shall not be re-
13 garded as income to the recipient, and shall not be re-
14 garded as a resource of the recipient for the month of re-
15 ceipt and the following 6 months, for purposes of deter-
16 mining the eligibility of any individual for benefits or as-
17 sistance, or the amount or extent of benefits or assistance,
18 under any Federal program or under any State or local
19 program financed in whole or in part with Federal funds.

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

1 **SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD**
 2 **SUPPORT LAW.**

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

8 **TITLE III—HEALTH INSURANCE**
 9 **ASSISTANCE FOR THE UNEM-**
 10 **EMPLOYED**

11 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**
 12 **TITLE.**

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

16 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 17 contents of this title is as follows:

- Sec. 3001. Short title and table of contents of title.
- Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA
 benefits for older or long-term employees.
- Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

18 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**
 19 **AND EXTENSION OF COBRA BENEFITS FOR**
 20 **OLDER OR LONG-TERM EMPLOYEES.**

21 (a) **PREMIUM ASSISTANCE FOR COBRA CONTINU-**
 22 **ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-**
 23 **LIES.**—

1 (1) PROVISION OF PREMIUM ASSISTANCE.—

2 (A) REDUCTION OF PREMIUMS PAY-
3 ABLE.—In the case of any premium for a pe-
4 riod of coverage beginning on or after the date
5 of the enactment of this Act for COBRA con-
6 tinuation coverage with respect to any assist-
7 ance eligible individual, such individual shall be
8 treated for purposes of any COBRA continu-
9 ation provision as having paid the amount of
10 such premium if such individual pays 35 per-
11 cent of the amount of such premium (as deter-
12 mined without regard to this subsection).

13 (B) PREMIUM REIMBURSEMENT.—For pro-
14 visions providing the balance of such premium,
15 see section 6431 of the Internal Revenue Code
16 of 1986, as added by paragraph (12).

17 (2) LIMITATION OF PERIOD OF PREMIUM AS-
18 SISTANCE.—

19 (A) IN GENERAL.—Paragraph (1)(A) shall
20 not apply with respect to any assistance eligible
21 individual for months of coverage beginning on
22 or after the earlier of—

23 (i) the first date that such individual
24 is eligible for coverage under any other
25 group health plan (other than coverage

1 consisting of only dental, vision, coun-
2 seling, or referral services (or a combina-
3 tion thereof), coverage under a health re-
4 imbursement arrangement or a health
5 flexible spending arrangement, or coverage
6 of treatment that is furnished in an on-site
7 medical facility maintained by the em-
8 ployer and that consists primarily of first-
9 aid services, prevention and wellness care,
10 or similar care (or a combination thereof))
11 or is eligible for benefits under title XVIII
12 of the Social Security Act.

13 (ii) the earliest of—

14 (I) the date which is 12 months
15 after the first day of first month that
16 paragraph (1)(A) applies with respect
17 to such individual,

18 (II) the date following the expira-
19 tion of the maximum period of con-
20 tinuation coverage required under the
21 applicable COBRA continuation cov-
22 erage provision, or

23 (III) the date following the expi-
24 ration of the period of continuation

1 coverage allowed under paragraph
2 (4)(B)(ii).

3 (B) TIMING OF ELIGIBILITY FOR ADDI-
4 TIONAL COVERAGE.—For purposes of subpara-
5 graph (A)(i), an individual shall not be treated
6 as eligible for coverage under a group health
7 plan before the first date on which such indi-
8 vidual could be covered under such plan.

9 (C) NOTIFICATION REQUIREMENT.—An
10 assistance eligible individual shall notify in writ-
11 ing the group health plan with respect to which
12 paragraph (1)(A) applies if such paragraph
13 ceases to apply by reason of subparagraph
14 (A)(i). Such notice shall be provided to the
15 group health plan in such time and manner as
16 may be specified by the Secretary of Labor.

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

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

24 (B) such qualified beneficiary elects such
25 coverage, and

1 (C) the qualifying event with respect to the
2 COBRA continuation coverage consists of the
3 involuntary termination of the covered employ-
4 ee's employment and occurred during such pe-
5 riod.

6 (4) EXTENSION OF ELECTION PERIOD AND EF-
7 FECT ON COVERAGE.—

8 (A) IN GENERAL.—Notwithstanding sec-
9 tion 605(a) of the Employee Retirement Income
10 Security Act of 1974, section 4980B(f)(5)(A) of
11 the Internal Revenue Code of 1986, section
12 2205(a) of the Public Health Service Act, and
13 section 8905a(c)(2) of title 5, United States
14 Code, in the case of an individual who is a
15 qualified beneficiary described in paragraph
16 (3)(A) as of the date of the enactment of this
17 Act and has not made the election referred to
18 in paragraph (3)(B) as of such date, such indi-
19 vidual may elect the COBRA continuation cov-
20 erage under the COBRA continuation coverage
21 provisions containing such sections during the
22 60-day period commencing with the date on
23 which the notification required under paragraph
24 (7)(C) is provided to such individual.

1 (B) COMMENCEMENT OF COVERAGE; NO
2 REACH-BACK.—Any COBRA continuation cov-
3 erage elected by a qualified beneficiary during
4 an extended election period under subparagraph
5 (A)—

6 (i) shall commence on the date of the
7 enactment of this Act, and

8 (ii) shall not extend beyond the period
9 of COBRA continuation coverage that
10 would have been required under the appli-
11 cable COBRA continuation coverage provi-
12 sion if the coverage had been elected as re-
13 quired under such provision.

14 (C) PREEXISTING CONDITIONS.—With re-
15 spect to a qualified beneficiary who elects
16 COBRA continuation coverage pursuant to sub-
17 paragraph (A), the period—

18 (i) beginning on the date of the quali-
19 fying event, and

20 (ii) ending with the day before the
21 date of the enactment of this Act,

22 shall be disregarded for purposes of deter-
23 mining the 63-day periods referred to in section
24 701)(2) of the Employee Retirement Income
25 Security Act of 1974, section 9801(c)(2) of the

1 Internal Revenue Code of 1986, and section
2 2701(c)(2) of the Public Health Service Act.

3 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
4 MIUM ASSISTANCE.—In any case in which an indi-
5 vidual requests treatment as an assistance eligible
6 individual and is denied such treatment by the group
7 health plan by reason of such individual's ineligi-
8 bility for COBRA continuation coverage, the Sec-
9 retary of Labor (or the Secretary of Health and
10 Human services in connection with COBRA continu-
11 ation coverage which is provided other than pursu-
12 ant to part 6 of subtitle B of title I of the Employee
13 Retirement Income Security Act of 1974), in con-
14 sultation with the Secretary of the Treasury, shall
15 provide for expedited review of such denial. An indi-
16 vidual shall be entitled to such review upon applica-
17 tion to such Secretary in such form and manner as
18 shall be provided by such Secretary. Such Secretary
19 shall make a determination regarding such individ-
20 ual's eligibility within 10 business days after receipt
21 of such individual's application for review under this
22 paragraph.

23 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
24 OF FEDERAL AND STATE PROGRAMS.—Notwith-
25 standing any other provision of law, any premium

1 reduction with respect to an assistance eligible indi-
2 vidual under this subsection shall not be considered
3 income or resources in determining eligibility for, or
4 the amount of assistance or benefits provided under,
5 any other public benefit provided under Federal law
6 or the law of any State or political subdivision there-
7 of.

8 (7) NOTICES TO INDIVIDUALS.—

9 (A) GENERAL NOTICE.—

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

1 (ii) ALTERNATIVE NOTICE.—In the
2 case of COBRA continuation coverage to
3 which the notice provision under such sec-
4 tions does not apply, the Secretary of
5 Labor, in consultation with the Secretary
6 of the Treasury and the Secretary of
7 Health and Human Services, shall, in co-
8 ordination with administrators of the
9 group health plans (or other entities) that
10 provide or administer the COBRA continu-
11 ation coverage involved, provide rules re-
12 quiring the provision of such notice.

13 (iii) FORM.—The requirement of the
14 additional notification under this subpara-
15 graph may be met by amendment of exist-
16 ing notice forms or by inclusion of a sepa-
17 rate document with the notice otherwise
18 required.

19 (B) SPECIFIC REQUIREMENTS.—Each ad-
20 ditional notification under subparagraph (A)
21 shall include—

22 (i) the forms necessary for estab-
23 lishing eligibility for premium reduction
24 under this subsection,

1 (ii) the name, address, and telephone
2 number necessary to contact the plan ad-
3 ministrator and any other person main-
4 taining relevant information in connection
5 with such premium reduction,

6 (iii) a description of the extended elec-
7 tion period provided for in paragraph
8 (4)(A),

9 (iv) a description of the obligation of
10 the qualified beneficiary under paragraph
11 (2)(C) to notify the plan providing continu-
12 ation coverage of eligibility for subsequent
13 coverage under another group health plan
14 or eligibility for benefits under title XVIII
15 of the Social Security Act and the penalty
16 provided for failure to so notify the plan,
17 and

18 (v) a description, displayed in a
19 prominent manner, of the qualified bene-
20 ficiary's right to a reduced premium and
21 any conditions on entitlement to the re-
22 duced premium.

23 (C) NOTICE RELATING TO RETROACTIVE
24 COVERAGE.—In the case of an individual de-
25 scribed in paragraph (3)(A) who has elected

1 COBRA continuation coverage as of the date of
2 enactment of this Act or an individual described
3 in paragraph (4)(A), the administrator of the
4 group health plan (or other entity) involved
5 shall provide (within 60 days after the date of
6 enactment of this Act) for the additional notifi-
7 cation required to be provided under subpara-
8 graph (A).

9 (D) MODEL NOTICES.—Not later than 30
10 days after the date of enactment of this Act,
11 the Secretary of the Labor, in consultation with
12 the Secretary of the Treasury and the Secretary
13 of Health and Human Services, shall prescribe
14 models for the additional notification required
15 under this paragraph.

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

21 (9) OUTREACH.—The Secretary of Labor, in
22 consultation with the Secretary of the Treasury and
23 the Secretary of Health and Human Services, shall
24 provide outreach consisting of public education and
25 enrollment assistance relating to premium reduction

1 provided under this subsection. Such outreach shall
2 target employers, group health plan administrators,
3 public assistance programs, States, insurers, and
4 other entities as determined appropriate by such
5 Secretaries. Such outreach shall include an initial
6 focus on those individuals electing continuation cov-
7 erage who are referred to in paragraph (7)(C). In-
8 formation on such premium reduction, including en-
9 rollment, shall also be made available on website of
10 the Departments of Labor, Treasury, and Health
11 and Human Services.

12 (10) DEFINITIONS.—For purposes of this sub-
13 section—

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

18 (B) COBRA CONTINUATION COVERAGE.—
19 The term “COBRA continuation coverage”
20 means continuation coverage provided pursuant
21 to part 6 of subtitle B of title I of the Em-
22 ployee Retirement Income Security Act of 1974
23 (other than under section 609), title XXII of
24 the Public Health Service Act, section 4980B of
25 the Internal Revenue Code of 1986 (other than

1 subsection (f)(1) of such section insofar as it
2 relates to pediatric vaccines), or section 8905a
3 of title 5, United States Code, or under a State
4 program that provides continuation coverage
5 comparable to such continuation coverage. Such
6 term does not include coverage under a health
7 flexible spending arrangement.

8 (C) COBRA CONTINUATION PROVISION.—
9 The term “COBRA continuation provision”
10 means the provisions of law described in sub-
11 paragraph (B).

12 (D) COVERED EMPLOYEE.—The term
13 “covered employee” has the meaning given such
14 term in section 607(2) of the Employee Retirement
15 Income Security Act of 1974.

16 (E) QUALIFIED BENEFICIARY.—The term
17 “qualified beneficiary” has the meaning given
18 such term in section 607(3) of the Employee
19 Retirement Income Security Act of 1974.

20 (F) GROUP HEALTH PLAN.—The term
21 “group health plan” has the meaning given
22 such term in section 607(1) of the Employee
23 Retirement Income Security Act of 1974.

24 (G) STATE.—The term “State” includes
25 the District of Columbia, the Commonwealth of

1 Puerto Rico, the Virgin Islands, Guam, Amer-
2 ican Samoa, and the Commonwealth of the
3 Northern Mariana Islands.

4 (11) REPORTS.—

5 (A) INTERIM REPORT.—The Secretary of
6 the Treasury shall submit an interim report to
7 the Committee on Education and Labor, the
8 Committee on Ways and Means, and the Com-
9 mittee on Energy and Commerce of the House
10 of Representatives and the Committee on
11 Health, Education, Labor, and Pensions and
12 the Committee on Finance of the Senate re-
13 garding the premium reduction provided under
14 this subsection that includes—

15 (i) the number of individuals provided
16 such assistance as of the date of the re-
17 port; and

18 (ii) the total amount of expenditures
19 incurred (with administrative expenditures
20 noted separately) in connection with such
21 assistance as of the date of the report.

22 (B) FINAL REPORT.—As soon as prac-
23 ticable after the last period of COBRA continu-
24 ation coverage for which premium reduction is
25 provided under this section, the Secretary of the

1 Treasury shall submit a final report to each
2 Committee referred to in subparagraph (A) that
3 includes—

4 (i) the number of individuals provided
5 premium reduction under this section;

6 (ii) the average dollar amount
7 (monthly and annually) of premium reduc-
8 tions provided to such individuals; and

9 (iii) the total amount of expenditures
10 incurred (with administrative expenditures
11 noted separately) in connection with pre-
12 mium reduction under this section.

13 (12) COBRA PREMIUM ASSISTANCE.—

14 (A) IN GENERAL.—Subchapter B of chap-
15 ter 65 of the Internal Revenue Code of 1986 is
16 amended by adding at the end the following
17 new section:

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

19 “(a) IN GENERAL.—The entity to whom premiums
20 are payable under COBRA continuation coverage shall be
21 reimbursed for the amount of premiums not paid by plan
22 beneficiaries by reason of section 3002(a) of the Health
23 Insurance Assistance for the Unemployed Act of 2009.
24 Such amount shall be treated as a credit against the re-
25 quirement of such entity to make deposits of payroll taxes.

1 To the extent that such amount exceeds the amount of
2 such taxes, the Secretary shall pay to such entity the
3 amount of such excess. No payment may be made under
4 this subsection to an entity with respect to any assistance
5 eligible individual until after such entity has received the
6 reduced premium from such individual required under sec-
7 tion 3002(a)(1)(A) of such Act.

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

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

13 “(2) amounts required to be deducted for the
14 payroll period under section 3102 (relating to FICA
15 employee taxes), and

16 “(3) amounts of the taxes imposed for the pay-
17 roll period under section 3111 (relating to FICA em-
18 ployer taxes).

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

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

5 “(e) REPORTING.—

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

10 “(A) an attestation of involuntary termi-
11 nation of employment for each covered em-
12 ployee on the basis of whose termination entitle-
13 ment to reimbursement is claimed under sub-
14 section (a), and

15 “(B) a report of the amount of payroll
16 taxes offset under subsection (a) for the report-
17 ing period and the estimated offsets of such
18 taxes for the subsequent reporting period in
19 connection with reimbursements under sub-
20 section (a).

21 “(2) TIMING OF REPORTS RELATING TO
22 AMOUNT OF PAYROLL TAXES.—Reports required
23 under paragraph (1)(B) shall be submitted at the
24 same time as deposits of taxes imposed by chapters

1 21, 22, and 24 or at such time as is specified by the
2 Secretary.

3 “(f) REGULATIONS.—The Secretary may issue such
4 regulations or other guidance as may be necessary or ap-
5 propriate to carry out this section, including the require-
6 ment to report information or the establishment of other
7 methods for verifying the correct amounts of payments
8 and credits under this section.”.

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

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

“Sec. 6431. COBRA premium assistance.”.

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

22 (13) PENALTY FOR FAILURE TO NOTIFY
23 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
24 PREMIUM ASSISTANCE.—

1 (A) IN GENERAL.—Part I of subchapter B
2 of chapter 68 of the Internal Revenue Code of
3 1986 is amended by adding at the end the fol-
4 lowing new section:

5 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
6 **PLAN OF CESSATION OF ELIGIBILITY FOR**
7 **COBRA PREMIUM ASSISTANCE.**

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

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

20 (B) CLERICAL AMENDMENT.—The table of
21 sections of part I of subchapter B of chapter 68
22 of such Code is amended by adding at the end
23 the following new item:

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

1 (C) EFFECTIVE DATE.—The amendments
2 made by this paragraph shall apply to failures
3 occurring after the date of the enactment of
4 this Act.

5 (14) COORDINATION WITH HCTC.—

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

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

21 (B) EFFECTIVE DATE.—The amendment
22 made by subparagraph (A) shall apply to tax-
23 able years ending after the date of the enact-
24 ment of this Act.

1 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
2 ANCE FROM GROSS INCOME.—

3 (A) IN GENERAL.—Part III of subchapter
4 B of chapter 1 of the Internal Revenue Code of
5 1986 is amended by inserting after section
6 139B the following new section:

7 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

8 “In the case of an assistance eligible individual (as
9 defined in section 3002 of the Health Insurance Assist-
10 ance for the Unemployed Act of 2009), gross income does
11 not include any premium reduction provided under sub-
12 section (a) of such section.”.

13 (B) CLERICAL AMENDMENT.—The table of
14 sections for part III of subchapter B of chapter
15 1 of such Code is amended by inserting after
16 the item relating to section 139B the following
17 new item:

“Sec. 139C. COBRA premium assistance.”.

18 (C) EFFECTIVE DATE.—The amendments
19 made by this paragraph shall apply to taxable
20 years ending after the date of the enactment of
21 this Act.

22 (b) EXTENSION OF COBRA BENEFITS FOR OLDER
23 OR LONG-TERM EMPLOYEES.—

24 (1) ERISA AMENDMENT.—Section 602(2)(A)
25 of the Employee Retirement Income Security Act of

1 1974 is amended by adding at the end the following
2 new clauses:

3 “(x) SPECIAL RULE FOR OLDER OR
4 LONG-TERM EMPLOYEES GENERALLY.—In
5 the case of a qualifying event described in
6 section 603(2) with respect to a covered
7 employee who (as of such qualifying event)
8 has attained age 55 or has completed 10
9 or more years of service with the entity
10 that is the employer at the time of the
11 qualifying event, clauses (i) and (ii) shall
12 not apply.

13 “(xi) YEAR OF SERVICE.—For pur-
14 poses of this subparagraph, the term ‘year
15 of service’ shall have the meaning provided
16 in section 202(a)(3).”.

17 (2) IRC AMENDMENT.—Clause (i) of section
18 4980B(f)(2)(B) of the Internal Revenue Code of
19 1986 is amended by adding at the end the following
20 new subclauses:

21 “(X) SPECIAL RULE FOR OLDER
22 OR LONG-TERM EMPLOYEES GEN-
23 ERALLY.—In the case of a qualifying
24 event described in paragraph (3)(B)
25 with respect to a covered employee

1 who (as of such qualifying event) has
2 attained age 55 or has completed 10
3 or more years of service with the enti-
4 ty that is the employer at the time of
5 the qualifying event, subclauses (I)
6 and (II) shall not apply.

7 “(XI) YEAR OF SERVICE.—For
8 purposes of this clause, the term ‘year
9 of service’ shall have the meaning pro-
10 vided in section 202(a)(3) of the Em-
11 ployee Retirement Income Security
12 Act of 1974.”.

13 (3) PHSA AMENDMENT.—Section 2202(2)(A)
14 of the Public Health Service Act is amended by add-
15 ing at the end the following new clauses:

16 “(viii) SPECIAL RULE FOR OLDER OR
17 LONG-TERM EMPLOYEES GENERALLY.—In
18 the case of a qualifying event described in
19 section 2203(2) with respect to a covered
20 employee who (as of such qualifying event)
21 has attained age 55 or has completed 10
22 or more years of service with the entity
23 that is the employer at the time of the
24 qualifying event, clauses (i) and (ii) shall
25 not apply.

1 “(ix) YEAR OF SERVICE.—For pur-
 2 poses of this subparagraph, the term ‘year
 3 of service’ shall have the meaning provided
 4 in section 202(a)(3) of the Employee Re-
 5 tirement Income Security Act of 1974.”.

6 (4) EFFECTIVE DATE OF AMENDMENTS.—The
 7 amendments made by this subsection shall apply to
 8 periods of coverage which would (without regard to
 9 the amendments made by this section) end on or
 10 after the date of the enactment of this Act.

11 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
 12 **FOR THE UNEMPLOYED.**

13 (a) IN GENERAL.—Section 1902 of the Social Secu-
 14 rity Act (42 U.S.C. 1396b) is amended—

15 (1) in subsection (a)(10)(A)(ii)—

16 (A) by striking “or” at the end of sub-
 17 clause (XVIII);

18 (B) by adding “or” at the end of subclause
 19 (XIX); and

20 (C) by adding at the end the following new
 21 subclause

22 “(XX) who are described in sub-
 23 section (dd)(1) (relating to certain un-
 24 employed individuals and their fami-
 25 lies);”; and

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

3 “(dd)(1) Individuals described in this paragraph
4 are—

5 “(A) individuals who—

6 “(i) are within one or more of the cat-
7 egories described in paragraph (2), as elected
8 under the State plan; and

9 “(ii) meet the applicable requirements of
10 paragraph (3); and

11 “(B) individuals who—

12 “(i) are the spouse, or dependent child
13 under 19 years of age, of an individual de-
14 scribed in subparagraph (A); and

15 “(ii) meet the requirement of paragraph
16 (3)(B).

17 “(2) The categories of individuals described in this
18 paragraph are each of the following:

19 “(A) Individuals who are receiving unemploy-
20 ment compensation benefits.

21 “(B) Individuals who were receiving, but have
22 exhausted, unemployment compensation benefits on
23 or after July 1, 2008.

24 “(C) Individuals who are involuntarily unem-
25 ployed and were involuntarily separated from em-

1 employment on or after September 1, 2008, and before
2 January 1, 2011, whose family gross income does
3 not exceed a percentage specified by the State (not
4 to exceed 200 percent) of the income official poverty
5 line (as defined by the Office of Management and
6 Budget, and revised annually in accordance with sec-
7 tion 673(2) of the Omnibus Budget Reconciliation
8 Act of 1981) applicable to a family of the size in-
9 volved, and who, but for subsection
10 (a)(10)(A)(ii)(XX), are not eligible for medical as-
11 sistance under this title or health assistance under
12 title XXI.

13 “(D) Individuals who are involuntarily unem-
14 ployed and were involuntarily separated from em-
15 ployment on or after September 1, 2008, and before
16 January 1, 2011, who are members of households
17 participating in the supplemental nutrition assist-
18 ance program established under the Food and Nutri-
19 tion Act of 2008 (7 U.S.C. 2011 et seq), and who,
20 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
21 ble for medical assistance under this title or health
22 assistance under title XXI.

23 A State plan may elect one or more of the categories de-
24 scribed in this paragraph but may not elect the category

1 described in subparagraph (B) unless the State plan also
2 elects the category described in subparagraph (A).

3 “(3) The requirements of this paragraph with respect
4 to an individual are the following:

5 “(A) In the case of individuals within a cat-
6 egory described in subparagraph (A) or (B) of para-
7 graph (2), the individual was involuntarily separated
8 from employment on or after September 1, 2008,
9 and before January 1, 2011, or meets such com-
10 parable requirement as the Secretary specifies
11 through rule, guidance, or otherwise in the case of
12 an individual who was an independent contractor.

13 “(B) The individual is not otherwise covered
14 under creditable coverage, as defined in section
15 2701(c) of the Public Health Service Act (42 U.S.C.
16 300gg(c)), but applied without regard to paragraph
17 (1)(F) of such section and without regard to cov-
18 erage provided by reason of the application of sub-
19 section (a)(10)(A)(ii)(XX).

20 “(4)(A) No income or resources test shall be applied
21 with respect to any category of individuals described in
22 subparagraph (A), (B), or (D) of paragraph (2) who are
23 eligible for medical assistance only by reason of the appli-
24 cation of subsection (a)(10)(A)(ii)(XX).

1 “(B) Nothing in this subsection shall be construed
2 to prevent a State from imposing a resource test for the
3 category of individuals described in paragraph (2)(C)).

4 “(C) In the case of individuals provided medical as-
5 sistance by reason of the application of subsection
6 (a)(10)(A)(ii)(XX), the requirements of subsections
7 (i)(22) and (x) shall not apply.”.

8 (b) 100 PERCENT FEDERAL MATCHING RATE.—

9 (1) FMAP FOR TIME-LIMITED PERIOD.—The
10 third sentence of section 1905(b) of such Act (42
11 U.S.C. 1396d(b)) is amended by inserting before the
12 period at the end the following: “and for items and
13 services furnished on or after the date of enactment
14 of this Act and before January 1, 2011, to individ-
15 uals who are eligible for medical assistance only by
16 reason of the application of section
17 1902(a)(10)(A)(ii)(XX)”.

18 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-
19 TRATIVE COSTS.—Notwithstanding any other provi-
20 sion of law, for purposes of applying section 1903(a)
21 of the Social Security Act (42 U.S.C. 1396b(a)),
22 with respect to expenditures incurred on or after the
23 date of the enactment of this Act and before Janu-
24 ary 1, 2011, for costs of administration (including
25 outreach and the modification and operation of eligi-

1 bility information systems) attributable to eligibility
2 determination and enrollment of individuals who are
3 eligible for medical assistance only by reason of the
4 application of section 1902(a)(10)(A)(ii)(XX) of
5 such Act, as added by subsection (a)(1), the Federal
6 matching percentage shall be 100 percent instead of
7 the matching percentage otherwise applicable.

8 (c) CONFORMING AMENDMENTS.—(1) Section
9 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-
10 ed by inserting “1902(a)(10)(A)(ii)(XX), or” after
11 “1902(a)(10)(A)(ii)(XIX),”.

12 (2) Section 1905(a) of such Act (42 U.S.C.
13 1396d(a)) is amended, in the matter preceding paragraph
14 (1)—

15 (A) by striking “or” at the end of clause (xii);

16 (B) by adding “or” at the end of clause (xiii);

17 and

18 (C) by inserting after clause (xiii) the following

19 new clause:

20 “(xiv) individuals described in section
21 1902(dd)(1),”.

1 **TITLE IV—HEALTH**
 2 **INFORMATION TECHNOLOGY**

3 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

4 (a) **SHORT TITLE.**—This title may be cited as the
 5 “Health Information Technology for Economic and Clin-
 6 ical Health Act” or the “HITECH Act”.

7 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 8 contents of this title is as follows:

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND
 QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

“Sec. 3001. Office of the National Coordinator for Health Information
 Technology.

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

“Sec. 3004. Process for adoption of endorsed recommendations; adoption
 of initial set of standards, implementation specifications,
 and certification criteria.

“Sec. 3005. Application and use of adopted standards and implementation
 specifications by Federal agencies.

“Sec. 3006. Voluntary application and use of adopted standards and im-
 plementation specifications by private entities.

“Sec. 3007. Federal health information technology.

“Sec. 3008. Transitions.

“Sec. 3009. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION
 TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and imple-
 mentation specifications.

Sec. 4112. Application to private entities.

Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

- Sec. 4201. National Institute for Standards and Technology testing.
 Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

- Sec. 4301. Grant, loan, and demonstration programs.

“Subtitle B—Incentives for the Use of Health Information Technology

- “Sec. 3011. Immediate funding to strengthen the health information 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 HIT 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 I—IMPROVING HEALTH CARE QUALITY,**
4 **SAFETY, AND EFFICIENCY**

5 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**
6 **ON.**

7 The Public Health Service Act (42 U.S.C. 201 et
8 seq.) is amended by adding at the end the following:

9 **“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND**
10 **QUALITY**

12 **“SEC. 3000. DEFINITIONS.**

13 “In this title:

14 “(1) CERTIFIED EHR TECHNOLOGY.—The term
15 ‘certified EHR technology’ means a qualified elec-
16 tronic health record that is certified pursuant to sec-
17 tion 3001(c)(5) as meeting standards adopted under
18 section 3004 that are applicable to the type of

1 record involved (as determined by the Secretary,
2 such as an ambulatory electronic health record for
3 office-based physicians or an inpatient hospital elec-
4 tronic health record for hospitals).

5 “(2) ENTERPRISE INTEGRATION.—The term
6 ‘enterprise integration’ means the electronic linkage
7 of health care providers, health plans, the govern-
8 ment, and other interested parties, to enable the
9 electronic exchange and use of health information
10 among all the components in the health care infra-
11 structure in accordance with applicable law, and
12 such term includes related application protocols and
13 other related standards.

14 “(3) HEALTH CARE PROVIDER.—The term
15 ‘health care provider’ means a hospital, skilled nurs-
16 ing facility, nursing facility, home health entity or
17 other long-term care facility, health care clinic, Fed-
18 erally qualified health center, group practice (as de-
19 fined in section 1877(h)(4) of the Social Security
20 Act), a pharmacist, a pharmacy, a laboratory, a phy-
21 sician (as defined in section 1861(r) of the Social
22 Security Act), a practitioner (as described in section
23 1842(b)(18)(C) of the Social Security Act), a pro-
24 vider operated by, or under contract with, the Indian
25 Health Service or by an Indian tribe (as defined in

1 the Indian Self-Determination and Education Assist-
2 ance Act), tribal organization, or urban Indian orga-
3 nization (as defined in section 4 of the Indian
4 Health Care Improvement Act), a rural health clinic,
5 a covered entity under section 340B, and any other
6 category of facility or clinician determined appro-
7 priate by the Secretary.

8 “(4) HEALTH INFORMATION.—The term ‘health
9 information’ has the meaning given such term in
10 section 1171(4) of the Social Security Act.

11 “(5) HEALTH INFORMATION TECHNOLOGY.—
12 The term ‘health information technology’ means
13 hardware, software, integrated technologies and re-
14 lated licenses, intellectual property, upgrades, and
15 packaged solutions sold as services that are specifi-
16 cally designed for use by health care entities for the
17 electronic creation, maintenance, or exchange of
18 health information.

19 “(6) HEALTH PLAN.—The term ‘health plan’
20 has the meaning given such term in section 1171(5)
21 of the Social Security Act.

22 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
23 Policy Committee’ means such Committee estab-
24 lished under section 3002(a).

1 “(8) HIT STANDARDS COMMITTEE.—The term
2 ‘HIT Standards Committee’ means such Committee
3 established under section 3003(a).

4 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
5 FORMATION.—The term ‘individually identifiable
6 health information’ has the meaning given such term
7 in section 1171(6) of the Social Security Act.

8 “(10) LABORATORY.—The term ‘laboratory’
9 has the meaning given such term in section 353(a).

10 “(11) NATIONAL COORDINATOR.—The term
11 ‘National Coordinator’ means the head of the Office
12 of the National Coordinator for Health Information
13 Technology established under section 3001(a).

14 “(12) PHARMACIST.—The term ‘pharmacist’
15 has the meaning given such term in section 804(2)
16 of the Federal Food, Drug, and Cosmetic Act.

17 “(13) QUALIFIED ELECTRONIC HEALTH
18 RECORD.—The term ‘qualified electronic health
19 record’ means an electronic record of health-related
20 information on an individual that—

21 “(A) includes patient demographic and
22 clinical health information, such as medical his-
23 tory and problem lists; and

24 “(B) has the capacity—

1 “(i) to provide clinical decision sup-
2 port;

3 “(ii) to support physician order entry;

4 “(iii) to capture and query informa-
5 tion relevant to health care quality; and

6 “(iv) to exchange electronic health in-
7 formation with, and integrate such infor-
8 mation from other sources.

9 “(14) STATE.—The term ‘State’ means each of
10 the several States, the District of Columbia, Puerto
11 Rico, the Virgin Islands, Guam, American Samoa,
12 and the Northern Mariana Islands.

13 **“Subtitle A—Promotion of Health**
14 **Information Technology**

15 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
16 **HEALTH INFORMATION TECHNOLOGY.**

17 “(a) ESTABLISHMENT.—There is established within
18 the Department of Health and Human Services an Office
19 of the National Coordinator for Health Information Tech-
20 nology (referred to in this section as the ‘Office’). The Of-
21 fice shall be headed by a National Coordinator who shall
22 be appointed by the Secretary and shall report directly to
23 the Secretary.

24 “(b) PURPOSE.—The National Coordinator shall per-
25 form the duties under subsection (c) in a manner con-

1 sistent with the development of a nationwide health infor-
2 mation technology infrastructure that allows for the elec-
3 tronic use and exchange of information and that—

4 “(1) ensures that each patient’s health informa-
5 tion is secure and protected, in accordance with ap-
6 plicable law;

7 “(2) improves health care quality, reduces med-
8 ical errors, and advances the delivery of patient-cen-
9 tered medical care;

10 “(3) reduces health care costs resulting from
11 inefficiency, medical errors, inappropriate care, du-
12 plicative care, and incomplete information;

13 “(4) provides appropriate information to help
14 guide medical decisions at the time and place of
15 care;

16 “(5) ensures the inclusion of meaningful public
17 input in such development of such infrastructure;

18 “(6) improves the coordination of care and in-
19 formation among hospitals, laboratories, physician
20 offices, and other entities through an effective infra-
21 structure for the secure and authorized exchange of
22 health care information;

23 “(7) improves public health activities and facili-
24 tates the early identification and rapid response to

1 public health threats and emergencies, including bio-
2 terror events and infectious disease outbreaks;

3 “(8) facilitates health and clinical research and
4 health care quality;

5 “(9) promotes prevention of chronic diseases;

6 “(10) promotes a more effective marketplace,
7 greater competition, greater systems analysis, in-
8 creased consumer choice, and improved outcomes in
9 health care services; and

10 “(11) improves efforts to reduce health dispari-
11 ties.

12 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

13 “(1) STANDARDS.—The National Coordinator
14 shall review and determine whether to endorse each
15 standard, implementation specification, and certifi-
16 cation criterion for the electronic exchange and use
17 of health information that is recommended by the
18 HIT Standards Committee under section 3003 for
19 purposes of adoption under section 3004. The Coor-
20 dinator shall make such determination, and report to
21 the Secretary such determination, not later than 45
22 days after the date the recommendation is received
23 by the Coordinator.

24 “(2) HIT POLICY COORDINATION.—

1 “(A) IN GENERAL.—The National Coordi-
2 nator shall coordinate health information tech-
3 nology policy and programs of the Department
4 with those of other relevant executive branch
5 agencies with a goal of avoiding duplication of
6 efforts and of helping to ensure that each agen-
7 cy undertakes health information technology ac-
8 tivities primarily within the areas of its greatest
9 expertise and technical capability and in a man-
10 ner towards a coordinated national goal.

11 “(B) HIT POLICY AND STANDARDS COM-
12 MITTEES.—The National Coordinator shall be a
13 leading member in the establishment and oper-
14 ations of the HIT Policy Committee and the
15 HIT Standards Committee and shall serve as a
16 liaison among those two Committees and the
17 Federal Government.

18 “(3) STRATEGIC PLAN.—

19 “(A) IN GENERAL.—The National Coordi-
20 nator shall, in consultation with other appro-
21 priate Federal agencies (including the National
22 Institute of Standards and Technology), update
23 the Federal Health IT Strategic Plan (devel-
24 oped as of June 3, 2008) to include specific ob-

1 jectives, milestones, and metrics with respect to
2 the following:

3 “(i) The electronic exchange and use
4 of health information and the enterprise
5 integration 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 and
10 security protections for the electronic ex-
11 change of an individual’s individually iden-
12 tifiable health information.

13 “(iv) Ensuring security methods to
14 ensure appropriate authorization and elec-
15 tronic authentication of health information
16 and specifying technologies or methodolo-
17 gies for rendering health information unus-
18 able, 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
11 plan shall be updated through collaboration of
12 public and private entities.

13 “(C) MEASURABLE OUTCOME GOALS.—
14 The strategic plan update shall include measur-
15 able outcome goals.

16 “(D) PUBLICATION.—The National Coor-
17 dinator shall republish the strategic plan, in-
18 cluding all updates.

19 “(4) WEBSITE.—The National Coordinator
20 shall maintain and frequently update an Internet
21 website on which there is posted information on the
22 work, schedules, reports, recommendations, and
23 other information to ensure transparency in pro-
24 motion of a nationwide health information tech-
25 nology infrastructure.

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 Tech-
5 nology, shall develop a program (either directly
6 or by contract) for the voluntary certification of
7 health information technology as being in com-
8 pliance with applicable certification criteria
9 adopted under this subtitle. Such program shall
10 include testing of the technology in accordance
11 with section 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
21 OR AUTHORITY NEEDED.—Not later than 12
22 months after the date of the enactment of this
23 title, the National Coordinator shall submit to
24 the appropriate committees of jurisdiction of
25 the House of Representatives and the Senate a

1 report on any additional funding or authority
2 the Coordinator or the HIT Policy Committee
3 or HIT Standards Committee requires to evalu-
4 ate and develop standards, implementation
5 specifications, and certification criteria, or to
6 achieve full participation of stakeholders in the
7 adoption of a nationwide health information
8 technology infrastructure that allows for the
9 electronic use and exchange of health informa-
10 tion.

11 “(B) IMPLEMENTATION REPORT.—The
12 National Coordinator shall prepare a report
13 that identifies lessons learned from major pub-
14 lic and private health care systems in their im-
15 plementation of health information technology,
16 including information on whether the tech-
17 nologies and practices developed by such sys-
18 tems may be applicable to and usable in whole
19 or in part by other health care providers.

20 “(C) ASSESSMENT OF IMPACT OF HIT ON
21 COMMUNITIES WITH HEALTH DISPARITIES AND
22 UNINSURED, UNDERINSURED, AND MEDICALLY
23 UNDERSERVED AREAS.—The National Coordi-
24 nator shall assess and publish the impact of
25 health information technology in communities

1 with health disparities and in areas with a high
2 proportion of individuals who are uninsured,
3 underinsured, and medically underserved indi-
4 viduals (including urban and rural areas) and
5 identify practices to increase the adoption of
6 such technology by health care providers in
7 such communities.

8 “(D) EVALUATION OF BENEFITS AND
9 COSTS OF THE ELECTRONIC USE AND EX-
10 CHANGE OF HEALTH INFORMATION.—The Na-
11 tional Coordinator shall evaluate and publish
12 evidence on the benefits and costs of the elec-
13 tronic use and exchange of health information
14 and assess to whom these benefits and costs ac-
15 crue.

16 “(E) RESOURCE REQUIREMENTS.—The
17 National Coordinator shall estimate and publish
18 resources required annually to reach the goal of
19 utilization of an electronic health record for
20 each person in the United States by 2014, in-
21 cluding the required level of Federal funding,
22 expectations for regional, State, and private in-
23 vestment, and the expected contributions by vol-
24 unteers to activities for the utilization of such
25 records.

1 “(7) ASSISTANCE.—The National Coordinator
2 may provide financial assistance to consumer advoca-
3 cacy groups and not-for-profit entities that work in
4 the public interest for purposes of defraying the cost
5 to such groups and entities to participate under,
6 whether in whole or in part, the National Tech-
7 nology Transfer Act of 1995 (15 U.S.C. 272 note).

8 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
9 INFORMATION NETWORK.—The National Coordi-
10 nator shall establish a governance mechanism for the
11 nationwide health information network.

12 “(d) DETAIL OF FEDERAL EMPLOYEES.—

13 “(1) IN GENERAL.—Upon the request of the
14 National Coordinator, the head of any Federal agen-
15 cy is authorized to detail, with or without reimburse-
16 ment from the Office, any of the personnel of such
17 agency to the Office to assist it in carrying out its
18 duties under this section.

19 “(2) EFFECT OF DETAIL.—Any detail of per-
20 sonnel under paragraph (1) shall—

21 “(A) not interrupt or otherwise affect the
22 civil service status or privileges of the Federal
23 employee; and

1 “(B) be in addition to any other staff of
2 the Department employed by the National Co-
3 ordinator.

4 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
5 standing any other provision of law, the Office may
6 accept detailed personnel from other Federal agen-
7 cies without regard to whether the agency described
8 under paragraph (1) is reimbursed.

9 “(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
10 THE NATIONAL COORDINATOR.—Not later than 12
11 months after the date of the enactment of this title, the
12 Secretary shall appoint a Chief Privacy Officer of the Of-
13 fice of the National Coordinator, whose duty it shall be
14 to advise the National Coordinator on privacy, security,
15 and data stewardship of electronic health information and
16 to coordinate with other Federal agencies (and similar pri-
17 vacy officers in such agencies), with State and regional
18 efforts, and with foreign countries with regard to the pri-
19 vacy, security, and data stewardship of electronic individ-
20 ually identifiable health information.

21 **“SEC. 3002. HIT POLICY COMMITTEE.**

22 “(a) ESTABLISHMENT.—There is established a HIT
23 Policy Committee to make policy recommendations to the
24 National Coordinator relating to the implementation of a
25 nationwide health information technology infrastructure,

1 including implementation of the strategic plan described
2 in section 3001(e)(3).

3 “(b) DUTIES.—

4 “(1) RECOMMENDATIONS ON HEALTH INFOR-
5 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
6 Policy Committee shall recommend a policy frame-
7 work for the development and adoption of a nation-
8 wide health information technology infrastructure
9 that permits the electronic exchange and use of
10 health information as is consistent with the strategic
11 plan under section 3001(e)(3) and that includes the
12 recommendations under paragraph (2). The Com-
13 mittee shall update such recommendations and make
14 new recommendations as appropriate.

15 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-
16 MENT.—

17 “(A) IN GENERAL.—The HIT Policy Com-
18 mittee shall recommend the areas in which
19 standards, implementation specifications, and
20 certification criteria are needed for the elec-
21 tronic exchange and use of health information
22 for purposes of adoption under section 3004
23 and shall recommend an order of priority for
24 the development, harmonization, and recogni-
25 tion of such standards, specifications, and cer-

1 tification criteria among the areas so rec-
2 ommended. Such standards and implementation
3 specifications shall include named standards,
4 architectures, and software schemes for the au-
5 thentication and security of individually identifi-
6 able health information and other information
7 as needed to ensure the reproducible develop-
8 ment of common solutions across disparate en-
9 tities.

10 “(B) AREAS REQUIRED FOR CONSIDER-
11 ATION.—For purposes of subparagraph (A), the
12 HIT Policy Committee shall make recommenda-
13 tions for at least the following areas:

14 “(i) Technologies that protect the pri-
15 vacy of health information and promote se-
16 curity in a qualified electronic health
17 record, including for the segmentation and
18 protection from disclosure of specific and
19 sensitive individually identifiable health in-
20 formation with the goal of minimizing the
21 reluctance of patients to seek care (or dis-
22 close information about a condition) be-
23 cause of privacy concerns, in accordance
24 with applicable law, and for the use and

1 disclosure of limited data sets of such in-
2 formation.

3 “(ii) A nationwide health information
4 technology infrastructure that allows for
5 the electronic use and accurate exchange of
6 health information.

7 “(iii) The utilization of a certified
8 electronic health record for each person in
9 the United States by 2014.

10 “(iv) Technologies that as a part of a
11 qualified electronic health record allow for
12 an accounting of disclosures made by a
13 covered entity (as defined for purposes of
14 regulations promulgated under section
15 264(e) of the Health Insurance Portability
16 and Accountability Act of 1996) for pur-
17 poses of treatment, payment, and health
18 care operations (as such terms are defined
19 for purposes of such regulations).

20 “(v) The use of certified electronic
21 health records to improve the quality of
22 health care, such as by promoting the co-
23 ordination of health care and improving
24 continuity of health care among health
25 care providers, by reducing medical errors,

1 by improving population health, and by ad-
2 vancing research and education.

3 “(C) OTHER AREAS FOR CONSIDER-
4 ATION.—In making recommendations under
5 subparagraph (A), the HIT Policy Committee
6 may consider the following additional areas:

7 “(i) The appropriate uses of a nation-
8 wide health information infrastructure, in-
9 cluding for purposes of—

10 “(I) the collection of quality data
11 and public reporting;

12 “(II) biosurveillance and public
13 health;

14 “(III) medical and clinical re-
15 search; and

16 “(IV) drug safety.

17 “(ii) Self-service technologies that fa-
18 cilitate the use and exchange of patient in-
19 formation and reduce wait times.

20 “(iii) Telemedicine technologies, in
21 order to reduce travel requirements for pa-
22 tients in remote areas.

23 “(iv) Technologies that facilitate home
24 health care and the monitoring of patients
25 recuperating at home.

1 “(v) Technologies that help reduce
2 medical errors.

3 “(vi) Technologies that facilitate the
4 continuity of care among health settings.

5 “(vii) Technologies that meet the
6 needs of diverse populations.

7 “(viii) Any other technology that the
8 HIT Policy Committee finds to be among
9 the technologies with the greatest potential
10 to improve the quality and efficiency of
11 health care.

12 “(3) FORUM.—The HIT Policy Committee shall
13 serve as a forum for broad stakeholder input with
14 specific expertise in policies relating to the matters
15 described in paragraphs (1) and (2).

16 “(c) MEMBERSHIP AND OPERATIONS.—

17 “(1) IN GENERAL.—The National Coordinator
18 shall provide leadership in the establishment and op-
19 erations of the HIT Policy Committee.

20 “(2) MEMBERSHIP.—The membership of the
21 HIT Policy Committee shall at least reflect pro-
22 viders, ancillary healthcare workers, consumers, pur-
23 chasers, health plans, technology vendors, research-
24 ers, relevant Federal agencies, and individuals with
25 technical expertise on health care quality, privacy

1 and security, and on the electronic exchange and use
2 of health information.

3 “(3) CONSIDERATION.—The National Coordi-
4 nator shall ensure that the relevant recommenda-
5 tions and comments from the National Committee
6 on Vital and Health Statistics are considered in the
7 development of policies.

8 “(d) APPLICATION OF FACA.—The Federal Advisory
9 Committee Act (5 U.S.C. App.), other than section 14 of
10 such Act, shall apply to the HIT Policy Committee.

11 “(e) PUBLICATION.—The Secretary shall provide for
12 publication in the Federal Register and the posting on the
13 Internet website of the Office of the National Coordinator
14 for Health Information Technology of all policy rec-
15 ommendations made by the HIT Policy Committee under
16 this section.

17 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

18 “(a) ESTABLISHMENT.—There is established a com-
19 mittee to be known as the HIT Standards Committee to
20 recommend to the National Coordinator standards, imple-
21 mentation specifications, and certification criteria for the
22 electronic exchange and use of health information for pur-
23 poses of adoption under section 3004, consistent with the
24 implementation of the strategic plan described in section
25 3001(c)(3) and beginning with the areas listed in section

1 3002(b)(2)(B) in accordance with policies developed by
2 the HIT Policy Committee.

3 “(b) DUTIES.—

4 “(1) STANDARD DEVELOPMENT.—

5 “(A) IN GENERAL.—The HIT Standards
6 Committee shall recommend to the National
7 Coordinator standards, implementation speci-
8 fications, and certification criteria described in
9 subsection (a) that have been developed, har-
10 monized, or recognized by the HIT Standards
11 Committee. The HIT Standards Committee
12 shall update such recommendations and make
13 new recommendations as appropriate, including
14 in response to a notification sent under section
15 3004(b)(2). Such recommendations shall be
16 consistent with the latest recommendations
17 made by the HIT Policy Committee.

18 “(B) PILOT TESTING OF STANDARDS AND
19 IMPLEMENTATION SPECIFICATIONS.—In the de-
20 velopment, harmonization, or recognition of
21 standards and implementation specifications,
22 the HIT Standards Committee shall, as appro-
23 priate, provide for the testing of such standards
24 and specifications by the National Institute for

1 Standards and Technology under section 4201
2 of the HITECH Act.

3 “(C) CONSISTENCY.—The standards, im-
4 plementation specifications, and certification
5 criteria recommended under this subsection
6 shall be consistent with the standards for infor-
7 mation transactions and data elements adopted
8 pursuant to section 1173 of the Social Security
9 Act.

10 “(2) FORUM.—The HIT Standards Committee
11 shall serve as a forum for the participation of a
12 broad range of stakeholders to provide input on the
13 development, harmonization, and recognition of
14 standards, implementation specifications, and certifi-
15 cation criteria necessary for the development and
16 adoption of a nationwide health information tech-
17 nology infrastructure that allows for the electronic
18 use and exchange of health information.

19 “(3) SCHEDULE.—Not later than 90 days after
20 the date of the enactment of this title, the HIT
21 Standards Committee shall develop a schedule for
22 the assessment of policy recommendations developed
23 by the HIT Policy Committee under section 3002.
24 The HIT Standards Committee shall update such

1 schedule annually. The Secretary shall publish such
2 schedule in the Federal Register.

3 “(4) PUBLIC INPUT.—The HIT Standards
4 Committee shall conduct open public meetings and
5 develop a process to allow for public comment on the
6 schedule described in paragraph (3) and rec-
7 ommendations described in this subsection. Under
8 such process comments shall be submitted in a time-
9 ly manner after the date of publication of a rec-
10 ommendation under this subsection.

11 “(c) MEMBERSHIP AND OPERATIONS.—

12 “(1) IN GENERAL.—The National Coordinator
13 shall provide leadership in the establishment and op-
14 erations of the HIT Standards Committee.

15 “(2) MEMBERSHIP.—The membership of the
16 HIT Standards Committee shall at least reflect pro-
17 viders, ancillary healthcare workers, consumers, pur-
18 chasers, health plans, technology vendors, research-
19 ers, relevant Federal agencies, and individuals with
20 technical expertise on health care quality, privacy
21 and security, and on the electronic exchange and use
22 of health information.

23 “(3) CONSIDERATION.—The National Coordi-
24 nator shall ensure that the relevant recommenda-
25 tions and comments from the National Committee

1 on Vital and Health Statistics are considered in the
2 development of standards.

3 “(4) ASSISTANCE.—For the purposes of car-
4 rying out this section, the Secretary may provide or
5 ensure that financial assistance is provided by the
6 HIT Standards Committee to defray in whole or in
7 part any membership fees or dues charged by such
8 Committee to those consumer advocacy groups and
9 not for profit entities that work in the public inter-
10 est as a part of their mission.

11 “(d) APPLICATION OF FACA.—The Federal Advisory
12 Committee Act (5 U.S.C. App.), other than section 14,
13 shall apply to the HIT Standards Committee.

14 “(e) PUBLICATION.—The Secretary shall provide for
15 publication in the Federal Register and the posting on the
16 Internet website of the Office of the National Coordinator
17 for Health Information Technology of all recommenda-
18 tions made by the HIT Standards Committee under this
19 section.

20 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
21 **COMMENDATIONS; ADOPTION OF INITIAL SET**
22 **OF STANDARDS, IMPLEMENTATION SPECI-**
23 **FICATIONS, AND CERTIFICATION CRITERIA.**

24 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-
25 OMMENDATIONS.—

1 “(1) REVIEW OF ENDORSED STANDARDS, IM-
2 PLEMENTATION SPECIFICATIONS, AND CERTIFI-
3 CATION CRITERIA.—Not later than 90 days after the
4 date of receipt of standards, implementation speci-
5 fications, or certification criteria endorsed under sec-
6 tion 3001(c), the Secretary, in consultation with rep-
7 resentatives of other relevant Federal agencies, shall
8 jointly review such standards, implementation speci-
9 fications, or certification criteria and shall determine
10 whether or not to propose adoption of such stand-
11 ards, implementation specifications, or certification
12 criteria.

13 “(2) DETERMINATION TO ADOPT STANDARDS,
14 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
15 CATION CRITERIA.—If the Secretary determines—

16 “(A) to propose adoption of any grouping
17 of such standards, implementation specifica-
18 tions, or certification criteria, the Secretary
19 shall, by regulation, determine whether or not
20 to adopt such grouping of standards, implemen-
21 tation specifications, or certification criteria; or

22 “(B) not to propose adoption of any group-
23 ing of standards, implementation specifications,
24 or certification criteria, the Secretary shall no-
25 tify the National Coordinator and the HIT

1 Standards Committee in writing of such deter-
2 mination and the reasons for not proposing the
3 adoption of such recommendation.

4 “(3) PUBLICATION.—The Secretary shall pro-
5 vide for publication in the Federal Register of all de-
6 terminations made by the Secretary under para-
7 graph (1).

8 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
9 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
10 CRITERIA.—

11 “(1) IN GENERAL.—Not later than December
12 31, 2009, the Secretary shall, through the rule-
13 making process described in section 3003, adopt an
14 initial set of standards, implementation specifica-
15 tions, and certification criteria for the areas required
16 for consideration under section 3002(b)(2)(B).

17 “(2) APPLICATION OF CURRENT STANDARDS,
18 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
19 CATION CRITERIA.—The standards, implementation
20 specifications, and certification criteria adopted be-
21 fore the date of the enactment of this title through
22 the process existing through the Office of the Na-
23 tional Coordinator for Health Information Tech-
24 nology may be applied towards meeting the require-
25 ment of paragraph (1).

1 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
2 **ARDS AND IMPLEMENTATION SPECIFICA-**
3 **TIONS BY FEDERAL AGENCIES.**

4 “For requirements relating to the application and use
5 by Federal agencies of the standards and implementation
6 specifications adopted under section 3004, see section
7 4111 of the HITECH Act.

8 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
9 **ED STANDARDS AND IMPLEMENTATION**
10 **SPECIFICATIONS BY PRIVATE ENTITIES.**

11 “(a) IN GENERAL.—Except as provided under section
12 4112 of the HITECH Act, any standard or implementa-
13 tion specification adopted under section 3004 shall be vol-
14 untary with respect to private entities.

15 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-
16 title shall be construed to require that a private entity that
17 enters into a contract with the Federal Government apply
18 or use the standards and implementation specifications
19 adopted under section 3004 with respect to activities not
20 related to the contract.

21 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
22 **NOLOGY.**

23 “(a) IN GENERAL.—The National Coordinator shall
24 support the development, routine updating and provision
25 of qualified EHR technology (as defined in section 3000)
26 consistent with subsections (b) and (c) unless the Sec-

1 retary determines that the needs and demands of pro-
2 viders are being substantially and adequately met through
3 the marketplace.

4 “(b) CERTIFICATION.—In making such EHR tech-
5 nology publicly available, the National Coordinator shall
6 ensure that the qualified EHR technology described in
7 subsection (a) is certified under the program developed
8 under section 3001(c)(3) to be in compliance with applica-
9 ble standards adopted under section 3003(a).

10 “(c) AUTHORIZATION TO CHARGE A NOMINAL
11 FEE.—The National Coordinator may impose a nominal
12 fee for the adoption by a health care provider of the health
13 information technology system developed or approved
14 under subsection (a) and (b). Such fee shall take into ac-
15 count the financial circumstances of smaller providers, low
16 income providers, and providers located in rural or other
17 medically underserved areas.

18 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to require that a private or govern-
20 ment entity adopt or use the technology provided under
21 this section.

22 **“SEC. 3008. TRANSITIONS.**

23 “(a) ONCHIT.—To the extent consistent with sec-
24 tion 3001, all functions, personnel, assets, liabilities, and
25 administrative actions applicable to the National Coordi-

1 nator for Health Information Technology appointed under
2 Executive Order 13335 or the Office of such National Co-
3 ordinator on the date before the date of the enactment
4 of this title shall be transferred to the National Coordi-
5 nator appointed under section 3001(a) and the Office of
6 such National Coordinator as of the date of the enactment
7 of this title.

8 “(b) AHIC.—

9 “(1) To the extent consistent with sections
10 3002 and 3003, all functions, personnel, assets, and
11 liabilities applicable to the AHIC Successor, Inc.
12 doing business as the National eHealth Collaborative
13 as of the day before the date of the enactment of
14 this title shall be transferred to the HIT Policy
15 Committee or the HIT Standards Committee, estab-
16 lished under section 3002(a) or 3003(a), as appro-
17 priate, as of the date of the enactment of this title.

18 “(2) In carrying out section 3003(b)(1)(A),
19 until recommendations are made by the HIT Policy
20 Committee, recommendations of the HIT Standards
21 Committee shall be consistent with the most recent
22 recommendations made by such AHIC Successor,
23 Inc.

24 “(c) RULES OF CONSTRUCTION.—

1 “(1) ONCHIT.—Nothing in section 3001 or
2 subsection (a) shall be construed as requiring the
3 creation of a new entity to the extent that the Office
4 of the National Coordinator for Health Information
5 Technology established pursuant to Executive Order
6 13335 is consistent with the provisions of section
7 3001.

8 “(2) AHIC.—Nothing in sections 3002 or 3003
9 or subsection (b) shall be construed as prohibiting
10 the AHIC Successor, Inc. doing business as the Na-
11 tional eHealth Collaborative from modifying its char-
12 ter, duties, membership, and any other structure or
13 function required to be consistent with section 3002
14 and 3003 in a manner that would permit the Sec-
15 retary to choose to recognize such Community as the
16 HIT Policy Committee or the HIT Standards Com-
17 mittee.

18 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**

19 **LAW.**

20 “(a) IN GENERAL.—With respect to the relation of
21 this title to HIPAA privacy and security law:

22 “(1) This title may not be construed as having
23 any effect on the authorities of the Secretary under
24 HIPAA privacy and security law.

1 “(2) The purposes of this title include ensuring
2 that the health information technology standards
3 and implementation specifications adopted under
4 section 3004 take into account the requirements of
5 HIPAA privacy and security law.

6 “(b) DEFINITION.—For purposes of this section, the
7 term ‘HIPAA privacy and security law’ means—

8 “(1) the provisions of part C of title XI of the
9 Social Security Act, section 264 of the Health Insur-
10 ance Portability and Accountability Act of 1996, and
11 subtitle D of title IV of the HITECH Act; and

12 “(2) regulations under such provisions.

13 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

14 “‘There is authorized to be appropriated to the Office
15 of the National Coordinator for Health Information Tech-
16 nology to carry out this subtitle \$250,000,000 for fiscal
17 year 2009.’”.

18 **SEC. 4102. TECHNICAL AMENDMENT.**

19 Section 1171(5) of the Social Security Act (42 U.S.C.
20 1320d) is amended by striking “or C” and inserting “C,
21 or D”.

1 **PART II—APPLICATION AND USE OF ADOPTED**
2 **HEALTH INFORMATION TECHNOLOGY**
3 **STANDARDS; REPORTS**

4 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**
5 **ADOPTED STANDARDS AND IMPLEMENTA-**
6 **TION SPECIFICATIONS.**

7 (a) SPENDING ON HEALTH INFORMATION TECH-
8 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-
9 ecutive Order issued on August 22, 2006, relating to pro-
10 moting quality and efficient health care in Federal Gov-
11 ernment administered or sponsored health care programs)
12 implements, acquires, or upgrades health information
13 technology systems used for the direct exchange of individ-
14 ually identifiable health information between agencies and
15 with non-Federal entities, it shall utilize, where available,
16 health information technology systems and products that
17 meet standards and implementation specifications adopted
18 under section 3004(b) of the Public Health Service Act,
19 as added by section 4101.

20 (b) FEDERAL INFORMATION COLLECTION ACTIVI-
21 TIES.—With respect to a standard or implementation
22 specification adopted under section 3004(b) of the Public
23 Health Service Act, as added by section 4101, the Presi-
24 dent shall take measures to ensure that Federal activities
25 involving the broad collection and submission of health in-
26 formation are consistent with such standard or implemen-

1 tation specification, respectively, within three years after
2 the date of such adoption.

3 (c) APPLICATION OF DEFINITIONS.—The definitions
4 contained in section 3000 of the Public Health Service
5 Act, as added by section 4101, shall apply for purposes
6 of this part.

7 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

8 Each agency (as defined in such Executive Order
9 issued on August 22, 2006, relating to promoting quality
10 and efficient health care in Federal Government adminis-
11 tered or sponsored health care programs) shall require in
12 contracts or agreements with health care providers, health
13 plans, or health insurance issuers that as each provider,
14 plan, or issuer implements, acquires, or upgrades health
15 information technology systems, it shall utilize, where
16 available, health information technology systems and prod-
17 ucts that meet standards and implementation specifica-
18 tions adopted under section 3004(b) of the Public Health
19 Service Act, as added by section 4101.

20 **SEC. 4113. STUDY AND REPORTS.**

21 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-
22 TEM.—Not later than 2 years after the date of the enact-
23 ment of this Act and annually thereafter, the Secretary
24 of Health and Human Services shall submit to the appro-

1 priate committees of jurisdiction of the House of Rep-
2 resentatives and the Senate a report that—

3 (1) describes the specific actions that have been
4 taken by the Federal Government and private enti-
5 ties to facilitate the adoption of a nationwide system
6 for the electronic use and exchange of health infor-
7 mation;

8 (2) describes barriers to the adoption of such a
9 nationwide system; and

10 (3) contains recommendations to achieve full
11 implementation of such a nationwide system.

12 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-
13 PORT.—

14 (1) STUDY.—The Secretary of Health and
15 Human Services shall carry out, or contract with a
16 private entity to carry out, a study that examines
17 methods to create efficient reimbursement incentives
18 for improving health care quality in federally quali-
19 fied health centers, rural health clinics, and free
20 clinics.

21 (2) REPORT.—Not later than 2 years after the
22 date of the enactment of this Act, the Secretary of
23 Health and Human Services shall submit to the ap-
24 propriate committees of jurisdiction of the House of

1 Representatives and the Senate a report on the
2 study carried out under paragraph (1).

3 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
4 PORT.—

5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services shall carry out, or contract with a
7 private entity to carry out, a study of matters relat-
8 ing to the potential use of new aging services tech-
9 nology to assist seniors, individuals with disabilities,
10 and their caregivers throughout the aging process.

11 (2) MATTERS TO BE STUDIED.—The study
12 under paragraph (1) shall include—

13 (A) an evaluation of—

14 (i) methods for identifying current,
15 emerging, and future health technology
16 that can be used to meet the needs of sen-
17 iors and individuals with disabilities and
18 their caregivers across all aging services
19 settings, as specified by the Secretary;

20 (ii) methods for fostering scientific in-
21 novation with respect to aging services
22 technology within the business and aca-
23 demic communities; and

1 (iii) developments in aging services
2 technology in other countries that may be
3 applied in the United States; and

4 (B) identification of—

5 (i) barriers to innovation in aging
6 services technology and devising strategies
7 for removing such barriers; and

8 (ii) barriers to the adoption of aging
9 services technology by health care pro-
10 viders and consumers and devising strate-
11 gies to removing such barriers.

12 (3) REPORT.—Not later than 24 months after
13 the date of the enactment of this Act, the Secretary
14 shall submit to the appropriate committees of juris-
15 diction of the House of Representatives and of the
16 Senate a report on the study carried out under para-
17 graph (1).

18 (4) DEFINITIONS.—For purposes of this sub-
19 section:

20 (A) AGING SERVICES TECHNOLOGY.—The
21 term “aging services technology” means health
22 technology that meets the health care needs of
23 seniors, individuals with disabilities, and the
24 caregivers of such seniors and individuals.

1 (B) SENIOR.—The term “senior” has such
2 meaning as specified by the Secretary.

3 **Subtitle B—Testing of Health**
4 **Information Technology**

5 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**
6 **TECHNOLOGY TESTING.**

7 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
8 TATION SPECIFICATIONS.—In coordination with the HIT
9 Standards Committee established under section 3003 of
10 the Public Health Service Act, as added by section 4101,
11 with respect to the development of standards and imple-
12 mentation specifications under such section, the Director
13 of the National Institute for Standards and Technology
14 shall test such standards and implementation specifica-
15 tions, as appropriate, in order to assure the efficient im-
16 plementation and use of such standards and implementa-
17 tion specifications.

18 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
19 tion with the HIT Standards Committee established under
20 section 3003 of the Public Health Service Act, as added
21 by section 4101, with respect to the development of stand-
22 ards and implementation specifications under such sec-
23 tion, the Director of the National Institute of Standards
24 and Technology shall support the establishment of a con-
25 formance testing infrastructure, including the develop-

1 ment of technical test beds. The development of this con-
2 formance testing infrastructure may include a program to
3 accredit independent, non-Federal laboratories to perform
4 testing.

5 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

6 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
7 GRATION RESEARCH CENTERS.—

8 (1) IN GENERAL.—The Director of the National
9 Institute of Standards and Technology, in consulta-
10 tion with the Director of the National Science Foun-
11 dation and other appropriate Federal agencies, shall
12 establish a program of assistance to institutions of
13 higher education (or consortia thereof which may in-
14 clude nonprofit entities and Federal Government
15 laboratories) to establish multidisciplinary Centers
16 for Health Care Information Enterprise Integration.

17 (2) REVIEW; COMPETITION.—Grants shall be
18 awarded under this subsection on a merit-reviewed,
19 competitive basis.

20 (3) PURPOSE.—The purposes of the Centers de-
21 scribed in paragraph (1) shall be—

22 (A) to generate innovative approaches to
23 health care information enterprise integration
24 by conducting cutting-edge, multidisciplinary

1 research on the systems challenges to health
2 care delivery; and

3 (B) the development and use of health in-
4 formation technologies and other complemen-
5 tary 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 un-
10 dertaken by the Center established pursuant to
11 assistance under paragraph (1) and the respec-
12 tive 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 infor-
24 mation enterprise integration.

1 (b) NATIONAL INFORMATION TECHNOLOGY RE-
2 SEARCH AND DEVELOPMENT PROGRAM.—The National
3 High-Performance Computing Program established by
4 section 101 of the High-Performance Computing Act of
5 1991 (15 U.S.C. 5511) shall coordinate Federal research
6 and development programs related to the development and
7 deployment of health information technology, including ac-
8 tivities related 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**
2 **of 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
17 allow for and promote the electronic exchange and use of
18 health information for each individual in the United States
19 consistent with the goals outlined in the strategic plan de-
20 veloped by the National Coordinator (and as available)
21 under section 3001. To the greatest extent practicable, the
22 Secretary shall ensure that any funds so appropriated
23 shall be used for the acquisition of health information
24 technology that meets standards and certification criteria
25 adopted before the date of the enactment of this title until

1 such date as the standards are adopted under section
2 3004. The Secretary shall invest funds through the dif-
3 ferent agencies with expertise in such goals, such as the
4 Office of the National Coordinator for Health Information
5 Technology, the Health Resources and Services Adminis-
6 tration, the Agency for Healthcare Research and Quality,
7 the Centers of Medicare & Medicaid Services, the Centers
8 for Disease Control and Prevention, and the Indian
9 Health Service to support the 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
14 information exchanges, and which may include up-
15 dating and implementing the infrastructure nec-
16 essary within different agencies of the Department
17 of Health and Human Services to support the elec-
18 tronic use and exchange of health information.

19 “(2) Development and adoption of appropriate
20 certified electronic health records for categories of
21 providers not eligible for support under title XVIII
22 or XIX of the Social Security Act for the adoption
23 of 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
2 a provider’s delivery of care, consistent with best
3 practices learned from the Health Information Tech-
4 nology Research Center developed under section 302,
5 including community health centers receiving assist-
6 ance under section 330 of the Public Health Service
7 Act, covered entities under section 340B of such
8 Act, and providers participating in one or more of
9 the programs under titles XVIII, XIX, and XXI of
10 the Social Security Act (relating to Medicare, Med-
11 icaid, and the State Children’s Health Insurance
12 Program).

13 “(4) Infrastructure and tools for the promotion
14 of telemedicine, including coordination among Fed-
15 eral agencies in the promotion of telemedicine.

16 “(5) Promotion of the interoperability of clinical
17 data repositories or registries.

18 “(6) Promotion of technologies and best prac-
19 tices that enhance the protection of health informa-
20 tion by all holders of individually identifiable health
21 information.

22 “(7) Improve and expand the use of health in-
23 formation technology by public health departments.

1 tute of Standards and Technology, in developing and im-
2 plementing this program.

3 “(b) HEALTH INFORMATION TECHNOLOGY RE-
4 SEARCH CENTER.—

5 “(1) IN GENERAL.—The Secretary shall create
6 a Health Information Technology Research Center
7 (in this section referred to as the ‘Center’) to pro-
8 vide technical assistance and develop or recognize
9 best practices to support and accelerate efforts to
10 adopt, implement, and effectively utilize health infor-
11 mation technology that allows for the electronic ex-
12 change and use of information in compliance with
13 standards, implementation specifications, and certifi-
14 cation criteria adopted under section 3004(b).

15 “(2) INPUT.—The Center shall incorporate
16 input from—

17 “(A) other Federal agencies with dem-
18 onstrated experience and expertise in informa-
19 tion technology services such as the National
20 Institute of Standards and Technology;

21 “(B) users of health information tech-
22 nology, such as providers and their support and
23 clerical staff and others involved in the care and
24 care coordination of patients, from the health

1 care and health information technology indus-
2 try; and

3 “(C) others as appropriate.

4 “(3) PURPOSES.—The purposes of the Center
5 are to—

6 “(A) provide a forum for the exchange of
7 knowledge and experience;

8 “(B) accelerate the transfer of lessons
9 learned from existing public and private sector
10 initiatives, including those currently receiving
11 Federal financial support;

12 “(C) assemble, analyze, and widely dis-
13 seminate evidence and experience related to the
14 adoption, implementation, and effective use of
15 health information technology that allows for
16 the electronic exchange and use of information
17 including through the regional centers described
18 in subsection (c);

19 “(D) provide technical assistance for the
20 establishment and evaluation of regional and
21 local health information networks to facilitate
22 the electronic exchange of information across
23 health care settings and improve the quality of
24 health care;

1 “(E) provide technical assistance for the
2 development and dissemination of solutions to
3 barriers to the exchange of electronic health in-
4 formation; and

5 “(F) learn about effective strategies to
6 adopt and utilize health information technology
7 in medically underserved communities.

8 “(c) HEALTH INFORMATION TECHNOLOGY RE-
9 REGIONAL EXTENSION CENTERS.—

10 “(1) IN GENERAL.—The Secretary shall provide
11 assistance for the creation and support of regional
12 centers (in this subsection referred to as ‘regional
13 centers’) to provide technical assistance and dissemi-
14 nate best practices and other information learned
15 from the Center to support and accelerate efforts to
16 adopt, implement, and effectively utilize health infor-
17 mation technology that allows for the electronic ex-
18 change and use of information in compliance with
19 standards, implementation specifications, and certifi-
20 cation criteria adopted under section 3004. Activities
21 conducted under this subsection shall be consistent
22 with the strategic plan developed by the National
23 Coordinator, (and, as available) under section 3001.

24 “(2) AFFILIATION.—Regional centers shall be
25 affiliated with any U.S.-based nonprofit institution

1 or organization, or group thereof, that applies and
2 is awarded financial assistance under this section.
3 Individual awards shall be decided on the basis of
4 merit.

5 “(3) OBJECTIVE.—The objective of the regional
6 centers is to enhance and promote the adoption of
7 health information technology through—

8 “(A) assistance with the implementation,
9 effective use, upgrading, and ongoing mainte-
10 nance of health information technology, includ-
11 ing electronic health records, to healthcare pro-
12 viders nationwide;

13 “(B) broad participation of individuals
14 from industry, universities, and State govern-
15 ments;

16 “(C) active dissemination of best practices
17 and research on the implementation, effective
18 use, upgrading, and ongoing maintenance of
19 health information technology, including elec-
20 tronic health records, to health care providers
21 in order to improve the quality of healthcare
22 and protect the privacy and security of health
23 information;

24 “(D) participation, to the extent prac-
25 ticable, in health information exchanges; and

1 “(E) utilization, when appropriate, of the
2 expertise and capability that exists in Federal
3 agencies other than the Department; and

4 “(F) integration of health information
5 technology, including electronic health records,
6 into the initial and ongoing training of health
7 professionals and others in the healthcare in-
8 dustry that would be instrumental to improving
9 the quality of healthcare through the smooth
10 and accurate electronic use and exchange of
11 health information.

12 “(4) REGIONAL ASSISTANCE.—Each regional
13 center shall aim to provide assistance and education
14 to all providers in a region, but shall prioritize any
15 direct assistance first to the following:

16 “(A) Public or not-for-profit hospitals or
17 critical access hospitals.

18 “(B) Federally qualified health centers (as
19 defined in section 1861(aa)(4) of the Social Se-
20 curity Act).

21 “(C) Entities that are located in rural and
22 other areas that serve uninsured, underinsured,
23 and medically underserved individuals (regard-
24 less of whether such area is urban or rural).

1 “(D) Individual or small group practices
2 (or a consortium thereof) that are primarily fo-
3 cused on primary care.

4 “(5) FINANCIAL SUPPORT.—The Secretary may
5 provide financial support to any regional center cre-
6 ated under this subsection for a period not to exceed
7 four years. The Secretary may not provide more
8 than 50 percent of the capital and annual operating
9 and maintenance funds required to create and main-
10 tain such a center, except in an instance of national
11 economic conditions which would render this cost-
12 share requirement detrimental to the program and
13 upon notification to Congress as to the justification
14 to waive the cost-share requirement.

15 “(6) NOTICE OF PROGRAM DESCRIPTION AND
16 AVAILABILITY OF FUNDS.—The Secretary shall pub-
17 lish in the Federal Register, not later than 90 days
18 after the date of the enactment of this Act, a draft
19 description of the program for establishing regional
20 centers under this subsection. Such description shall
21 include the following:

22 “(A) A detailed explanation of the program
23 and the programs goals.

24 “(B) Procedures to be followed by the ap-
25 plicants.

1 “(C) Criteria for determining qualified ap-
2 plicants.

3 “(D) Maximum support levels expected to
4 be available to centers under the program.

5 “(7) APPLICATION REVIEW.—The Secretary
6 shall subject each application under this subsection
7 to merit review. In making a decision whether to ap-
8 prove such application and provide financial support,
9 the Secretary shall consider at a minimum the mer-
10 its of the application, including those portions of the
11 application regarding—

12 “(A) the ability of the applicant to provide
13 assistance under this subsection and utilization
14 of health information technology appropriate to
15 the needs of particular categories of health care
16 providers;

17 “(B) the types of service to be provided to
18 health care providers;

19 “(C) geographical diversity and extent of
20 service area; and

21 “(D) the percentage of funding and
22 amount of in-kind commitment from other
23 sources.

24 “(8) BIENNIAL EVALUATION.—Each regional
25 center which receives financial assistance under this

1 subsection shall be evaluated biennially by an evalua-
2 tion panel appointed by the Secretary. Each evalua-
3 tion panel shall be composed of private experts, none
4 of whom shall be connected with the center involved,
5 and of Federal officials. Each evaluation panel shall
6 measure the involved center's performance against
7 the objective specified in paragraph (3). The Sec-
8 retary shall not continue to provide funding to a re-
9 gional center unless its evaluation is overall positive.

10 “(9) CONTINUING SUPPORT.—After the second
11 year of assistance under this subsection a regional
12 center may receive additional support under this
13 subsection if it has received positive evaluations and
14 a finding by the Secretary that continuation of Fed-
15 eral funding to the center was in the best interest
16 of provision of health information technology exten-
17 sion services.

18 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**
19 **MATION TECHNOLOGY.**

20 “(a) IN GENERAL.—The Secretary, acting through
21 the National Coordinator, shall establish a program in ac-
22 cordance with this section to facilitate and expand the
23 electronic movement and use of health information among
24 organizations according to nationally recognized stand-
25 ards.

1 “(b) PLANNING GRANTS.—The Secretary may award
2 a grant to a State or qualified State-designated entity (as
3 described in subsection (d)) that submits an application
4 to the Secretary at such time, in such manner, and con-
5 taining such information as the Secretary may specify, for
6 the purpose of planning activities described in subsection
7 (b).

8 “(c) IMPLEMENTATION GRANTS.—The Secretary
9 may award a grant to a State or qualified State-des-
10 ignated entity that—

11 “(1) has submitted, and the Secretary has ap-
12 proved, a plan described in subsection (c) (regardless
13 of whether such plan was prepared using amounts
14 awarded under paragraph (1)); and

15 “(2) submits an application at such time, in
16 such manner, and containing such information as
17 the Secretary may specify.

18 “(d) USE OF FUNDS.—Amounts received under a
19 grant under subsection (a)(3) shall be used to conduct ac-
20 tivities to facilitate and expand the electronic movement
21 and use of health information among organizations ac-
22 cording to nationally recognized standards through activi-
23 ties that include—

1 “(1) enhancing broad and varied participation
2 in the authorized and secure nationwide electronic
3 use and exchange of health information;

4 “(2) identifying State or local resources avail-
5 able towards a nationwide effort to promote health
6 information technology;

7 “(3) complementing other Federal grants, pro-
8 grams, and efforts towards the promotion of health
9 information technology;

10 “(4) providing technical assistance for the de-
11 velopment and dissemination of solutions to barriers
12 to the exchange of electronic health information;

13 “(5) promoting effective strategies to adopt and
14 utilize health information technology in medically
15 underserved communities;

16 “(6) assisting patients in utilizing health infor-
17 mation technology;

18 “(7) encouraging clinicians to work with Health
19 Information Technology Regional Extension Centers
20 as described in section 3012, to the extent they are
21 available and valuable;

22 “(8) supporting public health agencies’ author-
23 ized use of and access to electronic health informa-
24 tion;

1 “(9) promoting the use of electronic health
2 records for quality improvement including through
3 quality measures reporting; and

4 “(10) such other activities as the Secretary may
5 specify.

6 “(e) PLAN.—

7 “(1) IN GENERAL.—A plan described in this
8 subsection is a plan that describes the activities to
9 be carried out by a State or by the qualified State-
10 designated entity within such State to facilitate and
11 expand the electronic movement and use of health
12 information among organizations according to na-
13 tionally recognized standards and implementation
14 specifications.

15 “(2) REQUIRED ELEMENTS.—A plan described
16 in paragraph (1) shall—

17 “(A) be pursued in the public interest;

18 “(B) be consistent with the strategic plan
19 developed by the National Coordinator, (and, as
20 available) under section 3001;

21 “(C) include a description of the ways the
22 State or qualified State-designated entity will
23 carry out the activities described in subsection
24 (b); and

1 “(D) contain such elements as the Sec-
2 retary may require.

3 “(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
4 purposes of this section, to be a qualified State-designated
5 entity, with respect to a State, an entity shall—

6 “(1) be designated by the State as eligible to
7 receive awards under this section;

8 “(2) be a not-for-profit entity with broad stake-
9 holder representation on its governing board;

10 “(3) demonstrate that one of its principal goals
11 is to use information technology to improve health
12 care quality and efficiency through the authorized
13 and secure electronic exchange and use of health in-
14 formation;

15 “(4) adopt nondiscrimination and conflict of in-
16 terest policies that demonstrate a commitment to
17 open, fair, and nondiscriminatory participation by
18 stakeholders; and

19 “(5) conform to such other requirements as the
20 Secretary may establish.

21 “(g) REQUIRED CONSULTATION.—In carrying out
22 activities described in subsections (a)(2) and (a)(3), a
23 State or qualified State-designated entity shall consult
24 with and consider the recommendations of—

1 “(1) health care providers (including providers
2 that provide services to low income and underserved
3 populations);

4 “(2) health plans;

5 “(3) patient or consumer organizations that
6 represent the population to be served;

7 “(4) health information technology vendors;

8 “(5) health care purchasers and employers;

9 “(6) public health agencies;

10 “(7) health professions schools, universities and
11 colleges;

12 “(8) clinical researchers;

13 “(9) other users of health information tech-
14 nology such as the support and clerical staff of pro-
15 viders and others involved in the care and care co-
16 ordination of patients; and

17 “(10) such other entities, as may be determined
18 appropriate by the Secretary.

19 “(h) CONTINUOUS IMPROVEMENT.—The Secretary
20 shall annually evaluate the activities conducted under this
21 section and shall, in awarding grants under this section,
22 implement the lessons learned from such evaluation in a
23 manner so that awards made subsequent to each such
24 evaluation are made in a manner that, in the determina-
25 tion of the Secretary, will lead towards the greatest im-

1 improvement in quality of care, decrease in costs, and the
2 most effective authorized and secure electronic exchange
3 of health information.

4 “(i) REQUIRED MATCH.—

5 “(1) IN GENERAL.—For a fiscal year (begin-
6 ning with fiscal year 2011), the Secretary may not
7 make a grant under subsection (a) to a State unless
8 the State agrees to make available non-Federal con-
9 tributions (which may include in-kind contributions)
10 toward the costs of a grant awarded under sub-
11 section (a)(3) in an amount equal to—

12 “(A) for fiscal year 2011, not less than \$1
13 for each \$10 of Federal funds provided under
14 the grant;

15 “(B) for fiscal year 2012, not less than \$1
16 for each \$7 of Federal funds provided under
17 the grant; and

18 “(C) for fiscal year 2013 and each subse-
19 quent fiscal year, not less than \$1 for each \$3
20 of Federal funds provided under the grant.

21 “(2) AUTHORITY TO REQUIRE STATE MATCH
22 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
23 any fiscal year during the grant program under this
24 section before fiscal year 2011, the Secretary may
25 determine the extent to which there shall be required

1 a non-Federal contribution from a State receiving a
2 grant under this section.

3 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
4 **TRIBES FOR THE DEVELOPMENT OF LOAN**
5 **PROGRAMS TO FACILITATE THE WIDE-**
6 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**
7 **NOLOGY.**

8 “(a) IN GENERAL.—The National Coordinator may
9 award competitive grants to eligible entities for the estab-
10 lishment of programs for loans to health care providers
11 to conduct the activities described in subsection (e).

12 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of
13 this subsection, the term ‘eligible entity’ means a State
14 or Indian tribe (as defined in the Indian Self-Determina-
15 tion and Education Assistance Act) that—

16 “(1) submits to the National Coordinator an
17 application at such time, in such manner, and con-
18 taining such information as the National Coordi-
19 nator may require;

20 “(2) submits to the National Coordinator a
21 strategic plan in accordance with subsection (d) and
22 provides to the National Coordinator assurances that
23 the entity will update such plan annually in accord-
24 ance with such subsection;

1 “(3) provides assurances to the National Coordi-
2 nator that the entity will establish a Loan Fund
3 in accordance with subsection (c);

4 “(4) provides assurances to the National Coordi-
5 nator that the entity will not provide a loan from
6 the Loan Fund to a health care provider unless the
7 provider agrees to—

8 “(A) submit reports on quality measures
9 adopted by the Federal Government (by not
10 later than 90 days after the date on which such
11 measures are adopted), to—

12 “(i) the Director of the Centers for
13 Medicare & Medicaid Services (or his or
14 her designee), in the case of an entity par-
15 ticipating in the Medicare program under
16 title XVIII of the Social Security Act or
17 the Medicaid program under title XIX of
18 such Act; or

19 “(ii) the Secretary in the case of other
20 entities;

21 “(B) demonstrate to the satisfaction of the
22 Secretary (through criteria established by the
23 Secretary) that any certified EHR technology
24 purchased, improved, or otherwise financially
25 supported under a loan under this section is

1 used to exchange health information in a man-
2 ner that, in accordance with law and standards
3 (as adopted under section 3005) applicable to
4 the exchange of information, improves the qual-
5 ity of health care, such as promoting care co-
6 ordination; and

7 “(C) comply with such other requirements
8 as the entity or the Secretary may require;

9 “(D) include a plan on how health care
10 providers involved intend to maintain and sup-
11 port the certified EHR technology over time;

12 “(E) include a plan on how the health care
13 providers involved intend to maintain and sup-
14 port the certified EHR technology that would
15 be purchased with such loan, including the type
16 of resources expected to be involved and any
17 such other information as the State or Indian
18 tribe, respectively, may require; and

19 “(5) agrees to provide matching funds in ac-
20 cordance with subsection (i).

21 “(c) ESTABLISHMENT OF FUND.—For purposes of
22 subsection (b)(3), an eligible entity shall establish a cer-
23 tified EHR technology loan fund (referred to in this sub-
24 section as a ‘Loan Fund’) and comply with the other re-
25 quirements contained in this section. A grant to an eligible

1 entity under this section shall be deposited in the Loan
2 Fund established by the eligible entity. No funds author-
3 ized by other provisions of this title to be used for other
4 purposes specified in this title shall be deposited in any
5 Loan Fund.

6 “(d) STRATEGIC PLAN.—

7 “(1) IN GENERAL.—For purposes of subsection
8 (b)(2), a strategic plan of an eligible entity under
9 this subsection shall identify the intended uses of
10 amounts available to the Loan Fund of such entity.

11 “(2) CONTENTS.—A strategic plan under para-
12 graph (1), with respect to a Loan Fund of an eligi-
13 ble entity, shall include for a year the following:

14 “(A) A list of the projects to be assisted
15 through the Loan Fund during such year.

16 “(B) A description of the criteria and
17 methods established for the distribution of
18 funds from the Loan Fund during the year.

19 “(C) A description of the financial status
20 of the Loan Fund as of the date of submission
21 of the plan.

22 “(D) The short-term and long-term goals
23 of the Loan Fund.

24 “(e) USE OF FUNDS.—Amounts deposited in a Loan
25 Fund, including loan repayments and interest earned on

1 such amounts, shall be used only for awarding loans or
2 loan guarantees, making reimbursements described in sub-
3 section (g)(4)(A), or as a source of reserve and security
4 for leveraged loans, the proceeds of which are deposited
5 in the Loan Fund established under subsection (a). Loans
6 under this section may be used by a health care provider
7 to—

8 “(1) facilitate the purchase of certified EHR
9 technology;

10 “(2) enhance the utilization of certified EHR
11 technology;

12 “(3) train personnel in the use of such tech-
13 nology; or

14 “(4) improve the secure electronic exchange of
15 health information.

16 “(f) TYPES OF ASSISTANCE.—Except as otherwise
17 limited by applicable State law, amounts deposited into a
18 Loan Fund under this subsection may only be used for
19 the following:

20 “(1) To award loans that comply with the fol-
21 lowing:

22 “(A) The interest rate for each loan shall
23 not exceed the market interest rate.

24 “(B) The principal and interest payments
25 on each loan shall commence not later than 1

1 year after the date the loan was awarded, and
2 each loan shall be fully amortized not later than
3 10 years after the date of the loan.

4 “(C) The Loan Fund shall be credited with
5 all payments of principal and interest on each
6 loan awarded from the Loan Fund.

7 “(2) To guarantee, or purchase insurance for,
8 a local obligation (all of the proceeds of which fi-
9 nance a project eligible for assistance under this
10 subsection) if the guarantee or purchase would im-
11 prove credit market access or reduce the interest
12 rate applicable to the obligation involved.

13 “(3) As a source of revenue or security for the
14 payment of principal and interest on revenue or gen-
15 eral obligation bonds issued by the eligible entity if
16 the proceeds of the sale of the bonds will be depos-
17 ited into the Loan Fund.

18 “(4) To earn interest on the amounts deposited
19 into the Loan Fund.

20 “(5) To make reimbursements described in sub-
21 section (g)(4)(A).

22 “(g) ADMINISTRATION OF LOAN FUNDS.—

23 “(1) COMBINED FINANCIAL ADMINISTRATION.—
24 An eligible entity may (as a convenience and to
25 avoid unnecessary administrative costs) combine, in

1 accordance with applicable State law, the financial
2 administration of a Loan Fund established under
3 this subsection with the financial administration of
4 any other revolving fund established by the entity if
5 otherwise not prohibited by the law under which the
6 Loan Fund was established.

7 “(2) COST OF ADMINISTERING FUND.—Each el-
8 igible entity may annually use not to exceed 4 per-
9 cent of the funds provided to the entity under a
10 grant under this subsection to pay the reasonable
11 costs of the administration of the programs under
12 this section, including the recovery of reasonable
13 costs expended to establish a Loan Fund which are
14 incurred after the date of the enactment of this title.

15 “(3) GUIDANCE AND REGULATIONS.—The Na-
16 tional Coordinator shall publish guidance and pro-
17 mulgate regulations as may be necessary to carry
18 out the provisions of this section, including—

19 “(A) provisions to ensure that each eligible
20 entity commits and expends funds allotted to
21 the entity under this subsection as efficiently as
22 possible in accordance with this title and appli-
23 cable State laws; and

24 “(B) guidance to prevent waste, fraud, and
25 abuse.

1 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

2 “(A) IN GENERAL.—A Loan Fund estab-
3 lished under this subsection may accept con-
4 tributions from private sector entities, except
5 that such entities may not specify the recipient
6 or recipients of any loan issued under this sub-
7 section. An eligible entity may agree to reim-
8 burse a private sector entity for any contribu-
9 tion made under this subparagraph, except that
10 the amount of such reimbursement may not be
11 greater than the principal amount of the con-
12 tribution made.

13 “(B) AVAILABILITY OF INFORMATION.—
14 An eligible entity shall make publicly available
15 the identity of, and amount contributed by, any
16 private sector entity under subparagraph (A)
17 and may issue letters of commendation or make
18 other awards (that have no financial value) to
19 any such entity.

20 “(h) MATCHING REQUIREMENTS.—

21 “(1) IN GENERAL.—The National Coordinator
22 may not make a grant under subsection (a) to an el-
23 igible entity unless the entity agrees to make avail-
24 able (directly or through donations from public or
25 private entities) non-Federal contributions in cash to

1 the costs of carrying out the activities for which the
2 grant is awarded in an amount equal to not less
3 than \$1 for each \$5 of Federal funds provided under
4 the grant.

5 “(2) DETERMINATION OF AMOUNT OF NON-
6 FEDERAL CONTRIBUTION.—In determining the
7 amount of non-Federal contributions that an eligible
8 entity has provided pursuant to subparagraph (A),
9 the National Coordinator may not include any
10 amounts provided to the entity by the Federal Gov-
11 ernment.

12 “(i) EFFECTIVE DATE.—The Secretary may not
13 make an award under this section prior to January 1,
14 2010.

15 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
16 **FORMATION TECHNOLOGY INTO CLINICAL**
17 **EDUCATION.**

18 “(a) IN GENERAL.—The Secretary may award grants
19 under this section to carry out demonstration projects to
20 develop academic curricula integrating certified EHR
21 technology in the clinical education of health professionals.
22 Such awards shall be made on a competitive basis and
23 pursuant to peer review.

24 “(b) ELIGIBILITY.—To be eligible to receive a grant
25 under subsection (a), an entity shall—

1 “(1) submit to the Secretary an application at
2 such time, in such manner, and containing such in-
3 formation as the Secretary may require;

4 “(2) submit to the Secretary a strategic plan
5 for integrating certified EHR technology in the clin-
6 ical education of health professionals to reduce med-
7 ical errors and enhance health care quality;

8 “(3) be—

9 “(A) a school of medicine, osteopathic
10 medicine, dentistry, or pharmacy, a graduate
11 program in behavioral or mental health, or any
12 other graduate health professions school;

13 “(B) a graduate school of nursing or phy-
14 sician assistant studies;

15 “(C) a consortium of two or more schools
16 described in subparagraph (A) or (B); or

17 “(D) an institution with a graduate med-
18 ical education program in medicine, osteopathic
19 medicine, dentistry, pharmacy, nursing, or phy-
20 sician assistance studies.

21 “(4) provide for the collection of data regarding
22 the effectiveness of the demonstration project to be
23 funded under the grant in improving the safety of
24 patients, the efficiency of health care delivery, and
25 in increasing the likelihood that graduates of the

1 grantee will adopt and incorporate certified EHR
2 technology, in the delivery of health care services;
3 and

4 “(5) provide matching funds in accordance with
5 subsection (d).

6 “(c) USE OF FUNDS.—

7 “(1) IN GENERAL.—With respect to a grant
8 under subsection (a), an eligible entity shall—

9 “(A) use grant funds in collaboration with
10 2 or more disciplines; and

11 “(B) use grant funds to integrate certified
12 EHR technology into community-based clinical
13 education.

14 “(2) LIMITATION.—An eligible entity shall not
15 use amounts received under a grant under sub-
16 section (a) to purchase hardware, software, or serv-
17 ices.

18 “(d) FINANCIAL SUPPORT.—The Secretary may not
19 provide more than 50 percent of the costs of any activity
20 for which assistance is provided under subsection (a), ex-
21 cept in an instance of national economic conditions which
22 would render the cost-share requirement under this sub-
23 section detrimental to the program and upon notification
24 to Congress as to the justification to waive the cost-share
25 requirement.

1 “(e) EVALUATION.—The Secretary shall take such
2 action as may be necessary to evaluate the projects funded
3 under this section and publish, make available, and dis-
4 seminate the results of such evaluations on as wide a basis
5 as is practicable.

6 “(f) REPORTS.—Not later than 1 year after the date
7 of enactment of this title, and annually thereafter, the Sec-
8 retary shall submit to the Committee on Health, Edu-
9 cation, Labor, and Pensions and the Committee on Fi-
10 nance of the Senate, and the Committee on Energy and
11 Commerce of the House of Representatives a report
12 that—

13 “(1) describes the specific projects established
14 under this section; and

15 “(2) contains recommendations for Congress
16 based on the evaluation conducted under subsection
17 (e).

18 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
19 **ON HEALTH CARE.**

20 “(a) IN GENERAL.—The Secretary, in consultation
21 with the Director of the National Science Foundation,
22 shall provide assistance to institutions of higher education
23 (or consortia thereof) to establish or expand medical
24 health informatics education programs, including certifi-
25 cation, undergraduate, and masters degree programs, for

1 both health care and information technology students to
2 ensure the rapid and effective utilization and development
3 of health information technologies (in the United States
4 health care infrastructure).

5 “(b) ACTIVITIES.—Activities for which assistance
6 may be provided under subsection (a) may include the fol-
7 lowing:

8 “(1) Developing and revising curricula in med-
9 ical health informatics and related disciplines.

10 “(2) Recruiting and retaining students to the
11 program involved.

12 “(3) Acquiring equipment necessary for student
13 instruction in these programs, including the installa-
14 tion of testbed networks for student use.

15 “(4) Establishing or enhancing bridge programs
16 in the health informatics fields between community
17 colleges and universities.

18 “(c) PRIORITY.—In providing assistance under sub-
19 section (a), the Secretary shall give preference to the fol-
20 lowing:

21 “(1) Existing education and training programs.

22 “(2) Programs designed to be completed in less
23 than six months.

24 “(d) FINANCIAL SUPPORT.—The Secretary may not
25 provide more than 50 percent of the costs of any activity

1 for which assistance is provided under subsection (a), ex-
2 cept in an instance of national economic conditions which
3 would render the cost-share requirement under this sub-
4 section detrimental to the program and upon notification
5 to Congress as to the justification to waive the cost-share
6 requirement.

7 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

8 “(a) **REPORTS.**—The Secretary may require that an
9 entity receiving assistance under this title shall submit to
10 the Secretary, not later than the date that is 1 year after
11 the date of receipt of such assistance, a report that in-
12 cludes—

13 “(1) an analysis of the effectiveness of the ac-
14 tivities for which the entity receives such assistance,
15 as compared to the goals for such activities; and

16 “(2) an analysis of the impact of the project on
17 health care quality and safety.

18 “(b) **REQUIREMENT TO IMPROVE QUALITY OF CARE**
19 **AND DECREASE IN COSTS.**—The National Coordinator
20 shall annually evaluate the activities conducted under this
21 title and shall, in awarding grants, implement the lessons
22 learned from such evaluation in a manner so that awards
23 made subsequent to each such evaluation are made in a
24 manner that, in the determination of the National Coordi-

1 nator, will result in the greatest improvement in the qual-
2 ity and efficiency of health care.

3 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 “For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nec-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.”.

9 **PART II—MEDICARE PROGRAM**

10 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

11 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
12 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
13 ing at the end the following new subsection:

14 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 “(1) INCENTIVE PAYMENTS.—

17 “(A) IN GENERAL.—Subject to the suc-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

1 this part, there also shall be paid to the eligible
2 professional (or to an employer or facility in the
3 cases described in clause (A) of section
4 1842(b)(6)), from the Federal Supplementary
5 Medical Insurance Trust Fund established
6 under section 1841 an amount equal to 75 per-
7 cent of the Secretary's estimate (based on
8 claims submitted not later than 2 months after
9 the end of the payment year) of the allowed
10 charges under this part for all such covered
11 professional services furnished by the eligible
12 professional during such year.

13 “(B) LIMITATIONS ON AMOUNTS OF IN-
14 CENTIVE PAYMENTS.—

15 “(i) IN GENERAL.—In no case shall
16 the amount of the incentive payment pro-
17 vided under this paragraph for an eligible
18 professional for a payment year exceed the
19 applicable amount specified under this sub-
20 paragraph with respect to such eligible
21 professional and such year.

22 “(ii) AMOUNT.—Subject to clause
23 (iii), the applicable amount specified in this
24 subparagraph for an eligible professional is
25 as follows:

1 “(I) For the first payment year
2 for such professional, \$15,000.

3 “(II) For the second payment
4 year for such professional, \$12,000.

5 “(III) For the third payment
6 year for such professional, \$8,000.

7 “(IV) For the fourth payment
8 year for such professional, \$4,000.

9 “(V) For the fifth payment year
10 for such professional, \$2,000.

11 “(VI) For any succeeding pay-
12 ment year for such professional, \$0.

13 “(iii) PHASE DOWN FOR ELIGIBLE
14 PROFESSIONALS FIRST ADOPTING EHR
15 AFTER 2013.—If the first payment year for
16 an eligible professional is after 2013, then
17 the amount specified in this subparagraph
18 for a payment year for such professional is
19 the same as the amount specified in clause
20 (ii) for such payment year for an eligible
21 professional whose first payment year is
22 2013. If the first payment year for an eli-
23 gible professional is after 2015 then the
24 applicable amount specified in this sub-

1 paragraph for such professional for such
2 year and any subsequent year shall be \$0.

3 “(C) NON-APPLICATION TO HOSPITAL-
4 BASED ELIGIBLE PROFESSIONALS.—

5 “(i) IN GENERAL.—No incentive pay-
6 ment may be made under this paragraph
7 in the case of a hospital-based eligible pro-
8 fessional.

9 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
10 FESSIONAL.—For purposes of clause (i),
11 the term ‘hospital-based eligible profes-
12 sional’ means, with respect to covered pro-
13 fessional services furnished by an eligible
14 professional during the reporting period for
15 a payment year, an eligible professional,
16 such as a pathologist, anesthesiologist, or
17 emergency physician, who furnishes sub-
18 stantially all of such services in a hospital
19 setting (whether inpatient or outpatient)
20 and through the use of the facilities and
21 equipment, including computer equipment,
22 of the hospital.

23 “(D) PAYMENT.—

24 “(i) FORM OF PAYMENT.—The pay-
25 ment under this paragraph may be in the

1 form of a single consolidated payment or
2 in the form of such periodic installments
3 as the Secretary may specify.

4 “(ii) COORDINATION OF APPLICATION
5 OF LIMITATION FOR PROFESSIONALS IN
6 DIFFERENT PRACTICES.—In the case of an
7 eligible professional furnishing covered pro-
8 fessional services in more than one practice
9 (as specified by the Secretary), the Sec-
10 retary shall establish rules to coordinate
11 the incentive payments, including the ap-
12 plication of the limitation on amounts of
13 such incentive payments under this para-
14 graph, among such practices.

15 “(iii) COORDINATION WITH MED-
16 ICAID.—The Secretary shall seek, to the
17 maximum extent practicable, to avoid du-
18 plicative requirements from Federal and
19 State Governments to demonstrate mean-
20 ingful use of certified EHR technology
21 under this title and title XIX. In doing so,
22 the Secretary may deem satisfaction of
23 State requirements for such meaningful
24 use for a payment year under title XIX to
25 be sufficient to qualify as meaningful use

1 under this subsection and subsection (a)(7)
2 and vice versa. The Secretary may also ad-
3 just the reporting periods under such title
4 and such subsections in order to carry out
5 this clause.

6 “(E) PAYMENT YEAR DEFINED.—

7 “(i) IN GENERAL.—For purposes of
8 this subsection, the term ‘payment year’
9 means a year beginning with 2011.

10 “(ii) FIRST, SECOND, ETC. PAYMENT
11 YEAR.—The term ‘first payment year’
12 means, with respect to covered professional
13 services furnished by an eligible profes-
14 sional, the first year for which an incentive
15 payment is made for such services under
16 this subsection. The terms ‘second pay-
17 ment year’, ‘third payment year’, ‘fourth
18 payment year’, and ‘fifth payment year’
19 mean, with respect to covered professional
20 services furnished by such eligible profes-
21 sional, each successive year immediately
22 following the first payment year for such
23 professional.

24 “(2) MEANINGFUL EHR USER.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (1), an eligible professional shall be
3 treated as a meaningful EHR user for a report-
4 ing period for a payment year (or, for purposes
5 of subsection (a)(7), for a reporting period
6 under such subsection for a year) if each of the
7 following requirements is met:

8 “(i) MEANINGFUL USE OF CERTIFIED
9 EHR TECHNOLOGY.—The eligible profes-
10 sional demonstrates to the satisfaction of
11 the Secretary, in accordance with subpara-
12 graph (C)(i), that during such period the
13 professional is using certified EHR tech-
14 nology in a meaningful manner, which
15 shall include the use of electronic pre-
16 scribing as determined to be appropriate
17 by the Secretary.

18 “(ii) INFORMATION EXCHANGE.—The
19 eligible professional demonstrates to the
20 satisfaction of the Secretary, in accordance
21 with subparagraph (C)(i), that during such
22 period such certified EHR technology is
23 connected in a manner that provides, in
24 accordance with law and standards appli-
25 cable to the exchange of information, for

1 the electronic exchange of health informa-
2 tion to improve the quality of health care,
3 such as promoting care coordination.

4 “(iii) REPORTING ON MEASURES
5 USING EHR.—Subject to subparagraph
6 (B)(ii) and using such certified EHR tech-
7 nology, the eligible professional submits in-
8 formation for such period, in a form and
9 manner specified by the Secretary, on such
10 clinical quality measures and such other
11 measures as selected by the Secretary
12 under subparagraph (B)(i).

13 The Secretary may provide for the use of alter-
14 native means for meeting the requirements of
15 clauses (i), (ii), and (iii) in the case of an eligi-
16 ble professional furnishing covered professional
17 services in a group practice (as defined by the
18 Secretary). The Secretary shall seek to improve
19 the use of electronic health records and health
20 care quality over time by requiring more strin-
21 gent measures of meaningful use selected under
22 this paragraph.

23 “(B) REPORTING ON MEASURES.—

24 “(i) SELECTION.—The Secretary shall
25 select measures for purposes of subpara-

1 graph (A)(iii) but only consistent with the
2 following:

3 “(I) The Secretary shall provide
4 preference to clinical quality measures
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 being
9 selected under this subparagraph, the
10 Secretary shall publish in the Federal
11 Register such measure and provide for
12 a period of public comment on such
13 measure.

14 “(III) The Secretary shall, to the
15 extent practicable, select the same
16 measures for purposes of subpara-
17 graph (A)(iii) as are selected for qual-
18 ity purposes under title XIX.

19 “(ii) LIMITATION.—The Secretary
20 may not require the electronic reporting of
21 information on clinical quality measures
22 under subparagraph (A)(iii) unless the
23 Secretary has the capacity to accept the in-
24 formation electronically, which may be on
25 a pilot basis.

1 “(iii) COORDINATION OF REPORTING
2 OF INFORMATION.—In selecting such
3 measures, and in establishing the form and
4 manner for reporting measures under sub-
5 paragraph (A)(iii), the Secretary shall seek
6 to avoid redundant or duplicative reporting
7 otherwise required, including reporting
8 under subsection (k)(2)(C).

9 “(C) DEMONSTRATION OF MEANINGFUL
10 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
11 FORMATION EXCHANGE.—

12 “(i) IN GENERAL.—A professional
13 may satisfy the demonstration requirement
14 of clauses (i) and (ii) of subparagraph (A)
15 through means specified by the Secretary,
16 which may include—

17 “(I) an attestation;

18 “(II) the submission of claims
19 with appropriate coding (such as a
20 code indicating that a patient encoun-
21 ter was documented using certified
22 EHR technology);

23 “(III) a survey response;

24 “(IV) reporting under subpara-
25 graph (A)(iii); and

1 “(V) other means specified by the
2 Secretary.

3 “(ii) USE OF PART D DATA.—Not-
4 withstanding sections 1860D–15(d)(2)(B)
5 and 1860D–15(f)(2), the Secretary may
6 use data regarding drug claims submitted
7 for purposes of section 1860D–15 that are
8 necessary for purposes of subparagraph
9 (A).

10 “(3) APPLICATION.—

11 “(A) PHYSICIAN REPORTING SYSTEM
12 RULES.—Paragraphs (5), (6), and (8) of sub-
13 section (k) shall apply for purposes of this sub-
14 section in the same manner as they apply for
15 purposes of such subsection.

16 “(B) COORDINATION WITH OTHER PAY-
17 MENTS.—The provisions of this subsection shall
18 not be taken into account in applying the provi-
19 sions of subsection (m) of this section and of
20 section 1833(m) and any payment under such
21 provisions shall not be taken into account in
22 computing allowable charges under this sub-
23 section.

24 “(C) LIMITATIONS ON REVIEW.—There
25 shall be no administrative or judicial review

1 under section 1869, section 1878, or otherwise
2 of the determination of any incentive payment
3 under this subsection and the payment adjust-
4 ment under subsection (a)(7), including the de-
5 termination of a meaningful EHR user under
6 paragraph (2), a limitation under paragraph
7 (1)(B), and the exception under subsection
8 (a)(7)(B).

9 “(D) POSTING ON WEBSITE.—The Sec-
10 retary shall post on the Internet website of the
11 Centers for Medicare & Medicaid Services, in an
12 easily understandable format, a list of the
13 names, business addresses, and business phone
14 numbers of the eligible professionals who are
15 meaningful EHR users and, as determined ap-
16 propriate by the Secretary, of group practices
17 receiving incentive payments under paragraph
18 (1).

19 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
20 For purposes of this section, the term ‘certified
21 EHR technology’ means a qualified electronic health
22 record (as defined in 3000(13) of the Public Health
23 Service Act) that is certified pursuant to section
24 3001(c)(5) of such Act as meeting standards adopt-
25 ed under section 3004 of such Act that are applica-

1 ble to the type of record involved (as determined by
2 the Secretary, such as an ambulatory electronic
3 health record for office-based physicians or an inpa-
4 tient hospital electronic health record for hospitals).

5 “(5) DEFINITIONS.—For purposes of this sub-
6 section:

7 “(A) COVERED PROFESSIONAL SERV-
8 ICES.—The term ‘covered professional services’
9 has the meaning given such term in subsection
10 (k)(3).

11 “(B) ELIGIBLE PROFESSIONAL.—The term
12 ‘eligible professional’ means a physician, as de-
13 fined in section 1861(r).

14 “(C) REPORTING PERIOD.—The term ‘re-
15 porting period’ means any period (or periods),
16 with respect to a payment year, as specified by
17 the Secretary.”.

18 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
19 1848(a) of the Social Security Act (42 U.S.C. 1395w-
20 4(a)) is amended by adding at the end the following new
21 paragraph:

22 “(7) INCENTIVES FOR MEANINGFUL USE OF
23 CERTIFIED EHR TECHNOLOGY.—

24 “(A) ADJUSTMENT.—

1 “(i) IN GENERAL.—Subject to sub-
2 paragraphs (B) and (D), with respect to
3 covered professional services furnished by
4 an eligible professional during 2016 or any
5 subsequent payment year, if the eligible
6 professional is not a meaningful EHR user
7 (as determined under subsection (o)(2)) for
8 a reporting period for the year, the fee
9 schedule amount for such services fur-
10 nished by such professional during the year
11 (including the fee schedule amount for pur-
12 poses of determining a payment based on
13 such amount) shall be equal to the applica-
14 ble percent of the fee schedule amount that
15 would otherwise apply to such services
16 under this subsection (determined after ap-
17 plication of paragraph (3) but without re-
18 gard to this paragraph).

19 “(ii) APPLICABLE PERCENT.—Subject
20 to clause (iii), for purposes of clause (i),
21 the term ‘applicable percent’ means—

22 “(I) for 2016, 99 percent;

23 “(II) for 2017, 98 percent; and

24 “(III) for 2018 and each subse-
25 quent year, 97 percent.

1 “(iii) AUTHORITY TO DECREASE AP-
2 PLICABLE PERCENTAGE FOR 2019 AND
3 SUBSEQUENT YEARS.—For 2019 and each
4 subsequent year, if the Secretary finds that
5 the proportion of eligible professionals who
6 are meaningful EHR users (as determined
7 under subsection (o)(2)) is less than 75
8 percent, the applicable percent shall be de-
9 creased by 1 percentage point from the ap-
10 plicable percent in the preceding year, but
11 in no case shall the applicable percent be
12 less than 95 percent.

13 “(B) SIGNIFICANT HARDSHIP EXCEP-
14 TION.—The Secretary may, on a case-by-case
15 basis, exempt an eligible professional from the
16 application of the payment adjustment under
17 subparagraph (A) if the Secretary determines,
18 subject to annual renewal, that compliance with
19 the requirement for being a meaningful EHR
20 user would result in a significant hardship, such
21 as in the case of an eligible professional who
22 practices in a rural area without sufficient
23 Internet access. In no case may an eligible pro-
24 fessional be granted an exemption under this
25 subparagraph for more than 5 years.

1 “(C) APPLICATION OF PHYSICIAN REPORT-
2 ING SYSTEM RULES.—Paragraphs (5), (6), and
3 (8) of subsection (k) shall apply for purposes of
4 this paragraph in the same manner as they
5 apply for purposes of such subsection.

6 “(D) NON-APPLICATION TO HOSPITAL-
7 BASED ELIGIBLE PROFESSIONALS.—No pay-
8 ment adjustment may be made under subpara-
9 graph (A) in the case of hospital-based eligible
10 professionals (as defined in subsection
11 (o)(1)(C)(ii)).

12 “(E) DEFINITIONS.—For purposes of this
13 paragraph:

14 “(i) COVERED PROFESSIONAL SERV-
15 ICES.—The term ‘covered professional
16 services’ has the meaning given such term
17 in subsection (k)(3).

18 “(ii) ELIGIBLE PROFESSIONAL.—The
19 term ‘eligible professional’ means a physi-
20 cian, as defined in section 1861(r).

21 “(iii) REPORTING PERIOD.—The term
22 ‘reporting period’ means, with respect to a
23 year, a period specified by the Secretary.”.

24 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
25 ELIGIBLE PROFESSIONALS.—Section 1853 of the Social

1 Security Act (42 U.S.C. 1395w–23) is amended by adding
2 at the end the following new subsection:

3 “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
4 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
5 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
6 NOLOGY.—

7 “(1) IN GENERAL.—Subject to paragraphs (3)
8 and (4), in the case of a qualifying MA organization,
9 the provisions of sections 1848(o) and 1848(a)(7)
10 shall apply with respect to eligible professionals de-
11 scribed in paragraph (2) of the organization who the
12 organization attests under paragraph (6) to be
13 meaningful EHR users in a similar manner as they
14 apply to eligible professionals under such sections.
15 Incentive payments under paragraph (3) shall be
16 made to and payment adjustments under paragraph
17 (4) shall apply to such qualifying organizations.

18 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
19 With respect to a qualifying MA organization, an eli-
20 gible professional described in this paragraph is an
21 eligible professional (as defined for purposes of sec-
22 tion 1848(o)) who—

23 “(A)(i) is employed by the organization, or

24 “(ii)(I) is employed by, or is a partner of,

25 an entity that through contract with the organi-

1 zation furnishes at least 80 percent of the enti-
2 ty’s patient care services to enrollees of such or-
3 ganization; and

4 “(II) furnishes at least 75 percent of the
5 professional services of the eligible professional
6 to enrollees of the organization; and

7 “(B) furnishes, on average, at least 20
8 hours per week of patient care services.

9 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
10 MENTS.—

11 “(A) IN GENERAL.—In applying section
12 1848(o) under paragraph (1), instead of the ad-
13 ditional payment amount under section
14 1848(o)(1)(A) and subject to subparagraph
15 (B), the Secretary may substitute an amount
16 determined by the Secretary to the extent fea-
17 sible and practical to be similar to the esti-
18 mated amount in the aggregate that would be
19 payable if payment for services furnished by
20 such professionals was payable under part B in-
21 stead of this part.

22 “(B) AVOIDING DUPLICATION OF PAY-
23 MENTS.—

24 “(i) IN GENERAL.—If an individual is
25 an eligible professional described in para-

1 graph (2) and also is eligible for the max-
2 imum incentive payment under section
3 1848(o)(1)(A) for the same payment pe-
4 riod, the payment incentive shall be made
5 only under such section and not under this
6 subsection.

7 “(ii) METHODS.—In the case of an in-
8 dividual who is an eligible professional de-
9 scribed in paragraph (2) and also is eligi-
10 ble for an incentive payment under section
11 1848(o)(1)(A) but is not described in
12 clause (i) for the same payment period, the
13 Secretary shall develop a process—

14 “(I) to ensure that duplicate pay-
15 ments are not made with respect to
16 an eligible professional both under
17 this subsection and under section
18 1848(o)(1)(A); and

19 “(II) to collect data from Medi-
20 care Advantage organizations to en-
21 sure against such duplicate payments.

22 “(C) FIXED SCHEDULE FOR APPLICATION
23 OF LIMITATION ON INCENTIVE PAYMENTS FOR
24 ALL ELIGIBLE PROFESSIONALS.—In applying
25 section 1848(o)(1)(B)(ii) under subparagraph

1 (A), in accordance with rules specified by the
2 Secretary, a qualifying MA organization shall
3 specify a year (not earlier than 2011) that shall
4 be treated as the first payment year for all eli-
5 gible professionals with respect to such organi-
6 zation.

7 “(4) PAYMENT ADJUSTMENT.—

8 “(A) IN GENERAL.—In applying section
9 1848(a)(7) under paragraph (1), instead of the
10 payment adjustment being an applicable per-
11 cent of the fee schedule amount for a year
12 under such section, subject to subparagraph
13 (D), the payment adjustment under paragraph
14 (1) shall be equal to the percent specified in
15 subparagraph (B) for such year of the payment
16 amount otherwise provided under this section
17 for such year.

18 “(B) SPECIFIED PERCENT.—The percent
19 specified under this subparagraph for a year is
20 100 percent minus a number of percentage
21 points equal to the product of—

22 “(i) the number of percentage points
23 by which the applicable percent (under sec-
24 tion 1848(a)(7)(A)(ii)) for the year is less
25 than 100 percent; and

1 “(ii) the Medicare physician expendi-
2 ture proportion specified in subparagraph
3 (C) for the year.

4 “(C) MEDICARE PHYSICIAN EXPENDITURE
5 PROPORTION.—The Medicare physician expend-
6 iture proportion under this subparagraph for a
7 year is the Secretary’s estimate of the propor-
8 tion, of the expenditures under parts A and B
9 that are not attributable to this part, that are
10 attributable to expenditures for physicians’
11 services.

12 “(D) APPLICATION OF PAYMENT ADJUST-
13 MENT.—In the case that a qualifying MA orga-
14 nization attests that not all eligible profes-
15 sionals are meaningful EHR users with respect
16 to a year, the Secretary shall apply the payment
17 adjustment under this paragraph based on the
18 proportion of such eligible professionals that are
19 not meaningful EHR users for such year.

20 “(5) QUALIFYING MA ORGANIZATION DE-
21 FINED.—In this subsection and subsection (m), the
22 term ‘qualifying MA organization’ means a Medicare
23 Advantage organization that is organized as a health
24 maintenance organization (as defined in section
25 2791(b)(3) of the Public Health Service Act).

1 “(6) MEANINGFUL EHR USER ATTESTATION.—
2 For purposes of this subsection and subsection (m),
3 a qualifying MA organization shall submit an attes-
4 tation, in a form and manner specified by the Sec-
5 retary which may include the submission of such at-
6 testation as part of submission of the initial bid
7 under section 1854(a)(1)(A)(iv), identifying—

8 “(A) whether each eligible professional de-
9 scribed in paragraph (2), with respect to such
10 organization is a meaningful EHR user (as de-
11 fined in section 1848(o)(3)) for a year specified
12 by the Secretary; and

13 “(B) whether each eligible hospital de-
14 scribed in subsection (m)(1), with respect to
15 such organization, is a meaningful EHR user
16 (as defined in section 1886(n)(3)) for an appli-
17 cable period specified by the Secretary.”.

18 (d) CONFORMING AMENDMENTS.—Section 1853 of
19 the Social Security Act (42 U.S.C. 1395w–23) is amend-
20 ed—

21 (1) in subsection (a)(1)(A), by striking “and
22 (i)” and inserting “(i), and (l)”;

23 (2) in subsection (c)—

1 (A) in paragraph (1)(D)(i), by striking
2 “section 1886(h)” and inserting “sections
3 1848(o) and 1886(h)”;

4 (B) in paragraph (6)(A), by inserting after
5 “under part B,” the following: “excluding ex-
6 penditures attributable to subsections (a)(7)
7 and (o) of section 1848,”; and

8 (3) in subsection (f), by inserting “and for pay-
9 ments under subsection (l)” after “with the organi-
10 zation”.

11 (e) CONFORMING AMENDMENTS TO E-PRE-
12 SCRIBING.—

13 (1) Section 1848(a)(5)(A) of the Social Security
14 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

15 (A) in clause (i), by striking “or any sub-
16 sequent year” and inserting “, 2013, 2014, or
17 2015”; and

18 (B) in clause (ii), by striking “and each
19 subsequent year” and inserting “and 2015”.

20 (2) Section 1848(m)(2) of such Act (42 U.S.C.
21 1395w-4(m)(2)) is amended—

22 (A) in subparagraph (A), by striking “For
23 2009” and inserting “Subject to subparagraph
24 (D), for 2009”; and

1 (B) by adding at the end the following new
2 subparagraph:

3 “(D) LIMITATION WITH RESPECT TO EHR
4 INCENTIVE PAYMENTS.—The provisions of this
5 paragraph shall not apply to an eligible profes-
6 sional (or, in the case of a group practice under
7 paragraph (3)(C), to the group practice) if, for
8 the reporting period the eligible professional (or
9 group practice) receives an incentive payment
10 under subsection (o)(1)(A) with respect to a
11 certified EHR technology (as defined in sub-
12 section (o)(6)(A)) that has the capability of
13 electronic prescribing.”.

14 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

15 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
16 cial Security Act (42 U.S.C. 1395ww) is amended by add-
17 ing at the end the following new subsection:

18 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
19 USE OF CERTIFIED EHR TECHNOLOGY.—

20 “(1) IN GENERAL.—Subject to the succeeding
21 provisions of this subsection, with respect to inpa-
22 tient hospital services furnished by an eligible hos-
23 pital during a payment year (as defined in para-
24 graph (2)(G)), if the eligible hospital is a meaningful
25 EHR user (as determined under paragraph (3)) for

1 the reporting period with respect to such year, in ad-
2 dition to the amount otherwise paid under this sec-
3 tion, there also shall be paid to the eligible hospital,
4 from the Federal Hospital Insurance Trust Fund es-
5 tablished under section 1817, an amount equal to
6 the applicable amount specified in paragraph (2)(A)
7 for the hospital for such payment year.

8 “(2) PAYMENT AMOUNT.—

9 “(A) IN GENERAL.—Subject to the suc-
10 ceeding subparagraphs of this paragraph, the
11 applicable amount specified in this subpara-
12 graph for an eligible hospital for a payment
13 year is equal to the product of the following:

14 “(i) INITIAL AMOUNT.—The sum of—

15 “(I) the base amount specified in
16 subparagraph (B); plus

17 “(II) the discharge related
18 amount specified in subparagraph (C)
19 for a 12-month period selected by the
20 Secretary with respect to such pay-
21 ment year.

22 “(ii) MEDICARE SHARE.—The Medi-
23 care share as specified in subparagraph
24 (D) for the hospital for a period selected

1 by the Secretary with respect to such pay-
2 ment year.

3 “(iii) TRANSITION FACTOR.—The
4 transition factor specified in subparagraph
5 (E) for the hospital for the payment year.

6 “(B) BASE AMOUNT.—The base amount
7 specified in this subparagraph is \$2,000,000.

8 “(C) DISCHARGE RELATED AMOUNT.—The
9 discharge related amount specified in this sub-
10 paragraph for a 12-month period selected by
11 the Secretary shall be determined as the sum of
12 the amount, based upon total discharges (re-
13 gardless of any source of payment) for the pe-
14 riod, for each discharge up to the 23,000th dis-
15 charge as follows:

16 “(i) For the 1,150th through the
17 9,200th discharge, \$200.

18 “(ii) For the 9,201st through the
19 13,800th discharge, 50 percent of the
20 amount specified in clause (i).

21 “(iii) For the 13,801st through the
22 23,000th discharge, 30 percent of the
23 amount specified in clause (i).

24 “(D) MEDICARE SHARE.—The Medicare
25 share specified under this subparagraph for a

1 hospital for a period selected by the Secretary
2 for a payment year is equal to the fraction—

3 “(i) the numerator of which is the
4 sum (for such period and with respect to
5 the hospital) of—

6 “(I) the number of inpatient-bed-
7 days (as established by the Secretary)
8 which are attributable to individuals
9 with respect to whom payment may be
10 made under part A; and

11 “(II) the number of inpatient-
12 bed-days (as so established) which are
13 attributable to individuals who are en-
14 rolled with a Medicare Advantage or-
15 ganization under part C; and

16 “(ii) the denominator of which is the
17 product of—

18 “(I) the total number of inpa-
19 tient-bed-days with respect to the hos-
20 pital during such period; and

21 “(II) the total amount of the hos-
22 pital’s charges during such period, not
23 including any charges that are attrib-
24 utable to charity care (as such term is
25 used for purposes of hospital cost re-

1 porting under this title), divided by
2 the total amount of the hospital's
3 charges during such period.

4 Insofar as the Secretary determines that data
5 are not available on charity care necessary to
6 calculate the portion of the formula specified in
7 clause (ii)(II), the Secretary shall use data on
8 uncompensated care and may adjust such data
9 so as to be an appropriate proxy for charity
10 care including a downward adjustment to elimi-
11 nate bad debt data from uncompensated care
12 data. In the absence of the data necessary, with
13 respect to a hospital, for the Secretary to com-
14 pute the amount described in clause (ii)(II), the
15 amount under such clause shall be deemed to
16 be 1. In the absence of data, with respect to a
17 hospital, necessary to compute the amount de-
18 scribed in clause (i)(II), the amount under such
19 clause shall be deemed to be 0.

20 “(E) TRANSITION FACTOR SPECIFIED.—

21 “(i) IN GENERAL.—Subject to clause
22 (ii), the transition factor specified in this
23 subparagraph for an eligible hospital for a
24 payment year is as follows:

1 “(I) For the first payment year
2 for such hospital, 1.

3 “(II) For the second payment
4 year for such hospital, $\frac{3}{4}$.

5 “(III) For the third payment
6 year for such hospital, $\frac{1}{2}$.

7 “(IV) For the fourth payment
8 year for such hospital, $\frac{1}{4}$.

9 “(V) For any succeeding pay-
10 ment year for such hospital, 0.

11 “(ii) PHASE DOWN FOR ELIGIBLE
12 HOSPITALS FIRST ADOPTING EHR AFTER
13 2013.—If the first payment year for an eli-
14 gible hospital is after 2013, then the tran-
15 sition factor specified in this subparagraph
16 for a payment year for such hospital is the
17 same as the amount specified in clause (i)
18 for such payment year for an eligible hos-
19 pital for which the first payment year is
20 2013. If the first payment year for an eli-
21 gible hospital is after 2015 then the transi-
22 tion factor specified in this subparagraph
23 for such hospital and for such year and
24 any subsequent year shall be 0.

1 “(F) FORM OF PAYMENT.—The payment
2 under this subsection for a payment year may
3 be in the form of a single consolidated payment
4 or in the form of such periodic installments as
5 the Secretary may specify.

6 “(G) PAYMENT YEAR DEFINED.—

7 “(i) IN GENERAL.—For purposes of
8 this subsection, the term ‘payment year’
9 means a fiscal year beginning with fiscal
10 year 2011.

11 “(ii) FIRST, SECOND, ETC. PAYMENT
12 YEAR.—The term ‘first payment year’
13 means, with respect to inpatient hospital
14 services furnished by an eligible hospital,
15 the first fiscal year for which an incentive
16 payment is made for such services under
17 this subsection. The terms ‘second pay-
18 ment year’, ‘third payment year’, and
19 ‘fourth payment year’ mean, with respect
20 to an eligible hospital, each successive year
21 immediately following the first payment
22 year for that hospital.

23 “(3) MEANINGFUL EHR USER.—

24 “(A) IN GENERAL.—For purposes of para-
25 graph (1), an eligible hospital shall be treated

1 as a meaningful EHR user for a reporting pe-
2 riod for a payment year (or, for purposes of
3 subsection (b)(3)(B)(ix), for a reporting period
4 under such subsection for a fiscal year) if the
5 following requirements are met:

6 “(i) MEANINGFUL USE OF CERTIFIED
7 EHR TECHNOLOGY.—The eligible hospital
8 demonstrates to the satisfaction of the Sec-
9 retary, in accordance with subparagraph
10 (C)(i), that during such period the hospital
11 is using certified EHR technology in a
12 meaningful manner.

13 “(ii) INFORMATION EXCHANGE.—The
14 eligible hospital demonstrates to the satis-
15 faction of the Secretary, in accordance
16 with subparagraph (C)(i), that during such
17 period such certified EHR technology is
18 connected in a manner that provides, in
19 accordance with law and standards appli-
20 cable to the exchange of information, for
21 the electronic exchange of health informa-
22 tion to improve the quality of health care,
23 such as promoting care coordination.

24 “(iii) REPORTING ON MEASURES
25 USING EHR.—Subject to subparagraph

1 (B)(ii) and using such certified EHR tech-
2 nology, the eligible hospital submits infor-
3 mation for such period, in a form and
4 manner specified by the Secretary, on such
5 clinical quality measures and such other
6 measures as selected by the Secretary
7 under subparagraph (B)(i).

8 The Secretary shall seek to improve the use of
9 electronic health records and health care quality
10 over time by requiring more stringent measures
11 of meaningful use selected under this para-
12 graph.

13 “(B) REPORTING ON MEASURES.—

14 “(i) SELECTION.—The Secretary may
15 select measures for purposes of subpara-
16 graph (A)(iii) but only consistent with the
17 following:

18 “(I) The Secretary shall provide
19 preference to clinical quality measures
20 that have been selected for purposes
21 of applying subsection (b)(3)(B)(viii)
22 or that have been endorsed by the en-
23 tity with a contract with the Secretary
24 under section 1890(a).

1 “(II) Prior to any measure (other
2 than a clinical quality measure that
3 has been selected for purposes of ap-
4 plying subsection (b)(3)(B)(viii))
5 being selected under this subpara-
6 graph, the Secretary shall publish in
7 the Federal Register such measure
8 and provide for a period of public
9 comment on such measure.

10 “(ii) LIMITATIONS.—The Secretary
11 may not require the electronic reporting of
12 information on clinical quality measures
13 under subparagraph (A)(iii) unless the
14 Secretary has the capacity to accept the in-
15 formation electronically, which may be on
16 a pilot basis.

17 “(iii) COORDINATION OF REPORTING
18 OF INFORMATION.—In selecting such
19 measures, and in establishing the form and
20 manner for reporting measures under sub-
21 paragraph (A)(iii), the Secretary shall seek
22 to avoid redundant or duplicative reporting
23 with reporting otherwise required, includ-
24 ing reporting under subsection
25 (b)(3)(B)(viii).

1 “(C) DEMONSTRATION OF MEANINGFUL
2 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
3 FORMATION EXCHANGE.—

4 “(i) IN GENERAL.—A hospital may
5 satisfy the demonstration requirement of
6 clauses (i) and (ii) of subparagraph (A)
7 through means specified by the Secretary,
8 which may include—

9 “(I) an attestation;

10 “(II) the submission of claims
11 with appropriate coding (such as a
12 code indicating that inpatient care
13 was documented using certified EHR
14 technology);

15 “(III) a survey response;

16 “(IV) reporting under subpara-
17 graph (A)(iii); and

18 “(V) other means specified by the
19 Secretary.

20 “(ii) USE OF PART D DATA.—Not-
21 withstanding sections 1860D–15(d)(2)(B)
22 and 1860D–15(f)(2), the Secretary may
23 use data regarding drug claims submitted
24 for purposes of section 1860D–15 that are

1 necessary for purposes of subparagraph
2 (A).

3 “(4) APPLICATION.—

4 “(A) LIMITATIONS ON REVIEW.—There
5 shall be no administrative or judicial review
6 under section 1869, section 1878, or otherwise
7 of the determination of any incentive payment
8 under this subsection and the payment adjust-
9 ment under subsection (b)(3)(B)(ix), including
10 the determination of a meaningful EHR user
11 under paragraph (3), determination of meas-
12 ures applicable to services furnished by eligible
13 hospitals under this subsection, and the excep-
14 tion under subsection (b)(3)(B)(ix)(II).

15 “(B) POSTING ON WEBSITE.—The Sec-
16 retary shall post on the Internet website of the
17 Centers for Medicare & Medicaid Services, in an
18 easily understandable format, a list of the
19 names of the eligible hospitals that are mean-
20 ingful EHR users under this subsection or sub-
21 section (b)(3)(B)(ix) and other relevant data as
22 determined appropriate by the Secretary. The
23 Secretary shall ensure that a hospital has the
24 opportunity to review the other relevant data

1 that are to be made public with respect to the
2 hospital prior to such data being made public.

3 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—

4 The term ‘certified EHR technology’ has the mean-
5 ing given such term in section 1848(o)(4).

6 “(6) DEFINITIONS.—For purposes of this sub-
7 section:

8 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
9 gible hospital’ means a subsection (d) hospital.

10 “(B) REPORTING PERIOD.—The term ‘re-
11 porting period’ means any period (or periods),
12 with respect to a payment year, as specified by
13 the Secretary.”.

14 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—
15 Section 1886(b)(3)(B) of the Social Security Act (42
16 U.S.C. 1395ww(b)(3)(B)) is amended—

17 (1) in clause (viii)(I), by inserting “(or, begin-
18 ning with fiscal year 2016, by one-quarter)” after
19 “2.0 percentage points”; and

20 (2) by adding at the end the following new
21 clause:

22 “(ix)(I) For purposes of clause (i) for fiscal year
23 2016 and each subsequent fiscal year, in the case of an
24 eligible hospital (as defined in subsection (n)(6)(A)) that
25 is not a meaningful EHR user (as defined in subsection

1 (n)(3)) for the reporting period for such fiscal year, three-
2 quarters of the applicable percentage increase otherwise
3 applicable under clause (i) for such fiscal year shall be
4 reduced by $33\frac{1}{3}$ percent for fiscal year 2016, $66\frac{2}{3}$ per-
5 cent for fiscal year 2017, and 100 percent for fiscal year
6 2018 and each subsequent fiscal year. Such reduction
7 shall apply only with respect to the fiscal year involved
8 and the Secretary shall not take into account such reduc-
9 tion in computing the applicable percentage increase under
10 clause (i) for a subsequent fiscal year.

11 “(II) The Secretary may, on a case-by-case basis, ex-
12 empt a subsection (d) hospital from the application of sub-
13 clause (I) with respect to a fiscal year if the Secretary
14 determines, subject to annual renewal, that requiring such
15 hospital to be a meaningful EHR user during such fiscal
16 year would result in a significant hardship, such as in the
17 case of a hospital in a rural area without sufficient Inter-
18 net access. In no case may a hospital be granted an ex-
19 emption under this subclause for more than 5 years.

20 “(III) For fiscal year 2016 and each subsequent fis-
21 cal year, a State in which hospitals are paid for services
22 under section 1814(b)(3) shall adjust the payments to
23 each subsection (d) hospital in the State that is not a
24 meaningful EHR user (as defined in subsection (n)(3))
25 in a manner that is designed to result in an aggregate

1 reduction in payments to hospitals in the State that is
2 equivalent to the aggregate reduction that would have oc-
3 curred if payments had been reduced to each subsection
4 (d) hospital in the State in a manner comparable to the
5 reduction under the previous provisions of this clause. The
6 State shall report to the Secretary the methodology it will
7 use to make the payment adjustment under the previous
8 sentence.

9 “(IV) For purposes of this clause, the term ‘reporting
10 period’ means, with respect to a fiscal year, any period
11 (or periods), with respect to the fiscal year, as specified
12 by the Secretary.”.

13 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
14 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
15 rity Act (42 U.S.C. 1395w–23), as amended by section
16 311(c), is further amended by adding at the end the fol-
17 lowing new subsection:

18 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
19 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
20 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
21 NOLOGY.—

22 “(1) APPLICATION.—Subject to paragraphs (3)
23 and (4), in the case of a qualifying MA organization,
24 the provisions of sections 1886(n) and
25 1886(b)(3)(B)(ix) shall apply with respect to eligible

1 hospitals described in paragraph (2) of the organiza-
2 tion which the organization attests under subsection
3 (1)(6) to be meaningful EHR users in a similar man-
4 ner as they apply to eligible hospitals under such
5 sections. Incentive payments under paragraph (3)
6 shall be made to and payment adjustments under
7 paragraph (4) shall apply to such qualifying organi-
8 zations.

9 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
10 respect to a qualifying MA organization, an eligible
11 hospital described in this paragraph is an eligible
12 hospital that is under common corporate governance
13 with such organization and serves individuals en-
14 rolled under an MA plan offered by such organiza-
15 tion.

16 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
17 MENTS.—

18 “(A) IN GENERAL.—In applying section
19 1886(n)(2) under paragraph (1), instead of the
20 additional payment amount under section
21 1886(n)(2), there shall be substituted an
22 amount determined by the Secretary to be simi-
23 lar to the estimated amount in the aggregate
24 that would be payable if payment for services
25 furnished by such hospitals was payable under

1 part A instead of this part. In implementing the
2 previous sentence, the Secretary—

3 “(i) shall, insofar as data to deter-
4 mine the discharge related amount under
5 section 1886(n)(2)(C) for an eligible hos-
6 pital are not available to the Secretary, use
7 such alternative data and methodology to
8 estimate such discharge related amount as
9 the Secretary determines appropriate; and

10 “(ii) shall, insofar as data to deter-
11 mine the medicare share described in sec-
12 tion 1886(n)(2)(D) for an eligible hospital
13 are not available to the Secretary, use such
14 alternative data and methodology to esti-
15 mate such share, which data and method-
16 ology may include use of the inpatient bed
17 days (or discharges) with respect to an eli-
18 gible hospital during the appropriate pe-
19 riod which are attributable to both individ-
20 uals for whom payment may be made
21 under part A or individuals enrolled in an
22 MA plan under a Medicare Advantage or-
23 ganization under this part as a proportion
24 of the total number of patient-bed-days (or

1 discharges) with respect to such hospital
2 during such period.

3 “(B) AVOIDING DUPLICATION OF PAY-
4 MENTS.—

5 “(i) IN GENERAL.—In the case of a
6 hospital that for a payment year is an eli-
7 gible hospital described in paragraph (2),
8 is an eligible hospital under section
9 1886(n), and for which at least one-third
10 of their discharges (or bed-days) of Medi-
11 care patients for the year are covered
12 under part A, payment for the payment
13 year shall be made only under section
14 1886(n) and not under this subsection.

15 “(ii) METHODS.—In the case of a
16 hospital that is an eligible hospital de-
17 scribed in paragraph (2) and also is eligi-
18 ble for an incentive payment under section
19 1886(n) but is not described in clause (i)
20 for the same payment period, the Secretary
21 shall develop a process—

22 “(I) to ensure that duplicate pay-
23 ments are not made with respect to
24 an eligible hospital both under this

1 subsection and under section 1886(n);
2 and

3 “(II) to collect data from Medi-
4 care Advantage organizations to en-
5 sure against such duplicate payments.

6 “(4) PAYMENT ADJUSTMENT.—

7 “(A) Subject to paragraph (3), in the case
8 of a qualifying MA organization (as defined in
9 section 1853(l)(5)), if, according to the attesta-
10 tion of the organization submitted under sub-
11 section (l)(6) for an applicable period, one or
12 more eligible hospitals (as defined in section
13 1886(n)(6)(A)) that are under common cor-
14 porate governance with such organization and
15 that serve individuals enrolled under a plan of-
16 fered by such organization are not meaningful
17 EHR users (as defined in section 1886(n)(3))
18 with respect to a period, the payment amount
19 payable under this section for such organization
20 for such period shall be the percent specified in
21 subparagraph (B) for such period of the pay-
22 ment amount otherwise provided under this sec-
23 tion for such period.

24 “(B) SPECIFIED PERCENT.—The percent
25 specified under this subparagraph for a year is

1 100 percent minus a number of percentage
2 points equal to the product of—

3 “(i) the number of the percentage
4 point reduction effected under section
5 1886(b)(3)(B)(ix)(I) for the period; and

6 “(ii) the Medicare hospital expendi-
7 ture proportion specified in subparagraph
8 (C) for the year.

9 “(C) MEDICARE HOSPITAL EXPENDITURE
10 PROPORTION.—The Medicare hospital expendi-
11 ture proportion under this subparagraph for a
12 year is the Secretary’s estimate of the propor-
13 tion, of the expenditures under parts A and B
14 that are not attributable to this part, that are
15 attributable to expenditures for inpatient hos-
16 pital services.

17 “(D) APPLICATION OF PAYMENT ADJUST-
18 MENT.—In the case that a qualifying MA orga-
19 nization attests that not all eligible hospitals
20 are meaningful EHR users with respect to an
21 applicable period, the Secretary shall apply the
22 payment adjustment under this paragraph
23 based on a methodology specified by the Sec-
24 retary, taking into account the proportion of
25 such eligible hospitals, or discharges from such

1 hospitals, that are not meaningful EHR users
2 for such period.”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) Section 1814(b) of the Social Security Act
5 (42 U.S.C. 1395f(b)) is amended—

6 (A) in paragraph (3), in the matter pre-
7 ceding subparagraph (A), by inserting “, sub-
8 ject to section 1886(d)(3)(B)(ix)(III),” after
9 “then”; and

10 (B) by adding at the end the following:
11 “For purposes of applying paragraph (3), there
12 shall be taken into account incentive payments,
13 and payment adjustments under subsection
14 (b)(3)(B)(ix) or (n) of section 1886.”.

15 (2) Section 1851(i)(1) of the Social Security
16 Act (42 U.S.C. 1395w–21(i)(1)) is amended by
17 striking “and 1886(h)(3)(D)” and inserting
18 “1886(h)(3)(D), and 1853(m)”.

19 (3) Section 1853 of the Social Security Act (42
20 U.S.C. 1395w–23), as amended by section
21 4311(d)(1), is amended—

22 (A) in subsection (c)—

23 (i) in paragraph (1)(D)(i), by striking
24 “1848(o)” and inserting “, 1848(o), and
25 1886(n)”; and

1 (ii) in paragraph (6)(A), by inserting
2 “and subsections (b)(3)(B)(ix) and (n) of
3 section 1886” after “section 1848”; and
4 (B) in subsection (f), by inserting “and
5 subsection (m)” after “under subsection (l)”.

6 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
7 **PLEMENTATION FUNDING.**

8 (a) PREMIUM HOLD HARMLESS.—

9 (1) IN GENERAL.—Section 1839(a)(1) of the
10 Social Security Act (42 U.S.C. 1395r(a)(1)) is
11 amended by adding at the end the following: “In ap-
12 plying this paragraph there shall not be taken into
13 account additional payments under section 1848(o)
14 and section 1853(l)(3) and the Government con-
15 tribution under section 1844(a)(3).”.

16 (2) PAYMENT.—Section 1844(a) of such Act
17 (42 U.S.C. 1395w(a)) is amended—

18 (A) in paragraph (2), by striking the pe-
19 riod at the end and inserting “; plus”; and

20 (B) by adding at the end the following new
21 paragraph:

22 “(3) a Government contribution equal to the
23 amount of payment incentives payable under sec-
24 tions 1848(o) and 1853(l)(3).”.

1 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
2 of the Social Security Act (42 U.S.C. 1395iii), as added
3 by section 7002(a) of the Supplemental Appropriations
4 Act, 2008 (Public Law 110–252) and as amended by sec-
5 tion 188(a)(2) of the Medicare Improvements for Patients
6 and Providers Act of 2008 (Public Law 110–275; 122
7 Stat. 2589) and by section 6 of the QI Program Supple-
8 mental Funding Act of 2008, is amended—

9 (1) in subsection (a)—

10 (A) by inserting “medicare” before “fee-
11 for-service”; and

12 (B) by inserting before the period at the
13 end the following: “including, but not limited
14 to, an increase in the conversion factor under
15 section 1848(d) to address, in whole or in part,
16 any projected shortfall in the conversion factor
17 for 2014 relative to the conversion factor for
18 2008 and adjustments to payments for items
19 and services furnished by providers of services
20 and suppliers under such original medicare fee-
21 for-service program”; and

22 (2) in subsection (b)—

23 (A) in paragraph (1), by striking “during
24 fiscal year 2014,” and all that follows and in-
25 serting the following: “during—

1 “(A) fiscal year 2014, \$22,290,000,000;
2 and

3 “(B) fiscal year 2020 and each subsequent
4 fiscal year, the Secretary’s estimate, as of July
5 1 of the fiscal year, of the aggregate reduction
6 in expenditures under this title during the pre-
7 ceding fiscal year directly resulting from the re-
8 duction in payment amounts under sections
9 1848(a)(7), 1853(l)(4), 1853(m)(4), and
10 1886(b)(3)(B)(ix).”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(4) NO EFFECT ON PAYMENTS IN SUBSE-
14 QUENT YEARS.—In the case that expenditures from
15 the Fund are applied to, or otherwise affect, a pay-
16 ment rate for an item or service under this title for
17 a year, the payment rate for such item or service
18 shall be computed for a subsequent year as if such
19 application or effect had never occurred.”.

20 (c) IMPLEMENTATION FUNDING.—In addition to
21 funds otherwise available, out of any funds in the Treas-
22 ury not otherwise appropriated, there are appropriated to
23 the Secretary of Health and Human Services for the Cen-
24 ter for Medicare & Medicaid Services Program Manage-
25 ment Account, \$60,000,000 for each of fiscal years 2009

1 through 2015 and \$30,000,000 for each succeeding fiscal
2 year through fiscal year 2019, which shall be available for
3 purposes of carrying out the provisions of (and amend-
4 ments made by) this part. Amounts appropriated under
5 this subsection for a fiscal year shall be available until ex-
6 pended.

7 **SEC. 4314. STUDY ON APPLICATION OF HIT PAYMENT IN-**
8 **CENTIVES FOR PROVIDERS NOT RECEIVING**
9 **OTHER INCENTIVE PAYMENTS.**

10 (a) STUDY.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services shall conduct a study to determine
13 the extent to which and manner in which payment
14 incentives (such as under title XVIII or XIX of the
15 Social Security Act) and other funding for purposes
16 of implementing and using qualified health informa-
17 tion technology should be made available to health
18 care providers who are receiving minimal or no pay-
19 ment incentives or other funding under this Act,
20 under title XVIII or XIX of the Social Security Act,
21 or otherwise, for such purposes.

22 (2) DETAILS OF STUDY.—Such study shall in-
23 clude an examination of—

1 (A) the adoption rates of qualified health
2 information technology by such health care pro-
3 viders;

4 (B) the clinical utility of such technology
5 by such health care providers;

6 (C) whether the services furnished by such
7 health care providers are appropriate for or
8 would benefit from the use of such technology;

9 (D) the extent to which such health care
10 providers work in settings that might otherwise
11 receive an incentive payment or other funding
12 under this Act, title XVIII or XIX of the Social
13 Security Act, or otherwise;

14 (E) the potential costs and the potential
15 benefits of making payment incentives and
16 other funding available to such health care pro-
17 viders; and

18 (F) any other issues the Secretary deems
19 to be appropriate.

20 (b) REPORT.—Not later than June 30, 2010, the
21 Secretary shall submit to Congress a report on the find-
22 ings and conclusions of the study conducted under sub-
23 section (a).

PART III—MEDICAID FUNDING**SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.**

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking “and” at the end of subparagraph (D);

(B) by striking “plus” at the end of subparagraph (E) and inserting “and”; and

(C) by adding at the end the following new subparagraph:

“(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

“(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets

1 the condition described in subsection (t)(9);
2 plus”; and

3 (2) by inserting after subsection (s) the fol-
4 lowing 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
11 net allowable costs of Medicaid providers (as defined in
12 paragraph (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
16 paragraph (3)(B)) who is not hospital-based and has
17 at least 30 percent of the professional’s patient vol-
18 ume (as estimated in accordance with standards es-
19 tablished by the Secretary) attributable to individ-
20 uals who are receiving medical assistance under this
21 title; and

22 “(B)(i) a children’s hospital;

23 “(ii) an acute-care hospital that is not described
24 in clause (i) and that has at least 10 percent of the
25 hospital’s patient volume (as estimated in accord-

1 ance with standards established by the Secretary)
2 attributable to individuals who are receiving medical
3 assistance under this title; or

4 “(iii) a Federally-qualified health center or
5 rural health clinic that has at least 30 percent of the
6 center’s or clinic’s patient volume (as estimated in
7 accordance with standards established by the Sec-
8 retary) attributable to individuals who are receiving
9 medical assistance under this title.

10 A professional shall not qualify as a Medicaid provider
11 under this subsection unless the professional has waived,
12 in a manner specified by the Secretary, any right to pay-
13 ment under section 1848(o) with respect to the adoption
14 or support of certified EHR technology by the profes-
15 sional. In applying clauses (ii) and (iii) of subparagraph
16 (B), the standards established by the Secretary for patient
17 volume shall include individuals enrolled in a Medicaid
18 managed care plan (under section 1903(m) or section
19 1932).

20 “(3) In this subsection and subsection (a)(3)(F):

21 “(A) The term ‘certified EHR technology’
22 means a qualified electronic health record (as de-
23 fined in 3000(13) of the Public Health Service Act)
24 that is certified pursuant to section 3001(c)(5) of
25 such Act as meeting standards adopted under sec-

1 tion 3004 of such Act that are applicable to the type
2 of record involved (as determined by the Secretary,
3 such as an ambulatory electronic health record for
4 office-based physicians or an inpatient hospital elec-
5 tronic health record for hospitals).

6 “(B) The term ‘eligible professional’ means a
7 physician as defined in paragraphs (1) and (2) of
8 section 1861(r), and includes a nurse mid-wife and
9 a nurse practitioner.

10 “(C) The term ‘hospital-based’ means, with re-
11 spect to an eligible professional, a professional (such
12 as a pathologist, anesthesiologist, or emergency phy-
13 sician) who furnishes substantially all of the individ-
14 ual’s professional services in a hospital setting
15 (whether inpatient or outpatient) and through the
16 use of the facilities and equipment, including com-
17 puter equipment, of the hospital.

18 “(4)(A) The term ‘allowable costs’ means, with re-
19 spect to certified EHR technology of a Medicaid provider,
20 costs of such technology (and support services including
21 maintenance and training that is for, or is necessary for
22 the adoption and operation of, such technology) as deter-
23 mined by the Secretary to be reasonable.

24 “(B) The term ‘net allowable costs’ means allowable
25 costs reduced by any payment that is made to the provider

1 involved from any other source that is directly attributable
2 to payment for certified EHR technology or services de-
3 scribed in subparagraph (A).

4 “(C) In no case shall—

5 “(i) the aggregate allowable costs under this
6 subsection (covering one or more years) with respect
7 to a Medicaid provider described in paragraph
8 (2)(A) for purchase and initial implementation of
9 certified EHR technology (and services described in
10 subparagraph (A)) exceed \$25,000 or include costs
11 over a period of longer than 5 years;

12 “(ii) for costs not described in clause (i) relat-
13 ing to the operation, maintenance, or use of certified
14 EHR technology, the annual allowable costs under
15 this subsection with respect to such a Medicaid pro-
16 vider for costs not described in clause (i) for any
17 year exceed \$10,000;

18 “(iii) payment described in paragraph (1) for
19 costs described in clause (ii) be made with respect
20 to such a Medicaid provider over a period of more
21 than 5 years;

22 “(iv) the aggregate allowable costs under this
23 subsection with respect to such a Medicaid provider
24 for all costs exceed \$75,000; or

1 “(v) the allowable costs, whether for purchase
2 and initial implementation, maintenance, or other-
3 wise, for a Medicaid provider described in paragraph
4 (2)(B) exceed such aggregate or annual limitation as
5 the Secretary shall establish, based on an amount
6 determined by the Secretary as being adequate to
7 adopt and maintain certified EHR technology, con-
8 sistent with paragraph (6).

9 “(5) Payments described in paragraph (1) are not in
10 accordance with this subsection unless the following re-
11 quirements are met:

12 “(A) The State provides assurances satisfactory
13 to the Secretary that amounts received under sub-
14 section (a)(3)(F) with respect to costs of a Medicaid
15 provider are paid directly to such provider without
16 any deduction or rebate.

17 “(B) Such Medicaid provider is responsible for
18 payment of the costs described in such paragraph
19 that are not provided under this title.

20 “(C) With respect to payments to such Med-
21 icaid provider for costs other than costs related to
22 the initial adoption of certified EHR technology, the
23 Medicaid provider demonstrates meaningful use of
24 certified EHR technology through a means that is
25 approved by the State and acceptable to the Sec-

1 retary, and that may be based upon the methodolo-
2 gies applied under section 1848(o) or 1886(n).

3 “(D) To the extent specified by the Secretary,
4 the certified EHR technology is compatible with
5 State or Federal administrative management sys-
6 tems.

7 “(6)(A) In no case shall the payments described in
8 paragraph (1), with respect to a hospital, exceed in the
9 aggregate the product of—

10 “(i) the overall hospital HIT amount for the
11 hospital computed under subparagraph (B); and

12 “(ii) the Medicaid share for such hospital com-
13 puted under subparagraph (C).

14 “(B) For purposes of this paragraph, the overall hos-
15 pital HIT amount, with respect to a hospital, is the sum
16 of the applicable amounts specified in section
17 1886(n)(2)(A) for such hospital for the first 4 payment
18 years (as estimated by the Secretary) determined as if the
19 Medicare share specified in clause (ii) of such section were
20 1. The Secretary shall publish in the Federal Register the
21 overall hospital HIT amount for each hospital eligible for
22 payments under this subsection. In computing amounts
23 under clause (ii) for payment years after the first payment
24 year, the Secretary shall assume that in subsequent pay-

1 ment years discharges increase at an annual rate of 2 per-
2 cent per year.

3 “(C) The Medicaid share computed under this sub-
4 paragraph, for a hospital for a period specified by the Sec-
5 retary, shall be calculated in the same manner as the
6 Medicare share under section 1886(n)(2)(D) for such a
7 hospital and period, except that there shall be substituted
8 for the numerator under clause (i) of such section the
9 amount that is equal to the number of inpatient-bed-days
10 (as established by the Secretary) which are attributable
11 to individuals who are receiving medical assistance under
12 this title and who are not described in section
13 1886(n)(2)(D)(i). In computing inpatient-bed-days under
14 the previous sentence, the Secretary shall take into ac-
15 count inpatient-bed-days attributable to inpatient-bed-
16 days that are paid for individuals enrolled in a Medicaid
17 managed care plan (under section 1903(m) or section
18 1932).

19 “(7) With respect to health care providers other than
20 hospitals, the Secretary shall ensure coordination of the
21 different programs for payment of such health care pro-
22 viders for adoption or use of health information technology
23 (including certified EHR technology), as well as payments
24 for such health care providers provided under this title or
25 title XVIII, to assure no duplication of funding.

1 “(8) In carrying out paragraph (5)(C), the State and
2 Secretary shall seek, to the maximum extent practicable,
3 to avoid duplicative requirements from Federal and State
4 Governments to demonstrate meaningful use of certified
5 EHR technology under this title and title XVIII. In doing
6 so, the Secretary may deem satisfaction of requirements
7 for such meaningful use for a payment year under title
8 XVIII to be sufficient to qualify as meaningful use under
9 this subsection. The Secretary may also specify the report-
10 ing periods under this subsection in order to carry out this
11 paragraph.

12 “(9) In order to be provided Federal financial partici-
13 pation under subsection (a)(3)(F)(ii), a State must dem-
14 onstrate to the satisfaction of the Secretary, that the
15 State—

16 “(A) is using the funds provided for the pur-
17 poses of administering payments under this sub-
18 section, including tracking of meaningful use by
19 Medicaid providers;

20 “(B) conducting adequate oversight of the pro-
21 gram under this subsection, including routine track-
22 ing of meaningful use attestations and reporting
23 mechanisms; and

24 “(C) be pursuing initiatives to encourage the
25 adoption of certified EHR technology to promote

1 health care quality and the exchange of health care
2 information under this title, subject to applicable
3 laws and regulations governing such exchange.

4 “(10) The Secretary shall periodically submit reports
5 to the Committee on Energy and Commerce of the House
6 of Representatives and the Committee on Finance of the
7 Senate on status, progress, and oversight of payments
8 under paragraph (1).”.

9 (b) IMPLEMENTATION FUNDING.—In addition to
10 funds otherwise available, out of any funds in the Treas-
11 ury not otherwise appropriated, there are appropriated to
12 the Secretary of Health and Human Services for the Cen-
13 ter for Medicare & Medicaid Services Program Manage-
14 ment Account, \$40,000,000 for each of fiscal years 2009
15 through 2015 and \$20,000,000 for each succeeding fiscal
16 year through fiscal year 2019, which shall be available for
17 purposes of carrying out the provisions of (and the amend-
18 ments made by) this part. Amounts appropriated under
19 this subsection for a fiscal year shall be available until ex-
20 pended.

21 **Subtitle D—Privacy**

22 **SEC. 4400. DEFINITIONS.**

23 In this subtitle, except as specified otherwise:

24 (1) BREACH.—The term “breach” means the
25 unauthorized acquisition, access, use, or disclosure

1 of protected health information which compromises
2 the security, privacy, or integrity of protected health
3 information maintained by or on behalf of a person.
4 Such term does not include any unintentional acqui-
5 sition, access, use, or disclosure of such information
6 by an employee or agent of the covered entity or
7 business associate involved if such acquisition, ac-
8 cess, use, or disclosure, respectively, was made in
9 good faith and within the course and scope of the
10 employment or other contractual relationship of such
11 employee or agent, respectively, with the covered en-
12 tity or business associate and if such information is
13 not further acquired, accessed, used, or disclosed by
14 such employee or agent.

15 (2) BUSINESS ASSOCIATE.—The term “business
16 associate” has the meaning given such term in sec-
17 tion 160.103 of title 45, Code of Federal Regula-
18 tions.

19 (3) COVERED ENTITY.—The term “covered en-
20 tity” has the meaning given such term in section
21 160.103 of title 45, Code of Federal Regulations.

22 (4) DISCLOSE.—The terms “disclose” and “dis-
23 closure” have the meaning given the term “disclo-
24 sure” in section 160.103 of title 45, Code of Federal
25 Regulations.

1 (5) ELECTRONIC HEALTH RECORD.—The term
2 “electronic health record” means an electronic
3 record of health-related information on an individual
4 that is created, gathered, managed, and consulted by
5 authorized health care clinicians and staff.

6 (6) HEALTH CARE OPERATIONS.—The term
7 “health care operation” has the meaning given such
8 term in section 164.501 of title 45, Code of Federal
9 Regulations.

10 (7) HEALTH CARE PROVIDER.—The term
11 “health care provider” has the meaning given such
12 term in section 160.103 of title 45, Code of Federal
13 Regulations.

14 (8) HEALTH PLAN.—The term “health plan”
15 has the meaning given such term in section 1171(5)
16 of the Social Security Act.

17 (9) NATIONAL COORDINATOR.—The term “Na-
18 tional Coordinator” means the head of the Office of
19 the National Coordinator for Health Information
20 Technology established under section 3001(a) of the
21 Public Health Service Act, as added by section
22 4101.

23 (10) PAYMENT.—The term “payment” has the
24 meaning given such term in section 164.501 of title
25 45, Code of Federal Regulations.

1 (11) PERSONAL HEALTH RECORD.—The term
2 “personal health record” means an electronic record
3 of individually identifiable health information on an
4 individual that can be drawn from multiple sources
5 and that is managed, shared, and controlled by or
6 for the individual.

7 (12) PROTECTED HEALTH INFORMATION.—The
8 term “protected health information” has the mean-
9 ing given such term in section 160.103 of title 45,
10 Code of Federal Regulations.

11 (13) SECRETARY.—The term “Secretary”
12 means the Secretary of Health and Human Services.

13 (14) SECURITY.—The term “security” has the
14 meaning given such term in section 164.304 of title
15 45, Code of Federal Regulations.

16 (15) STATE.—The term “State” means each of
17 the several States, the District of Columbia, Puerto
18 Rico, the Virgin Islands, Guam, American Samoa,
19 and the Northern Mariana Islands.

20 (16) TREATMENT.—The term “treatment” has
21 the meaning given such term in section 164.501 of
22 title 45, Code of Federal Regulations.

23 (17) USE.—The term “use” has the meaning
24 given such term in section 160.103 of title 45, Code
25 of Federal Regulations.

1 (18) VENDOR OF PERSONAL HEALTH
2 RECORDS.—The term “vendor of personal health
3 records” means an entity, other than a covered enti-
4 ty (as defined in paragraph (3)), that offers or
5 maintains a personal health record.

6 **PART I—IMPROVED PRIVACY PROVISIONS AND**
7 **SECURITY PROVISIONS**

8 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**
9 **PENALTIES TO BUSINESS ASSOCIATES OF**
10 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
11 **SECURITY PROVISIONS.**

12 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-
13 tions 164.308, 164.310, 164.312, and 164.316 of title 45,
14 Code of Federal Regulations, shall apply to a business as-
15 sociate of a covered entity in the same manner that such
16 sections apply to the covered entity. The additional re-
17 quirements of this title that relate to security and that
18 are made applicable with respect to covered entities shall
19 also be applicable to such a business associate and shall
20 be incorporated into the business associate agreement be-
21 tween the business associate and the covered entity.

22 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-
23 ALTIES.—In the case of a business associate that violates
24 any security provision specified in subsection (a), sections
25 1176 and 1177 of the Social Security Act (42 U.S.C.

1 1320d–5, 1320d–6) shall apply to the business associate
2 with respect to such violation in the same manner such
3 sections apply to a covered entity that violates such secu-
4 rity provision.

5 (c) ANNUAL GUIDANCE.—For the first year begin-
6 ning after the date of the enactment of this Act and annu-
7 ally thereafter, the Secretary of Health and Human Serv-
8 ices shall, in consultation with industry stakeholders, an-
9 nually issue guidance on the most effective and appro-
10 priate technical safeguards for use in carrying out the sec-
11 tions referred to in subsection (a) and the security stand-
12 ards in subpart C of part 164 of title 45, Code of Federal
13 Regulations, as such provisions are in effect as of the date
14 before the enactment of this Act.

15 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

16 (a) IN GENERAL.—A covered entity that accesses,
17 maintains, retains, modifies, records, stores, destroys, or
18 otherwise holds, uses, or discloses unsecured protected
19 health information (as defined in subsection (h)(1)) shall,
20 in the case of a breach of such information that is discov-
21 ered by the covered entity, notify each individual whose
22 unsecured protected health information has been, or is
23 reasonably believed by the covered entity to have been,
24 accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
2 NESS ASSOCIATE.—A business associate of a covered enti-
3 ty that accesses, maintains, retains, modifies, records,
4 stores, destroys, or otherwise holds, uses, or discloses un-
5 secured protected health information shall, following the
6 discovery of a breach of such information, notify the cov-
7 ered entity of such breach. Such notice shall include the
8 identification of each individual whose unsecured protected
9 health information has been, or is reasonably believed by
10 the business associate to have been, accessed, acquired,
11 or disclosed during such breach.

12 (c) BREACHES TREATED AS DISCOVERED.—For pur-
13 poses of this section, a breach shall be treated as discov-
14 ered by a covered entity or by a business associate as of
15 the first day on which such breach is known to such entity
16 or associate, respectively, (including any person, other
17 than the individual committing the breach, that is an em-
18 ployee, officer, or other agent of such entity or associate,
19 respectively) or should reasonably have been known to
20 such entity or associate (or person) to have occurred.

21 (d) TIMELINESS OF NOTIFICATION.—

22 (1) IN GENERAL.—Subject to subsection (g), all
23 notifications required under this section shall be
24 made without unreasonable delay and in no case
25 later than 60 calendar days after the discovery of a

1 breach by the covered entity involved (or business
2 associate involved in the case of a notification re-
3 quired under subsection (b)).

4 (2) BURDEN OF PROOF.—The covered entity in-
5 volved (or business associate involved in the case of
6 a notification required under subsection (b)), shall
7 have the burden of demonstrating that all notifica-
8 tions were made as required under this part, includ-
9 ing evidence demonstrating the necessity of any
10 delay.

11 (e) METHODS OF NOTICE.—

12 (1) INDIVIDUAL NOTICE.—Notice required
13 under this section to be provided to an individual,
14 with respect to a breach, shall be provided promptly
15 and in the following form:

16 (A) Written notification by first-class mail
17 to the individual (or the next of kin of the indi-
18 vidual if the individual is deceased) at the last
19 known address of the individual or the next of
20 kin, respectively, or, if specified as a preference
21 by the individual, by electronic mail. The notifi-
22 cation may be provided in one or more mailings
23 as information is available.

24 (B) In the case in which there is insuffi-
25 cient, or out-of-date contact information (in-

1 including a phone number, e-mail address, or any
2 other form of appropriate communication) that
3 precludes direct written (or, if specified by the
4 individual under subparagraph (A), electronic)
5 notification to the individual, a substitute form
6 of notice shall be provided, including, in the
7 case that there are 10 or more individuals for
8 which there is insufficient or out-of-date contact
9 information, a conspicuous posting for a period
10 determined by the Secretary on the home page
11 of the website of the covered entity involved or
12 notice in major print or broadcast media, in-
13 cluding major media in geographic areas where
14 the individuals affected by the breach likely re-
15 side. Such a notice in media or web posting will
16 include a toll-free phone number where an indi-
17 vidual can learn whether or not the individual's
18 unsecured protected health information is pos-
19 sibly included in the breach.

20 (C) In any case deemed by the covered en-
21 tity involved to require urgency because of pos-
22 sible imminent misuse of unsecured protected
23 health information, the covered entity, in addi-
24 tion to notice provided under subparagraph (A),

1 may provide information to individuals by tele-
2 phone or other means, as appropriate.

3 (2) MEDIA NOTICE.—Notice shall be provided
4 to prominent media outlets serving a State or juris-
5 diction, following the discovery of a breach described
6 in subsection (a), if the unsecured protected health
7 information of more than 500 residents of such
8 State or jurisdiction is, or is reasonably believed to
9 have been, accessed, acquired, or disclosed during
10 such breach.

11 (3) NOTICE TO SECRETARY.—Notice shall be
12 provided to the Secretary by covered entities of un-
13 secured protected health information that has been
14 acquired or disclosed in a breach. If the breach was
15 with respect to 500 or more individuals than such
16 notice must be provided immediately. If the breach
17 was with respect to less than 500 individuals, the
18 covered entity involved may maintain a log of any
19 such breach occurring and annually submit such a
20 log to the Secretary documenting such breaches
21 occurring during the year involved.

22 (4) POSTING ON HHS PUBLIC WEBSITE.—The
23 Secretary shall make available to the public on the
24 Internet website of the Department of Health and
25 Human Services a list that identifies each covered

1 entity involved in a breach described in subsection
2 (a) in which the unsecured protected health informa-
3 tion of more than 500 individuals is acquired or dis-
4 closed.

5 (f) CONTENT OF NOTIFICATION.—Regardless of the
6 method by which notice is provided to individuals under
7 this section, notice of a breach shall include, to the extent
8 possible, the following:

9 (1) A brief description of what happened, in-
10 cluding the date of the breach and the date of the
11 discovery of the breach, if known.

12 (2) A description of the types of unsecured pro-
13 tected health information that were involved in the
14 breach (such as full name, Social Security number,
15 date of birth, home address, account number, or dis-
16 ability code).

17 (3) The steps individuals should take to protect
18 themselves from potential harm resulting from the
19 breach.

20 (4) A brief description of what the covered enti-
21 ty involved is doing to investigate the breach, to
22 mitigate losses, and to protect against any further
23 breaches.

24 (5) Contact procedures for individuals to ask
25 questions or learn additional information, which

1 shall include a toll-free telephone number, an e-mail
2 address, website, or postal address.

3 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
4 ENFORCEMENT PURPOSES.—If a law enforcement official
5 determines that a notification, notice, or posting required
6 under this section would impede a criminal investigation
7 or cause damage to national security, such notification,
8 notice, or posting shall be delayed in the same manner
9 as provided under section 164.528(a)(2) of title 45, Code
10 of Federal Regulations, in the case of a disclosure covered
11 under such section.

12 (h) UNSECURED PROTECTED HEALTH INFORMA-
13 TION.—

14 (1) DEFINITION.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), for purposes of this section, the
17 term “unsecured protected health information”
18 means protected health information that is not
19 secured through the use of a technology or
20 methodology specified by the Secretary in the
21 guidance issued under paragraph (2).

22 (B) EXCEPTION IN CASE TIMELY GUID-
23 ANCE NOT ISSUED.—In the case that the Sec-
24 retary does not issue guidance under paragraph
25 (2) by the date specified in such paragraph, for

1 purposes of this section, the term “unsecured
2 protected health information” shall mean pro-
3 tected health information that is not secured by
4 a technology standard that renders protected
5 health information unusable, unreadable, or in-
6 decipherable to unauthorized individuals and is
7 developed or endorsed by a standards devel-
8 oping organization that is accredited by the
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)
11 and section 407(f)(3), not later than the date that
12 is 60 days after the date of the enactment of this
13 Act, the Secretary shall, after consultation with
14 stakeholders, issue (and annually update) guidance
15 specifying the technologies and methodologies that
16 render protected health information unusable,
17 unreadable, or indecipherable to unauthorized indi-
18 viduals.

19 (i) REPORT TO CONGRESS ON BREACHES.—

20 (1) IN GENERAL.—Not later than 12 months
21 after the date of the enactment of this Act and an-
22 nually thereafter, the Secretary shall prepare and
23 submit to the Committee on Finance and the Com-
24 mittee on Health, Education, Labor, and Pensions
25 of the Senate and the Committee on Ways and

1 Means and the Committee on Energy and Commerce
2 of the House of Representatives a report containing
3 the information described in paragraph (2) regard-
4 ing breaches for which notice was provided to the
5 Secretary under subsection (e)(3).

6 (2) INFORMATION.—The information described
7 in this paragraph regarding breaches specified in
8 paragraph (1) shall include—

9 (A) the number and nature of such
10 breaches; and

11 (B) actions taken in response to such
12 breaches.

13 (j) REGULATIONS; EFFECTIVE DATE.—To carry out
14 this section, the Secretary of Health and Human Services
15 shall promulgate interim final regulations by not later
16 than the date that is 180 days after the date of the enact-
17 ment of this title. The provisions of this section shall apply
18 to breaches that are discovered on or after the date that
19 is 30 days after the date of publication of such interim
20 final regulations.

21 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**
22 **VACY.**

23 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not
24 later than 6 months after the date of the enactment of
25 this Act, the Secretary shall designate an individual in

1 each regional office of the Department of Health and
2 Human Services to offer guidance and education to cov-
3 ered entities, business associates, and individuals on their
4 rights and responsibilities related to Federal privacy and
5 security requirements for protected health information.

6 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
7 FORMATION.—Not later than 12 months after the date of
8 the enactment of this Act, the Office for Civil Rights with-
9 in the Department of Health and Human Services shall
10 develop and maintain a multi-faceted national education
11 initiative to enhance public transparency regarding the
12 uses of protected health information, including programs
13 to educate individuals about the potential uses of their
14 protected health information, the effects of such uses, and
15 the rights of individuals with respect to such uses. Such
16 programs shall be conducted in a variety of languages and
17 present information in a clear and understandable man-
18 ner.

19 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
20 **PENALTIES TO BUSINESS ASSOCIATES OF**
21 **COVERED ENTITIES.**

22 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
23 In the case of a business associate of a covered entity that
24 obtains or creates protected health information pursuant
25 to a written contract (or other written arrangement) de-

1 scribed in section 164.502(e)(2) of title 45, Code of Fed-
2 eral Regulations, with such covered entity, the business
3 associate may use and disclose such protected health infor-
4 mation only if such use or disclosure, respectively, is in
5 compliance with each applicable requirement of section
6 164.504(e) of such title. The additional requirements of
7 this subtitle that relate to privacy and that are made ap-
8 plicable with respect to covered entities shall also be appli-
9 cable to such a business associate and shall be incor-
10 porated into the business associate agreement between the
11 business associate and the covered entity.

12 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
13 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
14 title 45, Code of Federal Regulations, shall apply to a
15 business associate described in subsection (a), with respect
16 to compliance with such subsection, in the same manner
17 that such section applies to a covered entity, with respect
18 to compliance with the standards in sections 164.502(e)
19 and 164.504(e) of such title, except that in applying such
20 section 164.504(e)(1)(ii) each reference to the business as-
21 sociate, with respect to a contract, shall be treated as a
22 reference to the covered entity involved in such contract.

23 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
24 ALTIES.—In the case of a business associate that violates
25 any provision of subsection (a) or (b), the provisions of

1 sections 1176 and 1177 of the Social Security Act (42
2 U.S.C. 1320d–5, 1320d–6) shall apply to the business as-
3 sociate with respect to such violation in the same manner
4 as such provisions apply to a person who violates a provi-
5 sion of part C of title XI of such Act.

6 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
7 **SALES OF HEALTH INFORMATION; ACCOUNT-**
8 **ING OF CERTAIN PROTECTED HEALTH IN-**
9 **FORMATION DISCLOSURES; ACCESS TO CER-**
10 **TAIN INFORMATION IN ELECTRONIC FOR-**
11 **MAT.**

12 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-
13 CLOSURES OF HEALTH INFORMATION.—In the case that
14 an individual requests under paragraph (a)(1)(i)(A) of
15 section 164.522 of title 45, Code of Federal Regulations,
16 that a covered entity restrict the disclosure of the pro-
17 tected health information of the individual, notwith-
18 standing paragraph (a)(1)(ii) of such section, the covered
19 entity must comply with the requested restriction if—

20 (1) except as otherwise required by law, the dis-
21 closure is to a health plan for purposes of carrying
22 out payment or health care operations (and is not
23 for purposes of carrying out treatment); and

24 (2) the protected health information pertains
25 solely to a health care item or service for which the

1 health care provider involved has been paid out of
2 pocket in full.

3 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
4 THE LIMITED DATA SET OR THE MINIMUM NEC-
5 ESSARY.—

6 (1) IN GENERAL.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), a covered entity shall be treated as
9 being in compliance with section 164.502(b)(1)
10 of title 45, Code of Federal Regulations, with
11 respect to the use, disclosure, or request of pro-
12 tected health information described in such sec-
13 tion, only if the covered entity limits such pro-
14 tected health information, to the extent prac-
15 ticable, to the limited data set (as defined in
16 section 164.514(e)(2) of such title) or, if needed
17 by such entity, to the minimum necessary to ac-
18 complish the intended purpose of such use, dis-
19 closure, or request, respectively.

20 (B) GUIDANCE.—Not later than 18
21 months after the date of the enactment of this
22 section, the Secretary shall issue guidance on
23 what constitutes “minimum necessary” for pur-
24 poses of subpart E of part 164 of title 45, Code
25 of Federal Regulation. In issuing such guidance

1 the Secretary shall take into consideration the
2 guidance under section 4424(c).

3 (C) SUNSET.—Subparagraph (A) shall not
4 apply on and after the effective date on which
5 the Secretary issues the guidance under sub-
6 paragraph (B).

7 (2) DETERMINATION OF MINIMUM NEC-
8 ESSARY.—For purposes of paragraph (1), in the
9 case of the disclosure of protected health informa-
10 tion, the covered entity or business associate dis-
11 closing such information shall determine what con-
12 stitutes the minimum necessary to accomplish the
13 intended purpose of such disclosure.

14 (3) APPLICATION OF EXCEPTIONS.—The excep-
15 tions described in section 164.502(b)(2) of title 45,
16 Code of Federal Regulations, shall apply to the re-
17 quirement under paragraph (1) as of the effective
18 date described in section 4423 in the same manner
19 that such exceptions apply to section 164.502(b)(1)
20 of such title before such date.

21 (4) RULE OF CONSTRUCTION.—Nothing in this
22 subsection shall be construed as affecting the use,
23 disclosure, or request of protected health information
24 that has been de-identified.

1 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
2 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
3 TITY USES ELECTRONIC HEALTH RECORD.—

4 (1) IN GENERAL.—In applying section 164.528
5 of title 45, Code of Federal Regulations, in the case
6 that a covered entity uses or maintains an electronic
7 health record with respect to protected health infor-
8 mation—

9 (A) the exception under paragraph
10 (a)(1)(i) of such section shall not apply to dis-
11 closures through an electronic health record
12 made by such entity of such information; and

13 (B) an individual shall have a right to re-
14 ceive an accounting of disclosures described in
15 such paragraph of such information made by
16 such covered entity during only the three years
17 prior to the date on which the accounting is re-
18 quested.

19 (2) REGULATIONS.—The Secretary shall pro-
20 mulgate regulations on what information shall be
21 collected about each disclosure referred to in para-
22 graph (1)(A) not later than 18 months after the
23 date on which the Secretary adopts standards on ac-
24 counting for disclosure described in the section
25 3002(b)(2)(B)(iv) of the Public Health Service Act,

1 as added by section 4101. Such regulations shall
2 only require such information to be collected through
3 an electronic health record in a manner that takes
4 into account the interests of individuals in learning
5 the circumstances under which their protected health
6 information is being disclosed and takes into account
7 the administrative burden of accounting for such
8 disclosures.

9 (3) CONSTRUCTION.—Nothing in this sub-
10 section shall be construed as requiring a covered en-
11 tity to account for disclosures of protected health in-
12 formation that are not made by such covered entity
13 or by a business associate acting on behalf of the
14 covered entity.

15 (4) EFFECTIVE DATE.—

16 (A) CURRENT USERS OF ELECTRONIC
17 RECORDS.—In the case of a covered entity inso-
18 far as it acquired an electronic health record as
19 of January 1, 2009, paragraph (1) shall apply
20 to disclosures, with respect to protected health
21 information, made by the covered entity from
22 such a record on and after January 1, 2014.

23 (B) OTHERS.—In the case of a covered en-
24 tity insofar as it acquires an electronic health
25 record after January 1, 2009, paragraph (1)

1 shall apply to disclosures, with respect to pro-
2 tected health information, made by the covered
3 entity from such record on and after the later
4 of the following:

5 (i) January 1, 2011; or

6 (ii) the date that it acquires an elec-
7 tronic health record.

8 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
9 later than 18 months after the date of the enactment of
10 this title, the Secretary shall promulgate regulations to
11 eliminate from the definition of health care operations
12 under section 164.501 of title 45, Code of Federal Regula-
13 tions, those activities that can reasonably and efficiently
14 be conducted through the use of information that is de-
15 identified (in accordance with the requirements of section
16 164.514(b) of such title) or that should require a valid
17 authorization for use or disclosure. In promulgating such
18 regulations, the Secretary may choose to narrow or clarify
19 activities that the Secretary chooses to retain in the defini-
20 tion of health care operations and the Secretary shall take
21 into account the report under section 424(d). In such reg-
22 ulations the Secretary shall specify the date on which such
23 regulations shall apply to disclosures made by a covered
24 entity, but in no case would such date be sooner than the

1 date that is 24 months after the date of the enactment
2 of this section.

3 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
4 RECORDS OR PROTECTED HEALTH INFORMATION OB-
5 TAINED FROM ELECTRONIC HEALTH RECORDS.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), a covered entity or business associate
8 shall not directly or indirectly receive remuneration
9 in exchange for any protected health information of
10 an individual unless the covered entity obtained from
11 the individual, in accordance with section 164.508 of
12 title 45, Code of Federal Regulations, a valid au-
13 thorization that includes, in accordance with such
14 section, a specification of whether the protected
15 health information can be further exchanged for re-
16 munerated by the entity receiving protected health
17 information of that individual.

18 (2) EXCEPTIONS.—Paragraph (1) shall not
19 apply in the following cases:

20 (A) The purpose of the exchange is for re-
21 search or public health activities (as described
22 in sections 164.501, 164.512(i), and 164.512(b)
23 of title 45, Code of Federal Regulations) and
24 the price charged reflects the costs of prepara-

1 tion and transmittal of the data for such pur-
2 pose.

3 (B) The purpose of the exchange is for the
4 treatment of the individual and the price
5 charges reflects not more than the costs of
6 preparation and transmittal of the data for
7 such purpose.

8 (C) The purpose of the exchange is the
9 health care operation specifically described in
10 subparagraph (iv) of paragraph (6) of the defi-
11 nition of health care operations in section
12 164.501 of title 45, Code of Federal Regula-
13 tions.

14 (D) The purpose of the exchange is for re-
15 muneration that is provided by a covered entity
16 to a business associate for activities involving
17 the exchange of protected health information
18 that the business associate undertakes on behalf
19 of and at the specific request of the covered en-
20 tity pursuant to a business associate agreement.

21 (E) The purpose of the exchange is to pro-
22 vide an individual with a copy of the individ-
23 ual's protected health information pursuant to
24 section 164.524 of title 45, Code of Federal
25 Regulations.

1 (F) The purpose of the exchange is other-
2 wise determined by the Secretary in regulations
3 to be similarly necessary and appropriate as the
4 exceptions provided in subparagraphs (A)
5 through (E).

6 (3) REGULATIONS.—The Secretary shall pro-
7 mulgate regulations to carry out paragraph (this
8 subsection, including exceptions described in para-
9 graph (2), not later than 18 months after the date
10 of the enactment of this title.

11 (4) EFFECTIVE DATE.—Paragraph (1) shall
12 apply to exchanges occurring on or after the date
13 that is 6 months after the date of the promulgation
14 of final regulations implementing this subsection.

15 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
16 TRONIC FORMAT.—In applying section 164.524 of title
17 45, Code of Federal Regulations, in the case that a cov-
18 ered entity uses or maintains an electronic health record
19 with respect to protected health information of an indi-
20 vidual—

21 (1) the individual shall have a right to obtain
22 from such covered entity a copy of such information
23 in an electronic format; and

24 (2) notwithstanding paragraph (c)(4) of such
25 section, any fee that the covered entity may impose

1 for providing such individual with a copy of such in-
2 formation (or a summary or explanation of such in-
3 formation) if such copy (or summary or explanation)
4 is in an electronic form shall not be greater than the
5 entity's labor costs in responding to the request for
6 the copy (or summary or explanation).

7 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**
8 **OF HEALTH CARE OPERATIONS.**

9 (a) **MARKETING.**—

10 (1) **IN GENERAL.**—A communication by a cov-
11 ered entity or business associate that is about a
12 product or service and that encourages recipients of
13 the communication to purchase or use the product
14 or service shall not be considered a health care oper-
15 ation for purposes of subpart E of part 164 of title
16 45, Code of Federal Regulations, unless the commu-
17 nication is made as described in subparagraph (i),
18 (ii), or (iii) of paragraph (1) of the definition of
19 marketing in section 164.501 of such title.

20 (2) **PAYMENT FOR CERTAIN COMMUNICA-**
21 **TIONS.**—A covered entity or business associate may
22 not receive direct or indirect payment in exchange
23 for making any communication described in sub-
24 paragraph (i), (ii), or (iii) of paragraph (1) of the

1 definition of marketing in section 164.501 of title
2 45, Code of Federal Regulations, except—

3 (A) a business associate of a covered entity
4 may receive payment from the covered entity
5 for making any such communication on behalf
6 of the covered entity that is consistent with the
7 written contract (or other written arrangement)
8 described in section 164.502(e)(2) of such title
9 between such business associate and covered en-
10 tity; and

11 (B) a covered entity may receive payment
12 in exchange for making any such communica-
13 tion if the entity obtains from the recipient of
14 the communication, in accordance with section
15 164.508 of title 45, Code of Federal Regula-
16 tions, a valid authorization (as described in
17 paragraph (b) of such section) with respect to
18 such communication.

19 (b) FUNDRAISING.—Fundraising for the benefit of a
20 covered entity shall not be considered a health care oper-
21 ation for purposes of section 164.501 of title 45, Code of
22 Federal Regulations.

23 (c) EFFECTIVE DATE.—This section shall apply to
24 contracting occurring on or after the effective date speci-
25 fied under section 4423.

1 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
2 **MENT FOR VENDORS OF PERSONAL HEALTH**
3 **RECORDS AND OTHER NON-HIPAA COVERED**
4 **ENTITIES.**

5 (a) IN GENERAL.—In accordance with subsection (c),
6 each vendor of personal health records, following the dis-
7 covery of a breach of security of unsecured PHR identifi-
8 able health information that is in a personal health record
9 maintained or offered by such vendor, and each entity de-
10 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
11 lowing the discovery of a breach of security of such infor-
12 mation that is obtained through a product or service pro-
13 vided by such entity, shall—

14 (1) notify each individual who is a citizen or
15 resident of the United States whose unsecured PHR
16 identifiable health information was acquired by an
17 unauthorized person as a result of such a breach of
18 security; and

19 (2) notify the Federal Trade Commission.

20 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
21 VIDERS.—A third party service provider that provides
22 services to a vendor of personal health records or to an
23 entity described in clause (ii) or (iii) of section
24 4424(b)(1)(A) in connection with the offering or mainte-
25 nance of a personal health record or a related product or
26 service and that accesses, maintains, retains, modifies,

1 records, stores, destroys, or otherwise holds, uses, or dis-
2 closes unsecured PHR identifiable health information in
3 such a record as a result of such services shall, following
4 the discovery of a breach of security of such information,
5 notify such vendor or entity, respectively, of such breach.
6 Such notice shall include the identification of each indi-
7 vidual whose unsecured PHR identifiable health informa-
8 tion has been, or is reasonably believed to have been,
9 accessed, acquired, or disclosed during such breach.

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—
12 Subsections (c), (d), (e), and (f) of section 402 shall apply
13 to a notification required under subsection (a) and a ven-
14 dor of personal health records, an entity described in sub-
15 section (a) and a third party service provider described
16 in subsection (b), with respect to a breach of security
17 under subsection (a) of unsecured PHR identifiable health
18 information in such records maintained or offered by such
19 vendor, in a manner specified by the Federal Trade Com-
20 mission.

21 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
22 ceipt of a notification of a breach of security under sub-
23 section (a)(2), the Federal Trade Commission shall notify
24 the Secretary of such breach.

1 (e) ENFORCEMENT.—A violation of subsection (a) or
2 (b) shall be treated as an unfair and deceptive act or prac-
3 tice in violation of a regulation under section 18(a)(1)(B)
4 of the Federal Trade Commission Act (15 U.S.C.
5 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
6 tices.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) BREACH OF SECURITY.—The term “breach
9 of security” means, with respect to unsecured PHR
10 identifiable health information of an individual in a
11 personal health record, acquisition of such informa-
12 tion without the authorization of the individual.

13 (2) PHR IDENTIFIABLE HEALTH INFORMA-
14 TION.—The term “PHR identifiable health informa-
15 tion” means individually identifiable health informa-
16 tion, as defined in section 1171(6) of the Social Se-
17 curity Act (42 U.S.C. 1320d(6)), and includes, with
18 respect to an individual, information—

19 (A) that is provided by or on behalf of the
20 individual; and

21 (B) that identifies the individual or with
22 respect to which there is a reasonable basis to
23 believe that the information can be used to
24 identify the individual.

1 (3) UNSECURED PHR IDENTIFIABLE HEALTH
2 INFORMATION.—

3 (A) IN GENERAL.—Subject to subpara-
4 graph (B), the term “unsecured PHR identifi-
5 able health information” means PHR identifi-
6 able health information that is not protected
7 through the use of a technology or methodology
8 specified by the Secretary in the guidance
9 issued under section 4402(h)(2).

10 (B) EXCEPTION IN CASE TIMELY GUID-
11 ANCE NOT ISSUED.—In the case that the Sec-
12 retary does not issue guidance under section
13 4402(h)(2) by the date specified in such sec-
14 tion, for purposes of this section, the term “un-
15 secured PHR identifiable health information”
16 shall mean PHR identifiable health information
17 that is not secured by a technology standard
18 that renders protected health information unus-
19 able, unreadable, or indecipherable to unauthor-
20 ized individuals and that is developed or en-
21 dored by a standards developing organization
22 that is accredited by the American National
23 Standards Institute.

24 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

1 (1) REGULATIONS; EFFECTIVE DATE.—To
2 carry out this section, the Secretary of Health and
3 Human Services shall promulgate interim final regu-
4 lations by not later than the date that is 180 days
5 after the date of the enactment of this section. The
6 provisions of this section shall apply to breaches of
7 security that are discovered on or after the date that
8 is 30 days after the date of publication of such in-
9 terim final regulations.

10 (2) SUNSET.—The provisions of this section
11 shall not apply to breaches of security occurring on
12 or after the earlier of the following the dates:

13 (A) The date on which a standard relating
14 to requirements for entities that are not covered
15 entities that includes requirements relating to
16 breach notification has been promulgated by the
17 Secretary.

18 (B) The date on which a standard relating
19 to requirements for entities that are not covered
20 entities that includes requirements relating to
21 breach notification has been promulgated by the
22 Federal Trade Commission and has taken ef-
23 fect.

1 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
2 **FOR CERTAIN ENTITIES.**

3 Each organization, with respect to a covered entity,
4 that provides data transmission of protected health infor-
5 mation to such entity (or its business associate) and that
6 requires access on a routine basis to such protected health
7 information, such as a Health Information Exchange Or-
8 ganization, Regional Health Information Organization, E-
9 prescribing Gateway, or each vendor that contracts with
10 a covered entity to allow that covered entity to offer a per-
11 sonal health record to patients as part of its electronic
12 health record, is required to enter into a written contract
13 (or other written arrangement) described in section
14 164.502(e)(2) of title 45, Code of Federal Regulations and
15 a written contract (or other arrangement) described in
16 section 164.308(b) of such title, with such entity and shall
17 be treated as a business associate of the covered entity
18 for purposes of the provisions of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this title.

22 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
23 **DISCLOSURES CRIMINAL PENALTIES.**

24 Section 1177(a) of the Social Security Act (42 U.S.C.
25 1320d-6(a)) is amended by adding at the end the fol-
26 lowing new sentence: “For purposes of the previous sen-

1 tence, a person (including an employee or other individual)
2 shall be considered to have obtained or disclosed individ-
3 ually identifiable health information in violation of this
4 part if the information is maintained by a covered entity
5 (as defined in the HIPAA privacy regulation described in
6 section 1180(b)(3)) and the individual obtained or dis-
7 closed such information without authorization.”.

8 **SEC. 4410. IMPROVED ENFORCEMENT.**

9 (a) IN GENERAL.—Section 1176 of the Social Secu-
10 rity Act (42 U.S.C. 1320d–5) is amended—

11 (1) in subsection (b)(1), by striking “the act
12 constitutes an offense punishable under section
13 1177” and inserting “a penalty has been imposed
14 under section 1177 with respect to such act”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-
18 GLECT.—

19 “(1) IN GENERAL.—A violation of a provision
20 of this part due to willful neglect is a violation for
21 which the Secretary is required to impose a penalty
22 under subsection (a)(1).

23 “(2) REQUIRED INVESTIGATION.—For purposes
24 of paragraph (1), the Secretary shall formally inves-
25 tigate any complaint of a violation of a provision of

1 this part if a preliminary investigation of the facts
2 of the complaint indicate such a possible violation
3 due to willful neglect.”.

4 (b) EFFECTIVE DATE; REGULATIONS.—

5 (1) The amendments made by subsection (a)
6 shall apply to penalties imposed on or after the date
7 that is 24 months after the date of the enactment
8 of this title.

9 (2) Not later than 18 months after the date of
10 the enactment of this title, the Secretary of Health
11 and Human Services shall promulgate regulations to
12 implement such amendments.

13 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY
14 PENALTIES COLLECTED.—

15 (1) IN GENERAL.—Subject to the regulation
16 promulgated pursuant to paragraph (3), any civil
17 monetary penalty or monetary settlement collected
18 with respect to an offense punishable under this sub-
19 title or section 1176 of the Social Security Act (42
20 U.S.C. 1320d–5) insofar as such section relates to
21 privacy or security shall be transferred to the Office
22 of Civil Rights of the Department of Health and
23 Human Services to be used for purposes of enforcing
24 the provisions of this subtitle and subparts C and E
25 of part 164 of title 45, Code of Federal Regulations,

1 as such provisions are in effect as of the date of en-
2 actment of this Act.

3 (2) GAO REPORT.—Not later than 18 months
4 after the date of the enactment of this title, the
5 Comptroller General shall submit to the Secretary a
6 report including recommendations for a methodology
7 under which an individual who is harmed by an act
8 that constitutes an offense referred to in paragraph
9 (1) may receive a percentage of any civil monetary
10 penalty or monetary settlement collected with re-
11 spect to such offense.

12 (3) ESTABLISHMENT OF METHODOLOGY TO
13 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
14 HARMED INDIVIDUALS.—Not later than 3 years
15 after the date of the enactment of this title, the Sec-
16 retary shall establish by regulation and based on the
17 recommendations submitted under paragraph (2), a
18 methodology under which an individual who is
19 harmed by an act that constitutes an offense re-
20 ferred to in paragraph (1) may receive a percentage
21 of any civil monetary penalty or monetary settlement
22 collected with respect to such offense.

23 (4) APPLICATION OF METHODOLOGY.—The
24 methodology under paragraph (3) shall be applied
25 with respect to civil monetary penalties or monetary

1 settlements imposed on or after the effective date of
2 the regulation.

3 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
4 TARY PENALTIES.—

5 (1) IN GENERAL.—Section 1176(a)(1) of the
6 Social Security Act (42 U.S.C. 1320d–5(a)(1)) is
7 amended by striking “who violates a provision of
8 this part a penalty of not more than” and all that
9 follows and inserting the following: “who violates a
10 provision of this part—

11 “(A) in the case of a violation of such pro-
12 vision in which it is established that the person
13 did not know (and by exercising reasonable dili-
14 gence would not have known) that such person
15 violated such provision, a penalty for each such
16 violation of an amount that is at least the
17 amount described in paragraph (3)(A) but not
18 to exceed the amount described in paragraph
19 (3)(D);

20 “(B) in the case of a violation of such pro-
21 vision in which it is established that the viola-
22 tion was due to reasonable cause and not to
23 willful neglect, a penalty for each such violation
24 of an amount that is at least the amount de-

1 scribed in paragraph (3)(B) but not to exceed
2 the amount described in paragraph (3)(D); and

3 “(C) in the case of a violation of such pro-
4 vision in which it is established that the viola-
5 tion was due to willful neglect—

6 “(i) if the violation is corrected as de-
7 scribed in subsection (b)(3)(A), a penalty
8 in an amount that is at least the amount
9 described in paragraph (3)(C) but not to
10 exceed the amount described in paragraph
11 (3)(D); and

12 “(ii) if the violation is not corrected
13 as described in such subsection, a penalty
14 in an amount that is at least the amount
15 described in paragraph (3)(D).

16 In determining the amount of a penalty under
17 this section for a violation, the Secretary shall
18 base such determination on the nature and ex-
19 tent of the violation and the nature and extent
20 of the harm resulting from such violation.”.

21 (2) TIERS OF PENALTIES DESCRIBED.—Section
22 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is fur-
23 ther amended by adding at the end the following
24 new paragraph:

1 “(3) TIERS OF PENALTIES DESCRIBED.—For
2 purposes of paragraph (1), with respect to a viola-
3 tion by a person of a provision of this part—

4 “(A) the amount described in this subpara-
5 graph is \$100 for each such violation, except
6 that the total amount imposed on the person
7 for all such violations of an identical require-
8 ment or prohibition during a calendar year may
9 not exceed \$25,000;

10 “(B) the amount described in this subpara-
11 graph is \$1,000 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed \$100,000;

16 “(C) the amount described in this subpara-
17 graph is \$10,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed \$250,000; and

22 “(D) the amount described in this sub-
23 paragraph is \$50,000 for each such violation,
24 except that the total amount imposed on the
25 person for all such violations of an identical re-

1 requirement or prohibition during a calendar year
2 may not exceed \$1,500,000.”.

3 (3) CONFORMING AMENDMENTS.—Section
4 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is
5 amended—

6 (A) by striking paragraph (2) and redesignig-
7 nating paragraphs (3) and (4) as paragraphs
8 (2) and (3), respectively; and

9 (B) in paragraph (2), as so redesignated—

10 (i) in subparagraph (A), by striking
11 “in subparagraph (B), a penalty may not
12 be imposed under subsection (a) if” and all
13 that follows through “the failure to comply
14 is corrected” and inserting “in subpara-
15 graph (B) or subsection (a)(1)(C), a pen-
16 alty may not be imposed under subsection
17 (a) if the failure to comply is corrected”;
18 and

19 (ii) in subparagraph (B), by striking
20 “(A)(ii)” and inserting “(A)” each place it
21 appears.

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to violations occurring
24 after the date of the enactment of this title.

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS
2 GENERAL.—

3 (1) IN GENERAL.—Section 1176 of the Social
4 Security Act (42 U.S.C. 1320d–5) is amended by
5 adding at the end the following new subsection:

6 “(c) ENFORCEMENT BY STATE ATTORNEYS GEN-
7 ERAL.—

8 “(1) CIVIL ACTION.—Except as provided in
9 subsection (b), in any case in which the attorney
10 general of a State has reason to believe that an in-
11 terest of one or more of the residents of that State
12 has been or is threatened or adversely affected by
13 any person who violates a provision of this part, the
14 attorney general of the State, as *parens patriae*, may
15 bring a civil action on behalf of such residents of the
16 State in a district court of the United States of ap-
17 propriate jurisdiction—

18 “(A) to enjoin further such violation by the
19 defendant; or

20 “(B) to obtain damages on behalf of such
21 residents of the State, in an amount equal to
22 the amount determined under paragraph (2).

23 “(2) STATUTORY DAMAGES.—

24 “(A) IN GENERAL.—For purposes of para-
25 graph (1)(B), the amount determined under

1 this paragraph is the amount calculated by mul-
2 tiplying the number of violations by up to \$100.
3 For purposes of the preceding sentence, in the
4 case of a continuing violation, the number of
5 violations shall be determined consistent with
6 the HIPAA privacy regulations (as defined in
7 section 1180(b)(3)) for violations of subsection
8 (a).

9 “(B) LIMITATION.—The total amount of
10 damages imposed on the person for all viola-
11 tions of an identical requirement or prohibition
12 during a calendar year may not exceed \$25,000.

13 “(C) REDUCTION OF DAMAGES.—In as-
14 sessing damages under subparagraph (A), the
15 court may consider the factors the Secretary
16 may consider in determining the amount of a
17 civil money penalty under subsection (a) under
18 the HIPAA privacy regulations.

19 “(3) ATTORNEY FEES.—In the case of any suc-
20 cessful action under paragraph (1), the court, in its
21 discretion, may award the costs of the action and
22 reasonable attorney fees to the State.

23 “(4) NOTICE TO SECRETARY.—The State shall
24 serve prior written notice of any action under para-
25 graph (1) upon the Secretary and provide the Sec-

1 retary with a copy of its complaint, except in any
2 case in which such prior notice is not feasible, in
3 which case the State shall serve such notice imme-
4 diately upon instituting such action. The Secretary
5 shall have the right—

6 “(A) to intervene in the action;

7 “(B) upon so intervening, to be heard on
8 all matters arising therein; and

9 “(C) to file petitions for appeal.

10 “(5) CONSTRUCTION.—For purposes of bring-
11 ing any civil action under paragraph (1), nothing in
12 this section shall be construed to prevent an attor-
13 ney general of a State from exercising the powers
14 conferred on the attorney general by the laws of that
15 State.

16 “(6) VENUE; SERVICE OF PROCESS.—

17 “(A) VENUE.—Any action brought under
18 paragraph (1) may be brought in the district
19 court of the United States that meets applicable
20 requirements relating to venue under section
21 1391 of title 28, United States Code.

22 “(B) SERVICE OF PROCESS.—In an action
23 brought under paragraph (1), process may be
24 served in any district in which the defendant—

25 “(i) is an inhabitant; or

1 “(ii) maintains a physical place of
2 business.

3 “(7) LIMITATION ON STATE ACTION WHILE
4 FEDERAL ACTION IS PENDING.—If the Secretary has
5 instituted an action against a person under sub-
6 section (a) with respect to a specific violation of this
7 part, no State attorney general may bring an action
8 under this subsection against the person with re-
9 spect to such violation during the pendency of that
10 action.

11 “(8) APPLICATION OF CMP STATUTE OF LIM-
12 TATION.—A civil action may not be instituted with
13 respect to a violation of this part unless an action
14 to impose a civil money penalty may be instituted
15 under subsection (a) with respect to such violation
16 consistent with the second sentence of section
17 1128A(c)(1).”.

18 (2) CONFORMING AMENDMENTS.—Subsection
19 (b) of such section, as amended by subsection (d)(3),
20 is amended—

21 (A) in paragraph (1), by striking “A pen-
22 alty may not be imposed under subsection (a)”
23 and inserting “No penalty may be imposed
24 under subsection (a) and no damages obtained
25 under subsection (c)”;

1 (B) in paragraph (2)(A)—

2 (i) in the matter before clause (i), by
3 striking “a penalty may not be imposed
4 under subsection (a)” and inserting “no
5 penalty may be imposed under subsection
6 (a) and no damages obtained under sub-
7 section (c)”;

8 (ii) in clause (ii), by inserting “or
9 damages” after “the penalty”;

10 (C) in paragraph (2)(B)(i), by striking
11 “The period” and inserting “With respect to
12 the imposition of a penalty by the Secretary
13 under subsection (a), the period”;

14 (D) in paragraph (3), by inserting “and
15 any damages under subsection (c)” after “any
16 penalty under subsection (a)”.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to violations occurring
19 after the date of the enactment of this Act.

20 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-
21 TION.—Such section is further amended by adding at the
22 end the following new subsection:

23 “(d) ALLOWING CONTINUED USE OF CORRECTIVE
24 ACTION.—Nothing in this section shall be construed as
25 preventing the Office of Civil Rights of the Department

1 of Health and Human Services from continuing, in its dis-
2 cretion, to use corrective action without a penalty in cases
3 where the person did not know (and by exercising reason-
4 able diligence would not have known) of the violation in-
5 volved.”.

6 **SEC. 4411. AUDITS.**

7 The Secretary shall provide for periodic audits to en-
8 sure that covered entities and business associates that are
9 subject to the requirements of this subtitle and subparts
10 C and E of part 164 of title 45, Code of Federal Regula-
11 tions, as such provisions are in effect as of the date of
12 enactment of this Act, comply with such requirements.

13 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
14 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
15 **PORTS**

16 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

17 (a) APPLICATION OF HIPAA STATE PREEMPTION.—
18 Section 1178 of the Social Security Act (42 U.S.C.
19 1320d–7) shall apply to a provision or requirement under
20 this subtitle in the same manner that such section applies
21 to a provision or requirement under part C of title XI of
22 such Act or a standard or implementation specification
23 adopted or established under sections 1172 through 1174
24 of such Act.

1 (b) HEALTH INSURANCE PORTABILITY AND AC-
2 COUNTABILITY ACT.—The standards governing the pri-
3 vacy and security of individually identifiable health infor-
4 mation promulgated by the Secretary under sections
5 262(a) and 264 of the Health Insurance Portability and
6 Accountability Act of 1996 shall remain in effect to the
7 extent that they are consistent with this subtitle. The Sec-
8 retary shall by rule amend such Federal regulations as re-
9 quired to make such regulations consistent with this sub-
10 title.

11 **SEC. 4422. REGULATORY REFERENCES.**

12 Each reference in this subtitle to a provision of the
13 Code of Federal Regulations refers to such provision as
14 in effect on the date of the enactment of this title (or to
15 the most recent update of such provision).

16 **SEC. 4423. EFFECTIVE DATE.**

17 Except as otherwise specifically provided, the provi-
18 sions of part I shall take effect on the date that is 12
19 months after the date of the enactment of this title.

20 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

21 (a) REPORT ON COMPLIANCE.—

22 (1) IN GENERAL.—For the first year beginning
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Health, Education,

1 Labor, and Pensions of the Senate and the Com-
2 mittee on Ways and Means and the Committee on
3 Energy and Commerce of the House of Representa-
4 tives a report concerning complaints of alleged viola-
5 tions of law, including the provisions of this subtitle
6 as well as the provisions of subparts C and E of part
7 164 of title 45, Code of Federal Regulations, (as
8 such provisions are in effect as of the date of enact-
9 ment of this Act) relating to privacy and security of
10 health information that are received by the Secretary
11 during the year for which the report is being pre-
12 pared. Each such report shall include, with respect
13 to such complaints received during the year—

14 (A) the number of such complaints;

15 (B) the number of such complaints re-
16 solved informally, a summary of the types of
17 such complaints so resolved, and the number of
18 covered entities that received technical assist-
19 ance from the Secretary during such year in
20 order to achieve compliance with such provi-
21 sions and the types of such technical assistance
22 provided;

23 (C) the number of such complaints that
24 have resulted in the imposition of civil monetary
25 penalties or have been resolved through mone-

1 tary settlements, including the nature of the
2 complaints involved and the amount paid in
3 each penalty or settlement;

4 (D) the number of compliance reviews con-
5 ducted and the outcome of each such review;

6 (E) the number of subpoenas or inquiries
7 issued;

8 (F) the Secretary's plan for improving
9 compliance with and enforcement of such provi-
10 sions for the following year; and

11 (G) the number of audits performed and a
12 summary of audit findings pursuant to section
13 4411.

14 (2) AVAILABILITY TO PUBLIC.—Each report
15 under paragraph (1) shall be made available to the
16 public on the Internet website of the Department of
17 Health and Human Services.

18 (b) STUDY AND REPORT ON APPLICATION OF PRI-
19 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
20 COVERED ENTITIES.—

21 (1) STUDY.—Not later than one year after the
22 date of the enactment of this title, the Secretary, in
23 consultation with the Federal Trade Commission,
24 shall conduct a study, and submit a report under
25 paragraph (2), on privacy and security requirements

1 for entities that are not covered entities or business
2 associates as of the date of the enactment of this
3 title, including—

4 (A) requirements relating to security, pri-
5 vacy, and notification in the case of a breach of
6 security or privacy (including the applicability
7 of an exemption to notification in the case of
8 individually identifiable health information that
9 has been rendered unusable, unreadable, or in-
10 decipherable through technologies or methodolo-
11 gies recognized by appropriate professional or-
12 ganization or standard setting bodies to provide
13 effective security for the information) that
14 should be applied to—

15 (i) vendors of personal health records;

16 (ii) entities that offer products or
17 services through the website of a vendor of
18 personal health records;

19 (iii) entities that are not covered enti-
20 ties and that offer products or services
21 through the s of covered entities that offer
22 individuals personal health records;

23 (iv) entities that are not covered enti-
24 ties and that access information in a per-

1 sonal health record or send information to
2 a personal health record; and

3 (v) third party service providers used
4 by a vendor or entity described in clause
5 (i), (ii), (iii), or (iv) to assist in providing
6 personal health record products or services;

7 (B) a determination of which Federal Gov-
8 ernment agency is best equipped to enforce
9 such requirements recommended to be applied
10 to such vendors, entities, and service providers
11 under subparagraph (A); and

12 (C) a timeframe for implementing regula-
13 tions based on such findings.

14 (2) REPORT.—The Secretary shall submit to
15 the Committee on Finance, the Committee on
16 Health, Education, Labor, and Pensions, and the
17 Committee on Commerce of the Senate and the
18 Committee on Ways and Means and the Committee
19 on Energy and Commerce of the House of Rep-
20 resentatives a report on the findings of the study
21 under paragraph (1) and shall include in such report
22 recommendations on the privacy and security re-
23 quirements described in such paragraph.

24 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
25 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—

1 Not later than 12 months after the date of the enactment
2 of this title, the Secretary shall, in consultation with stake-
3 holders, issue guidance on how best to implement the re-
4 quirements for the de-identification of protected health in-
5 formation under section 164.514(b) of title 45, Code of
6 Federal Regulations.

7 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
8 Not later than one year after the date of the enactment
9 of this title, the Comptroller General of the United States
10 shall submit to the Committee on Health, Education,
11 Labor, and Pensions of the Senate and the Committee on
12 Ways and Means and the Committee on Energy and Com-
13 merce of the House of Representatives a report on the
14 best practices related to the disclosure among health care
15 providers of protected health information of an individual
16 for purposes of treatment of such individual. Such report
17 shall include an examination of the best practices imple-
18 mented by States and by other entities, such as health
19 information exchanges and regional health information or-
20 ganizations, an examination of the extent to which such
21 best practices are successful with respect to the quality
22 of the resulting health care provided to the individual and
23 with respect to the ability of the health care provider to
24 manage such best practices, and an examination of the
25 use of electronic informed consent for disclosing protected

1 health information for treatment, payment, and health
2 care operations.

3 **Subtitle E—Miscellaneous**
4 **Medicare Provisions**

5 **SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULA-**
6 **TIONS.**

7 (a) DELAY IN PHASE OUT OF MEDICARE HOSPICE
8 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING
9 FISCAL YEAR 2009.—Notwithstanding any other provi-
10 sion of law, including the final rule published on August
11 8, 2008, 73 Federal Register 46464 et seq., relating to
12 Medicare Program; Hospice Wage Index for Fiscal Year
13 2009, the Secretary of Health and Human Services shall
14 not phase out or eliminate the budget neutrality adjust-
15 ment factor in the Medicare hospice wage index before Oc-
16 tober 1, 2009, and the Secretary shall recompute and
17 apply the final Medicare hospice wage index for fiscal year
18 2009 as if there had been no reduction in the budget neu-
19 trality adjustment factor.

20 (b) NON-APPLICATION OF PHASED-OUT INDIRECT
21 MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR
22 FISCAL YEAR 2009.—

23 (1) IN GENERAL.—Section 412.322 of title 42,
24 Code of Federal Regulations, shall be applied with-
25 out regard to paragraph (c) of such section, and the

1 Secretary of Health and Human Services shall re-
2 compute payments for discharges occurring on or
3 after October 1, 2008, as if such paragraph had
4 never been in effect.

5 (2) NO EFFECT ON SUBSEQUENT YEARS.—
6 Nothing in paragraph (1) shall be construed as hav-
7 ing any effect on the application of paragraph (d) of
8 section 412.322 of title 42, Code of Federal Regula-
9 tions.

10 (c) FUNDING FOR IMPLEMENTATION.—In addition to
11 funds otherwise available, for purposes of implementing
12 the provisions of subsections (a) and (b), including costs
13 incurred in reprocessing claims in carrying out such provi-
14 sions, the Secretary of Health and Human Services shall
15 provide for the transfer from the Federal Hospital Insur-
16 ance Trust Fund established under section 1817 of the
17 Social Security Act (42 U.S.C. 1395i) to the Centers for
18 Medicare & Medicaid Services Program Management Ac-
19 count of \$2,000,000 for fiscal year 2009.

20 **SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL COR-**
21 **RECTIONS.**

22 (a) PAYMENT.—Subsection (c) of section 114 of the
23 Medicare, Medicaid, and SCHIP Extension Act of 2007
24 (Public Law 110–173) is amended—

25 (1) in paragraph (1)—

1 (A) by amending the heading to read as
2 follows: “DELAY IN APPLICATION OF 25 PER-
3 CENT PATIENT THRESHOLD PAYMENT ADJUST-
4 MENT”;

5 (B) by striking “the date of the enactment
6 of this Act” and inserting “July 1, 2007,”; and

7 (C) in subparagraph (A), by inserting “or
8 to a long-term care hospital, or satellite facility,
9 that as of December 29, 2007, was co-located
10 with an entity that is a provider-based, off-cam-
11 pus location of a subsection (d) hospital which
12 did not provide services payable under section
13 1886(d) of the Social Security Act at the off-
14 campus location” after “freestanding long-term
15 care hospitals”; and

16 (2) in paragraph (2)—

17 (A) in subparagraph (B)(ii), by inserting
18 “or that is described in section 412.22(h)(3)(i)
19 of such title” before the period; and

20 (B) in subparagraph (C), by striking “the
21 date of the enactment of this Act” and insert-
22 ing “October 1, 2007 (or July 1, 2007, in the
23 case of a satellite facility described in section
24 412.22(h)(3)(i) of title 42, Code of Federal
25 Regulations)”.

1 (b) MORATORIUM.—Subsection (d)(3)(A) of such sec-
2 tion is amended by striking “if the hospital or facility”
3 and inserting “if the hospital or facility obtained a certifi-
4 cate of need for an increase in beds that is in a State
5 for which such certificate of need is required and that was
6 issued on or after April 1, 2005, and before December
7 29, 2007, or if the hospital or facility”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall be effective and apply as if included in
10 the enactment of the Medicare, Medicaid, and SCHIP Ex-
11 tension Act of 2007 (Public Law 110–173).

○