

111TH CONGRESS
2D SESSION

H. R. 4529

To provide for the reform of health care, the Social Security system, the tax code for individuals and business, job training, and the budget process.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2010

Mr. RYAN of Wisconsin (for himself, Mr. BARTLETT, Mrs. BLACKBURN, Mr. BURGESS, Mr. CAMPBELL, Mr. HENSARLING, Mr. NUNES, and Mr. PRICE of Georgia) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, Education and Labor, Rules, the Budget, and the Judiciary, 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 the reform of health care, the Social Security system, the tax code for individuals and business, job training, and the budget process.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Roadmap for America’s Future Act of 2010”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.

TITLE I—HEALTH CARE REFORM

Subtitle A—Expanding Patient’s Health Care Choices

PART 1—STATE-BASED HEALTH CARE EXCHANGES

- Sec. 101. State-based health care exchanges.
- Sec. 102. Requirements.
- Sec. 103. State Exchange incentives.

PART 2—FAIR TAX TREATMENT FOR ALL AMERICANS TO AFFORD HEALTH CARE

- Sec. 111. Reference.

SUBPART A—REFUNDABLE AND ADVANCEABLE CREDIT FOR CERTAIN HEALTH INSURANCE COVERAGE

- Sec. 112. Refundable and advanceable credit for certain health insurance coverage.
- Sec. 113. Requiring employer transparency about employee benefits.
- Sec. 114. Changes to existing tax preferences for medical coverage, etc., for individuals eligible for qualified health insurance credit.

SUBPART B—HEALTH SAVINGS ACCOUNTS

- Sec. 121. Improvements to health savings accounts.
- Sec. 122. Exception to requirement for employers to make comparable health savings account contributions.

Subtitle B—Health Plan Choice; Small Business Health Fairness; Tax Amendments

- Sec. 131. Cooperative governing of individual health insurance coverage.
- Sec. 132. Small business health fairness.
- Sec. 133. Repeal of certain tax exemptions for health insurance payments.

Subtitle C—Health Care Services Commission

PART I—ESTABLISHMENT AND GENERAL DUTIES

- Sec. 141. Establishment.
- Sec. 142. General authorities and duties.
- Sec. 143. Dissemination.

PART II—FORUM FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE

- Sec. 151. Establishment of office.
- Sec. 152. Membership.
- Sec. 153. Duties.
- Sec. 154. Adoption and enforcement of guidelines and standards.
- Sec. 155. Additional requirements.

PART III—GENERAL PROVISIONS

- Sec. 161. Certain administrative authorities.

- Sec. 162. Funding.
- Sec. 163. Definitions.

PART IV—TERMINATIONS AND TRANSITION

- Sec. 171. Termination of Agency for Healthcare Research and Quality.
- Sec. 172. Transition.

PART V—INDEPENDENT HEALTH RECORD TRUST

- Sec. 181. Short title of part.
- Sec. 182. Purpose.
- Sec. 183. Definitions.
- Sec. 184. Establishment, certification, and membership of independent health record trusts.
- Sec. 185. Duties of IHRT to IHRT participants.
- Sec. 186. Availability and use of information from records in IHRT consistent with privacy protections and agreements.
- Sec. 187. Voluntary nature of trust participation and information sharing.
- Sec. 188. Financing of activities.
- Sec. 189. Regulatory oversight.

TITLE II—FAIRNESS FOR EVERY AMERICAN PATIENT

Subtitle A—Medicaid Modernization

- Sec. 201. Medicaid modernization.
- Sec. 202. Outreach.
- Sec. 203. Transition rules; miscellaneous provisions.

Subtitle B—Supplemental Health Care Assistance for Low-Income Families

- Sec. 211. Supplemental health care assistance for low-income families.

TITLE III—MEDICARE REFORM

Subtitle A—New Medicare Program

- Sec. 301. Benefit changes.
- Sec. 302. Increase in Medicare eligibility age.
- Sec. 303. Unified Medicare Trust Fund.

Subtitle B—Changes in Current Medicare Program

- Sec. 311. Income-related reduction in part D premium subsidy.
- Sec. 312. Reduction in hospital marketbasket increases.
- Sec. 313. Elimination of indexing of income thresholds for part B income-related premiums.
- Sec. 314. Reinstatement of the Medicare trigger.
- Sec. 315. Eliminating inefficiencies and increasing choice in Medicare Advantage.

Subtitle C—Medical Liability Reform

PART 1—ENACTING REAL MEDICAL LIABILITY REFORM

- Sec. 321. Encouraging speedy resolution of claims.
- Sec. 322. Compensating patient injury.
- Sec. 323. Maximizing patient recovery.

- Sec. 324. Additional health benefits.
- Sec. 325. Punitive damages.
- Sec. 326. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 327. Definitions.
- Sec. 328. Effect on other laws.
- Sec. 329. State flexibility and protection of States' rights.
- Sec. 330. Applicability; effective date.

PART 2—ENDING LAWSUIT ABUSE

- Sec. 331. State grants to create health court solutions.

TITLE IV—SOCIAL SECURITY REFORM

- Sec. 401. Short title.
- Sec. 402. Establishment of Personal Social Security Savings Program.
- Sec. 403. Monthly insurance benefits for participating individuals.
- Sec. 404. Tax treatment of accounts.
- Sec. 405. Self-Liquidating Social Security Transition Fund.
- Sec. 406. Budgetary treatment of Social Security.
- Sec. 407. Accounting for the Old-Age, Survivors, and Disability Insurance Program and the Personal Social Security Savings Program.
- Sec. 408. Progressive indexing of benefits for old-age, wife's, and husband's insurance benefits.
- Sec. 409. Adjustments to schedule for increases in normal retirement age.

TITLE V—SIMPLIFIED INCOME TAX

- Sec. 501. Short title.
- Sec. 502. Repeal of alternative minimum tax for noncorporate taxpayers.
- Sec. 503. Simplified income tax system.
- Sec. 504. Exclusion for capital gains, dividends, and interest.
- Sec. 505. Repeal of estate and gift taxes.

TITLE VI—BUSINESS CONSUMPTION TAX

- Sec. 601. Short title.
- Sec. 602. Repeal of corporate income tax; new tax paid by corporations and other businesses.
- Sec. 603. Repeal of chapter 6.

TITLE VII—JOB TRAINING RESULTS ACT OF 2010

- Sec. 701. Short title.
- Sec. 702. Purpose.
- Sec. 703. Improvement of job training programs; performance metrics for WIA job training programs.
- Sec. 704. Other job training programs.
- Sec. 705. Transparency.
- Sec. 706. Evaluations.
- Sec. 707. Encouraging innovation.
- Sec. 708. Making WIA Training Vouchers more accessible and flexible.
- Sec. 709. Life long learning awareness campaigns.
- Sec. 710. GAO reports.

TITLE VIII—SPENDING LIMITS AND DEFICIT CONTROL

Sec. 800. Short title.

Subtitle A—Spending Limits and Deficit Control

Sec. 801. Discretionary spending limits.

Sec. 802. Total spending limits.

Subtitle B—Reports and Orders

Sec. 811. Reports and orders.

Sec. 812. Spending limits enforcement.

Sec. 813. Spending reduction orders.

Sec. 814. Alternate spending reduction legislation in the House of Representatives.

Sec. 815. Alternate spending reduction legislation in the Senate.

Subtitle C—Long-Term Budgeting

Sec. 821. CBO and OMB projections.

Sec. 822. GAO and OMB statements of the Federal Government's financial condition.

Sec. 823. Five-year fiscal sustainability review.

Sec. 824. Long-term reconciliation.

Sec. 825. Long-term spending increase point of order.

1 SEC. 2. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—The Congress finds as follows:

3 (1) The Congressional Budget Office, the Gov-
4 ernment Accountability Office, and the Federal Re-
5 serve have all found that Social Security, Medicare,
6 and Medicaid, as currently structured, will result in
7 unsustainable levels of spending, deficits, and debt.

8 (2) Although Americans remain committed to
9 the missions of these initiatives, the goals can no
10 longer be met on models created nearly 80 years
11 ago—with large, centralized institutions, especially
12 government, serving as sole providers for an increas-
13 ingly dependent population.

1 (3) The continuing failure to enact solutions
2 makes these problems more intractable with each
3 succeeding year.

4 (4) Among the inescapable signs are the fol-
5 lowing: an unsustainable path of Government spend-
6 ing; levels of projected debt that threaten to bank-
7 rupt the country; trillions of dollars of unfunded li-
8 abilities in the Government's major benefit pro-
9 grams; and the erosion of Americans' security and
10 confidence in health care and retirement.

11 (5) These conditions pose significant potential
12 burdens not only for the Government, but for the
13 United States economy as well, threatening its abil-
14 ity to continue raising standards of living, and its
15 leadership in an increasingly international market-
16 place.

17 (6) A comprehensive plan is needed, and this
18 legislation aims to gain control of Federal spending,
19 deficits, and debt while energizing the productive ca-
20 pacities of Americans to generate sustained eco-
21 nomic growth.

22 (b) PURPOSE.—The purpose of this Act is as follows:

23 (1) HEALTH CARE REFORM.—To provide access
24 to health care coverage for uninsured Americans by
25 establishing a new tax credit; to reform health insur-

1 ance markets, high-risk pools, and electronic health
2 records; and to create a new agency to promote the
3 dissemination of industry-defined health care price
4 and quality data.

5 (2) MEDICAID AND SCHIP REFORM.—To ensure
6 health care coverage for those who need it most and
7 can be sustained, reforms the Medicaid and SCHIP
8 to expand coverage options for beneficiaries, gives
9 greater flexibility, and slows the growth in spending.

10 (3) MEDICARE REFORM.—To ensure the Medi-
11 care benefit continues to provide health care cov-
12 erage for seniors by establishing modernizing the
13 program to slowly phase in reforms for those young-
14 er than 55 years of age, and to make the program
15 permanently solvent and fiscally sustainable.

16 (4) SOCIAL SECURITY REFORM.—To reform So-
17 cial Security to ensure retirement security for future
18 generations and to make it solvent for the foresee-
19 able future; to address inequities in the system and
20 provide millions of Americans with the opportunity
21 to build a retirement nest egg that they can pass on
22 to their heirs.

23 (5) INDIVIDUAL INCOME TAX REFORM.—To
24 offer taxpayers a choice in paying their Federal in-
25 come taxes; to allow individuals to choose between

1 the current tax code or a highly simplified tax sys-
2 tem with virtually no deductions or credits (apart
3 from an individual health care credit), two low tax
4 rates and a generous standard deduction and per-
5 sonal exemption; to fully repeal the alternative min-
6 imum tax (AMT), eliminate the tax on interest, cap-
7 ital gains and dividends in order to promote saving;
8 and to repeal the estate tax.

9 (6) BUSINESS TAX REFORM.—To eliminate the
10 United States corporate income tax and establishes
11 a border-adjustable business consumption tax in its
12 place; to provide a new method of business taxation
13 that will level the playing field for United States
14 businesses to compete with foreign businesses and
15 will promote sustained economic growth, investment
16 and job creation in America.

17 (7) JOB TRAINING.—To assist working Ameri-
18 cans in an increasingly global economy, reforms 49
19 job training programs across eight agencies to en-
20 hance transparency, accountability, and perform-
21 ance.

22 (8) BUDGET PROCESS.—To keep total spending
23 of the Government under control, nondefense discre-
24 tionary spending limits are set forth, a limit on total
25 outlays as a percentage of the gross domestic

1 produce is established, and the process is reformed
2 to put a greater focus on long-term budgetary
3 trends.

4 **TITLE I—HEALTH CARE REFORM**
5 **Subtitle A—Expanding Patient’s**
6 **Health Care Choices**

7 **PART 1—STATE-BASED HEALTH CARE**

8 **EXCHANGES**

9 **SEC. 101. STATE-BASED HEALTH CARE EXCHANGES.**

10 (a) STATE-BASED HEALTH CARE EXCHANGES.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services (referred to in this part as the
13 “Secretary”) shall establish a process for the review
14 of applications submitted by States for the establish-
15 ment and implementation of State-based health care
16 Exchanges (referred to in this part as a “State Ex-
17 change”) and for the certification of such Ex-
18 changes. The Secretary shall certify a State Ex-
19 change if the Secretary determines that such Ex-
20 change meets the requirements of this part.

21 (2) CONTINUED CERTIFICATION.—The certifi-
22 cation of a State Exchange under subsection (a)
23 shall remain in effect until the Secretary determines
24 that the Exchange has failed to meet any of the re-
25 quirements under this part.

1 **SEC. 102. REQUIREMENTS.**

2 (a) GENERAL REQUIREMENTS FOR CERTIFI-
3 CATION.—An application for certification under section
4 101(a) shall demonstrate compliance with the following:

5 (1) PURPOSE.—The primary purpose of a State
6 Exchange shall be the facilitation of the individual
7 purchase of innovative private health insurance and
8 the creation of a market where private health plans
9 compete for enrollees based on price and quality.

10 (2) ADMINISTRATION.—A State shall ensure
11 the operation of the State Exchange through direct
12 contracts with the health insurance plans that are
13 participating in the State Exchange or through a
14 contract with a third party administrator for the op-
15 eration of the Exchange.

16 (3) PLAN PARTICIPATION.—A State shall not
17 restrict or otherwise limit the ability of a health in-
18 surance plan to participate in, and offer health in-
19 surance coverage through, the State Exchange, so
20 long as the health insurance issuers involved are
21 duly licensed under State insurance laws applicable
22 to all health insurance issuers in the State and oth-
23 erwise comply with the requirements of this part.

24 (4) PREMIUMS.—

25 (A) AMOUNT.—A State shall not determine
26 premium or cost sharing amounts for health in-

1 insurance coverage offered through the State Ex-
2 change.

3 (B) COLLECTION METHOD.—A State shall
4 ensure the existence of an effective and efficient
5 method for the collection of premiums for
6 health insurance coverage offered through the
7 State Exchange.

8 (b) BENEFIT PARITY WITH MEMBERS OF CON-
9 GRESS.—With respect to health insurance issuers offering
10 health insurance coverage through the State Exchange,
11 the State shall not impose any requirement that such
12 issuers provide coverage that includes benefits different
13 than requirements on plans offered to Members of Con-
14 gress under chapter 89 of title 5, United States Code.

15 (c) FACILITATING UNIVERSAL COVERAGE FOR
16 AMERICANS.—

17 (1) AUTOMATIC ENROLLMENT.—The State Ex-
18 change shall ensure that health insurance coverage
19 offered through the Exchange provides for the appli-
20 cation of uniform mechanisms that are designed to
21 encourage and facilitate the enrollment of all eligible
22 individuals in Exchange-based health insurance cov-
23 erage. Such mechanisms shall include automatic en-
24 rollment through various venues, which may include
25 emergency rooms, the submission of State tax forms,

1 places of employment in the State, and State depart-
2 ments of motor vehicles.

3 (2) OTHER ENROLLMENT OPPORTUNITIES.—

4 (A) IN GENERAL.—The State Exchange
5 shall ensure that health insurance coverage of-
6 fered through the Exchange permits enrollment,
7 and changes in enrollment, of individuals at the
8 time such individuals become eligible individuals
9 in the State.

10 (B) ANNUAL OPEN ENROLLMENT PERI-
11 ODS.—The State Exchange shall ensure that
12 health insurance coverage offered through the
13 Exchange permits eligible individuals to annu-
14 ally change enrollment among the coverage of-
15 fered through the Exchange, subject to sub-
16 paragraph (A).

17 (C) INCENTIVES FOR CONTINUOUS AN-
18 NUAL COVERAGE.—The State Exchange shall
19 include an incentive for eligible individuals to
20 remain insured from plan year to plan year,
21 and may include incentives such as State tax
22 incentives or premium-based incentives.

23 (3) GUARANTEED ACCESS FOR INDIVIDUALS.—

24 The State Exchange shall ensure that, with respect
25 to health insurance coverage offered through the Ex-

1 change, all eligible individuals are able to enroll in
2 the coverage of their choice provided that such indi-
3 viduals agree to make applicable premium and cost
4 sharing payments.

5 (4) LIMITATION ON PRE-EXISTING CONDITION
6 EXCLUSIONS.—The State Exchange shall ensure
7 that health insurance coverage offered through the
8 Exchange meets the requirements of section 9801 of
9 the Internal Revenue Code of 1986 in the same
10 manner as if such coverage was a group health plan.

11 (5) OPT-OUT.—Nothing in this part shall be
12 construed to require that an individual be enrolled in
13 health insurance coverage.

14 (d) LIMITATION ON EXORBITANT PREMIUMS.—

15 (1) ESTABLISHMENT OF MECHANISM.—With
16 respect to health insurance coverage offered through
17 the State Exchange, the Exchange shall establish a
18 mechanisms to protect enrollees from the imposition
19 of excessive premiums, to reduce adverse selection,
20 and to share risk.

21 (2) MECHANISM OPTIONS.—The mechanisms
22 referred to in paragraph (1) may include the fol-
23 lowing:

24 (A) INDEPENDENT RISK ADJUSTMENT.—

25 The implementation of risk-adjustment among

1 health insurance coverage offered through the
2 State Exchange through a contract entered into
3 with a private, independent board. Such board
4 shall include representation of health insurance
5 issuers and State officials but shall be inde-
6 pendently controlled. The State Exchange shall
7 ensure that risk-adjustment implemented under
8 this subparagraph shall be based on a blend of
9 patient diagnoses and estimated costs.

10 (B) HEALTH SECURITY POOLS.—The es-
11 tablishment (or continued operation under sec-
12 tion 2745 of the Public Health Service Act) of
13 a health security pool to guarantee high-risk in-
14 dividuals access to affordable, quality health
15 care.

16 (C) REINSURANCE.—The implementation
17 of a successful reinsurance mechanisms to guar-
18 antee high-risk individuals access to affordable,
19 quality health care.

20 (e) MEDICAID AND SCHIP BENEFICIARIES.—The
21 State Exchange shall include procedures to permit eligible
22 individuals who are receiving (or who are eligible to re-
23 ceive) health care under title XIX or XXI of the Social
24 Security Act to enroll in health insurance coverage offered
25 through the Exchange.

1 (f) DISSEMINATION OF COVERAGE INFORMATION.—

2 The State Exchange shall ensure that each health insur-
3 ance issuer that provides health insurance coverage
4 through the Exchange disseminate to eligible individuals
5 and employers within the State information concerning
6 health insurance coverage options, including the plans of-
7 fered and premiums and benefits for such plans.

8 (g) REGIONAL OPTIONS.—

9 (1) INTERSTATE COMPACTS.—Two or more
10 States that establish a State Exchange may enter
11 into interstate compacts providing for the regula-
12 tions of health insurance coverage offered within
13 such States.

14 (2) MODEL LEGISLATION.—States adopting
15 model legislation as developed by the National Asso-
16 ciation of Insurance Commissioners shall be eligible
17 to enter into an interstate compact as provided for
18 in this section.

19 (3) MULTI-STATE POOLING ARRANGEMENTS.—
20 State Exchanges may implement a multi-state health
21 care coverage pooling arrangement under this part.

22 (h) ELIGIBLE INDIVIDUAL.—In this part, the term
23 “eligible individual” means an individual who is—

24 (1) a citizen or national of the United States or
25 an alien lawfully admitted to the United States for

1 permanent residence or otherwise residing in the
2 United States under color of law;

3 (2) a resident of the State involved;

4 (3) not incarcerated; and

5 (4) not eligible for coverage under parts A and
6 B (or C) of the Medicare program under title XVIII
7 of the Social Security Act.

8 **SEC. 103. STATE EXCHANGE INCENTIVES.**

9 (a) GRANTS.—The Secretary may award grants, pur-
10 suant to subsection (b), to States for the development, im-
11 plementation, and evaluation of certified State Exchanges
12 and to provide more options and choice for individuals
13 purchasing health insurance coverage.

14 (b) ONE-TIME INCREASE IN MEDICAID PAYMENT.—
15 In the case of a State awarded a grant to carry out this
16 section, the total amount of the Federal payment deter-
17 mined for the State under section 1913 of the Social Secu-
18 rity Act (as amended by section 201 of this Act) for fiscal
19 year 2011 shall be increased by an amount equal to 1 per-
20 cent of the total amount of payments made to the State
21 for fiscal year 2010 under section 1903(a) of the Social
22 Security Act (42 U.S.C. 1396b(a)) for purposes of car-
23 rying out a grant awarded under this section. Amounts
24 paid to a State pursuant to this subsection shall remain
25 available until expended.

1 **PART 2—FAIR TAX TREATMENT FOR ALL**
2 **AMERICANS TO AFFORD HEALTH CARE**

3 **SEC. 111. REFERENCE.**

4 Except as otherwise expressly provided, whenever in
5 this part an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion, the reference shall be considered to be made to a
8 section or other provision of the Internal Revenue Code
9 of 1986.

10 **Subpart A—Refundable and Advanceable Credit for**
11 **Certain Health Insurance Coverage**

12 **SEC. 112. REFUNDABLE AND ADVANCEABLE CREDIT FOR**
13 **CERTAIN HEALTH INSURANCE COVERAGE.**

14 (a) **ADVANCEABLE CREDIT.**—Subpart A of part IV
15 of subchapter A of chapter 1 (relating to nonrefundable
16 personal credits) is amended by adding at the end the fol-
17 lowing new section:

18 **“SEC. 25E. QUALIFIED HEALTH INSURANCE CREDIT.**

19 “(a) **ALLOWANCE OF CREDIT.**—In the case of an in-
20 dividual, there shall be allowed as a credit against the tax
21 imposed by this chapter for the taxable year the sum of
22 the monthly limitations determined under subsection (b)
23 for the taxpayer and the taxpayer’s spouse and depend-
24 ents.

25 “(b) **MONTHLY LIMITATION.**—

1 “(1) IN GENERAL.—The monthly limitation for
2 each month during the taxable year for an eligible
3 individual is $\frac{1}{12}$ th of—

4 “(A) the applicable adult amount, in the
5 case that the eligible individual is the taxpayer
6 or the taxpayer’s spouse,

7 “(B) the applicable adult amount, in the
8 case that the eligible individual is an adult de-
9 pendent, and

10 “(C) the applicable child amount, in the
11 case that the eligible individual is a child de-
12 pendent.

13 “(2) LIMITATION ON AGGREGATE AMOUNT.—
14 Notwithstanding paragraph (1), the aggregate
15 monthly limitations for the taxpayer and the tax-
16 payer’s spouse and dependents for any month shall
17 not exceed $\frac{1}{12}$ th of the applicable aggregate amount.

18 “(3) NO CREDIT FOR INELIGIBLE MONTHS.—
19 With respect to any individual, the monthly limita-
20 tion shall be zero for any month for which such indi-
21 vidual is not an eligible individual.

22 “(4) APPLICABLE AMOUNT.—

23 “(A) IN GENERAL.—For purposes of this
24 section—

1 “(i) APPLICABLE ADULT AMOUNT.—

2 The applicable adult amount is \$2,300.

3 “(ii) APPLICABLE CHILD AMOUNT.—

4 The applicable child amount is \$1,700.

5 “(iii) APPLICABLE AGGREGATE

6 AMOUNT.—The applicable aggregate

7 amount is \$5,700.

8 “(B) COST-OF-LIVING ADJUSTMENTS.—

9 “(i) IN GENERAL.—In the case of any

10 taxable year beginning in a calendar year

11 after 2011, each dollar amount contained

12 in subparagraph (A) shall be increased by

13 an amount equal to such dollar amount

14 multiplied by the blended cost-of-living ad-

15 justment.

16 “(ii) BLENDED COST-OF-LIVING AD-

17 JUSTMENT.—For purposes of clause (i),

18 the blended cost-of-living adjustment

19 means one-half of the sum of—

20 “(I) the cost-of-living adjustment

21 determined under section 1(f)(3) for

22 the calendar year in which the taxable

23 year begins by substituting ‘calendar

24 year 2010’ for ‘calendar year 1992’ in

25 subparagraph (B) thereof, plus

1 “(II) the cost-of-living adjust-
2 ment determined under section
3 213(d)(10)(B)(ii) for the calendar
4 year in which the taxable year begins
5 by substituting ‘2010’ for ‘1996’ in
6 subclause (II) thereof.

7 “(iii) ROUNDING.—Any increase de-
8 termined under clause (i) shall be rounded
9 to the nearest multiple of \$10.

10 “(C) REVENUE NEUTRALITY ADJUST-
11 MENTS.—

12 “(i) IN GENERAL.—In the case of any
13 taxable year beginning in a calendar year
14 after 2011, each dollar amount contained
15 in subparagraph (A), as adjusted under
16 subparagraph (B), shall be further ad-
17 justed (if necessary) such that the aggre-
18 gate of such dollar amounts allowed as
19 credits under this section for such taxable
20 year equals but does not exceed the total
21 increase in revenues in the Treasury re-
22 sulting from the amendments made by sec-
23 tions 124 and 201 of the Roadmap for
24 America’s Future Act of 2010 for such
25 taxable year as estimated by the Secretary.

1 “(ii) DATE OF ADJUSTMENT.—The
2 Secretary shall announce the adjustments
3 for any taxable year under this subpara-
4 graph not later than the preceding October
5 1.

6 “(c) LIMITATION BASED ON AMOUNT OF TAX.—In
7 the case of a taxable year to which section 26(a)(2) does
8 not apply, the credit allowed under subsection (a) for the
9 taxable year shall not exceed the excess of—

10 “(1) the sum of the regular tax liability (as de-
11 fined in section 26(b)) plus the tax imposed by sec-
12 tion 55, over

13 “(2) the sum of the credits allowable under this
14 subpart (other than this section) and section 27 for
15 the taxable year.

16 “(d) EXCESS CREDIT REFUNDABLE TO CERTAIN
17 TAX-FAVORED ACCOUNTS.—If—

18 “(1) the credit which would be allowable under
19 subsection (a) if only qualified refund eligible health
20 insurance were taken into account under this sec-
21 tion, exceeds

22 “(2) the limitation imposed by section 26 or
23 subsection (c) for the taxable year,
24 such excess shall be paid by the Secretary into the des-
25 ignated account of the taxpayer.

1 “(e) ELIGIBLE INDIVIDUAL.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘eligible indi-
4 vidual’ means, with respect to any month, an indi-
5 vidual who—

6 “(A) is the taxpayer, the taxpayer’s
7 spouse, or the taxpayer’s dependent, and

8 “(B) is covered under qualified health in-
9 surance as of the 1st day of such month.

10 “(2) MEDICARE COVERAGE, MEDICAID DIS-
11 ABILITY COVERAGE, AND MILITARY COVERAGE.—
12 The term ‘eligible individual’ shall not include any
13 individual who for any month is—

14 “(A) entitled to benefits under part A of
15 title XVIII of the Social Security Act or en-
16 rolled under part B of such title, and the indi-
17 vidual is not a participant or beneficiary in a
18 group health plan or large group health plan
19 that is a primary plan (as defined in section
20 1862(b)(2)(A) of such Act),

21 “(B) enrolled by reason of disability in the
22 program under title XIX of such Act, or

23 “(C) entitled to benefits under chapter 55
24 of title 10, United States Code, including under

1 the TRICARE program (as defined in section
2 1072(7) of such title).

3 “(3) IDENTIFICATION REQUIREMENTS.—The
4 term ‘eligible individual’ shall not include any indi-
5 vidual for any month unless the policy number asso-
6 ciated with the qualified health insurance and the
7 TIN of each eligible individual covered under such
8 health insurance for such month are included on the
9 return of tax for the taxable year in which such
10 month occurs.

11 “(4) PRISONERS.—The term ‘eligible individual’
12 shall not include any individual for a month if, as
13 of the first day of such month, such individual is im-
14 prisoned under Federal, State, or local authority.

15 “(5) ALIENS.—The term ‘eligible individual’
16 shall not include any alien individual who is not a
17 lawful permanent resident of the United States.

18 “(f) HEALTH INSURANCE.—For purposes of this sec-
19 tion—

20 “(1) QUALIFIED HEALTH INSURANCE.—The
21 term ‘qualified health insurance’ means any insur-
22 ance constituting medical care which (as determined
23 under regulations prescribed by the Secretary)—

24 “(A) has a reasonable annual and lifetime
25 benefit maximum, and

1 “(B) provides coverage for inpatient and
2 outpatient care, emergency benefits, and physi-
3 cian care.

4 Such term does not include any insurance substan-
5 tially all of the coverage of which is coverage de-
6 scribed in section 223(c)(1)(B).

7 “(2) QUALIFIED REFUND ELIGIBLE HEALTH
8 INSURANCE.—The term ‘qualified refund eligible
9 health insurance’ means any qualified health insur-
10 ance which is coverage under a group health plan
11 (as defined in section 5000(b)(1)).

12 “(g) DESIGNATED ACCOUNTS.—

13 “(1) DESIGNATED ACCOUNT.—For purposes of
14 this section, the term ‘designated account’ means
15 any specified account established and maintained by
16 the provider of the taxpayer’s qualified refund eligi-
17 ble health insurance—

18 “(A) which is designated by the taxpayer
19 (in such form and manner as the Secretary may
20 provide) on the return of tax for the taxable
21 year,

22 “(B) which, under the terms of the ac-
23 count, accepts the payment described in sub-
24 section (d) on behalf of the taxpayer, and

1 “(C) which, under such terms, provides for
2 the payment of expenses by the taxpayer or on
3 behalf of such taxpayer by the trustee or custo-
4 dian of such account, including payment to
5 such provider.

6 “(2) SPECIFIED ACCOUNT.—For purposes of
7 this paragraph, the term ‘specified account’ means—

8 “(A) any health savings account under sec-
9 tion 223 or Archer MSA under section 220, or

10 “(B) any health insurance reserve account.

11 “(3) HEALTH INSURANCE RESERVE AC-
12 COUNT.—For purposes of this subsection, the term
13 ‘health insurance reserve account’ means a trust cre-
14 ated or organized in the United States as a health
15 insurance reserve account exclusively for the purpose
16 of paying the qualified medical expenses (within the
17 meaning of section 223(d)(2)) of the account bene-
18 ficiary (as defined in section 223(d)(3)), but only if
19 the written governing instrument creating the trust
20 meets the requirements described in subparagraphs
21 (B), (C), (D), and (E) of section 223(d)(1). Rules
22 similar to the rules under subsections (g) and (h) of
23 section 408 shall apply for purposes of this subpara-
24 graph.

1 “(4) TREATMENT OF PAYMENT.—Any payment
2 under subsection (d) to a designated account shall
3 not be taken into account with respect to any dollar
4 limitation which applies with respect to contributions
5 to such account (or to tax benefits with respect to
6 such contributions).

7 “(h) OTHER DEFINITIONS.—For purposes of this
8 section—

9 “(1) DEPENDENT.—The term ‘dependent’ has
10 the meaning given such term by section 152 (deter-
11 mined without regard to subsections (b)(1), (b)(2),
12 and (d)(1)(B) thereof). An individual who is a child
13 to whom section 152(e) applies shall be treated as
14 a dependent of the custodial parent for a coverage
15 month unless the custodial and noncustodial parent
16 provide otherwise.

17 “(2) ADULT.—The term ‘adult’ means an indi-
18 vidual who is not a child.

19 “(3) CHILD.—The term ‘child’ means a quali-
20 fying child (as defined in section 152(e)).

21 “(i) SPECIAL RULES.—

22 “(1) COORDINATION WITH MEDICAL DEDUC-
23 TION.—Any amount paid by a taxpayer for insur-
24 ance which is taken into account for purposes of de-
25 termining the credit allowable to the taxpayer under

1 subsection (a) shall not be taken into account in
2 computing the amount allowable to the taxpayer as
3 a deduction under section 213(a) or 162(l).

4 “(2) COORDINATION WITH HEALTH CARE TAX
5 CREDIT.—No credit shall be allowed under sub-
6 section (a) for any taxable year to any taxpayer and
7 qualifying family members with respect to whom a
8 credit under section 35 is allowed for such taxable
9 year.

10 “(3) DENIAL OF CREDIT TO DEPENDENTS.—No
11 credit shall be allowed under this section to any indi-
12 vidual with respect to whom a deduction under sec-
13 tion 151 is allowable to another taxpayer for a tax-
14 able year beginning in the calendar year in which
15 such individual’s taxable year begins.

16 “(4) MARRIED COUPLES MUST FILE JOINT RE-
17 TURN.—

18 “(A) IN GENERAL.—If the taxpayer is
19 married at the close of the taxable year, the
20 credit shall be allowed under subsection (a) only
21 if the taxpayer and his spouse file a joint return
22 for the taxable year.

23 “(B) MARITAL STATUS; CERTAIN MARRIED
24 INDIVIDUALS LIVING APART.—Rules similar to
25 the rules of paragraphs (3) and (4) of section

1 21(e) shall apply for purposes of this para-
2 graph.

3 “(5) VERIFICATION OF COVERAGE, ETC.—No
4 credit shall be allowed under this section with re-
5 spect to any individual unless such individual’s cov-
6 erage (and such related information as the Secretary
7 may require) is verified in such manner as the Sec-
8 retary may prescribe.

9 “(6) INSURANCE WHICH COVERS OTHER INDI-
10 VIDUALS; TREATMENT OF PAYMENTS.—Rules similar
11 to the rules of paragraphs (7) and (8) of section
12 35(g) shall apply for purposes of this section.

13 “(j) COORDINATION WITH ADVANCE PAYMENTS.—

14 “(1) REDUCTION IN CREDIT FOR ADVANCE PAY-
15 MENTS.—With respect to any taxable year, the
16 amount which would (but for this subsection) be al-
17 lowed as a credit to the taxpayer under subsection
18 (a) shall be reduced (but not below zero) by the ag-
19 gregate amount paid on behalf of such taxpayer
20 under section 7527A for months beginning in such
21 taxable year.

22 “(2) RECAPTURE OF EXCESS ADVANCE PAY-
23 MENTS.—If the aggregate amount paid on behalf of
24 the taxpayer under section 7527A for months begin-
25 ning in the taxable year exceeds the sum of the

1 monthly limitations determined under subsection (b)
2 for the taxpayer and the taxpayer's spouse and de-
3 pendents for such months, then the tax imposed by
4 this chapter for such taxable year shall be increased
5 by the sum of—

6 “(A) such excess, plus

7 “(B) interest on such excess determined at
8 the underpayment rate established under sec-
9 tion 6621 for the period from the date of the
10 payment under section 7527A to the date such
11 excess is paid.

12 For purposes of subparagraph (B), an equal part of
13 the aggregate amount of the excess shall be deemed
14 to be attributable to payments made under section
15 7527A on the first day of each month beginning in
16 such taxable year, unless the taxpayer establishes
17 the date on which each such payment giving rise to
18 such excess occurred, in which case subparagraph
19 (B) shall be applied with respect to each date so es-
20 tablished. The Secretary may rescind or waive all or
21 any portion of any amount imposed by reason of
22 subparagraph (B) if such excess was not the result
23 of the actions of the taxpayer.”.

1 (b) ADVANCE PAYMENT OF CREDIT.—Chapter 77
2 (relating to miscellaneous provisions) is amended by in-
3 serting after section 7527 the following new section:

4 **“SEC. 7527A. ADVANCE PAYMENT OF CREDIT FOR QUALI-**
5 **FIED REFUND ELIGIBLE HEALTH INSUR-**
6 **ANCE.**

7 “(a) IN GENERAL.—The Secretary shall establish a
8 program for making payments on behalf of individuals to
9 providers of qualified refund eligible health insurance (as
10 defined in section 25E(f)(2)) for such individuals.

11 “(b) LIMITATION.—The Secretary may make pay-
12 ments under subsection (a) only to the extent that the Sec-
13 retary determines that the amount of such payments made
14 on behalf of any taxpayer for any month does not exceed
15 the sum of the monthly limitations determined under sec-
16 tion 25E(b) for the taxpayer and taxpayer’s spouse and
17 dependents for such month.”.

18 (c) INFORMATION REPORTING.—

19 (1) IN GENERAL.—Subpart B of part III of
20 subchapter A of chapter 61 (relating to information
21 concerning transactions with other persons) is
22 amended by inserting after section 6050W the fol-
23 lowing new section:

1 **“SEC. 6050X. RETURNS RELATING TO CREDIT FOR QUALI-**
2 **FIED REFUND ELIGIBLE HEALTH INSUR-**
3 **ANCE.**

4 “(a) REQUIREMENT OF REPORTING.—Every person
5 who is entitled to receive payments for any month of any
6 calendar year under section 7527A (relating to advance
7 payment of credit for qualified refund eligible health insur-
8 ance) with respect to any individual shall, at such time
9 as the Secretary may prescribe, make the return described
10 in subsection (b) with respect to each such individual.

11 “(b) FORM AND MANNER OF RETURNS.—A return
12 is described in this subsection if such return—

13 “(1) is in such form as the Secretary may pre-
14 scribe, and

15 “(2) contains, with respect to each individual
16 referred to in subsection (a)—

17 “(A) the name, address, and TIN of each
18 such individual,

19 “(B) the months for which amounts pay-
20 ments under section 7527A were received,

21 “(C) the amount of each such payment,

22 “(D) the type of insurance coverage pro-
23 vided by such person with respect to such indi-
24 vidual and the policy number associated with
25 such coverage,

1 “(E) the name, address, and TIN of the
2 spouse and each dependent covered under such
3 coverage, and

4 “(F) such other information as the Sec-
5 retary may prescribe.

6 “(c) STATEMENTS TO BE FURNISHED TO INDIVID-
7 UALS WITH RESPECT TO WHOM INFORMATION IS RE-
8 QUIRED.—Every person required to make a return under
9 subsection (a) shall furnish to each individual whose name
10 is required to be set forth in such return a written state-
11 ment showing—

12 “(1) the contact information of the person re-
13 quired to make such return, and

14 “(2) the information required to be shown on
15 the return with respect to such individual.

16 The written statement required under the preceding sen-
17 tence shall be furnished on or before January 31 of the
18 year following the calendar year for which the return
19 under subsection (a) is required to be made.

20 “(d) RETURNS WHICH WOULD BE REQUIRED TO BE
21 MADE BY 2 OR MORE PERSONS.—Except to the extent
22 provided in regulations prescribed by the Secretary, in the
23 case of any amount received by any person on behalf of
24 another person, only the person first receiving such

1 amount shall be required to make the return under sub-
2 section (a).”.

3 (2) ASSESSABLE PENALTIES.—

4 (A) Subparagraph (B) of section
5 6724(d)(1) (relating to definitions) is amended
6 by striking “or” at the end of clause (xxii), by
7 striking “and” at the end of clause (xxiii) and
8 inserting “or”, and by inserting after clause
9 (xxiii) the following new clause:

10 “(xxiv) section 6050X (relating to re-
11 turns relating to credit for qualified refund
12 eligible health insurance), and”.

13 (B) Paragraph (2) of section 6724(d) is
14 amended by striking “or” at the end of sub-
15 paragraph (EE), by striking the period at the
16 end of subparagraph (FF) and inserting “, or”
17 and by inserting after subparagraph (FF) the
18 following new subparagraph:

19 “(GG) section 6050X (relating to returns
20 relating to credit for qualified refund eligible
21 health insurance).”.

22 (d) CONFORMING AMENDMENTS.—

23 (1) Paragraph (2) of section 1324(b) of title
24 31, United States Code, is amended by inserting
25 “25E,” before “35.”.

1 (2)(A) Section 24(b)(3)(B) is amended by in-
2 serting “, 25E,” after “25D”.

3 (B) Section 25(e)(1)(C)(ii) is amended by in-
4 serting “25E,” after “25D,”.

5 (C) Section 25B(g)(2) is amended by inserting
6 “25E,” after “25D,”.

7 (D) Section 26(a)(1) is amended by inserting
8 “25E,” after “25D,”.

9 (E) Section 30(c)(2)(B)(ii) is amended by in-
10 serting “25E,” after “25D,”.

11 (F) Section 30D(c)(2)(B)(ii) is amended by
12 striking “and 25D” and inserting “, 25D, and
13 25E”.

14 (G) Section 904(i) is amended by inserting
15 “25E,” after “25B,”.

16 (H) Section 1400C(d)(2) is amended by insert-
17 ing “25E,” after “25D,”.

18 (3) The table of sections for subpart A of part
19 IV of subchapter A of chapter 1 is amended by in-
20 serting after the item relating to section 25D the
21 following new item:

“Sec. 25E. Qualified health insurance credit.”

22 (4) The table of sections for chapter 77 is
23 amended by inserting after the item relating to sec-
24 tion 7527 the following new item:

“Sec. 7527A. Advance payment of credit for qualified refund eligible health insurance.”.

1 (5) The table of sections for subpart B of part
2 III of subchapter A of chapter 61 is amended by
3 adding at the end the following new item:

“Sec. 6050X. Returns relating to credit for qualified refund eligible health insurance.”.

4 (e) **EFFECTIVE DATE.**—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2010.

7 **SEC. 113. REQUIRING EMPLOYER TRANSPARENCY ABOUT**
8 **EMPLOYEE BENEFITS.**

9 (a) **IN GENERAL.**—Section 6051(a) (relating to W–
10 2 requirement) is amended by striking “and” at the end
11 of paragraph (12), by striking the period at the end of
12 paragraph (13) and inserting “, and” and by inserting
13 after paragraph (13) the following new paragraph:

14 “(14) the aggregate cost (within the meaning of
15 section 4980B(f)(4)) for coverage of the employee
16 under an accident or health plan which is excludable
17 from the gross income of the employee under section
18 106(a) (other than coverage under a health flexible
19 spending arrangement).”.

20 (b) **EFFECTIVE DATE.**—The amendments made by
21 this section shall apply to statements for calendar years
22 beginning after 2010.

1 **SEC. 114. CHANGES TO EXISTING TAX PREFERENCES FOR**
2 **MEDICAL COVERAGE, ETC., FOR INDIVIDUALS**
3 **ELIGIBLE FOR QUALIFIED HEALTH INSUR-**
4 **ANCE CREDIT.**

5 (a) EXCLUSION FOR CONTRIBUTIONS BY EMPLOYER
6 TO ACCIDENT AND HEALTH PLANS.—

7 (1) IN GENERAL.—Section 106 (relating to con-
8 tributions by employer to accident and health plans)
9 is amended by adding at the end the following new
10 subsection:

11 “(f) NO EXCLUSION FOR INDIVIDUALS ELIGIBLE
12 FOR QUALIFIED HEALTH INSURANCE CREDIT.—Sub-
13 section (a) shall not apply with respect to any employer-
14 provided coverage under an accident or health plan for any
15 individual for any month unless such individual is de-
16 scribed in paragraph (2) or (5) of section 25E(e) for such
17 month. The amount includible in gross income by reason
18 of this subsection shall be determined under rules similar
19 to the rules of section 4980B(f)(4).”.

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 106(b)(1) is amended—

22 (i) by inserting “gross income does
23 not include” before “amounts contrib-
24 uted”, and

1 (ii) by striking “shall be treated as
2 employer-provided coverage for medical ex-
3 penses under an accident or health plan”.

4 (B) Section 106(d)(1) is amended—

5 (i) by inserting “gross income does
6 not include” before “amounts contrib-
7 uted”, and

8 (ii) by striking “shall be treated as
9 employer-provided coverage for medical ex-
10 penses under an accident or health plan”.

11 (b) AMOUNTS RECEIVED UNDER ACCIDENT AND
12 HEALTH PLANS.—Section 105 (relating to amounts re-
13 ceived under accident and health plans) is amended by
14 adding at the end the following new subsection:

15 “(k) NO EXCLUSION FOR INDIVIDUALS ELIGIBLE
16 FOR QUALIFIED HEALTH INSURANCE CREDIT.—Sub-
17 section (b) shall not apply with respect to any employer-
18 provided coverage under an accident or health plan for any
19 individual for any month unless such individual is de-
20 scribed in paragraph (2) or (5) of section 25E(e) for such
21 month.”.

22 (c) SPECIAL RULES FOR HEALTH INSURANCE COSTS
23 OF SELF-EMPLOYED INDIVIDUALS.—Subsection (l) of sec-
24 tion 162 (relating to special rules for health insurance

1 costs of self-employed individuals) is amended by adding
2 at the end the following new paragraph:

3 “(6) NO DEDUCTION TO INDIVIDUALS ELIGIBLE
4 FOR QUALIFIED HEALTH INSURANCE.—Paragraph
5 (1) shall not apply for any individual for any month
6 unless such individual is described in paragraph (2)
7 or (5) of section 25E(e) for such month.”.

8 (d) EARNED INCOME CREDIT UNAFFECTED BY RE-
9 PEALED EXCLUSIONS.—Subparagraph (B) of section
10 32(c)(2) is amended by redesignating clauses (v) and (vi)
11 as clauses (vi) and (vii), respectively, and by inserting
12 after clause (iv) the following new clause:

13 “(v) the earned income of an indi-
14 vidual shall be computed without regard to
15 sections 105(k) and 106(f),”.

16 (e) MODIFICATION OF DEDUCTION FOR MEDICAL
17 EXPENSES.—Subsection (d) of section 213 is amended by
18 adding at the end the following new paragraph:

19 “(12) PREMIUMS FOR QUALIFIED HEALTH IN-
20 SURANCE.—The term ‘medical care’ does not include
21 any amount paid as a premium for coverage of an
22 eligible individual (as defined in section 25E(e))
23 under qualified health insurance (as defined in sec-
24 tion 25E(f)) for any month.”.

1 (f) REPORTING REQUIREMENT.—Subsection (a) of
2 section 6051 is amended by striking “and” at the end of
3 paragraph (12), by striking the period at the end of para-
4 graph (13) and inserting “and”, and by inserting after
5 paragraph (13) the following new paragraph:

6 “(14) the total amount of employer-provided
7 coverage under an accident or health plan which is
8 includible in gross income by reason of sections
9 105(k) and 106(f).”.

10 (g) RETIRED PUBLIC SAFETY OFFICERS.—Section
11 402(l)(4)(D) is amended by adding at the end the fol-
12 lowing: “Such term shall not include any premium for cov-
13 erage by an accident or health insurance plan for any
14 month unless such individual is described in paragraph (2)
15 or (5) of section 25E(e) for such month.”.

16 (h) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2010.

19 (i) NO INTENT TO ENCOURAGE STATE TAXATION OF
20 HEALTH BENEFITS.—No intent to encourage any State
21 to treat health benefits as taxable income for the purpose
22 of increasing State income taxes may be inferred from the
23 provisions of, and amendments made by, this section.

1 **Subpart B—Health Savings Accounts**

2 **SEC. 121. IMPROVEMENTS TO HEALTH SAVINGS ACCOUNTS.**

3 (a) INCREASE IN MONTHLY CONTRIBUTION LIMIT.—

4 (1) IN GENERAL.—Paragraph (2) of section
5 223(b) (relating to limitations) is amended to read
6 as follows:

7 “(2) MONTHLY LIMITATION.—

8 “(A) IN GENERAL.—In the case of an eligi-
9 ble individual who has coverage under a high
10 deductible health plan, the monthly limitation
11 for any month of such coverage is $\frac{1}{12}$ of the
12 sum of—

13 “(i) the greater of—

14 “(I) the sum of the annual de-
15 ductible and the other annual out-of-
16 pocket expenses (other than for pre-
17 miums) required to be paid under the
18 plan by the eligible individual for cov-
19 ered benefits, or

20 “(II) in the case of an eligible in-
21 dividual who has—

22 “(aa) self-only coverage
23 under a high deductible health
24 plan as of the first day of such
25 month, \$3,000, or

1 “(bb) family coverage under
2 a high deductible health plan as
3 of the first day of such month,
4 \$5,950, and

5 “(ii) in the case of an eligible indi-
6 vidual who has coverage under a qualified
7 long-term care insurance contract (as de-
8 fined in section 7702B(b)), the lesser of—

9 “(I) the annual premium for
10 such coverage, or

11 “(II) \$1,000.

12 “(B) SPECIAL RULES RELATING TO OUT-
13 OF-POCKET EXPENSES.—

14 “(i) REDUCTION FOR SEPARATE
15 PLAN.—The annual out-of-pocket expenses
16 taken into account under subparagraph
17 (A)(i)(I) with respect to any eligible indi-
18 vidual shall be reduced by any out-of-pock-
19 et expense payable under a separate plan
20 covering the individual.

21 “(ii) SECRETARIAL AUTHORITY.—The
22 Secretary may by regulations provide that
23 annual out-of-pocket expenses will not be
24 taken into account under subparagraph
25 (A)(i)(I) to the extent that there is only a

1 remote likelihood that such amounts will
2 be required to be paid.”.

3 (2) APPLICATION OF SPECIAL RULES FOR MAR-
4 RIED INDIVIDUALS.—Paragraph (5) of section
5 223(b) (relating to limitations) is amended to read
6 as follows:

7 “(5) SPECIAL RULES FOR MARRIED INDIVID-
8 UALS.—

9 “(A) IN GENERAL.—In the case of individ-
10 uals who are married to each other and who are
11 both eligible individuals, the limitation under
12 paragraph (1) for each spouse shall be equal to
13 the spouse’s applicable share of the combined
14 marital limit.

15 “(B) COMBINED MARITAL LIMIT.—For
16 purposes of subparagraph (A), the combined
17 marital limit is the excess (if any) of—

18 “(i) the lesser of—

19 “(I) subject to subparagraph (C),
20 the sum of the limitations computed
21 separately under paragraph (1) for
22 each spouse (including any additional
23 contribution amount under paragraph
24 (3)), or

1 “(II) the dollar amount in effect
2 under subsection (c)(2)(A)(ii)(II),
3 over

4 “(ii) the aggregate amount paid to
5 Archer MSAs of such spouses for the tax-
6 able year.

7 “(C) SPECIAL RULE WHERE BOTH
8 SPOUSES HAVE FAMILY COVERAGE.—For pur-
9 poses of subparagraph (B)(i)(I), if either spouse
10 has family coverage which covers both spouses,
11 both spouses shall be treated as having only
12 such coverage (and if both spouses each have
13 such coverage under different plans, shall be
14 treated as having only family coverage with the
15 plan with respect to which the lowest amount is
16 determined under paragraph (2)(A)(i)(I)).

17 “(D) APPLICABLE SHARE.—For purposes
18 of subparagraph (A), a spouse’s applicable
19 share is $\frac{1}{2}$ of the combined marital limit unless
20 both spouses agree on a different division.

21 “(E) COUPLES NOT MARRIED ENTIRE
22 YEAR.—The Secretary shall prescribe rules for
23 the application of this paragraph in the case of
24 any taxable year for which the individuals were
25 not married to each other during all months in-

1 cluded in the taxable year, including rules
2 which allow individuals in appropriate cases to
3 take into account coverage prior to marriage in
4 computing the combined marital limit for pur-
5 poses of this paragraph.”.

6 (3) SELF-ONLY COVERAGE.—Paragraph (4) of
7 section 223(c) (relating to definitions and special
8 rules) is amended to read as follows:

9 “(4) COVERAGE.—

10 “(A) FAMILY COVERAGE.—The term ‘fam-
11 ily coverage’ means any coverage other than
12 self-only coverage.

13 “(B) SELF-ONLY COVERAGE.—If more
14 than 1 individual is covered by a high deduct-
15 ible health plan but only 1 of the individuals is
16 an eligible individual, the coverage shall be
17 treated as self-only coverage.”.

18 (4) CONFORMING AMENDMENTS.—

19 (A) Section 223(b)(3)(A) is amended by
20 striking “subparagraphs (A) and (B) of”.

21 (B) Section 223(c)(2)(A) is amended—

22 (i) by striking “\$1,000” in clause
23 (i)(I) and inserting “\$1,150”, and

24 (ii) by striking “\$5,000” in clause
25 (ii)(I) and inserting “\$5,800”.

1 (C) Section 223(d)(1)(A)(ii)(I) is amended
2 by striking “subsection (b)(2)(B)(ii)” and in-
3 serting “subsection (c)(2)(A)(ii)(II)”.

4 (D) Clause (ii) of section 223(c)(2)(D) is
5 amended to read as follows:

6 “(ii) CERTAIN ITEMS DISREGARDED
7 IN COMPUTING MONTHLY LIMITATION.—
8 Such plan’s annual deductible, and such
9 plan’s annual out-of-pocket limitation, for
10 services provided outside of such network
11 shall not be taken into account for pur-
12 poses of subsection (b)(2).”

13 (E) Subsection (g) of section 223 is
14 amended to read as follows:

15 “(g) COST-OF-LIVING ADJUSTMENTS.—

16 “(1) IN GENERAL.—In the case of any taxable
17 year beginning in a calendar year after 2010, each
18 dollar amount contained in subsections (b)(2)(A)
19 and (c)(2)(A) shall be increased by an amount equal
20 to such dollar amount multiplied by the blended
21 cost-of-living adjustment.

22 “(2) BLENDED COST-OF-LIVING ADJUST-
23 MENT.—For purposes of paragraph (1), the blended
24 cost-of-living adjustment means one-half of the sum
25 of—

1 “(A) the cost-of-living adjustment deter-
2 mined under section 1(f)(3) for the calendar
3 year in which the taxable year begins by sub-
4 stituting ‘calendar year 2008’ for ‘calendar year
5 1992’ in subparagraph (B) thereof, plus

6 “(B) the cost-of-living adjustment deter-
7 mined under section 213(d)(10)(B)(ii) for the
8 calendar year in which the taxable year begins
9 by substituting ‘2008’ for ‘1996’ in subclause
10 (II) thereof.

11 “(3) ROUNDING.—Any increase determined
12 under paragraph (2) shall be rounded to the nearest
13 multiple of \$50.”.

14 (b) USE OF ACCOUNT FOR INDIVIDUAL HIGH DE-
15 DUCTIBLE HEALTH PLAN PREMIUMS.—Section
16 223(d)(2)(C) (relating to exceptions) is amended by strik-
17 ing “or” at the end of clause (iii), by striking the period
18 at the end of clause (iv) and inserting “, or”, and by add-
19 ing at the end the following new clause:

20 “(v) a high deductible health plan, but
21 only if—

22 “(I) the plan is not a group
23 health plan (as defined in section
24 5000(b)(1) without regard to section
25 5000(d)), and

1 “(II) the expenses are for cov-
2 erage for a month with respect to
3 which the account beneficiary is an el-
4 igible individual by reason of the cov-
5 erage under the plan.

6 For purposes of clause (v), an arrangement
7 which constitutes individual health insurance
8 shall not be treated as a group health plan, not-
9 withstanding that an employer or employee or-
10 ganization negotiates the cost of benefits of
11 such arrangement.”.

12 (c) SAFE HARBOR FOR ABSENCE OF MAINTENANCE
13 OF CHRONIC DISEASE.—Section 223(c)(2)(C) (safe har-
14 bor for absence of preventive care deductible) is amend-
15 ed—

16 (1) by inserting “or maintenance of chronic dis-
17 ease, or both” after “the Secretary”, and

18 (2) by inserting “OR MAINTENANCE OF CHRON-
19 IC DISEASE” in the heading after “PREVENTIVE
20 CARE”.

21 (d) CLARIFICATION OF TREATMENT OF CAPITATED
22 PRIMARY CARE PAYMENTS AS AMOUNTS PAID FOR MED-
23 ICAL CARE.—Section 213(d) (relating to definitions) is
24 amended by adding at the end the following new para-
25 graph:

1 “(12) TREATMENT OF CAPITATED PRIMARY
2 CARE PAYMENTS.—Capitated primary care payments
3 shall be treated as amounts paid for medical care.”.

4 (e) SPECIAL RULE FOR INDIVIDUALS ELIGIBLE FOR
5 VETERANS OR INDIAN HEALTH BENEFITS.—Section
6 223(e)(1) (defining eligible individual) is amended by add-
7 ing at the end the following new subparagraph:

8 “(C) SPECIAL RULE FOR INDIVIDUALS ELI-
9 GIBLE FOR VETERANS OR INDIAN HEALTH BEN-
10 EFITS.—For purposes of subparagraph (A)(ii),
11 an individual shall not be treated as covered
12 under a health plan described in such subpara-
13 graph merely because the individual receives
14 periodic hospital care or medical services under
15 any law administered by the Secretary of Vet-
16 erans Affairs or the Bureau of Indian Affairs.”.

17 (f) CERTAIN PHYSICIAN FEES TO BE TREATED AS
18 MEDICAL CARE.—

19 (1) IN GENERAL.—Section 213(d), is amended
20 by adding at the end the following new paragraph:

21 “(12) PRE-PAID PHYSICIAN FEES.—The term
22 ‘medical care’ shall include amounts paid by patients
23 to their primary physician in advance for the right
24 to receive medical services on an as-needed basis.”.

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

4 (g) EFFECTIVE DATES.—

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

9 (2) CAPITATED PRIMARY CARE PAYMENTS.—
10 The amendment made by subsection (d) shall apply
11 to amounts paid before, on, or after the date of the
12 enactment of this Act.

13 **SEC. 122. EXCEPTION TO REQUIREMENT FOR EMPLOYERS**
14 **TO MAKE COMPARABLE HEALTH SAVINGS AC-**
15 **COUNT CONTRIBUTIONS.**

16 (a) GREATER EMPLOYER-PROVIDED CONTRIBU-
17 TIONS TO HSAS FOR CHRONICALLY ILL EMPLOYEES
18 TREATED AS MEETING COMPARABILITY REQUIRE-
19 MENTS.—Subsection (b) of section 4980G (relating to fail-
20 ure of employer to make comparable health savings ac-
21 count contributions) is amended to read as follows:

22 “(b) RULES AND REQUIREMENTS.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), rules and requirements similar to the

1 rules and requirements of section 4980E shall apply
2 for purposes of this section.

3 “(2) TREATMENT OF EMPLOYER-PROVIDED
4 CONTRIBUTIONS TO HSAS FOR CHRONICALLY ILL
5 EMPLOYEES.—For purposes of this section—

6 “(A) IN GENERAL.—Any contribution by
7 an employer to a health savings account of an
8 employee who is (or the spouse or any depend-
9 ent of the employee who is) a chronically ill in-
10 dividual in an amount which is greater than a
11 contribution to a health savings account of a
12 comparable participating employee who is not a
13 chronically ill individual shall not fail to be con-
14 sidered a comparable contribution.

15 “(B) NONDISCRIMINATION REQUIRE-
16 MENT.—Subparagraph (A) shall not apply un-
17 less the excess employer contributions described
18 in subparagraph (A) are the same for all chron-
19 ically ill individuals who are similarly situated.

20 “(C) CHRONICALLY ILL INDIVIDUAL.—For
21 purposes of this paragraph, the term ‘chron-
22 ically ill individual’ means any individual whose
23 qualified medical expenses for any taxable year
24 are more than 50 percent greater than the av-

1 erage qualified medical expenses of all employ-
 2 ees of the employer for such year.”.

3 (b) EFFECTIVE DATE.—The amendment made by
 4 this section shall apply to taxable years beginning after
 5 December 31, 2010.

6 **Subtitle B—Health Plan Choice;**
 7 **Small Business Health Fairness;**
 8 **Tax Amendments**

9 **SEC. 131. COOPERATIVE GOVERNING OF INDIVIDUAL**
 10 **HEALTH INSURANCE COVERAGE.**

11 (a) IN GENERAL.—Title XXVII of the Public Health
 12 Service Act (42 U.S.C. 300gg et seq.) is amended by add-
 13 ing at the end the following new part:

14 **“PART D—COOPERATIVE GOVERNING OF**
 15 **INDIVIDUAL HEALTH INSURANCE COVERAGE**

16 **“SEC. 2795. DEFINITIONS.**

17 “In this part:

18 “(1) PRIMARY STATE.—The term ‘primary
 19 State’ means, with respect to individual health insur-
 20 ance coverage offered by a health insurance issuer,
 21 the State designated by the issuer as the State
 22 whose covered laws shall govern the health insurance
 23 issuer in the sale of such coverage under this part.
 24 An issuer, with respect to a particular policy, may
 25 only designate one such State as its primary State

1 with respect to all such coverage it offers. Such an
2 issuer may not change the designated primary State
3 with respect to individual health insurance coverage
4 once the policy is issued, except that such a change
5 may be made upon renewal of the policy. With re-
6 spect to such designated State, the issuer is deemed
7 to be doing business in that State.

8 “(2) SECONDARY STATE.—The term ‘secondary
9 State’ means, with respect to individual health insur-
10 ance coverage offered by a health insurance issuer,
11 any State that is not the primary State. In the case
12 of a health insurance issuer that is selling a policy
13 in, or to a resident of, a secondary State, the issuer
14 is deemed to be doing business in that secondary
15 State.

16 “(3) HEALTH INSURANCE ISSUER.—The term
17 ‘health insurance issuer’ has the meaning given such
18 term in section 2791(b)(2), except that such an
19 issuer must be licensed in the primary State and be
20 qualified to sell individual health insurance coverage
21 in that State.

22 “(4) INDIVIDUAL HEALTH INSURANCE COV-
23 ERAGE.—The term ‘individual health insurance cov-
24 erage’ means health insurance coverage offered in

1 the individual market, as defined in section
2 2791(e)(1).

3 “(5) APPLICABLE STATE AUTHORITY.—The
4 term ‘applicable State authority’ means, with respect
5 to a health insurance issuer in a State, the State in-
6 surance commissioner or official or officials des-
7 ignated by the State to enforce the requirements of
8 this title for the State with respect to the issuer.

9 “(6) HAZARDOUS FINANCIAL CONDITION.—The
10 term ‘hazardous financial condition’ means that,
11 based on its present or reasonably anticipated finan-
12 cial condition, a health insurance issuer is unlikely
13 to be able—

14 “(A) to meet obligations to policyholders
15 with respect to known claims and reasonably
16 anticipated claims; or

17 “(B) to pay other obligations in the normal
18 course of business.

19 “(7) COVERED LAWS.—

20 “(A) IN GENERAL.—The term ‘covered
21 laws’ means the laws, rules, regulations, agree-
22 ments, and orders governing the insurance busi-
23 ness pertaining to—

24 “(i) individual health insurance cov-
25 erage issued by a health insurance issuer;

1 “(ii) the offer, sale, rating (including
2 medical underwriting), renewal, and
3 issuance of individual health insurance cov-
4 erage to an individual;

5 “(iii) the provision to an individual in
6 relation to individual health insurance cov-
7 erage of health care and insurance related
8 services;

9 “(iv) the provision to an individual in
10 relation to individual health insurance cov-
11 erage of management, operations, and in-
12 vestment activities of a health insurance
13 issuer; and

14 “(v) the provision to an individual in
15 relation to individual health insurance cov-
16 erage of loss control and claims adminis-
17 tration for a health insurance issuer with
18 respect to liability for which the issuer pro-
19 vides insurance.

20 “(B) EXCEPTION.—Such term does not in-
21 clude any law, rule, regulation, agreement, or
22 order governing the use of care or cost manage-
23 ment techniques, including any requirement re-
24 lated to provider contracting, network access or

1 adequacy, health care data collection, or quality
2 assurance.

3 “(8) STATE.—The term ‘State’ means the 50
4 States and includes the District of Columbia, Puerto
5 Rico, the Virgin Islands, Guam, American Samoa,
6 and the Northern Mariana Islands.

7 “(9) UNFAIR CLAIMS SETTLEMENT PRAC-
8 TICES.—The term ‘unfair claims settlement prac-
9 tices’ means only the following practices:

10 “(A) Knowingly misrepresenting to claim-
11 ants and insured individuals relevant facts or
12 policy provisions relating to coverage at issue.

13 “(B) Failing to acknowledge with reason-
14 able promptness pertinent communications with
15 respect to claims arising under policies.

16 “(C) Failing to adopt and implement rea-
17 sonable standards for the prompt investigation
18 and settlement of claims arising under policies.

19 “(D) Failing to effectuate prompt, fair,
20 and equitable settlement of claims submitted in
21 which liability has become reasonably clear.

22 “(E) Refusing to pay claims without con-
23 ducting a reasonable investigation.

24 “(F) Failing to affirm or deny coverage of
25 claims within a reasonable period of time after

1 having completed an investigation related to
2 those claims.

3 “(G) A pattern or practice of compelling
4 insured individuals or their beneficiaries to in-
5 stitute suits to recover amounts due under its
6 policies by offering substantially less than the
7 amounts ultimately recovered in suits brought
8 by them.

9 “(H) A pattern or practice of attempting
10 to settle or settling claims for less than the
11 amount that a reasonable person would believe
12 the insured individual or his or her beneficiary
13 was entitled by reference to written or printed
14 advertising material accompanying or made
15 part of an application.

16 “(I) Attempting to settle or settling claims
17 on the basis of an application that was materi-
18 ally altered without notice to, or knowledge or
19 consent of, the insured.

20 “(J) Failing to provide forms necessary to
21 present claims within 15 calendar days of a re-
22 quests with reasonable explanations regarding
23 their use.

1 “(K) Attempting to cancel a policy in less
2 time than that prescribed in the policy or by the
3 law of the primary State.

4 “(10) FRAUD AND ABUSE.—The term ‘fraud
5 and abuse’ means an act or omission committed by
6 a person who, knowingly and with intent to defraud,
7 commits, or conceals any material information con-
8 cerning, one or more of the following:

9 “(A) Presenting, causing to be presented
10 or preparing with knowledge or belief that it
11 will be presented to or by an insurer, a rein-
12 surer, broker or its agent, false information as
13 part of, in support of or concerning a fact ma-
14 terial to one or more of the following:

15 “(i) An application for the issuance or
16 renewal of an insurance policy or reinsur-
17 ance contract.

18 “(ii) The rating of an insurance policy
19 or reinsurance contract.

20 “(iii) A claim for payment or benefit
21 pursuant to an insurance policy or reinsur-
22 ance contract.

23 “(iv) Premiums paid on an insurance
24 policy or reinsurance contract.

1 “(v) Payments made in accordance
2 with the terms of an insurance policy or
3 reinsurance contract.

4 “(vi) A document filed with the com-
5 missioner or the chief insurance regulatory
6 official of another jurisdiction.

7 “(vii) The financial condition of an in-
8 surer or reinsurer.

9 “(viii) The formation, acquisition,
10 merger, reconsolidation, dissolution or
11 withdrawal from one or more lines of in-
12 surance or reinsurance in all or part of a
13 State by an insurer or reinsurer.

14 “(ix) The issuance of written evidence
15 of insurance.

16 “(x) The reinstatement of an insur-
17 ance policy.

18 “(B) Solicitation or acceptance of new or
19 renewal insurance risks on behalf of an insurer
20 reinsurer or other person engaged in the busi-
21 ness of insurance by a person who knows or
22 should know that the insurer or other person
23 responsible for the risk is insolvent at the time
24 of the transaction.

1 “(C) Transaction of the business of insur-
2 ance in violation of laws requiring a license, cer-
3 tificate of authority or other legal authority for
4 the transaction of the business of insurance.

5 “(D) Attempt to commit, aiding or abet-
6 ting in the commission of, or conspiracy to com-
7 mit the acts or omissions specified in this para-
8 graph.

9 **“SEC. 2796. APPLICATION OF LAW.**

10 “(a) IN GENERAL.—The covered laws of the primary
11 State shall apply to individual health insurance coverage
12 offered by a health insurance issuer in the primary State
13 and in any secondary State, but only if the coverage and
14 issuer comply with the conditions of this section with re-
15 spect to the offering of coverage in any secondary State.

16 “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-
17 ONDARY STATE.—Except as provided in this section, a
18 health insurance issuer with respect to its offer, sale, rat-
19 ing (including medical underwriting), renewal, and
20 issuance of individual health insurance coverage in any
21 secondary State is exempt from any covered laws of the
22 secondary State (and any rules, regulations, agreements,
23 or orders sought or issued by such State under or related
24 to such covered laws) to the extent that such laws would—

1 “(1) make unlawful, or regulate, directly or in-
2 directly, the operation of the health insurance issuer
3 operating in the secondary State, except that any
4 secondary State may require such an issuer—

5 “(A) to pay, on a nondiscriminatory basis,
6 applicable premium and other taxes (including
7 high risk pool assessments) which are levied on
8 insurers and surplus lines insurers, brokers, or
9 policyholders under the laws of the State;

10 “(B) to register with and designate the
11 State insurance commissioner as its agent solely
12 for the purpose of receiving service of legal doc-
13 uments or process;

14 “(C) to submit to an examination of its fi-
15 nancial condition by the State insurance com-
16 missioner in any State in which the issuer is
17 doing business to determine the issuer’s finan-
18 cial condition, if—

19 “(i) the State insurance commissioner
20 of the primary State has not done an ex-
21 amination within the period recommended
22 by the National Association of Insurance
23 Commissioners; and

24 “(ii) any such examination is con-
25 ducted in accordance with the examiners’

1 handbook of the National Association of
2 Insurance Commissioners and is coordi-
3 nated to avoid unjustified duplication and
4 unjustified repetition;

5 “(D) to comply with a lawful order
6 issued—

7 “(i) in a delinquency proceeding com-
8 menced by the State insurance commis-
9 sioner if there has been a finding of finan-
10 cial impairment under subparagraph (C);

11 or

12 “(ii) in a voluntary dissolution pro-
13 ceeding;

14 “(E) to comply with an injunction issued
15 by a court of competent jurisdiction, upon a pe-
16 tition by the State insurance commissioner al-
17 leging that the issuer is in hazardous financial
18 condition;

19 “(F) to participate, on a nondiscriminatory
20 basis, in any insurance insolvency guaranty as-
21 sociation or similar association to which a
22 health insurance issuer in the State is required
23 to belong;

24 “(G) to comply with any State law regard-
25 ing fraud and abuse (as defined in section

1 2795(10)), except that if the State seeks an in-
2 junction regarding the conduct described in this
3 subparagraph, such injunction must be obtained
4 from a court of competent jurisdiction;

5 “(H) to comply with any State law regard-
6 ing unfair claims settlement practices (as de-
7 fined in section 2795(9)); or

8 “(I) to comply with the applicable require-
9 ments for independent review under section
10 2798 with respect to coverage offered in the
11 State;

12 “(2) require any individual health insurance
13 coverage issued by the issuer to be countersigned by
14 an insurance agent or broker residing in that Sec-
15 ondary State; or

16 “(3) otherwise discriminate against the issuer
17 issuing insurance in both the primary State and in
18 any secondary State.

19 “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A
20 health insurance issuer shall provide the following notice,
21 in 12-point bold type, in any insurance coverage offered
22 in a secondary State under this part by such a health in-
23 surance issuer and at renewal of the policy, with the 5
24 blank spaces therein being appropriately filled with the
25 name of the health insurance issuer, the name of primary

1 State, the name of the secondary State, the name of the
2 secondary State, and the name of the secondary State, re-
3 spectively, for the coverage concerned:

4 **“Notice**

5 **“This policy is issued by _____ and is**
6 **governed by the laws and regulations of the**
7 **State of _____, and it has met all the laws**
8 **of that State as determined by that State’s De-**
9 **partment of Insurance. This policy may be**
10 **less expensive than others because it is not**
11 **subject to all of the insurance laws and regu-**
12 **lations of the State of _____, including**
13 **coverage of some services or benefits man-**
14 **dated by the law of the State of _____. Ad-**
15 **ditionally, this policy is not subject to all of**
16 **the consumer protection laws or restrictions**
17 **on rate changes of the State of _____. As**
18 **with all insurance products, before pur-**
19 **chasing this policy, you should carefully re-**
20 **view the policy and determine what health**
21 **care services the policy covers and what bene-**
22 **fits it provides, including any exclusions, limi-**
23 **tations, or conditions for such services or ben-**
24 **efits.’.**

1 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
2 AND PREMIUM INCREASES.—

3 “(1) IN GENERAL.—For purposes of this sec-
4 tion, a health insurance issuer that provides indi-
5 vidual health insurance coverage to an individual
6 under this part in a primary or secondary State may
7 not upon renewal—

8 “(A) move or reclassify the individual in-
9 sured under the health insurance coverage from
10 the class such individual is in at the time of
11 issue of the contract based on the health-status
12 related factors of the individual; or

13 “(B) increase the premiums assessed the
14 individual for such coverage based on a health
15 status-related factor or change of a health sta-
16 tus-related factor or the past or prospective
17 claim experience of the insured individual.

18 “(2) CONSTRUCTION.—Nothing in paragraph
19 (1) shall be construed to prohibit a health insurance
20 issuer—

21 “(A) from terminating or discontinuing
22 coverage or a class of coverage in accordance
23 with subsections (b) and (c) of section 2742;

1 “(B) from raising premium rates for all
2 policy holders within a class based on claims ex-
3 perience;

4 “(C) from changing premiums or offering
5 discounted premiums to individuals who engage
6 in wellness activities at intervals prescribed by
7 the issuer, if such premium changes or incen-
8 tives—

9 “(i) are disclosed to the consumer in
10 the insurance contract;

11 “(ii) are based on specific wellness ac-
12 tivities that are not applicable to all indi-
13 viduals; and

14 “(iii) are not obtainable by all individ-
15 uals to whom coverage is offered;

16 “(D) from reinstating lapsed coverage; or

17 “(E) from retroactively adjusting the rates
18 charged an insured individual if the initial rates
19 were set based on material misrepresentation by
20 the individual at the time of issue.

21 “(e) PRIOR OFFERING OF POLICY IN PRIMARY
22 STATE.—A health insurance issuer may not offer for sale
23 individual health insurance coverage in a secondary State
24 unless that coverage is currently offered for sale in the
25 primary State.

1 “(f) LICENSING OF AGENTS OR BROKERS FOR
2 HEALTH INSURANCE ISSUERS.—Any State may require
3 that a person acting, or offering to act, as an agent or
4 broker for a health insurance issuer with respect to the
5 offering of individual health insurance coverage obtain a
6 license from that State, with commissions or other com-
7 pensation subject to the provisions of the laws of that
8 State, except that a State may not impose any qualifica-
9 tion or requirement which discriminates against a non-
10 resident agent or broker.

11 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
12 SURANCE COMMISSIONER.—Each health insurance issuer
13 issuing individual health insurance coverage in both pri-
14 mary and secondary States shall submit—

15 “(1) to the insurance commissioner of each
16 State in which it intends to offer such coverage, be-
17 fore it may offer individual health insurance cov-
18 erage in such State—

19 “(A) a copy of the plan of operation or fea-
20 sibility study or any similar statement of the
21 policy being offered and its coverage (which
22 shall include the name of its primary State and
23 its principal place of business);

24 “(B) written notice of any change in its
25 designation of its primary State; and

1 “(C) written notice from the issuer of the
2 issuer’s compliance with all the laws of the pri-
3 mary State; and

4 “(2) to the insurance commissioner of each sec-
5 ondary State in which it offers individual health in-
6 surance coverage, a copy of the issuer’s quarterly fi-
7 nancial statement submitted to the primary State,
8 which statement shall be certified by an independent
9 public accountant and contain a statement of opin-
10 ion on loss and loss adjustment expense reserves
11 made by—

12 “(A) a member of the American Academy
13 of Actuaries; or

14 “(B) a qualified loss reserve specialist.

15 “(h) POWER OF COURTS TO ENJOIN CONDUCT.—
16 Nothing in this section shall be construed to affect the
17 authority of any Federal or State court to enjoin—

18 “(1) the solicitation or sale of individual health
19 insurance coverage by a health insurance issuer to
20 any person or group who is not eligible for such in-
21 surance; or

22 “(2) the solicitation or sale of individual health
23 insurance coverage that violates the requirements of
24 the law of a secondary State which are described in

1 subparagraphs (A) through (H) of section
2 2796(b)(1).

3 “(i) POWER OF SECONDARY STATES TO TAKE AD-
4 MINISTRATIVE ACTION.—Nothing in this section shall be
5 construed to affect the authority of any State to enjoin
6 conduct in violation of that State’s laws described in sec-
7 tion 2796(b)(1).

8 “(j) STATE POWERS TO ENFORCE STATE LAWS.—

9 “(1) IN GENERAL.—Subject to the provisions of
10 subsection (b)(1)(G) (relating to injunctions) and
11 paragraph (2), nothing in this section shall be con-
12 strued to affect the authority of any State to make
13 use of any of its powers to enforce the laws of such
14 State with respect to which a health insurance issuer
15 is not exempt under subsection (b).

16 “(2) COURTS OF COMPETENT JURISDICTION.—

17 If a State seeks an injunction regarding the conduct
18 described in paragraphs (1) and (2) of subsection
19 (h), such injunction must be obtained from a Fed-
20 eral or State court of competent jurisdiction.

21 “(k) STATES’ AUTHORITY TO SUE.—Nothing in this
22 section shall affect the authority of any State to bring ac-
23 tion in any Federal or State court.

24 “(l) GENERALLY APPLICABLE LAWS.—Nothing in
25 this section shall be construed to affect the applicability

1 of State laws generally applicable to persons or corpora-
2 tions.

3 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO
4 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a
5 health insurance issuer is offering coverage in a primary
6 State that does not accommodate residents of secondary
7 States or does not provide a working mechanism for resi-
8 dents of a secondary State, and the issuer is offering cov-
9 erage under this part in such secondary State which has
10 not adopted a qualified high risk pool as its acceptable
11 alternative mechanism (as defined in section 2744(c)(2)),
12 the issuer shall, with respect to any individual health in-
13 surance coverage offered in a secondary State under this
14 part, comply with the guaranteed availability requirements
15 for eligible individuals in section 2741.

16 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
17 **BEFORE ISSUER MAY SELL INTO SECONDARY**
18 **STATES.**

19 “A health insurance issuer may not offer, sell, or
20 issue individual health insurance coverage in a secondary
21 State if the State insurance commissioner does not use
22 a risk-based capital formula for the determination of cap-
23 ital and surplus requirements for all health insurance
24 issuers.

1 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
2 **DURES.**

3 “(a) **RIGHT TO EXTERNAL APPEAL.**—A health insur-
4 ance issuer may not offer, sell, or issue individual health
5 insurance coverage in a secondary State under the provi-
6 sions of this title unless—

7 “(1) both the secondary State and the primary
8 State have legislation or regulations in place estab-
9 lishing an independent review process for individuals
10 who are covered by individual health insurance cov-
11 erage, or

12 “(2) in any case in which the requirements of
13 subparagraph (A) are not met with respect to the ei-
14 ther of such States, the issuer provides an inde-
15 pendent review mechanism substantially identical (as
16 determined by the applicable State authority of such
17 State) to that prescribed in the ‘Health Carrier Ex-
18 ternal Review Model Act’ of the National Association
19 of Insurance Commissioners for all individuals who
20 purchase insurance coverage under the terms of this
21 part, except that, under such mechanism, the review
22 is conducted by an independent medical reviewer, or
23 a panel of such reviewers, with respect to whom the
24 requirements of subsection (b) are met.

1 “(b) QUALIFICATIONS OF INDEPENDENT MEDICAL
2 REVIEWERS.—In the case of any independent review
3 mechanism referred to in subsection (a)(2)—

4 “(1) IN GENERAL.—In referring a denial of a
5 claim to an independent medical reviewer, or to any
6 panel of such reviewers, to conduct independent
7 medical review, the issuer shall ensure that—

8 “(A) each independent medical reviewer
9 meets the qualifications described in paragraphs
10 (2) and (3);

11 “(B) with respect to each review, each re-
12 viewer meets the requirements of paragraph (4)
13 and the reviewer, or at least 1 reviewer on the
14 panel, meets the requirements described in
15 paragraph (5); and

16 “(C) compensation provided by the issuer
17 to each reviewer is consistent with paragraph
18 (6).

19 “(2) LICENSURE AND EXPERTISE.—Each inde-
20 pendent medical reviewer shall be a physician
21 (allopathic or osteopathic) or health care profes-
22 sional who—

23 “(A) is appropriately credentialed or li-
24 censed in 1 or more States to deliver health
25 care services; and

1 “(B) typically treats the condition, makes
2 the diagnosis, or provides the type of treatment
3 under review.

4 “(3) INDEPENDENCE.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), each independent medical reviewer
7 in a case shall—

8 “(i) not be a related party (as defined
9 in paragraph (7));

10 “(ii) not have a material familial, fi-
11 nancial, or professional relationship with
12 such a party; and

13 “(iii) not otherwise have a conflict of
14 interest with such a party (as determined
15 under regulations).

16 “(B) EXCEPTION.—Nothing in subpara-
17 graph (A) shall be construed to—

18 “(i) prohibit an individual, solely on
19 the basis of affiliation with the issuer,
20 from serving as an independent medical re-
21 viewer if—

22 “(I) a non-affiliated individual is
23 not reasonably available;

1 “(II) the affiliated individual is
2 not involved in the provision of items
3 or services in the case under review;

4 “(III) the fact of such an affili-
5 ation is disclosed to the issuer and the
6 enrollee (or authorized representative)
7 and neither party objects; and

8 “(IV) the affiliated individual is
9 not an employee of the issuer and
10 does not provide services exclusively or
11 primarily to or on behalf of the issuer;

12 “(ii) prohibit an individual who has
13 staff privileges at the institution where the
14 treatment involved takes place from serv-
15 ing as an independent medical reviewer
16 merely on the basis of such affiliation if
17 the affiliation is disclosed to the issuer and
18 the enrollee (or authorized representative),
19 and neither party objects; or

20 “(iii) prohibit receipt of compensation
21 by an independent medical reviewer from
22 an entity if the compensation is provided
23 consistent with paragraph (6).

24 “(4) PRACTICING HEALTH CARE PROFESSIONAL
25 IN SAME FIELD.—

1 “(A) IN GENERAL.—In a case involving
2 treatment, or the provision of items or serv-
3 ices—

4 “(i) by a physician, a reviewer shall be
5 a practicing physician (allopathic or osteo-
6 pathic) of the same or similar specialty, as
7 a physician who, acting within the appro-
8 priate scope of practice within the State in
9 which the service is provided or rendered,
10 typically treats the condition, makes the
11 diagnosis, or provides the type of treat-
12 ment under review; or

13 “(ii) by a non-physician health care
14 professional, the reviewer, or at least 1
15 member of the review panel, shall be a
16 practicing non-physician health care pro-
17 fessional of the same or similar specialty
18 as the non-physician health care profes-
19 sional who, acting within the appropriate
20 scope of practice within the State in which
21 the service is provided or rendered, typi-
22 cally treats the condition, makes the diag-
23 nosis, or provides the type of treatment
24 under review.

1 “(B) PRACTICING DEFINED.—For pur-
2 poses of this paragraph, the term ‘practicing’
3 means, with respect to an individual who is a
4 physician or other health care professional, that
5 the individual provides health care services to
6 individual patients on average at least 2 days
7 per week.

8 “(5) PEDIATRIC EXPERTISE.—In the case of an
9 external review relating to a child, a reviewer shall
10 have expertise under paragraph (2) in pediatrics.

11 “(6) LIMITATIONS ON REVIEWER COMPENSA-
12 TION.—Compensation provided by the issuer to an
13 independent medical reviewer in connection with a
14 review under this section shall—

15 “(A) not exceed a reasonable level; and

16 “(B) not be contingent on the decision ren-
17 dered by the reviewer.

18 “(7) RELATED PARTY DEFINED.—For purposes
19 of this section, the term ‘related party’ means, with
20 respect to a denial of a claim under a coverage relat-
21 ing to an enrollee, any of the following:

22 “(A) The issuer involved, or any fiduciary,
23 officer, director, or employee of the issuer.

24 “(B) The enrollee (or authorized represent-
25 ative).

1 “(C) The health care professional that pro-
2 vides the items or services involved in the de-
3 nial.

4 “(D) The institution at which the items or
5 services (or treatment) involved in the denial
6 are provided.

7 “(E) The manufacturer of any drug or
8 other item that is included in the items or serv-
9 ices involved in the denial.

10 “(F) Any other party determined under
11 any regulations to have a substantial interest in
12 the denial involved.

13 “(8) DEFINITIONS.—For purposes of this sub-
14 section:

15 “(A) ENROLLEE.—The term ‘enrollee’
16 means, with respect to health insurance cov-
17 erage offered by a health insurance issuer, an
18 individual enrolled with the issuer to receive
19 such coverage.

20 “(B) HEALTH CARE PROFESSIONAL.—The
21 term ‘health care professional’ means an indi-
22 vidual who is licensed, accredited, or certified
23 under State law to provide specified health care
24 services and who is operating within the scope
25 of such licensure, accreditation, or certification.

1 **“SEC. 2799. ENFORCEMENT.**

2 “(a) IN GENERAL.—Subject to subsection (b), with
3 respect to specific individual health insurance coverage the
4 primary State for such coverage has sole jurisdiction to
5 enforce the primary State’s covered laws in the primary
6 State and any secondary State.

7 “(b) SECONDARY STATE’S AUTHORITY.—Nothing in
8 subsection (a) shall be construed to affect the authority
9 of a secondary State to enforce its laws as set forth in
10 the exception specified in section 2796(b)(1).

11 “(c) COURT INTERPRETATION.—In reviewing action
12 initiated by the applicable secondary State authority, the
13 court of competent jurisdiction shall apply the covered
14 laws of the primary State.

15 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case
16 of individual health insurance coverage offered in a sec-
17 ondary State that fails to comply with the covered laws
18 of the primary State, the applicable State authority of the
19 secondary State may notify the applicable State authority
20 of the primary State.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to individual health insurance
23 coverage offered, issued, or sold after the date that is one
24 year after the date of the enactment of this Act.

25 (c) GAO ONGOING STUDY AND REPORTS.—

1 (1) STUDY.—The Comptroller General of the
2 United States shall conduct an ongoing study con-
3 cerning the effect of the amendment made by sub-
4 section (a) on—

5 (A) the number of uninsured and under-in-
6 sured;

7 (B) the availability and cost of health in-
8 surance policies for individuals with pre-existing
9 medical conditions;

10 (C) the availability and cost of health in-
11 surance policies generally;

12 (D) the elimination or reduction of dif-
13 ferent types of benefits under health insurance
14 policies offered in different States; and

15 (E) cases of fraud or abuse relating to
16 health insurance coverage offered under such
17 amendment and the resolution of such cases.

18 (2) ANNUAL REPORTS.—The Comptroller Gen-
19 eral shall submit to Congress an annual report, after
20 the end of each of the 5 years following the effective
21 date of the amendment made by subsection (a), on
22 the ongoing study conducted under paragraph (1).

23 (d) SEVERABILITY.—If any provision of this subtitle
24 or the application of such provision to any person or cir-
25 cumstance is held to be unconstitutional, the remainder

1 of this subtitle and the application of the provisions of
2 such to any other person or circumstance shall not be af-
3 fected.

4 **SEC. 132. SMALL BUSINESS HEALTH FAIRNESS.**

5 (a) RULES GOVERNING ASSOCIATION HEALTH
6 PLANS.—

7 (1) IN GENERAL.—Subtitle B of title I of the
8 Employee Retirement Income Security Act of 1974
9 is amended by adding after part 7 the following new
10 part:

11 **“PART 8—RULES GOVERNING ASSOCIATION**
12 **HEALTH PLANS**

13 **“SEC. 801. ASSOCIATION HEALTH PLANS.**

14 “(a) IN GENERAL.—For purposes of this part, the
15 term ‘association health plan’ means a group health plan
16 whose sponsor is (or is deemed under this part to be) de-
17 scribed in subsection (b).

18 “(b) SPONSORSHIP.—The sponsor of a group health
19 plan is described in this subsection if such sponsor—

20 “(1) is organized and maintained in good faith,
21 with a constitution and bylaws specifically stating its
22 purpose and providing for periodic meetings on at
23 least an annual basis, as a bona fide trade associa-
24 tion, a bona fide industry association (including a
25 rural electric cooperative association or a rural tele-

1 phone cooperative association), a bona fide profes-
2 sional association, or a bona fide chamber of com-
3 merce (or similar bona fide business association, in-
4 cluding a corporation or similar organization that
5 operates on a cooperative basis (within the meaning
6 of section 1381 of the Internal Revenue Code of
7 1986)), for substantial purposes other than that of
8 obtaining or providing medical care;

9 “(2) is established as a permanent entity which
10 receives the active support of its members and re-
11 quires for membership payment on a periodic basis
12 of dues or payments necessary to maintain eligibility
13 for membership in the sponsor; and

14 “(3) does not condition membership, such dues
15 or payments, or coverage under the plan on the
16 basis of health status-related factors with respect to
17 the employees of its members (or affiliated mem-
18 bers), or the dependents of such employees, and does
19 not condition such dues or payments on the basis of
20 group health plan participation.

21 Any sponsor consisting of an association of entities which
22 meet the requirements of paragraphs (1), (2), and (3)
23 shall be deemed to be a sponsor described in this sub-
24 section.

1 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
2 **PLANS.**

3 “(a) IN GENERAL.—The applicable authority shall
4 prescribe by regulation a procedure under which, subject
5 to subsection (b), the applicable authority shall certify as-
6 sociation health plans which apply for certification as
7 meeting the requirements of this part.

8 “(b) STANDARDS.—Under the procedure prescribed
9 pursuant to subsection (a), in the case of an association
10 health plan that provides at least one benefit option which
11 does not consist of health insurance coverage, the applica-
12 ble authority shall certify such plan as meeting the re-
13 quirements of this part only if the applicable authority is
14 satisfied that the applicable requirements of this part are
15 met (or, upon the date on which the plan is to commence
16 operations, will be met) with respect to the plan.

17 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
18 PLANS.—An association health plan with respect to which
19 certification under this part is in effect shall meet the ap-
20 plicable requirements of this part, effective on the date
21 of certification (or, if later, on the date on which the plan
22 is to commence operations).

23 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
24 CATION.—The applicable authority may provide by regula-
25 tion for continued certification of association health plans
26 under this part.

1 “(e) CLASS CERTIFICATION FOR FULLY INSURED
2 PLANS.—The applicable authority shall establish a class
3 certification procedure for association health plans under
4 which all benefits consist of health insurance coverage.
5 Under such procedure, the applicable authority shall pro-
6 vide for the granting of certification under this part to
7 the plans in each class of such association health plans
8 upon appropriate filing under such procedure in connec-
9 tion with plans in such class and payment of the pre-
10 scribed fee under section 807(a).

11 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
12 HEALTH PLANS.—An association health plan which offers
13 one or more benefit options which do not consist of health
14 insurance coverage may be certified under this part only
15 if such plan consists of any of the following:

16 “(1) a plan which offered such coverage on the
17 date of the enactment of this part,

18 “(2) a plan under which the sponsor does not
19 restrict membership to one or more trades and busi-
20 nesses or industries and whose eligible participating
21 employers represent a broad cross-section of trades
22 and businesses or industries, or

23 “(3) a plan whose eligible participating employ-
24 ers represent one or more trades or businesses, or
25 one or more industries, consisting of any of the fol-

1 lowing: agriculture; equipment and automobile deal-
2 erships; barbering and cosmetology; certified public
3 accounting practices; child care; construction; dance,
4 theatrical and orchestra productions; disinfecting
5 and pest control; financial services; fishing; food
6 service establishments; hospitals; labor organiza-
7 tions; logging; manufacturing (metals); mining; med-
8 ical and dental practices; medical laboratories; pro-
9 fessional consulting services; sanitary services; trans-
10 portation (local and freight); warehousing; whole-
11 saling/distributing; or any other trade or business or
12 industry which has been indicated as having average
13 or above-average risk or health claims experience by
14 reason of State rate filings, denials of coverage, pro-
15 posed premium rate levels, or other means dem-
16 onstrated by such plan in accordance with regula-
17 tions.

18 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
19 **BOARDS OF TRUSTEES.**

20 “(a) SPONSOR.—The requirements of this subsection
21 are met with respect to an association health plan if the
22 sponsor has met (or is deemed under this part to have
23 met) the requirements of section 801(b) for a continuous
24 period of not less than 3 years ending with the date of
25 the application for certification under this part.

1 “(b) BOARD OF TRUSTEES.—The requirements of
2 this subsection are met with respect to an association
3 health plan if the following requirements are met:

4 “(1) FISCAL CONTROL.—The plan is operated,
5 pursuant to a trust agreement, by a board of trust-
6 ees which has complete fiscal control over the plan
7 and which is responsible for all operations of the
8 plan.

9 “(2) RULES OF OPERATION AND FINANCIAL
10 CONTROLS.—The board of trustees has in effect
11 rules of operation and financial controls, based on a
12 3-year plan of operation, adequate to carry out the
13 terms of the plan and to meet all requirements of
14 this title applicable to the plan.

15 “(3) RULES GOVERNING RELATIONSHIP TO
16 PARTICIPATING EMPLOYERS AND TO CONTRAC-
17 TORS.—

18 “(A) BOARD MEMBERSHIP.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clauses (ii) and (iii), the members
21 of the board of trustees are individuals se-
22 lected from individuals who are the owners,
23 officers, directors, or employees of the par-
24 ticipating employers or who are partners in

1 the participating employers and actively
2 participate in the business.

3 “(ii) LIMITATION.—

4 “(I) GENERAL RULE.—Except as
5 provided in subclauses (II) and (III),
6 no such member is an owner, officer,
7 director, or employee of, or partner in,
8 a contract administrator or other
9 service provider to the plan.

10 “(II) LIMITED EXCEPTION FOR
11 PROVIDERS OF SERVICES SOLELY ON
12 BEHALF OF THE SPONSOR.—Officers
13 or employees of a sponsor which is a
14 service provider (other than a contract
15 administrator) to the plan may be
16 members of the board if they con-
17 stitute not more than 25 percent of
18 the membership of the board and they
19 do not provide services to the plan
20 other than on behalf of the sponsor.

21 “(III) TREATMENT OF PRO-
22 VIDERS OF MEDICAL CARE.—In the
23 case of a sponsor which is an associa-
24 tion whose membership consists pri-
25 marily of providers of medical care,

1 subclause (I) shall not apply in the
2 case of any service provider described
3 in subclause (I) who is a provider of
4 medical care under the plan.

5 “(iii) CERTAIN PLANS EXCLUDED.—
6 Clause (i) shall not apply to an association
7 health plan which is in existence on the
8 date of the enactment of this part.

9 “(B) SOLE AUTHORITY.—The board has
10 sole authority under the plan to approve appli-
11 cations for participation in the plan and to con-
12 tract with a service provider to administer the
13 day-to-day affairs of the plan.

14 “(c) TREATMENT OF FRANCHISE NETWORKS.—In
15 the case of a group health plan which is established and
16 maintained by a franchiser for a franchise network con-
17 sisting of its franchisees—

18 “(1) the requirements of subsection (a) and sec-
19 tion 801(a) shall be deemed met if such require-
20 ments would otherwise be met if the franchiser were
21 deemed to be the sponsor referred to in section
22 801(b), such network were deemed to be an associa-
23 tion described in section 801(b), and each franchisee
24 were deemed to be a member (of the association and
25 the sponsor) referred to in section 801(b); and

1 “(2) the requirements of section 804(a)(1) shall
2 be deemed met.

3 The Secretary may by regulation define for purposes of
4 this subsection the terms ‘franchiser’, ‘franchise network’,
5 and ‘franchisee’.

6 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
7 **MENTS.**

8 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
9 requirements of this subsection are met with respect to
10 an association health plan if, under the terms of the
11 plan—

12 “(1) each participating employer must be—

13 “(A) a member of the sponsor,

14 “(B) the sponsor, or

15 “(C) an affiliated member of the sponsor
16 with respect to which the requirements of sub-
17 section (b) are met,

18 except that, in the case of a sponsor which is a pro-
19 fessional association or other individual-based asso-
20 ciation, if at least one of the officers, directors, or
21 employees of an employer, or at least one of the in-
22 dividuals who are partners in an employer and who
23 actively participates in the business, is a member or
24 such an affiliated member of the sponsor, partici-

1 pating employers may also include such employer;
2 and

3 “(2) all individuals commencing coverage under
4 the plan after certification under this part must
5 be—

6 “(A) active or retired owners (including
7 self-employed individuals), officers, directors, or
8 employees of, or partners in, participating em-
9 ployers; or

10 “(B) the beneficiaries of individuals de-
11 scribed in subparagraph (A).

12 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
13 PLOYEES.—In the case of an association health plan in
14 existence on the date of the enactment of this part, an
15 affiliated member of the sponsor of the plan may be of-
16 fered coverage under the plan as a participating employer
17 only if—

18 “(1) the affiliated member was an affiliated
19 member on the date of certification under this part;
20 or

21 “(2) during the 12-month period preceding the
22 date of the offering of such coverage, the affiliated
23 member has not maintained or contributed to a
24 group health plan with respect to any of its employ-

1 ees who would otherwise be eligible to participate in
2 such association health plan.

3 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
4 quirements of this subsection are met with respect to an
5 association health plan if, under the terms of the plan,
6 no participating employer may provide health insurance
7 coverage in the individual market for any employee not
8 covered under the plan which is similar to the coverage
9 contemporaneously provided to employees of the employer
10 under the plan, if such exclusion of the employee from cov-
11 erage under the plan is based on a health status-related
12 factor with respect to the employee and such employee
13 would, but for such exclusion on such basis, be eligible
14 for coverage under the plan.

15 “(d) PROHIBITION OF DISCRIMINATION AGAINST
16 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-
17 PATE.—The requirements of this subsection are met with
18 respect to an association health plan if—

19 “(1) under the terms of the plan, all employers
20 meeting the preceding requirements of this section
21 are eligible to qualify as participating employers for
22 all geographically available coverage options, unless,
23 in the case of any such employer, participation or
24 contribution requirements of the type referred to in

1 section 2711 of the Public Health Service Act are
2 not met;

3 “(2) upon request, any employer eligible to par-
4 ticipate is furnished information regarding all cov-
5 erage options available under the plan; and

6 “(3) the applicable requirements of sections
7 701, 702, and 703 are met with respect to the plan.

8 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
9 **DOCUMENTS, CONTRIBUTION RATES, AND**
10 **BENEFIT OPTIONS.**

11 “(a) IN GENERAL.—The requirements of this section
12 are met with respect to an association health plan if the
13 following requirements are met:

14 “(1) CONTENTS OF GOVERNING INSTRU-
15 MENTS.—The instruments governing the plan in-
16 clude a written instrument, meeting the require-
17 ments of an instrument required under section
18 402(a)(1), which—

19 “(A) provides that the board of trustees
20 serves as the named fiduciary required for plans
21 under section 402(a)(1) and serves in the ca-
22 pacity of a plan administrator (referred to in
23 section 3(16)(A));

1 “(B) provides that the sponsor of the plan
2 is to serve as plan sponsor (referred to in sec-
3 tion 3(16)(B)); and

4 “(C) incorporates the requirements of sec-
5 tion 806.

6 “(2) CONTRIBUTION RATES MUST BE NON-
7 DISCRIMINATORY.—

8 “(A) The contribution rates for any par-
9 ticipating small employer do not vary on the
10 basis of any health status-related factor in rela-
11 tion to employees of such employer or their
12 beneficiaries and do not vary on the basis of the
13 type of business or industry in which such em-
14 ployer is engaged.

15 “(B) Nothing in this title or any other pro-
16 vision of law shall be construed to preclude an
17 association health plan, or a health insurance
18 issuer offering health insurance coverage in
19 connection with an association health plan,
20 from—

21 “(i) setting contribution rates based
22 on the claims experience of the plan; or

23 “(ii) varying contribution rates for
24 small employers in a State to the extent
25 that such rates could vary using the same

1 methodology employed in such State for
2 regulating premium rates in the small
3 group market with respect to health insur-
4 ance coverage offered in connection with
5 bona fide associations (within the meaning
6 of section 2791(d)(3) of the Public Health
7 Service Act),

8 subject to the requirements of section 702(b)
9 relating to contribution rates.

10 “(3) FLOOR FOR NUMBER OF COVERED INDI-
11 VIDUALS WITH RESPECT TO CERTAIN PLANS.—If
12 any benefit option under the plan does not consist
13 of health insurance coverage, the plan has as of the
14 beginning of the plan year not fewer than 1,000 par-
15 ticipants and beneficiaries.

16 “(4) MARKETING REQUIREMENTS.—

17 “(A) IN GENERAL.—If a benefit option
18 which consists of health insurance coverage is
19 offered under the plan, State-licensed insurance
20 agents shall be used to distribute to small em-
21 ployers coverage which does not consist of
22 health insurance coverage in a manner com-
23 parable to the manner in which such agents are
24 used to distribute health insurance coverage.

1 “(B) STATE-LICENSED INSURANCE
2 AGENTS.—For purposes of subparagraph (A),
3 the term ‘State-licensed insurance agents’
4 means one or more agents who are licensed in
5 a State and are subject to the laws of such
6 State relating to licensure, qualification, test-
7 ing, examination, and continuing education of
8 persons authorized to offer, sell, or solicit
9 health insurance coverage in such State.

10 “(5) REGULATORY REQUIREMENTS.—Such
11 other requirements as the applicable authority deter-
12 mines are necessary to carry out the purposes of this
13 part, which shall be prescribed by the applicable au-
14 thority by regulation.

15 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
16 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
17 nothing in this part or any provision of State law (as de-
18 fined in section 514(c)(1)) shall be construed to preclude
19 an association health plan, or a health insurance issuer
20 offering health insurance coverage in connection with an
21 association health plan, from exercising its sole discretion
22 in selecting the specific items and services consisting of
23 medical care to be included as benefits under such plan
24 or coverage, except (subject to section 514) in the case
25 of (1) any law to the extent that it is not preempted under

1 section 731(a)(1) with respect to matters governed by sec-
2 tion 711, 712, or 713, or (2) any law of the State with
3 which filing and approval of a policy type offered by the
4 plan was initially obtained to the extent that such law pro-
5 hibits an exclusion of a specific disease from such cov-
6 erage.

7 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
8 **FOR SOLVENCY FOR PLANS PROVIDING**
9 **HEALTH BENEFITS IN ADDITION TO HEALTH**
10 **INSURANCE COVERAGE.**

11 “(a) IN GENERAL.—The requirements of this section
12 are met with respect to an association health plan if—

13 “(1) the benefits under the plan consist solely
14 of health insurance coverage; or

15 “(2) if the plan provides any additional benefit
16 options which do not consist of health insurance cov-
17 erage, the plan—

18 “(A) establishes and maintains reserves
19 with respect to such additional benefit options,
20 in amounts recommended by the qualified actu-
21 ary, consisting of—

22 “(i) a reserve sufficient for unearned
23 contributions;

24 “(ii) a reserve sufficient for benefit li-
25 abilities which have been incurred, which

1 have not been satisfied, and for which risk
2 of loss has not yet been transferred, and
3 for expected administrative costs with re-
4 spect to such benefit liabilities;

5 “(iii) a reserve sufficient for any other
6 obligations of the plan; and

7 “(iv) a reserve sufficient for a margin
8 of error and other fluctuations, taking into
9 account the specific circumstances of the
10 plan; and

11 “(B) establishes and maintains aggregate
12 and specific excess/stop loss insurance and sol-
13 vency indemnification, with respect to such ad-
14 ditional benefit options for which risk of loss
15 has not yet been transferred, as follows:

16 “(i) The plan shall secure aggregate
17 excess/stop loss insurance for the plan with
18 an attachment point which is not greater
19 than 125 percent of expected gross annual
20 claims. The applicable authority may by
21 regulation provide for upward adjustments
22 in the amount of such percentage in speci-
23 fied circumstances in which the plan spe-
24 cifically provides for and maintains re-

1 serves in excess of the amounts required
2 under subparagraph (A).

3 “(ii) The plan shall secure specific ex-
4 cess/stop loss insurance for the plan with
5 an attachment point which is at least equal
6 to an amount recommended by the plan’s
7 qualified actuary. The applicable authority
8 may by regulation provide for adjustments
9 in the amount of such insurance in speci-
10 fied circumstances in which the plan spe-
11 cifically provides for and maintains re-
12 serves in excess of the amounts required
13 under subparagraph (A).

14 “(iii) The plan shall secure indem-
15 nification insurance for any claims which
16 the plan is unable to satisfy by reason of
17 a plan termination.

18 Any person issuing to a plan insurance described in clause
19 (i), (ii), or (iii) of subparagraph (B) shall notify the Sec-
20 retary of any failure of premium payment meriting can-
21 cellation of the policy prior to undertaking such a cancella-
22 tion. Any regulations prescribed by the applicable author-
23 ity pursuant to clause (i) or (ii) of subparagraph (B) may
24 allow for such adjustments in the required levels of excess/
25 stop loss insurance as the qualified actuary may rec-

1 commend, taking into account the specific circumstances
2 of the plan.

3 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
4 RESERVES.—In the case of any association health plan de-
5 scribed in subsection (a)(2), the requirements of this sub-
6 section are met if the plan establishes and maintains sur-
7 plus in an amount at least equal to—

8 “(1) \$500,000, or

9 “(2) such greater amount (but not greater than
10 \$2,000,000) as may be set forth in regulations pre-
11 scribed by the applicable authority, considering the
12 level of aggregate and specific excess/stop loss insur-
13 ance provided with respect to such plan and other
14 factors related to solvency risk, such as the plan’s
15 projected levels of participation or claims, the nature
16 of the plan’s liabilities, and the types of assets avail-
17 able to assure that such liabilities are met.

18 “(c) ADDITIONAL REQUIREMENTS.—In the case of
19 any association health plan described in subsection (a)(2),
20 the applicable authority may provide such additional re-
21 quirements relating to reserves, excess/stop loss insurance,
22 and indemnification insurance as the applicable authority
23 considers appropriate. Such requirements may be provided
24 by regulation with respect to any such plan or any class
25 of such plans.

1 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
2 ANCE.—The applicable authority may provide for adjust-
3 ments to the levels of reserves otherwise required under
4 subsections (a) and (b) with respect to any plan or class
5 of plans to take into account excess/stop loss insurance
6 provided with respect to such plan or plans.

7 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
8 applicable authority may permit an association health plan
9 described in subsection (a)(2) to substitute, for all or part
10 of the requirements of this section (except subsection
11 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
12 rangement, or other financial arrangement as the applica-
13 ble authority determines to be adequate to enable the plan
14 to fully meet all its financial obligations on a timely basis
15 and is otherwise no less protective of the interests of par-
16 ticipants and beneficiaries than the requirements for
17 which it is substituted. The applicable authority may take
18 into account, for purposes of this subsection, evidence pro-
19 vided by the plan or sponsor which demonstrates an as-
20 sumption of liability with respect to the plan. Such evi-
21 dence may be in the form of a contract of indemnification,
22 lien, bonding, insurance, letter of credit, recourse under
23 applicable terms of the plan in the form of assessments
24 of participating employers, security, or other financial ar-
25 rangement.

1 “(f) MEASURES TO ENSURE CONTINUED PAYMENT
2 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

3 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-
4 CIATION HEALTH PLAN FUND.—

5 “(A) IN GENERAL.—In the case of an as-
6 sociation health plan described in subsection
7 (a)(2), the requirements of this subsection are
8 met if the plan makes payments into the Asso-
9 ciation Health Plan Fund under this subpara-
10 graph when they are due. Such payments shall
11 consist of annual payments in the amount of
12 \$5,000, and, in addition to such annual pay-
13 ments, such supplemental payments as the Sec-
14 retary may determine to be necessary under
15 paragraph (2). Payments under this paragraph
16 are payable to the Fund at the time determined
17 by the Secretary. Initial payments are due in
18 advance of certification under this part. Pay-
19 ments shall continue to accrue until a plan’s as-
20 sets are distributed pursuant to a termination
21 procedure.

22 “(B) PENALTIES FOR FAILURE TO MAKE
23 PAYMENTS.—If any payment is not made by a
24 plan when it is due, a late payment charge of
25 not more than 100 percent of the payment

1 which was not timely paid shall be payable by
2 the plan to the Fund.

3 “(C) CONTINUED DUTY OF THE SEC-
4 RETARY.—The Secretary shall not cease to
5 carry out the provisions of paragraph (2) on ac-
6 count of the failure of a plan to pay any pay-
7 ment when due.

8 “(2) PAYMENTS BY SECRETARY TO CONTINUE
9 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
10 DEMNFICATION INSURANCE COVERAGE FOR CER-
11 TAIN PLANS.—In any case in which the applicable
12 authority determines that there is, or that there is
13 reason to believe that there will be: (A) a failure to
14 take necessary corrective actions under section
15 809(a) with respect to an association health plan de-
16 scribed in subsection (a)(2); or (B) a termination of
17 such a plan under section 809(b) or 810(b)(8) (and,
18 if the applicable authority is not the Secretary, cer-
19 tifies such determination to the Secretary), the Sec-
20 retary shall determine the amounts necessary to
21 make payments to an insurer (designated by the
22 Secretary) to maintain in force excess/stop loss in-
23 surance coverage or indemnification insurance cov-
24 erage for such plan, if the Secretary determines that
25 there is a reasonable expectation that, without such

1 payments, claims would not be satisfied by reason of
2 termination of such coverage. The Secretary shall, to
3 the extent provided in advance in appropriation
4 Acts, pay such amounts so determined to the insurer
5 designated by the Secretary.

6 “(3) ASSOCIATION HEALTH PLAN FUND.—

7 “(A) IN GENERAL.—There is established
8 on the books of the Treasury a fund to be
9 known as the ‘Association Health Plan Fund’.
10 The Fund shall be available for making pay-
11 ments pursuant to paragraph (2). The Fund
12 shall be credited with payments received pursu-
13 ant to paragraph (1)(A), penalties received pur-
14 suant to paragraph (1)(B); and earnings on in-
15 vestments of amounts of the Fund under sub-
16 paragraph (B).

17 “(B) INVESTMENT.—Whenever the Sec-
18 retary determines that the moneys of the fund
19 are in excess of current needs, the Secretary
20 may request the investment of such amounts as
21 the Secretary determines advisable by the Sec-
22 retary of the Treasury in obligations issued or
23 guaranteed by the United States.

24 “(g) EXCESS/STOP LOSS INSURANCE.—For purposes
25 of this section—

1 “(1) AGGREGATE EXCESS/STOP LOSS INSUR-
2 ANCE.—The term ‘aggregate excess/stop loss insur-
3 ance’ means, in connection with an association
4 health plan, a contract—

5 “(A) under which an insurer (meeting such
6 minimum standards as the applicable authority
7 may prescribe by regulation) provides for pay-
8 ment to the plan with respect to aggregate
9 claims under the plan in excess of an amount
10 or amounts specified in such contract;

11 “(B) which is guaranteed renewable; and

12 “(C) which allows for payment of pre-
13 miums by any third party on behalf of the in-
14 sured plan.

15 “(2) SPECIFIC EXCESS/STOP LOSS INSUR-
16 ANCE.—The term ‘specific excess/stop loss insur-
17 ance’ means, in connection with an association
18 health plan, a contract—

19 “(A) under which an insurer (meeting such
20 minimum standards as the applicable authority
21 may prescribe by regulation) provides for pay-
22 ment to the plan with respect to claims under
23 the plan in connection with a covered individual
24 in excess of an amount or amounts specified in

1 such contract in connection with such covered
2 individual;

3 “(B) which is guaranteed renewable; and

4 “(C) which allows for payment of pre-
5 miums by any third party on behalf of the in-
6 sured plan.

7 “(h) INDEMNIFICATION INSURANCE.—For purposes
8 of this section, the term ‘indemnification insurance’
9 means, in connection with an association health plan, a
10 contract—

11 “(1) under which an insurer (meeting such min-
12 imum standards as the applicable authority may pre-
13 scribe by regulation) provides for payment to the
14 plan with respect to claims under the plan which the
15 plan is unable to satisfy by reason of a termination
16 pursuant to section 809(b) (relating to mandatory
17 termination);

18 “(2) which is guaranteed renewable and
19 noncancellable for any reason (except as the applica-
20 ble authority may prescribe by regulation); and

21 “(3) which allows for payment of premiums by
22 any third party on behalf of the insured plan.

23 “(i) RESERVES.—For purposes of this section, the
24 term ‘reserves’ means, in connection with an association
25 health plan, plan assets which meet the fiduciary stand-

1 ards under part 4 and such additional requirements re-
2 garding liquidity as the applicable authority may prescribe
3 by regulation.

4 “(j) SOLVENCY STANDARDS WORKING GROUP.—

5 “(1) IN GENERAL.—Within 90 days after the
6 date of the enactment of this part, the applicable au-
7 thority shall establish a Solvency Standards Working
8 Group. In prescribing the initial regulations under
9 this section, the applicable authority shall take into
10 account the recommendations of such Working
11 Group.

12 “(2) MEMBERSHIP.—The Working Group shall
13 consist of not more than 15 members appointed by
14 the applicable authority. The applicable authority
15 shall include among persons invited to membership
16 on the Working Group at least one of each of the
17 following:

18 “(A) a representative of the National Asso-
19 ciation of Insurance Commissioners;

20 “(B) a representative of the American
21 Academy of Actuaries;

22 “(C) a representative of the State govern-
23 ments, or their interests;

24 “(D) a representative of existing self-in-
25 sured arrangements, or their interests;

1 “(E) a representative of associations of the
2 type referred to in section 801(b)(1), or their
3 interests; and

4 “(F) a representative of multiemployer
5 plans that are group health plans, or their in-
6 terests.

7 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
8 **LATED REQUIREMENTS.**

9 “(a) **FILING FEE.**—Under the procedure prescribed
10 pursuant to section 802(a), an association health plan
11 shall pay to the applicable authority at the time of filing
12 an application for certification under this part a filing fee
13 in the amount of \$5,000, which shall be available in the
14 case of the Secretary, to the extent provided in appropria-
15 tion Acts, for the sole purpose of administering the certifi-
16 cation procedures applicable with respect to association
17 health plans.

18 “(b) **INFORMATION TO BE INCLUDED IN APPLICA-**
19 **TION FOR CERTIFICATION.**—An application for certifi-
20 cation under this part meets the requirements of this sec-
21 tion only if it includes, in a manner and form which shall
22 be prescribed by the applicable authority by regulation, at
23 least the following information:

24 “(1) **IDENTIFYING INFORMATION.**—The names
25 and addresses of—

1 “(A) the sponsor; and

2 “(B) the members of the board of trustees
3 of the plan.

4 “(2) STATES IN WHICH PLAN INTENDS TO DO
5 BUSINESS.—The States in which participants and
6 beneficiaries under the plan are to be located and
7 the number of them expected to be located in each
8 such State.

9 “(3) BONDING REQUIREMENTS.—Evidence pro-
10 vided by the board of trustees that the bonding re-
11 quirements of section 412 will be met as of the date
12 of the application or (if later) commencement of op-
13 erations.

14 “(4) PLAN DOCUMENTS.—A copy of the docu-
15 ments governing the plan (including any bylaws and
16 trust agreements), the summary plan description,
17 and other material describing the benefits that will
18 be provided to participants and beneficiaries under
19 the plan.

20 “(5) AGREEMENTS WITH SERVICE PRO-
21 VIDERS.—A copy of any agreements between the
22 plan and contract administrators and other service
23 providers.

24 “(6) FUNDING REPORT.—In the case of asso-
25 ciation health plans providing benefits options in ad-

1 dition to health insurance coverage, a report setting
2 forth information with respect to such additional
3 benefit options determined as of a date within the
4 120-day period ending with the date of the applica-
5 tion, including the following:

6 “(A) RESERVES.—A statement, certified
7 by the board of trustees of the plan, and a
8 statement of actuarial opinion, signed by a
9 qualified actuary, that all applicable require-
10 ments of section 806 are or will be met in ac-
11 cordance with regulations which the applicable
12 authority shall prescribe.

13 “(B) ADEQUACY OF CONTRIBUTION
14 RATES.—A statement of actuarial opinion,
15 signed by a qualified actuary, which sets forth
16 a description of the extent to which contribution
17 rates are adequate to provide for the payment
18 of all obligations and the maintenance of re-
19 quired reserves under the plan for the 12-
20 month period beginning with such date within
21 such 120-day period, taking into account the
22 expected coverage and experience of the plan. If
23 the contribution rates are not fully adequate,
24 the statement of actuarial opinion shall indicate

1 the extent to which the rates are inadequate
2 and the changes needed to ensure adequacy.

3 “(C) CURRENT AND PROJECTED VALUE OF
4 ASSETS AND LIABILITIES.—A statement of ac-
5 tuarial opinion signed by a qualified actuary,
6 which sets forth the current value of the assets
7 and liabilities accumulated under the plan and
8 a projection of the assets, liabilities, income,
9 and expenses of the plan for the 12-month pe-
10 riod referred to in subparagraph (B). The in-
11 come statement shall identify separately the
12 plan’s administrative expenses and claims.

13 “(D) COSTS OF COVERAGE TO BE
14 CHARGED AND OTHER EXPENSES.—A state-
15 ment of the costs of coverage to be charged, in-
16 cluding an itemization of amounts for adminis-
17 tration, reserves, and other expenses associated
18 with the operation of the plan.

19 “(E) OTHER INFORMATION.—Any other
20 information as may be determined by the appli-
21 cable authority, by regulation, as necessary to
22 carry out the purposes of this part.

23 “(c) FILING NOTICE OF CERTIFICATION WITH
24 STATES.—A certification granted under this part to an
25 association health plan shall not be effective unless written

1 notice of such certification is filed with the applicable
2 State authority of each State in which at least 25 percent
3 of the participants and beneficiaries under the plan are
4 located. For purposes of this subsection, an individual
5 shall be considered to be located in the State in which a
6 known address of such individual is located or in which
7 such individual is employed.

8 “(d) NOTICE OF MATERIAL CHANGES.—In the case
9 of any association health plan certified under this part,
10 descriptions of material changes in any information which
11 was required to be submitted with the application for the
12 certification under this part shall be filed in such form
13 and manner as shall be prescribed by the applicable au-
14 thority by regulation. The applicable authority may re-
15 quire by regulation prior notice of material changes with
16 respect to specified matters which might serve as the basis
17 for suspension or revocation of the certification.

18 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
19 SOCIATION HEALTH PLANS.—An association health plan
20 certified under this part which provides benefit options in
21 addition to health insurance coverage for such plan year
22 shall meet the requirements of section 103 by filing an
23 annual report under such section which shall include infor-
24 mation described in subsection (b)(6) with respect to the
25 plan year and, notwithstanding section 104(a)(1)(A), shall

1 be filed with the applicable authority not later than 90
2 days after the close of the plan year (or on such later date
3 as may be prescribed by the applicable authority). The ap-
4 plicable authority may require by regulation such interim
5 reports as it considers appropriate.

6 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
7 board of trustees of each association health plan which
8 provides benefits options in addition to health insurance
9 coverage and which is applying for certification under this
10 part or is certified under this part shall engage, on behalf
11 of all participants and beneficiaries, a qualified actuary
12 who shall be responsible for the preparation of the mate-
13 rials comprising information necessary to be submitted by
14 a qualified actuary under this part. The qualified actuary
15 shall utilize such assumptions and techniques as are nec-
16 essary to enable such actuary to form an opinion as to
17 whether the contents of the matters reported under this
18 part—

19 “(1) are in the aggregate reasonably related to
20 the experience of the plan and to reasonable expecta-
21 tions; and

22 “(2) represent such actuary’s best estimate of
23 anticipated experience under the plan.

24 The opinion by the qualified actuary shall be made with
25 respect to, and shall be made a part of, the annual report.

1 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
2 **MINATION.**

3 “Except as provided in section 809(b), an association
4 health plan which is or has been certified under this part
5 may terminate (upon or at any time after cessation of ac-
6 cruals in benefit liabilities) only if the board of trustees,
7 not less than 60 days before the proposed termination
8 date—

9 “(1) provides to the participants and bene-
10 ficiaries a written notice of intent to terminate stat-
11 ing that such termination is intended and the pro-
12 posed termination date;

13 “(2) develops a plan for winding up the affairs
14 of the plan in connection with such termination in
15 a manner which will result in timely payment of all
16 benefits for which the plan is obligated; and

17 “(3) submits such plan in writing to the appli-
18 cable authority.

19 Actions required under this section shall be taken in such
20 form and manner as may be prescribed by the applicable
21 authority by regulation.

22 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
23 **NATION.**

24 “(a) ACTIONS TO AVOID DEPLETION OF RE-
25 SERVES.—An association health plan which is certified
26 under this part and which provides benefits other than

1 health insurance coverage shall continue to meet the re-
2 quirements of section 806, irrespective of whether such
3 certification continues in effect. The board of trustees of
4 such plan shall determine quarterly whether the require-
5 ments of section 806 are met. In any case in which the
6 board determines that there is reason to believe that there
7 is or will be a failure to meet such requirements, or the
8 applicable authority makes such a determination and so
9 notifies the board, the board shall immediately notify the
10 qualified actuary engaged by the plan, and such actuary
11 shall, not later than the end of the next following month,
12 make such recommendations to the board for corrective
13 action as the actuary determines necessary to ensure com-
14 pliance with section 806. Not later than 30 days after re-
15 ceiving from the actuary recommendations for corrective
16 actions, the board shall notify the applicable authority (in
17 such form and manner as the applicable authority may
18 prescribe by regulation) of such recommendations of the
19 actuary for corrective action, together with a description
20 of the actions (if any) that the board has taken or plans
21 to take in response to such recommendations. The board
22 shall thereafter report to the applicable authority, in such
23 form and frequency as the applicable authority may speci-
24 fy to the board, regarding corrective action taken by the
25 board until the requirements of section 806 are met.

1 “(b) MANDATORY TERMINATION.—In any case in
2 which—

3 “(1) the applicable authority has been notified
4 under subsection (a) (or by an issuer of excess/stop
5 loss insurance or indemnity insurance pursuant to
6 section 806(a)) of a failure of an association health
7 plan which is or has been certified under this part
8 and is described in section 806(a)(2) to meet the re-
9 quirements of section 806 and has not been notified
10 by the board of trustees of the plan that corrective
11 action has restored compliance with such require-
12 ments; and

13 “(2) the applicable authority determines that
14 there is a reasonable expectation that the plan will
15 continue to fail to meet the requirements of section
16 806,

17 the board of trustees of the plan shall, at the direction
18 of the applicable authority, terminate the plan and, in the
19 course of the termination, take such actions as the appli-
20 cable authority may require, including satisfying any
21 claims referred to in section 806(a)(2)(B)(iii) and recov-
22 ering for the plan any liability under subsection
23 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure
24 that the affairs of the plan will be, to the maximum extent

1 possible, wound up in a manner which will result in timely
2 provision of all benefits for which the plan is obligated.

3 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
4 **VENT ASSOCIATION HEALTH PLANS PRO-**
5 **VIDING HEALTH BENEFITS IN ADDITION TO**
6 **HEALTH INSURANCE COVERAGE.**

7 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
8 INSOLVENT PLANS.—Whenever the Secretary determines
9 that an association health plan which is or has been cer-
10 tified under this part and which is described in section
11 806(a)(2) will be unable to provide benefits when due or
12 is otherwise in a financially hazardous condition, as shall
13 be defined by the Secretary by regulation, the Secretary
14 shall, upon notice to the plan, apply to the appropriate
15 United States district court for appointment of the Sec-
16 retary as trustee to administer the plan for the duration
17 of the insolvency. The plan may appear as a party and
18 other interested persons may intervene in the proceedings
19 at the discretion of the court. The court shall appoint such
20 Secretary trustee if the court determines that the trustee-
21 ship is necessary to protect the interests of the partici-
22 pants and beneficiaries or providers of medical care or to
23 avoid any unreasonable deterioration of the financial con-
24 dition of the plan. The trusteeship of such Secretary shall
25 continue until the conditions described in the first sen-

1 tence of this subsection are remedied or the plan is termi-
2 nated.

3 “(b) POWERS AS TRUSTEE.—The Secretary, upon
4 appointment as trustee under subsection (a), shall have
5 the power—

6 “(1) to do any act authorized by the plan, this
7 title, or other applicable provisions of law to be done
8 by the plan administrator or any trustee of the plan;

9 “(2) to require the transfer of all (or any part)
10 of the assets and records of the plan to the Sec-
11 retary as trustee;

12 “(3) to invest any assets of the plan which the
13 Secretary holds in accordance with the provisions of
14 the plan, regulations prescribed by the Secretary,
15 and applicable provisions of law;

16 “(4) to require the sponsor, the plan adminis-
17 trator, any participating employer, and any employee
18 organization representing plan participants to fur-
19 nish any information with respect to the plan which
20 the Secretary as trustee may reasonably need in
21 order to administer the plan;

22 “(5) to collect for the plan any amounts due the
23 plan and to recover reasonable expenses of the trust-
24 eeship;

1 “(6) to commence, prosecute, or defend on be-
2 half of the plan any suit or proceeding involving the
3 plan;

4 “(7) to issue, publish, or file such notices, state-
5 ments, and reports as may be required by the Sec-
6 retary by regulation or required by any order of the
7 court;

8 “(8) to terminate the plan (or provide for its
9 termination in accordance with section 809(b)) and
10 liquidate the plan assets, to restore the plan to the
11 responsibility of the sponsor, or to continue the
12 trusteeship;

13 “(9) to provide for the enrollment of plan par-
14 ticipants and beneficiaries under appropriate cov-
15 erage options; and

16 “(10) to do such other acts as may be nec-
17 essary to comply with this title or any order of the
18 court and to protect the interests of plan partici-
19 pants and beneficiaries and providers of medical
20 care.

21 “(c) NOTICE OF APPOINTMENT.—As soon as prac-
22 ticable after the Secretary’s appointment as trustee, the
23 Secretary shall give notice of such appointment to—

24 “(1) the sponsor and plan administrator;

25 “(2) each participant;

1 “(3) each participating employer; and

2 “(4) if applicable, each employee organization
3 which, for purposes of collective bargaining, rep-
4 resents plan participants.

5 “(d) ADDITIONAL DUTIES.—Except to the extent in-
6 consistent with the provisions of this title, or as may be
7 otherwise ordered by the court, the Secretary, upon ap-
8 pointment as trustee under this section, shall be subject
9 to the same duties as those of a trustee under section 704
10 of title 11, United States Code, and shall have the duties
11 of a fiduciary for purposes of this title.

12 “(e) OTHER PROCEEDINGS.—An application by the
13 Secretary under this subsection may be filed notwith-
14 standing the pendency in the same or any other court of
15 any bankruptcy, mortgage foreclosure, or equity receiver-
16 ship proceeding, or any proceeding to reorganize, conserve,
17 or liquidate such plan or its property, or any proceeding
18 to enforce a lien against property of the plan.

19 “(f) JURISDICTION OF COURT.—

20 “(1) IN GENERAL.—Upon the filing of an appli-
21 cation for the appointment as trustee or the issuance
22 of a decree under this section, the court to which the
23 application is made shall have exclusive jurisdiction
24 of the plan involved and its property wherever lo-
25 cated with the powers, to the extent consistent with

1 the purposes of this section, of a court of the United
2 States having jurisdiction over cases under chapter
3 11 of title 11, United States Code. Pending an adju-
4 dication under this section such court shall stay, and
5 upon appointment by it of the Secretary as trustee,
6 such court shall continue the stay of, any pending
7 mortgage foreclosure, equity receivership, or other
8 proceeding to reorganize, conserve, or liquidate the
9 plan, the sponsor, or property of such plan or spon-
10 sor, and any other suit against any receiver, conser-
11 vator, or trustee of the plan, the sponsor, or prop-
12 erty of the plan or sponsor. Pending such adjudica-
13 tion and upon the appointment by it of the Sec-
14 retary as trustee, the court may stay any proceeding
15 to enforce a lien against property of the plan or the
16 sponsor or any other suit against the plan or the
17 sponsor.

18 “(2) VENUE.—An action under this section
19 may be brought in the judicial district where the
20 sponsor or the plan administrator resides or does
21 business or where any asset of the plan is situated.
22 A district court in which such action is brought may
23 issue process with respect to such action in any
24 other judicial district.

1 “(g) PERSONNEL.—In accordance with regulations
2 which shall be prescribed by the Secretary, the Secretary
3 shall appoint, retain, and compensate accountants, actu-
4 aries, and other professional service personnel as may be
5 necessary in connection with the Secretary’s service as
6 trustee under this section.

7 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

8 “(a) IN GENERAL.—Notwithstanding section 514, a
9 State may impose by law a contribution tax on an associa-
10 tion health plan described in section 806(a)(2), if the plan
11 commenced operations in such State after the date of the
12 enactment of this part.

13 “(b) CONTRIBUTION TAX.—For purposes of this sec-
14 tion, the term ‘contribution tax’ imposed by a State on
15 an association health plan means any tax imposed by such
16 State if—

17 “(1) such tax is computed by applying a rate to
18 the amount of premiums or contributions, with re-
19 spect to individuals covered under the plan who are
20 residents of such State, which are received by the
21 plan from participating employers located in such
22 State or from such individuals;

23 “(2) the rate of such tax does not exceed the
24 rate of any tax imposed by such State on premiums
25 or contributions received by insurers or health main-

1 tenance organizations for health insurance coverage
2 offered in such State in connection with a group
3 health plan;

4 “(3) such tax is otherwise nondiscriminatory;
5 and

6 “(4) the amount of any such tax assessed on
7 the plan is reduced by the amount of any tax or as-
8 sessment otherwise imposed by the State on pre-
9 miums, contributions, or both received by insurers or
10 health maintenance organizations for health insur-
11 ance coverage, aggregate excess/stop loss insurance
12 (as defined in section 806(g)(1)), specific excess/stop
13 loss insurance (as defined in section 806(g)(2)),
14 other insurance related to the provision of medical
15 care under the plan, or any combination thereof pro-
16 vided by such insurers or health maintenance organi-
17 zations in such State in connection with such plan.

18 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

19 “(a) DEFINITIONS.—For purposes of this part—

20 “(1) GROUP HEALTH PLAN.—The term ‘group
21 health plan’ has the meaning provided in section
22 733(a)(1) (after applying subsection (b) of this sec-
23 tion).

24 “(2) MEDICAL CARE.—The term ‘medical care’
25 has the meaning provided in section 733(a)(2).

1 “(3) HEALTH INSURANCE COVERAGE.—The
2 term ‘health insurance coverage’ has the meaning
3 provided in section 733(b)(1).

4 “(4) HEALTH INSURANCE ISSUER.—The term
5 ‘health insurance issuer’ has the meaning provided
6 in section 733(b)(2).

7 “(5) APPLICABLE AUTHORITY.—The term ‘ap-
8 plicable authority’ means the Secretary, except that,
9 in connection with any exercise of the Secretary’s
10 authority regarding which the Secretary is required
11 under section 506(d) to consult with a State, such
12 term means the Secretary, in consultation with such
13 State.

14 “(6) HEALTH STATUS-RELATED FACTOR.—The
15 term ‘health status-related factor’ has the meaning
16 provided in section 733(d)(2).

17 “(7) INDIVIDUAL MARKET.—

18 “(A) IN GENERAL.—The term ‘individual
19 market’ means the market for health insurance
20 coverage offered to individuals other than in
21 connection with a group health plan.

22 “(B) TREATMENT OF VERY SMALL
23 GROUPS.—

24 “(i) IN GENERAL.—Subject to clause
25 (ii), such term includes coverage offered in

1 connection with a group health plan that
2 has fewer than 2 participants as current
3 employees or participants described in sec-
4 tion 732(d)(3) on the first day of the plan
5 year.

6 “(ii) STATE EXCEPTION.—Clause (i)
7 shall not apply in the case of health insur-
8 ance coverage offered in a State if such
9 State regulates the coverage described in
10 such clause in the same manner and to the
11 same extent as coverage in the small group
12 market (as defined in section 2791(e)(5) of
13 the Public Health Service Act) is regulated
14 by such State.

15 “(8) PARTICIPATING EMPLOYER.—The term
16 ‘participating employer’ means, in connection with
17 an association health plan, any employer, if any indi-
18 vidual who is an employee of such employer, a part-
19 ner in such employer, or a self-employed individual
20 who is such employer (or any dependent, as defined
21 under the terms of the plan, of such individual) is
22 or was covered under such plan in connection with
23 the status of such individual as such an employee,
24 partner, or self-employed individual in relation to the
25 plan.

1 “(9) APPLICABLE STATE AUTHORITY.—The
2 term ‘applicable State authority’ means, with respect
3 to a health insurance issuer in a State, the State in-
4 surance commissioner or official or officials des-
5 ignated by the State to enforce the requirements of
6 title XXVII of the Public Health Service Act for the
7 State involved with respect to such issuer.

8 “(10) QUALIFIED ACTUARY.—The term ‘quali-
9 fied actuary’ means an individual who is a member
10 of the American Academy of Actuaries.

11 “(11) AFFILIATED MEMBER.—The term ‘affili-
12 ated member’ means, in connection with a sponsor—

13 “(A) a person who is otherwise eligible to
14 be a member of the sponsor but who elects an
15 affiliated status with the sponsor,

16 “(B) in the case of a sponsor with mem-
17 bers which consist of associations, a person who
18 is a member of any such association and elects
19 an affiliated status with the sponsor, or

20 “(C) in the case of an association health
21 plan in existence on the date of the enactment
22 of this part, a person eligible to be a member
23 of the sponsor or one of its member associa-
24 tions.

1 “(12) LARGE EMPLOYER.—The term ‘large em-
2 ployer’ means, in connection with a group health
3 plan with respect to a plan year, an employer who
4 employed an average of at least 51 employees on
5 business days during the preceding calendar year
6 and who employs at least 2 employees on the first
7 day of the plan year.

8 “(13) SMALL EMPLOYER.—The term ‘small em-
9 ployer’ means, in connection with a group health
10 plan with respect to a plan year, an employer who
11 is not a large employer.

12 “(b) RULES OF CONSTRUCTION.—

13 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
14 poses of determining whether a plan, fund, or pro-
15 gram is an employee welfare benefit plan which is an
16 association health plan, and for purposes of applying
17 this title in connection with such plan, fund, or pro-
18 gram so determined to be such an employee welfare
19 benefit plan—

20 “(A) in the case of a partnership, the term
21 ‘employer’ (as defined in section 3(5)) includes
22 the partnership in relation to the partners, and
23 the term ‘employee’ (as defined in section 3(6))
24 includes any partner in relation to the partner-
25 ship; and

1 “(B) in the case of a self-employed indi-
2 vidual, the term ‘employer’ (as defined in sec-
3 tion 3(5)) and the term ‘employee’ (as defined
4 in section 3(6)) shall include such individual.

5 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
6 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
7 case of any plan, fund, or program which was estab-
8 lished or is maintained for the purpose of providing
9 medical care (through the purchase of insurance or
10 otherwise) for employees (or their dependents) cov-
11 ered thereunder and which demonstrates to the Sec-
12 retary that all requirements for certification under
13 this part would be met with respect to such plan,
14 fund, or program if such plan, fund, or program
15 were a group health plan, such plan, fund, or pro-
16 gram shall be treated for purposes of this title as an
17 employee welfare benefit plan on and after the date
18 of such demonstration.”.

19 (2) CONFORMING AMENDMENTS TO PREEMP-
20 TION RULES.—

21 (A) Section 514(b)(6) of such Act (29
22 U.S.C. 1144(b)(6)) is amended by adding at
23 the end the following new subparagraph:

24 “(E) The preceding subparagraphs of this paragraph
25 do not apply with respect to any State law in the case

1 of an association health plan which is certified under part
2 8.”.

3 (B) Section 514 of such Act (29 U.S.C.
4 1144) is amended—

5 (i) in subsection (b)(4), by striking
6 “Subsection (a)” and inserting “Sub-
7 sections (a) and (d)”;

8 (ii) in subsection (b)(5), by striking
9 “subsection (a)” in subparagraph (A) and
10 inserting “subsection (a) of this section
11 and subsections (a)(2)(B) and (b) of sec-
12 tion 805”, and by striking “subsection (a)”
13 in subparagraph (B) and inserting “sub-
14 section (a) of this section or subsection
15 (a)(2)(B) or (b) of section 805”;

16 (iii) by redesignating subsection (d) as
17 subsection (e); and

18 (iv) by inserting after subsection (c)
19 the following new subsection:

20 “(d)(1) Except as provided in subsection (b)(4), the
21 provisions of this title shall supersede any and all State
22 laws insofar as they may now or hereafter preclude, or
23 have the effect of precluding, a health insurance issuer
24 from offering health insurance coverage in connection with

1 an association health plan which is certified under part
2 8.

3 “(2) Except as provided in paragraphs (4) and (5)
4 of subsection (b) of this section—

5 “(A) In any case in which health insurance cov-
6 erage of any policy type is offered under an associa-
7 tion health plan certified under part 8 to a partici-
8 pating employer operating in such State, the provi-
9 sions of this title shall supersede any and all laws
10 of such State insofar as they may preclude a health
11 insurance issuer from offering health insurance cov-
12 erage of the same policy type to other employers op-
13 erating in the State which are eligible for coverage
14 under such association health plan, whether or not
15 such other employers are participating employers in
16 such plan.

17 “(B) In any case in which health insurance cov-
18 erage of any policy type is offered in a State under
19 an association health plan certified under part 8 and
20 the filing, with the applicable State authority (as de-
21 fined in section 812(a)(9)), of the policy form in
22 connection with such policy type is approved by such
23 State authority, the provisions of this title shall su-
24 persede any and all laws of any other State in which
25 health insurance coverage of such type is offered, in-

1 sofar as they may preclude, upon the filing in the
2 same form and manner of such policy form with the
3 applicable State authority in such other State, the
4 approval of the filing in such other State.

5 “(3) Nothing in subsection (b)(6)(E) or the preceding
6 provisions of this subsection shall be construed, with re-
7 spect to health insurance issuers or health insurance cov-
8 erage, to supersede or impair the law of any State—

9 “(A) providing solvency standards or similar
10 standards regarding the adequacy of insurer capital,
11 surplus, reserves, or contributions, or

12 “(B) relating to prompt payment of claims.

13 “(4) For additional provisions relating to association
14 health plans, see subsections (a)(2)(B) and (b) of section
15 805.

16 “(5) For purposes of this subsection, the term ‘asso-
17 ciation health plan’ has the meaning provided in section
18 801(a), and the terms ‘health insurance coverage’, ‘par-
19 ticipating employer’, and ‘health insurance issuer’ have
20 the meanings provided such terms in section 812, respec-
21 tively.”.

22 (C) Section 514(b)(6)(A) of such Act (29
23 U.S.C. 1144(b)(6)(A)) is amended—

24 (i) in clause (i)(II), by striking “and”
25 at the end;

1 (ii) in clause (ii), by inserting “and
2 which does not provide medical care (with-
3 in the meaning of section 733(a)(2)),”
4 after “arrangement,” and by striking
5 “title.” and inserting “title, and”; and

6 (iii) by adding at the end the fol-
7 lowing new clause:

8 “(iii) subject to subparagraph (E), in the case
9 of any other employee welfare benefit plan which is
10 a multiple employer welfare arrangement and which
11 provides medical care (within the meaning of section
12 733(a)(2)), any law of any State which regulates in-
13 surance may apply.”.

14 (D) Section 514(e) of such Act (as redesign-
15 nated by subparagraph (B)(iii)) is amended—

16 (i) by striking “Nothing” and insert-
17 ing “(1) Except as provided in paragraph
18 (2), nothing”; and

19 (ii) by adding at the end the following
20 new paragraph:

21 “(2) Nothing in any other provision of law enacted
22 on or after the date of the enactment of part 8 shall be
23 construed to alter, amend, modify, invalidate, impair, or
24 supersede any provision of this title, except by specific
25 cross-reference to the affected section.”.

1 (3) PLAN SPONSOR.—Section 3(16)(B) of such
2 Act (29 U.S.C. 102(16)(B)) is amended by adding
3 at the end the following new sentence: “Such term
4 also includes a person serving as the sponsor of an
5 association health plan under part 8.”.

6 (4) DISCLOSURE OF SOLVENCY PROTECTIONS
7 RELATED TO SELF-INSURED AND FULLY INSURED
8 OPTIONS UNDER ASSOCIATION HEALTH PLANS.—
9 Section 102(b) of such Act (29 U.S.C. 102(b)) is
10 amended by adding at the end the following: “An as-
11 sociation health plan shall include in its summary
12 plan description, in connection with each benefit op-
13 tion, a description of the form of solvency or guar-
14 antee fund protection secured pursuant to this Act
15 or applicable State law, if any.”.

16 (5) SAVINGS CLAUSE.—Section 731(c) of such
17 Act is amended by inserting “or part 8” after “this
18 part”.

19 (6) REPORT TO THE CONGRESS REGARDING
20 CERTIFICATION OF SELF-INSURED ASSOCIATION
21 HEALTH PLANS.—Not later than January 1, 2012,
22 the Secretary of Labor shall report to the Committee
23 on Education and the Workforce of the House of
24 Representatives and the Committee on Health, Edu-
25 cation, Labor, and Pensions of the Senate the effect

1 association health plans have had, if any, on reduc-
 2 ing the number of uninsured individuals.

3 (7) CLERICAL AMENDMENT.—The table of con-
 4 tents in section 1 of the Employee Retirement In-
 5 come Security Act of 1974 is amended by inserting
 6 after the item relating to section 734 the following
 7 new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

“801. Association health plans.

“802. Certification of association health plans.

“803. Requirements relating to sponsors and boards of trustees.

“804. Participation and coverage requirements.

“805. Other requirements relating to plan documents, contribution rates, and
 benefit options.

“806. Maintenance of reserves and provisions for solvency for plans providing
 health benefits in addition to health insurance coverage.

“807. Requirements for application and related requirements.

“808. Notice requirements for voluntary termination.

“809. Corrective actions and mandatory termination.

“810. Trusteeship by the Secretary of insolvent association health plans pro-
 viding health benefits in addition to health insurance coverage.

“811. State assessment authority.

“812. Definitions and rules of construction.”.

8 (b) CLARIFICATION OF TREATMENT OF SINGLE EM-
 9 PLOYER ARRANGEMENTS.—Section 3(40)(B) of the Em-
 10 ployee Retirement Income Security Act of 1974 (29
 11 U.S.C. 1002(40)(B)) is amended—

12 (1) in clause (i), by inserting after “control
 13 group,” the following: “except that, in any case in
 14 which the benefit referred to in subparagraph (A)
 15 consists of medical care (as defined in section
 16 812(a)(2)), two or more trades or businesses, wheth-
 17 er or not incorporated, shall be deemed a single em-

1 ployer for any plan year of such plan, or any fiscal
2 year of such other arrangement, if such trades or
3 businesses are within the same control group during
4 such year or at any time during the preceding 1-year
5 period,”;

6 (2) in clause (iii), by striking “(iii) the deter-
7 mination” and inserting the following:

8 “(iii)(I) in any case in which the benefit re-
9 ferred to in subparagraph (A) consists of medical
10 care (as defined in section 812(a)(2)), the deter-
11 mination of whether a trade or business is under
12 ‘common control’ with another trade or business
13 shall be determined under regulations of the Sec-
14 retary applying principles consistent and coextensive
15 with the principles applied in determining whether
16 employees of two or more trades or businesses are
17 treated as employed by a single employer under sec-
18 tion 4001(b), except that, for purposes of this para-
19 graph, an interest of greater than 25 percent may
20 not be required as the minimum interest necessary
21 for common control, or

22 “(II) in any other case, the determination”;

23 (3) by redesignating clauses (iv) and (v) as
24 clauses (v) and (vi), respectively; and

1 (4) by inserting after clause (iii) the following
2 new clause:

3 “(iv) in any case in which the benefit referred
4 to in subparagraph (A) consists of medical care (as
5 defined in section 812(a)(2)), in determining, after
6 the application of clause (i), whether benefits are
7 provided to employees of two or more employers, the
8 arrangement shall be treated as having only one par-
9 ticipating employer if, after the application of clause
10 (i), the number of individuals who are employees and
11 former employees of any one participating employer
12 and who are covered under the arrangement is
13 greater than 75 percent of the aggregate number of
14 all individuals who are employees or former employ-
15 ees of participating employers and who are covered
16 under the arrangement.”.

17 (c) ENFORCEMENT PROVISIONS RELATING TO ASSO-
18 CIATION HEALTH PLANS.—

19 (1) CRIMINAL PENALTIES FOR CERTAIN WILL-
20 FUL MISREPRESENTATIONS.—Section 501 of the
21 Employee Retirement Income Security Act of 1974
22 (29 U.S.C. 1131) is amended—

23 (A) by inserting “(a)” after “Sec. 501.”;
24 and

1 (B) by adding at the end the following new
2 subsection:

3 “(b) Any person who willfully falsely represents, to
4 any employee, any employee’s beneficiary, any employer,
5 the Secretary, or any State, a plan or other arrangement
6 established or maintained for the purpose of offering or
7 providing any benefit described in section 3(1) to employ-
8 ees or their beneficiaries as—

9 “(1) being an association health plan which has
10 been certified under part 8;

11 “(2) having been established or maintained
12 under or pursuant to one or more collective bar-
13 gaining agreements which are reached pursuant to
14 collective bargaining described in section 8(d) of the
15 National Labor Relations Act (29 U.S.C. 158(d)) or
16 paragraph Fourth of section 2 of the Railway Labor
17 Act (45 U.S.C. 152, paragraph Fourth) or which are
18 reached pursuant to labor-management negotiations
19 under similar provisions of State public employee re-
20 lations laws; or

21 “(3) being a plan or arrangement described in
22 section 3(40)(A)(i),
23 shall, upon conviction, be imprisoned not more than 5
24 years, be fined under title 18, United States Code, or
25 both.”.

1 (2) CEASE ACTIVITIES ORDERS.—Section 502
2 of such Act (29 U.S.C. 1132) is amended by adding
3 at the end the following new subsection:

4 “(n) ASSOCIATION HEALTH PLAN CEASE AND DE-
5 SIST ORDERS.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 upon application by the Secretary showing the oper-
8 ation, promotion, or marketing of an association
9 health plan (or similar arrangement providing bene-
10 fits consisting of medical care (as defined in section
11 733(a)(2))) that—

12 “(A) is not certified under part 8, is sub-
13 ject under section 514(b)(6) to the insurance
14 laws of any State in which the plan or arrange-
15 ment offers or provides benefits, and is not li-
16 censed, registered, or otherwise approved under
17 the insurance laws of such State; or

18 “(B) is an association health plan certified
19 under part 8 and is not operating in accordance
20 with the requirements under part 8 for such
21 certification,

22 a district court of the United States shall enter an
23 order requiring that the plan or arrangement cease
24 activities.

1 “(2) EXCEPTION.—Paragraph (1) shall not
2 apply in the case of an association health plan or
3 other arrangement if the plan or arrangement shows
4 that—

5 “(A) all benefits under it referred to in
6 paragraph (1) consist of health insurance cov-
7 erage; and

8 “(B) with respect to each State in which
9 the plan or arrangement offers or provides ben-
10 efits, the plan or arrangement is operating in
11 accordance with applicable State laws that are
12 not superseded under section 514.

13 “(3) ADDITIONAL EQUITABLE RELIEF.—The
14 court may grant such additional equitable relief, in-
15 cluding any relief available under this title, as it
16 deems necessary to protect the interests of the pub-
17 lic and of persons having claims for benefits against
18 the plan.”.

19 (3) RESPONSIBILITY FOR CLAIMS PROCE-
20 DURE.—Section 503 of such Act (29 U.S.C. 1133)
21 is amended by inserting “(a) IN GENERAL.—” be-
22 fore “In accordance”, and by adding at the end the
23 following new subsection:

24 “(b) ASSOCIATION HEALTH PLANS.—The terms of
25 each association health plan which is or has been certified

1 under part 8 shall require the board of trustees or the
2 named fiduciary (as applicable) to ensure that the require-
3 ments of this section are met in connection with claims
4 filed under the plan.”.

5 (d) COOPERATION BETWEEN FEDERAL AND STATE
6 AUTHORITIES.—Section 506 of the Employee Retirement
7 Income Security Act of 1974 (29 U.S.C. 1136) is amended
8 by adding at the end the following new subsection:

9 “(d) CONSULTATION WITH STATES WITH RESPECT
10 TO ASSOCIATION HEALTH PLANS.—

11 “(1) AGREEMENTS WITH STATES.—The Sec-
12 retary shall consult with the State recognized under
13 paragraph (2) with respect to an association health
14 plan regarding the exercise of—

15 “(A) the Secretary’s authority under sec-
16 tions 502 and 504 to enforce the requirements
17 for certification under part 8; and

18 “(B) the Secretary’s authority to certify
19 association health plans under part 8 in accord-
20 ance with regulations of the Secretary applica-
21 ble to certification under part 8.

22 “(2) RECOGNITION OF PRIMARY DOMICILE
23 STATE.—In carrying out paragraph (1), the Sec-
24 retary shall ensure that only one State will be recog-
25 nized, with respect to any particular association

1 health plan, as the State with which consultation is
2 required. In carrying out this paragraph—

3 “(A) in the case of a plan which provides
4 health insurance coverage (as defined in section
5 812(a)(3)), such State shall be the State with
6 which filing and approval of a policy type of-
7 fered by the plan was initially obtained, and

8 “(B) in any other case, the Secretary shall
9 take into account the places of residence of the
10 participants and beneficiaries under the plan
11 and the State in which the trust is main-
12 tained.”.

13 (e) EFFECTIVE DATE AND TRANSITIONAL AND
14 OTHER RULES.—

15 (1) EFFECTIVE DATE.—The amendments made
16 by this section shall take effect 1 year after the date
17 of the enactment of this Act. The Secretary of Labor
18 shall first issue all regulations necessary to carry out
19 such amendments within 1 year after the date of the
20 enactment of this Act.

21 (2) TREATMENT OF CERTAIN EXISTING
22 HEALTH BENEFITS PROGRAMS.—

23 (A) IN GENERAL.—In any case in which,
24 as of the date of the enactment of this Act, an
25 arrangement is maintained in a State for the

1 purpose of providing benefits consisting of med-
2 ical care for the employees and beneficiaries of
3 its participating employers, at least 200 partici-
4 pating employers make contributions to such
5 arrangement, such arrangement has been in ex-
6 istence for at least 10 years, and such arrange-
7 ment is licensed under the laws of one or more
8 States to provide such benefits to its partici-
9 pating employers, upon the filing with the ap-
10 plicable authority (as defined in section
11 812(a)(5) of the Employee Retirement Income
12 Security Act of 1974 (as amended by this sub-
13 title)) by the arrangement of an application for
14 certification of the arrangement under part 8 of
15 subtitle B of title I of such Act—

16 (i) such arrangement shall be deemed
17 to be a group health plan for purposes of
18 title I of such Act;

19 (ii) the requirements of sections
20 801(a) and 803(a) of the Employee Retire-
21 ment Income Security Act of 1974 shall be
22 deemed met with respect to such arrange-
23 ment;

24 (iii) the requirements of section
25 803(b) of such Act shall be deemed met, if

1 the arrangement is operated by a board of
2 directors which—

3 (I) is elected by the participating
4 employers, with each employer having
5 one vote; and

6 (II) has complete fiscal control
7 over the arrangement and which is re-
8 sponsible for all operations of the ar-
9 rangement;

10 (iv) the requirements of section
11 804(a) of such Act shall be deemed met
12 with respect to such arrangement; and

13 (v) the arrangement may be certified
14 by any applicable authority with respect to
15 its operations in any State only if it oper-
16 ates in such State on the date of certifi-
17 cation.

18 The provisions of this subparagraph shall cease
19 to apply with respect to any such arrangement
20 at such time after the date of the enactment of
21 this Act as the applicable requirements of this
22 subparagraph are not met with respect to such
23 arrangement.

24 (B) DEFINITIONS.—For purposes of this
25 paragraph, the terms “group health plan”,

1 “medical care”, and “participating employer”
2 shall have the meanings provided in section 812
3 of the Employee Retirement Income Security
4 Act of 1974, except that the reference in para-
5 graph (7) of such section to an “association
6 health plan” shall be deemed a reference to an
7 arrangement referred to in this paragraph.

8 **SEC. 133. REPEAL OF CERTAIN TAX EXEMPTIONS FOR**
9 **HEALTH INSURANCE PAYMENTS.**

10 (a) FICA DEFINITION OF WAGES.—Paragraphs (2)
11 and (4) of sections 3121(a) of the Internal Revenue Code
12 of 1986 (relating to tax on employers and employees) are
13 hereby repealed.

14 (b) CONFORMING AMENDMENTS.—Section 3401 of
15 the Internal Revenue Code of 1986 (relating to the collec-
16 tion of wages at source) is amended by striking paragraph
17 (20) and redesignating paragraphs (21), (22), and (23) as
18 paragraphs (20), (21), and (22), respectively.

19 (c) APPLICABLE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2010.

1 **Subtitle C—Health Care Services**
2 **Commission**

3 **PART I—ESTABLISHMENT AND GENERAL DUTIES**

4 **SEC. 141. ESTABLISHMENT.**

5 (a) IN GENERAL.—There is hereby established a
6 Health Care Services Commission (in this subtitle referred
7 to as the “Commission”) to be composed of five commis-
8 sioners (in this subtitle referred to as the “Commis-
9 sioners”) to be appointed by the President by and with
10 the advice and consent of the Senate. Not more than three
11 of such commissioners shall be members of the same polit-
12 ical party, and in making appointments members of dif-
13 ferent political parties shall be appointed alternately as
14 nearly as may be practicable. No commissioner shall en-
15 gage in any other business, vocation, or employment than
16 that of serving as commissioner. Each commissioner shall
17 hold office for a term of five years and until his successor
18 is appointed and has qualified, except that he shall not
19 so continue to serve beyond the expiration of the next ses-
20 sion of Congress subsequent to the expiration of said fixed
21 term of office, and except (1) any commissioner appointed
22 to fill a vacancy occurring prior to the expiration of the
23 term for which his predecessor was appointed shall be ap-
24 pointed for the remainder of such term, and (2) the terms
25 of office of the commissioners first taking office after the

1 enactment of this subtitle shall expire as designated by
2 the President at the time of nomination, one at the end
3 of one year, one at the end of two years, one at the end
4 of three years, one at the end of four years, and one at
5 the end of five years, after the date of the enactment of
6 this Act.

7 (b) PURPOSE.—The purpose of the Commission is to
8 enhance the quality, appropriateness, and effectiveness of
9 health care services, and access to such services, through
10 the establishment of a broad base of scientific research
11 and through the promotion of improvements in clinical
12 practice and in the organization, financing, and delivery
13 of health care services.

14 (c) APPOINTMENT OF CHAIRMAN.—The President
15 shall, from among the Commissioners appointed under
16 subsection (a), designate an individual to serve as the
17 Chairman of the Commission.

18 **SEC. 142. GENERAL AUTHORITIES AND DUTIES.**

19 (a) IN GENERAL.—In carrying out section 141(b),
20 the Commissioners shall conduct and support research,
21 demonstration projects, evaluations, training, guideline de-
22 velopment, and the dissemination of information, on
23 health care services and on systems for the delivery of
24 such services, including activities with respect to—

1 (1) the effectiveness, efficiency, and quality of
2 health care services;

3 (2) subject to subsection (b), the outcomes of
4 health care services and procedures;

5 (3) clinical practice, including primary care and
6 practice-oriented research;

7 (4) health care technologies, facilities, and
8 equipment;

9 (5) health care costs, productivity, and market
10 forces;

11 (6) health promotion and disease prevention;

12 (7) health statistics and epidemiology; and

13 (8) medical liability.

14 (b) **REQUIREMENTS WITH RESPECT TO RURAL**
15 **AREAS AND UNDERSERVED POPULATIONS.**—In carrying
16 out subsection (a), the Commissioners shall undertake and
17 support research, demonstration projects, and evaluations
18 with respect to—

19 (1) the delivery of health care services in rural
20 areas (including frontier areas); and

21 (2) the health of low-income groups, minority
22 groups, and the elderly.

23 **SEC. 143. DISSEMINATION.**

24 (a) **IN GENERAL.**—The Commissioners shall—

1 (1) promptly publish, make available, and oth-
2 erwise disseminate, in a form understandable and on
3 as broad a basis as practicable so as to maximize its
4 use, the results of research, demonstration projects,
5 and evaluations conducted or supported under this
6 subtitle and the guidelines, standards, and review
7 criteria developed under this subtitle;

8 (2) promptly make available to the public data
9 developed in such research, demonstration projects,
10 and evaluations; and

11 (3) as appropriate, provide technical assistance
12 to State and local government and health agencies
13 and conduct liaison activities to such agencies to fos-
14 ter dissemination.

15 (b) PROHIBITION AGAINST RESTRICTIONS.—Except
16 as provided in subsection (c), the Commissioners may not
17 restrict the publication or dissemination of data from, or
18 the results of, projects conducted or supported under this
19 subtitle.

20 (c) LIMITATION ON USE OF CERTAIN INFORMA-
21 TION.—No information, if an establishment or person sup-
22 plying the information or described in it is identifiable,
23 obtained in the course of activities undertaken or sup-
24 ported under this subtitle may be used for any purpose
25 other than the purpose for which it was supplied unless

1 such establishment or person has consented (as deter-
2 mined under regulations of the Secretary) to its use for
3 such other purpose. Such information may not be pub-
4 lished or released in other form if the person who supplied
5 the information or who is described in it is identifiable
6 unless such person has consented (as determined under
7 regulations of the Secretary) to its publication or release
8 in other form.

9 (d) CERTAIN INTERAGENCY AGREEMENT.—The
10 Commissioners and the Director of the National Library
11 of Medicine shall enter into an agreement providing for
12 the implementation of subsection (a)(1).

13 **PART II—FORUM FOR QUALITY AND**
14 **EFFECTIVENESS IN HEALTH CARE**

15 **SEC. 151. ESTABLISHMENT OF OFFICE.**

16 There is established within the Commission an office
17 to be known as the Office of the Forum for Quality and
18 Effectiveness in Health Care. The office shall be headed
19 by a director (referred to in this subtitle as the “Direc-
20 tor”), who shall be appointed by the Commissioners.

21 **SEC. 152. MEMBERSHIP.**

22 (a) IN GENERAL.—The Office of the Forum for Qual-
23 ity and Effectiveness in Health Care shall be composed
24 of 15 individuals nominated by private sector health care

1 organizations and appointed by the Commission and shall
2 include representation from at least the following:

3 (1) Health insurance industry.

4 (2) Health care provider groups.

5 (3) Non-profit organizations.

6 (4) Rural health organizations.

7 (b) TERMS.—

8 (1) IN GENERAL.—Except as provided in sub-
9 paragraph (B), members of the Office of the Forum
10 for Quality and Effectiveness in Health Care shall
11 serve for a term of 5 years.

12 (2) STAGGERED ROTATION.—Of the members
13 first appointed to the Office of the Forum for Qual-
14 ity and Effectiveness in Health Care, the Commis-
15 sion shall appoint 5 members to serve for a term of
16 2 years, 5 members to serve for a term of 3 years,
17 and 5 members to serve for a term of 4 years.

18 (c) TREATMENT OF OTHER EMPLOYMENT.—Each
19 member of the Office of the Forum for Quality and Effec-
20 tiveness in Health Care shall serve the Office independ-
21 ently from any other position of employment.

22 **SEC. 153. DUTIES.**

23 (a) ESTABLISHMENT OF FORUM PROGRAM.—The
24 Commissioners, acting through the Director, shall estab-
25 lish a program to be known as the Forum for Quality and

1 Effectiveness in Health Care. For the purpose of pro-
2 moting transparency in price, quality, appropriateness,
3 and effectiveness of health care, the Director, using the
4 process set forth in section 154, shall arrange for the de-
5 velopment and periodic review and updating of standards
6 of quality, performance measures, and medical review cri-
7 teria through which health care providers and other appro-
8 priate entities may assess or review the provision of health
9 care and assure the quality of such care.

10 (b) CERTAIN REQUIREMENTS.—Guidelines, stand-
11 ards, performance measures, and review criteria under
12 subsection (a) shall—

13 (1) be based on the best available research and
14 professional judgment regarding the effectiveness
15 and appropriateness of health care services and pro-
16 cedures; and

17 (2) be presented in formats appropriate for use
18 by physicians, health care practitioners, providers,
19 medical educators, and medical review organizations
20 and in formats appropriate for use by consumers of
21 health care.

22 (c) AUTHORITY FOR CONTRACTS.—In carrying out
23 this part, the Director may enter into contracts with pub-
24 lic or nonprofit private entities.

1 (d) PUBLIC DISCLOSURE OF RECOMMENDATIONS.—
2 For each fiscal year beginning with 2010, the Director
3 shall make publicly available the following:

4 (1) quarterly reports for public comment that
5 include proposed recommendations for guidelines,
6 standards, performance measures, and review cri-
7 teria under subsection (a) and any updates to such
8 guidelines, standards, performance measures, and
9 review criteria; and

10 (2) after consideration of such comments, a
11 final report that contains final recommendations for
12 such guidelines, standards, performance measures,
13 review criteria, and updates.

14 (e) DATE CERTAIN FOR INITIAL GUIDELINES AND
15 STANDARDS.—The Commissioners, by not later than Jan-
16 uary 1, 2012, shall assure the development of an initial
17 set of guidelines, standards, performance measures, and
18 review criteria under subsection (a).

19 **SEC. 154. ADOPTION AND ENFORCEMENT OF GUIDELINES**
20 **AND STANDARDS.**

21 (a) ADOPTION OF RECOMMENDATIONS OF FORUM
22 FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE.—
23 For each fiscal year, the Commissioners shall adopt the
24 recommendations made for such year in the final report
25 under subsection (d)(2) of section 153 for guidelines,

1 standards, performance measures, and review criteria de-
2 scribed in subsection (a) of such section.

3 (b) ENFORCEMENT AUTHORITY.—The Commis-
4 sioners , in consultation with the Secretary of Health and
5 Human Services, have the authority to make recommenda-
6 tions to the Secretary to enforce compliance of health care
7 providers with the guidelines, standards, performance
8 measures, and review criteria adopted under subsection
9 (a). Such recommendations may include the following,
10 with respect to a health care provider who is not in compli-
11 ance with such guidelines, standards, measures, and cri-
12 teria:

13 (1) Exclusion from participation in Federal
14 health care programs (as defined in section
15 1128B(f) of the Social Security Act).

16 (2) Imposition of a civil money penalty on such
17 provider.

18 **SEC. 155. ADDITIONAL REQUIREMENTS.**

19 (a) PROGRAM AGENDA.—The Commissioners shall
20 provide for an agenda for the development of the guide-
21 lines, standards, performance measures, and review cri-
22 teria described in section 153(a), including with respect
23 to the standards, performance measures, and review cri-
24 teria, identifying specific aspects of health care for which
25 the standards, performance measures, and review criteria

1 are to be developed and those that are to be given priority
2 in the development of the standards, performance meas-
3 ures, and review criteria.

4 **PART III—GENERAL PROVISIONS**

5 **SEC. 161. CERTAIN ADMINISTRATIVE AUTHORITIES.**

6 The Commissioners, in carrying out this subtitle, may
7 accept voluntary and uncompensated services.

8 **SEC. 162. FUNDING.**

9 For the purpose of carrying out this subtitle, there
10 are authorized to be appropriated such sums as may be
11 necessary for fiscal years 2011 through 2015.

12 **SEC. 163. DEFINITIONS.**

13 For purposes of this subtitle:

14 (1) The term “Commissioners” means the Com-
15 missioners of the Health Care Services Commission.

16 (2) The term “Commission” means the Health
17 Care Services Commission.

18 (3) The term “Director” means the Director of
19 the Office of the Forum for Quality and Effective-
20 ness in Health Care.

21 (4) The term “Secretary” means the Secretary
22 of Health and Human Services.

1 **PART IV—TERMINATIONS AND TRANSITION**

2 **SEC. 171. TERMINATION OF AGENCY FOR HEALTHCARE RE-**
3 **SEARCH AND QUALITY.**

4 As of the date of the enactment of this Act, the Agen-
5 cy for Healthcare Research and Quality is terminated, and
6 title IX of the Public Health Service Act is repealed.

7 **SEC. 172. TRANSITION.**

8 All orders, grants, contracts, privileges, and other de-
9 terminations or actions of the Agency for Healthcare Re-
10 search and Quality that are effective as of the date before
11 the date of the enactment of this Act, shall be transferred
12 to the Secretary and shall continue in effect according to
13 their terms unless changed pursuant to law.

14 **PART V—INDEPENDENT HEALTH RECORD TRUST**

15 **SEC. 181. SHORT TITLE OF PART.**

16 This part may be cited as the “Independent Health
17 Record Trust Act of 2008”.

18 **SEC. 182. PURPOSE.**

19 It is the purpose of this part to provide for the estab-
20 lishment of a nationwide health information technology
21 network that—

22 (1) improves health care quality, reduces med-
23 ical errors, increases the efficiency of care, and ad-
24 vances the delivery of appropriate, evidence-based
25 health care services;

1 (2) promotes wellness, disease prevention, and
2 the management of chronic illnesses by increasing
3 the availability and transparency of information re-
4 lated to the health care needs of an individual;

5 (3) ensures that appropriate information nec-
6 essary to make medical decisions is available in a us-
7 able form at the time and in the location that the
8 medical service involved is provided;

9 (4) produces greater value for health care ex-
10 penditures by reducing health care costs that result
11 from inefficiency, medical errors, inappropriate care,
12 and incomplete information;

13 (5) promotes a more effective marketplace,
14 greater competition, greater systems analysis, in-
15 creased choice, enhanced quality, and improved out-
16 comes in health care services;

17 (6) improves the coordination of information
18 and the provision of such services through an effec-
19 tive infrastructure for the secure and authorized ex-
20 change and use of health information; and

21 (7) ensures that the health information privacy,
22 security, and confidentiality of individually identifi-
23 able health information is protected.

24 **SEC. 183. DEFINITIONS.**

25 In this part:

1 (1) ACCESS.—The term “access” means, with
2 respect to an electronic health record, entering infor-
3 mation into such account as well as retrieving infor-
4 mation from such account.

5 (2) ACCOUNT.—The term “account” means an
6 electronic health record of an individual contained in
7 an independent health record trust.

8 (3) AFFIRMATIVE CONSENT.—The term “af-
9 firmative consent” means, with respect to an elec-
10 tronic health record of an individual contained in an
11 IHRT, express consent given by the individual for
12 the use of such record in response to a clear and
13 conspicuous request for such consent or at the indi-
14 vidual’s own initiative.

15 (4) AUTHORIZED EHR DATA USER.—The term
16 “authorized EHR data user” means, with respect to
17 an electronic health record of an IHRT participant
18 contained as part of an IHRT, any entity (other
19 than the participant) authorized (in the form of af-
20 firmative consent) by the participant to access the
21 electronic health record.

22 (5) CONFIDENTIALITY.—The term “confiden-
23 tiality” means, with respect to individually identifi-
24 able health information of an individual, the obliga-

1 tion of those who receive such information to respect
2 the health information privacy of the individual.

3 (6) ELECTRONIC HEALTH RECORD.—The term
4 “electronic health record” means a longitudinal col-
5 lection of information concerning a single individual,
6 including medical records and personal health infor-
7 mation, that is stored electronically.

8 (7) HEALTH INFORMATION PRIVACY.—The
9 term “health information privacy” means, with re-
10 spect to individually identifiable health information
11 of an individual, the right of such individual to con-
12 trol the acquisition, uses, or disclosures of such in-
13 formation.

14 (8) HEALTH PLAN.—The term “health plan”
15 means a group health plan (as defined in section
16 2208(1) of the Public Health Service Act (42 U.S.C.
17 300bb–8(1))) as well as a plan that offers health in-
18 surance coverage in the individual market.

19 (9) HIPAA PRIVACY REGULATIONS.—The term
20 “HIPAA privacy regulations” means the regulations
21 promulgated under section 264(c) of the Health In-
22 surance Portability and Accountability Act of 1996
23 (42 U.S.C. 1320d–2 note).

24 (10) INDEPENDENT HEALTH RECORD TRUST;
25 IHRT.—The terms “independent health record trust”

1 and “IHRT” mean a legal arrangement under the
2 administration of an IHRT operator that meets the
3 requirements of this part with respect to electronic
4 health records of individuals participating in the
5 trust or IHRT.

6 (11) IHRT OPERATOR.—The term “IHRT op-
7 erator” means, with respect to an IHRT, the organi-
8 zation that is responsible for the administration and
9 operation of the IHRT in accordance with this part.

10 (12) IHRT PARTICIPANT.—The term “IHRT
11 participant” means, with respect to an IHRT, an in-
12 dividual who has a participation agreement in effect
13 with respect to the maintenance of the individual’s
14 electronic health record by the IHRT.

15 (13) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
16 FORMATION.—The term “individually identifiable
17 health information” has the meaning given such
18 term in section 1171(6) of the Social Security Act
19 (42 U.S.C. 1320d(6)).

20 (14) SECURITY.—The term “security” means,
21 with respect to individually identifiable health infor-
22 mation of an individual, the physical, technological,
23 or administrative safeguards or tools used to protect
24 such information from unwarranted access or disclo-
25 sure.

1 **SEC. 184. ESTABLISHMENT, CERTIFICATION, AND MEMBER-**
2 **SHIP OF INDEPENDENT HEALTH RECORD**
3 **TRUSTS.**

4 (a) ESTABLISHMENT.—Not later than one year after
5 the date of the enactment of this Act, the Federal Trade
6 Commission, in consultation with the National Committee
7 on Vital and Health Statistics, shall prescribe standards
8 for the establishment, certification, operation, and inter-
9 operability of IHRTs to carry out the purposes described
10 in section 182 in accordance with the provisions of this
11 part.

12 (b) CERTIFICATION.—

13 (1) CERTIFICATION BY FTC.—The Federal
14 Trade Commission shall provide for the certification
15 of IHRTs. No IHRT may be certified unless the
16 IHRT is determined to meet the standards for cer-
17 tification established under subsection (a).

18 (2) DECERTIFICATION.—The Federal Trade
19 Commission shall establish a process for the revoca-
20 tion of certification of an IHRT under this section
21 in the case that the IHRT violates the standards es-
22 tablished under subsection (a).

23 (c) MEMBERSHIP.—

24 (1) IN GENERAL.—To be eligible to be a partic-
25 ipant in an IHRT, an individual shall—

1 (A) submit to the IHRT information as re-
2 quired by the IHRT to establish an electronic
3 health record with the IHRT; and

4 (B) enter into a privacy protection agree-
5 ment described in section 186(b)(1) with the
6 IHRT.

7 The process to determine eligibility of an individual
8 under this subsection shall allow for the establish-
9 ment by such individual of an electronic health
10 record as expeditiously as possible if such individual
11 is determined so eligible.

12 (2) NO LIMITATION ON MEMBERSHIP.—Nothing
13 in this subsection shall be construed to permit an
14 IHRT to restrict membership, including on the basis
15 of health condition.

16 **SEC. 185. DUTIES OF IHRT TO IHRT PARTICIPANTS.**

17 (a) FIDUCIARY DUTY OF IHRT; PENALTIES FOR
18 VIOLATIONS OF FIDUCIARY DUTY.—

19 (1) FIDUCIARY DUTY.—With respect to the
20 electronic health record of an IHRT participant
21 maintained by an IHRT, the IHRT shall have a fi-
22 duciary duty to act for the benefit and in the inter-
23 ests of such participant and of the IHRT as a whole.
24 Such duty shall include obtaining the affirmative
25 consent of such participant prior to the release of in-

1 formation in such participant's electronic health
2 record in accordance with the requirements of this
3 part.

4 (2) PENALTIES.—If the IHRT knowingly or
5 recklessly breaches the fiduciary duty described in
6 paragraph (1), the IHRT shall be subject to the fol-
7 lowing penalties:

8 (A) Loss of certification of the IHRT.

9 (B) A fine that is not in excess of \$50,000.

10 (C) A term of imprisonment for the indi-
11 viduals involved of not more than 5 years.

12 (b) ELECTRONIC HEALTH RECORD DEEMED TO BE
13 HELD IN TRUST BY IHRT.—With respect to an indi-
14 vidual, an electronic health record maintained by an IHRT
15 shall be deemed to be held in trust by the IHRT for the
16 benefit of the individual and the IHRT shall have no legal
17 or equitable interest in such electronic health record.

18 **SEC. 186. AVAILABILITY AND USE OF INFORMATION FROM**
19 **RECORDS IN IHRT CONSISTENT WITH PRI-**
20 **VACY PROTECTIONS AND AGREEMENTS.**

21 (a) PROTECTED ELECTRONIC HEALTH RECORDS
22 USE AND ACCESS.—

23 (1) GENERAL RIGHTS REGARDING USES OF IN-
24 FORMATION.—

1 (A) IN GENERAL.—With respect to the
2 electronic health record of an IHRT participant
3 maintained by an IHRT, subject to paragraph
4 (2)(C), primary uses and secondary uses (de-
5 scribed in subparagraphs (B) and (C), respec-
6 tively) of information within such record (other
7 than by such participant) shall be permitted
8 only upon the authorization of such use, prior
9 to such use, by such participant.

10 (B) PRIMARY USES.—For purposes of sub-
11 paragraph (A) and with respect to an electronic
12 health record of an individual, a primary use is
13 a use for purposes of the individual’s self-care
14 or care by health care professionals.

15 (C) SECONDARY USES.—For purposes of
16 subparagraph (B) and with respect to an elec-
17 tronic health record of an individual, a sec-
18 ondary use is any use not described in subpara-
19 graph (B) and includes a use for purposes of
20 public health research or other related activi-
21 ties. Additional authorization is required for a
22 secondary use extending beyond the original
23 purpose of the secondary use authorized by the
24 IHRT participant involved. Nothing in this
25 paragraph shall be construed as requiring au-

1 thorization for every secondary use that is with-
2 in the authorized original purpose.

3 (2) RULES FOR PRIMARY USE OF RECORDS FOR
4 HEALTH CARE PURPOSES.—With respect to the elec-
5 tronic health record of an IHRT participant (or
6 specified parts of such electronic health record)
7 maintained by an IHRT standards for access to
8 such record shall provide for the following:

9 (A) ACCESS BY IHRT PARTICIPANTS TO
10 THEIR ELECTRONIC HEALTH RECORDS.—

11 (i) OWNERSHIP.—The participant
12 maintains ownership over the entire elec-
13 tronic health record (and all portions of
14 such record) and shall have the right to
15 electronically access and review the con-
16 tents of the entire record (and any portion
17 of such record) at any time, in accordance
18 with this subparagraph.

19 (ii) ADDITION OF PERSONAL INFOR-
20 MATION.—The participant may add per-
21 sonal health information to the health
22 record of that participant, except that such
23 participant shall not alter information that
24 is entered into the electronic health record
25 by any authorized EHR data user. Such

1 participant shall have the right to propose
2 an amendment to information that is en-
3 tered by an authorized EHR data user
4 pursuant to standards prescribed by the
5 Federal Trade Commission for purposes of
6 amending such information.

7 (iii) IDENTIFICATION OF INFORMA-
8 TION ENTERED BY PARTICIPANT.—Any ad-
9 ditions or amendments made by the partic-
10 ipant to the health record shall be identi-
11 fied and disclosed within such record as
12 being made by such participant.

13 (B) ACCESS BY ENTITIES OTHER THAN
14 IHRT PARTICIPANT.—

15 (i) AUTHORIZED ACCESS ONLY.—Ex-
16 cept as provided under subparagraph (C)
17 and paragraph (4), access to the electronic
18 health record (or any portion of the
19 record)—

20 (I) may be made only by author-
21 ized EHR data users and only to such
22 portions of the record as specified by
23 the participant; and

24 (II) may be limited by the partic-
25 ipant for purposes of entering infor-

1 mation into such record, retrieving in-
2 formation from such record, or both.

3 (ii) IDENTIFICATION OF ENTITY THAT
4 ENTERS INFORMATION.—Any information
5 that is added by an authorized EHR data
6 user to the health record shall be identified
7 and disclosed within such record as being
8 made by such user.

9 (iii) SATISFACTION OF HIPAA PRIVACY
10 REGULATIONS.—In the case of a record of
11 a covered entity (as defined for purposes of
12 HIPAA privacy regulations), with respect
13 to an individual, if such individual is an
14 IHRT participant with an independent
15 health record trust and such covered entity
16 is an authorized EHR data user, the re-
17 quirement under the HIPAA privacy regu-
18 lations for such entity to provide the
19 record to the participant shall be deemed
20 met if such entity, without charge to the
21 IHRT or the participant—

22 (I) forwards to the trust an ap-
23 propriately formatted electronic copy
24 of the record (and updates to such
25 records) for inclusion in the electronic

1 health record of the participant main-
2 tained by the trust;

3 (II) enters such record into the
4 electronic health record of the partici-
5 pant so maintained; or

6 (III) otherwise makes such
7 record available for electronic access
8 by the IHRT or the individual in a
9 manner that permits such record to
10 be included in the account of the indi-
11 vidual contained in the IHRT.

12 (iv) NOTIFICATION OF SENSITIVE IN-
13 FORMATION.—Any information, with re-
14 spect to the participant, that is sensitive
15 information, as specified by the Federal
16 Trade Commission, shall not be forwarded
17 or entered by an authorized EHR data
18 user into the electronic health record of the
19 participant maintained by the trust unless
20 the user certifies that the participant has
21 been notified of such information.

22 (C) DEEMED AUTHORIZATION FOR ACCESS
23 FOR EMERGENCY HEALTH CARE.—

24 (i) FINDINGS.—Congress finds that—

1 (I) given the size and nature of
2 visits to emergency departments in
3 the United States, readily available
4 health information could make the dif-
5 ference between life and death; and

6 (II) because of the case mix and
7 volume of patients treated, emergency
8 departments are well positioned to
9 provide information for public health
10 surveillance, community risk assess-
11 ment, research, education, training,
12 quality improvement, and other uses.

13 (ii) USE OF INFORMATION.—With re-
14 spect to the electronic health record of an
15 IHRT participant (or specified parts of
16 such electronic health record) maintained
17 by an IHRT, the participant shall be
18 deemed as providing authorization (in the
19 form of affirmative consent) for health
20 care providers to access, in connection with
21 providing emergency care services to the
22 participant, a limited, authenticated infor-
23 mation set concerning the participant for
24 emergency response purposes, unless the
25 participant specifies that such information

1 set (or any portion of such information
2 set) may not be so accessed. Such limited
3 information set may include information—

4 (I) patient identification data, as
5 determined appropriate by the partici-
6 pant;

7 (II) provider identification that
8 includes the use of unique provider
9 identifiers;

10 (III) payment information;

11 (IV) information related to the
12 individual's vitals, allergies, and medi-
13 cation history;

14 (V) information related to exist-
15 ing chronic problems and active clin-
16 ical conditions of the participant; and

17 (VI) information concerning
18 physical examinations, procedures, re-
19 sults, and diagnosis data.

20 (3) RULES FOR SECONDARY USES OF RECORDS
21 FOR RESEARCH AND OTHER PURPOSES.—

22 (A) IN GENERAL.—With respect to the
23 electronic health record of an IHRT participant
24 (or specified parts of such electronic health
25 record) maintained by an IHRT, the IHRT

1 may sell such record (or specified parts of such
2 record) only if—

3 (i) the transfer is authorized by the
4 participant pursuant to an agreement be-
5 tween the participant and the IHRT and is
6 in accordance with the privacy protection
7 agreement described in subsection (b)(1)
8 entered into between such participant and
9 such IHRT;

10 (ii) such agreement includes param-
11 eters with respect to the disclosure of in-
12 formation involved and a process for the
13 authorization of the further disclosure of
14 information in such record;

15 (iii) the information involved is to be
16 used for research or other activities only as
17 provided for in the agreement;

18 (iv) the recipient of the information
19 provides assurances that the information
20 will not be further transferred or reused in
21 violation of such agreement; and

22 (v) the transfer otherwise meets the
23 requirements and standards prescribed by
24 the Federal Trade Commission.

1 (B) TREATMENT OF PUBLIC HEALTH RE-
2 PORTING.—Nothing in this paragraph shall be
3 construed as prohibiting or limiting the use of
4 health care information of an individual, includ-
5 ing an individual who is an IHRT participant,
6 for public health reporting (or other research)
7 purposes prior to the inclusion of such informa-
8 tion in an electronic health record maintained
9 by an IHRT.

10 (4) LAW ENFORCEMENT CLARIFICATION.—
11 Nothing in this part shall prevent an IHRT from
12 disclosing information contained in an electronic
13 health record maintained by the IHRT when re-
14 quired for purposes of a lawful investigation or offi-
15 cial proceeding inquiring into a violation of, or fail-
16 ure to comply with, any criminal or civil statute or
17 any regulation, rule, or order issued pursuant to
18 such a statute.

19 (5) RULE OF CONSTRUCTION.—Nothing in this
20 section shall be construed to require a health care
21 provider that does not utilize electronic methods or
22 appropriate levels of health information technology
23 on the date of the enactment of this Act to adopt
24 such electronic methods or technology as a require-
25 ment for participation or compliance under this part.

1 (b) PRIVACY PROTECTION AGREEMENT; TREATMENT
2 OF STATE PRIVACY AND SECURITY LAWS.—

3 (1) PRIVACY PROTECTION AGREEMENT.—A pri-
4 vacy protection agreement described in this sub-
5 section is an agreement, with respect to an electronic
6 health record of an IHRT participant to be main-
7 tained by an independent health record trust, be-
8 tween the participant and the trust—

9 (A) that is consistent with the standards
10 described in subsection (a)(2);

11 (B) under which the participant specifies
12 the portions of the record that may be accessed,
13 under what circumstances such portions may be
14 accessed, any authorizations for indicated au-
15 thorized EHR data users to access information
16 contained in the record, and the purposes for
17 which the information (or portions of the infor-
18 mation) in the record may be used;

19 (C) which provides a process for the au-
20 thorization of the transfer of information con-
21 tained in the record to a third party, including
22 for the sale of such information for purposes of
23 research, by an authorized EHR data user and
24 reuse of such information by such third party,
25 including a provision requiring that such trans-

1 fer and reuse is not in violation of any privacy
2 or transfer restrictions placed by the partici-
3 pant on the independent health record of such
4 participant; and

5 (D) under which the trust provides assur-
6 ances that the trust will not transfer, disclose,
7 or provide access to the record (or any portion
8 of the record) in violation of the parameters es-
9 tablished in the agreement or to any person or
10 entity who has not agreed to use and transfer
11 such record (or portion of such record) in ac-
12 cordance with such agreement.

13 (2) TREATMENT OF STATE LAWS.—

14 (A) IN GENERAL.—Except as provided
15 under subparagraph (B), the provisions of a
16 privacy protection agreement entered into be-
17 tween an IHRT and an IHRT participant shall
18 preempt any provision of State law (or any
19 State regulation) relating to the privacy and
20 confidentiality of individually identifiable health
21 information or to the security of such health in-
22 formation.

23 (B) EXCEPTION FOR PRIVILEGED INFOR-
24 MATION.—The provisions of a privacy protec-
25 tion agreement shall not preempt any provision

1 of State law (or any State regulation) that rec-
2 ognizes privileged communications between phy-
3 sicians, health care practitioners, and patients
4 of such physicians or health care practitioners,
5 respectively.

6 (C) STATE DEFINED.—For purposes of
7 this section, the term “State” has the meaning
8 given such term when used in title XI of the
9 Social Security Act, as provided under section
10 1101(a) of such Act (42 U.S.C. 1301(a)).

11 **SEC. 187. VOLUNTARY NATURE OF TRUST PARTICIPATION**
12 **AND INFORMATION SHARING.**

13 (a) IN GENERAL.—Participation in an independent
14 health record trust, or authorizing access to information
15 from such a trust, is voluntary. No employer, health insur-
16 ance issuer, group health plan, health care provider, or
17 other person may require, as a condition of employment,
18 issuance of a health insurance policy, coverage under a
19 group health plan, the provision of health care services,
20 payment for such services, or otherwise, that an individual
21 participate in, or authorize access to information from, an
22 independent health record trust.

23 (b) ENFORCEMENT.—The penalties provided for in
24 subsection (a) of section 1177 of the Social Security Act
25 (42 U.S.C. 1320d–6) shall apply to a violation of sub-

1 section (a) in the same manner as such penalties apply
2 to a person in violation of subsection (a) of such section.

3 **SEC. 188. FINANCING OF ACTIVITIES.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), an IHRT may generate revenue to pay for the oper-
6 ations of the IHRT through—

7 (1) charging IHRT participants account fees
8 for use of the trust;

9 (2) charging authorized EHR data users for ac-
10 ccessing electronic health records maintained in the
11 trust;

12 (3) the sale of information contained in the
13 trust (as provided for in section 186(a)(3)(A)); and

14 (4) any other activity determined appropriate
15 by the Federal Trade Commission.

16 (b) PROHIBITION AGAINST ACCESS FEES FOR
17 HEALTH CARE PROVIDERS.—For purposes of providing
18 incentives to health care providers to access information
19 maintained in an IHRT, as authorized by the IHRT par-
20 ticipants involved, the IHRT may not charge a fee for
21 services specified by the IHRT. Such services shall include
22 the transmittal of information from a health care provider
23 to be included in an independent electronic health record
24 maintained by the IHRT (or permitting such provider to
25 input such information into the record), including the

1 transmission of or access to information described in sec-
2 tion 186(a)(2)(C)(ii) by appropriate emergency respond-
3 ers.

4 (c) **REQUIRED DISCLOSURES.**—The sources and
5 amounts of revenue derived under subsection (a) for the
6 operations of an IHRT shall be fully disclosed to each
7 IHRT participant of such IHRT and to the public.

8 (d) **TREATMENT OF INCOME.**—For purposes of the
9 Internal Revenue Code of 1986, any revenue described in
10 subsection (a) shall not be included in gross income of any
11 IHRT, IHRT participant, or authorized EHR data user.

12 **SEC. 189. REGULATORY OVERSIGHT.**

13 (a) **IN GENERAL.**—In carrying out this part, the Fed-
14 eral Trade Commission shall promulgate regulations for
15 independent health record trusts.

16 (b) **ESTABLISHMENT OF INTERAGENCY STEERING**
17 **COMMITTEE.**—

18 (1) **IN GENERAL.**—The Secretary of Health and
19 Human Services shall establish an Interagency
20 Steering Committee in accordance with this sub-
21 section.

22 (2) **CHAIRPERSON.**—The Secretary of Health
23 and Human Services shall serve as the chairperson
24 of the Interagency Steering Committee.

1 (3) MEMBERSHIP.—The members of the Inter-
2 agency Steering Committee shall consist of the At-
3 torney General, the Chairperson of the Federal
4 Trade Commission, the Chairperson for the National
5 Committee for Vital and Health Statistics, a rep-
6 resentative of the Federal Reserve, and other Fed-
7 eral officials determined appropriate by the Sec-
8 retary of Health and Human Services.

9 (4) DUTIES.—The Interagency Steering Com-
10 mittee shall coordinate the implementation of this
11 part, including the implementation of policies de-
12 scribed in subsection (d) based upon the rec-
13 ommendations provided under such subsection, and
14 regulations promulgated under this part.

15 (c) FEDERAL ADVISORY COMMITTEE.—

16 (1) IN GENERAL.—The National Committee for
17 Vital and Health Statistics shall serve as an advisory
18 committee for the IHRTs. The membership of such
19 advisory committee shall include a representative
20 from the Federal Trade Commission and the chair-
21 person of the Interagency Steering Committee. Not
22 less than 60 percent of such membership shall con-
23 sist of representatives of nongovernment entities, at
24 least one of whom shall be a representative from an
25 organization representing health care consumers.

1 (2) DUTIES.—The National Committee for
2 Vital and Health Statistics shall issue periodic re-
3 ports and review policies concerning IHRTs based
4 on each of the following factors:

5 (A) Privacy and security policies.

6 (B) Economic progress.

7 (C) Interoperability standards.

8 (d) POLICIES RECOMMENDED BY FEDERAL TRADE
9 COMMISSION.—The Federal Trade Commission, in con-
10 sultation with the National Committee for Vital and
11 Health Statistics, shall recommend policies to—

12 (1) provide assistance to encourage the growth
13 of independent health record trusts;

14 (2) track economic progress as it pertains to
15 operators of independent health records trusts and
16 individuals receiving nontaxable income with respect
17 to accounts;

18 (3) conduct public education activities regarding
19 the creation and usage of the independent health
20 records trusts;

21 (4) establish standards for the interoperability
22 of health information technology to ensure that in-
23 formation contained in such record may be shared
24 between the trust involved, the participant, and au-
25 thorized EHR data users, including for the stand-

1 ardized collection and transmission of individual
2 health records (or portions of such records) to au-
3 thorized EHR data users through a common inter-
4 face and for the portability of such records among
5 independent health record trusts; and

6 (5) carry out any other activities determined
7 appropriate by the Federal Trade Commission.

8 (e) REGULATIONS PROMULGATED BY FEDERAL
9 TRADE COMMISSION.—The Federal Trade Commission
10 shall promulgate regulations based on, at a minimum, the
11 following factors:

12 (1) Requiring that an IHRT participant, who
13 has an electronic health record that is maintained by
14 an IHRT, be notified of a security breach with re-
15 spect to such record, and any corrective action taken
16 on behalf of the participant.

17 (2) Requiring that information sent to, or re-
18 ceived from, an IHRT that has been designated as
19 high-risk should be authenticated through the use of
20 methods such as the periodic changing of passwords,
21 the use of biometrics, the use of tokens or other
22 technology as determined appropriate by the council.

23 (3) Requiring a delay in releasing sensitive
24 health care test results and other similar informa-

1 tion to patients directly in order to give physicians
2 time to contact the patient.

3 (4) Recommendations for entities operating
4 IHRTs, including requiring analysis of the potential
5 risk of health transaction security breeches based on
6 set criteria.

7 (5) The conduct of audits of IHRTs to ensure
8 that they are in compliance with the requirements
9 and standards established under this part.

10 (6) Disclosure to IHRT participants of the
11 means by which such trusts are financed, including
12 revenue from the sale of patient data.

13 (7) Prevention of certification of an entity seek-
14 ing independent health record trust certification
15 based on—

16 (A) the potential for conflicts between the
17 interests of such entity and the security of the
18 health information involved; and

19 (B) the involvement of the entity in any
20 activity that is contrary to the best interests of
21 a patient.

22 (8) Prevention of the use of revenue sources
23 that are contrary to a patient's interests.

1 (9) Public disclosure of audits in a manner
2 similar to financial audits required for publicly trad-
3 ed stock companies.

4 (10) Requiring notification to a participating
5 entity that the information contained in such record
6 may not be representative of the complete or accu-
7 rate electronic health record of such account holder.

8 (f) COMPLIANCE REPORT.—Not later than 1 year
9 after the date of the enactment of this Act, and annually
10 thereafter, the Commission shall submit to the Committee
11 on Health, Education, Labor, and Pensions and the Com-
12 mittee on Finance of the Senate and the Committee on
13 Energy and Commerce and the Committee on Ways and
14 Means of the House of Representatives, a report on com-
15 pliance by and progress of independent health record
16 trusts with this part. Such report shall describe the fol-
17 lowing:

18 (1) The number of complaints submitted about
19 independent health record trusts, which shall be di-
20 vided by complaints related to security breaches, and
21 complaints not related to security breaches, and may
22 include other categories as the Interagency Steering
23 Committee established under subsection (b) deter-
24 mines appropriate.

1 (2) The number of enforcement actions under-
2 taken by the Commission against independent health
3 record trusts in response to complaints under para-
4 graph (1), which shall be divided by enforcement ac-
5 tions related to security breaches and enforcement
6 actions not related to security breaches and may in-
7 clude other categories as the Interagency Steering
8 Committee established under subsection (b) deter-
9 mines appropriate.

10 (3) The economic progress of the individual
11 owner or institution operator as achieved through
12 independent health record trust usage and existing
13 barriers to such usage.

14 (4) The progress in security auditing as pro-
15 vided for by the Interagency Steering Committee
16 council under subsection (b).

17 (5) The other core responsibilities of the Com-
18 mission as described in subsection (a).

19 (g) INTERAGENCY MEMORANDUM OF UNDER-
20 STANDING.—The Interagency Steering Committee shall
21 ensure, through the execution of an interagency memo-
22 randum of understanding, that—

23 (1) regulations, rulings, and interpretations
24 issued by Federal officials relating to the same mat-
25 ter over which 2 or more such officials have respon-

1 sibility under this part are administered so as to
2 have the same effect at all times; and

3 (2) the memorandum provides for the coordina-
4 tion of policies related to enforcing the same require-
5 ments through such officials in order to have coordi-
6 nated enforcement strategy that avoids duplication
7 of enforcement efforts and assigns priorities in en-
8 forcement.

9 **TITLE II—FAIRNESS FOR EVERY**
10 **AMERICAN PATIENT**
11 **Subtitle A—Medicaid**
12 **Modernization**

13 **SEC. 201. MEDICAID MODERNIZATION.**

14 (a) IN GENERAL.—Effective January 1, 2011, title
15 XIX of the Social Security Act (42 U.S.C. 1396 et seq.)
16 is amended to read as follows:

17 **“TITLE XIX—GRANTS TO STATES**
18 **FOR MEDICAL ASSISTANCE**
19 **PROGRAMS**

“TABLE OF CONTENTS OF TITLE

“Sec. 1900. References to pre-modernized Medicaid provisions; continuity for commonwealths and territories.

“PART A—GRANTS TO STATES FOR ACUTE CARE FOR INDIVIDUALS WITH DISABILITIES AND CERTAIN LOW-INCOME INDIVIDUALS

“Sec. 1901. Purpose; appropriation.

“Sec. 1902. Payments to States for acute care medical assistance.

“Sec. 1903. Definitions of eligible individuals and acute care medical assistance.

“Sec. 1904. State plan requirements for acute care medical assistance.

“Sec. 1905. Definitions.

- “Sec. 1906. Enrollment of individuals under group health plans and other arrangements.
- “Sec. 1907. Drug rebates.
- “Sec. 1908. Managed care.
- “Sec. 1909. Annual reports.

“PART B—GRANTS TO STATES FOR LONG-TERM CARE SERVICES AND SUPPORTS

- “Sec. 1911. Purpose.
- “Sec. 1912. State plan.
- “Sec. 1913. State allotments.
- “Sec. 1914. Use of grants.
- “Sec. 1915. Administrative provisions.
- “Sec. 1916. Definition of long-term care services and supports.
- “Sec. 1917. Provision requirements for long-term care services and supports, including option for self-directed services and supports.
- “Sec. 1918. Treatment of income and resources for certain institutionalized spouses.
- “Sec. 1919. Annual reports.

“PART C—GRANTS TO STATES FOR SURVEY AND CERTIFICATION OF MEDICAL FACILITIES AND OTHER REQUIREMENTS

- “Sec. 1931. Authorization of appropriations.
- “Sec. 1932. Application of certain requirements under pre-modernized Medicaid.

“PART D—GRANTS TO STATES FOR PROGRAM INTEGRITY

- “Sec. 1941. Authorization of appropriations.
- “Sec. 1942. Application of certain requirements under pre-modernized Medicaid.

“PART E—GRANTS TO STATES FOR ADMINISTRATION

- “Sec. 1951. Authorization of appropriations; payments to states.
- “Sec. 1952. Cost-sharing protections.
- “Sec. 1953. Application of certain requirements under pre-modernized Medicaid.

“PART F—OTHER PROVISIONS

- “Sec. 1961. Application of certain requirements under pre-modernized Medicaid.

1 **“SEC. 1900. REFERENCES TO PRE-MODERNIZED MEDICAID**
 2 **PROVISIONS; CONTINUITY FOR COMMON-**
 3 **WEALTHS AND TERRITORIES.**

4 “(a) IN GENERAL.—In this title, if a reference to this
 5 title or to a provision of this title is prefaced by the term

1 ‘old’, such reference is to this title or a provision of this
2 title as in effect on December 31, 2010.

3 “(b) REGULATIONS.—The Secretary shall promul-
4 gate regulations to bring requirements imposed under an
5 old provision of this title that applies under this title after
6 December 31, 2010, into conformity with the policies em-
7 bodied in this title as in effect on and after January 1,
8 2011.

9 “(c) CONTINUITY FOR COMMONWEALTHS AND TER-
10 RITORIES.—In the case of Puerto Rico, the United States
11 Virgin Islands, Guam, the Northern Mariana Islands, and
12 American Samoa, this title as in effect on and after Janu-
13 ary 1, 2011, shall not apply to such commonwealths and
14 territories, and old title XIX shall apply to a Medicaid pro-
15 gram operated by such commonwealths or territories on
16 and after that date.

17 **“PART A—GRANTS TO STATES FOR ACUTE CARE**
18 **FOR INDIVIDUALS WITH DISABILITIES AND**
19 **CERTAIN LOW-INCOME INDIVIDUALS**

20 **“SEC. 1901. PURPOSE; APPROPRIATION.**

21 “(a) PURPOSE.—It is the purpose of this part to en-
22 able each State, as far as practicable under the conditions
23 in the State, to provide acute care medical assistance to
24 eligible individuals described in section 1903 whose income
25 and resources are insufficient to meet the costs of nec-

1 essary medical services, and (2) rehabilitation and other
2 services to help such individuals attain or retain capability
3 for independence or self-care.

4 “(b) APPROPRIATION.—For the purpose of making
5 payments to States under this part, there is appropriated
6 out of any money in the Treasury not otherwise appro-
7 priated, such sums as are necessary for fiscal year 2011
8 and each fiscal year thereafter.

9 **“SEC. 1902. PAYMENTS TO STATES FOR ACUTE CARE MED-**
10 **ICAL ASSISTANCE.**

11 “(a) IN GENERAL.—From the amounts appropriated
12 under section 1901 for a fiscal year, the Secretary shall
13 pay to each State which has a plan approved under this
14 part, for each quarter, beginning with the quarter com-
15 mencing January 1, 2011, an amount equal to the Federal
16 medical assistance percentage (as defined in section
17 1905(b)) of the total amount expended during such quar-
18 ter as acute care medical assistance under the State plan
19 under this part.

20 “(b) ADMINISTRATIVE EXPENSES.—Each State with
21 a plan approved under this part shall receive a payment
22 determined in accordance with part E for administrative
23 expenses incurred in carrying out the plan under this part
24 and part B (if the State has a plan approved under that
25 part).

1 **“SEC. 1903. DEFINITIONS OF ELIGIBLE INDIVIDUALS AND**
2 **ACUTE CARE MEDICAL ASSISTANCE.**

3 “(a) ELIGIBLE INDIVIDUALS.—

4 “(1) IN GENERAL.—In this part, the term ‘eli-
5 gible individual’ means an individual—

6 “(A) who is—

7 “(i) a blind or disabled individual; or

8 “(ii) an individual described in para-
9 graph (2); and

10 “(B) who the State determines satisfies—

11 “(i) the income and resources eligi-
12 bility requirements established by the State
13 under the State plan under this part; and

14 “(ii) such other requirements for as-
15 sistance as are imposed under this title, in-
16 cluding documentation of citizenship or
17 status as a qualified alien under title IV of
18 the Personal Responsibility and Work Op-
19 portunity Reconciliation Act of 1996.

20 “(2) INDIVIDUALS DESCRIBED.—For purposes
21 of paragraph (1)(A)(ii), the following individuals are
22 described in this paragraph:

23 “(A) A child in foster care under the re-
24 sponsibility of the State.

1 “(B) A low-income woman with breast or
2 cervical cancer described in old section
3 1902(aa).

4 “(C) Certain TB-infected individuals de-
5 scribed in old section 1902(z)(1).

6 “(3) GRANDFATHERED INDIVIDUALS.—An indi-
7 vidual shall be an eligible individual under the State
8 plan under this part if—

9 “(A) the individual is described in para-
10 graph (1)(A);

11 “(B) the individual satisfies the docu-
12 mentation requirements referred to in para-
13 graph (1)(B)(ii); and

14 “(C) the State would have provided med-
15 ical assistance under the State plan under old
16 title XIX to the individual, but only so long as
17 the individual continues to satisfy such old eligi-
18 bility requirements.

19 “(4) CONCURRENT ELIGIBILITY FOR PART B.—
20 An eligible individual under this part may be eligible
21 under part B, but only if the individual satisfies the
22 eligibility requirements of part B in addition to sat-
23 isfying the requirements for eligibility under this
24 part.

1 “(5) PRESUMPTIVE ELIGIBILITY FOR CERTAIN
2 BREAST OR CERVICAL CANCER PATIENTS.—Old sec-
3 tion 1920B (relating to presumptive eligibility for
4 certain breast or cervical cancer patients) shall apply
5 under this part.

6 “(b) BENEFITS.—Subject to paragraph (3), in this
7 part, the term ‘acute care medical assistance’ means the
8 following:

9 “(1) MANDATORY BENEFITS.—The care and
10 services listed in paragraphs (1) through (5), (17),
11 and (21) of old section 1905(a) (but, in the case of
12 paragraph (4)(A) of such section, without regard to
13 any limitation based on age or services in an institu-
14 tion for mental diseases).

15 “(2) OPTIONAL BENEFITS.—Any care or serv-
16 ices listed in a paragraph of old section 1905(a)
17 (other than paragraph (16)).

18 “(3) EXCEPTIONS.—

19 “(A) CERTAIN SERVICES LIMITED TO PART
20 B.—Services described in paragraphs (15),
21 (22), (23), (24), and (26) of old section
22 1905(a) shall only be provided under the State
23 plan under part B.

24 “(B) LIMIT ON PROVISION OF LONG-TERM
25 CARE SERVICES AND SUPPORTS.—A care or

1 service that the Secretary determines is a long-
2 term care service and support (including nurs-
3 ing facility services described in old section
4 1905(a)(4)(A)) shall not be provided to an indi-
5 vidual under the State plan under this part for
6 more than 30 days within any 12-month period.

7 “(C) EXCLUSIONS.—Such term shall not
8 include any payments with respect to care or
9 services for any individual who is an inmate of
10 a public institution or a patient in an institu-
11 tion for mental diseases (regardless of age).

12 **“SEC. 1904. STATE PLAN REQUIREMENTS FOR ACUTE CARE**
13 **MEDICAL ASSISTANCE.**

14 “(a) IN GENERAL.—In order to receive payments
15 under this part, a State shall have an approved State plan
16 for acute care medical assistance. For purposes of this
17 part, such assistance includes payments for preventive
18 care, primary care, diagnosis and treatment of acute and
19 chronic health conditions, emergency care, diagnosis and
20 treatment of mental illnesses and related conditions, and
21 rehabilitation and other services to help eligible individuals
22 attain or retain capability for independence or self-care.
23 A State medical assistance plan shall include a descrip-
24 tion, consistent with the requirements of this part of—

1 “(1) eligibility standards, including income and
2 asset standards;

3 “(2) benefits, including the amount, duration,
4 and scope of covered items and services;

5 “(3) strategies for improving access and quality
6 of care; and

7 “(4) methods of service delivery.

8 “(b) PUBLIC AVAILABILITY OF STATE PLAN.—The
9 State shall make available to the public the State plan
10 under this part and any amendments submitted by the
11 State to the plan.

12 “(c) AMOUNT, DURATION, AND SCOPE.—The State
13 plan shall provide that the acute care medical assistance
14 made available to any eligible individual shall not be less
15 in amount, duration, or scope than the acute care medical
16 assistance made available to any other eligible individual.

17 “(d) APPLICATION OF CERTAIN PRE-MODERNIZED
18 MEDICAID REQUIREMENTS.—

19 “(1) OLD STATE PLAN REQUIREMENTS.—The
20 following provisions of old section 1902 shall apply
21 to the State plans under this part:

22 “(A) Old section 1902(a)(10)(C) (relating
23 to certain eligibility and other requirements).

24 “(B) Old section 1902(a)(10)(D) (relating
25 to home health services).

1 “(C) Old section 1902(a)(10)(G) (relating
2 to nonapplication of certain supplemental secu-
3 rity income eligibility criteria).

4 “(D) The subclauses in the flush matter
5 following old section 1902(a)(10)(G) (relating
6 to the provision of certain services) other than
7 subclauses (V), (VII), (VIII), and (IX).

8 “(E) Old section 1902(a)(17) (relating to
9 reasonable standards for determining eligi-
10 bility).

11 “(F) Old section 1902(a)(19) (relating to
12 eligibility safeguards).

13 “(G) Old section 1902(a)(34) (relating to
14 eligibility beginning with the third month prior
15 to the month of application).

16 “(H) Subparagraphs (A), (B), and (C) of
17 old section 1902(a)(43) (relating to early and
18 periodic screening, diagnostic, and treatment
19 services).

20 “(I) Old section 1902(a)(46)(A) (relating
21 to compliance with section 1137 requirements).

22 “(J) The fourth and sixth sentences of old
23 section 1902(a) (relating to eligibility for cer-
24 tain individuals).

25 “(2) OTHER OLD TITLE XIX REQUIREMENTS.—

1 “(A) Old section 1902(e)(3) (relating to
2 optional eligibility for certain disabled individ-
3 uals).

4 “(B) Old section 1902(e)(9) (relating to
5 optional respiratory care services).

6 “(C) Old section 1902(f) (relating to eligi-
7 bility of certain aged, blind, or disabled individ-
8 uals).

9 “(D) Old section 1902(m) (relating to eli-
10 gibility of certain aged or disabled individuals),
11 other than paragraph (4).

12 “(E) Old section 1902(o) (relating to dis-
13 regard of certain supplemental security income
14 benefits).

15 “(F) Old section 1902(v) (relating to eligi-
16 bility determinations of blind or disabled indi-
17 viduals).

18 “(e) OTHER REQUIREMENTS.—The State plan under
19 this part shall—

20 “(1) comply with the requirements of the other
21 parts of this title; and

22 “(2) provide that the State will make the con-
23 tributions specified under section 340A–1(e) of the
24 Public Health Service Act .

1 **“SEC. 1905. DEFINITIONS.**

2 “(a) IN GENERAL.—The definitions specified in this
3 section shall apply for purposes of this part and, to the
4 extent applicable and consistent with the policy embodied
5 in such part, parts B, C, D, E, and F.

6 “(b) FEDERAL MEDICAL ASSISTANCE PERCENT-
7 AGE.—The term ‘Federal medical assistance percentage’
8 for any State shall be 100 percent less the State percent-
9 age; and the State percentage shall be that percentage
10 which bears the same ratio to 45 percent as the square
11 of the per capita income of such State bears to the square
12 of the per capita income of the continental United States
13 (including Alaska) and Hawaii, except that the Federal
14 medical assistance percentage shall in no case be less than
15 50 percent or more than 83 percent. The Federal medical
16 assistance percentage for any State shall be determined
17 and promulgated in accordance with the provisions of sec-
18 tion 1101(a)(8)(B).

19 “(c) APPLICATION OF CERTAIN PRE-MODERNIZED
20 MEDICAID PROVISIONS.—The following old provisions
21 shall apply under this part:

22 “(1) OLD SECTION 1905 PROVISIONS.—The fol-
23 lowing provisions of old section 1905:

24 “(A) Old section 1905(d) (relating to the
25 definition of an intermediate care facility for
26 the mentally retarded).

1 “(B) Old section 1905(e) (relating to the
2 definition of physicians services).

3 “(C) Old section 1905(f) (relating to the
4 definition of nursing facility services).

5 “(D) Old section 1905(g) (relating to the
6 provision of chiropractors’ services).

7 “(E) Old section 1905(j) (relating to State
8 supplementary payments).

9 “(F) Old section 1905(k) (relating to sup-
10 plemental security income benefits payable pur-
11 suant to section 211 of Public Law 93–66).

12 “(G) Old section 1905(l)(1) (relating to
13 rural health clinic services).

14 “(H) Old section 1905(o) (relating to hos-
15 pice care).

16 “(I) Old section 1905(q) (relating to the
17 definition of a qualified severely impaired indi-
18 vidual).

19 “(J) Old section 1905(r) (relating to the
20 definition of early and periodic screening, diag-
21 nostic, and treatment services).

22 “(K) Old section 1905(s) (relating to the
23 definition of a qualified disabled and working
24 individual).

1 “(L) Old section 1905(t) (relating to the
2 definition of primary care case management
3 services).

4 “(M) Old section 1905(v) (relating to the
5 definition of an employed individual with a
6 medically improved disability).

7 “(N) Paragraphs (1) and (3) of old section
8 1905(w) (relating to the definition of an inde-
9 pendent foster care adolescent).

10 “(O) Old section 1905(x) (relating to
11 strategies, treatment, and services for individ-
12 uals with Sickle Cell Disease).

13 “(2) OTHER OLD PROVISIONS.—

14 “(A) Old section 1903(m) (relating to the
15 definition of a medicaid managed care organiza-
16 tion).

17 **“SEC. 1906. ENROLLMENT OF INDIVIDUALS UNDER GROUP**
18 **HEALTH PLANS AND OTHER ARRANGEMENTS.**

19 “The following old provisions shall apply under this
20 part:

21 “(1) Old section 1906 (relating to enrollment of
22 individuals under group health plans).

23 “(2) Old section 1902(a)(70) (relating to State
24 option to establish a non-emergency medical trans-
25 portation brokerage program).

1 “(3) Paragraphs (2) and (11) of old section
2 1902(e) (relating to eligibility for individuals en-
3 rolled with a group health plan or under a managed
4 care arrangement during a minimum enrollment pe-
5 riod).

6 **“SEC. 1907. DRUG REBATES.**

7 “Old sections 1902(a)(54) and 1927 (relating to pay-
8 ment for covered outpatient drugs and rebates) shall apply
9 under this part.

10 **“SEC. 1908. MANAGED CARE.**

11 “The following old provisions shall apply under this
12 part:

13 “(1) Old section 1932 (relating to managed
14 care), other than subsection (a)(2) of such section.

15 “(2) Old section 1903(k) (relating to technical
16 and actuarial assistance for States).

17 **“SEC. 1909. ANNUAL REPORTS.**

18 “(a) IN GENERAL.—Each State that receives pay-
19 ments under this part shall submit an annual report to
20 the Secretary, in such form and manner as the Secretary
21 shall specify.

22 “(b) APPLICATION OF OLD EPSDT REPORTING RE-
23 QUIREMENTS.—Each annual report shall include the in-
24 formation required to be reported under old section
25 1902(a)(43)(D)(iv).

1 **“PART B—GRANTS TO STATES FOR LONG-TERM**
2 **CARE SERVICES AND SUPPORTS**

3 **“SEC. 1911. PURPOSE.**

4 “(a) IN GENERAL.—The purpose of this part is to
5 increase the flexibility of States in operating a system of
6 long-term care services and supports designed to—

7 “(1) provide assistance to needy families so that
8 individuals with disabilities and low-income senior
9 citizens may be served and supported in their own
10 homes and communities;

11 “(2) emphasize the independence and dignity of
12 the person served by public programs;

13 “(3) end the institutional bias that existed
14 under the Medicaid program prior to January 1,
15 2011;

16 “(4) provide stable and predictable funding for
17 States as they rebalance their long-term care sys-
18 tems from institutions to communities;

19 “(5) provide flexibility to States to adopt new
20 and innovative service delivery methods; and

21 “(6) promote independence and support activi-
22 ties that will enable individuals to return or main-
23 tain ties to the community, including through em-
24 ployment.

25 “(b) NO INDIVIDUAL ENTITLEMENT.—No individual
26 determined eligible for long-term care services and sup-

1 ports under this part shall be entitled to a specific service
2 or type of delivery of service.

3 **“SEC. 1912. STATE PLAN.**

4 “(a) IN GENERAL.—In order to receive payments
5 under this part, a State must have an approved State plan
6 for long-term care services and supports. A State long
7 term care services and supports plan shall include a de-
8 scription, consistent with the requirements of this part,
9 of—

10 “(1) income and assets eligibility standards and
11 spousal impoverishment protections consistent with
12 subsection (b);

13 “(2) the standardized assessments tools used to
14 determine eligibility for specific long-term care serv-
15 ices and supports;

16 “(3) the person-centered plans used to provide
17 such services and supports;

18 “(4) the proposed uses of funding, if applicable,
19 to provide targeted methods to meet individual level
20 of support needs including tiering (preventive, emer-
21 gency, low, medium, high); and

22 “(5) the long-term care services and supports to
23 be available under the plan based on individual as-
24 sessment of need in accordance with sections 1916
25 and 1917.

1 “(b) MINIMUM ELIGIBILITY STANDARDS.—

2 “(1) POPULATIONS COVERED.—The State plan
3 shall specify the disabled and elderly populations
4 who are eligible for long-term care services and sup-
5 ports.

6 “(2) NEEDS-BASED CRITERIA.—The plan shall
7 include a description of the needs-based criteria the
8 State will use to assess an individual’s need for spe-
9 cific services and supports available under the State
10 plan.

11 “(3) OTHER ELIGIBILITY REQUIREMENTS.—

12 “(A) INCOME AND ASSETS.—A State may
13 use different income and asset standards and
14 methodologies for determining eligibility than
15 those used for determining eligibility for acute
16 care medical assistance under part A. A State
17 may not make eligibility standards related to
18 income, asset, and spousal impoverishment pro-
19 tection more restrictive than the Federal min-
20 imum requirements of December 31, 2008.

21 “(B) APPLICATION OF SPOUSAL IMPOVER-
22 ISHMENT PROTECTIONS.—The State plan shall
23 provide that the State shall comply with the re-
24 quirements of section 1918 (relating to spousal
25 impoverishment protections).

1 “(C) STATEWIDENESS.—The State plan
2 shall provide that, except with respect to meth-
3 ods used for determining homestead exemp-
4 tions, the income and asset standards and
5 methodologies shall be in effect in all political
6 subdivisions of the State.

7 “(4) TRANSITION ASSISTANCE.—The State plan
8 shall specify how the State will provide transition as-
9 sistance for individuals who, on December 31, 2010,
10 are enrolled under the State plan under old title
11 XIX (or under a waiver of that plan) and receiving
12 long-term care services or supports on that date.
13 The State shall provide such assistance to individ-
14 uals who are and are not likely to be determined eli-
15 gible for long-term care services and supports under
16 the State plan under this part, as in effect on Janu-
17 ary 1, 2011 (or the first day on which the State plan
18 is in effect under this part).

19 “(c) PAYMENT METHODOLOGIES TO PROVIDERS.—

20 “(1) IN GENERAL.—The State plan shall de-
21 scribe the methodologies used to determine payments
22 to providers. Such methodologies—

23 “(A) may be varied to assist in
24 transitioning from facilities-based to commu-
25 nity-based care; and

1 “(B) shall not be subject to Secretarial ap-
2 proval.

3 “(2) TRANSPARENCY.—The State plan shall
4 provide that the State shall make publicly avail-
5 able—

6 “(A) the payment methodologies applicable
7 under the plan; and

8 “(B) the name of any provider that re-
9 ceives \$1,000,000 or more in any 12-month pe-
10 riod and the actual amount paid to the provider
11 during that period.

12 “(d) COORDINATION OF EFFORT WITH OTHER RE-
13 LATED PUBLIC AND PRIVATE PROGRAMS.—The plan shall
14 include a description of the State’s efforts to coordinate
15 the delivery of services and supports under the plan with
16 other related public and private programs that serve indi-
17 viduals with disabilities or aged populations that need or
18 may be at risk of needing long term care.

19 “(e) PUBLIC AVAILABILITY OF STATE PLAN.—The
20 State shall make available to the public the State plan
21 under this part and any amendments submitted by the
22 State to the plan.

23 “(f) APPLICATION OF OLD TITLE XIX REQUIRE-
24 MENTS.—The following old title XIX provisions shall
25 apply to a State plan under this part:

1 “(1) Subsections (a)(50) and (q) of old section
2 1902 (relating to a monthly personal needs allow-
3 ance for certain institutionalized individuals and
4 couples).

5 “(2) Old section 1902(a)(67) (relating to pay-
6 ment for certain services furnished to a PACE pro-
7 gram eligible individual).

8 “(3) Paragraph (1) of old section 1902(r) (re-
9 lating to the post-eligibility treatment of income for
10 certain individuals) and paragraph (2) of such sec-
11 tion (relating to methodologies for determining in-
12 come and resource eligibility for individuals, but only
13 with respect to individuals who are eligible under
14 this part on or after January 1, 2011).

15 “(4) Old section 1905(i) (relating to the defini-
16 tion of an institution for mental diseases).

17 “(g) OTHER REQUIREMENTS OF OTHER PARTS.—
18 The State plan under this part shall—

19 “(1) comply with the requirements of the other
20 parts of this title; and

21 “(2) provide that the State will make the con-
22 tributions specified under section 340A–1(e) of the
23 Public Health Service Act.

1 **“SEC. 1913. STATE ALLOTMENTS.**

2 “(a) APPROPRIATION.—For the purpose of providing
3 allotments to States under this section, there is appro-
4 priated out of any money in the Treasury not otherwise
5 appropriated—

6 “(1) for fiscal year 2011, \$65,274,560,000;

7 “(2) for fiscal year 2012, \$67,885,540,000;

8 “(3) for fiscal year 2013, \$70,600,964,100;

9 “(4) for fiscal year 2014, \$73,425,000,000;

10 “(5) for fiscal year 2015, \$76,362,000,000;

11 “(6) for fiscal year 2016, \$79,416,480,000;

12 “(7) for fiscal year 2017, \$82,593,140,000;

13 “(8) for fiscal year 2018, \$85,896,870,000; and

14 “(9) for fiscal year 2019, \$89,332,743,000.

15 “(b) ALLOTMENTS TO 50 STATES AND THE DISTRICT
16 OF COLUMBIA.—

17 “(1) FISCAL YEAR 2011 ALLOTMENTS.—Subject
18 to subsection (e), the Secretary shall allot to each
19 State with a long term care plan approved under
20 this title an amount in fiscal year 2011 equal to the
21 Federal expenditures made by the State for long-
22 term care as defined in section 1916 in fiscal year
23 2008, increased by 8 percent.

24 “(2) SUBSEQUENT FISCAL YEAR ALLOT-
25 MENTS.—For fiscal year 2012 and each subsequent
26 fiscal year through fiscal year 2019, the allotment

1 for a State under this section is equal to the allot-
2 ment for the State determined for the preceding fis-
3 cal year, increased by 4 percent.

4 “(c) LIMITATION.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), no other Federal funds are available
7 under this title for expenditures incurred for long-
8 term care services and supports after December 31,
9 2010, except as provided under a State plan ap-
10 proved under this part.

11 “(2) EXCEPTION.—

12 “(A) IN GENERAL.—If a State does not
13 have an approved State plan by October 1,
14 2010, the Secretary may make payments equal
15 to 85 percent of the State’s estimated quarterly
16 allotment until June 30, 2011.

17 “(B) FULL FUNDING.—A State shall re-
18 ceive 100 percent of its allotment for fiscal year
19 2011 if the State has a plan approved under
20 this part by June 30, 2011.

21 “(d) MAINTENANCE OF EFFORT.—In order to qualify
22 for the grant payable under this section, the State must
23 demonstrate in each fiscal year that it made long-term
24 care service and supports expenditures (including funding
25 from local government sources) equal to the amount of

1 not less than 95 percent of the nonfederal share amount
 2 spent in fiscal year 2009 under the State plan under old
 3 title XIX on long term care services and supports (as de-
 4 fined in section 1916). Expenditures not made under this
 5 part shall not be recognized by the Secretary for purposes
 6 of this requirement.

7 “(e) GRANTS REDUCED IF INSUFFICIENT APPRO-
 8 PRIATIONS.—

9 “(1) IN GENERAL.—If the amount appropriated
 10 for fiscal year 2011 under subsection (a)(1) is less
 11 than the amount necessary to fund each State’s al-
 12 lotment for that fiscal year, the Secretary shall re-
 13 duce the allotment for each State for that fiscal year
 14 based on the applicable percentage determined for
 15 the State under paragraph (2) provide a reduced
 16 percentage basis as follows: Each state shall receive
 17 a percentage of its allotment based on the ratio of
 18 non-institutional spending to total long term care
 19 spending in FY 2009.

20 “(2) APPLICABLE PERCENTAGE.—For purposes
 21 of paragraph (1), the applicable percentage deter-
 22 mined with respect to a State is as follows:

“If the ratio of the State’s non-institutional spending to total long-term care spending for fiscal year 2009 is:	The applicable percentage is:
50 percent or greater	100
at least 46, but less than 50 percent	99
at least 40, but less than 46 percent	98
at least 36, but less than 40	97

at least 30, but less than 36	96
less than 30 percent	95.

1 “(f) ADMINISTRATIVE EXPENSES.—

2 “(1) IN GENERAL.—Each State with a plan ap-
3 proved under this part shall receive a payment deter-
4 mined in accordance with amounts appropriated for
5 part E for administrative expenses incurred in car-
6 rying out the plan under this part and part A.

7 “(2) ASSESSMENT-RELATED COSTS.—Costs at-
8 tributable to providing an individualized needs-based
9 assessment for purposes of identifying the long-term
10 care services and supports to be provided under the
11 State plan to an individual shall be considered a
12 long-term care service and support and shall not be
13 treated as an administrative expense.

14 **“SEC. 1914. USE OF GRANTS.**

15 “(a) IN GENERAL.—A State shall use funds for long-
16 term care services and supports as defined in section
17 1916.

18 “(b) SELF-DIRECTION.—A State shall offer individ-
19 uals the opportunity to self-direct their long-term care
20 services and supports.

21 **“SEC. 1915. ADMINISTRATIVE PROVISIONS.**

22 “(a) FUNDING ON A QUARTERLY BASIS.—The Sec-
23 retary shall make payments to States in equal amounts
24 of a State’s annual allotment on a quarterly basis. Each

1 quarterly payment shall remain available for use by the
2 State for twelve succeeding fiscal year quarters.

3 “(b) PUBLICATION.—The Secretary shall public each
4 State’s applicable allotment.

5 **“SEC. 1916. DEFINITION OF LONG-TERM CARE SERVICES**
6 **AND SUPPORTS.**

7 “(a) DEFINITION.—

8 “(1) IN GENERAL.—Subject to subsection (e),
9 in this part, the term ‘long-term care services and
10 supports’ means any of the services or supports
11 specified in paragraphs (2) or (3) that may be pro-
12 vided in a nursing facility, an institution, a home, or
13 other setting.

14 “(2) SERVICES AND SUPPORTS DESCRIBED.—
15 For purposes of paragraph (1), the services and sup-
16 ports described in this paragraph include assistive
17 technology, adaptive equipment, remote monitoring
18 equipment, case management for the aged, case
19 management for individuals with disabilities, nursing
20 home services, long-term rehabilitative services nec-
21 essary to restore functional abilities, services pro-
22 vided in intermediate care facilities for people with
23 disabilities, habilitation services (including adult day
24 care programs), community treatment teams for in-
25 dividuals with mental illness, home health services,

1 services provided in an institution for mental dis-
2 ease, a Program of All-Inclusive Care for the Elderly
3 (PACE), personal care (including personal assist-
4 ance services), recovery support including peer coun-
5 seling, supportive employment, training skills nec-
6 essary to assist the individual in achieving or main-
7 taining independence, training of family members in-
8 cluding foster parents in supportive and behavioral
9 modification skills, ongoing and periodic training to
10 maintain life skills, transitional care including room
11 and board not to exceed 60 days within a 12-month
12 period.

13 “(3) INCLUSION OF CERTAIN BENEFITS UNDER
14 OLD TITLE XIX.—Such services and supports may
15 include any of the following services:

16 “(A) Old section 1905(a)(15) (relating to
17 services in an intermediate care facility for the
18 mentally retarded).

19 “(B) Services described in subsections
20 (a)(16) and (h) of old section 1905, but without
21 regard to any restriction on such services on
22 the basis of age (relating to inpatient psy-
23 chiatric hospital services).

24 “(C) Old section 1905(a)(22) (relating to
25 home and community care (to the extent al-

1 lowed and as defined in old section 1929) for
2 functionally disabled elderly individuals).

3 “(D) Old section 1905(a)(23) (relating to
4 community supported living arrangements serv-
5 ices (to the extent allowed and as defined in old
6 section 1930)).

7 “(E) Subject to subsection (e), old section
8 1905(a)(24) but without regard to any restric-
9 tion on furnishing services to patients or resi-
10 dents of facilities or institutions (relating to
11 personal care services).

12 “(F) Old sections 1905(a)(26) and 1934
13 (relating to services furnished under a PACE
14 program under old section 1934 to PACE pro-
15 gram eligible individuals enrolled under the pro-
16 gram under such old section).

17 “(G) Old section 1915(c)(5) (relating to
18 the definition of habilitation services).

19 “(4) LIMITATION.—Long-term care services
20 and supports cannot be used for services and admin-
21 istrative costs provided through the foster care (with
22 the exception of training of foster care parents),
23 child welfare, adult protective services, juvenile jus-
24 tice, public guardianship, or correctional systems.

1 “(b) REHABILITATIVE CARE.—For purposes of reha-
2 bilitation due to acute care medical needs, a State may
3 claim rehabilitative services provided in an institutional
4 setting, nursing home, or as part of home health expendi-
5 tures as acute care benefits under the State plan under
6 part A rather than under the State plan under this part
7 for a cumulative period of 30 days within a 12-month pe-
8 riod if such care is directly related to the onset of an acute
9 care need. A State shall demonstrate the services were
10 provided as a direct result of an acute care need.

11 “(c) MANAGED CARE.—If a State provides long-term
12 care services and supports through managed care, the
13 State shall submit a methodology for determining the level
14 of expenditures attributed to long term care for approval
15 by the Secretary.

16 “(d) APPLICATION OF PART A DEFINITIONS.—A def-
17 inition specified in section 1905 shall apply to the same
18 term used in this part, unless the Secretary determines
19 that the application of such definition would be incon-
20 sistent with the purpose of this part.

21 “(e) EXCLUSION.—No payments shall be made under
22 the State plan under this part with respect to long-term
23 care supports and services provided for any individual who
24 is an inmate of a public institution. Nothing in the pre-
25 ceding sentence shall be construed as precluding the provi-

1 sion of long-term care services and supports under the
2 State plan under this part to an individual who is a pa-
3 tient in an institution for mental diseases.

4 **“SEC. 1917. PROVISION REQUIREMENTS FOR LONG-TERM**
5 **CARE SERVICES AND SUPPORT, INCLUDING**
6 **OPTION FOR SELF-DIRECTED SERVICES AND**
7 **SUPPORTS.**

8 “(a) REQUIREMENTS FOR THE PROVISION OF LONG-
9 TERM CARE SERVICES AND SUPPORTS.—

10 “(1) IN GENERAL.—Subject to the succeeding
11 provisions of this subsection, a State may provide
12 through a State plan amendment for the provision
13 of long-term care services and supports for individ-
14 uals eligible under the State plan under this part,
15 subject to the following requirements:

16 “(A) NEEDS-BASED CRITERIA FOR ELIGI-
17 BILITY FOR, AND RECEIPT OF, LONG-TERM
18 CARE SERVICES AND SUPPORTS.—The State es-
19 tablishes needs-based criteria for determining
20 an individual’s eligibility under the State plan
21 for medical assistance for such long-term care
22 services and supports, and if the individual is
23 eligible for such services and supports, the spe-
24 cific services and supports that will be available
25 under the State plan to the individual.

1 “(B) CRITERIA FOR INSTITUTIONALIZED
2 VERSUS NON-INSTITUTIONALIZED SERVICES.—
3 In establishing needs-based criteria, the State
4 may establish criteria for determining eligibility
5 for, and receipt of, services and supports pro-
6 vided in a facility or institution that are more
7 stringent than the criteria established for eligi-
8 bility and receipt of services and supports in a
9 non-facility or non-institutionalized setting.

10 “(C) AUTHORITY TO LIMIT NUMBER OF
11 ELIGIBLE INDIVIDUALS.—A State may limit the
12 number of individuals who are eligible for such
13 services and supports and may establish waiting
14 lists for the receipt of such services and sup-
15 ports.

16 “(D) CRITERIA BASED ON INDIVIDUAL AS-
17 SESSMENT.—

18 “(i) IN GENERAL.—The criteria estab-
19 lished by the State shall require an assess-
20 ment of an individual’s support needs and
21 capabilities, and may take into account the
22 inability of the individual to perform 2 or
23 more activities of daily living (as defined in
24 section 7702B(c)(2)(B) of the Internal
25 Revenue Code of 1986) or the need for sig-

1 nificant assistance to perform such activi-
2 ties, and such other risk factors as the
3 State determines to be appropriate.

4 “(ii) ADJUSTMENT AUTHORITY.—The
5 State plan amendment provides the State
6 with the option to modify the criteria es-
7 tablished under subparagraph (A) (without
8 having to obtain prior approval from the
9 Secretary) in the event that the enrollment
10 of individuals eligible for services exceeds
11 the projected enrollment, but only if—

12 “(I) the State provides at least
13 60 days notice to the Secretary and
14 the public of the proposed modifica-
15 tion;

16 “(II) the State deems an indi-
17 vidual receiving long-term care serv-
18 ices and supports on the basis of the
19 most recent version of the criteria in
20 effect prior to the effective date of the
21 modification to be eligible for such
22 services and supports for a period of
23 at least 12 months beginning on the
24 date the individual first received med-

1 ical assistance for such services and
2 supports; and

3 “(III) after the effective date of
4 such modification, the State, at a
5 minimum, applies the criteria for de-
6 termining whether an individual re-
7 quires the level of care provided in a
8 facility or institutionalized setting
9 which applied under the State plan
10 immediately prior to the application of
11 the modified criteria.

12 “(E) INDEPENDENT EVALUATION AND AS-
13 SESSMENT.—

14 “(i) ELIGIBILITY DETERMINATION.—
15 The State uses an independent evaluation
16 for making the determinations described in
17 subparagraph (A).

18 “(ii) ASSESSMENT.—In the case of an
19 individual who is determined to be eligible
20 for long-term care services and supports,
21 the State uses an independent assessment,
22 based on the needs of the individual to—

23 “(I) determine a necessary level
24 of services and supports to be pro-

1 vided, consistent with an individual's
2 physical and mental capacity;

3 “(II) prevent the provision of un-
4 necessary or inappropriate care; and

5 “(III) establish an individualized
6 care plan for the individual in accord-
7 ance with subparagraph (G).

8 “(F) ASSESSMENT.—The independent as-
9 sessment required under subparagraph (E)(ii)
10 shall include the following:

11 “(i) An objective evaluation of an in-
12 dividual's inability to perform 2 or more
13 activities of daily living (as defined in sec-
14 tion 7702B(c)(2)(B) of the Internal Rev-
15 enue Code of 1986) or the need for signifi-
16 cant assistance to perform such activities.

17 “(ii) A face-to-face evaluation of the
18 individual by an individual trained in the
19 assessment and evaluation of individuals
20 whose physical or mental conditions trigger
21 a potential need for long-term care services
22 and supports.

23 “(iii) Where appropriate, consultation
24 with the individual's family, spouse, guard-
25 ian, or other responsible individual.

1 “(iv) Consultation with appropriate
2 treating and consulting health and support
3 professionals caring for the individual.

4 “(v) An examination of the individ-
5 ual’s relevant history, medical records, and
6 care and support needs, guided by best
7 practices and research on effective strate-
8 gies that result in improved health and
9 quality of life outcomes.

10 “(vi) An evaluation of the ability of
11 the individual or the individual’s represent-
12 ative to self-direct the purchase of, or con-
13 trol the receipt of, such services and sup-
14 ports if the individual so elects.

15 “(G) INDIVIDUALIZED CARE PLAN.—

16 “(i) IN GENERAL.—In the case of an
17 individual who is determined to be eligible
18 for long-term care services and supports,
19 the State uses the independent assessment
20 required under subparagraph (E)(ii) to es-
21 tablish a written individualized care plan
22 for the individual.

23 “(ii) PLAN REQUIREMENTS.—The
24 State ensures that the individualized care
25 plan for an individual—

1 “(I) is developed—

2 “(aa) in consultation with
3 the individual, the individual’s
4 treating physician, health care or
5 support professional, or other ap-
6 propriate individuals, as defined
7 by the State, and, where appro-
8 priate the individual’s family,
9 caregiver, or representative; and

10 “(bb) taking into account
11 the extent of, and need for, any
12 family or other supports for the
13 individual;

14 “(II) identifies the long-term care
15 services and supports to be furnished
16 to the individual (or, if the individual
17 elects to self-direct the purchase of, or
18 control the receipt of, such services
19 and supports, funded for the indi-
20 vidual); and

21 “(III) is reviewed at least annu-
22 ally and as needed when there is a
23 significant change in the individual’s
24 circumstances.

1 “(iii) STATE REQUIREMENT TO OFFER
2 ELECTION FOR SELF-DIRECTED SERVICES
3 AND SUPPORTS.—

4 “(I) INDIVIDUAL CHOICE.—The
5 State shall allow an individual or the
6 individual’s representative the oppor-
7 tunity to elect to receive self-directed
8 long-term care services and supports
9 in a manner which gives them the
10 most control over such services and
11 supports consistent with the individ-
12 ual’s abilities and the requirements of
13 subclauses (II) and (III).

14 “(II) SELF-DIRECTED.—The
15 term ‘self-directed’ means, with re-
16 spect to the long-term care services
17 and supports offered under the State
18 plan amendment, such services and
19 supports for the individual which are
20 planned and purchased under the di-
21 rection and control of such individual
22 or the individual’s authorized rep-
23 resentative, including the amount, du-
24 ration, scope, provider, and location of
25 such services and supports, under the

1 State plan consistent with the fol-
2 lowing requirements:

3 “(aa) ASSESSMENT.—There
4 is an assessment of the needs, ca-
5 pabilities, and preferences of the
6 individual with respect to such
7 services and supports.

8 “(bb) SERVICE PLAN.—
9 Based on such assessment, there
10 is developed jointly with such in-
11 dividual or the individual’s au-
12 thorized representative a plan for
13 such services and supports for
14 such individual that is approved
15 by the State and that satisfies
16 the requirements of subclause
17 (III).

18 “(III) PLAN REQUIREMENTS.—
19 For purposes of subclause (II)(bb),
20 the requirements of this subclause are
21 that the plan—

22 “(aa) specifies those services
23 and supports which the individual
24 or the individual’s authorized

1 representative would be respon-
2 sible for directing;

3 “(bb) identifies the methods
4 by which the individual or the in-
5 dividual’s authorized representa-
6 tive will select, manage, and dis-
7 miss providers of such services
8 and supports;

9 “(cc) specifies the role of
10 family members and others whose
11 participation is sought by the in-
12 dividual or the individual’s au-
13 thorized representative with re-
14 spect to such services and sup-
15 ports;

16 “(dd) is developed through a
17 person-centered process that is
18 directed by the individual or the
19 individual’s authorized represent-
20 ative, builds upon the individual’s
21 capacity to engage in activities
22 that promote community life and
23 that respects the individual’s
24 preferences, choices, and abilities,
25 and involves families, friends,

1 and professionals as desired or
2 required by the individual or the
3 individual's authorized represent-
4 ative;

5 “(ee) includes appropriate
6 risk management techniques that
7 recognize the roles and sharing of
8 responsibilities in obtaining serv-
9 ices and supports in a self-di-
10 rected manner and assure the ap-
11 propriateness of such plan based
12 upon the resources and capabili-
13 ties of the individual or the indi-
14 vidual's authorized representa-
15 tive; and

16 “(ff) may include an individ-
17 ualized budget which identifies
18 the dollar value of the services
19 and supports under the control
20 and direction of the individual or
21 the individual's authorized rep-
22 resentative.

23 “(IV) BUDGET PROCESS.—With
24 respect to individualized budgets de-

1 scribed in subclause (III)(ff), the
2 State plan amendment—

3 “(aa) describes the method
4 for calculating the dollar values
5 in such budgets based on reliable
6 costs and service utilization;

7 “(bb) defines a process for
8 making adjustments in such dol-
9 lar values to reflect changes in
10 individual assessments and serv-
11 ice plans; and

12 “(cc) provides a procedure
13 to evaluate expenditures under
14 such budgets.

15 “(H) QUALITY ASSURANCE; CONFLICT OF
16 INTEREST STANDARDS.—

17 “(i) QUALITY ASSURANCE.—The
18 State ensures that the provision of long-
19 term care services and supports meets
20 Federal and State guidelines for quality
21 assurance.

22 “(ii) CONFLICT OF INTEREST STAND-
23 ARDS.—The State establishes standards
24 for the conduct of the independent evalua-

1 tion and the independent assessment to
2 safeguard against conflicts of interest.

3 “(I) REDETERMINATIONS AND APPEALS.—

4 The State allows for at least annual redeter-
5 minations of eligibility, and appeals in accord-
6 ance with the frequency of, and manner in
7 which, redeterminations and appeals of eligi-
8 bility are made under the State plan.

9 “(J) PRESUMPTIVE ELIGIBILITY FOR AS-
10 SESSMENT.—The State, at its option, elects to
11 provide for a period of presumptive eligibility
12 (not to exceed a period of 60 days) only for
13 those individuals that the State has reason to
14 believe may be eligible for long-term care serv-
15 ices and supports. Such presumptive eligibility
16 shall be limited to medical assistance for car-
17 rying out the independent evaluation and as-
18 sessment under subparagraph (E) to determine
19 an individual’s eligibility for such services and
20 if the individual is so eligible, the specific long-
21 term care services and supports that the indi-
22 vidual will receive.

23 “(2) DEFINITION OF INDIVIDUAL’S REP-
24 RESENTATIVE.—In this section, the term ‘individ-
25 ual’s representative’ means, with respect to an indi-

1 vidual, a parent, a family member, or a guardian of
2 the individual, an advocate for the individual, or any
3 other individual who is authorized to represent the
4 individual.

5 “(b) SELF-DIRECTED PERSONAL ASSISTANCE SERV-
6 ICES.—If a State includes personal care or personal assist-
7 ance services in the long-term care services and supports
8 available under the State plan, the State shall comply with
9 the requirements of old section 1915(j) in the case of an
10 individual who elects to self-direct the receipt of such care
11 or services.

12 **“SEC. 1918. TREATMENT OF INCOME AND RESOURCES FOR**
13 **CERTAIN INSTITUTIONALIZED SPOUSES.**

14 “Old section 1924 (relating to treatment of income
15 and resources for certain institutionalized spouses), other
16 than paragraphs (2) and (4)(A) of subsection (a) of such
17 section, shall apply under this part.

18 **“SEC. 1919. ANNUAL REPORTS.**

19 “(a) IN GENERAL.—Each State that receives pay-
20 ments under this part shall submit an annual report to
21 the Secretary, in such form and manner as the Secretary
22 shall specify.

23 “(b) REQUIREMENTS.—The report shall include the
24 following with respect to the most recent fiscal year ended:

1 “(1) The number of individuals served under
2 the plan.

3 “(2) The number of individuals served by tier
4 (preventive, emergency, low, medium, and high
5 needs).

6 “(3) The number of individuals known to the
7 State on waiting list for services (if any) and type
8 of disability (physical, developmental, mental health)
9 or aged.

10 “(4) Expenditures by service category.

11 **“PART C—GRANTS TO STATES FOR SURVEY AND**
12 **CERTIFICATION OF MEDICAL FACILITIES**
13 **AND OTHER REQUIREMENTS**

14 **“SEC. 1931. AUTHORIZATION OF APPROPRIATIONS.**

15 “For the purpose of carrying our Federal activities
16 and providing grants to States for expenses necessary to
17 carry out this part, there is authorized to be appro-
18 priated—

19 “(1) for fiscal year 2011, \$300,000,000; and

20 “(2) for each succeeding fiscal year, the amount
21 authorized under this section for the preceding fiscal
22 year, increased by 5 percent.

1 **“SEC. 1932. APPLICATION OF CERTAIN REQUIREMENTS**
2 **UNDER PRE-MODERNIZED MEDICAID.**

3 “The following old provisions shall apply under this
4 part:

5 “(1) Old section 1902(a)(9) (relating to health
6 standards and applicable requirements for laboratory
7 services).

8 “(2) Old section 1902(a)(28) (relating to nurs-
9 ing facilities and nursing facility services).

10 “(3) Old sections 1902(a)(29) and 1908 (relat-
11 ing to a State program for the licensing of adminis-
12 trators of nursing homes).

13 “(4) Old section 1902(a)(33)(B) (relating to li-
14 censing health institutions).

15 “(5) Old section 1902(d) (relating to medical or
16 utilization review functions).

17 “(6) Old section 1902(i) (relating to inter-
18 mediate care facilities for the mentally retarded).

19 “(7) Old section 1902(y) (relating to psy-
20 chiatric hospitals).

21 “(8) Paragraphs (2) and (6) of old section
22 1903(g) (relating to the Secretarial requirement to
23 conduct sample onsite surveys of private and public
24 institutions and recertifications for the need for cer-
25 tain services).

1 “(9) Old section 1903(q)(4)(B) (relating to the
2 definition of a board and care facility).

3 “(10) Old section 1910 (relating to certification
4 and approval of rural health clinics and intermediate
5 care facilities for the mentally retarded).

6 “(11) Old section 1911 (relating to Indian
7 Health Service facilities).

8 “(12) Old section 1913 (relating to hospital
9 providers of nursing facility services).

10 “(13) Old section 1919 (relating to require-
11 ments for nursing facilities).

12 **“PART D—GRANTS TO STATES FOR PROGRAM**

13 **INTEGRITY**

14 **“SEC. 1941. AUTHORIZATION OF APPROPRIATIONS.**

15 “(a) IN GENERAL.—For the purpose of carrying out
16 Federal activities under this part and providing grants to
17 States for expenses necessary to carry out this part, there
18 is authorized to be appropriated—

19 “(1) for fiscal year 2011, \$100,000,000; and

20 “(2) for each succeeding fiscal year, the amount
21 authorized under this section for the preceding fiscal
22 year, increased by 5 percent.

23 “(b) AVAILABILITY; AUTHORITY FOR USE OF
24 FUNDS.—

1 “(1) AVAILABILITY.—Amounts appropriated
2 pursuant to subsection (a) shall remain available
3 until expended.

4 “(2) AUTHORITY FOR USE OF FUNDS FOR
5 TRANSPORTATION AND TRAVEL EXPENSES FOR
6 ATTENDEES AT EDUCATION, TRAINING, OR CON-
7 SULTATIVE ACTIVITIES.—

8 “(A) IN GENERAL.—The Secretary may
9 use amounts appropriated pursuant to sub-
10 section (a) to pay for transportation and the
11 travel expenses, including per diem in lieu of
12 subsistence, at rates authorized for employees
13 of agencies under subchapter I of chapter 57 of
14 title 5, United States Code, while away from
15 their homes or regular places of business, of in-
16 dividuals described in subsection (b)(4) who at-
17 tend education, training, or consultative activi-
18 ties conducted under the authority of that sub-
19 section.

20 “(B) PUBLIC DISCLOSURE.—The Secretary
21 shall make available on a website of the Centers
22 for Medicare & Medicaid Services that is acces-
23 sible to the public—

24 “(i) the total amount of funds ex-
25 pended for each conference conducted

1 under the authority of subsection (b)(4);
2 and

3 “(ii) the amount of funds expended
4 for each such conference that were for
5 transportation and for travel expenses.

6 “(c) ANNUAL REPORT.—Not later than 180 days
7 after the end of each fiscal year, the Secretary shall sub-
8 mit a report to Congress which identifies—

9 “(1) the use of funds appropriated pursuant to
10 subsection (a); and

11 “(2) the effectiveness of the use of such funds.

12 **“SEC. 1942. APPLICATION OF CERTAIN REQUIREMENTS**
13 **UNDER PRE-MODERNIZED MEDICAID.**

14 “The following old provisions shall apply under this
15 part:

16 “(1) Old subsections (a)(25) (other than sub-
17 paragraph (E)) and (g) of section 1902 and section
18 1903(o) (relating to third party liability).

19 “(2) Old section 1902(a)(30)(B) (relating to
20 hospital, intermediate care facility for the mentally
21 retarded, or hospital for mental diseases admission
22 screening and review requirements).

23 “(3) Old section 1902(a)(32) (relating to cer-
24 tain payment requirements).

1 “(4) Old section 1902(a)(35) (relating to dis-
2 closing entities under section 1124).

3 “(5) Old section 1902(a)(37) and the fifth sen-
4 tence (relating to claims payment procedures).

5 “(6) Old section 1902(a)(44) (relating to pay-
6 ment for inpatient hospital services, services in an
7 intermediate care facility for the mentally retarded,
8 or inpatient mental hospital services).

9 “(7) Old sections 1902(a)(45) and 1912 (relat-
10 ing to assignment of rights of payment).

11 “(8) Old sections 1902(a)(49) and 1921 (relat-
12 ing to information and access to information con-
13 cerning sanctions taken by State licensing authori-
14 ties against health care practitioners and providers).

15 “(9) Old sections 1902(a)(61) and 1903(q) (re-
16 lating to requirements for a medicaid fraud and
17 abuse control unit).

18 “(10) Old section 1902(a)(64) (relating to re-
19 ports from beneficiaries and others and data com-
20 pilation requirements concerning alleged instances of
21 waste, fraud, and abuse).

22 “(11) Old section 1902(a)(65) (relating to pro-
23 vider number and surety bond requirement for sup-
24 pliers of durable medical equipment).

1 “(12) Old section 1902(a)(68) (relating to re-
2 requirements for certain entities).

3 “(13) Old sections 1902(a)(69) and 1936 (re-
4 lating to the Medicaid Integrity Program) other
5 than paragraphs (1), (2)(A), and (3) of old section
6 1936(e).

7 “(14) Old section 1902(a)(70)(B)(iv) (relating
8 to prohibitions on referrals and conflict of interest
9 for certain brokers of non-emergency medical trans-
10 portation).

11 “(15) Old sections 1902(a)(71) and 1940 (re-
12 lating to a required asset verification program).

13 “(16) Old section 1902(p) (relating to exclusion
14 of certain individuals or entities).

15 “(17) Old section 1902(x) (relating to unique
16 identifiers for physicians).

17 “(18) Old section 1903(p) (relating to inter-
18 state collection of rights of support).

19 “(19) Old section 1903(r)(2) (relating to re-
20 quirements for mechanized claims processing and in-
21 formation retrieval systems).

22 “(20) Old section 1903(u) (relating to erro-
23 neous excess payments), other than clause (v) of
24 paragraph (1)(D).

1 “(21) Old section 1903(v) and the seventh sen-
2 tence of old section 1902(a) (relating to limitations
3 on payments for services furnished to aliens), other
4 than subparagraphs (A) and (B) of paragraph (4).

5 “(22) Old section 1903(x) (relating to citizen-
6 ship documentation).

7 “(23) Old section 1909 (relating to State false
8 claims act requirements for increased State share of
9 recoveries).

10 “(24) Old section 1914 (relating to withholding
11 of Federal share of payments for certain Medicare
12 providers).

13 “(25) Old section 1917 (relating to liens, ad-
14 justments and recoveries, and transfers of assets).

15 “(26) Old section 1922 (relating to correction
16 and reduction plans for intermediate care facilities
17 for the mentally retarded).

18 **“PART E—GRANTS TO STATES FOR**

19 **ADMINISTRATION**

20 **“SEC. 1951. AUTHORIZATION OF APPROPRIATIONS; PAY-**
21 **MENTS TO STATES.**

22 “(a) IN GENERAL.—For the purpose of providing
23 grants to States for administrative expenses necessary to
24 carry out parts A and B, there is authorized to be appro-
25 priated—

1 “(1) for fiscal year 2011, \$7,000,000,000; and

2 “(2) for each succeeding fiscal year, the amount
3 authorized under this subsection for the preceding
4 fiscal year, increased by 3 percent.

5 “(b) PAYMENTS TO STATES.—

6 “(1) IN GENERAL.—From the amount appro-
7 priated pursuant to subsection (a) for a fiscal year,
8 the Secretary shall pay each State with approved
9 plans under parts A and B for the fiscal year an
10 amount equal to the product of the amount appro-
11 priated for the fiscal year and the ratio of the total
12 amount of payments made to the State under para-
13 graphs (2) through (7) of section 1903(a) for fiscal
14 year 2008 (as such section was in effect for that fis-
15 cal year) to the total amount of such payments made
16 to all States for such fiscal year.

17 “(2) PRO RATA ADJUSTMENT.—The Secretary
18 shall make pro rata adjustments to the amounts de-
19 termined under paragraph (1) for a fiscal year as
20 necessary so as to not exceed the amount appro-
21 priated pursuant to subsection (a) for the fiscal
22 year.

23 **“SEC. 1952. COST-SHARING PROTECTIONS.**

24 “(a) IN GENERAL.—A State may impose cost-sharing
25 for individuals provided acute care medical assistance

1 under a State plan under part A or long-term care services
2 and supports under a State plan under part B consistent
3 with the following:

4 “(1) The State may (in a uniform manner) re-
5 quire payment of monthly premiums or other cost-
6 sharing set on a sliding scale based on family in-
7 come.

8 “(2) A premium or other cost-sharing require-
9 ment imposed under paragraph (1) may only apply
10 to the extent that, in the case of an individual whose
11 family income—

12 “(A) exceeds 150 percent of the poverty
13 line, the aggregate annual amount of such pre-
14 mium and other cost-sharing charges imposed
15 under the plan does not exceed 5 percent of the
16 individual’s annual income; and

17 “(B) exceeds 250 percent of the poverty
18 line, the aggregate annual amount of such pre-
19 mium and other cost-sharing charges do not ex-
20 ceed 7.5 percent of the individual’s annual in-
21 come.

22 “(3) A State shall not require prepayment of
23 any premium or cost-sharing imposed pursuant to
24 paragraph (1) and shall not terminate eligibility of
25 an individual under the State plan on the basis of

1 failure to pay any such premium or cost-sharing
2 until such failure continues for a period of at least
3 60 days from the date on which the premium or
4 cost-sharing became past due. The State may waive
5 payment of any such premium or cost-sharing in any
6 case where the State determines that requiring such
7 payment would create an undue hardship.

8 “(b) APPLICATION TO INSTITUTIONALIZED INDIVID-
9 UALS.—A State may impose cost-sharing consistent with
10 subsection (a) to individuals who are patients in, or resi-
11 dents of, a medical institution or nursing facility except
12 that rules relating to the post-eligibility treatment of in-
13 come (including a minimum monthly personal needs allow-
14 ance) applicable to institutionalized individuals under old
15 title XIX shall apply in the same manner to individuals
16 eligible for long-term care services and supports under a
17 State plan under part B.

18 “(c) POVERTY LINE DEFINED.—In this section, the
19 term ‘poverty line’ has the meaning given such term in
20 section 673(2) of the Community Services Block Grant
21 Act (42 U.S.C. 9902(2)), including any revision required
22 by such section.

1 **“SEC. 1953. APPLICATION OF CERTAIN REQUIREMENTS**
2 **UNDER PRE-MODERNIZED MEDICAID.**

3 “The following old provisions shall apply to the State
4 plans under this title:

5 “(1) OLD STATE PLAN REQUIREMENTS.—

6 “(A) Old section 1902(a)(1) (relating to
7 the requirement for plans to be in effect in all
8 political subdivisions of the State).

9 “(B) Old section 1902(a)(2) (relating to
10 State financial participation).

11 “(C) Old section 1902(a)(3) (relating to
12 opportunity for a fair hearing).

13 “(D) Old section 1902(a)(4) (relating to
14 administration).

15 “(E) Old section 1902(a)(5) (relating to
16 designation of a single State agency).

17 “(F) Old section 1902(a)(6) (relating to
18 reporting requirements).

19 “(G) Old section 1902(a)(7) (relating to
20 restrictions on the use or disclosure of informa-
21 tion).

22 “(H) Old section 1902(a)(8) (relating to
23 applications for assistance).

24 “(I) Old section 1902(a)(11) (relating to
25 cooperative agreements with other State agen-
26 cies).

1 “(J) Old section 1902(a)(12) (relating to
2 determinations of blindness).

3 “(K) Old section 1902(a)(13) (relating to
4 determination of rates of payment for certain
5 services), other than clause (iv) of subpara-
6 graph (A).

7 “(L) Subsections (a)(15) and (bb) of old
8 section 1902(a) (relating to payment for serv-
9 ices provided by rural health clinics and feder-
10 ally qualified health centers).

11 “(M) Old section 1902(a)(16) (relating to
12 furnishing services to individuals when absent
13 from the State).

14 “(N) Old section 1902(a)(22) (relating to
15 certain administrative provisions).

16 “(O) Paragraphs (23) and (25)(D) of old
17 section 1902(a) (relating to any willing provider
18 requirements).

19 “(P) Old section 1902(a)(24) (relating to
20 consultative services by other agencies).

21 “(Q) Old section 1902(a)(26) (relating to
22 review of need for inpatient mental hospital
23 services and written plan of care requirements).

24 “(R) Old section 1902(a)(27) (relating to
25 provider record keeping requirements).

1 “(S) Old section 1902(a)(30)(A) (relating
2 to utilization review).

3 “(T) Old section 1902(a)(31) (relating to
4 written plan of care for services and review for
5 intermediate care facility for the mentally re-
6 tarded services).

7 “(U) Old section 1902(a)(33)(A) (relating
8 to quality review requirements).

9 “(V) Old section 1902(a)(36) (relating to
10 public availability of facility surveys).

11 “(W) Old section 1902(a)(38) (relating to
12 the provision of information described in section
13 1128(b)(9) by certain entities).

14 “(X) Old section 1902(a)(39) (relating to
15 the exclusion of certain entities).

16 “(Y) Old section 1902(a)(40) (relating to
17 requirement for uniform reporting systems).

18 “(Z) Old section 1902(a)(41) (relating to
19 notice to State medical licensing boards).

20 “(AA) Old section 1902(a)(42) (relating to
21 certain audit requirements).

22 “(BB) Old section 1902(a)(48) (relating to
23 eligibility cards).

24 “(CC) Old section 1902(a)(55) (relating to
25 the receipt and initial processing of applica-

1 tions, but only to the extent such section is con-
2 sistent with the policy embodied in the State
3 plans under parts A and B).

4 “(DD) Subsections (a)(56) and (s) of old
5 section 1902 (relating to adjusted payments for
6 certain inpatient hospital services).

7 “(EE) Old section 1902(a)(59) (relating to
8 maintenance of list of participating physicians).

9 “(FF) The second sentence of old section
10 1902 (relating to designation of certain State
11 agencies).

12 “(GG) Old section 1902(b) (relating to
13 limitations on approval of plans).

14 “(HH) Old section 1902(j) (relating to ap-
15 plication of requirements to American Samoa
16 and the Northern Mariana Islands).

17 “(2) OTHER OLD TITLE XIX REQUIREMENTS.—

18 “(A) Old section 1903(b)(4) (relating to
19 limitations on payments to enrollment brokers).

20 “(B) Old section 1903(e) (relating to fur-
21 nishing of services included in a program or
22 plan under part B or C of the Individuals with
23 Disabilities Education Act).

24 “(C) Old section 1903(d) (relating to pay-
25 ments).

1 “(D) Old section 1903(e) (relating to costs
2 with respect to certain hospital services).

3 “(E) Old section 1903(i) (relating to limi-
4 tations on payments).

5 “(F) Old section 1903(r) (relating to re-
6 quirements for mechanized claims processing
7 and information retrieval systems).

8 “(G) Subsections (b)(5) and (w) of old sec-
9 tion 1903 (relating to limitations on payments
10 related to provider taxes).

11 “(H) Old section 1904 (relating to oper-
12 ation of State plans).

13 “(I) Old sections 1902(a)(60) and 1908A
14 (relating to medical child support).

15 “(J) Paragraphs (32)(D) and (62) of old
16 section 1902(a) and section 1928 (relating to
17 program for distribution of pediatric vaccines).

18 **“PART F—OTHER PROVISIONS**

19 **“SEC. 1961. APPLICATION OF CERTAIN REQUIREMENTS**
20 **UNDER PRE-MODERNIZED MEDICAID.**

21 “The following old provisions shall apply under this
22 part:

23 “(1) The third sentence of old section 1902 (re-
24 lating to nonapplication of certain old provisions to
25 a religious nonmedical health care institution).

1 “(2) Old section 1918 (relating to application of
2 provisions of title II relating to subpoenas).

3 “(3) Old section 1939 (relating to references to
4 laws directly affecting the Medicaid program.”.

5 (b) REPEAL OF TITLE XXI.—Effective January 1,
6 2011, title XXI of the Social Security Act (42 U.S.C.
7 1397aa et seq.) is repealed.

8 **SEC. 202. OUTREACH.**

9 (a) AUTHORIZATION OF APPROPRIATIONS.—The fol-
10 lowing amounts are authorized to be appropriated to the
11 Secretary of Health and Human Services:

12 (1) For fiscal year 2010, \$100,000,000 for the
13 design and implementation of a public outreach cam-
14 paign to inform the public about the changes to the
15 programs under such titles that take effect on Janu-
16 ary 1, 2011, as a result of the amendment made by
17 section 201.

18 (2) For each of fiscal years 2011 and 2012,
19 \$200,000,000 to carry out such public outreach
20 campaign.

21 (3) For fiscal year 2013, \$50,000,000 to carry
22 out such public outreach campaign.

23 (b) AVAILABILITY.—Funds appropriated under sub-
24 section (a) shall remain available for expenditure through
25 September 30, 2012.

1 than 6 months after the date of enactment of this Act,
2 the Secretary of Health and Human Services shall submit
3 to Congress a legislative proposal for such technical and
4 conforming amendments as are necessary to carry out the
5 amendments made by this Act.

6 **Subtitle B—Supplemental Health**
7 **Care Assistance for Low-Income**
8 **Families**

9 **SEC. 211. SUPPLEMENTAL HEALTH CARE ASSISTANCE FOR**
10 **LOW-INCOME FAMILIES.**

11 Part D of title III of the Public Health Service Act
12 (42 U.S.C. 254b et seq.) is amended by adding at the end
13 the following:

14 **“Subpart XI—Health Care Assistance to Low-income**
15 **Families**

16 **“SEC. 340A-1. FINANCIAL ASSISTANCE TO LOW-INCOME**
17 **FAMILIES.**

18 “(a) IN GENERAL.—The Secretary shall supplement
19 the costs of private health insurance for eligible low-in-
20 come families through the distribution of supplemental
21 debit cards to eligible families, which may be used to pay
22 for costs associated with health care for the members of
23 such eligible families and provide direct support to such
24 families in accessing health care.

25 “(b) ELIGIBILITY.—

1 “(1) ELIGIBLE FAMILIES.—To be eligible for fi-
2 nancial assistance under this section—

3 “(A) a family shall—

4 “(i) consist of 2 or more individuals
5 living together who are related by mar-
6 riage, birth, adoption, or guardianship;

7 “(ii) have a gross income that does
8 not exceed 200 percent of the poverty line,
9 as applicable to a family of the size in-
10 volved; and

11 “(iii) include at least 1 individual who
12 is a dependent under the age of 19; and

13 “(B) no member of the family shall be cov-
14 ered by private health insurance.

15 “(2) DETERMINATION OF GROSS INCOME.—The
16 gross income of a family shall be determined by tak-
17 ing the sum of the income of each family member
18 who is at least age 21 but not older than age 65,
19 except that the income of any member of the family
20 who qualifies for coverage under Medicaid Part A or
21 B shall not be counted.

22 “(3) LIMITATION ON INDIVIDUAL ELIGIBILITY;
23 ASSISTANCE.—

24 “(A) IN GENERAL.—No individual who is a
25 member of an eligible family under paragraph

1 (1) is eligible to qualify separately for financial
2 assistance under this section.

3 “(B) ALIENS.—The Secretary shall ensure
4 that financial assistance under this section is
5 not provided for costs associated with health
6 care for any member of an eligible family who
7 is an alien individual who is not a lawful per-
8 manent resident of the United States.

9 “(c) SUPPLEMENTAL DEBIT CARD FOR HEALTH
10 CARE EXPENDITURES.—

11 “(1) IN GENERAL.—The Secretary shall issue
12 to each eligible family that enrolls in the program in
13 accordance with subsection (f) a supplemental debit
14 card with a dollar-amount value, in accordance with
15 subsection (d), that may be used to pay for quali-
16 fying health care expenses.

17 “(2) USE OF THE DEBIT CARD.—

18 “(A) QUALIFYING HEALTH CARE EX-
19 PENSES.—A supplemental debit card issued
20 under this section may be used by members of
21 the eligible family to pay for—

22 “(i) the purchase of health care insur-
23 ance for any member of the family;

24 “(ii) cost sharing expenses related to
25 health care, including deductibles, copay-

1 ments, and coinsurance, for any member of
2 the family; and

3 “(iii) the direct purchase of health
4 care services and supplies for any member
5 of the family.

6 “(B) GEOGRAPHIC RANGE.—Each supple-
7 mental debit card may be used to pay for quali-
8 fying health care expenses incurred anywhere in
9 the 50 States or the District of Columbia.

10 “(C) LIMITATIONS.—No supplemental
11 debit card shall be used to make a payment for
12 any cost—

13 “(i) incurred prior to the determina-
14 tion of the family’s eligibility for assistance
15 under this section; or

16 “(ii) that is not a health-related ex-
17 pense.

18 “(3) ROLLOVER OF UNUSED AMOUNTS.—Not
19 more than one-quarter of the annual dollar amount
20 of a supplemental debit card that is unexpended at
21 the end of each 12-month period may rollover—

22 “(A) to the family’s supplemental debit
23 card for expenditure during the subsequent 12-
24 month period, provided that the family to which
25 the supplemental debit card was issued in the

1 previous 12-month period is eligible to receive a
2 supplemental debit card in the subsequent 12-
3 month period; or

4 “(B) to the family’s health savings account
5 (as defined in section 223(g)(2) of the Internal
6 Revenue Code of 1986).

7 “(4) MONTHLY STATEMENTS.—The Secretary
8 shall issue a monthly statement to each family to
9 which a supplemental debit card has been issued
10 under this section, which shall state each payment
11 made with the family’s supplemental debit card dur-
12 ing the month covered by the statement, the dollar
13 amount of each such payment, and the provider to
14 which each such payment was made.

15 “(d) AMOUNT OF FINANCIAL ASSISTANCE.—

16 “(1) AMOUNTS FOR CALENDAR YEAR 2011.—
17 Subject to paragraph (5), the amount of financial
18 assistance available to each eligible family during the
19 calendar year 2011 shall be determined as follows:

20 “(A) Each family whose annual income
21 does not exceed 100 percent of the poverty
22 level, as applicable to a family of the size in-
23 volved, shall receive \$5,000.

24 “(B) Each family whose annual income ex-
25 ceeds 100 percent, but does not exceed 200 per-

1 cent, of the poverty level, as applicable to a
2 family of the size involved, shall receive an
3 amount as follows:

4 “(i) For families whose annual income
5 exceeds 100 percent but does not exceed
6 120 percent, of the poverty level, \$4,000.

7 “(ii) For families whose annual in-
8 come exceeds 120 percent but does not ex-
9 ceed 140 percent, of the poverty level,
10 \$3,500.

11 “(iii) For families whose annual in-
12 come exceeds 140 percent but does not ex-
13 ceed 160 percent, of the poverty level,
14 \$3,000.

15 “(iv) For families whose annual in-
16 come exceeds 160 percent but does not ex-
17 ceed 180 percent, of the poverty level,
18 \$2,500.

19 “(v) For families whose annual in-
20 come exceeds 180 percent but does not ex-
21 ceed 200 percent, of the poverty level,
22 \$2,000.

23 “(2) ADDITIONAL AMOUNTS.—In addition to
24 the amounts under paragraph (1), subject to para-

1 graph (5), the following amounts shall be added to
2 the supplemental debit cards of qualifying families:

3 “(A) For each pregnancy during which a
4 pregnant woman’s family is eligible for assist-
5 ance under this section, an additional amount
6 of \$1,000 shall be added to the family’s supple-
7 mental debit card, except that no family shall
8 receive such additional \$1,000 for any preg-
9 nancy for which the family received such
10 amount in the previous 12-month period.

11 “(B) For each member of an eligible fam-
12 ily who is less than 1 year old on any day with-
13 in the calendar year in which the family is eligi-
14 ble for assistance, an additional amount of
15 \$500 shall be added to the family’s supple-
16 mental debit card.

17 “(3) COST OF LIVING ADJUSTMENTS.—In the
18 case of any taxable year beginning in a calendar
19 year after 2011, each dollar amount contained in
20 paragraphs (1) and (2) shall be increased in the
21 same manner as the dollar amounts specified in sec-
22 tion 25E(b)(3) of the Internal Revenue Code of
23 1986 are increased by the blended cost-of-living ad-
24 justment determined under subsection (k)(2) of sec-

1 tion 25E of the Internal Revenue Code for the tax-
2 able year involved.

3 “(4) STATE OPTION TO INCREASE AMOUNTS.—
4 At the option of each State, amounts in excess of
5 the annual dollar amounts under paragraphs (1) and
6 (2) may be provided through the supplemental debit
7 card to eligible families in that State, but no Federal
8 funds shall be paid to any State for any amount pro-
9 vided in excess of such annual dollar amount.

10 “(5) RISK ADJUSTMENT.—The Secretary may
11 adjust the amount of financial assistance available to
12 an eligible family for a calendar year under this sec-
13 tion based on age, health indicators, and other fac-
14 tors that represent distinct patterns of health care
15 services utilization and costs.

16 “(e) CONTRIBUTIONS OF STATES.—

17 “(1) IN GENERAL.—As a condition for receiving
18 Federal funds under Part A or Part B of Medicaid,
19 each State shall contribute 50 percent of the total
20 amount expended under the supplemental debit card
21 program by the participating families that reside
22 within the State during the time that the family re-
23 sides in that State. For purposes of this section, the
24 residency of a family is determined by the residency
25 the legally responsible head of the household.

1 “(2) PAYMENTS FROM STATES.—

2 “(A) BILLING NOTIFICATION.—

3 “(i) TIMING.—On June 30th and De-
4 cember 31st of each year, the Secretary
5 shall send written notification to each
6 State of that State’s 50 percent share of
7 expenses, as described in paragraph (1),
8 for the 6-month period ending on the last
9 day of the month previous to such notifica-
10 tion.

11 “(ii) CONTENTS.—Each such notifica-
12 tion to a State shall clearly state—

13 “(I) the payment amount due
14 from the State;

15 “(II) the name of each individual
16 for whom payment was made through
17 the supplemental debit card program;

18 “(III) the health care provider to
19 whom each payment was made;

20 “(IV) the amount of each pay-
21 ment; and

22 “(V) any other information, as
23 the Secretary requires.

24 “(B) PAYMENTS.—Each State shall make
25 a payment to the Secretary, in the amount

1 billed, not later than 30 days after the billing
2 notification date, in accordance with subpara-
3 graph (A)(i).

4 “(C) PENALTIES.—If a State fails to pay
5 to the Secretary an amount required under sub-
6 paragraph (B), interest shall accrue on such
7 amount at the rate provided under old section
8 1903(d)(5) of the Social Security Act. The
9 amount so owed and applicable interest shall be
10 immediately offset against amounts otherwise
11 payable to the State under this section, in ac-
12 cordance with the Federal Claims Collection Act
13 of 1996 and applicable regulations.

14 “(f) ENROLLMENT.—

15 “(1) IN GENERAL.—The Secretary shall estab-
16 lish procedures and times for enrollment in the sup-
17 plemental debit card program. Open enrollment shall
18 be available not less than 4 times per calendar year.

19 “(2) TRANSITION OF INDIVIDUALS ENROLLED
20 IN MEDICAID OR THE STATE CHILDREN’S HEALTH
21 INSURANCE PROGRAM.—

22 “(A) INFORMATION FROM THE STATES.—

23 Each State shall—

24 “(i) not later than June 30, 2011, in-
25 form all individuals then enrolled in Med-

1 icaid or the State Children’s Health Insur-
2 ance Program (SCHIP), of the changes in
3 effect beginning on January 1, 2012; and

4 “(ii) not later than October 31, 2011,
5 redetermine the eligibility of each indi-
6 vidual enrolled in Medicaid or SCHIP,
7 other than those individuals who qualify
8 for Medicaid or SCHIP as disabled, elder-
9 ly, or a special population, for the supple-
10 mental debit card program, according to
11 the eligibility criteria under subsection (b).

12 “(B) AUTOMATIC ENROLLMENT.—The
13 Secretary shall provide for the automatic enroll-
14 ment in the supplemental debit card program of
15 all individuals who are enrolled in Medicaid or
16 SCHIP and who have been redetermined by a
17 State under subparagraph (A) to be eligible for
18 Medicaid or SCHIP. Any individual who is de-
19 termined by a State not to qualify for the sup-
20 plemental debit card program may retain cov-
21 erage under Medicaid or SCHIP until June 30,
22 2012.

23 “(3) ASSISTANCE WITH QUALIFIED HEALTH IN-
24 SURANCE CREDIT.—Each State shall, to the extent
25 practicable, provide individuals residing within the

1 State with information regarding the qualified health
2 insurance credit described in section 25E of the In-
3 ternal Revenue Code of 1986, including information
4 regarding eligibility for, and how to claim, such
5 credit.

6 “(g) ADMINISTRATION.—

7 “(1) NATIONAL SYSTEM.—The Secretary may
8 enter into contracts or agreements with a State, a
9 consortium of States, or a private entity, including
10 a bank, enrollment broker, or similar entity, to es-
11 tablish and maintain a unified national system to
12 support the processes and transactions necessary to
13 administer this section.

14 “(2) AUTOMATED SYSTEM.—The Secretary
15 shall establish an automated means, such as an elec-
16 tronic benefit transfer system, by which the benefits
17 under this section shall be transferred to eligible
18 families.

19 “(3) VERIFICATION OF APPLICANT INFORMA-
20 TION.—The Secretary may verify information pro-
21 vided by applicants with the appropriate Federal,
22 State, and local agencies, including the Internal Rev-
23 enue Service, the Social Security Administration, the
24 Department of Labor, and child support enforce-
25 ment agencies.

1 “(4) CHOICE COUNSELING.—The Secretary
2 may enter into contracts or agreements with a State,
3 a consortium of a State, or a private entity, includ-
4 ing an enrollment broker or community organization
5 or other organization, to educate eligible families
6 about their options and to assist in their enrollment
7 in the supplemental debit card plan.

8 “(5) APPEALS.—The Secretary shall establish
9 an independent appeals process, to be administered
10 by an entity separate from the entity that makes ini-
11 tial eligibility determinations, which shall be avail-
12 able to individuals who are denied benefits under the
13 supplemental debit card program.

14 “(6) RESOLUTION OF ERRORS.—The Secretary
15 shall provide for a reconciliation process with the
16 States to resolve any errors and adjudicate disputes
17 due to incomplete or false information in a family’s
18 application or in the billing process described in sub-
19 section (e).

20 “(7) PENALTIES FOR FALSE INFORMATION.—
21 Any person who provides false information to qualify
22 for the supplemental debit card program shall pay a
23 penalty in the amount of 110 percent of the amount
24 of assistance paid on behalf of such person and all
25 members of such person’s family.

1 “(h) IMPLEMENTATION PLAN.—Not later than 6
2 months after the date of enactment of this section, the
3 Secretary shall submit to Congress a plan for imple-
4 menting this program.

5 “(i) AUTHORIZATION OF APPROPRIATIONS.—

6 “(1) ADMINISTRATION OF THE SUPPLEMENTAL
7 DEBIT CARD PROGRAM.—To administer the program
8 under this section, there are authorized to be appro-
9 priated—

10 “(A) for fiscal year 2009, \$300,000,000,
11 for the design of a unified, national system of
12 conducting the supplemental debit card pro-
13 gram;

14 “(B) for fiscal year 2010, \$1,000,000,000
15 for start-up costs, including, contracting, hiring
16 and training employees, and testing the pro-
17 gram; and

18 “(C) for fiscal year 2011 and each subse-
19 quent fiscal year, \$3,000,000,000.

20 “(2) AUTHORIZATION OF BENEFITS UNDER
21 THE SUPPLEMENTAL DEBIT CARD PROGRAM.—To
22 provide the supplemental debit card benefits de-
23 scribed in this section, there are authorized to be ap-
24 propriated—

1 “(2) NO IMPACT ON FICA/SECA TAX REVE-
2 NUES.—Nothing in this section shall be construed as
3 affecting revenues through the payment of hospital
4 insurance taxes under sections 1401(b), 3101(b),
5 and 3111(b) of the Internal Revenue Code of 1986.

6 “(3) NO IMPACT ON OTHER BENEFICIARIES.—

7 “(A) IN GENERAL.—This section shall not
8 apply to individuals not described in paragraph
9 (1).

10 “(B) NO IMPACT ON COMPUTATION OF
11 MEDICARE PREMIUMS FOR OLDER MEDICARE
12 BENEFICIARIES.—Premiums under parts A, B,
13 and D shall be computed for individuals not de-
14 scribed in paragraph (1) based on the average
15 costs that the Secretary estimates would have
16 been applicable if this section did not apply.

17 “(b) ALTERNATIVE BENEFITS.—

18 “(1) IN GENERAL.—An individual described in
19 subsection (a)(1) is only entitled to benefits under
20 this title in accordance with this section. In the case
21 of such an individual who has qualified health insur-
22 ance coverage, the individual is entitled under this
23 section—

24 “(A) to an income-related payment under
25 subsection (c); and

1 “(B) in the case of a low-income individual
2 (as defined in paragraph (3) of subsection (d)),
3 to a contribution to a medical savings account
4 of the individual in the amount specified in
5 such subsection.

6 “(2) ALTERNATIVE PREMIUM OBLIGATIONS.—
7 An individual described in subsection (a)(1)—

8 “(A) is not responsible for payment of any
9 premium otherwise applicable under part B or
10 D; but

11 “(B) is responsible for payment of the pre-
12 mium for qualified health insurance coverage
13 referred to in paragraph (1) and may apply the
14 income-related payment under subsection (c) to-
15 ward such premium.

16 “(3) QUALIFIED HEALTH INSURANCE COV-
17 ERAGE.—

18 “(A) PUBLICATION OF LIST.—The Sec-
19 retary of Health and Human Services shall
20 publish an annual list of health insurance plans
21 that meet the definition of qualified health in-
22 surance coverage, as described in subparagraph
23 (B) below, at least one of such plans must ad-
24 dress the special needs of Medicare’s highest-
25 cost seniors, as determined by the Secretary.

1 “(B) QUALIFIED HEALTH INSURANCE COV-
2 ERAGE DEFINED.—In this subsection, the term
3 ‘qualified health insurance coverage’ means
4 health benefits coverage, whether under a group
5 health plan, health insurance coverage or other-
6 wise, but does not include coverage under a
7 health plan if substantially all of its coverage is
8 coverage described in section 223(c)(1)(B) of
9 the Internal Revenue Code of 1986.

10 “(c) INCOME-RELATED PAYMENT.—

11 “(1) IN GENERAL.—The amount of the income-
12 related payment under this subsection for an indi-
13 vidual for a year is equal to—

14 “(A) the annual amount specified for the
15 year in paragraph (2);

16 “(B) subject to reduction under paragraph
17 (3) (relating to higher income individuals);

18 “(C) further subject to adjustment under
19 paragraph (4); and

20 “(D) subject to pro-ration under para-
21 graph (5).

22 “(2) ANNUAL AMOUNT.—

23 “(A) IN GENERAL.—The annual amount
24 specified in this paragraph—

1 “(i) for 2011 is the average nominal
2 dollar value of the Medicare benefit; and

3 “(ii) for any subsequent year is the
4 annual amount specified in this paragraph
5 for the preceding year increased by the an-
6 nual inflation adjustment described in sub-
7 paragraph (B) for such subsequent year.

8 Any amount computed under clause (ii) that is
9 not a multiple of \$12 shall be rounded to the
10 nearest multiple of \$12.

11 “(B) ANNUAL INFLATION ADJUSTMENT.—
12 The annual inflation adjustment under this
13 subparagraph for a year is equal to the average
14 of—

15 “(i) the annual rate of increase in the
16 consumer price index for urban consumers
17 (all items; U.S. city average) for the year,
18 as projected by the Secretary in consulta-
19 tion with the Bureau of Labor Statistics
20 before the beginning of the year; and

21 “(ii) the annual rate of increase in the
22 medical care component of the consumer
23 price index for all urban consumers (U.S.
24 city average) for the year, as projected by
25 the Secretary in consultation with the Bu-

1 reau of Labor Statistics before the begin-
2 ning of the year.

3 “(3) REDUCTION FOR HIGHER-INCOME INDIVID-
4 UALS.—

5 “(A) IN GENERAL.—In the case of an indi-
6 vidual whose modified adjusted gross income
7 exceeds the threshold amount specified in para-
8 graph (2) of section 1839(i), as adjusted under
9 paragraph (5) of such section, the annual
10 amount under paragraph (2) shall be reduced
11 by the adjustment percentage specified in sub-
12 paragraph (B).

13 “(B) ADJUSTMENT PERCENTAGE.—In the
14 case of an individual for whom the applicable
15 percentage specified in section 1839(i)(3)(C)—

16 “(i) is less than 80 percent, the ad-
17 justment percentage under this subpara-
18 graph shall be 50 percent; or

19 “(ii) is equal to 80 percent, the ad-
20 justment percentage under this subpara-
21 graph shall be 70 percent.

22 “(C) APPLICATION OF CERTAIN PROVI-
23 SIONS.—The provisions of paragraphs (4)
24 through (6) of section 1839(i) shall apply under

1 this paragraph in the same manner as they
2 apply for purposes of such section.

3 “(4) RISK, GEOGRAPHIC AREA, AND OTHER AD-
4 JUSTMENTS.—

5 “(A) RISK ADJUSTMENT.—The payment
6 amount under this subsection for an individual
7 shall be adjusted, using a methodology specified
8 by the Secretary, in a manner that takes into
9 account the relative risk factors (such as those
10 described in section 1853(a)(1)(C)(i)) associ-
11 ated with such individual. Such adjustment
12 shall be made in such a manner as not to
13 change the total amount of payments made
14 under this subsection as a result of such adjust-
15 ment.

16 “(B) PARTIAL GEOGRAPHIC AREA ADJUST-
17 MENT.—Such payment amount for an indi-
18 vidual also shall be adjusted, using a method-
19 ology specified by the Secretary, in a manner
20 that takes into account the relative differences
21 in area health care costs for the area in which
22 the individual resides compared to other areas.
23 Such adjustment shall be made in such a man-
24 ner as not to change the total amount of pay-
25 ments made under this subsection as a result of

1 such adjustment. The Secretary shall provide
2 for a decrease over time in the adjustment
3 made under this subparagraph.

4 “(C) CERTAIN PART A BUY-IN INDIVID-
5 UALS.—Such payment amount for an individual
6 who is not eligible for benefits under part A
7 pursuant to section 226 or 226A shall be ad-
8 justed by such proportion or amount as the
9 Secretary determines appropriate to take into
10 account premiums that would otherwise be pay-
11 able under section 1818 or 1818A for benefits
12 under part A.

13 “(5) PRO-RATIO FOR PARTIAL YEAR OF ELIGI-
14 BILITY.—In the case of an individual whose entitle-
15 ment under this section is for less than an entire
16 year, the payment amount under this subsection
17 shall be pro-rated to reflect the portion of the year
18 included in such entitlement.

19 “(6) PAYMENT ON PERIODIC BASIS.—The Sec-
20 retary shall provide for the payment under this sub-
21 section on an appropriate monthly or other periodic
22 basis.

23 “(d) CONTRIBUTION TO A MEDICAL SAVINGS AC-
24 COUNT (MSA) FOR LOW-INCOME INDIVIDUALS.—

1 “(1) IN GENERAL.—The amount of the con-
2 tribution under subsection (b)(1)(B) to a medical
3 savings account of a low-income individual is
4 equal—

5 “(A) in the case of an individual described
6 in clause (i) or (ii) of paragraph (4)(A), to the
7 full MSA contribution amount (as defined in
8 paragraph (2)); or

9 “(B) in the case of any other individual, to
10 75 percent of the full MSA contribution
11 amount.

12 “(2) FULL MSA CONTRIBUTION AMOUNT.—For
13 purposes of this subsection, the term ‘full MSA con-
14 tribution amount’ means, for a year for an indi-
15 vidual, an amount to be equivalent to the full
16 amount of the average deductible of a high-deduct-
17 ible health plan (as defined in section 223(e)(2) of
18 the Internal Revenue Code of 1986) as determined
19 by the Secretary.

20 “(3) NO MEDICAID COVERAGE FOR MEDICARE-
21 COVERED SERVICES.—

22 “(A) IN GENERAL.—In the case of an indi-
23 vidual who is eligible to be provided a contribu-
24 tion to a medical savings account under this
25 subsection, the individual is not entitled to any

1 payment under a State plan under title XIX
2 with respect to any benefits relating to items
3 and services for which coverage is provided
4 under this title.

5 “(B) CONSTRUCTION.—Subparagraph (A)
6 shall not affect the continued provision of med-
7 ical assistance under title XIX for items and
8 services, such as dental, vision, or long-term
9 care facility services, for which benefits are not
10 provided under this title regardless of medical
11 necessity.

12 “(4) PERIODIC PAYMENT.—The Secretary shall
13 provide for the contribution into medical savings ac-
14 counts of amounts under this subsection on an ap-
15 propriate monthly or other periodic basis.

16 “(5) LOW-INCOME INDIVIDUAL DEFINED.—

17 “(A) IN GENERAL.—For purposes of this
18 section, the term ‘low-income individual’ means
19 an individual described in subsection (a)(1)—

20 “(i) who meets the requirement of
21 section 1936(c)(6)(A)(ii) (relating to a full-
22 benefit dual eligible individual);

23 “(ii) whose income (as determined
24 under section 1612 for purposes of the
25 supplemental security income program, ex-

1 cept as provided in subparagraph (B))
2 does not exceed 100 percent of the official
3 income poverty line (referred to in section
4 1905(p)(1)) applicable to a family of the
5 size involved; or

6 “(iii) whose income (as so determined)
7 exceeds 100 percent, but does not exceed
8 150 percent, of such official income pov-
9 erty line applicable to a family of the size
10 involved.

11 “(B) APPLICATION OF SPECIAL RULE RE-
12 GARDING APPLICATION OF SOCIAL SECURITY IN-
13 CREASES.—The provisions of subparagraph (D)
14 of section 1905(p)(2) shall apply to determina-
15 tions of income under subparagraph (A) in the
16 same manner they apply under such section.

17 “(C) DETERMINATION PROCESS.—The
18 Secretary shall specify a process for the deter-
19 mination of whether individuals are low-income
20 individuals.”.

21 **SEC. 302. INCREASE IN MEDICARE ELIGIBILITY AGE.**

22 Section 226 of the Social Security Act (42 U.S.C.
23 426) is amended by adding at the end the following new
24 subsection:

25 “(k) INCREASING MEDICARE QUALIFYING AGE.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, any reference in this section or title
3 XVIII (or title XIX insofar as it refers to title
4 XVIII) to ‘age 65’ shall be deemed a reference to
5 the medicare qualifying age specified in paragraph
6 (2).

7 “(2) MEDICARE QUALIFYING AGE SPECIFIED.—
8 The medicare qualifying age specified in this para-
9 graph is determined as follows:

10 “(A) In the case of an individual who at-
11 tains 65 years of age before January 1, 2021,
12 the medicare qualifying age is 65 years of age.

13 “(B) In the case of an individual who at-
14 tains 65 years of age in a year after 2018 and
15 before 2027, the medicare qualifying age is the
16 medicare qualifying age specified in this para-
17 graph for the previous year increased by 2
18 months.

19 “(C) In the case of an individual who at-
20 tains 65 years of age—

21 “(i) in the 2-year period beginning on
22 January 1, 2027, the medicare qualifying
23 age is 67 years and 1 month; or

24 “(ii) in a subsequent 2-year period be-
25 ginning before 2087, the medicare quali-

1 fying age is the medicare qualifying age
2 specified in this paragraph for the previous
3 2-year period (or, in the case of the first
4 2-year period, specified for 2026) increased
5 by 1 month.

6 “(D) In the case of an individual who at-
7 tains 65 years of age on or after January 1,
8 2086, the medicare qualifying age is the medi-
9 care qualifying age specified in this paragraph
10 is 69 years and 6 months.”.

11 **SEC. 303. UNIFIED MEDICARE TRUST FUND.**

12 (a) IN GENERAL.—The Federal Hospital Insurance
13 Trust Fund (established under section 1817 of the Social
14 Security Act) and the Federal Supplementary Medical In-
15 surance Trust Fund (established under section 1841 of
16 such Act) are hereby consolidated into a unified Medicare
17 trust fund. Such trust fund shall have separate accounts
18 for parts A, B, and D of such title and shall be adminis-
19 tered by the same board of trustees that administers the
20 current Trust Funds.

21 (b) CONSTRUCTION.—Nothing in this section shall be
22 construed as affecting the actual transfer of funds or com-
23 putations of amounts of premiums under any part of the
24 Medicare program.

1 (c) SOLVENCY.—The Medicare trustee shall establish
2 a measure of program solvency for the Medicare program
3 of total outlays as a measure of gross domestic product.

4 **Subtitle B—Changes in Current**
5 **Medicare Program**

6 **SEC. 311. INCOME-RELATED REDUCTION IN PART D PRE-**
7 **MIUM SUBSIDY.**

8 (a) INCOME-RELATED REDUCTION IN PART D PRE-
9 MIUM SUBSIDY.—

10 (1) IN GENERAL.—Section 1860D–13(a) of the
11 Social Security Act (42 U.S.C. 1395w–113(a)) is
12 amended by adding at the end the following new
13 paragraph:

14 “(7) REDUCTION IN PREMIUM SUBSIDY BASED
15 ON INCOME.—

16 “(A) IN GENERAL.—In the case of an indi-
17 vidual whose modified adjusted gross income
18 exceeds the threshold amount applicable under
19 paragraph (2) of section 1839(i) (including ap-
20 plication of paragraph (5) of such section) for
21 the calendar year, the monthly amount of the
22 premium subsidy applicable to the premium
23 under this section for a month after December
24 2010 shall be reduced (and the monthly bene-
25 ficiary premium shall be increased) by the

1 monthly adjustment amount specified in sub-
2 paragraph (B).

3 “(B) MONTHLY ADJUSTMENT AMOUNT.—
4 The monthly adjustment amount specified in
5 this subparagraph for an individual for a month
6 in a year is equal to the product of—

7 “(i) the quotient obtained by divid-
8 ing—

9 “(I) the applicable percentage de-
10 termined under paragraph (3)(C) of
11 section 1839(i) (including application
12 of paragraph (5) of such section) for
13 the individual for the calendar year
14 reduced by 25.5 percent; by

15 “(II) 25.5 percent; and

16 “(ii) the base beneficiary premium (as
17 computed under paragraph (2)).

18 “(C) MODIFIED ADJUSTED GROSS IN-
19 COME.—For purposes of this paragraph, the
20 term ‘modified adjusted gross income’ has the
21 meaning given such term in subparagraph (A)
22 of section 1839(i)(4), determined for the tax-
23 able year applicable under subparagraphs (B)
24 and (C) of such section.

1 “(D) DETERMINATION BY COMMISSIONER
2 OF SOCIAL SECURITY.—The Commissioner of
3 Social Security shall make any determination
4 necessary to carry out the income-related reduc-
5 tion in premium subsidy under this paragraph.

6 “(E) PROCEDURES TO ASSURE CORRECT
7 INCOME-RELATED REDUCTION IN PREMIUM
8 SUBSIDY.—

9 “(i) DISCLOSURE OF BASE BENE-
10 FICIARY PREMIUM.—Not later than Sep-
11 tember 15 of each year beginning with
12 2011, the Secretary shall disclose to the
13 Commissioner of Social Security the
14 amount of the base beneficiary premium
15 (as computed under paragraph (2)) for the
16 purpose of carrying out the income-related
17 reduction in premium subsidy under this
18 paragraph with respect to the following
19 year.

20 “(ii) ADDITIONAL DISCLOSURE.—Not
21 later than October 15 of each year begin-
22 ning with 2010, the Secretary shall dis-
23 close to the Commissioner of Social Secu-
24 rity the following information for the pur-
25 pose of carrying out the income-related re-

1 duction in premium subsidy under this
2 paragraph with respect to the following
3 year:

4 “(I) The modified adjusted gross
5 income threshold applicable under
6 paragraph (2) of section 1839(i) (in-
7 cluding application of paragraph (5)
8 of such section).

9 “(II) The applicable percentage
10 determined under paragraph (3)(C) of
11 section 1839(i) (including application
12 of paragraph (5) of such section).

13 “(III) The monthly adjustment
14 amount specified in subparagraph
15 (B).

16 “(IV) Any other information the
17 Commissioner of Social Security de-
18 termines necessary to carry out the
19 income-related reduction in premium
20 subsidy under this paragraph.

21 “(F) RULE OF CONSTRUCTION.—The for-
22 mula used to determine the monthly adjustment
23 amount specified under subparagraph (B) shall
24 only be used for the purpose of determining

1 such monthly adjustment amount under such
2 subparagraph.”.

3 (2) COLLECTION OF MONTHLY ADJUSTMENT
4 AMOUNT.—Section 1860D–13(c) of the Social Secu-
5 rity Act (42 U.S.C. 1395w–113(c)) is amended—

6 (A) in paragraph (1), by striking “(2) and
7 (3)” and inserting “(2), (3), and (4)”; and

8 (B) by adding at the end the following new
9 paragraph:

10 “(4) COLLECTION OF MONTHLY ADJUSTMENT
11 AMOUNT.—

12 “(A) IN GENERAL.—Notwithstanding any
13 other provision of this subsection or section
14 1854(d)(2), subject to subparagraph (B), the
15 amount of the income-related reduction in pre-
16 mium subsidy for an individual for a month (as
17 determined under subsection (a)(7)) shall be
18 paid through withholding from benefit pay-
19 ments in the manner provided under section
20 1840.

21 “(B) AGREEMENTS.—In the case where
22 the monthly benefit payments of an individual
23 that are withheld under subparagraph (A) are
24 insufficient to pay the amount described in such
25 subparagraph, the Commissioner of Social Se-

1 security shall enter into agreements with the Sec-
2 retary, the Director of the Office of Personnel
3 Management, and the Railroad Retirement
4 Board as necessary in order to allow other
5 agencies to collect the amount described in sub-
6 paragraph (A) that was not withheld under
7 such subparagraph.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) MEDICARE.—Part D of title XVIII of the
10 Social Security Act (42 U.S.C. 1395w–101 et seq.)
11 is amended—

12 (A) in section 1860D–13(a)(1)—

13 (i) by redesignating subparagraph (F)
14 as subparagraph (G);

15 (ii) in subparagraph (G), as redesign-
16 nated by clause (i), by striking “(D) and
17 (E)” and inserting “(D), (E), and (F)”;
18 and

19 (iii) by inserting after subparagraph
20 (E) the following new subparagraph:

21 “(F) INCREASE BASED ON INCOME.—The
22 monthly beneficiary premium shall be increased
23 pursuant to paragraph (7).”; and

1 (B) in section 1860D–15(a)(1)(B), by
2 striking “paragraph (1)(B)” and inserting
3 “paragraphs (1)(B) and (1)(F)”.

4 (2) INTERNAL REVENUE CODE.—Section
5 6103(l)(20) of the Internal Revenue Code of 1986
6 (relating to disclosure of return information to carry
7 out Medicare part B premium subsidy adjustment)
8 is amended—

9 (A) in the heading, by striking “PART B
10 PREMIUM SUBSIDY ADJUSTMENT” and inserting
11 “PARTS B AND D PREMIUM SUBSIDY ADJUST-
12 MENTS”;

13 (B) in subparagraph (A)—

14 (i) in the matter preceding clause (i),
15 by inserting “or 1860D–13(a)(7)” after
16 “1839(i)”; and

17 (ii) in clause (vii), by inserting after
18 “subsection (i) of such section” the fol-
19 lowing: “or under section 1860D–13(a)(7)
20 of such Act”; and

21 (C) in subparagraph (B)—

22 (i) by inserting “or such section
23 1860D–13(a)(7)” before the period at the
24 end;

1 (ii) as amended by clause (i), by in-
2 serting “or for the purpose of resolving tax
3 payer appeals with respect to any such pre-
4 mium adjustment” before the period at the
5 end; and

6 (iii) by adding at the end the fol-
7 lowing new sentence: “Officers, employees,
8 and contractors of the Social Security Ad-
9 ministration may disclose such return in-
10 formation to officers, employees, and con-
11 tractors of the Department of Health and
12 Human Services, the Office of Personnel
13 Management, the Railroad Retirement
14 Board, the Department of Justice, and the
15 courts of the United States to the extent
16 necessary to carry out the purposes de-
17 scribed in the preceding sentence.”; and

18 (D) by adding at the end the following new
19 subparagraph:

20 “(C) TIMING OF DISCLOSURE.—Return in-
21 formation shall be disclosed to officers, employ-
22 ees, and contractors of the Social Security Ad-
23 ministration under subparagraph (A) not later
24 than the date that is 90 days prior to the date
25 on which the taxpayer first becomes entitled to

1 benefits under part A of title XVIII of the So-
2 cial Security Act or eligible to enroll for benefits
3 under part B of such title.”.

4 **SEC. 312. REDUCTION IN HOSPITAL MARKETBASKET IN-**
5 **CREASES.**

6 Notwithstanding any other provision of law:

7 (1) **OUTPATIENT HOSPITAL SERVICES.**—For
8 2010 and each succeeding year, the OPD fee sched-
9 ule increase factor otherwise computed under section
10 1833(t)(3)(C)(iv) of the Social Security Act (42
11 U.S.C. 1395l(t)(3)(C)(iv)) shall be reduced by .4
12 percentage points.

13 (2) **INPATIENT HOSPITAL SERVICES.**—For fis-
14 cal year 2010 and each succeeding fiscal year, the
15 applicable percentage increase otherwise computed
16 under clauses (i) and (ii) of section 1886(b)(3)(B) of
17 such Act (42 U.S.C. 1395ww(b)(3)(B)) shall be re-
18 duced by .4 percentage points.

19 **SEC. 313. ELIMINATION OF INDEXING OF INCOME THRESH-**
20 **OLDS FOR PART B INCOME-RELATED PRE-**
21 **MIUMS.**

22 (a) **IN GENERAL.**—Section 1839(i) of the Social Se-
23 curity Act (42 U.S.C. 1395r(i)) is amended by striking
24 paragraph (5).

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to premiums for years beginning
3 with 2010.

4 **SEC. 314. REINSTATEMENT OF THE MEDICARE TRIGGER.**

5 (a) REINSTATEMENT OF THE MEDICARE TRIGGER.—

6 (1) DETERMINATIONS OF EXCESS GENERAL
7 REVENUE MEDICARE FUNDING.—

8 (A) IN GENERAL.—The Board of Trustees
9 of each medicare trust fund shall include in the
10 annual reports submitted under subsection
11 (b)(2) of sections 1817 and 1841 of the Social
12 Security Act (42 U.S.C. 1395i and 1395t)—

13 (i) the information described in para-
14 graph (2); and

15 (ii) a determination as to whether
16 there is projected to be excess general rev-
17 enue medicare funding (as defined in para-
18 graph (3)) for the fiscal year in which the
19 report is submitted or for the previous fis-
20 cal year.

21 (B) MEDICARE FUNDING WARNING.—For
22 purposes of section 1105(h) of title 31, United
23 States Code, and this subsection, an affirmative
24 determination under subparagraph (A)(i) in 2
25 consecutive annual reports shall be treated as a

1 medicare funding warning in the year in which
2 the second such report is made.

3 (2) INFORMATION.—The information described
4 in this subsection for an annual report in a year is
5 as follows:

6 (A) PROJECTIONS OF GROWTH OF GEN-
7 ERAL REVENUE SPENDING.—A statement of the
8 general revenue medicare funding as a percent-
9 age of the total medicare outlays for each of the
10 following:

11 (i) The previous fiscal year.

12 (ii) Previous fiscal years and as of 10,
13 50, and 75 years after such year.

14 (B) COMPARISON WITH OTHER GROWTH
15 TRENDS.—A comparison of the trend of such
16 percentages with the annual growth rate in the
17 following:

18 (i) The gross domestic product.

19 (ii) Private health costs.

20 (iii) National health expenditures.

21 (iv) Other appropriate measures.

22 (C) PART D SPENDING.—Expenditures, in-
23 cluding trends in expenditures, under part D of
24 title XVIII of the Social Security Act, as added
25 by section 101 of the Medicare Prescription

1 Drug, Improvement, and Modernization Act of
2 2003 (Public Law 108–173).

3 (D) COMBINED MEDICARE TRUST FUND
4 ANALYSIS.—A financial analysis of the com-
5 bined medicare trust funds if general revenue
6 medicare funding were limited to the percentage
7 specified in paragraph (3)(A)(ii) of total medi-
8 care outlays.

9 (3) DEFINITIONS.—For purposes of this sec-
10 tion:

11 (A) EXCESS GENERAL REVENUE MEDI-
12 CARE FUNDING.—The term “excess general rev-
13 enue medicare funding” means, with respect to
14 a fiscal year, that—

15 (i) general revenue medicare funding
16 (as defined in subparagraph (B)), ex-
17 pressed as a percentage of total medicare
18 outlays (as defined in subparagraph (D))
19 for the fiscal year; exceeds

20 (ii) 45 percent.

21 (B) GENERAL REVENUE MEDICARE FUND-
22 ING.—The term “general revenue medicare
23 funding” means for a year—

1 (i) the total medicare outlays (as de-
2 fined in subparagraph (D)) for the year;
3 minus

4 (ii) the dedicated medicare financing
5 sources (as defined in subparagraph (C))
6 for the year.

7 (C) DEDICATED MEDICARE FINANCING
8 SOURCES.—The term “dedicated medicare fi-
9 nancing sources” means the following:

10 (i) HOSPITAL INSURANCE TAX.—
11 Amounts appropriated to the Hospital In-
12 surance Trust Fund under the third sen-
13 tence of section 1817(a) of the Social Se-
14 curity Act (42 U.S.C. 1395i(a)) and
15 amounts transferred to such Trust Fund
16 under section 7(c)(2) of the Railroad Re-
17 tirement Act of 1974 (45 U.S.C.
18 231f(c)(2)).

19 (ii) TAXATION OF CERTAIN OASDI
20 BENEFITS.—Amounts appropriated to the
21 Hospital Insurance Trust Fund under sec-
22 tion 121(e)(1)(B) of the Social Security
23 Amendments of 1983 (Public Law 98–21),
24 as inserted by section 13215(c) of the Om-

1 nibus Budget Reconciliation Act of 1993
2 (Public Law 103–66).

3 (iii) STATE TRANSFERS.—The State
4 share of amounts paid to the Federal Gov-
5 ernment by a State under section 1843 of
6 the Social Security Act (42 U.S.C. 1395v)
7 or pursuant to section 1935(c) of such Act.

8 (iv) PREMIUMS.—The following pre-
9 miums:

10 (I) PART A.—Premiums paid by
11 non-Federal sources under sections
12 1818 and section 1818A (42 U.S.C.
13 1395i–2 and 1395i–2a) of such Act.

14 (II) PART B.—Premiums paid by
15 non-Federal sources under section
16 1839 of such Act (42 U.S.C. 1395r),
17 including any adjustments in pre-
18 miums under such section.

19 (III) PART D.—Monthly bene-
20 ficiary premiums paid under part D of
21 title XVIII of such Act, as added by
22 section 101 of the Medicare Prescrip-
23 tion Drug, Improvement, and Mod-
24 ernization Act of 2003 (Public Law
25 108–173), and MA monthly prescrip-

1 tion drug beneficiary premiums paid
2 under part C of such title insofar as
3 they are attributable to basic prescrip-
4 tion drug coverage.

5 (IV) DESCRIPTION.—Premiums
6 under subclauses (II) and (III) shall
7 be determined without regard to any
8 reduction in such premiums attrib-
9 utable to a beneficiary rebate under
10 section 1854(b)(1)(C) of such title, as
11 amended by section 222(b)(1) of the
12 Medicare Prescription Drug, Improve-
13 ment, and Modernization Act of 2003
14 (Public Law 108–173), and premiums
15 under clause (iii) are deemed to in-
16 clude any amounts paid under section
17 1860D–13(b) of such title, as added
18 by section 101 of the Medicare Pre-
19 scription Drug, Improvement, and
20 Modernization Act of 2003 (Public
21 Law 108–173).

22 (v) GIFTS.—Amounts received by the
23 medicare trust funds under section 201(i)
24 of the Social Security Act (42 U.S.C.
25 401(i)).

1 (D) TOTAL MEDICARE OUTLAYS.—The
2 term “total medicare outlays” means total out-
3 lays from the medicare trust funds and shall—

4 (i) include payments made to plans
5 under part C of title XVIII of the Social
6 Security Act that are attributable to any
7 rebates under section 1854(b)(1)(C) of
8 such Act (42 U.S.C. 1395w–24(b)(1)(C)),
9 as amended by section 222(b)(1) of the
10 Medicare Prescription Drug, Improvement,
11 and Modernization Act of 2003 (Public
12 Law 108–173);

13 (ii) include administrative expendi-
14 tures made in carrying out title XVIII of
15 the Social Security Act and Federal out-
16 lays under section 1935(b) of such Act, as
17 added by section 103(a)(2) of the Medicare
18 Prescription Drug, Improvement, and
19 Modernization Act of 2003 (Public Law
20 108–173); and

21 (iii) offset outlays by the amount of
22 fraud and abuse collections insofar as they
23 are applied or deposited into a medicare
24 trust fund.

1 (E) MEDICARE TRUST FUND.—The term
2 “medicare trust fund” means—

3 (i) the Federal Hospital Insurance
4 Trust Fund established under section 1817
5 of the Social Security Act (42 U.S.C.
6 1395i); and

7 (ii) the Federal Supplementary Med-
8 ical Insurance Trust Fund established
9 under section 1841 of such Act (42 U.S.C.
10 1395t), including the Medicare Prescrip-
11 tion Drug Account under such Trust
12 Fund.

13 (4) CONFORMING AMENDMENTS.—

14 (A) FEDERAL HOSPITAL INSURANCE
15 TRUST FUND.—The last sentence of section
16 1817(b)(2) (42 U.S.C. 1395i(b)(2)) is amended
17 to read as follows: “Each report provided under
18 paragraph (2) beginning with the report in
19 2010 shall include the information specified in
20 section 314 of the Roadmap for America’s Fu-
21 ture Act of 2010.”.

22 (B) FEDERAL SUPPLEMENTARY MEDICAL
23 INSURANCE TRUST FUND.—The last sentence of
24 section 1841(b)(2) (42 U.S.C. 1395t(b)(2)) is
25 amended to read as follows: “Each report pro-

1 vided under paragraph (2) beginning with the
2 report in 2010 shall include the information
3 specified in section 314 of the Roadmap for
4 America’s Future Act of 2010.”.

5 (5) NOTICE OF MEDICARE FUNDING WARN-
6 ING.—Whenever any report described in subsection
7 (a) contains a determination that for the previous
8 fiscal year reporting period there will be excess gen-
9 eral revenue medicare funding, Congress and the
10 President should address the matter under existing
11 rules and procedures.

12 (b) PRESIDENTIAL SUBMISSION OF LEGISLATION.—

13 (1) IN GENERAL.—Section 1105(h) of title 31,
14 United States Code, is amended to read as follows:

15 “(h)(1) If there is a medicare funding warning under
16 section 314 of the Roadmap for America’s Future Act of
17 2010 made in a year, the President shall submit to Con-
18 gress, within the 15-day period beginning on the date of
19 the budget submission to Congress under subsection (a)
20 for the succeeding year, proposed legislation to respond
21 to such warning.

22 “(2) Paragraph (1) does not apply if, during the year
23 in which the warning is made, legislation is enacted which
24 eliminates excess general revenue medicare funding (as de-
25 fined in section 314 of the Roadmap for America’s Future

1 Act of 2010) for the previous fiscal year, as certified by
2 the Board of Trustees of each medicare trust fund (as de-
3 fined in section 314 of such Act) not later than 30 days
4 after the date of the enactment of such legislation.”.

5 (2) SENSE OF CONGRESS.—It is the sense of
6 Congress that legislation submitted pursuant to sec-
7 tion 1105(h) of title 31, United States Code, in a
8 year should be designed to reduce payments by 1
9 percent for services furnished in Medicare’s fee-for-
10 service sector for the fiscal year that begins in such
11 year.

12 (c) PROCEDURES IN THE HOUSE OF REPRESENTA-
13 TIVES.—

14 (1) INTRODUCTION AND REFERRAL OF PRESI-
15 DENT’S LEGISLATIVE PROPOSAL.—

16 (A) INTRODUCTION.—In the case of a leg-
17 islative proposal submitted by the President
18 pursuant to section 1105(h) of title 31, United
19 States Code, within the 15-day period specified
20 in paragraph (1) of such section, the majority
21 leader of the House of Representatives (or his
22 designee) and the minority leader of the House
23 of Representatives (or his designee) shall intro-
24 duce such proposal (by request), the title of
25 which is as follows: “A bill to respond to a

1 medicare funding warning.”. Such bill shall be
2 introduced within 3 legislative days after Con-
3 gress receives such proposal.

4 (B) REFERRAL.—Any legislation intro-
5 duced pursuant to paragraph (1) shall be re-
6 ferred to the appropriate committees of the
7 House of Representatives.

8 (2) DIRECTION TO THE APPROPRIATE HOUSE
9 COMMITTEES.—

10 (A) IN GENERAL.—In the House, in any
11 year during which the President is required to
12 submit proposed legislation to Congress under
13 section 1105(h) of title 31, United States Code,
14 the appropriate committees shall report medi-
15 care funding legislation by not later than June
16 30 of such year.

17 (B) MEDICARE FUNDING LEGISLATION.—
18 For purposes of this section, the term “medi-
19 care funding legislation” means—

20 (i) legislation introduced pursuant to
21 subsection (c)(1), but only if the legislative
22 proposal upon which the legislation is
23 based was submitted within the 15-day pe-
24 riod referred to in such subsection; or

1 (ii) any bill the title of which is as fol-
2 lows: “A bill to respond to a medicare
3 funding warning.”.

4 (C) CERTIFICATION.—With respect to any
5 medicare funding legislation or any amendment
6 to such legislation to respond to a medicare
7 funding warning, the chairman of the Com-
8 mittee on the Budget of the House shall cer-
9 tify—

10 (i) whether or not such legislation
11 eliminates excess general revenue medicare
12 funding (as defined in subsection (a)(3))
13 for the previous fiscal year; and

14 (ii) with respect to such an amend-
15 ment, whether the legislation, as amended,
16 would reduce payments by 1 percent for
17 services furnished in Medicare’s fee-for-
18 service sector for the fiscal year that be-
19 gins in such year.

20 (3) FALLBACK PROCEDURE FOR FLOOR CON-
21 SIDERATION IF THE HOUSE FAILS TO VOTE ON
22 FINAL PASSAGE BY JULY 30.—

23 (A) After July 30 of any year during
24 which the President is required to submit pro-
25 posed legislation to Congress under section

1 1105(h) of title 31, United States Code, unless
2 the House of Representatives has voted on final
3 passage of any medicare funding legislation for
4 which there is an affirmative certification under
5 paragraph (2)(C)(i), then, after the expiration
6 of not less than 30 calendar days (and concur-
7 rently 5 legislative days), it is in order to move
8 to discharge any committee to which medicare
9 funding legislation which has such a certifi-
10 cation and which has been referred to such
11 committee for 30 calendar days from further
12 consideration of the legislation.

13 (B) A motion to discharge may be made
14 only by an individual favoring the legislation,
15 may be made only if supported by one-fifth of
16 the total membership of the House (a quorum
17 being present), and is highly privileged in the
18 House. Debate thereon shall be limited to not
19 more than one hour, the time to be divided in
20 the House equally between those favoring and
21 those opposing the motion. An amendment to
22 the motion is not in order, and it is not in order
23 to move to reconsider the vote by which the mo-
24 tion is agreed to or disagreed to.

1 (C) Only one motion to discharge a par-
2 ticular committee may be adopted under this
3 subsection in any session of a Congress.

4 (D) Notwithstanding subparagraph (A), it
5 shall not be in order to move to discharge a
6 committee from further consideration of medi-
7 care funding legislation pursuant to this sub-
8 section during a session of a Congress if, dur-
9 ing the previous session of the Congress, the
10 House passed medicare funding legislation for
11 which there is an affirmative certification under
12 paragraph (2)(C)(i).

13 (4) FLOOR CONSIDERATION IN THE HOUSE OF
14 DISCHARGED LEGISLATION.—

15 (A) In the House, not later than 3 legisla-
16 tive days after any committee has been dis-
17 charged from further consideration of legisla-
18 tion under paragraph (3), the Speaker shall re-
19 solve the House into the Committee of the
20 Whole for consideration of the legislation.

21 (B) The first reading of the legislation
22 shall be dispensed with. All points of order
23 against consideration of the legislation are
24 waived. General debate shall be confined to the
25 legislation and shall not exceed five hours,

1 which shall be divided equally between those fa-
2 voring and those opposing the legislation. After
3 general debate the legislation shall be consid-
4 ered for amendment under the five-minute rule.
5 During consideration of the legislation, no
6 amendments shall be in order in the House or
7 in the Committee of the Whole except those for
8 which there has been an affirmative certifi-
9 cation under paragraph (2)(C)(ii). All points of
10 order against consideration of any such amend-
11 ment in the Committee of the Whole are
12 waived. The legislation, together with any
13 amendments which shall be in order, shall be
14 considered as read. During the consideration of
15 the bill for amendment, the Chairman of the
16 Committee of the Whole may accord priority in
17 recognition on the basis of whether the Member
18 offering an amendment has caused it to be
19 printed in the portion of the Congressional
20 Record designated for that purpose in clause 8
21 of Rule XVIII of the Rules of the House of
22 Representatives. Debate on any amendment
23 shall not exceed one hour, which shall be di-
24 vided equally between those favoring and those
25 opposing the amendment, and no pro forma

1 amendments shall be offered during the debate.
2 The total time for debate on all amendments
3 shall not exceed 10 hours. At the conclusion of
4 consideration of the legislation for amendment,
5 the Committee shall rise and report the legisla-
6 tion to the House with such amendments as
7 may have been adopted. The previous question
8 shall be considered as ordered on the legislation
9 and amendments thereto to final passage with-
10 out intervening motion except one motion to re-
11 commit with or without instructions. If the
12 Committee of the Whole rises and reports that
13 it has come to no resolution on the bill, then on
14 the next legislative day the House shall, imme-
15 diately after the third daily order of business
16 under clause 1 of Rule XIV of the Rules of the
17 House of Representatives, resolve into the Com-
18 mittee of the Whole for further consideration of
19 the bill.

20 (C) All appeals from the decisions of the
21 Chair relating to the application of the Rules of
22 the House of Representatives to the procedure
23 relating to any such legislation shall be decided
24 without debate.

1 (D) Except to the extent specifically pro-
2 vided in the preceding provisions of this sub-
3 section, consideration of any such legislation
4 and amendments thereto (or any conference re-
5 port thereon) shall be governed by the Rules of
6 the House of Representatives applicable to
7 other bills and resolutions, amendments, and
8 conference reports in similar circumstances.

9 (5) LEGISLATIVE DAY DEFINED.—As used in
10 this section, the term “legislative day” means a day
11 on which the House of Representatives is in session.

12 (6) RESTRICTION ON WAIVER.—In the House,
13 the provisions of this section may be waived only by
14 a rule or order proposing only to waive such provi-
15 sions.

16 (7) RULEMAKING POWER.—The provisions of
17 this section are enacted by the Congress—

18 (A) as an exercise of the rulemaking power
19 of the House of Representatives and, as such,
20 shall be considered as part of the rules of that
21 House and shall supersede other rules only to
22 the extent that they are inconsistent therewith;
23 and

24 (B) with full recognition of the constitu-
25 tional right of that House to change the rules

1 (so far as they relate to the procedures of that
2 House) at any time, in the same manner, and
3 to the same extent as in the case of any other
4 rule of that House.

5 (d) PROCEDURES IN THE SENATE.—

6 (1) INTRODUCTION AND REFERRAL OF PRESI-
7 DENT’S LEGISLATIVE PROPOSAL.—

8 (A) INTRODUCTION.—In the case of a leg-
9 islative proposal submitted by the President
10 pursuant to section 1105(h) of title 31, United
11 States Code, within the 15-day period specified
12 in paragraph (1) of such section, the majority
13 leader and minority leader of the Senate (or
14 their designees) shall introduce such proposal
15 (by request), the title of which is as follows: “A
16 bill to respond to a medicare funding warn-
17 ing.”. Such bill shall be introduced within 3
18 days of session after Congress receives such
19 proposal.

20 (B) REFERRAL.—Any legislation intro-
21 duced pursuant to paragraph (1) shall be re-
22 ferred to the Committee on Finance.

23 (2) MEDICARE FUNDING LEGISLATION.—For
24 purposes of this section, the term “medicare funding
25 legislation” means—

1 (A) legislation introduced pursuant to sub-
2 section (d)(1), but only if the legislative pro-
3 posal upon which the legislation is based was
4 submitted within the 15-day period referred to
5 in such subsection; or

6 (B) any bill the title of which is as follows:
7 “A bill to respond to a medicare funding warn-
8 ing.”.

9 (3) QUALIFICATION FOR SPECIAL PROCE-
10 DURES.—

11 (A) IN GENERAL.—The special procedures
12 set forth in paragraphs (4) and (5) shall apply
13 to medicare funding legislation, as described in
14 paragraph (2), only if the legislation—

15 (i) is medicare funding legislation that
16 is passed by the House of Representatives;
17 or

18 (ii) contains matter within the juris-
19 diction of the Committee on Finance in the
20 Senate.

21 (B) FAILURE TO QUALIFY FOR SPECIAL
22 PROCEDURES.—If the medicare funding legisla-
23 tion does not satisfy subparagraph (A), then
24 the legislation shall be considered under the or-

1 dinary procedures of the Standing Rules of the
2 Senate.

3 (4) DISCHARGE.—

4 (A) IN GENERAL.—If the Committee on
5 Finance has not reported medicare funding leg-
6 islation described in subparagraph (3)(A) by
7 June 30 of a year in which the President is re-
8 quired to submit medicare funding legislation to
9 Congress under section 1105(h) of title 31,
10 United States Code, then any Senator may
11 move to discharge the Committee of any single
12 medicare funding legislation measure. Only one
13 such motion shall be in order in any session of
14 Congress.

15 (B) DEBATE LIMITS.—Debate in the Sen-
16 ate on any such motion to discharge, and all
17 appeals in connection therewith, shall be limited
18 to not more than 2 hours. The time shall be
19 equally divided between, and controlled by, the
20 maker of the motion and the majority leader, or
21 their designees, except that in the event the ma-
22 jority leader is in favor of such motion, the time
23 in opposition thereto shall be controlled by the
24 minority leader or the minority leader's des-
25 ignee. A point of order under this subsection

1 may be made at any time. It is not in order to
2 move to proceed to another measure or matter
3 while such motion (or the motion to reconsider
4 such motion) is pending.

5 (C) AMENDMENTS.—No amendment to the
6 motion to discharge shall be in order.

7 (D) EXCEPTION IF CERTIFIED LEGISLA-
8 TION ENACTED.—Notwithstanding subpara-
9 graph (A), it shall not be in order to discharge
10 the Committee from further consideration of
11 medicare funding legislation pursuant to this
12 subsection during a session of a Congress if the
13 chairman of the Committee on the Budget of
14 the Senate certifies that medicare funding legis-
15 lation has been enacted that reduce payments
16 by 1 percent for services furnished in Medi-
17 care’s fee-for-service sector for the next fiscal
18 year.

19 (5) CONSIDERATION.—After the date on which
20 the Committee on Finance has reported medicare
21 funding legislation described in paragraph (3)(A), or
22 has been discharged (under paragraph (4)) from fur-
23 ther consideration of, such legislation, it is in order
24 (even though a previous motion to the same effect
25 has been disagreed to) for any Member of the Sen-

1 ate to move to proceed to the consideration of such
2 legislation.

3 (6) RULES OF THE SENATE.—This section is
4 enacted by the Senate—

5 (A) as an exercise of the rulemaking power
6 of the Senate and as such it is deemed a part
7 of the rules of the Senate, but applicable only
8 with respect to the procedure to be followed in
9 the Senate in the case of a bill described in this
10 paragraph, and it supersedes other rules only to
11 the extent that it is inconsistent with such
12 rules; and

13 (B) with full recognition of the constitu-
14 tional right of the Senate to change the rules
15 (so far as relating to the procedure of the Sen-
16 ate) at any time, in the same manner, and to
17 the same extent as in the case of any other rule
18 of the Senate.

19 **SEC. 315. ELIMINATING INEFFICIENCIES AND INCREASING**
20 **CHOICE IN MEDICARE ADVANTAGE.**

21 (a) REIMBURSEMENT BENCHMARKS.—In imple-
22 menting section 1853 of the Social Security Act (42
23 U.S.C. 1395w-23)—

1 (1) in calculating the benchmark amounts
2 under subsection (k), the Secretary shall use the av-
3 erage amount of local plan bids; and

4 (2) in addition to the amounts under subsection
5 (k), the Secretary may provide bonus payments to
6 local plans that implement care coordination pro-
7 grams, as defined by the Secretary.

8 **Subtitle C—Medical Liability** 9 **Reform**

10 **PART 1—ENACTING REAL MEDICAL LIABILITY**

11 **REFORM**

12 **SEC. 321. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

13 (a) **TIMING OF LAWSUIT.**—The time for the com-
14 mencement of a health care lawsuit shall be 3 years after
15 the date of manifestation of injury or 1 year after the
16 claimant discovers, or through the use of reasonable dili-
17 gence should have discovered, the injury, whichever occurs
18 first. In no event shall the time for commencement of a
19 health care lawsuit exceed 3 years after the date of mani-
20 festation of injury unless tolled for any of the following:

21 (1) Upon proof of fraud.

22 (2) Intentional concealment.

23 (3) The presence of a foreign body, which has
24 no therapeutic or diagnostic purpose or effect, in the
25 person of the injured person.

1 (b) ACTIONS BY MINORS.—Actions by a minor shall
2 be commenced within 3 years from the date of the alleged
3 manifestation of injury except that actions by a minor
4 under the full age of 6 years shall be commenced within
5 3 years of manifestation of injury or prior to the minor’s
6 8th birthday, whichever provides a longer period. Such
7 time limitation shall be tolled for minors for any period
8 during which a parent or guardian and a health care pro-
9 vider or health care organization have committed fraud or
10 collusion in the failure to bring an action on behalf of the
11 injured minor.

12 **SEC. 322. COMPENSATING PATIENT INJURY.**

13 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
14 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
15 health care lawsuit, nothing in this part shall limit a
16 claimant’s recovery of the full amount of the available eco-
17 nomic damages, notwithstanding the limitation in sub-
18 section (b).

19 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
20 health care lawsuit, the amount of noneconomic damages,
21 if available, may be as much as \$250,000, regardless of
22 the number of parties against whom the action is brought
23 or the number of separate claims or actions brought with
24 respect to the same injury.

1 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
2 DAMAGES.—For purposes of applying the limitation in
3 subsection (b), future noneconomic damages shall not be
4 discounted to present value. The jury shall not be in-
5 formed about the maximum award for noneconomic dam-
6 ages. An award for noneconomic damages in excess of
7 \$250,000 shall be reduced either before the entry of judg-
8 ment, or by amendment of the judgment after entry of
9 judgment, and such reduction shall be made before ac-
10 counting for any other reduction in damages required by
11 law. If separate awards are rendered for past and future
12 noneconomic damages and the combined awards exceed
13 \$250,000, the future noneconomic damages shall be re-
14 duced first.

15 (d) FAIR SHARE RULE.—In any health care lawsuit,
16 each party shall be liable for that party's several share
17 of any damages only and not for the share of any other
18 person. Each party shall be liable only for the amount of
19 damages allocated to such party in direct proportion to
20 such party's percentage of responsibility. Whenever a
21 judgment of liability is rendered as to any party, a sepa-
22 rate judgment shall be rendered against each such party
23 for the amount allocated to such party. For purposes of
24 this section, the trier of fact shall determine the propor-

1 tion of responsibility of each party for the claimant's
2 harm.

3 **SEC. 323. MAXIMIZING PATIENT RECOVERY.**

4 (a) COURT SUPERVISION OF SHARE OF DAMAGES
5 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
6 suit, the court shall supervise the arrangements for pay-
7 ment of damages to protect against conflicts of interest
8 that may have the effect of reducing the amount of dam-
9 ages awarded that are actually paid to claimants. In par-
10 ticular, in any health care lawsuit in which the attorney
11 for a party claims a financial stake in the outcome by vir-
12 tue of a contingent fee, the court shall have the power
13 to restrict the payment of a claimant's damage recovery
14 to such attorney, and to redirect such damages to the
15 claimant based upon the interests of justice and principles
16 of equity. In no event shall the total of all contingent fees
17 for representing all claimants in a health care lawsuit ex-
18 ceed the following limits:

19 (1) 40 percent of the first \$50,000 recovered by
20 the claimant(s).

21 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered
22 by the claimant(s).

23 (3) 25 percent of the next \$500,000 recovered
24 by the claimant(s).

1 (4) 15 percent of any amount by which the re-
2 covery by the claimant(s) is in excess of \$600,000.

3 (b) APPLICABILITY.—The limitations in this section
4 shall apply whether the recovery is by judgment, settle-
5 ment, mediation, arbitration, or any other form of alter-
6 native dispute resolution. In a health care lawsuit involv-
7 ing a minor or incompetent person, a court retains the
8 authority to authorize or approve a fee that is less than
9 the maximum permitted under this section. The require-
10 ment for court supervision in the first two sentences of
11 subsection (a) applies only in civil actions.

12 **SEC. 324. ADDITIONAL HEALTH BENEFITS.**

13 In any health care lawsuit involving injury or wrong-
14 ful death, any party may introduce evidence of collateral
15 source benefits. If a party elects to introduce such evi-
16 dence, any opposing party may introduce evidence of any
17 amount paid or contributed or reasonably likely to be paid
18 or contributed in the future by or on behalf of the oppos-
19 ing party to secure the right to such collateral source bene-
20 fits. No provider of collateral source benefits shall recover
21 any amount against the claimant or receive any lien or
22 credit against the claimant's recovery or be equitably or
23 legally subrogated to the right of the claimant in a health
24 care lawsuit involving injury or wrongful death. This sec-
25 tion shall apply to any health care lawsuit that is settled

1 as well as a health care lawsuit that is resolved by a fact
2 finder. This section shall not apply to section 1862(b) (42
3 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
4 1396a(a)(25)) of the Social Security Act.

5 **SEC. 325. PUNITIVE DAMAGES.**

6 (a) IN GENERAL.—Punitive damages may, if other-
7 wise permitted by applicable State or Federal law, be
8 awarded against any person in a health care lawsuit only
9 if it is proven by clear and convincing evidence that such
10 person acted with malicious intent to injure the claimant,
11 or that such person deliberately failed to avoid unneces-
12 sary injury that such person knew the claimant was sub-
13 stantially certain to suffer. In any health care lawsuit
14 where no judgment for compensatory damages is rendered
15 against such person, no punitive damages may be awarded
16 with respect to the claim in such lawsuit. No demand for
17 punitive damages shall be included in a health care lawsuit
18 as initially filed. A court may allow a claimant to file an
19 amended pleading for punitive damages only upon a mo-
20 tion by the claimant and after a finding by the court, upon
21 review of supporting and opposing affidavits or after a
22 hearing, after weighing the evidence, that the claimant has
23 established by a substantial probability that the claimant
24 will prevail on the claim for punitive damages. At the re-

1 quest of any party in a health care lawsuit, the trier of
2 fact shall consider in a separate proceeding—

3 (1) whether punitive damages are to be award-
4 ed and the amount of such award; and

5 (2) the amount of punitive damages following a
6 determination of punitive liability.

7 (b) SEPARATE PROCEEDING.—If a separate pro-
8 ceeding is requested, evidence relevant only to the claim
9 for punitive damages, as determined by applicable State
10 law, shall be inadmissible in any proceeding to determine
11 whether compensatory damages are to be awarded.

12 (c) DETERMINING AMOUNT OF PUNITIVE DAM-
13 AGES.—

14 (1) FACTORS CONSIDERED.—In determining
15 the amount of punitive damages, if awarded, in a
16 health care lawsuit, the trier of fact shall consider
17 only the following—

18 (A) the severity of the harm caused by the
19 conduct of such party;

20 (B) the duration of the conduct or any
21 concealment of it by such party;

22 (C) the profitability of the conduct to such
23 party;

24 (D) the number of products sold or med-
25 ical procedures rendered for compensation, as

1 the case may be, by such party, of the kind
2 causing the harm complained of by the claim-
3 ant;

4 (E) any criminal penalties imposed on such
5 party, as a result of the conduct complained of
6 by the claimant; and

7 (F) the amount of any civil fines assessed
8 against such party as a result of the conduct
9 complained of by the claimant.

10 (2) MAXIMUM AWARD.—The amount of punitive
11 damages, if awarded, in a health care lawsuit may
12 be as much as \$250,000 or as much as two times
13 the amount of economic damages awarded, which-
14 ever is greater. The jury shall not be informed of
15 this limitation.

16 **SEC. 326. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
17 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
18 **SUITS.**

19 (a) IN GENERAL.—In any health care lawsuit, if an
20 award of future damages, without reduction to present
21 value, equaling or exceeding \$50,000 is made against a
22 party with sufficient insurance or other assets to fund a
23 periodic payment of such a judgment, the court shall, at
24 the request of any party, enter a judgment ordering that
25 the future damages be paid by periodic payments. In any

1 health care lawsuit, the court may be guided by the Uni-
2 form Periodic Payment of Judgments Act promulgated by
3 the National Conference of Commissioners on Uniform
4 State Laws.

5 (b) APPLICABILITY.—This section applies to all ac-
6 tions which have not been first set for trial or retrial be-
7 fore the effective date of this part.

8 **SEC. 327. DEFINITIONS.**

9 In this part:

10 (1) ALTERNATIVE DISPUTE RESOLUTION;
11 ADR.—The term “alternative dispute resolution sys-
12 tem” or “ADR” means a system that provides for
13 the resolution of health care lawsuits in a manner
14 other than through a civil action brought in a State
15 or Federal court.

16 (2) CLAIMANT.—The term “claimant” means
17 any person who brings a health care lawsuit, includ-
18 ing a person who asserts or claims a right to legal
19 or equitable contribution, indemnity, or subrogation,
20 arising out of a health care liability claim or action,
21 and any person on whose behalf such a claim is as-
22 serted or such an action is brought, whether de-
23 ceased, incompetent, or a minor.

24 (3) COLLATERAL SOURCE BENEFITS.—The
25 term “collateral source benefits” means any amount

1 paid or reasonably likely to be paid in the future to
2 or on behalf of the claimant, or any service, product,
3 or other benefit provided or reasonably likely to be
4 provided in the future to or on behalf of the claim-
5 ant, as a result of the injury or wrongful death, pur-
6 suant to—

7 (A) any State or Federal health, sickness,
8 income-disability, accident, or workers' com-
9 pensation law;

10 (B) any health, sickness, income-disability,
11 or accident insurance that provides health bene-
12 fits or income-disability coverage;

13 (C) any contract or agreement of any
14 group, organization, partnership, or corporation
15 to provide, pay for, or reimburse the cost of
16 medical, hospital, dental, or income-disability
17 benefits; and

18 (D) any other publicly or privately funded
19 program.

20 (4) COMPENSATORY DAMAGES.—The term
21 “compensatory damages” means objectively
22 verifiable monetary losses incurred as a result of the
23 provision of, use of, or payment for (or failure to
24 provide, use, or pay for) health care services or med-
25 ical products, such as past and future medical ex-

1 penses, loss of past and future earnings, cost of ob-
2 taining domestic services, loss of employment, and
3 loss of business or employment opportunities, dam-
4 ages for physical and emotional pain, suffering, in-
5 convenience, physical impairment, mental anguish,
6 disfigurement, loss of enjoyment of life, loss of soci-
7 ety and companionship, loss of consortium (other
8 than loss of domestic service), hedonic damages, in-
9 jury to reputation, and all other nonpecuniary losses
10 of any kind or nature. The term “compensatory
11 damages” includes economic damages and non-
12 economic damages, as such terms are defined in this
13 section.

14 (5) CONTINGENT FEE.—The term “contingent
15 fee” includes all compensation to any person or per-
16 sons which is payable only if a recovery is effected
17 on behalf of one or more claimants.

18 (6) ECONOMIC DAMAGES.—The term “economic
19 damages” means objectively verifiable monetary
20 losses incurred as a result of the provision of, use
21 of, or payment for (or failure to provide, use, or pay
22 for) health care services or medical products, such as
23 past and future medical expenses, loss of past and
24 future earnings, cost of obtaining domestic services,

1 loss of employment, and loss of business or employ-
2 ment opportunities.

3 (7) HEALTH CARE LAWSUIT.—The term
4 “health care lawsuit” means any health care liability
5 claim concerning the provision of health care goods
6 or services or any medical product affecting inter-
7 state commerce, or any health care liability action
8 concerning the provision of health care goods or
9 services or any medical product affecting interstate
10 commerce, brought in a State or Federal court or
11 pursuant to an alternative dispute resolution system,
12 against a health care provider, a health care organi-
13 zation, or the manufacturer, distributor, supplier,
14 marketer, promoter, or seller of a medical product,
15 regardless of the theory of liability on which the
16 claim is based, or the number of claimants, plain-
17 tiffs, defendants, or other parties, or the number of
18 claims or causes of action, in which the claimant al-
19 leges a health care liability claim. Such term does
20 not include a claim or action which is based on
21 criminal liability; which seeks civil fines or penalties
22 paid to Federal, State, or local government; or which
23 is grounded in antitrust.

24 (8) HEALTH CARE LIABILITY ACTION.—The
25 term “health care liability action” means a civil ac-

1 tion brought in a State or Federal court or pursuant
2 to an alternative dispute resolution system, against
3 a health care provider, a health care organization, or
4 the manufacturer, distributor, supplier, marketer,
5 promoter, or seller of a medical product, regardless
6 of the theory of liability on which the claim is based,
7 or the number of plaintiffs, defendants, or other par-
8 ties, or the number of causes of action, in which the
9 claimant alleges a health care liability claim.

10 (9) HEALTH CARE LIABILITY CLAIM.—The
11 term “health care liability claim” means a demand
12 by any person, whether or not pursuant to ADR,
13 against a health care provider, health care organiza-
14 tion, or the manufacturer, distributor, supplier, mar-
15 keter, promoter, or seller of a medical product, in-
16 cluding, but not limited to, third-party claims, cross-
17 claims, counter-claims, or contribution claims, which
18 are based upon the provision of, use of, or payment
19 for (or the failure to provide, use, or pay for) health
20 care services or medical products, regardless of the
21 theory of liability on which the claim is based, or the
22 number of plaintiffs, defendants, or other parties, or
23 the number of causes of action.

24 (10) HEALTH CARE ORGANIZATION.—The term
25 “health care organization” means any person or en-

1 tity which is obligated to provide or pay for health
2 benefits under any health plan, including any person
3 or entity acting under a contract or arrangement
4 with a health care organization to provide or admin-
5 ister any health benefit.

6 (11) HEALTH CARE PROVIDER.—The term
7 “health care provider” means any person or entity
8 required by State or Federal laws or regulations to
9 be licensed, registered, or certified to provide health
10 care services, and being either so licensed, reg-
11 istered, or certified, or exempted from such require-
12 ment by other statute or regulation.

13 (12) HEALTH CARE GOODS OR SERVICES.—The
14 term “health care goods or services” means any
15 goods or services provided by a health care organiza-
16 tion, provider, or by any individual working under
17 the supervision of a health care provider, that relates
18 to the diagnosis, prevention, or treatment of any
19 human disease or impairment, or the assessment or
20 care of the health of human beings.

21 (13) MALICIOUS INTENT TO INJURE.—The
22 term “malicious intent to injure” means inten-
23 tionally causing or attempting to cause physical in-
24 jury other than providing health care goods or serv-
25 ices.

1 (14) MEDICAL PRODUCT.—The term “medical
2 product” means a drug, device, or biological product
3 intended for humans, and the terms “drug”, “de-
4 vice”, and “biological product” have the meanings
5 given such terms in sections 201(g)(1) and 201(h)
6 of the Federal Food, Drug and Cosmetic Act (21
7 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
8 Public Health Service Act (42 U.S.C. 262(a)), re-
9 spectively, including any component or raw material
10 used therein, but excluding health care services.

11 (15) NONECONOMIC DAMAGES.—The term
12 “noneconomic damages” means damages for phys-
13 ical and emotional pain, suffering, inconvenience,
14 physical impairment, mental anguish, disfigurement,
15 loss of enjoyment of life, loss of society and compan-
16 ionship, loss of consortium (other than loss of do-
17 mestic service), hedonic damages, injury to reputa-
18 tion, and all other nonpecuniary losses of any kind
19 or nature.

20 (16) PUNITIVE DAMAGES.—The term “punitive
21 damages” means damages awarded, for the purpose
22 of punishment or deterrence, and not solely for com-
23 pensatory purposes, against a health care provider,
24 health care organization, or a manufacturer, dis-
25 tributor, or supplier of a medical product. Punitive

1 damages are neither economic nor noneconomic
2 damages.

3 (17) RECOVERY.—The term “recovery” means
4 the net sum recovered after deducting any disburse-
5 ments or costs incurred in connection with prosecu-
6 tion or settlement of the claim, including all costs
7 paid or advanced by any person. Costs of health care
8 incurred by the plaintiff and the attorneys’ office
9 overhead costs or charges for legal services are not
10 deductible disbursements or costs for such purpose.

11 (18) STATE.—The term “State” means each of
12 the several States, the District of Columbia, the
13 Commonwealth of Puerto Rico, the Virgin Islands,
14 Guam, American Samoa, the Northern Mariana Is-
15 lands, the Trust Territory of the Pacific Islands, and
16 any other territory or possession of the United
17 States, or any political subdivision thereof.

18 **SEC. 328. EFFECT ON OTHER LAWS.**

19 (a) VACCINE INJURY.—

20 (1) IN GENERAL.—To the extent that title XXI
21 of the Public Health Service Act establishes a Fed-
22 eral rule of law applicable to a civil action brought
23 for a vaccine-related injury or death—

24 (A) this part does not affect the applica-
25 tion of the rule of law to such an action; and

1 (B) any rule of law prescribed by this part
2 in conflict with a rule of law of such title XXI
3 shall not apply to such action.

4 (2) APPLICATION.—If there is an aspect of a
5 civil action brought for a vaccine-related injury or
6 death to which a Federal rule of law under title XXI
7 of the Public Health Service Act does not apply,
8 then this part or otherwise applicable law (as deter-
9 mined under this part) will apply to such aspect of
10 such action.

11 (b) OTHER FEDERAL LAW.—Except as provided in
12 this section, nothing in this part shall be deemed to affect
13 any defense available to a defendant in a health care law-
14 suit or action under any other provision of Federal law.

15 **SEC. 329. STATE FLEXIBILITY AND PROTECTION OF**
16 **STATES' RIGHTS.**

17 (a) HEALTH CARE LAWSUITS.—The provisions gov-
18 erning health care lawsuits set forth in this part preempt,
19 subject to subsections (b) and (c), State law to the extent
20 that State law prevents the application of any provisions
21 of law established by or under this part. The provisions
22 governing health care lawsuits set forth in this part super-
23 sede chapter 171 of title 28, United States Code, to the
24 extent that such chapter—

1 (1) provides for a greater amount of damages
2 or contingent fees, a longer period in which a health
3 care lawsuit may be commenced, or a reduced appli-
4 cability or scope of periodic payment of future dam-
5 ages, than provided in this part; or

6 (2) prohibits the introduction of evidence re-
7 garding collateral source benefits, or mandates or
8 permits subrogation or a lien on collateral source
9 benefits.

10 (b) PROTECTION OF STATES' RIGHTS AND OTHER
11 LAWS.—

12 (1) IN GENERAL.—Any issue that is not gov-
13 erned by any provision of law established by or
14 under this part (including State standards of neg-
15 ligence) shall be governed by otherwise applicable
16 State or Federal law.

17 (2) PREEMPTION.—This part shall not preempt
18 or supersede any State or Federal law that imposes
19 greater procedural or substantive protections for
20 health care providers and health care organizations
21 from liability, loss, or damages than those provided
22 by this part or create a cause of action.

23 (c) STATE FLEXIBILITY.—No provision of this part
24 shall be construed to preempt—

1 (1) any State law (whether effective before, on,
2 or after the date of the enactment of this Act) that
3 specifies a particular monetary amount of compen-
4 satory or punitive damages (or the total amount of
5 damages) that may be awarded in a health care law-
6 suit, regardless of whether such monetary amount is
7 greater or lesser than is provided for under this
8 part, notwithstanding section 323(a); or

9 (2) any defense available to a party in a health
10 care lawsuit under any other provision of State or
11 Federal law.

12 **SEC. 330. APPLICABILITY; EFFECTIVE DATE.**

13 This part shall apply to any health care lawsuit
14 brought in a Federal or State court, or subject to an alter-
15 native dispute resolution system, that is initiated on or
16 after the date of the enactment of this Act, except that
17 any health care lawsuit arising from an injury occurring
18 prior to the date of the enactment of this Act shall be
19 governed by the applicable statute of limitations provisions
20 in effect at the time the injury occurred.

1 **PART 2—ENDING LAWSUIT ABUSE**

2 **SEC. 331. STATE GRANTS TO CREATE HEALTH COURT SOLU-**
3 **TIONS.**

4 Part P of title III of the Public Health Service Act
5 (42 U.S.C. 280g et seq.) is amended by adding at the end
6 the following:

7 **“SEC. 399R. STATE GRANTS TO CREATE HEALTH COURT SO-**
8 **LUTIONS.**

9 “(a) **IN GENERAL.**—The Secretary may award grants
10 to States for the development, implementation, and eval-
11 uation of alternatives to current tort litigation that comply
12 with this section, for the resolution of disputes concerning
13 injuries allegedly caused by health care providers or health
14 care organizations.

15 “(b) **CONDITIONS FOR DEMONSTRATION GRANTS.**—

16 “(1) **APPLICATION.**—To be eligible to receive a
17 grant under this section, a State shall submit to the
18 Secretary an application at such time, in such man-
19 ner, and containing such information as may be re-
20 quired by the Secretary. A grant shall be awarded
21 under this section on such terms and conditions as
22 the Secretary determines appropriate.

23 “(2) **STATE REQUIREMENTS.**—To be eligible to
24 receive a grant under this section, a State shall—

25 “(A) develop and implement an alternative
26 to current tort litigation for resolving disputes

1 over injuries allegedly caused by health care
2 providers or health care organizations based on
3 one or more of the models described in sub-
4 section (d); and

5 “(B) implement policies that provide for a
6 reduction in health care errors through the col-
7 lection and analysis by organizations that en-
8 gage in voluntary efforts to improve patient
9 safety and the quality of health care delivery, of
10 patient safety data related to disputes resolved
11 under the alternatives under subparagraph (A).

12 “(3) DEMONSTRATION OF EFFECTIVENESS.—
13 To be eligible to receive a grant under subsection
14 (a), a State shall demonstrate how the proposed al-
15 ternative to be implemented under paragraph (2)(A)
16 will—

17 “(A) make the medical liability system of
18 the State more reliable through the prompt and
19 fair resolution of disputes;

20 “(B) encourage the early disclosure of
21 health care errors;

22 “(C) enhance patient safety; and

23 “(D) maintain access to medical liability
24 insurance.

1 “(4) SOURCES OF COMPENSATION.—To be eligi-
2 ble to receive a grant under subsection (a), a State
3 shall identify the sources from, and methods by
4 which, compensation would be paid for medical li-
5 ability claims resolved under the proposed alter-
6 native to current tort litigation implemented under
7 paragraph (2)(A). Funding methods shall, to the ex-
8 tent practicable, provide financial incentives for ac-
9 tivities that improve patient safety.

10 “(5) SCOPE.—

11 “(A) IN GENERAL.—To be eligible to re-
12 ceive a grant under subsection (a), a State shall
13 utilize the proposed alternative identified under
14 paragraph (2)(A) for the resolution of all types
15 of disputes concerning injuries allegedly caused
16 by health care providers or health care organi-
17 zations.

18 “(B) CURRENT STATE EFFORTS TO ESTAB-
19 LISH ALTERNATIVE TO TORT LITIGATION.—

20 “(i) IN GENERAL.—Nothing in this
21 section shall be construed to limit the ef-
22 forts that any State has made prior to the
23 date of enactment of this section to estab-
24 lish any alternative to tort litigation.

1 “(ii) ALTERNATIVE FOR PRACTICE
2 AREAS OR INJURIES.—In the case of a
3 State that has established an alternative to
4 tort litigation for a certain area of health
5 care practice or a category of injuries, the
6 alternative selected as provided for in this
7 section shall supplement not replace or in-
8 validate such established alternative unless
9 the State intends otherwise.

10 “(6) NOTIFICATION OF PATIENTS.—To be eligi-
11 ble to receive a grant under subsection (a), the State
12 shall demonstrate how patients will be notified when
13 they are receiving health care services that fall with-
14 in the scope of the alternative selected under this
15 section by the State to current tort litigation.

16 “(c) REPRESENTATION BY COUNSEL.—A State that
17 receives a grant under this section may not preclude any
18 party to a dispute that falls within the jurisdiction of the
19 alternative to current tort litigation that is implemented
20 under the grant from obtaining legal representation at any
21 point during the consideration of the claim under such al-
22 ternative.

23 “(d) MODELS.—

24 “(1) IN GENERAL.—The models in this section
25 are the following:

1 “(2) EXPERT PANEL REVIEW AND EARLY
2 OFFER GUIDELINES.—

3 “(A) IN GENERAL.—A State may use
4 amounts received under a grant under this sec-
5 tion to develop and implement an expert panel
6 and early offer review system that meets the re-
7 quirements of this paragraph.

8 “(B) ESTABLISHMENT OF PANEL.—Under
9 the system under this paragraph, the State
10 shall establish an expert panel to review any
11 disputes concerning injuries allegedly caused by
12 health care providers or health care organiza-
13 tions according to the guidelines described in
14 this paragraph.

15 “(C) COMPOSITION.—

16 “(i) IN GENERAL.—An expert panel
17 under this paragraph shall be composed of
18 3 medical experts (either physicians or
19 health care professionals) and 3 attorneys
20 to be appointed by the head of the State
21 agency responsible for health.

22 “(ii) LICENSURE AND EXPERTISE.—
23 Each physician or health care professional
24 appointed to an expert panel under clause
25 (i) shall—

1 “(I) be appropriately credentialed
2 or licensed in the State in which the
3 dispute takes place to deliver health
4 care services; and

5 “(II) typically treat the condi-
6 tion, make the diagnosis, or provide
7 the type of treatment that is under re-
8 view.

9 “(iii) INDEPENDENCE.—

10 “(I) IN GENERAL.—Subject to
11 subclause (II), each individual ap-
12 pointed to an expert panel under this
13 paragraph shall—

14 “(aa) not have a material
15 familial, financial, or professional
16 relationship with a party involved
17 in the dispute reviewed by the
18 panel; and

19 “(bb) not otherwise have a
20 conflict of interest with such a
21 party.

22 “(II) EXCEPTION.—Nothing in
23 subclause (I) shall be construed to
24 prohibit an individual who has staff
25 privileges at an institution where the

1 treatment involved in the dispute was
2 provided from serving as a member of
3 an expert panel merely on the basis of
4 such affiliation, if the affiliation is
5 disclosed to the parties and neither
6 party objects.

7 “(iv) PRACTICING HEALTH CARE PRO-
8 FESSIONAL IN SAME FIELD.—

9 “(I) IN GENERAL.—In a dispute
10 before an expert panel that involves
11 treatment, or the provision of items or
12 services—

13 “(aa) by a physician, the
14 medical experts on the expert
15 panel shall be practicing physi-
16 cians (allopathic or osteopathic)
17 of the same or similar specialty
18 as a physician who typically
19 treats the condition, makes the
20 diagnosis, or provides the type of
21 treatment under review; or

22 “(bb) by a health care pro-
23 fessional other than a physician,
24 at least two medical experts on
25 the expert panel shall be prac-

1 ting physicians (allopathic or
2 osteopathic) of the same or simi-
3 lar specialty as the health care
4 professional who typically treats
5 the condition, makes the diag-
6 nosis, or provides the type of
7 treatment under review, and, if
8 determined appropriate by the
9 State agency, the third medical
10 expert shall be a practicing
11 health care professional (other
12 than such a physician) of such a
13 same or similar specialty.

14 “(II) PRACTICING DEFINED.—In
15 this paragraph, the term ‘practicing’
16 means, with respect to an individual
17 who is a physician or other health
18 care professional, that the individual
19 provides health care services to indi-
20 vidual patients on average at least 2
21 days a week.

22 “(v) PEDIATRIC EXPERTISE.—In the
23 case of dispute relating to a child, at least
24 1 medical expert on the expert panel shall

1 have expertise described in clause (iv)(I) in
2 pediatrics.

3 “(D) DETERMINATION.—After a review,
4 an expert panel shall make a determination as
5 to the liability of the parties involved and com-
6 pensation based on a schedule of compensation
7 that is developed by the panel. Such a schedule
8 shall at least include—

9 “(i) payment for the net economic loss
10 incurred by the patient, on a periodic
11 basis, reduced by any payments received by
12 the patient under—

13 “(I) any health or accident insur-
14 ance;

15 “(II) any wage or salary continu-
16 ation plan; or

17 “(III) any disability income in-
18 surance;

19 “(ii) payment for the non-economic
20 damages incurred by the patient, if appro-
21 priate for the injury, based on a defined
22 payment schedule developed by the State,
23 in consultation with relevant experts and
24 with the Secretary;

25 “(iii) reasonable attorney’s fees; and

1 “(iv) regular updates of the schedule
2 under clause (ii) as necessary.

3 “(E) ACCEPTANCE.—If the parties to a
4 dispute who come before an expert panel under
5 this paragraph accept the determination of the
6 expert panel concerning liability and compensa-
7 tion, such compensation shall be paid to the
8 claimant and the claimant shall agree to forgo
9 any further action against the health care pro-
10 viders or health care organizations involved.

11 “(F) FAILURE TO ACCEPT.—If any party
12 decides not to accept the expert panel’s deter-
13 mination under this paragraph, the State may
14 choose whether to allow the panel to review the
15 determination de novo, with deference, or to
16 provide an opportunity for parties to reject the
17 determination of the panel.

18 “(G) REVIEW BY STATE COURT AFTER EX-
19 HAUSTION OF ADMINISTRATIVE REMEDIES.—

20 “(i) RIGHT TO FILE.—If the State
21 elects not to permit the expert panel under
22 this paragraph to conduct its own reviews
23 of determinations, or if the State elects to
24 permit such reviews but a party is not sat-
25 isfied with the final decision of the panel

1 after such a review, the party shall have
2 the right to file a claim relating to the in-
3 jury involved in a State court of competent
4 jurisdiction.

5 “(ii) FORFEIT OF AWARDS.—Any
6 party filing an action in a State court
7 under clause (i) shall forfeit any compensa-
8 tion award made under subparagraph (C).

9 “(iii) ADMISSIBILITY.—The deter-
10 minations of the expert panel pursuant to
11 a review under subparagraph (C) shall be
12 admissible into evidence in any State court
13 proceeding under this subparagraph.

14 “(3) ADMINISTRATIVE HEALTH CARE TRIBU-
15 NALS.—

16 “(A) IN GENERAL.—A State may use
17 amounts received under a grant under this sec-
18 tion to develop and implement an administra-
19 tive health care tribunal system under which
20 the parties involved shall have the right to re-
21 quest a hearing to review any dispute con-
22 cerning injuries allegedly caused by health care
23 providers or health care organizations before an
24 administrative health care tribunal established
25 by the State involved.

1 “(B) REQUIREMENTS.—In establishing an
2 administrative health care tribunal under this
3 paragraph, a State shall—

4 “(i) ensure that such tribunals are
5 presided over by special judges with health
6 care expertise who meet applicable State
7 standards for judges and who agree to pre-
8 side over such court voluntarily;

9 “(ii) provide authority to such judges
10 to make binding rulings, rendered in writ-
11 ten decisions, on standards of care, causa-
12 tion, compensation, and related issues with
13 reliance on independent expert witnesses
14 commissioned by the tribunal;

15 “(iii) establish a legal standard for
16 the tribunal that shall be the same as the
17 standard that would apply in the State
18 court of competent jurisdiction which
19 would otherwise handle the claim; and

20 “(iv) provide for an appeals process to
21 allow for review of decisions by State
22 courts.

23 “(C) DETERMINATION.—After a tribunal
24 conducts a review under this paragraph, the tri-
25 bunal shall make a determination as to the li-

1 ability of the parties involved and the amount
2 of compensation that should be paid based on
3 a schedule of compensation developed by the
4 tribunal. Such a schedule shall at a minimum
5 include—

6 “(i) payment for the net economic loss
7 incurred by the patient, on a periodic
8 basis, reduced by any payments received by
9 the patient under—

10 “(I) any health or accident insur-
11 ance;

12 “(II) any wage or salary continu-
13 ation plan; or

14 “(III) any disability income in-
15 surance;

16 “(ii) payment for the non-economic
17 damages incurred by the patient, if appro-
18 priate for the injury, based on a defined
19 payment schedule developed by the State
20 in consultation with relevant experts and
21 with the Secretary;

22 “(iii) reasonable attorney’s fees; and

23 “(iv) regular updates of the schedule
24 under clause (ii) as necessary.

1 “(D) REVIEW BY STATE COURT AFTER EX-
2 HAUSTION OF ADMINISTRATIVE REMEDIES.—

3 “(i) RIGHT TO FILE.—Nothing in this
4 paragraph shall be construed to prohibit
5 any individual who is not satisfied with the
6 determinations of a tribunal under this
7 paragraph, from filing a claim for the in-
8 jury involved in a State court of competent
9 jurisdiction.

10 “(ii) FORFEIT OF AWARD.—Any party
11 filing an action in a State court under
12 clause (i) shall forfeit any compensation
13 award made under subparagraph (C).

14 “(iii) ADMISSIBILITY.—The deter-
15 minations of the tribunal under subpara-
16 graph (C) shall be admissible into evidence
17 in any State court proceeding under this
18 subparagraph.

19 “(4) EXPERT PANEL REVIEW AND ADMINISTRA-
20 TIVE HEALTH CARE TRIBUNAL COMBINATION
21 MODEL.—

22 “(A) IN GENERAL.—A State may use
23 amounts received under a grant under this sec-
24 tion to develop and implement an expert panel
25 review and administrative health care tribunal

1 combination system to review any dispute con-
2 cerning injuries allegedly caused by health care
3 providers or health care organizations. Under
4 such system, a dispute concerning injuries al-
5 legedly caused by health care providers or
6 health care organizations shall proceed through
7 the procedures described in this subparagraph
8 prior to the submission of such dispute to a
9 State court.

10 “(B) GENERAL PROCEDURE.—

11 “(i) ESTABLISHMENT OF EXPERT
12 PANEL.—Prior to submitting any dispute
13 described in subparagraph (A) to an ad-
14 ministrative health care tribunal under the
15 system established under this paragraph,
16 the State shall establish an expert panel
17 (in accordance with subparagraph (C)) to
18 review the allegations involved in such dis-
19 pute.

20 “(ii) REFERRAL TO TRIBUNAL.—If ei-
21 ther party to a dispute described in clause
22 (i) fails to accept the determination of the
23 expert panel, the dispute shall then be re-
24 ferred to an administrative health care tri-

1 bunal (in accordance with subparagraph
2 (D).

3 “(C) EXPERT REVIEW PANEL.—

4 “(i) IN GENERAL.—The provisions of
5 paragraph (2) shall apply with respect to
6 the establishment and operation of an ex-
7 pert review panel under this subparagraph,
8 except that the subparagraphs (F) and (G)
9 of such paragraph shall not apply.

10 “(ii) FAILURE TO ACCEPT DETER-
11 MINATION OF PANEL.—If any party to a
12 dispute before an expert panel under this
13 subparagraph refuses to accept the panel’s
14 determination, the dispute shall be referred
15 to an administrative health care tribunal
16 under subparagraph (D).

17 “(D) ADMINISTRATIVE HEALTH CARE TRI-
18 BUNALS.—

19 “(i) IN GENERAL.—Upon the failure
20 of any party to accept the determination of
21 an expert panel under subparagraph (C),
22 the parties shall request a hearing con-
23 cerning the liability or compensation in-
24 volved by an administrative health care tri-

1 bunal established by the State involved
2 under this subparagraph.

3 “(ii) REQUIREMENTS.—The provisions
4 of paragraph (3) shall apply with respect
5 to the establishment and operation of an
6 administrative health care tribunal under
7 this subparagraph.

8 “(iii) FORFEIT OF AWARDS.—Any
9 party proceeding to the second step-admin-
10 istrative health care tribunal-under this
11 model shall forfeit any compensation
12 awarded by the expert panel.

13 “(iv) ADMISSIBILITY.—The deter-
14 minations of the expert panel under sub-
15 paragraph (C) shall be admissible into evi-
16 dence in any administrative health care tri-
17 bunal proceeding under this subparagraph.

18 “(E) RIGHT TO FILE.—Nothing in this
19 paragraph shall be construed to prohibit any in-
20 dividual who is not satisfied with the deter-
21 mination of the tribunal (after having proceeded
22 through both the expert panel under subpara-
23 graph (C) and the tribunal under subparagraph
24 (D)) from filing a claim for the injury involved
25 in a State court of competent jurisdiction.

1 “(F) ADMISSIBILITY.—The determinations
2 of both the expert panel and the tribunal under
3 this paragraph shall be admissible into evidence
4 in any State court proceeding under this para-
5 graph.

6 “(G) FORFEIT OF AWARDS.—Any party fil-
7 ing an action in State court under subpara-
8 graph (E) shall forfeit any compensation award
9 made by both the expert panel and the adminis-
10 trative health care tribunal under this para-
11 graph.

12 “(e) DEFINITIONS.—In this section:

13 “(1) CURRENT TORT LITIGATION.—The term
14 ‘current tort litigation’ means the tort litigation sys-
15 tem existing in the State on the date on which the
16 State submits an application under subsection
17 (b)(1), for the resolution of disputes concerning inju-
18 ries allegedly caused by health care providers or
19 health care organizations.

20 “(2) HEALTH CARE ORGANIZATION.—The term
21 ‘health care organization’ means any individual or
22 entity that is obligated to provide, pay for, or admin-
23 ister health benefits under any health plan.

24 “(3) NET ECONOMIC LOSS.—The term ‘net eco-
25 nomic loss’ means—

1 “(A) reasonable expenses incurred for
2 products, services and accommodations needed
3 for health care, training and other remedial
4 treatment and care of an injured individual;

5 “(B) reasonable and appropriate expenses
6 for rehabilitation treatment and occupational
7 training;

8 “(C) 100 percent of the loss of income
9 from work that an injured individual would
10 have performed if not injured, reduced by any
11 income from substitute work actually per-
12 formed; and

13 “(D) reasonable expenses incurred in ob-
14 taining ordinary and necessary services to re-
15 place services an injured individual would have
16 performed for the benefit of the individual or
17 the family of such individual if the individual
18 had not been injured.

19 “(4) NON-ECONOMIC DAMAGES.—The term
20 ‘non-economic damages’ means losses for physical
21 and emotional pain, suffering, inconvenience, phys-
22 ical impairment, mental anguish, disfigurement, loss
23 of enjoyment of life, loss of society and compan-
24 ship, loss of consortium (other than loss of domestic
25 service), injury to reputation, and all other non-pe-

1 cuniary losses of any kind or nature, to the extent
2 permitted under State law.

3 “(f) FUNDING.—

4 “(1) ONE-TIME INCREASE IN MEDICAID PAY-
5 MENT.—In the case of a State awarded a grant to
6 carry out this section, the total amount of the Fed-
7 eral payment determined for the State under section
8 1913 of the Social Security Act (as amended by sec-
9 tion 401) for fiscal year 2011 (in addition to the any
10 increase applicable for that fiscal year under section
11 203(b) but determined without regard to any such
12 increase) shall be increased by an amount equal to
13 1 percent of the total amount of payments made to
14 the State for fiscal year 2010 under section 1903(a)
15 of the Social Security Act (42 U.S.C. 1396b(a)) for
16 purposes of carrying out a grant awarded under this
17 section. Amounts paid to a State pursuant to this
18 subsection shall remain available until expended.

19 “(2) AUTHORIZATION OF APPROPRIATIONS.—

20 There are authorized to be appropriated for any fis-
21 cal year such sums as may be necessary for purposes
22 of making payments to States pursuant to para-
23 graph (1).”.

1 **TITLE IV—SOCIAL SECURITY**
2 **REFORM**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Social Security Per-
5 sonal Savings Guarantee and Prosperity Act of 2010”.

6 **SEC. 402. ESTABLISHMENT OF PERSONAL SOCIAL SECU-**
7 **RITY SAVINGS PROGRAM.**

8 (a) IN GENERAL.—Title II of the Social Security Act
9 is amended—

10 (1) by inserting before section 201 the fol-
11 lowing:

12 **“PART A—INSURANCE BENEFITS”;**

13 and

14 (2) by adding at the end the following new part:

15 **“PART B—PERSONAL SOCIAL SECURITY SAVINGS**
16 **PROGRAM**

17 **“SEC. 251. DEFINITIONS.**

18 “For purposes of this part—

19 “(1) PARTICIPATING INDIVIDUAL.—The term
20 ‘participating individual’ has the meaning provided
21 in section 253(a).

22 “(2) BOARD.—The term ‘Board’ means the
23 Personal Social Security Savings Board established
24 under section 260.

1 “(3) EXECUTIVE DIRECTOR.—The term ‘Execu-
2 tive Director’ means the Executive Director ap-
3 pointed under section 261.

4 “(4) PERSONAL SOCIAL SECURITY SAVINGS AC-
5 COUNT.—The term ‘personal social security savings
6 account’ means an account established under section
7 254(a).

8 “(5) PERSONAL SOCIAL SECURITY SAVINGS AN-
9 NUITY.—The term ‘personal social security savings
10 annuity’ means an annuity approved by the Board
11 under section 258(b)(3).

12 “(6) SAVINGS FUND.—The term ‘Savings Fund’
13 means the Social Security Personal Savings Fund
14 established under section 252.

15 “(7) TIER I INVESTMENT FUND.—The term
16 ‘Tier I Investment Fund’ means the trust fund cre-
17 ated under section 255.

18 “(8) TIER II INVESTMENT FUND.—The term
19 ‘Tier II Investment Fund’ means the trust fund cre-
20 ated under section 256.

21 “(9) TIER III INVESTMENT OPTION.—The term
22 ‘Tier III Investment Option’ means an investment
23 option which is—

24 “(A) offered by an eligible entity certified
25 by the Board under section 257(b); and

1 “(B) approved by the Board under section
2 257(c).

3 **“SEC. 252. SOCIAL SECURITY PERSONAL SAVINGS FUND.**

4 “(a) ESTABLISHMENT OF SAVINGS FUND.—

5 “(1) ESTABLISHMENT.—There is established in
6 the Treasury of the United States a trust fund to
7 be known as the ‘Social Security Personal Savings
8 Fund’.

9 “(2) AMOUNTS IN FUND.—The Savings Fund
10 shall consist of—

11 “(A) all amounts transferred to or depos-
12 ited into the Savings Fund under subsection
13 (b), increased by the total net earnings from in-
14 vestments of sums in the Savings Fund attrib-
15 utable to such transferred or deposited
16 amounts, and reduced by the total net losses
17 from investments of such sums, and

18 “(B) the reserves held in the Annuity Re-
19 serves Account established under section
20 258(b)(3), increased by the total net earnings
21 from investments of such reserves, and reduced
22 by the total net losses from investments of such
23 reserves.

24 “(3) TRUSTEES.—The Board shall serve as
25 trustees of the Savings Fund.

1 “(4) BUDGET AUTHORITY; APPROPRIATION.—

2 This part constitutes budget authority in advance of
3 appropriations Acts and represents the obligation of
4 the Board to provide for the payment of amounts
5 provided under this part. The amounts held in the
6 Savings Fund are appropriated and shall remain
7 available without fiscal year limitation.

8 “(b) DEPOSITS INTO FUND.—

9 “(1) IN GENERAL.—During each calendar year,
10 the Secretary of the Treasury shall deposit into the
11 Savings Fund, from amounts held in the Federal
12 Old-Age and Survivors Insurance Trust Fund, a
13 total amount equal, in the aggregate, to 100 percent
14 of the redirected Social Security contribution for
15 such calendar year of each individual who is a par-
16 ticipating individual for such calendar year.

17 “(2) TRANSFERS BASED ON ESTIMATES.—

18 “(A) IN GENERAL.—The amounts depos-
19 ited pursuant to paragraph (1) shall be trans-
20 ferred in at least weekly payments from the
21 Federal Old-Age and Survivors Insurance Trust
22 Fund to the Savings Fund.

23 “(B) DETERMINATION OF AMOUNTS.—The
24 amounts transferred under subparagraph (A)
25 shall be determined on the basis of estimates,

1 made by the Commissioner of Social Security
2 and certified to the Secretary of the Treasury,
3 of the wages paid to, and self-employment in-
4 come derived by, participating individuals.
5 Proper adjustments shall be made in amounts
6 subsequently transferred to the extent prior es-
7 timates were in excess of or were less than ac-
8 tual amounts transferred.

9 “(3) REDIRECTED SOCIAL SECURITY CONTRIBU-
10 TIONS.—For purposes of paragraph (1)—

11 “(A) IN GENERAL.—The term ‘redirected
12 social security contributions’ means, with re-
13 spect to an individual for a calendar year, the
14 sum of—

15 “(i) the product derived by multi-
16 plying—

17 “(I) the sum of the total wages
18 paid to, and self-employment income
19 derived by, such individual during
20 such calendar year, to the extent such
21 total wages and self-employment in-
22 come do not exceed the base amount
23 for such calendar year; by

24 “(II) the applicable base percent-
25 age for the calendar year; and

1 “(ii) the product derived by multi-
2 plying—

3 “(I) the sum of the total wages
4 paid to, and self-employment income
5 derived by, such individual during
6 such calendar year, to the extent such
7 total wages and self-employment in-
8 come exceed the base amount (taking
9 into account the limits imposed by the
10 contribution and benefit base under
11 section 230); by

12 “(II) the applicable supplemental
13 percentage for the calendar year.

14 “(B) BASE AMOUNT.—For purposes of
15 subparagraph (A)—

16 “(i) INITIAL BASE AMOUNT.—The
17 base amount for calendar year 2012 is
18 \$10,000.

19 “(ii) ADJUSTMENTS TO BASE
20 AMOUNT.—The base amount for any cal-
21 endar year after 2011 is the product de-
22 rived by multiplying \$10,000 by a frac-
23 tion—

24 “(I) the numerator of which is
25 the national average wage index (as

1 defined in section 209(k)) for the first
2 of the 2 preceding calendar years; and

3 “(II) the denominator of which is
4 the national average wage index (as so
5 defined) for 2010.

6 “(C) APPLICABLE BASE PERCENTAGE.—
7 For purposes of subparagraph (A), the applica-
8 ble base percentage for a calendar year is—

9 “(i) for calendar years after 2011 and
10 before 2022, 2 percent;

11 “(ii) for calendar years after 2021
12 and before 2032, 4 percent;

13 “(iii) for calendar years after 2031
14 and before 2042, 6 percent; and

15 “(iv) for calendar years after 2041, 8
16 percent.

17 “(D) APPLICABLE SUPPLEMENTAL PER-
18 CENTAGE.—For purposes of subparagraph (A),
19 the applicable supplemental percentage for a
20 calendar year is—

21 “(i) for calendar years after 2011 and
22 before 2022, 1 percent;

23 “(ii) for calendar years after 2021
24 and before 2032, 2 percent;

1 “(iii) for calendar years after 2031
2 and before 2042, 3 percent; and

3 “(iv) for calendar years after 2041, 4
4 percent.

5 “(c) AVAILABILITY.—The sums in the Savings Fund
6 are appropriated and shall remain available without fiscal
7 year limitation—

8 “(1) to invest funds in the Tier I Investment
9 Fund of the Savings Fund and the Tier II Invest-
10 ment Fund of the Savings Fund under sections 255
11 and 256, respectively;

12 “(2) to transfer into Tier III Investment Op-
13 tions under section 257;

14 “(3) to make distributions in accordance with
15 section 258; and

16 “(4) to pay the administrative expenses of the
17 Board in accordance with subsection (e).

18 “(d) LIMITATIONS ON USE OF FUNDS.—

19 “(1) IN GENERAL.—Sums in the Savings Fund
20 credited to a participating individual’s personal so-
21 cial security savings account may not be used for, or
22 diverted to, purposes other than for the exclusive
23 benefit of the participating individual or the partici-
24 pating individual’s beneficiaries under this part.

1 “(2) ASSIGNMENTS.—Sums in the Savings
2 Fund may not be assigned or alienated and are not
3 subject to execution, levy, attachment, garnishment,
4 or other legal process.

5 “(e) PAYMENT OF ADMINISTRATIVE EXPENSES.—
6 Administrative expenses incurred to carry out this part
7 shall be paid out of net earnings in the Savings Fund in
8 conjunction with the allocation of investment earnings and
9 losses under section 254(c).

10 “(f) LIMITATION.—The sums in the Savings Fund
11 shall not be appropriated for any purpose other than the
12 purposes specified in this part and may not be used for
13 any other purpose.

14 **“SEC. 253. PARTICIPATION IN PROGRAM.**

15 “(a) PARTICIPATING INDIVIDUAL.—For purposes of
16 this part, the term ‘participating individual’ means any
17 individual—

18 “(1)(A) who receives wages in any calendar
19 year after December 31, 2011, on which there is im-
20 posed a tax under section 3101(a) of the Internal
21 Revenue Code of 1986, or

22 “(B) who derives self-employment income for a
23 taxable year beginning after December 31, 2011, on
24 which there is imposed a tax under section 1401(a)
25 of the Internal Revenue Code of 1986,

1 “(2) who is born on or after January 1, 1956,
2 and

3 “(3) who has filed an election to be treated as
4 a participating individual under subsection (b) and
5 has not subsequently filed an election to renounce
6 such individual’s status as a participating individual
7 under subsection (c).

8 “(b) ELECTION OF PARTICIPATION.—

9 “(1) IN GENERAL.—An individual who has not
10 become entitled to old-age insurance benefits under
11 section 202(a) may elect, subject to paragraph (2)
12 and in such form and manner as shall be prescribed
13 in regulations of the Board, to be treated as a ‘par-
14 ticipating individual’ for purposes of this part. Such
15 regulations shall provide for regular, periodic oppor-
16 tunities for the filing of such an election. The Board
17 shall provide for immediate notification to the Com-
18 missioner of Social Security, the Secretary of the
19 Treasury, and the Executive Director of such elec-
20 tion.

21 “(2) DEADLINE FOR ELECTION.—An election
22 under paragraph (1) may be made by an individual
23 not later than the later of—

24 “(A) the date on which such individual at-
25 tains age 25, or

1 “(B) December 31, 2012.

2 “(3) EFFECTIVENESS OF ELECTION.—An elec-
3 tion under this subsection shall be effective with re-
4 spect to wages earned, and self-employment income
5 derived, on the earliest date on which the Board de-
6 termines is practicable to make such election effec-
7 tive following the date of the filing of the election.

8 “(c) REVOCATION OF ELECTION.—

9 “(1) IN GENERAL.—An individual may, in such
10 form and manner as shall be prescribed in regula-
11 tions of the Board, revoke an election made by such
12 individual under subsection (b) within 1 year after
13 the date of a qualifying event described in paragraph
14 (2). Upon completion of the procedures provided for
15 under paragraph (3), any such individual who has
16 made such an election shall not be treated as a par-
17 ticipating individual under this part, effective as if
18 such individual had never been a participating indi-
19 vidual. The Board shall provide for immediate notifi-
20 cation of such election to the Commissioner of Social
21 Security, the Secretary of the Treasury, and the Ex-
22 ecutive Director.

23 “(2) QUALIFYING EVENTS.—For purposes of
24 paragraph (1), the term ‘qualifying event’ means, in

1 connection with an individual, any of the following
2 events:

3 “(A) The death of the individual’s spouse.

4 “(B) The entry into marriage by the indi-
5 vidual.

6 “(C) The divorce or legal separation of the
7 individual from the individual’s spouse.

8 “(D) A dependent child of the individual
9 ceasing to be a dependent child of the indi-
10 vidual under section 202(d)(3).

11 “(3) PROCEDURE.—The Board shall prescribe
12 by regulation procedures governing the termination
13 of an individual’s status as ‘participating individual’
14 pursuant to a revocation under this subsection. Such
15 procedures shall include—

16 “(A) prompt closing of the individual’s per-
17 sonal social security savings account established
18 under section 254, and

19 “(B) prompt transfer to the Federal Old-
20 Age and Survivors Insurance Trust Fund as
21 general receipts of any amount held in the Tier
22 II Investment Fund of the Savings Fund or
23 under a Tier III Investment Option pursuant to
24 section 256 or 257 and credited to such individ-
25 ual’s personal social security savings account.

1 **“SEC. 254. PERSONAL SOCIAL SECURITY SAVINGS AC-**
2 **COUNTS.**

3 “(a) ESTABLISHMENT OF PUBLICLY ADMINISTERED
4 SYSTEM OF PERSONAL SECURITY SAVINGS ACCOUNTS.—
5 As soon as practicable after the later of January 1, 2011,
6 or the date on which an individual becomes a participating
7 individual under this part, the Executive Director shall es-
8 tablish a personal social security savings account for such
9 individual. Such account shall be the means by which
10 amounts held in the Tier I Investment Fund and the Tier
11 II Investment Fund of the Savings Fund under sections
12 255 and 256 and amounts held under Tier III Investment
13 Options under section 257 are credited to such individual,
14 under procedures which shall be established by the Board
15 by regulation. Each account of a participating individual
16 shall be identified to such participating individual by
17 means of the participating individual’s Social Security ac-
18 count number.

19 “(b) ACCOUNT BALANCE.—The balance in a partici-
20 pating individual’s account at any time is the sum of—

21 “(1) the balance in the Tier I Investment Fund
22 of the Savings Fund credited to such participating
23 individual prior to transfer of the credited amount to
24 the Tier II Investment Fund of the Savings Fund;
25 plus

26 “(2) the excess of—

1 “(A) all deposits in the Tier II Investment
2 Fund of the Savings Fund credited to such par-
3 ticipating individual’s personal social security
4 savings account, subject to such increases and
5 reductions as may result from allocations made
6 to and reductions made in the account pursuant
7 to subsection (c)(1); over

8 “(B) amounts paid out of the Tier II In-
9 vestment Fund in connection with amounts
10 credited to such participating individual’s per-
11 sonal social security savings account; plus

12 “(3) the excess of—

13 “(A) the deposits in the Tier III Invest-
14 ment Options credited to such participating in-
15 dividual’s personal social security savings ac-
16 count, subject to such increases and reductions
17 as may result from amounts credited to, and re-
18 ductions made in, the account pursuant to sub-
19 section (c)(2); over

20 “(B) amounts paid out of the Tier III In-
21 vestment Options of such participating indi-
22 vidual.

23 The calculation made under paragraph (3) shall be made
24 separately for each Tier III Investment Option of the par-
25 ticipating individual. The Board shall also hold for the

1 participating individual any benefit credit certificate as-
2 signed to the participating individual's personal social se-
3 curity savings account under section 255.

4 “(c) ALLOCATION OF EARNINGS AND LOSSES.—Pur-
5 suant to regulations which shall be prescribed by the
6 Board, the Executive Director shall allocate to each per-
7 sonal social security savings account an amount equal to
8 the net earnings and net losses from each investment of
9 sums—

10 “(1) in the Tier I Investment Fund and the
11 Tier II Investment Fund which are attributable to
12 sums credited to such account reduced by an appro-
13 priate share of the administrative expenses paid out
14 of the net earnings, as determined by the Executive
15 Director; and

16 “(2) in the Tier III Investment Options which
17 are attributable to sums credited to such account re-
18 duced by the administrative expenses paid out of the
19 net earnings.

20 **“SEC. 255. TIER I INVESTMENT FUND.**

21 “(a) ESTABLISHMENT OF TIER I INVESTMENT
22 FUND.—

23 “(1) IN GENERAL.—The Savings Fund shall in-
24 clude a separate fund to be known as the ‘Tier I In-
25 vestment Fund’.

1 “(2) AMOUNTS IN FUND.—The Tier I Invest-
2 ment Fund consists of all amounts derived from
3 payments into the Fund under section 252(b) and
4 remaining after investment of such amounts under
5 subsection (b), including additional amounts derived
6 as income from such investments.

7 “(3) USE OF FUNDS.—The amounts held in the
8 Fund are appropriated and shall remain available
9 without fiscal year limitation—

10 “(A) to be held for investment on behalf of
11 participating individuals under subsection (b),

12 “(B) to pay the administrative expenses re-
13 lated to the Fund, and

14 “(C) to make transfers from the Fund
15 under subsection (c)(2).

16 “(b) INVESTMENT OF FUND BALANCE.—For pur-
17 poses of investment of the Tier I Investment Fund, the
18 Board shall contract with appropriate professional asset
19 managers, recordkeepers, and custodians selected for in-
20 vestment of amounts held in the Fund, so as to provide
21 for investment of the balance of the Fund, in a manner
22 providing broad diversification in accordance with regula-
23 tions of the Board, in—

24 “(1) insurance contracts,

25 “(2) certificates of deposit, or

1 “(3) other instruments or obligations selected
2 by such asset managers,
3 which return the amount invested and pay interest, at a
4 specified rate or rates, on that amount during a specified
5 period of time.

6 “(c) SEPARATE CREDITING TO PERSONAL SOCIAL
7 SECURITY SAVINGS ACCOUNTS AND TRANSFERS TO THE
8 TIER II INVESTMENT FUND OR TO TIER III INVESTMENT
9 OPTIONS.—

10 “(1) CREDITING TO ACCOUNTS.—

11 “(A) IN GENERAL.—Subject to this para-
12 graph, the Board shall provide for prompt, sep-
13 arate crediting, as soon as practicable, of the
14 amounts deposited in the Tier I Investment
15 Fund to the personal social security savings ac-
16 count of each participating individual with re-
17 spect to the redirected social security contribu-
18 tions (as defined in section 252(b)(3)) of such
19 participating individual. The Board shall in-
20 clude in such crediting, with respect to each
21 such individual, any increases or decreases in
22 such amounts so as to reflect the net returns
23 and losses from investment of the balance of
24 the Fund prior to such crediting. For purposes
25 of determining such increases and decreases for

1 each calendar year, the amounts deposited into
2 the Fund in connection with such individual
3 during such calendar year shall be deemed to
4 have been deposited on June 30 of such year.

5 “(B) TREATMENT OF MARRIED PARTICI-
6 PATING INDIVIDUALS.—If the participating in-
7 dividual is married as of the end of the calendar
8 year in which the amounts to be credited were
9 deposited in the Tier I Investment Fund and
10 the spouse is also a participating individual, the
11 personal social security savings account of the
12 participating individual and the personal social
13 security savings account of his or her spouse
14 shall each be credited with 50 percent of such
15 amounts.

16 “(2) TRANSFERS FROM THE TIER I INVEST-
17 MENT FUND.—In accordance with elections filed
18 with the Board by a participating individual, any
19 amount credited to the personal social security sav-
20 ings account of such participating individual under
21 paragraph (1) shall be promptly transferred to the
22 Tier II Investment Fund of the Savings Fund for
23 investment in accordance with section 256 and, to
24 the extent available under section 257, to Tier III
25 Investment Options in accordance with section 257.

1 “(d) TREATMENT OF AMOUNTS HELD IN TIER I IN-
2 VESTMENT FUND.—Subject to this part—

3 “(1) until amounts deposited into the Tier I In-
4 vestment Fund during any calendar year are cred-
5 ited to personal social security savings accounts,
6 such amounts shall be treated as the unallocated
7 property of all participating individuals with respect
8 to whom amounts were deposited in the Fund dur-
9 ing such year, jointly held in trust for such partici-
10 pating individuals in the Savings Fund, and

11 “(2) amounts deposited into the Fund which
12 are credited to the personal social security savings
13 account of a participating individual shall be treated
14 as property of the participating individual, held in
15 trust for such participating individual in the Savings
16 Fund.

17 **“SEC. 256. TIER II INVESTMENT FUND.**

18 “(a) ESTABLISHMENT OF TIER II INVESTMENT
19 FUND.—

20 “(1) IN GENERAL.—The Savings Fund shall in-
21 clude a separate fund to be known as the ‘Tier II
22 Investment Fund’.

23 “(2) AMOUNTS IN FUND.—The Tier II Invest-
24 ment Fund consists of all amounts derived from
25 payments into the Fund under section 255(c)(2) and

1 remaining after investment of such amounts under
2 subsection (b), including additional amounts derived
3 as income from such investments.

4 “(3) USE OF FUNDS.—The amounts held in the
5 Fund are appropriated and shall remain available
6 without fiscal year limitation—

7 “(A) to be held for investment under sub-
8 section (b),

9 “(B) to pay the administrative expenses re-
10 lated to the Fund, and

11 “(C) to make transfers to Tier III Invest-
12 ment Options under section 257 or to make
13 payments under section 258.

14 “(b) PAYMENTS INTO TIER II INVESTMENT FUND.—

15 “(1) IN GENERAL.—Upon the crediting under
16 section 252 to the personal social security savings
17 account of a participating individual of any amount
18 held in the Tier I Investment Fund for any calendar
19 year, the Board shall transfer from the Tier I In-
20 vestment Fund into the Tier II Investment Fund
21 any amount so credited to such participating individ-
22 ual’s account which is not transferred to a Tier III
23 Investment Option pursuant to an election under
24 section 257(a).

1 “(2) ONGOING SEPARATE CREDITING.—Subject
2 to this paragraph, the Board shall provide for ongoing
3 separate crediting to each participating individual’s
4 personal social security savings account of the
5 amounts deposited in the Tier II Investment Fund
6 with respect to such participating individual, together
7 with any increases or decreases therein so as
8 to reflect the net returns and losses from investment
9 thereof while held in the Fund.

10 “(c) INVESTMENT ACCOUNTS.—

11 “(1) IN GENERAL.—For purposes of investment
12 of the Tier II Investment Fund, the Board shall divide
13 the Fund into 6 investment accounts. The
14 Board shall contract with appropriate investment
15 managers, recordkeepers, and custodians selected for
16 investment of amounts held in each investment account.
17 Such accounts shall consist of—

18 “(A) a Lifecycle Investment Account,

19 “(B) a Government Securities Investment
20 Account,

21 “(C) a Fixed Income Investment Account,

22 “(D) a Common Stock Index Investment
23 Account,

24 “(E) a Small Capitalization Stock Index
25 Investment Account, and

1 “(F) an International Stock Index Invest-
2 ment Account.

3 “(2) ELECTION OF INVESTMENT OPTIONS.—

4 “(A) DEFAULT INVESTMENT ACCOUNT.—

5 Except as provided in an election in effect
6 under subparagraph (B), amounts held in the
7 Tier II Investment Fund shall be credited to
8 the Lifecycle Investment Account.

9 “(B) ELECTION OF TRANSFERS BETWEEN
10 INVESTMENT ACCOUNTS.—In any case in which
11 a participating individual who has an amount in
12 such individual’s personal social security sav-
13 ings account credited to any of the investment
14 accounts in the Tier II Investment Fund files
15 with the Secretary of the Treasury a written
16 election under this subparagraph, not more fre-
17 quently than annually and in accordance with
18 regulations of the Board, the Secretary of the
19 Treasury shall transfer the full amount so cred-
20 ited in such investment account from such in-
21 vestment account to any one of the other invest-
22 ment accounts in the Tier II Investment Fund
23 (whichever is designated in such election).

24 “(d) LIFECYCLE INVESTMENT ACCOUNT.—

1 “(1) IN GENERAL.—The investment manager,
2 recordkeeper, and custodian selected for investment
3 of amounts held in the Lifecycle Investment Account
4 shall invest such amounts under regulations which
5 shall be prescribed by the Board in a mix of equities
6 and fixed income instruments so as to ensure, to the
7 maximum extent practicable, that, of the total bal-
8 ance in the Fund credited to such account and avail-
9 able for investment (after allowing for administrative
10 expenses), the percentage invested in fixed income
11 instruments by individuals in designated cohorts,
12 ranging in age up to those of at least retirement
13 age, will increase in a linear progression from 0 per-
14 cent to 100 percent as the cohort approaches retire-
15 ment age.

16 “(2) INVESTMENT IN EQUITIES.—In accordance
17 with regulations which shall be prescribed by the
18 Board, the Board shall establish standards which
19 must be met by equities selected for investment in
20 the Lifecycle Investment Account. In conformity
21 with such standards, the Board shall select, for pur-
22 poses of such investment, indices which are com-
23 prised of equities the aggregate market value of
24 which is, in each case, a reasonably broad represen-
25 tation of companies whose shares are traded on the

1 equity markets. Amounts invested in equities under
2 an investment option shall be held in a portfolio de-
3 signed to replicate the performance of one or more
4 of such indices.

5 “(3) INVESTMENT IN FIXED INCOME INSTRU-
6 MENTS.—In accordance with regulations which shall
7 be prescribed by the Board, the Board shall estab-
8 lish standards which must be met by fixed income
9 instruments selected for investment in the Lifecycle
10 Investment Account. Such standards shall take into
11 account the competing considerations of risk and re-
12 turn. Amounts invested in fixed income instruments
13 in an investment option shall be held in a portfolio
14 which shall consist of a diverse range of fixed income
15 instruments, taking into full account the opposing
16 considerations of risk and maximization of return.

17 “(e) GOVERNMENT SECURITIES INVESTMENT AC-
18 COUNT.—

19 “(1) IN GENERAL.—Amounts in the Govern-
20 ment Securities Investment Account shall be in-
21 vested in securities of the United States Government
22 as provided in this subsection

23 “(2) ISSUANCE OF SPECIAL OBLIGATIONS.—
24 The Secretary of the Treasury is authorized to issue
25 special interest-bearing obligations of the United

1 States for purchase by the Tier II Investment Fund
2 for purposes of investment of amounts in the Gov-
3 ernment Securities Investment Account. Such obliga-
4 tions shall have maturities fixed with due regard to
5 the needs of the Fund as determined by the Board,
6 and shall bear interest at a rate equal to the average
7 market yield (computed by the Secretary of the
8 treasury on the basis of market quotations as of the
9 end of the calendar month next preceding the date
10 of issue of such obligations) on all marketable inter-
11 est-bearing obligations of the United States then
12 forming a part of the public debt which are not due
13 or callable earlier than 4 years after the end of such
14 calendar month. Any average market yield computed
15 under this paragraph which is not a multiple of one-
16 eighth of 1 percent shall be rounded to the nearest
17 multiple of one-eighth of 1 percent.

18 “(f) FIXED INCOME INVESTMENT ACCOUNT.—
19 Amounts in the Fixed Income Investment Account shall
20 be invested in instruments or obligations which return the
21 amount invested and pay interest, at a specified rate or
22 rates, on that amount during a specified period of time,
23 consisting of instruments or obligations in one or more
24 of the following categories:

25 “(1) insurance contracts;

1 “(2) certificates of deposit; or

2 “(3) other instruments or obligations selected
3 by qualified professional asset managers.

4 “(g) COMMON STOCK INDEX INVESTMENT AC-
5 COUNT.—

6 “(1) PORTFOLIO DESIGN.—Amounts held in the
7 Common Stock Investment Account shall be invested
8 in a portfolio of common stock designed to replicate
9 the performance of the index selected under para-
10 graph (2). The portfolio shall be designed such that,
11 to the extent practicable, the percentage of the bal-
12 ance in the Common Stock Index Investment Ac-
13 count that is invested in each stock is the same as
14 the percentage determined by dividing the aggregate
15 market value of all shares of that stock by the ag-
16 gregate market value of all shares of all stocks in-
17 cluded in such index.

18 “(2) SELECTION OF INDEX.—The Board shall
19 select, for purposes of investment of amounts held in
20 the Common Stock Investment Account, an index
21 which is a commonly recognized index comprised of
22 common stock the aggregate market value of which
23 is a reasonably complete representation of the
24 United States equity markets.

1 “(h) SMALL CAPITALIZATION STOCK INDEX INVEST-
2 MENT ACCOUNT.—

3 “(1) PORTFOLIO DESIGN.—Amounts held in the
4 Small Capitalization Stock Index Investment Ac-
5 count shall be invested in a portfolio of common
6 stock designed to replicate the performance of the
7 index selected under paragraph (2). The portfolio
8 shall be designed such that, to the extent prac-
9 ticable, the percentage of the balance in the Small
10 Capitalization Stock Index Investment Account that
11 is invested in each stock is the same as the percent-
12 age determined by dividing the aggregate market
13 value of all shares of that stock by the aggregate
14 market value of all shares of all stocks included in
15 such index.

16 “(2) SELECTION OF INDEX.—The Board shall
17 select, for purposes of investment of amounts held in
18 the Small Capitalization Stock Index Investment Ac-
19 count, an index which is a commonly recognized
20 index comprised of common stock the aggregate
21 market value of which represents the United States
22 equity markets excluding the common stocks in-
23 cluded in the Common Stock Index Investment Ac-
24 count.

1 “(i) INTERNATIONAL STOCK INDEX INVESTMENT
2 ACCOUNT.—

3 “(1) PORTFOLIO DESIGN.—Amounts held in the
4 International Stock Index Investment Account shall
5 be invested in a portfolio of stock designed to rep-
6 licate the performance of the index selected under
7 paragraph (2). The portfolio shall be designed such
8 that, to the extent practicable, the percentage of the
9 balance in the International Stock Index Investment
10 Account that is invested in each stock is the same
11 as the percentage determined by dividing the aggre-
12 gate market value of all shares of that stock by the
13 aggregate market value of all shares of all stocks in-
14 cluded in such index.

15 “(2) SELECTION OF INDEX.—The Board shall
16 select, for purposes of investment of amounts held in
17 the International Stock Index Investment Account,
18 an index which is a commonly recognized index com-
19 prised of common stock the aggregate market value
20 of which is a reasonably complete representation of
21 the international equity markets excluding the
22 United States equity markets.

23 “(j) ADDITIONAL INVESTMENT OPTIONS.—The
24 Board may from time to time, as determined by regulation

1 as appropriate to further the purposes of this section,
2 shall—

3 “(1) establish investment accounts in the Tier
4 II Investment Fund meeting the requirements of
5 this section in addition to those established by this
6 section, and

7 “(2) terminate investment accounts in the Tier
8 II Investment Fund established pursuant to para-
9 graph (1).

10 “(k) DISCLOSURE OF ADMINISTRATIVE COSTS.—The
11 Board shall provide to each participating individual an an-
12 nual disclosure of the rate of administrative costs charge-
13 able with respect to investment in each investment account
14 in the Tier II Investment Fund. Such disclosure shall be
15 written in a manner calculated to be understood by the
16 average participating individual.

17 “(l) TREATMENT OF AMOUNTS HELD IN TIER II IN-
18 VESTMENT FUND.—Subject to this part, amounts depos-
19 ited into, and held and accounted for in, the Tier II In-
20 vestment Fund with respect to any participating individual
21 shall continue to be treated as property of such partici-
22 pating individual, held in trust for such participating indi-
23 vidual in the Fund.

1 **“SEC. 257. TIER III INVESTMENT OPTIONS.**

2 “(a) ELECTION OF TIER III INVESTMENT OP-
3 TIONS.—

4 “(1) IN GENERAL.—A participating individual
5 may elect to direct transfers from amounts in the
6 Savings Fund credited to the personal social security
7 savings account of such individual into 1 or more
8 Tier III Investment Options in accordance with
9 paragraph (2).

10 “(2) COMMENCEMENT OF TIER III INVESTMENT
11 OPTIONS UPON ATTAINMENT OF ELECTION THRESH-
12 OLD.—In any case in which, as of the end of any
13 calendar year, the total balance in the Savings Fund
14 credited to a participating individual’s personal so-
15 cial security savings account exceeds for the first
16 time the election threshold, the Board shall, by regu-
17 lation, provide for an opportunity for such partici-
18 pating individual to make, at any time thereafter,
19 such individual’s first election of one or more of the
20 Tier III Investment Options for investment of an
21 amount in the Savings Fund credited to such ac-
22 count. Such election may be in lieu of or in addition
23 to investment in the options available with respect to
24 the Tier II Investment Fund of the Savings Fund.

25 “(3) ALLOCATION OF FUNDS.—In the case of
26 an election under paragraph (1), funds credited to

1 the personal social security savings account of the
2 participating individual and elected for transfer to
3 one or more Tier III Investment Options shall be
4 transferred to the Tier III Investment Options so
5 elected for such calendar year, in percentages speci-
6 fied in the election by the participating individual for
7 each applicable portfolio.

8 “(4) ELECTION THRESHOLD.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), for purposes of this subsection the
11 term ‘election threshold’ means an amount
12 equal to \$25,000.

13 “(B) ADJUSTMENTS.—The Board shall ad-
14 just annually (effective for annual reporting
15 months occurring after December 2011) the
16 dollar amount set forth in subparagraph (A)
17 under procedures providing for adjustments in
18 the same manner and to the same extent as ad-
19 justments are provided for under the proce-
20 dures used to adjust benefit amounts under sec-
21 tion 215(i)(2)(A), except that any amount so
22 adjusted that is not a multiple of \$1.00 shall be
23 rounded to the nearest multiple of \$1.00.

24 “(5) SUBSEQUENT INVESTMENT OF AMOUNTS
25 HELD IN TIER III INVESTMENT OPTIONS.—Any

1 amounts held in one or more Tier III Investment
2 Options may be—

3 “(A) transferred at any time to one or
4 more other Tier III Investment Options, subject
5 to applicable regulations of the Board and the
6 terms governing the affected Tier III Invest-
7 ment Options, and

8 “(B) transferred, not more frequently than
9 annually, to the Tier II Investment Fund, for
10 deposit in the applicable investment account
11 then selected by the participating individual
12 under section 256.

13 “(b) CERTIFICATION OF ELIGIBLE ENTITIES.—

14 “(1) IN GENERAL.—The Board shall certify eli-
15 gible entities to offer Tier III Investment Options
16 under this part.

17 “(2) APPLICATION.—Any eligible entity that de-
18 sires to be certified by the Board to offer a Tier III
19 Investment Option shall submit an application to the
20 Board at such time, in such manner, and containing
21 such information as the Board may require.

22 “(3) REQUIREMENTS FOR APPROVAL.—The
23 Board shall not certify an eligible entity unless such
24 eligible entity agrees to the following requirements:

1 “(A) SEPARATE ACCOUNTING.—Each eligi-
2 ble entity shall, with respect to each Tier III
3 Investment Option offered by such eligible enti-
4 ty to participating individuals—

5 “(i) establish separate accounts for
6 the contributions of each participating in-
7 dividual, and any earnings properly allo-
8 cable to the contributions, and

9 “(ii) maintain separate recordkeeping
10 with respect to each account.

11 “(B) TREATMENT OF AMOUNTS HELD IN
12 FUND.—Amounts deposited into, and held and
13 accounted for in, a Tier III Investment Option
14 with respect to any participating individual
15 shall be treated as property of such partici-
16 pating individual, held in trust for such partici-
17 pating individual.

18 “(C) TRUST REQUIREMENTS.—Amounts
19 held and accounted for with respect to a partici-
20 pating individual shall be held in a trust created
21 or organized in the United States for the exclu-
22 sive benefit of such individual or his bene-
23 ficiaries.

24 “(D) EXEMPTION FROM THIRD PARTY
25 CLAIMS.—Each Tier III Investment Option

1 shall be exempt from any and all third party
2 claims against the eligible entity.

3 “(E) DISCLOSURE OF ADMINISTRATIVE
4 COSTS.—Each eligible entity offering a Tier III
5 Investment Option under this section shall pro-
6 vide to each participating individual an annual
7 disclosure of the rate of administrative costs
8 chargeable with respect to investment in such
9 Option. Such disclosure shall be written in a
10 manner calculated to be understood by the av-
11 erage participating individual. The Board shall
12 provide for coordination of disclosures with re-
13 spect to Tier III Investment Options under this
14 subparagraph so as to assist participating indi-
15 viduals in comparing alternative Options based
16 on administrative costs.

17 “(F) REPORTING TO THE EXECUTIVE DI-
18 RECTOR AND THE BOARD.—Each eligible entity
19 shall provide reports to the Executive Director
20 and the Board at such time, in such manner,
21 and containing such information as the Board
22 may require.

23 “(4) ELIGIBLE ENTITY DEFINED.—For pur-
24 poses of this section, the term ‘eligible entity’ means
25 any investment company (as defined in section 3 of

1 the Investment Company Act of 1940) or other per-
2 son that the Board determines appropriate to offer
3 Tier III Investment Options under this part.

4 “(c) APPROVAL OF TIER III INVESTMENT OP-
5 TIONS.—

6 “(1) IN GENERAL.—No funds may be trans-
7 ferred into a Tier III Investment Option unless the
8 Board has approved an application submitted under
9 paragraph (2) with respect to the option.

10 “(2) APPLICATION.—With respect to each Tier
11 III Investment Option that an eligible entity cer-
12 tified under subsection (b)(1) seeks to offer, such
13 entity shall submit an application to the Board at
14 such time, in such manner, and containing such in-
15 formation as the Board may require.

16 “(3) QUALIFICATIONS FOR APPROVAL.—The
17 Board may not approve an application submitted
18 under paragraph (2) in connection with a Tier III
19 Investment Option unless the following requirements
20 are met:

21 “(A) OPTION MUST BE OFFERED BY CER-
22 TIFIED ELIGIBLE ENTITY.—The Tier III In-
23 vestment Option is offered by an eligible entity
24 certified under subsection (b).

1 “(B) OPTION MUST MEET QUALITY FAC-
2 TORS.—

3 “(i) IN GENERAL.—The Tier III In-
4 vestment Option meets qualifications which
5 shall be prescribed by the Board relating
6 to the quality factors described in clause
7 (ii).

8 “(ii) QUALITY FACTORS.—The quality
9 factors described in this clause are—

10 “(I) the safety and soundness of
11 the Tier III Investment Option’s pro-
12 posed investment policy;

13 “(II) the experience and record
14 of performance of the proposed invest-
15 ment option, if any;

16 “(III) the experience and record
17 of performance of the entity issuing or
18 offering such option; and

19 “(IV) such other factors as the
20 Board may determine appropriate.

21 “(d) CONSIDERATIONS FOR CERTIFICATION AND AP-
22 PROVAL.—In determining whether to certify an eligible en-
23 tity under subsection (b) or to approve a Tier III Invest-
24 ment Option under subsection (c), the Board shall—

1 “(1) act in the best interests of the partici-
2 pating individuals;

3 “(2) base its determination solely on consider-
4 ations of balancing safety and soundness of the Tier
5 III Investment Option with the maximization of re-
6 turns of such option; and

7 “(3) not base any determination related to the
8 entity or option on political or other extraneous con-
9 siderations.

10 “(e) SPONSORSHIP OF TIER III INVESTMENT OP-
11 TIONS BY MEMBERSHIP AND LABOR ORGANIZATIONS.—

12 “(1) IN GENERAL.—A membership or labor or-
13 ganization (as defined by the Board) may sponsor
14 Tier III Investment Options under contracts with el-
15 igible entities certified under subsection (b) who
16 shall administer the investment option if such invest-
17 ment option is approved by the Board under sub-
18 section (c).

19 “(2) LIMITATION TO MEMBERSHIP.—A mem-
20 bership or labor organization (as so defined) may
21 limit to the members of such organization participa-
22 tion in a Tier III Investment Option sponsored by
23 such organization.

24 “(f) DISTRIBUTIONS IN CASE OF DEATH.—Upon the
25 death of a participating individual, the amount of any as-

1 sets held under a Tier III Investment Option credited to
2 the personal social security savings account of such indi-
3 vidual shall be distributed in accordance with section
4 258(e).

5 **“SEC. 258. PERSONAL SOCIAL SECURITY SAVINGS ANNUITY**
6 **AND OTHER DISTRIBUTIONS.**

7 “(a) DATE OF INITIAL DISTRIBUTION.—Except as
8 provided in subsection (e), distributions may be made to
9 a participating individual from amounts credited to the
10 personal social security savings account of such individual
11 only on or after the earliest of—

12 “(1) the date the participating individual at-
13 tains retirement age (as defined in section 216(l)(1))
14 or, if elected by the individual, early retirement age
15 (as defined in section 216(l)(2)); or

16 “(2) the date on which the amount credited to
17 the participating individual’s personal social security
18 savings account is sufficient to purchase a personal
19 social security savings annuity with a monthly ben-
20 efit that is at least equal to the minimum annuity
21 payment amount (as defined in subsection
22 (b)(4)(C)(iii)).

23 “(b) PERSONAL SOCIAL SECURITY SAVINGS ANNU-
24 ITIES.—

1 “(1) NOTICE OF AVAILABLE ANNUITIES.—Not
2 later than the date determined under subsection (a),
3 the Board shall notify each participating individual
4 of—

5 “(A) the most recent listing of personal so-
6 cial security savings annuities offered by the
7 Annuity Issuance Authority under paragraph
8 (2); and

9 “(B) the entitlement of the participating
10 individual to purchase such an annuity.

11 “(2) ANNUITY ISSUANCE AUTHORITY.—There is
12 established in the office of the Board an agency
13 which shall be known as the ‘Annuity Issuance Au-
14 thority’. The Authority shall provide, in accordance
15 with regulations of the Board, for the issuance of
16 personal social security savings annuities for pur-
17 chase from the Authority under this section and to
18 otherwise administer the issuance of such annuities
19 in accordance with such regulations.

20 “(3) ANNUITY RESERVES ACCOUNT.—There is
21 established in the Savings Fund an Annuity Re-
22 serves Account. The Account shall consist of all
23 amounts received by the Authority from the pur-
24 chase of personal social security savings annuities
25 under this section (plus such amounts as may be

1 transferred to the Account under paragraph (5)(B)),
2 increased by the total net earnings from investments
3 of such reserves under subparagraph (A) of para-
4 graph (5) and reduced by the total net losses from
5 investments of such reserves under such subpara-
6 graph.

7 “(4) PURCHASE OF ANNUITIES.—

8 “(A) SELECTION OF ANNUITY.—On a date
9 elected by the participating individual, but no
10 earlier than the date determined under sub-
11 section (a), a participating individual may pur-
12 chase a personal social security savings annuity
13 selected from among the annuities offered by
14 the Authority under paragraph (2).

15 “(B) TRANSFER OF ASSETS.—Upon the
16 selection of an annuity by a participating indi-
17 vidual under subparagraph (A), the Board shall
18 provide for the transfer of assets, credited to
19 the personal social security savings account of
20 the participating individual and held in the Tier
21 II Investment Fund or under 1 or more Tier
22 III Investment Options (or any combination
23 thereof), in a total amount sufficient to pur-
24 chase the annuity selected by the participating

1 individual from annuities offered by the Author-
2 ity.

3 “(C) MINIMUM ANNUITY PAYMENT
4 AMOUNT.—

5 “(i) IN GENERAL.—Subject to sub-
6 paragraph (D), if, at the time a personal
7 social security savings annuity is pur-
8 chased under subparagraph (A), the assets
9 credited to the personal social security sav-
10 ings account of the participating individual
11 are sufficient to purchase a personal social
12 security savings annuity offered by the Au-
13 thority under paragraph (2) with a month-
14 ly annuity payment that is at least equal
15 to the minimum annuity payment amount,
16 the amount of the monthly annuity pay-
17 ment provided by such annuity may not be
18 less than the minimum annuity payment
19 amount.

20 “(ii) CONSTRUCTION.—Nothing in
21 this subparagraph shall be construed to
22 prohibit a participating individual from
23 using personal social security savings ac-
24 count assets to purchase a personal social
25 security savings annuity offered by the Au-

1 thority under paragraph (2) which provides
2 for a monthly payment in excess of the
3 minimum amount required under clause
4 (i).

5 “(iii) MINIMUM ANNUITY PAYMENT
6 AMOUNT DEFINED.—For purposes of this
7 part, the term ‘minimum annuity payment
8 amount’ means, as of any date, an amount
9 equal to the monthly equivalent of 150 per-
10 cent of the poverty line for an individual
11 (as in effect on such date), determined
12 under the poverty guidelines of the Depart-
13 ment of Health and Human Services
14 issued under sections 652 and 673(2) of
15 the Omnibus Budget Reconciliation Act of
16 1981.

17 “(D) PURCHASE OF ANNUITIES IN THE
18 EVENT OF INSUFFICIENT ASSETS.—If a partici-
19 pating individual desires, or is required under
20 subsection (f), to purchase a personal social se-
21 curity savings annuity under subsection (b) on
22 or after the date determined under subsection
23 (a)(1) and the assets of the personal social se-
24 curity savings account of such individual are in-
25 sufficient to purchase a personal social security

1 savings annuity that provides for a monthly
2 payment that is at least equal to the minimum
3 annuity payment amount (as defined in para-
4 graph (4)(C)(iii)), the participating individual
5 shall purchase a personal social security savings
6 annuity with a monthly payment equal to the
7 maximum amount that the participating indi-
8 vidual's personal social security savings account
9 can fund, as determined in accordance with reg-
10 ulations which shall be prescribed by the Au-
11 thority, and that otherwise meets the require-
12 ments of this subsection (including the cost-of-
13 living protection requirement of subsection
14 (c)(1)(C)), and the Authority shall provide for
15 appropriate certification to the Secretary of the
16 Treasury with respect to the participating indi-
17 vidual's eligibility for guarantee payments
18 under section 259.

19 “(5) MAINTENANCE OF RESERVES FOR PAY-
20 MENT OF ANNUITIES.—

21 “(A) INVESTMENT OF RESERVES.—For
22 purposes of investment of reserves held in the
23 Annuity Reserves Account, the Authority shall
24 contract with appropriate investment managers,
25 recordkeepers, and custodians selected by the

1 Authority for investment of such reserves. Such
2 reserves shall be invested under regulations
3 which shall be prescribed by the Authority so as
4 to ensure, to the maximum extent practicable,
5 that, of the total balance of the reserves (after
6 payment of administrative expenses to such
7 managers, recordkeepers, and custodians)—

8 “(i) 65 percent is invested in equities
9 in the same manner and under the same
10 standards as are provided in section
11 256(c)(4), and

12 “(ii) 35 percent is invested in fixed in-
13 come instruments in the same manner and
14 under the same standards as are provided
15 in section 256(c)(5).

16 “(B) PROVISION FOR FULL PAYMENT OF
17 ANNUITIES.—Payment of personal social secu-
18 rity savings annuities in accordance with the
19 terms of such annuities shall be made, irrespec-
20 tive of the sufficiency of reserves in the Annuity
21 Reserves Fund attributable to funds obtained
22 from the purchase of such annuities. In the
23 event of any impending insufficiency in the An-
24 nuity Reserves Account for the next fiscal year,
25 the Authority shall certify to the Secretary of

1 the Treasury the amount of such insufficiency,
2 and the Secretary of the Treasury shall transfer
3 from the Federal Old-Age and Survivors Insur-
4 ance Trust Fund to the Annuity Reserves Ac-
5 count the amount of the insufficiency, as so cer-
6 tified, in such installments, made prior to or
7 during such fiscal year, as are necessary to
8 eliminate in advance such insufficiency.

9 “(c) PERSONAL SOCIAL SECURITY SAVINGS ANNU-
10 ITY.—

11 “(1) IN GENERAL.—For purposes of this part,
12 the term ‘personal social security savings annuity’
13 means an annuity that meets the following require-
14 ments:

15 “(A) The annuity starting date (as defined
16 in section 72(c)(4) of the Internal Revenue
17 Code of 1986) commences on the first day of
18 the month beginning after the date of the pur-
19 chase of the annuity.

20 “(B) The terms of the annuity provide—

21 “(i) for a monthly payment to the
22 participating individual during the life of
23 the participating individual equal to at
24 least the minimum annuity payment

1 amount (as defined in subsection
2 (b)(4)(C)(iii)), or

3 “(ii) in the case of an annuity pur-
4 chased under subparagraph (D) of sub-
5 section (b)(4), the maximum monthly pay-
6 ment determined under regulations pre-
7 scribed under such subparagraph.

8 “(C) The terms of the annuity include pro-
9 cedures providing for adjustments in the
10 amount of the monthly payments in the same
11 manner and to the same extent as adjustments
12 are provided for under the procedures used to
13 adjust benefit amounts under section
14 215(i)(2)(A). Nothing in this subparagraph
15 shall be construed to preclude the terms gov-
16 erning such an annuity from providing for ad-
17 justments in the amount of monthly payments
18 resulting in a payment for any month greater
19 than the payment for that month that would re-
20 sult from adjustments required under the pre-
21 ceding sentence (b)(4)(D).

22 “(D) The terms of the annuity include
23 such other terms and conditions as the Board
24 requires for the protection of the annuitant.

1 “(2) EXEMPTION FROM THIRD PARTY
2 CLAIMS.—Each personal social security savings an-
3 nuity shall be exempt from any and all third party
4 claims against the issuer.

5 “(d) RIGHT TO USE EXCESS PERSONAL SOCIAL SE-
6 CURITY SAVINGS ACCOUNT ASSETS.—To the extent assets
7 credited to a participating individual’s personal social se-
8 curity savings account remain after the purchase of an an-
9 nuity under subsection (b), the remaining assets shall be
10 payable to the participating individual at such time, in
11 such manner, and in such amounts as the participating
12 individual may specify, subject to subsection (f).

13 “(e) DISTRIBUTIONS IN CASE OF DEATH.—If the
14 participating individual dies before all amounts which are
15 held in the Tier I Investment Fund or the Tier II Invest-
16 ment Fund of the Savings Fund or held under a Tier III
17 Investment Option and which are credited to the personal
18 social security savings account of the individual are other-
19 wise distributed in accordance with this section, such
20 amounts shall be distributed, under regulations which
21 shall be prescribed by the Board—

22 “(1) in any case in which one or more bene-
23 ficiaries have been designated in advance, to such
24 beneficiaries in accordance with such designation as
25 provided in such regulations, and

1 “(2) in the case of any amount not distributed
2 as described in paragraph (1), to such individual’s
3 estate.

4 “(f) DATE OF FINAL DISTRIBUTION.—All amounts
5 credited to the personal social security savings account of
6 an individual shall be distributed, by means of the pur-
7 chase of annuities or otherwise in a manner consistent
8 with the requirements of this section, not later than 5
9 years after the date the individual attains retirement age
10 (as defined in section 216(l)). The Board shall provide by
11 regulation for means of distribution necessary to ensure
12 compliance with the requirements of this subsection.

13 **“SEC. 259. GUARANTEE OF ACCOUNT SAVINGS.**

14 “(a) IN GENERAL.—If, as of immediately before the
15 month for which the first monthly payment under a par-
16 ticipating individual’s personal social security savings an-
17 nuity is paid, the amount credited to such individual’s per-
18 sonal social security savings account is less than the sum
19 of all deposits made to the account under section 252(b),
20 adjusted as provided in subsection (b), the Annuity
21 Issuance Authority shall so certify to the Secretary of the
22 Treasury and, upon receipt of such certification, such Sec-
23 retary shall transfer to such individual’s Tier I Investment
24 Fund, from amounts in the Federal Old-Age and Sur-
25 vivors Insurance Trust Fund, an amount equal to the ex-

1 cess of such sum of such deposits, as so adjusted, over
2 such amount credited to such account.

3 “(b) ADJUSTMENTS.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (a), deposits described in subsection (a) which are
6 made in any calendar year shall be deemed to be
7 equal to the product of—

8 “(A) the deposits made in such year (as
9 determined without regard to this subsection);
10 and

11 “(B) the quotient obtained by dividing—

12 “(i) the Consumer Price Index for the
13 calendar quarter beginning on July 1 and
14 ending on September 30 preceding the
15 year in which the month referred to in sub-
16 section (a) occurs; by

17 “(ii) the Consumer Price Index for
18 the calendar quarter beginning on July 1
19 and ending on September 30 preceding the
20 calendar year in which such deposits were
21 made.

22 “(2) CONSUMER PRICE INDEX.—For purposes
23 of paragraph (1), the Consumer Price Index for a
24 calendar quarter shall be the arithmetical mean of
25 the Consumer Price Index for Urban Wage Earners

1 and Clerical Workers (CPI-W) for the 3 months in
2 such quarter.

3 **“SEC. 260. PERSONAL SOCIAL SECURITY SAVINGS BOARD.**

4 “(a) ESTABLISHMENT.—There is established in the
5 executive branch of the Government a Personal Social Se-
6 curity Savings Board.

7 “(b) COMPOSITION.—The Board shall be composed
8 of—

9 “(1) 3 members appointed by the President, of
10 whom 1 shall be designated by the President as
11 Chairman; and

12 “(2) 2 members appointed by the President, of
13 whom—

14 “(A) 1 shall be appointed by the President
15 after taking into consideration the recommenda-
16 tion made by the Speaker of the House of Rep-
17 resentatives in consultation with the minority
18 leader of the House of Representatives; and

19 “(B) 1 shall be appointed by the President
20 after taking into consideration the recommenda-
21 tion made by the majority leader of the Senate
22 in consultation with the minority leader of the
23 Senate.

1 “(c) ADVICE AND CONSENT.—Appointments under
2 subsection (b) shall be made by and with the advice and
3 consent of the Senate.

4 “(d) MEMBERSHIP REQUIREMENTS.—Members of
5 the Board shall have substantial experience, training, and
6 expertise in the management of financial investments and
7 pension benefit plans.

8 “(e) LENGTH OF APPOINTMENTS.—

9 “(1) TERMS.—A member of the Board shall be
10 appointed for a term of 4 years, except that of the
11 members first appointed under subsection (b)—

12 “(A) the Chairman shall be appointed for
13 a term of 4 years;

14 “(B) the members appointed under sub-
15 section (b)(2) shall be appointed for terms of 3
16 years; and

17 “(C) the remaining members shall be ap-
18 pointed for terms of 2 years.

19 “(2) VACANCIES.—

20 “(A) IN GENERAL.—A vacancy on the
21 Board shall be filled in the manner in which the
22 original appointment was made and shall be
23 subject to any conditions that applied with re-
24 spect to the original appointment.

1 “(B) COMPLETION OF TERM.—An indi-
2 vidual chosen to fill a vacancy shall be ap-
3 pointed for the unexpired term of the member
4 replaced.

5 “(3) EXPIRATION.—The term of any member
6 shall not expire before the date on which the mem-
7 ber’s successor takes office.

8 “(f) DUTIES.—The Board shall—

9 “(1) administer the program established under
10 this part;

11 “(2) establish policies for the investment and
12 management of the Savings Fund, including the
13 Tier I Investment Fund and the Tier II Investment
14 Fund, and amounts held under Tier III Investment
15 Options, including policies applicable to the asset
16 managers, recordkeepers, and custodians with re-
17 sponsibility for managing the investment of amounts
18 credited to personal social security investment ac-
19 counts, and for the management and operation of
20 personal social security savings annuities, which
21 shall provide for—

22 “(A) prudent investments suitable for ac-
23 cumulating funds for payment of retirement in-
24 come;

25 “(B) sound management practices; and

1 “(C) low administrative costs;

2 “(3) review the performance of investments
3 made for the Tier I Investment Fund and the Tier
4 II Investment Fund;

5 “(4) review the performance of investments
6 made under Tier III Investment Options;

7 “(5) review the management and operation of
8 personal social security savings annuities;

9 “(6) review and approve the budget of the
10 Board; and

11 “(7) comply with the fiduciary requirements of
12 part 4 of subtitle B of title I of the Employee Re-
13 tirement Income Security Act of 1974 (relating to fi-
14 duciary responsibility) in connection with any exer-
15 cise of discretion in connection with the assets of the
16 Savings Fund.

17 “(g) ADMINISTRATIVE PROVISIONS.—

18 “(1) IN GENERAL.—The Board may—

19 “(A) adopt, alter, and use a seal;

20 “(B) except as provided in paragraph (4),
21 direct the Executive Director to take such ac-
22 tion as the Board considers appropriate to
23 carry out the provisions of this part and the
24 policies of the Board in accordance with delega-
25 tions under this part;

1 “(C) upon the concurring votes of 4 mem-
2 bers, remove the Executive Director from office
3 for good cause shown;

4 “(D) provide to the Executive Director
5 such resources as are necessary to carry out the
6 duties of the Executive Director; and

7 “(E) take such other actions as may be
8 necessary to carry out the functions of the
9 Board.

10 “(2) MEETINGS.—The Board shall meet—

11 “(A) not less than once during each
12 month; and

13 “(B) at additional times at the call of the
14 Chairman.

15 “(3) EXERCISE OF POWERS.—

16 “(A) IN GENERAL.—Except as provided in
17 paragraph (1)(C), the Board shall perform the
18 functions and exercise the powers of the Board
19 on a majority vote of a quorum of the Board.
20 Three members of the Board shall constitute a
21 quorum for the transaction of business.

22 “(B) VACANCIES.—A vacancy on the
23 Board shall not impair the authority of a
24 quorum of the Board to perform the functions
25 and exercise the powers of the Board.

1 “(4) LIMITATIONS ON INVESTMENTS.—The
2 Board may not direct any person to invest or to
3 cause to be invested any sums in the Tier II Invest-
4 ment Fund or any personal social security invest-
5 ment account in a specific asset or to dispose of or
6 cause to be disposed of any specific asset of such
7 Fund or any such account.

8 “(h) COMPENSATION.—

9 “(1) IN GENERAL.—Each member of the Board
10 who is not an officer or employee of the Federal
11 Government shall be compensated at the daily rate
12 of basic pay for level IV of the Executive Schedule
13 for each day during which such member is engaged
14 in performing a function of the Board.

15 “(2) EXPENSES.—A member of the Board shall
16 be paid travel, per diem, and other necessary ex-
17 penses under subchapter I of chapter 57 of title 5,
18 United States Code, while traveling away from such
19 member’s home or regular place of business in the
20 performance of the duties of the Board.

21 “(3) SOURCE OF FUNDS.—Payments authorized
22 under this subsection shall be paid from the Tier I
23 Investment Fund or the Tier II Investment Fund,
24 as determined appropriate by the Board.

1 “(i) DISCHARGE OF RESPONSIBILITIES.—The mem-
2 bers of the Board shall discharge their responsibilities
3 solely in the interest of the participating individuals and
4 their beneficiaries under this part.

5 “(j) ANNUAL INDEPENDENT AUDIT.—The Board
6 shall annually engage an independent qualified public ac-
7 countant to audit the activities of the Board.

8 “(k) SUBMISSION OF BUDGET TO CONGRESS.—The
9 Board shall prepare and submit to the President, and, at
10 the same time, to the appropriate committees of Congress,
11 an annual budget of the expenses and other items relating
12 to the Board which shall be included as a separate item
13 in the budget required to be transmitted to Congress
14 under section 1105 of title 31, United States Code.

15 “(l) SUBMISSION OF LEGISLATIVE RECOMMENDA-
16 TIONS.—The Board may submit to the President, and, at
17 the same time, shall submit to each House of Congress,
18 any legislative recommendations of the Board relating to
19 any of its functions under this part or any other provision
20 of law.

21 **“SEC. 261. EXECUTIVE DIRECTOR.**

22 “(a) APPOINTMENT OF EXECUTIVE DIRECTOR.—The
23 Board shall appoint, without regard to the provisions of
24 law governing appointments in the competitive service, an

1 Executive Director by action agreed to by a majority of
2 the members of the Board.

3 “(b) DUTIES.—The Executive Director shall, as de-
4 termined appropriate by the Board—

5 “(1) carry out the policies established by the
6 Board;

7 “(2) invest and manage the Tier I Investment
8 Fund and the Tier II Investment Fund in accord-
9 ance with the investment policies and other policies
10 established by the Board;

11 “(3) administer the provisions of this part re-
12 lating to the Tier I Investment Fund and the Tier
13 II Investment Fund; and

14 “(4) prescribe such regulations (other than reg-
15 ulations relating to fiduciary responsibilities) as may
16 be necessary for the administration of this part re-
17 lating to the Tier I Investment Fund and the Tier
18 II Investment Fund.

19 “(c) ADMINISTRATIVE AUTHORITY.—The Executive
20 Director may, within the scope of the duties of the Execu-
21 tive Director as determined by the Board—

22 “(1) appoint such personnel as may be nec-
23 essary to carry out the provisions of this part relat-
24 ing to the Tier I Investment Fund and the Tier II
25 Investment Fund;

1 “(2) subject to approval by the Board, procure
2 the services of experts and consultants under section
3 3109 of title 5, United States Code;

4 “(3) secure directly from an Executive agency,
5 the United States Postal Service, or the Postal Rate
6 Commission any information necessary to carry out
7 the provisions of this part and the policies of the
8 Board relating to the Tier I Investment Fund and
9 the Tier II Investment Fund;

10 “(4) make such payments out of sums in the
11 Tier I Investment Fund and the Tier II Investment
12 Fund as the Executive Director determines, in ac-
13 cordance with regulations of the Board, are nec-
14 essary to carry out the provisions of this part and
15 the policies of the Board;

16 “(5) pay the compensation, per diem, and travel
17 expenses of individuals appointed under paragraphs
18 (1), (2), and (6) from the Tier I Investment Fund
19 or the Tier II Investment Fund, in accordance with
20 regulations of the Board;

21 “(6) accept and use the services of individuals
22 employed intermittently in the Government service
23 and reimburse such individuals for travel expenses,
24 authorized by section 5703 of title 5, United States

1 Code, including per diem as authorized by section
2 5702 of such title;

3 “(7) except as otherwise expressly prohibited by
4 law or the policies of the Board, delegate any of the
5 Executive Director’s functions to such employees
6 under the Board as the Executive Director may des-
7 ignate and authorize such successive redelegations of
8 such functions to such employees under the Board
9 as the Executive Director may consider to be nec-
10 essary or appropriate; and

11 “(8) take such other actions as are appropriate
12 to carry out the functions of the Executive Direc-
13 tor.”.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply with respect to wages paid after
16 December 31, 2011, for pay periods ending after such
17 date and self-employment income for taxable years begin-
18 ning after such date.

19 **SEC. 403. MONTHLY INSURANCE BENEFITS FOR PARTICI-**
20 **PATING INDIVIDUALS.**

21 Section 202 of the Social Security Act (42 U.S.C.
22 402) is amended by adding at the end the following new
23 subsection:

1 “Benefits for Participants Under Part B

2 “(z)(1) Notwithstanding the preceding provisions of
3 this section—

4 “(A) a participating individual under the Per-
5 sonal Social Security Savings Program under part B
6 shall not be entitled to old-age insurance benefits
7 under subsection (a); and

8 “(B) except as provided in paragraph (2), no
9 individual shall be entitled to benefits under this sec-
10 tion on the basis of the wages and self-employment
11 income of such a participating individual.

12 “(2) In the case of any such participating individual
13 who dies before such individual purchases a personal social
14 security savings annuity under section 258, paragraph
15 (1)(B) shall not apply with respect to child’s insurance
16 benefits under subsection (d), widow’s insurance benefits
17 under subsection (e), widower’s insurance benefits under
18 subsection (f), mother’s and father’s insurance benefits
19 under subsection (g), and parent’s insurance benefits
20 under subsection (h).”.

21 **SEC. 404. TAX TREATMENT OF ACCOUNTS.**

22 (a) IN GENERAL.—

23 (1) IN GENERAL.—Subchapter F of chapter 1
24 of the Internal Revenue Code of 1986 (relating to

1 exempt organizations) is amended by adding at the
2 end the following new part:

3 **“PART IX—PERSONAL SOCIAL SECURITY**
4 **SAVINGS PROGRAM**

“Sec. 530A. Personal social security savings program.

5 **“SEC. 530A. PERSONAL SOCIAL SECURITY SAVINGS PRO-**
6 **GRAM.**

7 “(a) GENERAL RULE.—The Social Security Personal
8 Savings Fund and each Tier III Investment Option are
9 exempt from taxation under this subtitle. Notwithstanding
10 the preceding sentence, sums in a personal social security
11 savings account which are attributable to a Tier III Op-
12 tion shall be subject to the taxes imposed by section 511
13 (relating to imposition of tax on unrelated business income
14 of charitable, etc. organizations).

15 “(b) DISTRIBUTIONS.—

16 “(1) IN GENERAL.—Any qualified distribution
17 from—

18 “(A) amounts credited to a personal social
19 security savings account from the Social Secu-
20 rity Personal Savings Fund or attributable to a
21 Tier III Investment Option, or

22 “(B) a personal social security savings an-
23 nuity,

1 shall not be included in the gross income of the dis-
2 tributee.

3 “(2) QUALIFIED DISTRIBUTION.—For purposes
4 of paragraph (1), the term ‘qualified distribution’
5 means a distribution which meets the requirements
6 of section 258 of the Social Security Act and which
7 is not a guaranty payment (as defined by section
8 259 of such Act).

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

10 “(1) PERSONAL SOCIAL SECURITY SAVINGS AC-
11 COUNT.—The term ‘personal social security savings
12 account’ means an account established under section
13 254(a) of the Social Security Act.

14 “(2) PERSONAL SOCIAL SECURITY SAVINGS AN-
15 NUIITY.—The term ‘personal social security savings
16 annuity’ means an annuity approved by the Personal
17 Social Security Savings Board under section
18 258(b)(3) of the Social Security Act.

19 “(3) SOCIAL SECURITY PERSONAL SAVINGS
20 FUND.—The term ‘Social Security Personal Savings
21 Fund’ means the Savings Fund established under
22 section 252 of the Social Security Act.

23 “(4) TIER III INVESTMENT OPTION.—The term
24 ‘Tier III Investment Option’ has the meaning given

1 such term by section 251(9) of the Social Security
2 Act.

3 “(d) ESTATE TAX TREATMENT.—No amount shall be
4 includible in the gross estate of any individual for pur-
5 poses of chapter 11 by reason of an interest in the Tier
6 I Investment Fund or the Tier II Investment Fund of the
7 Savings Fund or held under a Tier III Investment Option
8 and which is credited to the personal social security sav-
9 ings account of the individual.”.

10 (2) CONFORMING AMENDMENT.—Section
11 86(d)(1)(A) of such Code is amended by inserting
12 “part A of” after “under”.

13 (3) CLERICAL AMENDMENT.—The table of
14 parts for subchapter F of chapter 1 of such Code is
15 amended by adding after the item relating to part
16 VIII the following new item:

“PART IX. PERSONAL SOCIAL SECURITY SAVINGS PROGRAM.”.

17 (b) GUARANTY PAYMENTS.—Paragraph (1) of sec-
18 tion 86(d) of the Internal Revenue Act of 1986, as amend-
19 ed by subsection (a)(2), is amended by striking “or” at
20 the end of subparagraph (A), by striking the period and
21 inserting “, or” at the end of subparagraph (B), and by
22 adding at the end the following new subparagraph:

23 “(C) a guaranty payment under section
24 259(a), and a payment of an additional amount

1 members of the Personal Social Security Savings
2 Board.

3 “(2) DUTIES.—The Board of Trustees shall—

4 “(A) provide for the issuance of obligations
5 by the Transition Fund pursuant to subsection
6 (c),

7 “(B) provide for the receipt and manage-
8 ment of amounts paid into the Transition Fund
9 pursuant to subsection (d),

10 “(C) use all funds paid into the Transition
11 Fund to redeem obligations issued under sub-
12 section (c) as soon as practicable,

13 “(D) report to Congress not later than the
14 first day of April of each year on the operation
15 and status of the Transition Fund during the
16 preceding fiscal year and on its expected oper-
17 ation and status during the current fiscal year
18 and the next 2 fiscal years, and

19 “(E) review the general policies followed in
20 managing the Transition Fund, and recommend
21 changes in such policies, including necessary
22 changes in the provisions of law which govern
23 the way in which the Transition Fund is to be
24 managed.

1 “(3) MEETINGS.—The Board of Trustees shall
2 meet not less frequently than once each calendar
3 year.

4 “(c) ISSUANCE OF TRANSITION FUND BONDS.—

5 “(1) ISSUANCE.—

6 “(A) IN GENERAL.—The purposes for
7 which obligations of the United States may be
8 issued under chapter 31 of title 31, United
9 States Code, are hereby extended to authorize
10 the issuance at par of public-debt obligations by
11 the Transition Fund.

12 “(B) REQUIRED ISSUANCE.—Beginning on
13 January 1, 2012, whenever any obligation held
14 in the Federal Old-Age and Survivors Insurance
15 Trust Fund or the Federal Disability Insurance
16 Trust Fund is repaid from the general fund of
17 the Treasury to either of such Trust Funds, the
18 Transition Fund shall issue an obligation under
19 this subsection in an amount equal to the
20 amount of interest and principal so repaid.

21 “(C) TRANSFER OF PROCEEDS TO GEN-
22 ERAL FUND OF THE TREASURY.—Proceeds
23 from the issuance of any obligation issued
24 under this section shall be transferred to the
25 general fund of the Treasury.

1 “(D) ACCOUNTING.—The debt owed on
2 any obligation issued under this section shall be
3 considered to be debt of the Transition Fund
4 and shall be accounted for in such manner.

5 “(2) MATURITIES AND INTEREST RATE.—Such
6 obligations issued by the Transition Fund for pur-
7 chase by the public shall have maturities fixed with
8 due regard for the needs of the Transition Fund and
9 shall bear interest at a rate equal to the average
10 market yield (computed by the Secretary of the
11 Treasury on the basis of market quotations as of the
12 end of the calendar month next preceding the date
13 of such issue) on all marketable interest-bearing ob-
14 ligations of the United States then forming a part
15 of the public debt which are not due or callable until
16 after the expiration of 4 years from the end of such
17 calendar month, except that where such average
18 market yield is not a multiple of one-eighth of 1 per
19 centum, the rate of interest on such obligations shall
20 be the multiple of one-eighth of 1 per centum near-
21 est such market yield.

22 “(3) REPAYMENT OF OBLIGATIONS.—Obliga-
23 tions issued under this subsection may be redeemed
24 only by funds in the Transition Fund.

25 “(d) DEPOSIT OF OASDI TRUST FUND SURPLUS.—

1 “(1) IN GENERAL.—In advance of the initial re-
2 payment from the general fund of the Treasury de-
3 scribed in subsection (c)(1)(B), the Chief Actuary of
4 the Social Security Administration shall certify to
5 the Secretary of the Treasury the date of such re-
6 payment. There are appropriated to the Transition
7 Fund for the fiscal year during which such date oc-
8 curs, and for each fiscal year thereafter, out of any
9 moneys in the Federal Old-Age and Survivors Insur-
10 ance Trust Fund, amounts equivalent to the OASDI
11 trust fund surplus (as defined in paragraph (2)) for
12 the preceding fiscal year.

13 “(2) TRANSFERS BASED ON ESTIMATES.—The
14 amounts appropriated by paragraph (1) shall be
15 transferred from time to time from the Federal Old-
16 Age and Survivors Insurance Trust Fund to the
17 Transition Fund, such amounts to be determined on
18 the basis of estimates by the Commissioner of Social
19 Security. Proper adjustments shall be made in
20 amounts subsequently transferred to the extent prior
21 estimates were in excess of or were less than such
22 surplus.

23 “(3) OASDI TRUST FUND SURPLUS DE-
24 FINED.—In this section, the term ‘OASDI trust
25 fund surplus’ for a fiscal year means the dollar

1 amount by which the Federal Old-Age and Survivors
2 Insurance Trust Fund could be reduced as of the
3 end of such fiscal year so as to result in an OASDI
4 trust fund ratio (as defined in section 201(p)(4)) for
5 such fiscal year equal to 125 percent.

6 “(4) RULE OF CONSTRUCTION.—This section
7 shall not be construed to require redemption of obli-
8 gations of the Trust Fund for the purpose of mak-
9 ing transfers to the Transition Fund under this sec-
10 tion or for any other purpose other than to provide
11 for payment of benefits under part A of title II of
12 the Social Security Act.

13 “(e) REDEMPTION OF OBLIGATIONS UPON DEPOSIT
14 OF FUNDS.—Obligations issued under subsection (c) may
15 be redeemed only by funds in the Transition Fund. The
16 Board of Trustees shall provide for the redemption of such
17 obligations as soon as possible with funds deposited into
18 the Transition Fund pursuant to subsection (d).

19 “(f) SUNSET.—On the first date as of which all of
20 the obligations issued under subsection (c) have been re-
21 deemed, any balance remaining in the Transition Fund
22 as of such date shall be deposited in the Federal Old-Age
23 and Survivors Insurance Trust Fund, the terms of the
24 Board of Trustees shall end, the Transition Fund shall
25 cease to exist, and this section shall be repealed.”.

1 **SEC. 406. BUDGETARY TREATMENT OF SOCIAL SECURITY.**

2 (a) IN GENERAL.—Section 710 of the Social Security
3 Act (42 U.S.C. 911) is amended to read as follows:

4 “BUDGETARY TREATMENT OF SOCIAL SECURITY

5 “SEC. 710.

6 “Notwithstanding any other provision of law and ex-
7 cept as provided in subsection (b), the receipts and dis-
8 bursements shall be treated in the same manner as section
9 13301 of the Budget Enforcement Act of 1990.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to fiscal years begin-
12 ning on or after October 1, 2011.

13 **SEC. 407. ACCOUNTING FOR THE OLD-AGE, SURVIVORS,**
14 **AND DISABILITY INSURANCE PROGRAM AND**
15 **THE PERSONAL SOCIAL SECURITY SAVINGS**
16 **PROGRAM.**

17 Title VII of the Social Security Act is amended by
18 inserting after section 705 (42 U.S.C. 906) the following
19 new section:

20 “ACCOUNTING FOR THE OLD-AGE, SURVIVORS, AND DIS-
21 ABILITY INSURANCE PROGRAM AND THE PERSONAL
22 SOCIAL SECURITY SAVINGS PROGRAM

23 “Social Security Lockbox Budget

24 “SEC. 706. (a) At the time of the transmittal to the
25 Congress by the President of the budget of the United
26 States Government, the President shall transmit to each

1 House of the Congress a separate report (to be known as
2 the ‘Social Security Lockbox Budget’) detailing the per-
3 formance during the preceding fiscal year of each of the
4 accounts established under subsection (b). Such report
5 shall set forth, as determined as of the end of the year—

6 “(1) the amount of the balance of each account,

7 “(2) the amount of the total charges and the
8 amount of the total credits to each account for the
9 year, and

10 “(3) the amount of the total for the year of
11 each category of charges and credits itemized in sub-
12 section (b).

13 “Establishment of Accounts

14 “(b) For purposes of accounting for certain receipts
15 and disbursement of the Treasury of the United States
16 in connection with the Old-Age, Survivors, and Disability
17 Insurance Program under part A of title II of the Social
18 Security Act and the Personal Security Savings Program
19 under part B of such title, the Secretary of the Treasury
20 shall establish and maintain a Social Security Part A Ac-
21 count, a Social Security Part B Account, and a Self-Liqui-
22 dating Social Security Transition Fund Account.

1 “Credits and Charges to the Social Security Part A
2 Account

3 “(c)(1) For each fiscal year, the Social Security Part
4 A Account shall be credited with the sum of—

5 “(A) all receipts during the year by the Federal
6 Old-Age and Survivors Insurance Trust Fund and
7 the Federal Disability Insurance Trust Fund under
8 section 201 (including amounts received as interest
9 on notes and obligations purchased by the Trust
10 Funds under section 201(d) of such Act, and exclud-
11 ing amounts received in redemption of such notes
12 and obligations and amounts received by either such
13 Trust Fund as transfers from the other such Trust
14 Fund), and

15 “(B) all receipts during the year by the Federal
16 Old-Age and Survivors Insurance Trust Fund and
17 the Federal Disability Insurance Trust Fund under
18 section 121(e) of the Social Security Amendments of
19 1983 (relating to appropriation of amounts equiva-
20 lent to taxes on social security benefits) (42 U.S.C.
21 401 note).

22 “(2) For each fiscal year, the Social Security Part
23 A Account shall be charged with the sum of—

24 “(A) all benefits paid during the year from the
25 Federal Old-Age and Survivors Insurance Trust

1 Fund and the Federal Disability Insurance Trust
2 Fund under part A of title II of the Social Security
3 Act,

4 “(B) all redirected social security contributions
5 transferred during the year to the Social Security
6 Personal Savings Fund under section 252(b),

7 “(C) all other expenditures during the year
8 from the Trust Funds under part A of title II (ex-
9 cluding amounts expended as transfers by either
10 such Trust Fund to the other such Trust Fund and
11 amounts paid for the purchase of notes and obliga-
12 tions under section 201(d)), and

13 “(D) all transfers from the Federal Old-Age
14 and Survivors Insurance Trust Fund to the Self-Liq-
15 uidating Social Security Transition Fund under sec-
16 tion 262(d).

17 “Charges and Credits to the Social Security Part B
18 Account

19 “(d)(1) For each fiscal year, the Social Security Part
20 B Account shall be credited with—

21 “(A) all redirected social security contributions
22 transferred during the year to the Personal Social
23 Security Savings Fund under section 252(b) of the
24 Social Security Act, and

1 “(B) any net increase in the Tier I Investment
2 Fund attributable to investment for the fiscal year,
3 any net increase in the Tier II Investment Fund at-
4 tributable to investment for the fiscal year, and the
5 total amount of any net increases in Tier III Invest-
6 ment Options attributable to investment for the fis-
7 cal year.

8 “(2) For each fiscal year, the Social Security Part
9 B Account shall be charged with—

10 “(A) all administrative costs incurred for the
11 fiscal year with respect to the Tier I Investment
12 Fund, the Tier II Investment Fund, and the Tier III
13 Investment Options,

14 “(B) any net decrease in the Tier I Investment
15 Fund attributable to investment for the fiscal year,
16 any net decrease in the Tier II Investment Fund at-
17 tributable to investment for the fiscal year, and the
18 total amount of any net decreases in Tier III Invest-
19 ment Options attributable to investment for the fis-
20 cal year, and

21 “(C) annuity payments made during the year
22 under section 258 from the Annuity Reserve Ac-
23 count in the Savings Fund.

1 “Charges and Credits to the Self-Liquidating Social
2 Security Transition Fund Account

3 “(e)(1) For each fiscal year, the Self-Liquidating So-
4 cial Security Transition Account shall be credited with—

5 “(A) all transfers to the Transition Fund from
6 the Federal Old-Age and Survivors Insurance Trust
7 Fund under section 262(b), and

8 “(B) all amounts expended during the fiscal
9 year from the Trust Funds in the redemption under
10 section 262(e) of obligations issued by the Transi-
11 tion fund under section 262(e).

12 “(2) For each fiscal year, the Self-Liquidating Social
13 Security Transition Fund Account shall be charged with
14 the total amount of obligations issued during the fiscal
15 year by the Transition Fund under section 262(e)”.

16 **SEC. 408. PROGRESSIVE INDEXING OF BENEFITS FOR OLD-**
17 **AGE, WIFE’S, AND HUSBAND’S INSURANCE**
18 **BENEFITS.**

19 (a) IN GENERAL.—Section 215(a) of the Social Secu-
20 rity Act (42 U.S.C. 415(a)) is amended—

21 (1) by striking “The” in paragraph (1)(A) and
22 inserting “In the case of any benefit other than an
23 applicable benefit to which paragraph (2) applies,
24 the”, and

1 (2) by redesignating paragraphs (2) through
2 (7) as paragraphs (3) through (8), respectively, and
3 by inserting after paragraph (1) the following new
4 paragraph:

5 “(2)(A) In the case of an applicable benefit with re-
6 spect to any individual who initially becomes eligible for
7 old-age insurance benefits or who dies (before becoming
8 eligible for such benefits) in calendar year 2018 or later,
9 the primary insurance amount of the individual shall be
10 equal to the sum of—

11 “(i) 90 percent of the individual’s average in-
12 dexed monthly earning (determined under subsection
13 (b)) to the extent that such earnings do not exceed
14 the amount established for purposes of paragraph
15 (1)(A)(i) by paragraph (1)(B);

16 “(ii) 32 percent of the individual’s average in-
17 dexed monthly earnings to the extent that such
18 earnings exceed the amount established for purposes
19 of paragraph (1)(A)(i) by paragraph (1)(B) but do
20 not exceed the amount established for purposes of
21 this clause by subparagraph (B);

22 “(iii) 32 percent (reduced as provided in sub-
23 paragraph (C)) of the individual’s average indexed
24 monthly earnings to the extent that such earnings
25 exceed the amount established for purposes of clause

1 (ii) but do not exceed the amount established for
2 purposes of paragraph (1)(A)(ii) by paragraph
3 (1)(B); and

4 “(iv) 15 percent (reduced as provided in sub-
5 paragraph (C)) of the individual’s average indexed
6 monthly earnings to the extent that such earnings
7 exceed the amount established for purposes of para-
8 graph (1)(A)(ii) by paragraph (1)(B).

9 “(B)(i) For purposes of subparagraph (A)(ii), the
10 amount established under this subparagraph for calendar
11 year 2016 shall be the level of average indexed monthly
12 earnings determined by the Chief Actuary of the Social
13 Security Administration under clause (ii) as being at the
14 30th percentile for the period of calendar years 2007
15 through 2009.

16 “(ii) For purposes of clause (i), the average indexed
17 monthly earnings for the period of calendar years 2007
18 through 2009 shall be determined by—

19 “(I) determining the average indexed monthly
20 earnings for each individual who initially became eli-
21 gible for old-age insurance benefits or who died (be-
22 fore becoming eligible for such benefits) during such
23 period, except that in determining such average in-
24 dexed monthly earnings under subsection (b), sub-
25 section (b)(3)(A)(ii)(I) shall be applied by sub-

1 stituting calendar year 2004 for the second calendar
2 year described in such subsection; and

3 “(II) multiplying the amount determined for
4 each individual under subclause (I) by the quotient
5 obtained by dividing the national average wage index
6 (as defined in section 209(k)(1)) for the calendar
7 year 2016 by such index for the calendar year 2004.

8 “(iii) For purposes of subparagraph (A)(ii), the
9 amount established under this subparagraph for any cal-
10 endar year after 2018 shall be equal to the product of
11 the amount in effect under clause (i) with respect to cal-
12 endar year 2018 and the quotient obtained by dividing—

13 “(I) the national average wage index (as de-
14 fined in section 209(k)(1)) for the second calendar
15 year preceding the calendar year for which the de-
16 termination is being made, by

17 “(II) the national average wage index (as so de-
18 fined) for 2016.

19 “(iv) The amount established under this subpara-
20 graph for any calendar year shall be rounded to the near-
21 est \$1, except that any amount so established which is
22 a multiple of \$0.50 but not of \$1 shall be rounded to the
23 next higher \$1.

24 “(C)(i) Except as provided in clause (ii), in the case
25 of any calendar year after 2017, each of the percentages

1 to which this subparagraph applies by reason of clauses
2 (iii) or (iv) of subparagraph (A) shall be a percentage
3 equal to such percentage multiplied by the quotient ob-
4 tained by dividing—

5 “(I) the difference of the maximum CPI-in-
6 dexed benefit amount for such year over the amount
7 determined under this paragraph for an individual
8 whose average indexed monthly earnings are equal
9 to the amount established for purposes of subpara-
10 graph (A)(ii) for such year, by

11 “(II) the difference of the maximum wage-in-
12 dexed benefit amount for such year over the amount
13 determined under this paragraph for an individual
14 whose average indexed monthly earnings are equal
15 to the amount established for purposes of subpara-
16 graph (A)(ii) for such year.

17 “(ii)(I) In the case of any calendar year which is a
18 positive balance year, clause (i) shall not apply and each
19 of the percentages to which this subparagraph applies by
20 reason of clause (iii) or (iv) of subparagraph (B) shall be
21 a percentage equal to the percentage determined under
22 this subparagraph for the preceding year (determined
23 after the application of this subparagraph).

24 “(II) In the case of any calendar year after a positive
25 balance year which is not a positive balance year, this sub-

1 paragraph shall be applied by substituting ‘the second cal-
2 endar year preceding the most recent positive balance
3 year’ for ‘2015’ each place it appears in clause (iv).

4 “(iii) For purposes of clause (i), the maximum wage-
5 indexed benefit amount for any calendar year shall be
6 equal to the amount determined under this paragraph (de-
7 termined without regard to any reduction under this sub-
8 paragraph) for an individual with wages paid in and self-
9 employment income credited to each computation base
10 year in an amount equal to the contribution and benefit
11 base for each calendar year.

12 “(iv) For purposes of clause (i), the maximum CPI-
13 indexed benefit amount for any calendar year shall be an
14 amount equal to the amount determined under clause (iii)
15 for such year multiplied by a fraction—

16 “(I) the numerator of which is the ratio (round-
17 ed to the nearest one-thousandth of 1 percent) of
18 the Consumer Price Index for the second preceding
19 year to such index for 2015; and

20 “(II) the denominator of which is the ratio
21 (rounded to the nearest one-thousandth of 1 per-
22 cent) of the national wage index (as defined in sec-
23 tion 209(k)(1)) for the second year preceding such
24 year to such index for 2015.

1 “(v)(I) For purposes of this subparagraph, a positive
2 balance year is a calendar year following any calendar year
3 after 2082 for which the Chief Actuary of the Social Secu-
4 rity Administration certifies to the Secretary of the Treas-
5 ury and the Congress that the combined balance ratio of
6 the Federal Old-Age and Survivors Trust Fund and the
7 Federal Disability Insurance Trust Fund is not less than
8 100 percent for such year.

9 “(II) For purposes of subclause (I), the combined
10 balance ratio of the Federal Old-Age and Survivors Trust
11 Fund and the Federal Disability Insurance Trust Fund
12 for any calendar year is the ratio of the combined balance
13 of such Trust Funds as of the last day of such calendar
14 year (reduced by any transfer made pursuant to section
15 201(o) in such calendar year) to the amount estimated
16 by the Commissioner of Social Security under section
17 201(l)(3)(B)(iii)(II) to be paid from such Trust Funds
18 during the calendar year following such calendar year for
19 all purposes authorized by section 201 (determined as if
20 such following calendar year were a positive balance year).

21 “(D) For purposes of this paragraph, rules similar
22 to the rules of subparagraphs (C) and (D) of paragraph
23 (1) shall apply.

1 “(E) For purposes of this paragraph, the term ‘appli-
2 cable benefit’ means any benefit under section 202 other
3 than—

4 “(i) a child’s insurance benefit under section
5 202(d) with respect to a child of an individual who
6 has died;

7 “(ii) a widow’s insurance benefit under section
8 202(e) with respect to a widow who has not attained
9 age 60 and is under a disability (as defined in sec-
10 tion 223(d)) which began before the end of the pe-
11 riod specified in section 202(e)(4);

12 “(iii) a widower’s insurance benefit under sec-
13 tion 202(f) with respect to a widower who has not
14 attained age 60 and is under a disability (as defined
15 in section 223(d)) which began before the end of the
16 period specified in section 202(f)(4); and

17 “(iv) a mother’s and father’s insurance benefit
18 under section 202(g).”.

19 (b) TREATMENT OF DISABLED BENEFICIARIES.—
20 Section 215(a) of such Act (as amended by subsection (a))
21 is amended further by adding at the end the following new
22 paragraph:

23 “(9)(A) Notwithstanding the preceding provisions of
24 this subsection, in the case of an individual who has or
25 has had a period of disability and who initially becomes

1 eligible for old-age insurance benefits or who dies (before
2 becoming eligible for such benefits) in any calendar year
3 in or after 2018, the primary insurance amount of such
4 individual shall be the sum of—

5 “(i) the amount determined under subpara-
6 graph (B); and

7 “(ii) the product derived by multiplying—

8 “(I) the excess of the amount determined
9 under subparagraph (C) over the amount deter-
10 mined under subparagraph (B), by

11 “(II) the adjustment factor for such indi-
12 vidual determined under subparagraph (D).

13 “(B) The amount determined under this subpara-
14 graph is the amount of such individual’s primary insur-
15 ance amount as determined under this section without re-
16 gard to this paragraph.

17 “(C) The amount determined under this subpara-
18 graph is the amount of such individual’s primary insur-
19 ance amount as determined under this section as in effect
20 with respect to individuals becoming eligible for old-age
21 or disability insurance benefits under section 202(a) on
22 the date of the enactment of the Social Security Personal
23 Savings Guarantee and Prosperity Act of 2010.

1 “(D) The adjustment factor determined under this
2 subparagraph for any individual is the ratio (not greater
3 than 1) of—

4 “(i) the total number of months during which
5 such individual is under a disability (as defined in
6 section 223(d)) during the period beginning on the
7 date the individual attains age 22 and ending on the
8 first day of such individual’s first month of eligibility
9 for old-age insurance benefits under section 202(a)
10 (or, if earlier, the month of such individual’s death),
11 to

12 “(ii) the number of months during the period
13 beginning on the date the individual attains age 22
14 and ending on the first day of such individual’s first
15 month of eligibility for old-age insurance benefits
16 under section 202(a) (or, if earlier, the month of
17 such individual’s death).”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Subsections (e)(2)(B)(i)(I) and
20 (f)(2)(B)(i)(I) of section 202 of the Social Security
21 Act are each amended by inserting “or section
22 215(a)(2)(B)(iii)” after “section 215(a)(1)(B)(i) and
23 (ii)”.

24 (2) Section 203(a)(10) of such Act is amend-
25 ed—

1 (A) in subparagraph (A)(i), by striking
2 “215(a)(2)(B)(i)” and inserting
3 “215(a)(3)(B)(i)”;

4 (B) in subparagraph (A)(ii), by striking
5 “215(a)(2)(C)” and inserting “215(a)(3)(C)”;
6 and

7 (C) in subparagraph (B)(ii), by striking
8 “215(a)(2)” and inserting “215(a)(3)”.

9 (3) Section 209(k)(1) of such Act is amended
10 by inserting “215(a)(2)(B), 215(a)(2)(C),” after
11 “215(a)(1)(D),”.

12 (4) Section 215(a) of such Act is amended—

13 (A) in paragraph (4)(A), as redesignated
14 by paragraph (2), by striking “paragraph (4)”
15 and inserting “paragraph (5)”;

16 (B) in paragraph (4)(B), as redesignated
17 by paragraph (2), by striking “paragraph
18 (2)(A)” and inserting “paragraph (3)(A)”;

19 (C) in paragraph (5), as redesignated by
20 paragraph (2), by striking “paragraph (3)(A)”
21 and inserting “paragraph (4)(A)”;

22 (D) in paragraph (6)(A), as redesignated
23 by paragraph (2), by striking “paragraph
24 (4)(B)” and inserting “paragraph (5)(B)”;

1 (E) in paragraph (8)(B)(ii)(I), as redesignig-
2 nated by paragraph (2), by striking “paragraph
3 (3)(B)” and inserting “paragraph (4)(B)”.

4 (5) Section 215(d)(3) of such Act is amended—

5 (A) by striking “paragraph (4)(B)(ii)” and
6 inserting “paragraph (5)(B)(ii)”; and

7 (B) by striking “subsection (a)(7)(C)” and
8 inserting “subsection (a)(8)(C)”.

9 (6) Subsection 215(f) of such Act is amended—

10 (A) in paragraph (2)(B), by striking “sub-
11 section (a)(4)(B)” and inserting “subsection
12 (a)(5)(B)”;

13 (B) in paragraph (7), by striking “sub-
14 section (a)(4)(B)” and inserting “subsection
15 (a)(5)(B)”, and by striking “subsection (a)(6)”
16 and inserting “subsection (a)(7)”;

17 (C) in paragraph (9)(A)—

18 (i) by striking “subsection (a)(7)(A)”
19 and inserting “subsection (a)(8)(A)”; and

20 (ii) by striking “subsection (a)(7)(C)”
21 and inserting “subsection (a)(8)(C)”; and

22 (D) in paragraph (9)(B), by striking “sub-
23 section (a)(7)” each place it appears and insert-
24 ing “subsection (a)(8)”.

1 **SEC. 409. ADJUSTMENTS TO SCHEDULE FOR INCREASES IN**
2 **NORMAL RETIREMENT AGE.**

3 (a) COMPLETION OF PHASE-IN OF NORMAL RETIRE-
4 MENT AGE TO AGE 67 BY 2021.—

5 (1) IN GENERAL.—Section 216(l) of the Social
6 Security Act (42 U.S.C. 416(l)) is amended—

7 (A) in paragraph (1)(C), by striking
8 “2017” and inserting “2016”;

9 (B) in paragraph (1)(D), by striking
10 “2016” and inserting “2015”, and by striking
11 “2022” and inserting “2021”;

12 (C) in paragraph (1)(E), by striking
13 “2021” and inserting “2020”; and

14 (D) in paragraph (3)(B), by striking
15 “2017” and inserting “2016”, by striking
16 “2021” and inserting “2020”, and by striking
17 “2017” and inserting “2016”.

18 (2) MAINTENANCE OF CURRENT LAW FOR INDIV-
19 IDUALS BORN PRIOR TO JANUARY 1, 1956.—Section
20 216(l)(3) of such Act (as amended by paragraph
21 (1)(D)) is amended—

22 (A) by redesignating subparagraphs (A)
23 and (B) as clauses (i) and (ii), respectively;

24 (B) by inserting “(A)” after “(3)”; and

25 (C) by adding at the end the following new
26 subparagraph:

1 “(B) Notwithstanding the preceding provisions of
2 this subsection—

3 “(i) with respect to an individual who attains
4 early retirement age after December 31, 2015, and
5 before January 1, 2017, the age increase factor
6 under subparagraph (A)(ii) shall not be applied; and

7 “(ii) with respect to an individual who attains
8 early retirement age after December 31, 2016, and
9 before January 1, 2018, the age increase factor
10 under subparagraph (A)(ii) shall be 2 months.”.

11 (b) ADJUSTMENTS TO NORMAL RETIREMENT AGE
12 AFTER 2021.—Section 216(l) of such Act (as amended
13 by subsection (a)) is amended—

14 (1) in paragraph (1)(E), by inserting “and be-
15 fore January 1, 2022,” after “2020,” and by strik-
16 ing “age.” and inserting “age; and” ;

17 (2) in paragraph (1), by adding after subpara-
18 graph (E) the following new subparagraph:

19 “(F) with respect to an individual who attains
20 early retirement age after December 31, 2121, 67
21 years of age plus the number of months in the age
22 increase factor (as determined under paragraph (3))
23 for the calendar year in which such individual at-
24 tains early retirement age.”; and

1 **SEC. 502. REPEAL OF ALTERNATIVE MINIMUM TAX FOR**
2 **NONCORPORATE TAXPAYERS.**

3 (a) IN GENERAL.—Section 55(a) of the Internal Rev-
4 enue Code of 1986 (relating to alternative minimum tax
5 imposed) is amended by adding at the end the following
6 new flush sentence:
7 “In the case of a taxpayer other than a corporation, no
8 tax shall be imposed by this section for any taxable year
9 beginning after December 31, 2010, and the tentative
10 minimum tax of any taxpayer other than a corporation
11 for any such taxable year shall be zero for purposes of
12 this title.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 26(e) of such Code is amended by
15 striking “the term ‘tentative minimum tax’ means
16 the amount determined under section 55(b)(1)” and
17 inserting “the tentative minimum tax is zero.”.

18 (2) Section 911(f)(2) of such Code is amended
19 to read as follows:

20 “(2) the tentative minimum tax under section
21 55 for the taxable year shall be zero.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2010.

1 **SEC. 503. SIMPLIFIED INCOME TAX SYSTEM.**

2 (a) IN GENERAL.—Part I of subchapter A of chapter
3 1 of the Internal Revenue Code of 1986 (relating to tax
4 on individuals) is amended by redesignating section 5 as
5 section 6 and by inserting after section 4 the following
6 new section:

7 **“SEC. 5. SIMPLIFIED INCOME TAX SYSTEM.**

8 “(a) ELECTION.—

9 “(1) IN GENERAL.—A taxpayer other than a
10 corporation may elect in accordance with this sub-
11 section to be subject to the tax imposed by this sec-
12 tion in lieu of the tax imposed by section 1 for a tax-
13 able year and all subsequent taxable years.

14 “(2) EFFECT OF ELECTION.—For purposes of
15 this title, if an election is in effect under paragraph
16 (1) for any taxable year, the tax imposed by this sec-
17 tion shall be treated as the tax imposed by section
18 1 for the taxable year and, except as provided by
19 sections 31 and 36, no amount shall be allowed as
20 a credit against such tax for the taxable year.

21 “(3) ELECTION.—

22 “(A) IN GENERAL.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii) of this subparagraph
25 and clauses (ii) and (iii) of subparagraph
26 (B), the election under paragraph (1) may

1 only be made with respect to any taxable
2 year beginning before January 1, 2021, on
3 a timely filed return for the first taxable
4 year for which the election applies.

5 “(ii) NEW TAXPAYERS.—In the case
6 of an individual with no tax liability under
7 this title before January 1, 2021, the elec-
8 tion under paragraph (1) may only be
9 made for the first taxable year beginning
10 after December 31, 2020, for which such
11 individual has tax liability under this title.

12 “(B) EFFECT OF ELECTION.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in clauses (ii) and (iii), the election
15 under paragraph (1), once made, shall be
16 irrevocable.

17 “(ii) ONE-TIME REVOCATION OF
18 ELECTION.—A taxpayer may revoke an
19 election under paragraph (1) for a taxable
20 year and all subsequent taxable years. The
21 preceding sentence shall not apply if the
22 taxpayer has made a revocation under such
23 sentence for any prior taxable year.

24 “(iii) FILING STATUS CHANGES DUE
25 TO MAJOR LIFE EVENTS.—In the case of

1 any major life event described in clause
 2 (iv), a taxpayer may make an election
 3 under paragraph (1) or revoke such an
 4 election under clause (ii). Any such election
 5 or revocation shall apply for the taxable
 6 year for which made and all subsequent
 7 taxable years until the taxpayer makes an
 8 election under the preceding sentence for
 9 any subsequent (and all succeeding) tax-
 10 able year.

11 “(iv) MAJOR LIFE EVENT.—For pur-
 12 poses of clause (iii), a major life event de-
 13 scribed in this clause is marriage, divorce,
 14 and death.

15 “(b) TAX IMPOSED.—

16 “(1) MARRIED INDIVIDUALS AND SURVIVING
 17 SPOUSES.—In the case of a taxpayer for whom an
 18 election under subsection (a) is in effect and who is
 19 a married individual (as defined in section 7703)
 20 who makes a single return jointly with his spouse
 21 under section 6013 or a surviving spouse (as defined
 22 in section 2(a)), there is hereby imposed on the al-
 23 ternative taxable income of such individual a tax de-
 24 termined in accordance with the following table:

“If taxable income is:	The tax is:
Not over \$100,000	10% of alternative taxable income.

“If taxable income is:	The tax is:
Over \$100,000	\$10,000, plus 25% of the excess over \$100,000.

1 “(2) UNMARRIED INDIVIDUALS (OTHER THAN
2 SURVIVING SPOUSES).—In the case of a taxpayer for
3 whom an election under subsection (a) is in effect
4 and who is not described in paragraph (1), there is
5 hereby imposed on the alternative taxable income of
6 such individual a tax determined in accordance with
7 the following table:

“If taxable income is:	The tax is:
Not over \$50,000	10% of alternative taxable income.
Over \$50,000	\$5,000, plus 25% of the excess over \$50,000.

8 “(c) ALTERNATIVE TAXABLE INCOME.—For pur-
9 poses of this section—

10 “(1) IN GENERAL.—The term ‘alternative tax-
11 able income’ means—

12 “(A) gross income,

13 “(B) the amount excluded from income
14 under section 139C for capital gains, dividends,
15 and interest, minus

16 “(C) the sum of—

17 “(i) the personal exemption,

18 “(ii) the dependent allowance, plus

19 “(iii) the alternative standard deduc-
20 tion.

1 “(2) PERSONAL EXEMPTION.—The personal ex-
2 emption is—

3 “(A) 200 percent of the dollar amount in
4 effect under subparagraph (B) in the case of—

5 “(i) a joint return, or

6 “(ii) a surviving spouse (as defined in
7 section 2(a)), and

8 “(B) \$3,500 in the case of an individual—

9 “(i) who is not married and is not a
10 surviving spouse, or

11 “(ii) who is a married individual filing
12 a separate return.

13 “(3) DEPENDENT ALLOWANCE.—The depend-
14 ent allowance is \$3,500 for each dependent (as de-
15 fined in section 152).

16 “(4) ALTERNATIVE STANDARD DEDUCTION.—
17 The alternative standard deduction means—

18 “(A) \$25,000 in the case of—

19 “(i) a joint return, or

20 “(ii) a surviving spouse (as defined in
21 section 2(a)), and

22 “(B) \$12,500 in the case of an indi-
23 vidual—

24 “(i) who is not married and is not a
25 surviving spouse, or

1 “(ii) who is a married individual filing
2 a separate return.

3 “(d) INFLATION ADJUSTMENTS.—

4 “(1) IN GENERAL.—In the case of any taxable
5 year beginning in a calendar year after 2011, each
6 of the dollar amounts for the rate brackets in sub-
7 section (b) and each of the dollar amounts in sub-
8 section (d)(2)(B), (d)(3), and (d)(4) shall be in-
9 creased by an amount equal to—

10 “(A) such dollar amount, multiplied by

11 “(B) the cost-of-living adjustment deter-
12 mined under section 1(f)(3) for the calendar
13 year in which the taxable year begins, by sub-
14 stituting ‘calendar year 2010’ for ‘calendar year
15 1992’ in subparagraph (B) thereof.

16 “(2) ROUNDING.—If any amount as adjusted
17 under clause (i) is not a multiple of \$100, such
18 amount shall be rounded to the nearest multiple of
19 \$100.”.

20 “(b) CONFORMING AMENDMENT.—The table of sec-
21 tions for part I of subchapter A of chapter 1 of such Code
22 is amended by striking the item relating to section 5 and
23 inserting after the item relating to section 4 the following:

“Sec. 5. Simplified income tax system.

“Sec. 6. Cross references relating to tax on individuals.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2010.

4 **SEC. 504. EXCLUSION FOR CAPITAL GAINS, DIVIDENDS,**
5 **AND INTEREST.**

6 (a) IN GENERAL.—Part III of subchapter B of chap-
7 ter 1 of the Internal Revenue Code of 1986 (relating to
8 items specifically excluded from gross income) is amended
9 by inserting after section 139C the following new section:
10 **“SEC. 139D. CAPITAL GAINS, DIVIDENDS, AND INTEREST.**

11 “(a) EXCLUSION.—Gross income does not include
12 amounts received by an individual as net capital gains,
13 qualified dividends, and interest.

14 “(b) QUALIFIED DIVIDENDS.—For purposes of this
15 section—

16 “(1) IN GENERAL.—The term ‘qualified divi-
17 dends’ means dividends received during the taxable
18 year from—

19 “(A) domestic corporations, and

20 “(B) qualified foreign corporations.

21 “(2) QUALIFIED FOREIGN CORPORATIONS.—

22 “(A) IN GENERAL.—Except as otherwise
23 provided in this paragraph, the term ‘qualified
24 foreign corporation’ means any foreign corpora-
25 tion if—

1 “(i) such corporation is incorporated
2 in a possession of the United States, or

3 “(ii) such corporation is eligible for
4 benefits of a comprehensive income tax
5 treaty with the United States which the
6 Secretary determines is satisfactory for
7 purposes of this paragraph and which in-
8 cludes an exchange of information pro-
9 gram.

10 “(B) DIVIDENDS ON STOCK READILY
11 TRADABLE ON UNITED STATES SECURITIES
12 MARKET.—A foreign corporation not otherwise
13 treated as a qualified foreign corporation under
14 subparagraph (A) shall be so treated with re-
15 spect to any dividend paid by such corporation
16 if the stock with respect to which such dividend
17 is paid is readily tradable on an established se-
18 curities market in the United States.

19 “(C) EXCLUSION OF DIVIDENDS OF CER-
20 TAIN FOREIGN CORPORATIONS.—Such term
21 shall not include any foreign corporation which
22 for the taxable year of the corporation in which
23 the dividend was paid, or the preceding taxable
24 year, is a passive foreign investment company
25 (as defined in section 1297).

1 “(3) SPECIAL RULE.—If a taxpayer to whom
2 this section applies receives, with respect to any
3 share of stock, qualified dividend income from 1 or
4 more dividends which are extraordinary dividends
5 (within the meaning of section 1059(c)), any loss on
6 the sale or exchange of such share shall, to the ex-
7 tent of such dividends, be treated as long-term cap-
8 ital loss.

9 “(c) INTEREST.—For purposes of this section, the
10 term ‘interest’ means—

11 “(1) interest on deposits with a bank (as de-
12 fined in section 581),

13 “(2) amounts (whether or not designated as in-
14 terest) paid, in respect to deposits, investment cer-
15 tificates, or withdrawable or repurchasable shares,
16 by—

17 “(A) a mutual savings bank, cooperative
18 bank, domestic building and loan association,
19 industrial loan association or bank, or credit
20 union, or

21 “(B) any other savings or thrift institu-
22 tion, which is chartered and supervised under
23 Federal or State law,

1 the deposits or accounts in which are insured under
2 Federal or State law or which are protected and
3 guaranteed under State law,

4 “(3) interest on—

5 “(A) evidences of indebtedness (including
6 bonds, debentures, notes, and certificates)
7 issued by a domestic corporation in registered
8 form, and

9 “(B) to the extent provided in regulations
10 prescribed by the Secretary, other evidences of
11 indebtedness issued by a domestic corporation
12 of a type offered by corporations to the public,

13 “(4) interest on obligations of the United
14 States, a State, or a political subdivision of a State
15 (not excluded from gross income of the taxpayer
16 under any other provision of law), and

17 “(5) interest attributable to participation shares
18 in a trust established and maintained by a corpora-
19 tion established pursuant to Federal law.

20 “(d) CERTAIN NONRESIDENT ALIENS INELIGIBLE
21 FOR EXCLUSION.—In the case of a nonresident alien indi-
22 vidual, subsection (a) shall apply only—

23 “(1) in determining the tax imposed for the
24 taxable year pursuant to section 871(b)(1) and only
25 in respect to dividends and interest which are effec-

1 tively connected with the conduct of a trade or busi-
2 ness within the United States, or

3 “(2) in determining the tax imposed for the
4 taxable year pursuant to section 877(b).”.

5 (b) CONFORMING AMENDMENT.—Section 1 of such
6 Code is amended by striking subsection (h).

7 (c) CLERICAL AMENDMENT.—The table of sections
8 for such part III is amended by inserting after the item
9 relating to section 139C the following new item:

 “Sec. 139D. Capital gains, dividends, and interest.”.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 December 31, 2010.

13 **SEC. 505. REPEAL OF ESTATE AND GIFT TAXES.**

14 (a) IN GENERAL.—Subtitle B of the Internal Rev-
15 enue Code of 1986 is hereby repealed.

16 (b) EFFECTIVE DATE.—The repeal made by sub-
17 section (a) shall apply to the estates of decedents dying,
18 and gifts made, and generation-skipping transfers after
19 December 31, 2010.

20 **TITLE VI—BUSINESS**
21 **CONSUMPTION TAX**

22 **SEC. 601. SHORT TITLE.**

23 This title may be cited as the “Competitive American
24 Business Tax”.

1 **SEC. 602. REPEAL OF CORPORATE INCOME TAX; NEW TAX**
 2 **PAID BY CORPORATIONS AND OTHER BUSI-**
 3 **NESSES.**

4 (a) IN GENERAL.—Chapter 2 of the Internal Rev-
 5 enue Code is renumbered chapter 3 and the following new
 6 chapter is inserted after chapter 1:

7 **“CHAPTER 2—COMPETITIVE AMERICAN**
 8 **BUSINESS TAX**

“SUBCHAPTER A. IMPOSITION OF TAX

“SUBCHAPTER B. BASIC RULES FOR BUSINESS CONSUMPTION TAX

“SUBCHAPTER C. CAPITAL CONTRIBUTIONS, MERGERS, ACQUISITIONS, AND
 DISTRIBUTIONS

“SUBCHAPTER D. ACCOUNTING METHOD RULES

“SUBCHAPTER E. LAND AND RENTAL PROPERTY

“SUBCHAPTER F. INSURANCE AND FINANCIAL PRODUCTS

“SUBCHAPTER G. TAX-EXEMPT ORGANIZATIONS

“SUBCHAPTER H. COOPERATIVES

“SUBCHAPTER I. SOURCING RULES

“SUBCHAPTER J. BUSINESS CONDUCTED IN A POSSESSION

“SUBCHAPTER K. IMPORT TAX

“SUBCHAPTER L. TRANSITION RULES

“SUBCHAPTER M. RULES FOR ADMINISTRATION, CONSOLIDATED RETURNS

“SUBCHAPTER N. DEFINITIONS AND RULES OF APPLICATION

9 **“Subchapter A—Imposition of Tax**

“Sec. 201. Tax imposed.

1 **“SEC. 203. TAXABLE RECEIPTS.**

2 “(a) IN GENERAL.—‘Taxable receipts’ means all re-
3 cepts from the sale of property, use of property, and per-
4 formance of services in the United States.

5 “(b) GAMES OF CHANCE.—Amounts received for
6 playing games of chance by business entities engaging in
7 the activity of providing such games shall be treated as
8 receipts from the sale of property or services.

9 “(c) IN-KIND RECEIPTS.—The taxable receipts at-
10 tributable to the receipt of property, use of property or
11 services in whole or partial exchange for property, use of
12 property or services equal the fair market value of the
13 services or property received.

14 “(d) TAXES.—Taxable receipts do not include any ex-
15 cise tax, sales tax, custom duty, or other separately stated
16 levy imposed by a Federal, State, or local government re-
17 ceived by a business entity in connection with the sale of
18 property or services or the use of property.

19 “(e) FINANCIAL RECEIPTS.—

20 “(1) IN GENERAL.—Taxable receipts do not in-
21 clude financial receipts.

22 “(2) FINANCIAL RECEIPTS.—‘Financial re-
23 cepts’ include—

24 “(A) interest,

25 “(B) dividends and other distributions by a
26 business entity,

1 “(C) proceeds from the sale of stock, other
2 ownership interests in business entities, or
3 other financial instruments,

4 “(D) proceeds from life insurance policies,

5 “(E) proceeds from annuities,

6 “(F) proceeds from currency hedging or
7 exchanges, and

8 “(G) proceeds from other financial trans-
9 actions.

10 “(3) FINANCIAL INSTRUMENT.—‘Financial in-
11 strument’ means any—

12 “(A) share of stock in a corporation,

13 “(B) equity ownership in any widely held
14 or publicly traded partnership, trust, or other
15 business entity,

16 “(C) note, bond, debenture, or other evi-
17 dence of indebtedness,

18 “(D) interest rate, currency, or equity no-
19 tional principal contract,

20 “(E) evidence or interest in, or a derivative
21 financial instrument in, any financial instru-
22 ment described in subparagraph (A), (B), (C),
23 or (D), or any currency, including any option,
24 forward contract, short position, and any simi-

1 lar financial instrument in such a financial in-
2 strument or currency, and

3 “(F) a position which—

4 “(i) is not a financial instrument de-
5 scribed in subparagraph (A), (B), (C), (D)
6 or (E),

7 “(ii) is a hedge with respect to such
8 a financial instrument, and

9 “(iii) is clearly identified in the deal-
10 er’s records as being described in this sub-
11 paragraph before the close of the day on
12 which it was acquired or entered into.

13 “(f) CROSS REFERENCES.—

14 “(1) EXPORTS, SALES IN THE UNITED
15 STATES.—See subchapter I for the exclusion from
16 gross receipts for export sales and for rules on sales
17 of property and services in the United States.

18 “(2) LAND.—See subchapter E for rules relat-
19 ing to certain sales of land.

20 **“SEC. 204. DEDUCTIBLE AMOUNTS.**

21 “‘Deductible amounts’ for a business entity in a tax-
22 able year include—

23 “(1) the cost of business purchases in the tax-
24 able year (as determined under section 205),

1 “(2) the cost of employer-provided health insur-
2 ance for which the employee, members of his family,
3 or persons designated by him or members of his
4 family are the beneficiaries,

5 “(3) such entity’s loss carryover deduction (as
6 determined under section 207), and

7 “(4) the transition basis deduction (as deter-
8 mined under section 290).

9 **“SEC. 205. COST OF BUSINESS PURCHASES.**

10 “(a) BUSINESS PURCHASES.—

11 “(1) IN GENERAL.—‘Business purchases’ means
12 the acquisition of—

13 “(A) property,

14 “(B) the use of property, or

15 “(C) services

16 in the United States for use in a business activity.

17 “(2) EXAMPLES.—Business purchases include
18 (without limitation) the—

19 “(A) purchase or rental of real property,

20 “(B) purchase or rental of capital equip-
21 ment,

22 “(C) purchase of supplies and inventory,

23 “(D) purchase of services from inde-
24 pendent contractors, and

25 “(E) imports for use in a business activity.

1 “(3) EXCLUSIONS.—Business purchases do not
2 include—

3 “(A) payments for use of money or capital,
4 such as interest or dividends (except to the ex-
5 tent that a portion so paid is a fee for financial
6 intermediation services),

7 “(B) premiums for life insurance,

8 “(C) the acquisition of savings assets or
9 other financial instruments (as defined in sec-
10 tion 203(e)(3)).

11 “(D) property acquired outside the United
12 States (but such property shall be taken into
13 account as an import if imported),

14 “(E) services performed outside the United
15 States (unless treated as imported into the
16 United States),

17 “(F) compensation expenses for an indi-
18 vidual (other than amounts paid to an indi-
19 vidual in his capacity as a business entity), or

20 “(G) taxes (except as provided in sub-
21 section (b)(2) relating to product taxes).

22 “(4) COMPENSATION EXPENSES.—‘Compensa-
23 tion expenses’ means—

24 “(A) wages, salaries or other cash payable
25 for services,

1 “(B) any taxes imposed on the recipient
2 that are withheld by the business entity,

3 “(C) the cost of property purchased to pro-
4 vide employees with compensation (other than
5 property incidental to the provision of fringe
6 benefits that are excluded from income under
7 the individual tax),

8 “(D) the cost of fringe benefits which are
9 includible in an employee’s, partner’s, or propri-
10 etor’s income under the business consumption
11 tax (or are excluded solely because they con-
12 stitute employee savings), including (without
13 limitation)—

14 “(i) contributions to retirement and
15 severance benefit plans,

16 “(ii) premiums for the cost of life, ac-
17 cident, disability and other insurance poli-
18 cies for which the employee, members of
19 his family, or persons designated by him or
20 members of his family are the bene-
21 ficiaries,

22 “(iii) rental of parking spaces or park-
23 ing fees (unless the parking space is used
24 for a vehicle that is regularly used in a
25 business activity);

1 “(iv) employer paid educational bene-
2 fits;

3 “(v) employer paid housing (other
4 than housing provided for the convenience
5 of the employer); and

6 “(vi) employer paid meals (other than
7 meals provided for the convenience of the
8 employer).

9 “(b) COST OF BUSINESS PURCHASES.—

10 “(1) IN GENERAL.—The ‘cost of a business
11 purchase’ is the amount paid or to be paid for the
12 business purchase.

13 “(2) TAXES.—

14 “(A) IN GENERAL.—The ‘cost of business
15 purchases’ includes any product taxes paid with
16 respect to the property or services purchased.

17 “(B) PRODUCT TAX.—‘Product tax’ means
18 any excise tax, sales or use tax, custom duty, or
19 other separately stated levy imposed by a Fed-
20 eral, State, or local government on the produc-
21 tion, severance or consumption of property or
22 on the provision of services, whether or not sep-
23 arately stated, and including any such taxes
24 that are technically imposed on the seller of
25 property or services.

1 “(C) TAXES NOT PRODUCT TAXES.—Prod-
2 uct taxes do not include—

3 “(i) the import tax,

4 “(ii) state and local property taxes,

5 “(iii) franchise or income taxes,

6 “(iv) payroll taxes and self-employ-
7 ment taxes, or

8 “(v) the business consumption tax.

9 “(3) IMPORTS.—In the case of an import by a
10 business entity, the cost of the import is the import
11 price for purposes of the import tax. The import tax
12 is not part of the cost of the import.

13 “(c) PROPERTY AND SERVICES ACQUIRED FOR
14 PROPERTY.—If a business entity receives property or serv-
15 ices from a business entity in whole or partial exchange
16 for property or services, the property or services acquired
17 shall be treated as if they were purchased for an amount
18 equal to the fair market value of the services or property
19 received. For purposes of this section, property includes
20 stock and other equity interests in business other than
21 stock or an equity interest in the business entity acquiring
22 the property or services. See section 210(b) for rules on
23 property or services received in exchange for an equity in-
24 terest in the recipient.

1 “(d) GAMBLING PAYMENTS.—In the case of a busi-
2 ness involving gambling, lotteries, or other games of
3 chance, business purchases include amounts paid to win-
4 ners.

5 “(e) SAVINGS ASSETS.—‘Savings assets’ means
6 stocks, bonds, securities, certificates of deposits, invest-
7 ments in partnerships and limited liability companies,
8 shares of mutual funds, life insurance policies, annuities,
9 and other similar savings or investment assets.

10 “(f) CROSS REFERENCES.—

11 “(1) LAND.—For special rules relating to the
12 acquisition of land, see subchapter E.

13 “(2) RENTAL REAL ESTATE.—For special rules
14 relating to the rental of real estate previously occu-
15 pied by an owner of the real estate, see section 232.

16 “(3) OUTSIDE THE UNITED STATES.—For spe-
17 cial rules relating to services performed outside the
18 United States but used inside the United States and
19 international services, see subchapter I.

20 **“SEC. 206. BUSINESS ENTITY AND BUSINESS ACTIVITY.**

21 “(a) BUSINESS ENTITY.—For purposes of the busi-
22 ness consumption tax, ‘business entity’ means any cor-
23 poration, unincorporated association, partnership, limited
24 liability company, proprietorship, independent contractor,
25 individual, or any other person engaging in business activ-

1 ity in the United States. An individual shall be considered
2 a business entity only with respect to the individual's busi-
3 ness activities.

4 “(b) BUSINESS ACTIVITY.—‘Business activity’ means
5 the sale of property or services, the leasing of property,
6 the development of property or services for subsequent
7 sale or use in producing property or services for subse-
8 quent sale. ‘Business activity’ does not include casual or
9 occasional sales of property used by an individual (other
10 than in a business activity), such as the sale by an indi-
11 vidual of a vehicle used by the individual.

12 “(c) EXCEPTION FOR CERTAIN EMPLOYEES.—

13 “(1) IN GENERAL.—‘Business activity’ does not
14 include—

15 “(A) the performance of services by an em-
16 ployee for an employer that is a business entity
17 with respect to the activity in which the em-
18 ployee is engaged, or

19 “(B) the performance of regular domestic
20 household services (including babysitting,
21 housecleaning, and lawn cutting) by an em-
22 ployee of an employer that is an individual or
23 family.

24 “(2) EMPLOYEE DEFINED.—For purposes of
25 this subsection, ‘employee’ includes an individual

1 partner who provides services to a partnership or an
2 individual member who provides services to a limited
3 liability company, or a proprietor with respect to
4 compensation for services from his proprietorship.

5 **“SEC. 207. LOSS CARRYOVER DEDUCTION.**

6 “(a) DEDUCTION.—The ‘loss carryover deduction’ for
7 a taxable year is the lesser of—

8 “(1) the business entity’s gross profits for the
9 taxable year (determined without the loss carryover
10 deduction), or

11 “(2) the amount of the loss carryover to the
12 taxable year.

13 “(b) LOSS CARRYOVER.—

14 “(1) GENERAL RULE.—A loss for any taxable
15 year shall be a loss carryover to each of the 15 tax-
16 able years following the taxable year of the loss.

17 “(2) LOSS CARRYOVERS TO A TAXABLE YEAR.—
18 The loss carryover to a taxable year is the sum of
19 the loss carryovers from all prior taxable years be-
20 ginning on or after January 1, 2011, that can be
21 carried over to the taxable year.

22 “(3) REDUCTION OF LOSS CARRYOVERS AS A
23 RESULT OF THE DEDUCTION.—A business entity’s
24 loss carryovers shall be reduced each year by the
25 amount of the loss carryover deduction for the year.

1 Loss carryovers shall be reduced in the order that
2 they arose.

3 “(c) LOSS FOR TAXABLE YEAR.—A business entity’s
4 loss (if any) for the taxable year equals the excess (if any)
5 of—

6 “(1) the sum of—

7 “(A) the cost of business purchases for the
8 taxable year, and

9 “(B) the transition basis adjustment for
10 the taxable year, over

11 “(2) taxable receipts for the taxable year.

12 “(d) SPECIAL RULES.—

13 “(1) CONSOLIDATED RETURNS.—In the case of
14 a consolidated return, the loss for a taxable year
15 shall be determined on a consolidated group basis.

16 In the case of a deconsolidation, the loss carryovers
17 from the consolidated group shall be allocated in ac-
18 cordance with rules to be prescribed by the Sec-
19 retary.

20 “(2) LOSS CARRYOVERS OF ACQUIRED BUSI-
21 NESS ENTITY.—

22 “(A) IN GENERAL.—If a business entity
23 acquires another business entity in a trans-
24 action that is considered the acquisition of a
25 business entity and the two entities file a con-

1 solidated return or if two business entities
2 merge, the loss carryovers will survive and can
3 be applied against the taxable receipts attrib-
4 utable to the business activities carried on (or
5 in the case of a merger formerly carried on) by
6 either entity.

7 “(B) ASSET ACQUISITION.—If a business
8 entity acquires all or substantially all of the as-
9 sets of another entity in a transaction that is
10 considered an asset acquisition rather than the
11 acquisition of a business entity, the acquirer
12 will be treated as if it acquired the loss
13 carryovers of the selling entity. For purposes of
14 this rule, the assets of a business entity include
15 ownership interests in other business entities.

16 “(C) SUBSTANTIALLY ALL.—For purposes
17 of this paragraph ‘substantially all’ means more
18 than 80 percent of the fair market value of a
19 business entity’s net assets. Under rules pre-
20 scribed by the Secretary, the parties to a trans-
21 action may elect to treat acquisitions in excess
22 of 70 percent of the fair market value of a busi-
23 ness entity’s net assets as acquisitions of ‘sub-
24 stantially all’ of a business entity’s net assets.

1 **“Subchapter C—Capital Contributions,**
2 **Mergers, Acquisitions, and Distributions**

“Sec. 210. Contributions to a business entity.

“Sec. 211. Distributions of property.

“Sec. 212. Asset acquisitions.

“Sec. 213. Mergers and stock acquisitions.

“Sec. 214. Spin-offs, split-off, etc.

“Sec. 215. Allocation of certain tax attributes.

3 **“SEC. 210. CONTRIBUTIONS TO A BUSINESS ENTITY.**

4 “(a) BY BUSINESS ENTITY.—

5 “(1) CASH.—If a business entity contributes
6 cash to a business entity of which it is or becomes
7 a partial or full owner, the amount contributed is
8 not a deductible amount to the contributor or a tax-
9 able receipt to the recipient.

10 “(2) PROPERTY OR SERVICES.—If a business
11 entity contributes property or services to a business
12 entity of which it is or becomes a partial or full
13 owner, the transaction will not result in taxable re-
14 ceipts to the contributor or a deduction for a busi-
15 ness purchase for the recipient and will not con-
16 stitute a sale resulting in taxable receipts to the con-
17 tributor.

18 “(b) BY INDIVIDUAL.—

19 “(1) CASH.—If an individual contributes cash
20 to a business entity, the cash received is not a tax-
21 able receipt.

1 “(2) NEW PROPERTY.—If an individual contrib-
2 utes to a business entity property that the individual
3 purchased for the business entity but which was not
4 used by any person after its purchase, the property
5 shall be considered purchased by such business enti-
6 ty from the person from which the individual pur-
7 chased the property.

8 “(3) PERSONAL USE PROPERTY.—

9 “(A) IN GENERAL.—If an individual con-
10 tributes personal use property to a business en-
11 tity in which the individual has an ownership
12 interest or for which the individual receives an
13 ownership interest, the business entity shall not
14 be permitted to deduct the value of the property
15 received as a business expense. The business
16 entity will have a tax basis in the contributed
17 property equal to the contributor’s basis.

18 “(B) PERSONAL USE PROPERTY.—‘Per-
19 sonal use property’ means any property used by
20 an individual at any time other than in a busi-
21 ness activity.

22 “(4) SERVICES.—If an individual contributes
23 services to a business entity in which the individual
24 has an ownership interest or receives an ownership
25 interest, the business entity shall not be permitted to

1 deduct the value of the services received (or the
2 value of the equity interest provided to the services
3 provider).

4 **“SEC. 211. DISTRIBUTIONS OF PROPERTY.**

5 “(a) DISTRIBUTIONS OTHER THAN TO CONTROL-
6 LING BUSINESS.—If a business entity distributes all or a
7 portion of its assets to its owners (other than a controlling
8 business entity), the business entity will be treated as if
9 it sold the assets to its owners at fair market value. The
10 fair market value will be determined by the distributing
11 corporation and those determinations, unless unreason-
12 able, will be binding on the recipients.

13 “(b) DISTRIBUTIONS TO A CONTROLLING BUSI-
14 NESS.—If a business entity distributes all or a portion of
15 its assets to a controlling business, the controlling busi-
16 ness will assume the distributing entity’s tax attributes
17 with respect to the assets and neither entity will have tax-
18 able receipts or a deduction as a result of the transaction.

19 “(c) DISTRIBUTION OF PERSONAL USE PROP-
20 erty.—If personal use property is distributed to the indi-
21 vidual who contributed the personal use property to a busi-
22 ness entity, the fair market value of the property for pur-
23 poses of paragraph (a) shall equal the basis of the prop-
24 erty plus any enhancement in value of the property attrib-
25 utable to business purchases with respect to the property.

1 “(d) CONTROLLING BUSINESS ENTITY.—A business
2 entity is a ‘controlling business entity’ with respect to an-
3 other business entity if it owns directly or indirectly more
4 than 50 percent of the profits or capital interest in the
5 other business entity.

6 “(e) APPLICATION OF THIS SECTION.—This section
7 applies to both liquidating and nonliquidating distribu-
8 tions. Property shall be treated as distributed if the prop-
9 erty is used for a nonbusiness purpose or used as non rent-
10 al property (as defined in section 232) for more than an
11 insubstantial period of time during a taxable year. See sec-
12 tion 232 for rules relating to certain rental property.

13 **“SEC. 212. ASSET ACQUISITIONS.**

14 “(a) IN GENERAL.—If a business entity transfers
15 some or all of its assets, the consideration received for
16 such assets shall be allocated among the assets transferred
17 in the same manner as was required by section 1060 of
18 the Internal Revenue Code of 1986. If the transferee and
19 transferor agree in writing on the allocation of any consid-
20 eration, or as to the fair market value of any of the assets,
21 such agreement shall be binding on both the transferor
22 and transferee unless the Secretary determines that such
23 allocation (or fair market value) is not appropriate.

24 “(b) TAX CONSEQUENCES.—The tax consequences of
25 an asset acquisition shall be determined in accordance

1 with the rules of this chapter and shall be dependent upon
2 allocations made under subsection (a). In general, consid-
3 eration allocable to savings assets, such as stock in an-
4 other business entity, would not be included in taxable re-
5 ceipts of the transferor and would not be a business pur-
6 chase of the purchaser, but consideration allocable to the
7 sale of tangible property and intangible property (other
8 than savings assets) will constitute taxable receipts of the
9 seller and a business purchase of the purchaser.

10 “(c) ELECTION TO TREAT ASSET ACQUISITION AS A
11 STOCK ACQUISITION.—In the case of the sale of substan-
12 tially all of the assets of a business entity or substantially
13 all of the assets of a line of business or a separately stand-
14 ing business of a business entity, the transferee and trans-
15 feror can jointly elect to treat the acquisition as if it were
16 an acquisition of the stock of a business entity holding
17 the assets so transferred. In such case, the rules of section
18 213 shall apply.

19 “(d) AUTHORITY TO REQUIRE ALLOCATION AGREE-
20 MENT AND NOTICE TO THE SECRETARY.—If the Sec-
21 retary determines that certain types of asset acquisitions
22 have significant possibilities of tax avoidance, the Sec-
23 retary may require—

24 “(1) parties to such types of acquisitions to
25 enter into agreements allocating consideration,

1 “(2) parties to acquisitions involving certain
2 kinds of assets to enter into agreements allocating
3 part of the consideration to those assets, or

4 “(3) parties to certain acquisitions to report in-
5 formation to the Secretary.

6 “(e) ASSET ACQUISITION RULES DO NOT APPLY IF
7 CONSIDERATION INCLUDES EQUITY IN PURCHASER.—

8 “(1) IN GENERAL.—If a business entity issues
9 its own equity or equity in a subsidiary or other con-
10 trolled entity as part of the consideration for the
11 transfer of assets to it, the transaction shall be
12 treated as a business purchase and not as an asset
13 acquisition, and the taxpayer shall not be entitled to
14 a loss carryover for any unused deduction attrib-
15 utable to the equity portion of such transfer.

16 “(2) EQUITY.—For purposes of this subsection,
17 equity means—

18 “(A) stock, in the case of a corporation,

19 “(B) partnership or similar interest, in the
20 case of a partnership or limited liability com-
21 pany, and

22 “(C) an ownership interest or interest in
23 profits in the case of any other business entity.

1 **“SEC. 213. MERGERS AND STOCK ACQUISITIONS.**

2 “(a) MERGERS.—A merger of one business entity
3 into another or two businesses entities into a third busi-
4 ness entity or any other similar transaction shall have no
5 direct consequences under the business consumption tax.
6 The surviving entity shall assume the tax attributes of the
7 merged corporations, including any loss carryovers and
8 credit carryovers.

9 “(b) STOCK ACQUISITION.—The acquisition of all or
10 substantially all of the ownership interest in one business
11 entity either for cash or in exchange for ownership in the
12 acquiring entity or an entity controlled by the acquired
13 entity shall have no direct consequences under the busi-
14 ness consumption tax.

15 **“SEC. 214. SPIN-OFFS, SPLIT-OFFS, ETC.**

16 “A spin-off, split-off or split-up of a business entity
17 shall have no direct tax consequences under the business
18 consumption tax.

19 **“SEC. 215. ALLOCATION OF CERTAIN TAX ATTRIBUTES.**

20 “The Secretary shall prescribe rules for allocation of
21 loss carryovers in cases of substantial shifts of assets from
22 one business entity to another business entity. Under such
23 rules, a portion of a business entity’s carryovers may be
24 deemed transferred when assets are transferred.

25 **“Subchapter D—Accounting Method Rules**

“Sec. 220. General accounting rules.

“Sec. 221. Use of the cash method of accounting.

“Sec. 222. Taxable year.

“Sec. 223. Long-term contracts.

“Sec. 224. Post-sale price adjustments and refunds.

“Sec. 225. Bad debts.

“Sec. 226. Transition rules.

1 **“SEC. 220. GENERAL ACCOUNTING RULES.**

2 “(a) IN GENERAL.—Except as provided in section
3 221, a business entity shall use an accrual method of ac-
4 counting for purposes of determining the timing of rec-
5 ognition of taxable receipts and deduction of business pur-
6 chases. All business purchases shall be deducted when in-
7 curred (in the case of a business entity using the accrual
8 method of accounting) or when paid (in case of a business
9 entity using the cash method of accounting) without re-
10 gard to whether the business purchases are for or relate
11 to—

12 “(1) inventory,

13 “(2) assets with a useful life of more than one
14 year, or

15 “(3) property that will be used to produce other
16 property.

17 “(b) ECONOMIC PERFORMANCE.—For purposes of
18 determining whether an amount has been incurred, the all
19 events test shall not be treated as met any earlier than
20 when economic performance with respect to such item oc-
21 curs.

1 “(c) CONSISTENT ACCOUNTING METHODS.—Except
2 as otherwise expressly provided in this chapter, a business
3 entity shall secure the consent of the Secretary before
4 changing the method of accounting by which it determines
5 gross profits. This provision shall not apply to changes
6 required by the adoption of the business consumption tax.

7 **“SEC. 221. USE OF THE CASH METHOD OF ACCOUNTING.**

8 “(a) IN GENERAL.—A business entity that was per-
9 mitted to use and used the cash method of accounting
10 under the Internal Revenue Code of 1986 shall be per-
11 mitted to continue to use the cash method of accounting.

12 “(b) NEW BUSINESS ENTITIES.—A new business en-
13 tity shall be permitted to use the cash method of account-
14 ing if permitted to under regulations prescribed by the
15 Secretary.

16 “(c) CHANGE OR EXPANSION OF BUSINESS.—Sub-
17 section (a) shall cease to apply to a business entity that
18 changes or expands its business such that under regula-
19 tions prescribed by the Secretary it is no longer eligible
20 to use the cash method of accounting.

21 “(d) REGULATIONS.—

22 “(1) USE OF CASH METHOD.—The Secretary
23 shall prescribe regulations defining which business
24 entities may use the cash method of accounting. In
25 general, those regulations shall be consistent with

1 the rules under sections 447 and 448 of the Internal
2 Revenue Code of 1986. The regulations shall not re-
3 quire a business entity described in subsection (a) to
4 convert to the accrual method prior to January 1,
5 2012.

6 “(2) CHANGE IN ACCOUNTING METHOD.—The
7 Secretary shall prescribe regulations to prevent dou-
8 ble counting of taxable receipts and deductible ex-
9 penses in the case of a change in accounting method.

10 **“SEC. 222. TAXABLE YEAR.**

11 “(a) COMPUTATION OF GROSS PROFITS.—Gross
12 profits shall be computed on the basis of a business enti-
13 ty’s taxable year.

14 “(b) TAXABLE YEAR.—‘Taxable year’ means—

15 “(1) the taxpayer’s annual accounting period, if
16 it is a calendar year or a fiscal year;

17 “(2) the calendar year, if subsection (g) applies;
18 or

19 “(3) the period for which the return is made if
20 the return is made for a period of less than 12
21 months.

22 “(c) ANNUAL ACCOUNTING PERIOD.—‘Annual ac-
23 counting period’ means the annual period on the basis of
24 which the business entity regularly keeps its books.

1 “(d) CALENDAR YEAR.—‘Calendar year’ means a pe-
2 riod of 12 months ending on December 31.

3 “(e) FISCAL YEAR.—‘Fiscal year’ means a period of
4 12 months ending on the last day of any month other than
5 December. In the case of any business entity that has
6 made the election provided by subsection (f), the term
7 means the annual period (varying from 52 to 53 weeks)
8 so elected.

9 “(f) ELECTION OF 52–53 WEEK YEAR.—

10 “(1) GENERAL RULE.—A business entity which,
11 in keeping its books, regularly computes its income
12 or profits on a basis of an annual period which var-
13 ies from 52 to 53 weeks and ends always on the
14 same day of the week and ends always—

15 “(A) on whatever date such same day of
16 the week last occurs in a calendar month, or

17 “(B) on whatever date such same day of
18 the week falls which is nearest to the last day
19 of a calendar month, may elect to compute its
20 gross profits on the basis of such annual period.

21 “(2) REGULATIONS.—The Secretary shall pre-
22 scribe such regulations as he deems necessary for
23 the application of this subsection, including regula-
24 tions relating to the application of effective dates to
25 taxpayers using a 52–53 week year.

1 “(g) CALENDAR YEAR REQUIRED.—

2 “(1) NO ACCOUNTING PERIOD.—A business en-
3 tity’s taxable year shall be the calendar year if the
4 business entity does not have an annual accounting
5 period or has an annual accounting period that does
6 not qualify as a fiscal year.

7 “(2) NEW BUSINESS ENTITY.—The taxable
8 year of a business entity that begins business activ-
9 ity after December 31, 2010, shall be the calendar
10 year (or a 52–53 week fiscal year ending in Decem-
11 ber) unless the business entity can demonstrate a
12 business reason for selecting an accounting period
13 other than the calendar year.

14 “(h) TRANSITION RULE FOR BUSINESS ENTITIES
15 WITH A FISCAL YEAR.—

16 “(1) IN GENERAL.—A business entity with a
17 taxable year that is not the calendar year shall have
18 a short taxable year ending on December 31, 2010,
19 and a subsequent taxable year beginning on January
20 1, 2011, and ending on the day immediately pre-
21 ceding the beginning of the business entity’s next
22 fiscal year.

23 “(2) BUSINESS ENTITIES WITH 52–53 WEEK
24 YEAR ENDING IN DECEMBER.—

1 “(A) IN GENERAL.—If a business entity
2 has a 52–53 week taxable year (under the In-
3 ternal Revenue Code of 1986) that ends in De-
4 cember 2010, it may elect to begin its first tax-
5 able year for the business consumption tax on
6 the first day immediately following the last day
7 of such taxable year.

8 “(B) NO ELECTION.—If a business entity
9 that has a 52–53 week taxable year that ends
10 in December 2010, does not make the election
11 under subparagraph (A) or is prohibited from
12 making such election by subparagraph (C), the
13 business entity’s taxable year under the Inter-
14 nal Revenue Code of 1986 that would end in
15 December 2010 shall end on December 31,
16 2010.

17 “(C) ANTI-ABUSE RULE.—Subparagraph
18 (A) shall not apply to any taxpayer that enters
19 into business transactions in 2010 following the
20 scheduled end of its fiscal year with business
21 entities that are not subject to the business con-
22 sumption tax at the time of such transactions
23 if such transactions deviate from the normal
24 course of business in order to achieve some tax
25 benefit.

1 **“SEC. 223. LONG-TERM CONTRACTS.**

2 “(a) IN GENERAL.—In the case of a long-term con-
3 tract—

4 “(1) CONTRACTOR EXPENSES.—The contractor
5 shall be entitled to deduct its business purchases
6 when paid or incurred.

7 “(2) CONTRACTOR RECEIPTS.—The contractor
8 shall recognize taxable receipts—

9 “(A) in the case of a project in which the
10 acquirer has no ownership interest in the
11 project until delivery—

12 “(i) upon delivery of the project, in
13 the case of an accrual basis contractor, or

14 “(ii) upon the later of delivery of the
15 project or the receipt of payment, in the
16 case of cash-basis contractor.

17 “(B) in the case of a project in which the
18 acquirer obtains an ownership interest as the
19 project is constructed—

20 “(i) when the contractor has the right
21 to payments, in the case of an accrual
22 basis contractor, or

23 “(ii) upon the later of when the con-
24 tractor receives the cash or has the right
25 to payments, in the case of a cash basis
26 contractor.

1 “(3) ACQUIRER EXPENSES.—The acquirer that
2 is a business entity shall be entitled to deduct its
3 costs of the business purchase—

4 “(A) in the case of a cash-basis acquirer,
5 at such time as a cash basis contractor would
6 be required to treat the amounts paid as tax-
7 able receipts, or

8 “(B) in the case of an accrual-basis
9 acquirer, at such time as an accrual basis con-
10 tractor would be required to treat the amounts
11 paid or due as taxable receipts.

12 “(b) RIGHT TO PAYMENTS.—

13 “(1) IN GENERAL.—A contractor shall be treat-
14 ed as having a right to payments with respect to a
15 project at any time to the extent that the contractor
16 would not be required to return payments received
17 (or would be entitled to collect payments not yet re-
18 ceived) if the project were terminated at such time
19 by the contractor.

20 “(2) CONTRACTUAL PROVISIONS.—If a long-
21 term contract includes a procedure for paying the
22 contractor as work is completed (for example, by
23 reason of a draw down from a trust account), the
24 contractual provisions shall generally govern when a
25 contractor has a right to payment.

1 “(3) PERCENTAGE COMPLETION METHOD OF
2 ACCOUNTING.—If a long-term contract does not in-
3 clude a mechanism for paying the contractor as
4 work is completed, the percentage-of-completion
5 method of accounting shall be used to determine the
6 timing of taxable receipts of the contractor and busi-
7 ness purchases of the acquirer.

8 “(c) LONG-TERM CONTRACT.—

9 “(1) IN GENERAL.—‘Long-term contract’
10 means—

11 “(A) any contract that covers service or
12 production through parts of two different cal-
13 endar years if the contract includes a formal
14 deposit and draw-down mechanism, and

15 “(B) any contract for the manufacture,
16 building, installation, or construction of prop-
17 erty if such contract is not completed within the
18 taxable year of the contractor in which such
19 contract is entered into.

20 “(2) EXCEPTION.—A contract for the manufac-
21 ture of property shall not be treated as a long-term
22 contract unless such contract involves the manufac-
23 ture of—

1 “(A) any unique item of a type which is
2 not normally included in the finished goods in-
3 ventory of the taxpayer, or

4 “(B) any item which normally requires
5 more than 12 calendar months to complete.

6 “(d) CONSISTENCY.—The Secretary may require
7 business entities to file statements containing such infor-
8 mation with respect to long-term contracts as the Sec-
9 retary may prescribe to ensure consistency in reporting.

10 “(e) FOREIGN CONTRACTS.—This section shall not
11 be construed to permit a deduction for a business purchase
12 for the cost of property produced outside the United
13 States pursuant to a long-term contract at any time prior
14 to the import of such property into the United States.

15 **“SEC. 224. POST-SALE PRICE ADJUSTMENTS AND REFUNDS.**

16 “(a) RECEIPT OF PRICE ADJUSTMENT.—In the case
17 of a post-sale price adjustment attributable to a business
18 purchase which was taken into account in computing gross
19 profits for a prior taxable year, the amount of such adjust-
20 ment shall be treated as a reduction or increase, as the
21 case may be, in the cost of business purchases for the tax-
22 able year in which the adjustment is made or incurred.

23 “(b) ISSUANCE OF PRICE ADJUSTMENT.—In the case
24 of a post-sale price adjustment attributable to a sale the
25 receipts from which were taken into account in deter-

1 mining taxable receipts for a prior taxable year, the
2 amount of such adjustment shall be treated as a reduction
3 or increase, as the case may be, in taxable receipts for
4 the taxable year in which the adjustment is made or in-
5 curred.

6 “(c) POST-SALE PRICE ADJUSTMENT.—‘Post-sale
7 price adjustment’ means a refund, rebate, or other price
8 allowance attributable to a sale of property or services or
9 an upward adjustment in price that was not previously
10 taken into account under the business entity’s method of
11 accounting.

12 **“SEC. 225. BAD DEBTS.**

13 “(a) SELLER.—If an amount owed to an accrual
14 basis business entity for property or services sold—

15 “(1) was taken into account as a taxable receipt
16 in a prior taxable year, and

17 “(2) becomes wholly or partially uncollectible
18 during the taxable year, then the seller shall treat
19 the amount as a reduction in taxable receipts for the
20 taxable year in which it becomes wholly or partially
21 uncollectible.

22 “(b) NOTICE REQUIREMENT.—No reduction shall be
23 allowed under subsection (a) unless the seller notifies the
24 purchaser of the amount which the seller has treated as
25 wholly or partially uncollectible.

1 “(c) SUBSEQUENT COLLECTION.—If an amount
2 which was treated as uncollectible under subsection (a) is
3 subsequently collected, it shall be treated as a taxable re-
4 ceipt when collected.

5 “(d) PURCHASER.—If a purchaser receives notice
6 under subsection (b) from a seller and the purchaser has
7 treated the amount labeled uncollectible as a business pur-
8 chase in a prior taxable year, then the purchaser shall
9 treat such amount as a reduction in the cost of business
10 purchases in the taxable year to which the notice relates.
11 If the purchaser subsequently repays such amount, the re-
12 payment shall constitute the cost of a business purchase.

13 **“SEC. 226. TRANSITION RULES.**

14 “(a) NO DOUBLE DEDUCTIONS.—A business entity
15 shall not be entitled to treat as a ‘cost of business pur-
16 chase’ any amount that the business entity deducted in
17 computing taxable income under the income tax in effect
18 prior the effective date of the business consumption tax.

19 “(b) NO DOUBLE INCLUSION.—A business entity
20 shall not be required to include in taxable receipts any
21 receipt that the business entity took into account in com-
22 puting taxable income under the income tax in effect prior
23 to the effect date of the business consumption tax.

24 “(c) NO LOSS OF DEDUCTION.—An expense which—

1 “(1) a business entity would have been able to
2 deduct as a cost of a business purchase in an ac-
3 counting period before the effective date of the busi-
4 ness consumption tax if the business consumption
5 tax had been in effect in such period, and

6 “(2) the business entity would have been able to
7 deduct as an expense in computing taxable income
8 in a period after the business consumption tax is ef-
9 fective if the income tax had continued in effect,

10 shall be treated as a cost of a business purchase incurred
11 or paid at the time that it would have been paid or in-
12 curred under the income tax if the income tax had contin-
13 ued in effect. This subsection shall not apply to any
14 amount which is to be taken into account under sub-
15 chapter L (relating to transition rules), any amounts
16 which would have been deducted under the income tax
17 through loss carryover deductions, or any deductions de-
18 ferred by the uniform capitalization rules under section
19 263A of the Internal Revenue Code of 1986.

20 “(d) ALL TAXABLE RECEIPTS TAXED.—A receipt
21 which—

22 “(1) a business entity would have been required
23 to treat as a taxable receipt in an accounting period
24 before the effective date of the business consumption

1 tax if the business consumption tax had been in ef-
 2 fect in such period, and

3 “(2) the business entity would have been re-
 4 quired to include in gross income in a period after
 5 the business consumption tax is effective if the in-
 6 come tax had continued in effect,

7 shall be treated as a taxable receipt at the time that it
 8 would have been included in income if the income tax had
 9 continued in effect.

10 **“Subchapter E—Land and Rental Property**

“Sec. 230. No deduction for land purchased for nonbusiness use.

“Sec. 231. Taxable receipts for land held for nonbusiness use.

“Sec. 232. Certain rental property.

11 **“SEC. 230. NO DEDUCTION FOR LAND PURCHASED FOR** 12 **NONBUSINESS USE.**

13 “(a) IN GENERAL.—The acquisition of unimproved
 14 land shall not constitute a business purchase if the unim-
 15 proved land is not acquired to be used in a business activ-
 16 ity or if the land is acquired for—

17 “(1) speculation,

18 “(2) development (including subdivision), or

19 “(3) temporary leasing or other use not com-
 20 mensurate with the value of the land,

21 “(4) indefinite future use in a business activity,

22 or

23 “(5) use in compensating employees.

1 “(b) FUTURE USE IN BUSINESS ACTIVITY.—Unim-
2 proved land will not be considered held for ‘indefinite fu-
3 ture use in a business activity’ if promptly upon acquisi-
4 tion, the purchaser or the lessee begins construction of im-
5 provements on the land (other than improvements, such
6 as paving or sewage lines, intended for indefinite future
7 development) that will be used in a business activity. Such
8 improvement must be commensurate with the value of the
9 land.

10 “(c) UNIMPROVED LAND.—‘Unimproved land’
11 means—

12 “(1) land with no buildings on it,

13 “(2) land with improvements if the value of the
14 improvements is relatively small in comparison to
15 the value of the land and it is anticipated that the
16 improvements will be demolished and not used,

17 “(3) land in excess of the amount reasonably
18 needed for the buildings located on it.

19 “(d) CONVERSION TO BUSINESS USE.—If the acqui-
20 sition of land is not treated as a business purchase by rea-
21 son of subsection (a) and the land is subsequently used
22 in a manner for which it could have been treated as a
23 business purchase, the cost of the land will be treated as
24 a business purchase when the improvements on the land

1 are placed in service (or in the case of construction for
2 sale, substantially completed and advertised for sale).

3 **“SEC. 231. TAXABLE RECEIPTS FROM SALE OF LAND HELD**
4 **FOR NONBUSINESS USE.**

5 “(a) TAX BASIS.—A business entity shall have a tax
6 basis in land equal to the cost of the land if such cost
7 is not deductible by reason of section 230(a) and the land
8 has not been converted to business use for purposes of
9 section 230(d).

10 “(b) TAXABLE RECEIPTS OF A LAND SALE.—The
11 taxable receipts from the sale of land (or portion thereof)
12 in which a business entity has a tax basis by reason of
13 subsection (a) shall be the amount by which the proceeds
14 exceed the basis of such land (or portion thereof).

15 **“SEC. 232. CERTAIN RENTAL PROPERTY.**

16 “(a) IN GENERAL.—Except as provided in subsection
17 (b), the activity of rental of real estate is a business activ-
18 ity to which the business consumption tax applies.

19 “(b) NOT RENTAL PROPERTY.—Subsection (a) shall
20 not apply—

21 “(1) to property used on more than 14 days
22 during the taxable year for nonbusiness purposes, or

23 “(2) to property rented for no more than 14
24 days during the taxable year and the total rental re-

1 **“SEC. 251. EXEMPTION FOR GOVERNMENTAL ENTITIES.**

2 “(a) STATES.—Except as provided in section 252, a
3 state, political subdivision thereof and the District of Co-
4 lumbia shall be exempt from taxation under this chapter
5 on any gross profits derived from the exercise of any es-
6 sential governmental function.

7 “(b) POSSESSIONS.—The government of any posses-
8 sion of the United States shall be exempt from taxation
9 under this chapter on any gross profits earned by the pos-
10 session.

11 **“SEC. 252. TAXABLE ACTIVITY OF GOVERNMENTAL ENTI-**
12 **TIES.**

13 “(a) CERTAIN ACTIVITIES TAXABLE.—A govern-
14 mental entity shall be considered a business and subject
15 to tax on any business activity of a type frequently pro-
16 vided by business entities subject to tax under this chap-
17 ter.

18 “(b) CERTAIN ACTIVITIES TREATED AS ESSENTIAL
19 GOVERNMENT FUNCTIONS.—Subsection (a) shall not
20 apply to the following activities, which shall be treated as
21 essential government functions:

22 “(1) Provision of mass transportation services.

23 “(2) Provision of public utility services.

1 **“SEC. 253. TAX-EXEMPT ORGANIZATIONS.**

2 “(a) EXEMPTION FROM TAXATION.—An organiza-
3 tion described in subsection (c) or (d) shall be exempt
4 from taxation under this chapter.

5 “(b) TAX ON UNRELATED BUSINESS ACTIVITY.—An
6 organization exempt from taxation under subsection (a)
7 shall be subject to tax to the extent provided in sections
8 255 and 256, but shall be considered a tax-exempt organi-
9 zation for purposes of any law that refers to tax-exempt
10 organizations.

11 “(c) LIST OF EXEMPT ORGANIZATIONS.—The fol-
12 lowing organizations are referred to in subsection (a):

13 “(1) INSTRUMENTALITY OF THE UNITED
14 STATES.—Any corporation organized under Act of
15 Congress which is an instrumentality of the United
16 States but only if such corporation—

17 “(A) is exempt from Federal income
18 taxes—

19 “(i) under such Act as amended and
20 supplemented before July 18, 1984, or

21 “(ii) under this title without regard to
22 any provision of law which is not contained
23 in this title and which is not contained in
24 a revenue Act, or

25 “(B) is described in subsection (h).

1 “(2) TITLE HOLDING COMPANIES.—Corpora-
2 tions organized for the exclusive purpose of holding
3 title to property, collecting income therefrom, and
4 turning over the entire amount thereof, less ex-
5 penses, to an organization which itself is exempt
6 under this section. Rules similar to the rules of sub-
7 paragraph (G) of paragraph (25) shall apply for
8 purposes of this paragraph.

9 “(3) CHARITABLE, EDUCATIONAL AND RELI-
10 GIOUS ORGANIZATIONS.—Corporations, and any
11 community chest, fund, or foundation, organized and
12 operated exclusively for religious, charitable, sci-
13 entific, testing for public safety, literary, or edu-
14 cational purposes, or to foster national or inter-
15 national amateur sports competition (but only if no
16 part of its activities involve the provision of athletic
17 facilities or equipment), or for the prevention of cru-
18 elty to children or animals, no part of the net earn-
19 ings of which inures to the benefit of any private
20 shareholder or individual, no substantial part of the
21 activities of which is carrying on propaganda, or oth-
22 erwise attempting, to influence legislation (except as
23 otherwise provided in subsection (g)), and which
24 does not participate in, or intervene in (including the
25 publishing or distributing of statements), any polit-

1 ical campaign on behalf of (or in opposition to) any
2 candidate for public office.

3 “(4) SOCIAL WELFARE ORGANIZATIONS, ETC.—

4 “(A) Civic leagues or organizations not or-
5 ganized for profit but operated exclusively for
6 the promotion of social welfare, or local associa-
7 tions of employees, the membership of which is
8 limited to the employees of a designated person
9 or persons in a particular municipality, and the
10 net earnings of which are devoted exclusively to
11 charitable, educational, or recreational pur-
12 poses.

13 “(B) Subparagraph (A) shall not apply to
14 an entity unless no part of the net earnings of
15 such entity inures to the benefit of any private
16 shareholder or individual.

17 “(5) LABOR AND AGRICULTURAL ORGANIZA-
18 TIONS.—Labor, agricultural, or horticultural organi-
19 zations.

20 “(6) TRADE ASSOCIATIONS.—Business leagues,
21 chambers of commerce, real-estate boards, boards of
22 trade, or professional football leagues (whether or
23 not administering a pension fund for football play-
24 ers) not organized for profit and no part of the net

1 earnings of which inures to the benefit of any pri-
2 vate shareholder or individual.

3 “(7) SOCIAL CLUBS.—Clubs organized for
4 pleasure, recreation, and other nonprofitable pur-
5 poses, substantially all of the activities of which are
6 for such purposes and no part of the net earnings
7 of which inures to the benefit of any private share-
8 holder.

9 “(8) CERTAIN FRATERNAL SOCIETIES.—Fra-
10 ternal beneficiary societies, orders, or associations—

11 “(A) operating under the lodge system or
12 for the exclusive benefit of the members of a
13 fraternity itself operating under the lodge sys-
14 tem, and

15 “(B) providing for the payment of life,
16 sick, accident, or other benefits to the members
17 of such society, order, or association or their
18 dependents.

19 “(9) VEBAS.—Voluntary employees’ beneficiary
20 associations providing for the payment of life, sick,
21 accident, or other benefits to the members of such
22 association or their dependents or designated bene-
23 ficiaries, if no part of the net earnings of such asso-
24 ciation inures (other than through such payments)

1 to the benefit of any private shareholder or indi-
2 vidual.

3 “(10) OTHER FRATERNAL ORGANIZATIONS.—
4 Domestic fraternal societies, orders, or associations,
5 operating under the lodge system—

6 “(A) the net earnings of which are devoted
7 exclusively to religious, charitable, scientific, lit-
8 erary, educational, and fraternal purposes, and

9 “(B) which do not provide for the payment
10 of life, sick, accident, or other benefits.

11 “(11) LOCAL TEACHERS’ RETIREMENT
12 FUNDS.—Teachers’ retirement fund associations of a
13 purely local character, if—

14 “(A) no part of their net earnings inures
15 (other than through payment of retirement ben-
16 efits) to the benefit of any private shareholder
17 or individual, and

18 “(B) the income consists solely of amounts
19 received from public taxation, amounts received
20 from assessments on the teaching salaries of
21 members, and income in respect of investments.

22 “(12) CERTAIN COOPERATIVES.—

23 “(A) Benevolent life insurance associations
24 of a purely local character, mutual ditch or irri-
25 gation companies, mutual or cooperative tele-

1 phone companies, or like organizations; but only
2 if 85 percent or more of the income consists of
3 amounts collected from members for the sole
4 purpose of meeting losses and expenses.

5 “(B) In the case of a mutual or coopera-
6 tive telephone company, subparagraph (A) shall
7 be applied without taking into account any in-
8 come received or accrued—

9 “(i) from a nonmember telephone
10 company for the performance of commu-
11 nication services which involve members of
12 the mutual or cooperative telephone com-
13 pany,

14 “(ii) from qualified pole rentals,

15 “(iii) from the sale of display listings
16 in a directory furnished to the members of
17 the mutual or cooperative telephone com-
18 pany, or

19 “(iv) from the prepayment of a loan
20 under section 306A, 306B, or 311 of the
21 Rural Electrification Act of 1936 (as in ef-
22 fect on January 1, 1987).

23 “(C) In the case of a mutual or cooperative
24 electric company, subparagraph (A) shall be ap-

1 plied without taking into account any income
2 received or accrued—

3 “(i) from qualified pole rentals, or

4 “(ii) from the prepayment of a loan
5 under section 306A, 306B, or 311 of the
6 Rural Electrification Act of 1936 (as in ef-
7 fect on January 1, 1987).

8 “(D) For purposes of this paragraph, the
9 term ‘qualified pole rental’ means any rental of
10 a pole (or other structure used to support
11 wires) if such pole (or other structure)—

12 “(i) is used by the telephone or elec-
13 tric company to support one or more wires
14 which are used by such company in pro-
15 viding telephone or electric services to its
16 members, and

17 “(ii) is used pursuant to the rental to
18 support one or more wires (in addition to
19 the wires described in clause (i)) for use in
20 connection with the transmission by wire
21 of electricity or of telephone or other com-
22 munications.

23 For purposes of the preceding sentence, the
24 term ‘rental’ includes any sale of the right to
25 use the pole (or other structure).

1 “(13) NONPROFIT CEMETERIES.—Cemetery
2 companies owned and operated exclusively for the
3 benefit of their members or which are not operated
4 for profit; and any corporation chartered solely for
5 the purpose of the disposal of bodies by burial or
6 cremation which is not permitted by its charter to
7 engage in any business not necessarily incident to
8 that purpose and no part of the net earnings of
9 which inures to the benefit of any private share-
10 holder or individual.

11 “(14) GRANDFATHERED MUTUAL FINANCIAL
12 INSTITUTIONS.—

13 “(A) Credit unions without capital stock
14 organized and operated for mutual purposes
15 and without profit.

16 “(B) Certain corporations or associations
17 organized before September 1, 1957, and de-
18 scribed in subparagraphs (B) or (C) of section
19 501(c)(14) of the Internal Revenue Code of
20 1986.

21 “(15) GRANDFATHERED SMALL INSURANCE
22 COMPANIES.—Insurance companies described in sec-
23 tion 501(c)(15) of the Internal Revenue Code of
24 1986.

1 “(16) CROP FINANCING ASSOCIATIONS.—Cor-
2 porations organized by an association subject to part
3 IV of this subchapter or members thereof, for the
4 purpose of financing the ordinary crop operations of
5 such members or other producers, and operated in
6 conjunction with such association. Exemption shall
7 not be denied any such corporation because it has
8 capital stock, if the dividend rate of such stock is
9 fixed at not to exceed the legal rate of interest in the
10 State of incorporation or 8 percent per annum,
11 whichever is greater, on the value of the consider-
12 ation for which the stock was issued, and if substan-
13 tially all such stock (other than nonvoting preferred
14 stock, the owners of which are not entitled or per-
15 mitted to participate, directly or indirectly, in the
16 profits of the corporation, on dissolution or other-
17 wise, beyond the fixed dividends) is owned by such
18 association, or members thereof; nor shall exemption
19 be denied any such corporation because there is ac-
20 cumulated and maintained by it a reserve required
21 by State law or a reasonable reserve for any nec-
22 essary purpose.

23 “(17) SUPPLEMENTAL EMPLOYMENT BENEFIT
24 TRUST.—

1 “(A) A trust or trusts forming part of a
2 plan providing for the payment of supplemental
3 unemployment compensation benefits, if—

4 “(i) under the plan, it is impossible,
5 at any time prior to the satisfaction of all
6 liabilities, with respect to employees under
7 the plan, for any part of the corpus or in-
8 come to be (within the taxable year or
9 thereafter) used for, or diverted to, any
10 purpose other than the providing of supple-
11 mental unemployment compensation bene-
12 fits,

13 “(ii) such benefits are payable to em-
14 ployees under a classification which is set
15 forth in the plan and which is found by the
16 Secretary not to be discriminatory in favor
17 of employees who are highly compensated
18 employees (within the meaning of section
19 414(q)), and

20 “(iii) such benefits do not discrimi-
21 nate in favor of employees who are highly
22 compensated employees (within the mean-
23 ing of section 414(q)). A plan shall not be
24 considered discriminatory within the mean-
25 ing of this clause merely because the bene-

1 fits received under the plan bear a uniform
2 relationship to the total compensation, or
3 the basic or regular rate of compensation,
4 of the employees covered by the plan.

5 “(B) Rules similar to those contained in
6 subparagraphs (B) through (E) of section
7 501(c)(7) of the Internal Revenue Code of 1986
8 shall apply to subparagraph (A).

9 “(18) GRANDFATHERED TRUSTS.—A trust or
10 trusts created before June 25, 1959, and described
11 in section 501(c)(18) of the Internal Revenue Code
12 of 1986.

13 “(19) CERTAIN VETERANS’ ORGANIZATIONS.—
14 A post or organization of past or present members
15 of the Armed Forces of the United States, or an
16 auxiliary unit or society of, or a trust or foundation
17 for, any such post or organization—

18 “(A) organized in the United States or any
19 of its possessions,

20 “(B) at least 75 percent of the members of
21 which are past or present members of the
22 Armed Forces of the United States and sub-
23 stantially all of the other members of which are
24 individuals who are cadets or are spouses, wid-
25 ows, or widowers of past or present members of

1 the Armed Forces of the United States or of
2 cadets, and

3 “(C) no part of the net earnings of which
4 inures to the benefit of any private shareholder
5 or individual.

6 “(20) LEGAL SERVICE PLAN TRUSTS.—An or-
7 ganization or trust created or organized in the
8 United States, the exclusive function of which is to
9 form part of a qualified group legal services plan or
10 plans.

11 “(21) BLACK LUNG ACT TRUSTS.—A trust or
12 trusts established in writing, created or organized in
13 the United States, and contributed to by any person
14 (except an insurance company) if—

15 “(A) the purpose of such trust or trusts is
16 exclusively—

17 “(i) to satisfy, in whole or in part, the
18 liability of such person for, or with respect
19 to, claims for compensation for disability
20 or death due to pneumoconiosis under
21 Black Lung Acts,

22 “(ii) to pay premiums for insurance
23 exclusively covering such liability,

24 “(iii) to pay administrative and other
25 incidental expenses of such trust in connec-

1 tion with the operation of the trust and the
2 processing of claims against such person
3 under Black Lung Acts, and

4 “(iv) to pay accident or health bene-
5 fits for retired miners and their spouses
6 and dependents (including administrative
7 and other incidental expenses of such trust
8 in connection therewith) or premiums for
9 insurance exclusively covering such bene-
10 fits; and

11 “(B) such trusts meets requirements simi-
12 lar to those contained in section 501(c)(21) of
13 the Internal Revenue Code of 1986.

14 “(22) MULTIEMPLOYER ERISA TRUST.—A trust
15 created or organized in the United States and estab-
16 lished in writing by the plan sponsors of multiem-
17 ployer plans if—

18 “(A) the purpose of such trust is exclu-
19 sively—

20 “(i) to pay any amount described in
21 section 4223(c) or (h) of the Employee Re-
22 tirement Income Security Act of 1974, and

23 “(ii) to pay reasonable and necessary
24 administrative expenses in connection with
25 the establishment and operation of the

1 trust and the processing of claims against
2 the trust,

3 “(B) no part of the assets of the trust may
4 be used for, or diverted to, any purpose other
5 than—

6 “(i) the purposes described in sub-
7 paragraph (A), or

8 “(ii) prudent investment in securities,
9 obligations, or time or demand deposits,

10 “(C) such trust meets the requirements of
11 paragraphs (2), (3), and (4) of section 4223(b),
12 4223(h), or, if applicable, section 4223(c) of the
13 Employee Retirement Income Security Act of
14 1974, and

15 “(D) the trust instrument provides that,
16 on dissolution of the trust, assets of the trust
17 may not be paid other than to plans which have
18 participated in the plan or, in the case of a
19 trust established under section 4223(h) of such
20 Act, to plans with respect to which employers
21 have participated in the fund.

22 “(23) GRANDFATHERED VETERANS’ INSURANCE
23 ORGANIZATION.—Any association organized before
24 1880 more than 75 percent of the members of which
25 are present or past members of the Armed Forces

1 and a principal purpose of which is to provide insur-
2 ance and other benefits to veterans or their depend-
3 ents.

4 “(24) ERISA TRUST.—A trust described in sec-
5 tion 4049 of the Employee Retirement Income Secu-
6 rity Act of 1974 (as in effect on the date of the en-
7 actment of the Single-Employer Pension Plan
8 Amendments Act of 1986).

9 “(25) REAL TITLE HOLDING CORPORATION OR
10 TRUST.—

11 “(A) Any corporation or trust which—

12 “(i) has no more than 35 shareholders
13 or beneficiaries,

14 “(ii) has only 1 class of stock or bene-
15 ficial interest, and

16 “(iii) is organized for the exclusive
17 purposes of—

18 “(I) acquiring real property and
19 holding title to, and collecting income
20 from, such property, and

21 “(II) remitting the entire amount
22 of income from such property (less ex-
23 penses) to 1 or more organizations de-
24 scribed in subparagraph (C) which are

1 shareholders of such corporation or
2 beneficiaries of such trust.

3 For purposes of clause (iii), the term ‘real prop-
4 erty’ shall not include any interest as a tenant
5 in common (or similar interest) and shall not
6 include any indirect interest.

7 “(B) A corporation or trust shall be de-
8 scribed in subparagraph (A) without regard to
9 whether the corporation or trust is organized by
10 1 or more organizations described in subpara-
11 graph (C).

12 “(C) An organization is described in this
13 subparagraph if such organization is—

14 “(i) a qualified pension, profit shar-
15 ing, or stock bonus plan that meets the re-
16 quirements of section 401(a),

17 “(ii) a governmental plan (within the
18 meaning of section 414(d)),

19 “(iii) the United States, any State or
20 political subdivision thereof, or any agency
21 or instrumentality of any of the foregoing,
22 or

23 “(iv) any organization described in
24 paragraph (3).

1 “(D) A corporation or trust shall in no
2 event be treated as described in subparagraph
3 (A) unless such corporation or trust permits its
4 shareholders or beneficiaries—

5 “(i) to dismiss the corporation’s or
6 trust’s investment adviser, following rea-
7 sonable notice, upon a vote of the share-
8 holders or beneficiaries holding a majority
9 of interest in the corporation or trust, and

10 “(ii) to terminate their interest in the
11 corporation or trust by either, or both, of
12 the following alternatives, as determined by
13 the corporation or trust:

14 “(I) by selling or exchanging
15 their stock in the corporation or inter-
16 est in the trust (subject to any Fed-
17 eral or State securities law) to any or-
18 ganization described in subparagraph
19 (C) so long as the sale or exchange
20 does not increase the number of
21 shareholders or beneficiaries in such
22 corporation or trust above 35, or

23 “(II) by having their stock or in-
24 terest redeemed by the corporation or
25 trust after the shareholder or bene-

1 ficiary has provided 90 days notice to
2 such corporation or trust.

3 “(E)(i) For purposes of this paragraph—

4 “(I) a corporation which is a qualified
5 subsidiary shall not be treated as a sepa-
6 rate corporation, and

7 “(II) all assets, liabilities, and items
8 of income, deduction, and credit of a quali-
9 fied subsidiary shall be treated as assets,
10 liabilities, and such items (as the case may
11 be) of the corporation or trust described in
12 subparagraph (A).

13 “(ii) For purposes of this subparagraph,
14 the term ‘qualified subsidiary’ means any cor-
15 poration if, at all times during the period such
16 corporation was in existence, 100 percent of the
17 stock of such corporation is held by the cor-
18 poration or trust described in subparagraph
19 (A).

20 “(iii) For purposes of this subtitle, if any
21 corporation which was a qualified subsidiary
22 ceases to meet the requirements of clause (ii),
23 such corporation shall be treated as a new cor-
24 poration acquiring all of its assets (and assum-
25 ing all of its liabilities) immediately before such

1 cessation from the corporation or trust de-
2 scribed in subparagraph (A) in exchange for its
3 stock.

4 “(F) For purposes of subparagraph (A),
5 the term ‘real property’ includes any personal
6 property which is leased under, or in connection
7 with, a lease of real property, but only if the
8 rent attributable to such personal property for
9 the taxable year does not exceed 15 percent of
10 the total rent for the taxable year attributable
11 to both the real and personal property leased
12 under, or in connection with, such lease.

13 “(G)(i) An organization shall not be treat-
14 ed as failing to be described in this paragraph
15 merely by reason of the receipt of any otherwise
16 disqualifying income which is incidentally de-
17 rived from the holding of real property.

18 “(ii) Clause (i) shall not apply if the
19 amount of gross income described in such
20 clause exceeds 10 percent of the organization’s
21 gross income for the taxable year unless the or-
22 ganization establishes to the satisfaction of the
23 Secretary that the receipt of gross income de-
24 scribed in clause (i) in excess of such limitation
25 was inadvertent and reasonable steps are being

1 taken to correct the circumstances giving rise to
2 such income.

3 “(26) STATE ESTABLISHED MEDICAL CARE IN-
4 SURER.—Any membership organization if—

5 “(A) such organization is established by a
6 State exclusively to provide coverage for medical
7 care on a not-for-profit basis to individuals de-
8 scribed in subparagraph (B) through—

9 “(i) insurance issued by the organiza-
10 tion, or

11 “(ii) a health maintenance organiza-
12 tion under an arrangement with the orga-
13 nization,

14 “(B) the only individuals receiving such
15 coverage through the organization are individ-
16 uals—

17 “(i) who are residents of such State,
18 and

19 “(ii) who, by reason of the existence
20 or history of a medical condition—

21 “(I) are unable to acquire med-
22 ical care coverage for such condition
23 through insurance or from a health
24 maintenance organization, or

1 “(II) are able to acquire such
2 coverage only at a rate which is sub-
3 stantially in excess of the rate for
4 such coverage through the member-
5 ship organization,

6 “(C) the composition of the membership in
7 such organization is specified by such State,
8 and

9 “(D) no part of the net earnings of the or-
10 ganization inures to the benefit of any private
11 shareholder or individual. A spouse and any
12 qualifying child) of an individual described in
13 subparagraph (B) (without regard to this sen-
14 tence) shall be treated as described in subpara-
15 graph (B).

16 “(27) GRANDFATHERED WORKERS COMPENSA-
17 TION ORGANIZATION.—Any membership organiza-
18 tion established before June 1, 1996, by a State ex-
19 clusively to reimburse its members for losses arising
20 under workmen’s compensation acts, and described
21 in section 501(c)(27) of the Internal Revenue Code
22 of 1986.

23 “(d) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—
24 The following organizations are referred to in subsection
25 (a): Religious or apostolic associations or corporations, if

1 such associations or corporations have a common treasury
2 or community treasury, even if such associations or cor-
3 porations engage in business for the common benefit of
4 the members, but only if such activity is treated as unre-
5 lated business activity.

6 “(e) COOPERATIVE HOSPITAL SERVICE ORGANIZA-
7 TIONS.—For purposes of this chapter, an organization
8 shall be treated as an organization organized and operated
9 exclusively for charitable purposes, if—

10 “(1) such organization is organized and oper-
11 ated solely—

12 “(A) to perform, on a centralized basis,
13 one or more of the following services which, if
14 performed on its own behalf by a hospital which
15 is an organization described in subsection (c)(3)
16 and exempt from taxation under subsection (a),
17 would constitute activities in exercising or per-
18 forming the purpose or function constituting
19 the basis for its exemption: data processing,
20 purchasing (including the purchasing of insur-
21 ance on a group basis), warehousing, billing
22 and collection, food, clinical, industrial engi-
23 neering, laboratory, printing, communications,
24 record center, and personnel (including selec-

1 tion, testing, training, and education of per-
2 sonnel) services; and

3 “(B) to perform such services solely for
4 two or more hospitals each of which is—

5 “(i) an organization described in sub-
6 section (c)(3) which is exempt from tax-
7 ation under subsection (a),

8 “(ii) a constituent part of an organi-
9 zation described in subsection (c)(3) which
10 is exempt from taxation under subsection
11 (a) and which, if organized and operated
12 as a separate entity, would constitute an
13 organization described in subsection (c)(3),
14 or

15 “(iii) owned and operated by the
16 United States, a State, the District of Co-
17 lumbia, or a possession of the United
18 States, or a political subdivision or an
19 agency or instrumentality of any of the
20 foregoing;

21 “(2) such organization is organized and oper-
22 ated on a cooperative basis and allocates or pays,
23 within 8½ months after the close of its taxable year,
24 all net earnings to patrons on the basis of services
25 performed for them; and

1 “(3) if such organization has capital stock, all
2 of such stock outstanding is owned by its patrons.
3 For purposes of this title, any organization which, by rea-
4 son of the preceding sentence, is an organization described
5 in subsection (c)(3) and exempt from taxation under sub-
6 section (a), shall be treated as a hospital and as an organi-
7 zation the principal purpose or functions of which are the
8 providing of medical or hospital care or medical education
9 or medical research, if the organization is a hospital, or
10 if the organization is a medical research organization di-
11 rectly engaged in the continuous active conduct of medical
12 research in conjunction with a hospital.

13 “(f) COOPERATIVE SERVICE ORGANIZATIONS OF OP-
14 ERATING EDUCATIONAL ORGANIZATIONS.—For purposes
15 of this chapter—

16 “(1) If an organization is—

17 “(A) organized and operated solely to hold,
18 commingle, and collectively invest and reinvest
19 (including arranging for and supervising the
20 performance by independent contractors of in-
21 vestment services related thereto) in stocks and
22 securities, the moneys contributed thereto by
23 each of the members of such organization, and
24 to collect income therefrom and turn over the

1 entire amount thereof, less expenses, to such
2 members,

3 “(B) organized and controlled by one or
4 more such members, and

5 “(C) comprised solely of members that are
6 organizations described in paragraph (2) or
7 (3)—

8 “(i) which are exempt from taxation
9 under subsection (a), or

10 “(ii) the gross profits of which are ex-
11 cluded from taxation under section 251(a),
12 then such organization shall be treated as an
13 organization organized and operated exclusively
14 for charitable purposes.

15 “(2) An organization is described in this para-
16 graph if the organization is an educational organiza-
17 tion which normally maintains a regular faculty and
18 curriculum and normally has a regularly enrolled
19 body of pupils or students in attendance at the place
20 where its educational activities are regularly carried
21 on.

22 “(3) An organization is described in this para-
23 graph if the organization is an organization which
24 normally receives a substantial part of its support
25 (exclusive of income received in the exercise or per-

1 formance by such organization of its charitable, edu-
2 cational, or other purpose or function constituting
3 the basis for its exemption under section 253(a))
4 from the United States or any State or political sub-
5 division thereof or from direct or indirect contribu-
6 tions from the general public, and which is organized
7 and operated exclusively to receive, hold, invest, and
8 administer property and to make expenditures to or
9 for the benefit of a college or university which is an
10 organization referred to in clause (ii) of this sub-
11 paragraph and which is an agency or instrumentality
12 of a State or political subdivision thereof, or which
13 is owned or operated by a State or political subdivi-
14 sion thereof or by an agency or instrumentality of
15 one or more States or political subdivisions.

16 “(g) EXPENDITURES BY PUBLIC CHARITIES TO IN-
17 FLUENCE LEGISLATION.—

18 “(1) GENERAL RULE.—In the case of an orga-
19 nization to which this subsection applies, exemption
20 from taxation under subsection (a) shall be denied
21 because a substantial part of the activities of such
22 organization consists of carrying on propaganda, or
23 otherwise attempting, to influence legislation, but
24 only if such organization normally—

1 “(A) makes lobbying expenditures in ex-
2 cess of the lobbying ceiling amount for such or-
3 ganization for each taxable year, or

4 “(B) makes grass roots expenditures in ex-
5 cess of the grass roots ceiling amount for such
6 organization for each taxable year.

7 “(2) DEFINITIONS.—For purposes of this sub-
8 section—

9 “(A) LOBBYING EXPENDITURES.—‘Lob-
10 bying expenditures’ means expenditures for the
11 purpose of influencing legislation (as defined in
12 section 4911(d)).

13 “(B) LOBBYING CEILING AMOUNT.—The
14 lobbying ceiling amount for any organization
15 for any taxable year is 150 percent of the lob-
16 bying nontaxable amount for such organization
17 for such taxable year, determined under section
18 4911.

19 “(C) GRASS ROOTS EXPENDITURES.—
20 ‘Grass roots expenditures’ means expenditures
21 for the purpose of influencing legislation (as de-
22 fined in section 4911(d) without regard to para-
23 graph (1)(B) thereof).

24 “(D) GRASS ROOTS CEILING AMOUNT.—
25 The grass roots ceiling amount for any organi-

1 zation for any taxable year is 150 percent of
2 the gross roots nontaxable amount for such or-
3 ganization for such taxable year, determined
4 under section 4911.

5 “(3) ORGANIZATIONS TO WHICH THIS SUB-
6 SECTION APPLIES.—This subsection shall apply to
7 any organization which has elected (in such manner
8 and at such time as the Secretary may prescribe) to
9 have the provisions of this subsection apply to such
10 organization and which, for the taxable year which
11 includes the date the election is made, is described
12 in subsection (c)(3) and is not described in para-
13 graph (4) and is not a private foundation.

14 “(4) DISQUALIFIED ORGANIZATIONS.—This
15 subsection does not apply to—

16 “(A) a church,

17 “(B) an integrated auxiliary of a church or
18 of a convention or association of churches, or

19 “(C) a member of an affiliated group of or-
20 ganizations (within the meaning of section
21 4911(f)(2)) if one or more members of such
22 group is described in subparagraph (A) or (B).

23 “(5) YEARS FOR WHICH ELECTION IS EFFEC-
24 TIVE.—An election by an organization under this

1 subsection shall be effective for all taxable years of
2 such organization which—

3 “(A) end after the date the election is
4 made, and

5 “(B) begin before the date the election is
6 revoked by such organization (under regulations
7 prescribed by the Secretary).

8 “(6) NO EFFECT ON CERTAIN ORGANIZA-
9 TIONS.—With respect to any organization for a tax-
10 able year for which—

11 “(A) such organization is described in
12 paragraph (5), or

13 “(B) an election under this subsection is
14 not in effect for such organization, nothing in
15 this subsection or in section 4911 shall be con-
16 strued to affect the interpretation of the phrase,
17 ‘no substantial part of the activities of which is
18 carrying on propaganda, or otherwise attempt-
19 ing, to influence legislation,’ under subsection
20 (c)(3).

21 “(h) GOVERNMENT CORPORATIONS EXEMPT UNDER
22 SUBSECTION (c)(1).—For purposes of subsection (c)(1),
23 the following organizations are described in this sub-
24 section:

1 “(1) The Central Liquidity Facility established
2 under title III of the Federal Credit Union Act (12
3 U.S.C. 1795 et seq.).

4 “(2) The Resolution Trust Corporation estab-
5 lished under section 21A of the Federal Home Loan
6 Bank Act.

7 “(3) The Resolution Funding Corporation es-
8 tablished under section 21B of the Federal Home
9 Loan Bank Act.

10 “(i) CERTAIN EDUCATIONAL ORGANIZATIONS.—An
11 organization shall not be eligible for exemption as an edu-
12 cational organization under subsection (c)(3) if a substan-
13 tial amount of its activities and funds are devoted to—

14 “(1) conducting seminars and other similar pro-
15 grams,

16 “(2) conducting research to educate Congress
17 or the general public about public policy issues,

18 “(3) producing books and pamphlets, or

19 “(4) a combination of the foregoing.

20 **“SEC. 254. SPECIAL RULES FOR (c)(3) ORGANIZATIONS.**

21 “(a) NEW ORGANIZATIONS MUST NOTIFY SEC-
22 RETARY.—Except as provided in subsection (c), an organi-
23 zation shall not be treated as an organization described
24 in section 253(c)(3)—

1 “(1) unless that it has given notice to the Sec-
2 retary, in such manner as the Secretary may pre-
3 scribe, that it is applying for recognition of such sta-
4 tus, or

5 “(2) for any period before giving of such notice,
6 if such notice is given after the time prescribed by
7 the Secretary by regulations for giving notice under
8 this subsection.

9 “(b) PRESUMPTION THAT ORGANIZATIONS ARE PRI-
10 VATE FOUNDATIONS.—Except as provided in subsection
11 (c), any organization described in section 253(c)(3) and
12 which does not notify the Secretary, at such time and in
13 such manner as the Secretary may by regulations pre-
14 scribe, that it is not a private foundation shall be pre-
15 sumed to be a private foundation.

16 “(c) EXCEPTIONS.—Subsections (a) and (b) shall not
17 apply to—

18 “(1) organizations organized before October 10,
19 1969;

20 “(2) organizations which obtained recognition
21 of tax-exempt status under section 501(c)(3) of the
22 Internal Revenue Code of 1986 (in the case of sub-
23 section (a) only);

1 “(3) organizations which were determined not
2 to be private foundations under the Internal Rev-
3 enue Code of 1986;

4 “(4) churches, their integrated auxiliaries, and
5 conventions and associations of churches;

6 “(5) any organization that is not a private
7 foundation and the gross receipts of which in each
8 taxable year are not more than \$25,000, or

9 “(6) such other classes of organizations which
10 the Secretary may exempt.

11 **“SEC. 255. TAX ON UNRELATED BUSINESS ACTIVITY.**

12 “(a) IN GENERAL.—Each organization described in
13 subsection (b) shall be subject to the Competitive Amer-
14 ican Business Tax for businesses under section 201 on its
15 gross profits from its unrelated business activity.

16 “(b) ORGANIZATIONS SUBJECT TO TAX.—This sec-
17 tion shall apply to—

18 “(1) organizations exempt from the business
19 consumption tax under section 253(a), other than
20 instrumentalities of the United States described in
21 section 253(c)(1).

22 “(2) colleges and universities which are instru-
23 mentalities of any government and corporations
24 owned by one or more such colleges or universities.

1 **“SEC. 256. UNRELATED BUSINESS ACTIVITY.**

2 “(a) IN GENERAL.—‘Unrelated business activity’
3 means any trade or business the conduct of which is not
4 substantially related (aside from the need of such organi-
5 zation for income or funds or the use it makes of the prof-
6 its derived) to the exercise or performance by such organi-
7 zation of its charitable, educational, or other purpose or
8 function constituting the basis for its exemption under
9 section 253, except that such term does not include any
10 trade or business—

11 “(1) in which substantially all the work in car-
12 rying on such trade or business is performed for the
13 organization without compensation; or

14 “(2) which is carried on, in the case of an orga-
15 nization described in section 253(e)(3) or in the case
16 of a college or university described in section 255(b),
17 by the organization primarily for the convenience of
18 its members, students, patients, officers, or employ-
19 ees, which is the selling by the organization of items
20 of work-related clothes and equipment and items
21 normally sold through vending machines, through
22 food dispensing facilities, or by snack bars, for the
23 convenience of its members at their usual places of
24 employment; or

1 “(3) which is the selling of merchandise, sub-
2 stantially all of which has been received by the orga-
3 nization as gifts or contributions.

4 “(b) ADVERTISING, ETC., ACTIVITIES.—For purposes
5 of this section, ‘trade or business’ includes any activity
6 which is carried on for the production of income from the
7 sale of goods or the performance of services. For purposes
8 of the preceding sentence, an activity does not lose identity
9 as a trade or business merely because it is carried on with-
10 in a larger aggregate of similar activities or within a larger
11 complex of other endeavors which may, or may not, be
12 related to the exempt purposes of the organization. Where
13 an activity carried on for profit constitutes an unrelated
14 trade or business, no part of such trade or business shall
15 be excluded from such classification merely because it does
16 not result in profit.

17 “(c) TRADE OR BUSINESS.—

18 “(1) CERTAIN BUSINESS ACTIVITIES.—An ac-
19 tivity shall not be considered a ‘trade or business’
20 solely because the activity is a business activity
21 (such as certain passive rental activity) that would
22 be subject to the business consumption tax if con-
23 ducted by a business entity other than a tax-exempt
24 organization.

1 “(2) REGULATIONS.—The Secretary shall pre-
 2 scribe regulations defining a ‘trade or business’.
 3 Such regulations shall be consistent with the provi-
 4 sions under sections 511 through 513 of the Internal
 5 Revenue Code of 1986, except to the extent such
 6 provisions are inconsistent with other principles of
 7 the business consumption tax. The regulations shall
 8 include exclusions from the definition of ‘trade or
 9 business’ similar to those contained in section 513 of
 10 the Internal Revenue Code for—

11 “(A) certain bingo games,

12 “(B) certain hospital services, and

13 “(C) certain public entertainment activity
 14 at fairs and expositions by an organization
 15 which regularly conducts, as one of its substan-
 16 tial exempt purposes, an agricultural or edu-
 17 cational fair or exhibition.

18 “(3) TRADE SHOWS.—The conduct of trade
 19 shows and conventions shall not be excluded from
 20 the definition of trade or business.

21 **“Subchapter H—Cooperatives**

“Sec. 260. Patronage dividends of cooperatives.

22 **“SEC. 260. PATRONAGE DIVIDENDS OF COOPERATIVES.**

23 “(a) PATRONAGE DIVIDENDS PAID BY SUPPLY CO-
 24 OPERATIVES.—A qualified patronage dividend paid by a

1 supply cooperative to a patron shall be treated as if it is
2 a refund of a portion of the amounts paid by the patron
3 for goods, services, or use of capital. In general, if the
4 supply cooperative included the amount received from the
5 patron in taxable receipts, the dividend shall reduce tax-
6 able receipts in the year incurred. If the recipient of the
7 dividend is a business entity which deducted the cost of
8 business purchases to which the dividend related, the re-
9 cipient will reduce its cost of business purchases by the
10 amount of the dividend in the year the dividend is paid
11 or incurred.

12 “(b) PATRONAGE DIVIDENDS PAID BY MARKETING
13 COOPERATIVES.—A qualified patronage dividend paid to
14 a patron by a marketing cooperative shall be treated as
15 an upward price adjustment in the amount received by the
16 patron for its goods marketed by the cooperative. In gen-
17 eral, the cooperative will increase its cost of business pur-
18 chases by the amount of the qualified patronage dividend
19 and the recipient will increase its taxable receipts by the
20 amount of the qualified patronage dividend.

21 “(c) DIVIDEND TREATMENT.—Only the portion of a
22 patronage dividend that is not a qualified patronage divi-
23 dend shall be treated as a dividend under this chapter and
24 chapter 2.

25 “(d) DEFINITIONS.—

1 “(1) QUALIFIED PATRONAGE DIVIDEND.—A
2 ‘qualified patronage dividend’ is that part of a pa-
3 tronage dividend that is attributable to the patron’s
4 allocable share of patronage earnings of a marketing
5 cooperative or a supply cooperative.

6 “(2) SUPPLY COOPERATIVE.—A ‘supply cooper-
7 ative’ is a cooperative that sells goods or service to
8 patrons and provided patronage dividends with re-
9 spect to the quantity of purchases of the patrons.

10 “(3) MARKETING COOPERATIVE.—A ‘marketing
11 cooperative’ is a cooperative that sells goods pro-
12 duced by its members and provides patronage divi-
13 dends to the members based on the quantities of
14 goods sold or provided for sale.

15 “(e) SPECIAL RULES.—

16 “(1) NOTICES OF ALLOCATION AND PER-UNIT
17 RETAIN CERTIFICATES.—Except as provided in
18 paragraph (2), a notice of allocation, per-unit retain
19 certificate, or other similar document shall not be
20 treated as a patronage dividend until it is redeemed
21 in cash or property.

22 “(2) OPPORTUNITY TO RECEIVE CASH.—If a
23 patron is given an opportunity to receive a patron-
24 age dividend in cash, but instead chooses to accept
25 a per-unit retain certificate or a qualified notice of

1 allocation, the patron will be treated as receiving
2 cash and simultaneously contributing to the capital
3 of the cooperative.

4 “(3) APPLICATION LIMITED TO QUALIFIED CO-
5 OPERATIVES.—Under rules to be prescribed by the
6 Secretary, this section shall apply only to coopera-
7 tives to which one of the following provisions of the
8 Internal Revenue Code of 1986 would have applied:

9 “(A) Section 501(c)(12) (relating to coop-
10 erative telephone companies and similar organi-
11 zations).

12 “(B) Section 501(c)(14) (relating to cer-
13 tain cooperative banks).

14 “(C) Section 521 (relating to farm co-
15 operatives).

16 “(D) Section 1381 (relating to coopera-
17 tives generally).

18 “(4) REGULATIONS.—The Secretary shall pre-
19 scribe regulations for the application of this section.
20 The regulations shall generally be consistent with
21 subchapter T of chapter 1 of the Internal Revenue
22 Code of 1986 except to the extent that such rules
23 are inconsistent with provisions of this chapter.

24 **“Subchapter I—Sourcing Rules**

“Sec. 265. Exports of property or services.

“Sec. 266. Imports of property or services.

“Sec. 267. Import or export of services.

“Sec. 268. International transportation services.

“Sec. 269. International communications.

“Sec. 270. Insurance.

“Sec. 271. Banking services.

1 **“SEC. 265. EXPORTS OF PROPERTY OR SERVICES.**

2 “(a) GENERAL RULE.—Taxable receipts do not in-
3 clude amounts received by the exporter thereof for prop-
4 erty or services exported from the United States for use
5 or consumption outside the United States.

6 “(b) EXPORT THROUGH NONBUSINESS ENTITY.—
7 For purposes of subsection (a), if property or services are
8 sold to a governmental entity or a tax-exempt organization
9 for export and are exported other than in an activity of
10 such entity which is subject to the business consumption
11 tax, then the seller of such property or services is deemed
12 to be the exporter thereof.

13 “(c) EXPORT OF SERVICES.—See section 267 for
14 rules for determining whether services are exported or im-
15 ported.

16 **“SEC. 266. IMPORTS OF PROPERTY OR SERVICES.**

17 “(a) IN GENERAL.—The import of property or serv-
18 ices for consumption in the United States shall constitute
19 a business purchase if such property or service is to be
20 used in a business activity in the United States. Property
21 being held for sale or retail by a business entity that is
22 in the business of selling goods shall be considered held
23 for ‘use in a business activity’.

1 “(b) AMOUNT OF BUSINESS PURCHASE.—

2 “(1) IN GENERAL.—The cost of business pur-
3 chases with respect to the import of property or
4 services for use or consumption in the United States
5 is the customs value, price or other amount used for
6 purposes of determining the import tax under sec-
7 tion 281 or section 282.

8 “(2) IMPORT TAX.—The cost of business pur-
9 chases does not include any import tax paid. No de-
10 duction shall be allowed with respect to property or
11 service imported by a business entity unless the im-
12 port tax is paid with respect to such import.

13 **“SEC. 267. IMPORT OR EXPORT OF SERVICES.**

14 “(a) IN GENERAL.—Except as otherwise provided in
15 this subchapter, services shall not be treated as imported
16 or exported from the location in which they are performed.

17 “(b) IMPORT OF SERVICES.—A business entity shall
18 be treated as importing a service if—

19 “(1) the entire benefit of the service will be re-
20 alized in the United States, and

21 “(2) the benefit will be realized in connection
22 with the United States business activities of the
23 business entity.

24 “(c) EXPORT OF SERVICES.—A business will be
25 treated as exporting a service if—

1 “(1) the entire benefit of the service will be re-
2 alized outside of the United States, and

3 “(2) the benefit will be realized solely in con-
4 nection with the activities of the purchaser occurring
5 outside the United States.

6 “(d) SERVICES ACQUIRED FROM SERVICE PROVIDER
7 THAT PROVIDES SERVICES IN AND OUTSIDE THE
8 UNITED STATES.—

9 “(1) IN GENERAL.—If a business entity ac-
10 quires services from a service provider that provides
11 services both in and outside the United States and
12 the service provider shows on the invoice where the
13 services are provided—

14 “(A) the business entity shall treat the
15 services as provided where stated on the invoice,
16 and

17 “(B) the service provider shall treat as tax-
18 able receipts any services listed as provided in
19 the United States.

20 “(2) NO INVOICE.—If a business entity acquires
21 services from a service provider that provides serv-
22 ices both in and outside the United States and the
23 service provider does not show on an invoice where
24 such services are provided—

1 “(A) the business entity shall treat the
2 services as if provided in the location to which
3 payment is sent, and

4 “(B) the service provider shall treat as tax-
5 able receipts any payments received in the
6 United States.

7 “(e) SPECIAL RULES PREVAIL.—See sections 268
8 and 269 for special rule relating to transportation and
9 communication services.

10 **“SEC. 268. INTERNATIONAL TRANSPORTATION SERVICES.**

11 “(a) TRANSPORTATION OF PROPERTY.—

12 “(1) TAXABLE RECEIPTS.—

13 “(A) EXPORTS.—Taxable receipts do not
14 include receipts from the transportation of
15 property exported from the United States.

16 “(B) IMPORTS.—Taxable receipts include
17 receipts from transportation of property im-
18 ported into the United States only if such costs
19 are not taken into account in determining the
20 import tax.

21 “(C) PRESUMPTIONS.—The Secretary shall
22 prescribe regulations describing situations in
23 which a transporter of property must presume
24 that no import tax has been paid on the cost of
25 its services.

1 “(2) BUSINESS PURCHASES.—

2 “(A) EXPORTS.—Business purchases do
3 not include amounts paid or incurred for the
4 cost of transportation of property exported from
5 the United States.

6 “(B) IMPORTS.—Amounts paid or incurred
7 for transportation of goods imported into the
8 United States, shall constitute a cost of busi-
9 ness purchase only to the extent that they are
10 taken into account in determining the customs
11 value for purposes of section 281(a) (relating to
12 the import tax).

13 “(b) TRANSPORTATION OF PASSENGERS.—

14 “(1) TAXABLE RECEIPTS.—Taxable receipts—

15 “(A) include receipts from the transpor-
16 tation of passengers from the United States to
17 a destination outside the United States, but

18 “(B) do not include receipts from the
19 transportation of passengers from outside the
20 United States to a destination in the United
21 States.

22 “(2) BUSINESS PURCHASES.—Business pur-
23 chases—

24 “(A) include amounts paid or incurred in
25 a business activity for the transportation of

1 passengers from the United States to a destina-
2 tion outside the United States, but

3 “(B) do not include amounts paid or in-
4 curred for transportation of passengers from
5 outside the United States to a destination in
6 the United States.

7 “(3) SIMPLIFYING RULES.—The Secretary may
8 provide rules that simplify this subsection, including
9 rules under which—

10 “(A) half of receipts attributable to trans-
11 portation to or from the United States are
12 treated as taxable receipts,

13 “(B) half of the cost for business trips to
14 and from the United States are treated as busi-
15 ness purchases, and

16 “(C) all transportation expenses of a busi-
17 ness entity that has no regular business outside
18 the United States are treated as business pur-
19 chases.

20 **“SEC. 269. INTERNATIONAL COMMUNICATIONS.**

21 “(a) IN GENERAL.—For purposes of section 266,
22 communications services shall be treated as provided at
23 the point of origin of the communications and shall not
24 be treated as imported or exported.

1 “(b) COMMUNICATIONS SERVICES.—Communications
2 services include—

3 “(1) internet services,

4 “(2) telephone and electronic email communica-
5 tions services,

6 “(3) courier services (except in the case of
7 transportation of property that is imported or ex-
8 ported),

9 “(4) satellite transmission services,

10 “(5) telegraph services,

11 “(6) facsimile transmission services, and

12 “(7) other similar services.

13 **“SEC. 270. INSURANCE.**

14 “(a) IN GENERAL.—Insurance services will be treat-
15 ed as provided at the location of the insurance company
16 providing the services. Except as the Secretary may pre-
17 scribe by regulations, insurance companies will be treated
18 as providing services at the location to which insurance
19 payments are made.

20 “(b) INSURED RISKS IN THE UNITED STATES.—If
21 insurance services are provided outside the United States
22 and the insured risk is located in the United States—

23 “(1) the insurance service shall be treated as
24 imported,

1 “(2) the insurance premiums shall be subject to
2 the import tax, and

3 “(3) payments of insurance benefits shall not be
4 treated as imported.

5 “(c) INSURED RISK OUTSIDE THE UNITED
6 STATES.—If insurance services are provided inside the
7 United States and the insured risk is located outside the
8 United States—

9 “(1) insurance services shall be treated as ex-
10 ported,

11 “(2) payments of insurance benefits shall be
12 treated as payments for services outside the United
13 States, and shall not be deducted as business pur-
14 chases.

15 “(d) INSURANCE SERVICES.—Insurance services
16 means the provision of insurance and services related to
17 insurance other than insurance that is treated as a savings
18 asset.

19 **“SEC. 271. BANKING SERVICES.**

20 “The Secretary shall prescribe regulations on the lo-
21 cation of banking services and the extent to which such
22 services are to be treated as imported or exported.

23 **“Subchapter J—Business Conducted in a**
24 **Possession**

“Sec. 276. Treatment of possessions.

1 **“SEC. 276. TREATMENT OF POSSESSIONS.**

2 “(a) IN GENERAL.—For purposes of the business
3 consumption tax imposed by this chapter, the U.S. posses-
4 sions shall not be treated as part of the United States.

5 “(b) POSSESSION.—For purposes of this subchapter,
6 ‘U.S. possession’ or ‘possession’ means a possession of the
7 United States and includes the Commonwealth of Puerto
8 Rico and the Virgin Islands.

9 **“Subchapter K—Import Tax**

“Sec. 281. Imposition of tax on property.

“Sec. 282. Imposition of tax on import of services.

“Sec. 283. General rules for the import tax.

10 **“SEC. 281. IMPOSITION OF TAX ON PROPERTY.**

11 “(a) GENERAL RULE.—There is hereby imposed a
12 tax equal to 8.5 percent of the customs value of all prop-
13 erty entered into the United States for consumption, use
14 or warehousing.

15 “(b) LIABILITY FOR TAX.—The tax imposed on the
16 import of property by subsection (a) shall be paid by the
17 person entering the property into the United States for
18 consumption, use or warehousing. Such tax shall be due
19 and payable at the time of import.

20 “(c) IMPORTS OF PREVIOUSLY EXPORTED PROP-
21 erty.—In the case of any article that is classified under
22 a heading or subheading of subchapter I or II of chapter
23 98 of the Tariff Schedules of the United States, the tax
24 under this section shall be imposed only on that portion

1 of the customs value of such article that is dutiable under
2 such heading or subheading.

3 “(d) **IMPORTS FOR PERSONAL CONSUMPTION.**—The
4 import tax imposed by this section shall not apply to any
5 article entered into the United States duty free under sub-
6 chapters I through VII of chapter 98 of the Tariff Sched-
7 ules of the United States.

8 “(e) **EXCEPTION FOR CERTAIN COMMODITIES AND**
9 **PRODUCTS.**—The import tax imposed by this section shall
10 not apply to petroleum, petroleum products or such com-
11 modities or products as the President shall by Executive
12 Order determine to be in short supply and vital to national
13 security.

14 **“SEC. 282. IMPOSITION OF TAX ON IMPORT OF SERVICES.**

15 “(a) **GENERAL RULE.**—There is hereby imposed a
16 tax equal to 8.5 percent of the cost of all services treated
17 as imported into the United States during the taxable year
18 of the service recipient.

19 “(b) **LIABILITY FOR THE TAX.**—The tax on the im-
20 port of services imposed by subsection (a) shall be paid
21 by the person who receives the imported services. The tax
22 shall be payable as if it were an addition to the business
23 consumption tax imposed by section 201.

24 “(c) **IMPORTED SERVICES.**—For purposes of this sec-
25 tion, services shall be treated as imported if they are treat-

1 ed as imported under section 267 (general rules on import
2 or export of services) or section 270 (related to insurance).

3 “(d) SPECIAL RULE FOR INSURANCE.—The seller of
4 insurance that is treated as imported under section 270
5 shall be liable for the collection of the tax imposed by sub-
6 section (a) on the insurance and for paying such tax to
7 the Secretary. The first sentence of subsection (b) (relat-
8 ing to the person liable for the tax) shall apply to insur-
9 ance only to the extent that the seller of the insurance
10 services does not collect such tax.

11 **“SEC. 283. GENERAL RULES FOR THE IMPORT TAX.**

12 “‘Import tax’ means the tax imposed by section 281
13 on the import of property and the tax imposed by section
14 282 on the import of services.

15 **“Subchapter L—Transition Rules**

“Sec. 290. Amortization of transition basis.

16 **“SEC. 290. AMORTIZATION OF TRANSITION BASIS.**

17 “(a) TRANSITION BASIS DEDUCTION.—The ‘transi-
18 tion basis deduction’ for a taxable year is the sum of the
19 amortization allowance determined under this section for
20 the taxable year.

21 “(b) TREATMENT OF INTEREST FLOWS.—Interest
22 flows between non-financial businesses shall be treated as
23 under current law, phased out over 5 years.

1 “(c) AMORTIZATION RULES.—The amortization al-
2 lowance to all property placed in service before the effec-
3 tive date of this section shall be the lesser of—

4 “(1) the amortization period under current law
5 remaining on such date, or

6 “(2) a 5-year ratable period beginning on such
7 date.

8 **“Subchapter M—Rules for Administration,**
9 **Consolidated Returns**

“Sec. 301. Returns, due dates, etc.

“Sec. 302. Consolidated returns.

10 **“SEC. 301. RETURNS, DUE DATES, ETC.**

11 “(a) IN GENERAL.—Until subtitle F is amended to
12 reflect the adoption of this chapter, the rules of subtitle
13 F relating to C corporations shall apply to business enti-
14 ties with respect to—

15 “(1) returns and records;

16 “(2) time and place for paying tax;

17 “(3) assessment of taxes;

18 “(4) collections and liens;

19 “(5) abatements, credits, and refunds;

20 “(6) interest on underpayments and overpay-
21 ments;

22 “(7) additions to tax and penalties;

23 “(8) closing agreements and compromises;

24 “(9) crimes;

1 “(10) judicial proceedings;

2 “(11) discovery of liability and enforcement;

3 and

4 “(12) estimated taxes.

5 “(b) **INDIVIDUALS ENGAGING IN BUSINESS ACTIVI-**
6 **TIES.**—Under rules prescribed by the Secretary, individ-
7 uals engaging in business activities on their own or with
8 their spouses shall be permitted to file their business con-
9 sumption tax returns with their individual tax returns and
10 shall be subject to estimated tax rules for individual in-
11 come tax returns. Such rules shall include rules to prevent
12 the avoidance or abuse of this chapter and chapter 1.

13 **“SEC. 302. CONSOLIDATED RETURNS.**

14 “(a) **IN GENERAL.**—Business entities may file con-
15 solidated returns of business consumption tax if they
16 would have been permitted to file consolidated returns
17 under section 1501 of the Internal Revenue Code and such
18 section were applied by treating each business entity as
19 a corporation and its owners or partners as shareholders.

20 “(b) **FINANCIAL INSTITUTIONS.**—Financial inter-
21 mediation businesses may be included in consolidated re-
22 turns.

23 “(c) **INTERCOMPANY TRANSACTIONS.**—In computing
24 the gross profits of a consolidated group, intercompany
25 transactions can be taken into account, or at the election

1 of the filer, be disregarded (except in the case of trans-
2 actions with financial intermediation businesses).

3 **“Subchapter N—Definitions and Rules of**
4 **Application**

“Sec. 310. Definitions.

“Sec. 311. Rules of application.

5 **“SEC. 310. DEFINITIONS.**

6 “When used in this chapter, where not otherwise dis-
7 tinctly expressed or manifestly incompatible with the in-
8 tent thereof—

9 “(1) INTERNAL REVENUE CODE OF 1986.—‘In-
10 ternal Revenue Code of 1986’ means the Internal
11 Revenue Code of 1986 as in effect immediately be-
12 fore the enactment of the Competitive American
13 Business Tax.

14 “(2) UNITED STATES.—‘United States’ means
15 the States and the District of Columbia.

16 **“SEC. 311. RULES OF APPLICATION.**

17 “(a) DEFINITIONS.—Any definition included in this
18 chapter shall apply for all purposes of this chapter un-
19 less—

20 “(1) such definition is limited to the purposes
21 of a particular chapter, section, or subsection, or

22 “(2) the definition clearly would not be applica-
23 ble in a particular context.

1 “(b) INTERPRETATIONS CONSISTENT WITH INTER-
2 NAL REVENUE CODE OF 1986.—Terms not defined in this
3 chapter or elsewhere in this title, but defined in the Inter-
4 nal Revenue Code of 1986, shall be interpreted in a man-
5 ner consistent with the Internal Revenue Code of 1986,
6 except to the extent such interpretation would be incon-
7 sistent with the principles and purposes of this chapter.”.

8 (b) The amendments made by this section shall be
9 effective on January 1, 2011, except to the extent other-
10 wise specifically provided in the text of such amendments.

11 **SEC. 603. REPEAL OF CHAPTER 6.**

12 Chapter 6 of the Code (relating to consolidated re-
13 turns) is repealed as of January 1, 2011.

14 **TITLE VII—JOB TRAINING**
15 **RESULTS ACT OF 2010**

16 **SEC. 701. SHORT TITLE.**

17 This title may be cited as the “Job Training Results
18 Act of 2010”.

19 **SEC. 702. PURPOSE.**

20 The purpose of this title is to ensure accountability
21 and job training results in Federal job training programs.

1 **SEC. 703. IMPROVEMENT OF JOB TRAINING PROGRAMS;**
2 **PERFORMANCE METRICS FOR WIA JOB**
3 **TRAINING PROGRAMS.**

4 Title V of the Workforce Investment Act of 1998 (20
5 U.S.C. 9271 et seq.) is amended—

6 (1) by redesignating section 507 as section 510;

7 and

8 (2) by inserting after section 506, the following:

9 **“SEC. 507. IMPROVEMENT OF JOB TRAINING PROGRAMS.**

10 **“(a) GENERAL RULES.—**

11 **“(1) GRANT COMPETITION.—**In order to en-
12 courage competition under the grant programs for
13 providers of job training programs authorized under
14 this Act, any grants under such grant programs
15 shall be awarded on a competitive basis.

16 **“(2) PRIORITY.—**In awarding grants under this
17 Act, the Secretary shall give priority to applicants
18 that leverage private resources.

19 **“(3) GRANT RENEWAL.—**

20 **“(A) THRESHOLD DETERMINATION.—**The
21 Secretary shall not renew a grant for a provider
22 of a training program under this Act that fails
23 to demonstrate, in accordance with the perform-
24 ance measures described section 508(b), that at
25 least 50 percent of the participants of such pro-
26 gram were employed for at least 1 year in an

1 occupation related to the training provided
2 under the program.

3 “(B) PRIORITY.—In renewing grants for
4 providers who meet the requirement described
5 in subparagraph (A), the Secretary shall give
6 priority to those providers that have the great-
7 est percentage of participants who—

8 “(i) were employed for at least 1
9 year in an occupation related to the train-
10 ing provided under the program; and

11 “(ii) as a result of the training pro-
12 vided under the program—

13 “(I) have the highest income lev-
14 els; and

15 “(II) the lowest percentage of
16 participants receiving Federal assist-
17 ance.

18 “(b) EXCEPTIONS.—Subsection (a) shall not apply to
19 State allotments made under sections 127 and 132.

20 “(c) ENROLLMENT PROHIBITION AND REQUIRE-
21 MENT.—

22 “(1) PROHIBITION.—A provider of a job train-
23 ing program under this Act may not in any way
24 limit recruitment for, or enrollment in, such pro-
25 gram to individuals who are more likely to be suc-

1 successful in obtaining employment or earning a higher
2 income after the completion of the program, as com-
3 pared to other individuals.

4 “(2) REQUIREMENT.—An individual who par-
5 ticipates in, or receives any service under, a training
6 program shall be considered to be enrolled as a par-
7 ticipant in the program.

8 “(d) DEFINITIONS.—For purposes of this section and
9 section 508:

10 “(1) FEDERAL ASSISTANCE.—

11 “(A) IN GENERAL.—The term ‘Federal as-
12 sistance’ includes—

13 “(i) supplemental nutrition assistance
14 authorized under the Food and Nutrition
15 Act of 2008 (7 U.S.C. 2011 et seq.);

16 “(ii) the case where a participant’s
17 adjusted gross income (or, if greater,
18 earned income) for the most recently ended
19 taxable year exceeds the amount of ad-
20 justed gross income, or earned income, as
21 the case may be, which would cause the
22 credit allowable to the participant for such
23 taxable year under paragraph (1) of sec-
24 tion 32(a) of the Internal Revenue Code of

1 1986 to be reduced by reason of paragraph
2 (2) of such section;

3 “(iii) supplemental security income
4 benefits under title XVI of the Social Secu-
5 rity Act (42 U.S.C. 1382 et seq.);

6 “(iv) assistance under the State med-
7 icaid program under title XIX of the Social
8 Security Act (42 U.S.C. 1396 et seq.); and

9 “(v) benefits under the temporary as-
10 sistance for needy families program funded
11 under part A of title IV of the Social Secu-
12 rity Act (42 U.S.C. 601 et seq.).

13 “(B) DEFINED TERMS.—The terms ‘ad-
14 justed gross income’, ‘earned income’, and
15 ‘phaseout amount’ shall have the respective
16 meanings given such terms by section 32 of the
17 Internal Revenue Code of 1986.

18 “(2) JOB TRAINING PROGRAM.—The term ‘job
19 training program’ includes the following programs:

20 “(A) Programs for migrant youth author-
21 ized under section 127.

22 “(B) Native American Programs author-
23 ized under section 166.

24 “(C) Migrant and seasonal farm workers
25 programs authorized under section 167.

1 “(D) Youth Opportunity Grant authorized
2 under section 169.

3 “(E) Grants to States for Incarcerated
4 Youth Offenders authorized under section 171.

5 “(F) Programs for the reintegration of ex-
6 offenders authorized under section 171.

7 “(G) Responsible Reintegration of Youth
8 Offenders program authorized under section
9 171.

10 “(H) Program of Competitive Grants for
11 Worker Training and Placement in High
12 Growth and Emerging Industry Sectors author-
13 ized under section 171.

14 “(I) Energy Efficiency and Renewable
15 Worker Training Programs authorized under
16 section 171(e).

17 “(J) Youthbuild Program authorized under
18 section 173A.

19 “(K) Veterans’ Workforce Investment Pro-
20 gram authorized under section 168.

21 “(L) The program of workforce investment
22 activities for youth authorized under chapter 4
23 of subtitle B of title I.

1 “(M) The program of workforce invest-
2 ment activities for adults authorized under
3 chapter 5 of subtitle B of title I.

4 “(N) The program of workforce investment
5 activities for dislocated workers under chapter 5
6 of subtitle B of title I.

7 “(O) Job Corps program authorized under
8 subtitle C of title I.

9 “(P) The Adult Education and Family Lit-
10 eracy Act authorized under title II.

11 “(3) PARTICIPANT.—The term ‘participant’
12 means an individual who participated in, or received
13 a service under, a job training program that is fund-
14 ed under this Act.

15 “(4) PROVIDER.—The term ‘provider’—

16 “(A) has the meaning given the term ‘eligi-
17 ble provider’ in section 101(12);

18 “(B) has the meaning given the term ‘serv-
19 ice provider’ in section 142(10); and

20 “(C) means any other agency, entity, or
21 provider that is responsible for administering,
22 or carrying out, a job training program under
23 this Act.

1 **“SEC. 508. PERFORMANCE MEASURES FOR JOB TRAINING**
2 **PROGRAMS.**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of law, each provider of a job training program
5 under this Act shall, annually—

6 “(1) use the performance measures described in
7 subsection (b) to assess the effectiveness of such job
8 training program; and

9 “(2) submit the results of such assessment to
10 the Secretary.

11 “(b) PERFORMANCE MEASURES.—In carrying out
12 the assessment described in subsection (a), a provider of
13 a job training program shall include the following perform-
14 ance measures in the assessment:

15 “(1) The type of job training each participant
16 received under the program and the program costs
17 (such as tuition and fees) for each participant.

18 “(2) The employment status of each partici-
19 pant—

20 “(A) 1 year after the participant completes
21 the program;

22 “(B) 3 years after the participant com-
23 pletes the program; and

24 “(C) 5 years after the participant com-
25 pletes the program.

1 “(3) The percentage and number of partici-
2 pants who obtained employment after the completion
3 of the program in an occupation related to the train-
4 ing provided under the program.

5 “(4) The income level of each participant—

6 “(A) 2 years prior to participating in the
7 program; and

8 “(B) every year, up to 5 years, after par-
9 ticipation in the program.

10 “(5) The percentage and number of partici-
11 pants receiving Federal assistance—

12 “(A) prior to participating in the program;
13 and

14 “(B) every year, up to 5 years, after par-
15 ticipation in the program.

16 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to prohibit a provider of a job
18 training program from assessing the program by using (in
19 addition to the performance measures described in sub-
20 section (b)) a performance measure—

21 “(1) not described in subsection (b); or

22 “(2) that was being used by the provider on the
23 day before the date of the enactment of this section.

24 “(d) AUDITS.—

1 “(1) IN GENERAL.—The Inspector General of
2 the Department of Labor and the Comptroller Gen-
3 eral of the United States shall conduct periodic au-
4 dits to ensure that providers of job training pro-
5 grams are—

6 “(A) accurately assessing the programs, in-
7 cluding the outcomes of all participants of such
8 programs, using the performance measures re-
9 quired under this section; and

10 “(B) in compliance with section 507(c).

11 “(2) REQUIREMENTS.—

12 “(A) IN GENERAL.—In carrying out any
13 audit under this section (other than any initial
14 audit survey or any audit investigating possible
15 criminal or fraudulent conduct), either directly
16 or through grant or contract, the Inspector
17 General of the Department of Labor and the
18 Comptroller General of the United States shall
19 furnish to the providers of job training pro-
20 grams, or other entity to be audited, advance
21 notification of the overall objectives and pur-
22 poses of the audit, and any extensive record-
23 keeping or data requirements to be met, not
24 later than 14 days (or as soon as practicable),
25 prior to the commencement of the audit.

1 “(B) NOTIFICATION REQUIREMENT.—If
2 the scope, objectives, or purposes of the audit
3 change substantially during the course of the
4 audit, the entity being audited shall be notified
5 of the change as soon as practicable.

6 “(C) ADDITIONAL REQUIREMENT.—The
7 reports on the results of such audits shall cite
8 the law, regulation, policy, or other criteria ap-
9 plicable to any finding contained in the reports.

10 “(D) RULE OF CONSTRUCTION.—Nothing
11 contained in this title shall be construed so as
12 to be inconsistent with the Inspector General
13 Act of 1978 (5 U.S.C. App.) or government au-
14 diting standards issued by the Comptroller Gen-
15 eral of the United States.”.

16 **SEC. 704. OTHER JOB TRAINING PROGRAMS.**

17 (a) IN GENERAL.—The appropriate Secretaries
18 shall—

19 (1) require that the providers of job training
20 programs, as such term is defined by such Secre-
21 taries, under the programs described in subsection
22 (b), conduct an annual assessment of the programs
23 in accordance with section 508(b) of the Workforce
24 Investment Act of 1998; and

1 (2) award grants under the programs described
2 in subsection (b) on a competitive basis.

3 (b) **JOB TRAINING PROGRAMS.**—Subsection (a) shall
4 apply to the following programs:

5 (1) The Disabled Veterans Outreach Program
6 authorized under section 4103A of title 38, United
7 States Code.

8 (2) The Local Veterans' Employment Rep-
9 resentative Program authorized under section 4104
10 of title 38, United States Code.

11 (3) The Homeless Veterans' Reintegration Pro-
12 gram authorized under section 2021 of title 38,
13 United States Code.

14 (4) Vocational Rehabilitation for Disabled Vet-
15 erans authorized under chapter 31 of title 38,
16 United States Code.

17 (5) The National Guard Challenge Program au-
18 thorized under section 509 of title 32, United States
19 Code.

20 (6) The Older American Community Service
21 Program authorized under title V of the Older
22 Americans Act of 1965 (42 U.S.C. 3056 et seq.).

23 (7) The Native American Vocational and Tech-
24 nical Education Program authorized under section

1 116 of the Carl D. Perkins Career and Technical
2 Education Act of 2006 (29 U.S.C. 741).

3 (8) Tribally Controlled Post-secondary Voca-
4 tional and Technical Institutions programs author-
5 ized under section 117 of the Carl D. Perkins Ca-
6 reer and Technical Education Act of 2006 (20
7 U.S.C. 2327).

8 (9) The Native Hawaiian Vocational Education
9 Program authorized under section 116 of the Carl
10 D. Perkins Career and Technical Education Act of
11 2006 (29 U.S.C. 741).

12 (10) Career and Technical Assistance to the
13 States authorized under section title I of the Carl D.
14 Perkins Career and Technical Education Act of
15 2006 (20 U.S.C. 2321 et seq.).

16 (11) Tech Prep Education Program authorized
17 under title II of the Carl D. Perkins Career and
18 Technical Education Act of 2006 (29 U.S.C. 2371
19 et seq.).

20 (12) Migrant and Seasonal Farmworkers Pro-
21 gram authorized under section 304 of the Rehabili-
22 tation Act of 1973 (29 U.S.C. 774).

23 (13) Projects with industry authorized under
24 section 611 of the Rehabilitation Act of 1973 (29
25 U.S.C. 795).

1 (14) Vocational Rehabilitation Services author-
2 ized under title I of the Rehabilitation Act of 1973
3 (29 U.S.C. 720 et seq.).

4 (15) American Indian Vocational Rehabilitation
5 Services authorized under part C of title I of the Re-
6 habilitation Act of 1973 (29 U.S.C. 741 et seq.).

7 (16) Coordination of Migrant Education Activi-
8 ties authorized under section 1308 of the Elemen-
9 tary and Secondary Education Act of 1965 (20
10 U.S.C. 6398).

11 (17) Programs authorized under the Commu-
12 nity Services Block Grant Act (42 U.S.C. 9901 et
13 seq.).

14 (18) The Tribal Work Grants program author-
15 ized under section 412(a)(2) of Social Security Act
16 (42 U.S.C. 612(a)(2)).

17 (19) Job training grants authorized under sec-
18 tion 414(c) of the American Competitiveness and
19 Workforce Improvement Act of 1998 (29 U.S.C.
20 2916a).

21 (20) Indian Employment, Job Placement As-
22 sistance, and Vocational Training programs author-
23 ized under the Indian Self-Determination Act (25
24 U.S.C. 450 et seq.).

1 (21) Programs authorized under part A of title
2 IV of the Social Security Act (42 U.S.C. 601 et
3 seq.).

4 (22) Refugee assistance programs authorized
5 under chapter 2 of title IV of the Immigration and
6 Nationality Act (8 U.S.C. 1521 et seq.).

7 (23) Targeted assistance programs for refugees
8 and entrants authorized under chapter 2 of title IV
9 of the Immigration and Nationality Act (8 U.S.C.
10 1521 et seq.).

11 (24) Programs authorized under section 16(h)
12 of the Food and Nutrition Act of 2008 (7 U.S.C.
13 2025(h)).

14 (25) The Federal Prisoner Reentry Initiative
15 authorized under section 231(i) of Second Chance
16 Act of 2007 (42 U.S.C. 17541(i)).

17 (26) Employment services authorized under the
18 Wagner-Peyser Act of 1933 (29 U.S.C. 49 et seq.).

19 (27) Training programs under section 236 of
20 part II of subchapter B of chapter 2 of title II of
21 the Trade Adjustment Assistance Act of 1974 (19
22 U.S.C. 2296).

23 (c) DEFINITION.—The term “appropriate Secretary”
24 means the head of the Federal agency who exercises ad-

1 ministrative authority over a program described in sub-
2 section (b).

3 **SEC. 705. TRANSPARENCY.**

4 Section 136(d)(3)(A) of the Workforce Investment
5 Act of 1998 (29 U.S.C. 2871) is amended to read as fol-
6 lows:

7 “(A) shall make available to the general
8 public the information contained in such reports
9 and the results of an assessment using the per-
10 formance measures described in section 508(b)
11 with respect to the workforce investment activi-
12 ties authorized under this subtitle—

13 “(i) through publication; and

14 “(ii) by posting such information and
15 results on the Internet website of the De-
16 partment of Labor in a format and lan-
17 guage understandable by the general pub-
18 lic.”.

19 **SEC. 706. EVALUATIONS.**

20 (a) EVALUATIONS.—Section 172 of the Workforce
21 Investment Act of 1998 (29 U.S.C. 2917) is amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph

24 (1)—

1 (i) by inserting “impact” after “con-
2 tinuing”; and

3 (ii) by inserting “impact” after
4 “Such”; and

5 (B) in paragraph (1)—

6 (i) by striking “the general effective-
7 ness” and inserting “outcomes measuring
8 of the effectiveness”;

9 (ii) in subparagraph (A), by striking
10 “and” after the semicolon;

11 (iii) in subparagraph (B)—

12 (I) by striking “to the extent fea-
13 sible,”; and

14 (II) by inserting “and” after the
15 semicolon; and

16 (iv) by adding at the end the fol-
17 lowing:

18 “(C) increase the incomes and hourly
19 wages of participants in comparison to similarly
20 situated individuals who did not participate in
21 such programs and activities.”;

22 (2) in subsection (b), by inserting “impact”
23 after “conduct”;

24 (3) in subsection (c)—

1 (A) by striking “Evaluations” and insert-
2 ing “Impact evaluations”;

3 (B) by inserting “intervention and” after
4 “, including the use of”

5 (C) by inserting “The Secretary for each
6 impact evaluation shall fulfill all the notification
7 and reporting requirements under subsections
8 (d), (e), and (f).” after “assignment methodolo-
9 gies.”; and

10 (D) by striking “by the end of fiscal year
11 2005” and inserting “not later than 3 years
12 after the date of the enactment of the Job
13 Training Results Act of 2010”;

14 (4) by redesignating subsections (c) through (f),
15 as subsections (d) through (g), respectively; and

16 (5) by inserting after subsection (c), the fol-
17 lowing:

18 “(a) NOTIFICATION OF IMPACT EVALUATION
19 PROGRESS.—

20 “(1) REPORTS TO CONGRESS.—Not later than
21 1 year after the date of the enactment of the Job
22 Training Results Act of 2010, and annually there-
23 after, the Secretary shall transmit to the Committee
24 on Education and the Labor, and the Committee on
25 the Budget, of the House of Representatives and the

1 Committee on Health, Education, Labor, and Pen-
2 sions, and the Committee on Budget, of the Senate
3 a report on the progress the Secretary is making in
4 evaluating the programs and activities carried out
5 under this section.

6 “(2) AVAILABILITY TO GENERAL PUBLIC.—Not
7 later than 1 year after the date of the enactment of
8 the Job Training Results Act of 2010, and annually
9 thereafter not later than 30 days after the trans-
10 mission of an annual report under paragraph (1),
11 the Secretary shall make available the reports to the
12 general public on the Internet website of the Depart-
13 ment of Labor.”;

14 (6) by amending subsection (e) (as so redesign-
15 nated), by inserting “impact” after “carrying out
16 an”;

17 (7) by amending subsection (f) (as so redesign-
18 nated)—

19 (A) by striking “Workforce” and inserting
20 “, Labor and the Committee on the Budget,”;

21 (B) by striking “Committee on Labor and
22 Human Resources” and inserting “Committee
23 on Health, Education, Labor, and Pensions,
24 and the Committee on Budget,”;

1 (C) by striking “30 days” and inserting
2 “60 days”; and

3 (D) by inserting the following: “All reports
4 transmitted under this subsection shall be made
5 available to the general public on the Internet
6 website of the Department of Labor.”; and

7 (8) by adding at the end the following:

8 “(h) GAO REPORT.—Not later than 3 years after the
9 date of the enactment of the Job Training Results Act
10 of 2010, and every 3 years thereafter, the Comptroller
11 General of the United States shall conduct a study and
12 submit a report to Congress that evaluates—

13 “(1) the effectiveness of the impact evaluations
14 conducted under this section; and

15 “(2) the impact of such evaluations on the as-
16 sessments conducted under section 508(b) with re-
17 spect to the programs and activities carried out
18 under this title.

19 “(i) DEFINITIONS.—In this section:

20 “(1) IMPACT EVALUATION.—The term ‘impact
21 evaluation’ means an evaluative study that evaluates,
22 in accordance with subsection (a), the outcomes of
23 programs and activities carried out under this title,
24 including the impact on social conditions such pro-
25 grams and activities are intended to improve.

1 “(2) SCIENTIFIC RANDOM ASSIGNMENT METH-
2 ODOLOGIES.—The term ‘scientific random assign-
3 ment methodologies’ means research designs con-
4 ducted in program settings in which intervention
5 and control groups are—

6 “(A) formed by random assignment; and

7 “(B) compared on the basis of outcome
8 measures for the purpose of determining the
9 impact of the programs and activities carried
10 out under this title on participants.

11 “(3) CONTROL GROUP.—The term ‘control
12 group’ means a group of individuals—

13 “(A) who did not participate in the pro-
14 grams and activities carried out under this title;
15 and

16 “(B) whose outcome measures are com-
17 pared to the outcome measures of individuals in
18 an intervention group.

19 “(4) INTERVENTION GROUP.—The term ‘inter-
20 vention group’ means a group of individuals—

21 “(A) who participated in the programs and
22 activities carried out under this title; and

23 “(B) whose outcome measures are com-
24 pared to the outcome measures of individuals in
25 a control group.”.

1 **SEC. 707. ENCOURAGING INNOVATION.**

2 (a) STATE BLOCK GRANT.—Section 192 (29 U.S.C.
3 2942) is amended to read as follows:

4 **“SEC. 192. JOB TRAINING IMPROVEMENT PLAN.**

5 “(a) STATE BLOCK GRANT.—

6 “(1) IN GENERAL.—Not earlier than 1 year of
7 the date of the enactment of the ‘Job Training Re-
8 sults Act of 2010’, a State may submit to the Sec-
9 retary, and the Secretary (in cooperation with the
10 appropriate Secretaries) may approve a Job Train-
11 ing Improvement Plan (in this section referred to as
12 a ‘Plan’) submitted by a State pursuant to sub-
13 section (d) under which the State is authorized to—

14 “(A) integrate any of the funds that the
15 State is eligible to receive under the job train-
16 ing programs described in subsection (g) to im-
17 prove job training results in the State; and

18 “(B) waive, in accordance with the Plan
19 and except as otherwise indicated in this sub-
20 section, any of the statutory and regulatory re-
21 quirements—

22 “(i) applicable under this title to local
23 areas; and

24 “(ii) applicable under the programs
25 described in subsection (g), the funds of

1 which will be integrated under a Plan sub-
2 mitted under this section.

3 “(2) ELIGIBILITY.—In order for a State’s Plan
4 to be approved under this section, the providers of
5 training programs in the State shall have carried out
6 at least 1 assessment pursuant to section 508 with
7 respect to such programs.

8 “(b) PERIODS.—

9 “(1) IN GENERAL.—The Secretary (in coopera-
10 tion with other appropriate Secretaries) may—

11 “(A) approve a State’s Plan under this
12 section for a period of not more than 3 years;
13 and

14 “(B) renew a State’s Plan under this sec-
15 tion for additional 3-year periods if the State
16 demonstrates a significant improvement in job
17 training results at the end of the preceding 3-
18 year period.

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

20 “(1) JOB TRAINING RESULTS.—

21 “(A) IN GENERAL.—The term ‘job training
22 results’ means an improvement in the assess-
23 ment carried out pursuant to section 508 with
24 respect to the job training programs conducted
25 in a State, as compared to the assessment of

1 such programs carried out in the most recent
2 preceding fiscal year.

3 “(B) IMPROVEMENTS.—An improvement
4 in an assessment described in subparagraph (A)
5 shall include—

6 “(i) an increase in the percentage of
7 participants—

8 “(I) who were employed for at
9 least 1 year in an occupation related
10 to the training provided under the
11 program;

12 “(II) who are employed at higher
13 income levels; and

14 “(ii) a decrease in the percentage of
15 participants who are receiving Federal as-
16 sistance

17 “(2) APPROPRIATE SECRETARY.—The term ‘ap-
18 propriate Secretary’ means the head of the Federal
19 agency who exercises administrative authority over a
20 program described in subsection (g).

21 “(d) CONTENTS OF PLAN.—To have a Plan approved
22 under this subsection, a State, after consultation with
23 State and local workforce investment boards, shall submit
24 a Plan to the Secretary at such time, in such manner,

1 and containing such information as the Secretary may re-
2 quire, including—

3 “(1) identification of the funds the State is eli-
4 gible to receive under the job training programs de-
5 scribed in subsection (g) that will be integrated;

6 “(2) a description of how the Plan, including
7 how the integration of funds under the Plan will re-
8 sult in a significant improvement in job training re-
9 sults in the State;

10 “(3) a description of how the State will main-
11 tain accurate records of the performance measures
12 for the assessments required pursuant to section
13 508;

14 “(4) assurances that in carrying out the Plan—

15 “(A) the State will serve populations con-
16 sistent with the populations served by the funds
17 which are being integrated, and will provide
18 such populations universal access to work ready
19 services as described in section 134(d)(2) of
20 this Act;

21 “(B) of the funds expended under the plan
22 each fiscal year, not more than 10 percent of
23 such funds will be expended on the costs of ad-
24 ministration (as defined by the Secretary); and

1 “(C) the State will comply with require-
2 ments under this title and the programs to be
3 integrated relating to wage and labor standards
4 (including nondisplacement provisions), grievance
5 procedures and judicial review, and non-
6 discrimination;

7 “(5) identification of private resources that will
8 be used to assist in improving job training results;
9 and

10 “(6) a description of the job training awareness
11 campaign that the State will carry out as part of
12 such Plan.

13 “(e) INTEGRATION OF JOB TRAINING PROGRAMS AU-
14 THORIZED.—

15 “(1) AUTHORIZATION FOR INTEGRATION.—In
16 carrying out this subsection, the Secretary, in co-
17 operation with the appropriate Secretaries, shall,
18 upon the approval of the Plan submitted under sub-
19 section (d), authorize a State to integrate, as de-
20 scribed in paragraph (2) the portion of the funds the
21 State is eligible to receive under the programs de-
22 scribed in subsection (g) to assist in implementing
23 such Plan.

1 “(2) INTEGRATION.—The authorization shall
2 give the State the authority to integrate, in accord-
3 ance with the State’s Plan, funds the State—

4 “(A) is eligible to receive under the pro-
5 grams described in subsection (g); and

6 “(B) has identified under the Plan as
7 funds to be integrated.

8 “(f) EFFECT ON PROGRAM REQUIREMENTS.—The
9 State may use the integrated funds used to carry out any
10 of the activities authorized under any of the programs de-
11 scribed in subsection (g), but shall not be required to carry
12 out any requirements of the statutes authorizing the pro-
13 grams, except as otherwise specified in this section.

14 “(g) JOB TRAINING PROGRAMS.—Funds that shall
15 be made available for integration under an approved Plan
16 are funds provided under the following programs:

17 “(1) Programs for migrant youth authorized
18 under section 127.

19 “(2) Native American Programs authorized
20 under section 166.

21 “(3) Migrant and seasonal farm workers pro-
22 grams authorized under section 167.

23 “(4) Youth Opportunity Grant authorized
24 under section 169.

1 “(5) Grants to States for Incarcerated Youth
2 Offenders authorized under section 171.

3 “(6) Programs for the reintegration of ex-of-
4 fenders authorized under section 171.

5 “(7) Responsible Reintegration of Youth Of-
6 fenders program authorized under section 171.

7 “(8) Program of Competitive Grants for Work-
8 er Training and Placement in High Growth and
9 Emerging Industry Sectors authorized under section
10 171.

11 “(9) Energy Efficiency and Renewable Worker
12 Training Programs authorized under section 171(e).

13 “(10) Youthbuild Program authorized under
14 section 173A.

15 “(11) Veterans’ Workforce Investment Program
16 authorized under section 168.

17 “(12) The program of workforce investment ac-
18 tivities for youth authorized under chapter 4 of sub-
19 title B of title I.

20 “(13) The program of workforce investment ac-
21 tivities for adults authorized under chapter 5 of sub-
22 title B of title I.

23 “(14) The program of workforce investment ac-
24 tivities for dislocated workers under chapter 5 of
25 subtitle B of title I.

1 “(15) The Adult Education and Family Lit-
2 eracy Act authorized under title II.

3 “(16) The Disabled Veterans Outreach Pro-
4 gram authorized under section 4103A of title 38,
5 United States Code.

6 “(17) The Local Veterans’ Employment Rep-
7 resentative Program authorized under section 4104
8 of title 38, United States Code.

9 “(18) The Homeless Veterans’ Reintegration
10 Program authorized under section 2021 of title 38,
11 United States Code.

12 “(19) Vocational Rehabilitation for Disabled
13 Veterans authorized under chapter 31 of title 38,
14 United States Code.

15 “(20) The National Guard Challenge Program
16 authorized under section 509 of title 32, United
17 States Code.

18 “(21) The Older American Community Service
19 Program authorized under title V of the Older
20 Americans Act of 1965 (42 U.S.C. 3056 et seq.).

21 “(22) The Native American Vocational and
22 Technical Education Program authorized under sec-
23 tion 116 of the Carl D. Perkins Career and Tech-
24 nical Education Act of 2006 (29 U.S.C. 741).

1 “(23) Tribally Controlled Post-secondary Voca-
2 tional and Technical Institutions programs author-
3 ized under section 117 of the Carl D. Perkins Ca-
4 reer and Technical Education Act of 2006 (20
5 U.S.C. 2327).

6 “(24) The Native Hawaiian Vocational Edu-
7 cation Program authorized under section 116 of the
8 Carl D. Perkins Career and Technical Education
9 Act of 2006 (29 U.S.C. 741).

10 “(25) Career and Technical Assistance to the
11 States authorized under section title I of the Carl D.
12 Perkins Career and Technical Education Act of
13 2006 (20 U.S.C. 2321 et seq.).

14 “(26) Tech Prep Education Program author-
15 ized under title II of the Carl D. Perkins Career and
16 Technical Education Act of 2006 (29 U.S.C. 2371
17 et seq.).

18 “(27) Migrant and Seasonal Farmworkers Pro-
19 gram authorized under section 304 of the Rehabili-
20 tation Act of 1973 (29 U.S.C. 774).

21 “(28) Projects with industry authorized under
22 section 611 of the Rehabilitation Act of 1973 (29
23 U.S.C. 795).

1 “(29) Vocational Rehabilitation Services au-
2 thorized under title I of the Rehabilitation Act of
3 1973 (29 U.S.C. 720 et seq.).

4 “(30) American Indian Vocational Rehabilita-
5 tion Services authorized under part C of title I of
6 the Rehabilitation Act of 1973 (29 U.S.C. 741 et
7 seq.).

8 “(31) Coordination of Migrant Education Ac-
9 tivities authorized under section 1308 of the Ele-
10 mentary and Secondary Education Act of 1965 (20
11 U.S.C. 6398).

12 “(32) Programs authorized under the Commu-
13 nity Services Block Grant Act (42 U.S.C. 9901 et
14 seq.).

15 “(33) The Tribal Work Grants program author-
16 ized under section 412(a)(2) of Social Security Act
17 (42 U.S.C. 612(a)(2)).

18 “(34) Job training grants authorized under sec-
19 tion 414(c) of the American Competitiveness and
20 Workforce Improvement Act of 1998 (29 U.S.C.
21 2916a).

22 “(35) Indian Employment, Job Placement As-
23 sistance, and Vocational Training programs author-
24 ized under the Indian Self-Determination Act (25
25 U.S.C. 450 et seq.).

1 “(36) Programs authorized under part A of
2 title IV of the Social Security Act (42 U.S.C. 601
3 et seq.).

4 “(37) Refugee assistance programs authorized
5 under chapter 2 of title IV of the Immigration and
6 Nationality Act (8 U.S.C. 1521 et seq.).

7 “(38) Targeted assistance programs for refu-
8 gees and entrants authorized under chapter 2 of title
9 IV of the Immigration and Nationality Act (8
10 U.S.C. 1521 et seq.).

11 “(39) Programs authorized under section 16(h)
12 of the Food and Nutrition Act of 2008 (7 U.S.C.
13 2025(h)).

14 “(40) The Federal Prisoner Reentry Initiative
15 authorized under section 231(i) of Second Chance
16 Act of 2007 (42 U.S.C. 17541(i)).

17 “(41) Employment services authorized under
18 the Wagner-Peyser Act of 1933 (29 U.S.C. 49 et
19 seq.).

20 “(42) Training programs under section 236 of
21 part II of subchapter B of chapter 2 of title II of
22 the Trade Adjustment Assistance Act of 1974 (19
23 U.S.C. 2296).

24 “(h) PERFORMANCE MEASURES AND REPORTING.—

1 “(1) PERFORMANCE MEASURES.—Each State
2 with an approved Plan under this section shall carry
3 out an assessment pursuant to section 508 of all the
4 job training programs conducted in such State that
5 receive funding under the Plan for each fiscal year
6 the Plan is approved under this section.

7 “(2) REPORTING.—Each State with an ap-
8 proved Plan under this section shall ensure that
9 records are maintained and reports are submitted, in
10 such form and containing such information, as the
11 Secretary may require regarding the performance of
12 job training programs funded pursuant to this sec-
13 tion.

14 “(i) TECHNICAL ASSISTANCE AND EVALUATION.—

15 “(1) TECHNICAL ASSISTANCE.—The Secretary
16 shall provide such staff training, technical assist-
17 ance, and other activities as the Secretary deems ap-
18 propriate to support the implementation of this sec-
19 tion.

20 “(2) EVALUATION.—The Secretary may require
21 that States with an approved Plan under this section
22 participate in an evaluation of job training programs
23 funded pursuant to this subsection, including an
24 evaluation using the techniques described in section
25 172(c).

1 “(j) PLAN REVIEW.—

2 “(1) IN GENERAL.—Upon receipt of a Plan
3 from the Governor, the Secretary shall consult with
4 the appropriate Secretaries in reviewing and approv-
5 ing such plan. Such plan shall be approved if it
6 meets the requirements described in subsection (d).

7 “(2) PLAN APPROVAL.—

8 “(A) 90-DAY PERIOD.—Subject to subpara-
9 graph (B), a Plan that is submitted to the Sec-
10 retary under this section shall be considered to
11 be approved by the Secretary at the end of the
12 90-day period beginning on the day the Sec-
13 retary receives the Plan, unless the Secretary
14 denies the Plan during the 90-day period.

15 “(B) 30-DAY EXTENSIONS.—If the Sec-
16 retary is in good faith negotiations with a State
17 with respect to the State’s Plan—

18 “(i) at the end of the 90-day period
19 described in subparagraph (A), the Sec-
20 retary may have an additional 30 days to
21 determine whether to approve the Plan; or

22 “(ii) at the end of the 30 days de-
23 scribed in clause (i), the Secretary may
24 have an additional 30 days to determine
25 whether to approve the Plan.

1 “(3) PLAN DENIAL.—In the case where the
2 Secretary denies a Plan submitted by a State under
3 this section, the Secretary shall—

4 “(A) provide a written explanation to the
5 State for the denial of the Plan; and

6 “(B) make such written explanation acces-
7 sible to the general public.

8 “(k) FEDERAL RESPONSIBILITIES.—

9 “(1) INTERAGENCY MEMORANDUM OF UNDER-
10 STANDING.—Within 90 days following the date of
11 enactment of this section, the Secretary and the ap-
12 propriate Secretaries shall enter into an interdepart-
13 mental memorandum of agreement providing for the
14 implementation of the Plans with respect to the inte-
15 gration of funds administered by each Secretary.

16 “(2) INTERAGENCY FUNDS TRANSFERS AU-
17 THORIZED.—The Secretary and the appropriate Sec-
18 retaries responsible for the programs that are in-
19 cluded in a Plan approved are authorized to take
20 such action as may be necessary to provide for intra-
21 agency or interagency transfers of funds otherwise
22 available to a State in order to further the purposes
23 of this section.”.

1 **SEC. 708. MAKING WIA TRAINING VOUCHERS MORE ACCES-**
2 **SIBLE AND FLEXIBLE.**

3 (a) USE OF FUNDS FOR EMPLOYMENT AND TRAIN-
4 ING ACTIVITIES.—

5 (1) WORK READY SERVICES.—Section
6 134(d)(2) (29 U.S.C. 2864(c)(2)) is amended—

7 (A) in the heading, by striking “CORE
8 SERVICES” and inserting “WORK READY SERV-
9 ICES”;

10 (B) by striking “core services” and insert-
11 ing “work ready services”;

12 (C) by striking “paragraph (1)(A)” and in-
13 serting “paragraph (1)(A)(i)”;

14 (D) by striking “who are adults or dis-
15 located workers”;

16 (E) in subparagraph (A), by inserting
17 “and assistance in obtaining eligibility deter-
18 minations under the other one-stop partner pro-
19 grams through such activities as assisting in
20 the submission of applications, the provision of
21 information on the results of such applications,
22 the provision of intake services and information,
23 and, where appropriate and consistent with the
24 authorizing statute of the one-stop partner pro-
25 gram, determinations of eligibility” after “sub-
26 title”;

1 (F) by amending subparagraph (D) to
2 read as follows:

3 “(D) labor exchange services, including—

4 “(i) job search and placement assist-
5 ance, and where appropriate career coun-
6 seling;

7 “(ii) appropriate recruitment services
8 for employers, including small employers,
9 in the local area, which may include serv-
10 ices described in this subsection, including
11 information and referral to specialized
12 business services not traditionally offered
13 through the one-stop delivery system; and

14 “(iii) reemployment services provided
15 to unemployment claimants, including
16 claimants identified as in need of such
17 services under the worker profiling system
18 established under section 303(j) of the So-
19 cial Security Act (42 U.S.C. 503(j));”;

20 (G) in subparagraph (I), by inserting “and
21 the administration of the work test for the un-
22 employment compensation system” after “com-
23 pensation”; and

24 (H) by striking subparagraph (H) and in-
25 serting the following:

1 “(H) provision of accurate information, in
2 formats that are usable and understandable to
3 all one-stop center customers, relating to the
4 availability of supportive services or assistance,
5 including child care, child support, medical or
6 child health assistance under title XIX or XXI
7 of the Social Security Act (42 U.S.C. 1396 et
8 seq. and 1397aa et seq.), benefits under the
9 Food Stamp Act of 1977 (7 U.S.C. 2011 et
10 seq.), the earned income tax credit under sec-
11 tion 32 of the Internal Revenue Code of 1986,
12 and assistance under a State program funded
13 under part A of title IV of the Social Security
14 Act (42 U.S.C. 601 et seq.) and other sup-
15 portive services and transportation provided
16 through funds made available under such part,
17 available in the local area, and referral to such
18 services or assistance as appropriate;” and

19 (I) by amending subparagraph (J) to read
20 as follows:

21 “(J) assistance in establishing eligibility
22 for programs of financial aid assistance for
23 training and education programs that are not
24 funded under this Act and are available in the
25 local area; and” and

1 (J) by redesignating subparagraph (K) as
2 subparagraph (M); and

3 (K) by inserting the following new sub-
4 paragraphs after subparagraph (J)):

5 “(K) the provision of information from of-
6 ficial publications of the Internal Revenue Serv-
7 ice, regarding Federal tax credits available to
8 individuals relating to education, job training
9 and employment, including the Hope Scholar-
10 ship Credit and the Lifetime Learning Credit
11 (26 U.S.C. 25A), and the Earned Income Tax
12 Credit (26 U.S.C. 32);

13 “(L) services relating to the Work Oppor-
14 tunity Tax Credit (26 U.S.C. 51);

15 “(M) comprehensive and specialized assess-
16 ments of the skill levels and service needs of
17 adults and dislocated workers, which may in-
18 clude—

19 “(i) diagnostic testing and use of
20 other assessment tools; and

21 “(ii) in-depth interviewing and evalua-
22 tion to identify employment barriers and
23 appropriate employment goals;

24 “(N) development of an individual employ-
25 ment plan, to identify the employment goals,

1 appropriate achievement objectives, and appro-
2 priate combination of services for the participa-
3 tion to achieve the employment goals;

4 “(O) group counseling;

5 “(P) individual counseling and career plan-
6 ning;

7 “(Q) case management;

8 “(R) short-term prevocational services, in-
9 cluding development of learning skills, commu-
10 nications skills, interviewing skills, punctuality,
11 personal maintenance skills, and professional
12 conduct, to prepare individuals for unsubsidized
13 employment or training;

14 “(S) internships and work experience;

15 “(T) literacy activities relating to basic
16 work readiness, information and communication
17 technology literacy activities, and financial lit-
18 eracy activities, if such activities are not avail-
19 able to participants in the local area under pro-
20 grams administered under the Adult Education
21 and Family Literacy Act (20 U.S.C. 2901 et
22 seq.); and

23 “(U) out-of-area job search assistance and
24 relocation assistance.”.

1 (L) DELIVERY OF SERVICES.—Section
2 134(c)(3) (29 U.S.C. 2864(c)(3)) is amended to
3 read as follows:

4 “(3) DELIVERY OF SERVICES.—The work ready
5 services described in paragraph (M) through (U)
6 shall be provided through the one-stop delivery sys-
7 tem and may be provided through contracts with
8 public, private for-profit, and private nonprofit serv-
9 ice providers, approved by the local board.”.

10 (M) TRAINING SERVICES.—Section
11 134(c)(4) is amended—

12 (i) by amending subparagraph (A) to
13 read as follows:

14 “(A) IN GENERAL.—Funds allocated to a
15 local area under section 133(b) shall be used to
16 provide training services to adults who—

17 “(i) after an interview, evaluation, or
18 assessment, and case management, have
19 been determined by a one-stop operator or
20 one-stop partner, as appropriate, to—

21 “(I) be in need of training serv-
22 ices to obtain or retain suitable em-
23 ployment; and

24 “(II) have the skills and quali-
25 fications to successfully participate in

1 the selected program of training serv-
2 ices;

3 “(ii) select programs of training serv-
4 ices that are directly linked to the employ-
5 ment opportunities in the local area in-
6 volved or in another area in which the
7 adults receiving such services are willing to
8 commute or relocate;

9 “(iii) who meet the requirements of
10 subparagraph (B); and

11 “(iv) who are determined eligible in
12 accordance with the priority system in ef-
13 fect under subparagraph (E).”;

14 (ii) in subparagraph (B)(i), by strik-
15 ing “Except” and inserting “Notwith-
16 standing section 479B of the Higher Edu-
17 cation Act of 1965 (20 U.S.C. 1087uu)
18 and except”;

19 (iii) by amending subparagraph (D) to
20 read as follows:

21 “(D) TRAINING SERVICES.—Training serv-
22 ices authorized under this paragraph may in-
23 clude—

24 “(i) occupational skills training;

25 “(ii) on-the-job training;

1 “(iii) skill upgrading and retraining;

2 “(iv) entrepreneurial training;

3 “(v) education activities leading to a
4 high school diploma or its equivalent, in-
5 cluding a General Educational Develop-
6 ment credential, in combination with, con-
7 currently or subsequently, occupational
8 skills training;

9 “(vi) adult education and literacy ac-
10 tivities provided in conjunction with other
11 training authorized under this subpara-
12 graph;

13 “(vii) workplace training combined
14 with related instruction; and

15 “(viii) occupational skills training that
16 incorporates English language acquisi-
17 tion.”;

18 (iv) by amending subparagraph (E) to
19 read as follows:

20 “(E) PRIORITY.—

21 “(i) IN GENERAL.—A priority shall be
22 given to dislocated workers or workers who
23 are in danger of being dislocated for the
24 provision of intensive and training services
25 under this subsection.

1 “(ii) DETERMINATIONS.—The Gov-
2 ernor and the appropriate local board shall
3 direct the one-stop operators in the local
4 area with regard to making determinations
5 with respect to the priority of service under
6 this subparagraph.”;

7 (v) in subparagraph (F), by striking
8 clause (iii) and inserting the following:

9 “(iii) ENHANCED INDIVIDUAL TRAIN-
10 ING ACCOUNTS.—An individual who seeks
11 training services and who is eligible pursu-
12 ant to subparagraph (A), may, in consulta-
13 tion with a case manager, select an eligible
14 provider of training services from the list
15 or identifying information for providers de-
16 scribed in clause (ii)(I). Upon such selec-
17 tion, the one-stop operator involved shall,
18 to the extent practicable, refer such indi-
19 vidual to the eligible provider of training
20 services, and arrange for payment for such
21 services through a enhanced individual
22 training account.

23 “(iv) COORDINATION.—Each local
24 board may, through one-stop centers, co-
25 ordinate enhanced individual training ac-

1 counts with other Federal, State, local, or
2 private job training programs or sources to
3 assist the individual in obtaining training
4 services.

5 “(v) ENHANCED INDIVIDUAL TRAIN-
6 ING ACCOUNTS.—Each local board may,
7 through one-stop centers, assist individuals
8 receiving enhanced individual training ac-
9 counts through the establishment of such
10 accounts that include, in addition to the
11 funds provided under this paragraph,
12 funds from other programs and sources
13 that will assist the individual in obtaining
14 training services.”; and

15 (vi) in subparagraph (G)—

16 (I) in the subparagraph heading,
17 by striking “INDIVIDUAL TRAINING
18 ACCOUNTS” and inserting “EN-
19 HANCED INDIVIDUAL TRAINING AC-
20 COUNTS”;

21 (II) in clause (i) by striking “in-
22 dividual training accounts” and in-
23 serting “enhanced individual training
24 accounts”;

25 (III) in clause (ii)—

1 (aa) by striking “an indi-
2 vidual training account” and in-
3 sserting “a enhanced individual
4 training account”;

5 (bb) in subclause (II), by
6 striking “individual training ac-
7 counts” and inserting “enhanced
8 individual training accounts”;

9 (cc) in subclause (II) by
10 striking “or” after the semicolon;

11 (dd) in subclause (III) by
12 striking the period and inserting
13 “; or”; and

14 (ee) by adding at the end of
15 the following:

16 “(IV) The local board determines
17 that it would be most appropriate to
18 award a contract to an institution of
19 higher education in order to facilitate
20 the training of multiple individuals in
21 high-demand occupations, if such con-
22 tract does not limit customer choice.”.

23 (IV) in clause (iv)—

24 (aa) by redesignating sub-
25 clause (IV) as subclause (V) and

1 inserting after subclause (III) the
2 following:

3 “(IV) Individuals with disabili-
4 ties.”.

5 (2) PERMISSIBLE ACTIVITIES.—Section 134(c)
6 is amended by amending paragraph (1) to read as
7 follows:

8 “(1) DISCRETIONARY ONE-STOP DELIVERY AC-
9 TIVITIES.—

10 “(A) IN GENERAL.—Funds allocated to a
11 local area under section 133(b) may be used to
12 provide, through the one-stop delivery system—

13 “(i) customized screening and referral
14 of qualified participants in training serv-
15 ices to employers;

16 “(ii) customized employment-related
17 services to employers on a fee-for-service
18 basis;

19 “(iii) customer support to navigate
20 among multiple services and activities for
21 special participant populations that face
22 multiple barriers to employment, including
23 individuals with disabilities;

24 “(iv) employment and training assist-
25 ance provided in coordination with child

1 support enforcement activities of the State
2 agency carrying out subtitle D of title IV
3 of the Social Security Act (42 U.S.C. 651
4 et seq.);

5 “(v) activities to improve services to
6 local employers, including small employers
7 in the local area, and increase linkages be-
8 tween the local workforce investment sys-
9 tem and employers;

10 “(vi) activities to facilitate remote ac-
11 cess to services provided through a one-
12 stop delivery system, including facilitating
13 access through the use of technology; and

14 “(vii) activities to carry out business
15 services and strategies that meet the work-
16 force investment needs of local area em-
17 ployers, as determined by the local board,
18 consistent with the local plan under section
19 118, which services—

20 “(I) may be provided through ef-
21 fective business intermediaries work-
22 ing in conjunction with the local
23 board, and may also be provided on a
24 fee-for-service basis or through the
25 leveraging of economic development

1 and other resources as determined ap-
2 propriate by the local board; and

3 “(II) may include—

4 “(aa) identifying and dis-
5 seminating to business, edu-
6 cators, and job seekers, informa-
7 tion related to the workforce, eco-
8 nomic and community develop-
9 ment needs, and opportunities of
10 the local economy;

11 “(bb) development and deliv-
12 ery of innovative workforce in-
13 vestment services and strategies
14 for area businesses, which may
15 include sectoral, industry cluster,
16 regional skills alliances, career
17 ladder, skills upgrading, skill
18 standard development and certifi-
19 cation, apprenticeship, and other
20 effective initiatives for meeting
21 the workforce investment needs
22 of area employers and workers;

23 “(cc) participation in semi-
24 nars and classes offered in part-
25 nership with relevant organiza-

1 tions focusing on the workforce-
2 related needs of area employers
3 and job seekers;

4 “(dd) training consulting,
5 needs analysis, and brokering
6 services for area businesses, in-
7 cluding the organization and ag-
8 gregation of training (which may
9 be paid for with funds other than
10 those provided under this title),
11 for individual employers and coa-
12 litions of employers with similar
13 interests, products, or workforce
14 needs;

15 “(ee) assistance to area em-
16 ployers in the aversion of layoffs
17 and in managing reductions in
18 force in coordination with rapid
19 response activities;

20 “(ff) the marketing of busi-
21 ness services offered under this
22 title, to appropriate area employ-
23 ers, including small and mid-
24 sized employers;

1 “(gg) information referral
2 on concerns affecting local em-
3 ployers; and

4 “(hh) other business services
5 and strategies designed to better
6 engage employers in workforce
7 investment activities and to make
8 the workforce investment system
9 more relevant to the workforce
10 investment needs of area busi-
11 nesses, as determined by the local
12 board to be consistent with the
13 objectives of this title.”.

14 **SEC. 709. LIFE LONG LEARNING AWARENESS CAMPAIGNS.**

15 (a) FEDERAL COMMUNICATIONS COMMISSION.—

16 (1) IN GENERAL.—The Federal Communica-
17 tions Commission shall require that each licensed
18 broadcaster keep a record of the number and dura-
19 tion of public service announcements voluntarily
20 broadcast with respect to the job training opportuni-
21 ties and services described in section 509 of the
22 Workforce Investment Act of 1998.

23 (2) DEADLINE.—Not later than 90 days after
24 the date of the enactment of this Act, the Federal
25 Communications Commission shall take all actions

1 necessary to adopt a regulation to implement para-
2 graph (1).

3 (3) REQUIREMENT.—The Federal Communica-
4 tions Commission shall consider the voluntary broad-
5 cast of any public service announcement described in
6 paragraph (1) as—

7 (A) fulfilling part of a broadcaster’s obliga-
8 tion to serve the public interest; and

9 (B) demonstrating such service for the
10 purposes of license renewal.

11 (b) JOB TRAINING PROVIDERS.—Title V of the
12 Workforce Investment Act of 1998 (20 U.S.C. 9271 et
13 seq.) is further amended by adding at the end the fol-
14 lowing:

15 **“SEC. 509. PUBLIC SERVICE ANNOUNCEMENTS.**

16 “(a) IN GENERAL.—Each provider of a job training
17 program shall make periodic public service announcements
18 to inform the general public about job training opportuni-
19 ties and services, including—

20 “(1) the availability of job training opportuni-
21 ties under the program;

22 “(2) Federal Pell Grants available under title
23 IV of the Higher Education Act of 1965 (20 U.S.C.
24 1070 et seq.);

25 “(3) the Job Corps centers;

1 “(4) the one-stop delivery systems; and

2 “(5) community colleges.

3 “(b) REGULATIONS.—The Secretary shall promul-
4 gate regulations to assist providers of job training pro-
5 grams in carrying out the requirements described in sub-
6 section (a). In promulgating such regulations, the Sec-
7 retary shall consider whether the requirements may be sat-
8 isfied by—

9 “(1) posting the required information on an
10 Internet Web site;

11 “(2) publishing the required information in a
12 newspaper; or

13 “(3) making an announcement containing the
14 required information on the television or radio.

15 “(c) DEFINITION.—The term ‘job training program’
16 has the meaning given such term in section 507(d).”.

17 **SEC. 710. GAO REPORTS.**

18 (a) IDENTIFYING DUPLICATION.—Not later than 1
19 year after the date of the enactment of this Act, the Comp-
20 troller General of the United States shall conduct a study
21 and submit a report to Congress on job training programs
22 that—

23 (1) identifies duplications among such pro-
24 grams; and

1 (2) if applicable, recommends the consolidation
2 of such programs.

3 (b) EFFECTIVENESS OF PROGRAMS.—Not later than
4 2 years after the date of the enactment of this Act, and
5 every 2 years thereafter, the Comptroller General of the
6 United States shall conduct a study and submit a report
7 to Congress that evaluates the effectiveness of job training
8 programs based on the assessments of such programs car-
9 ried out under section 508(b) of the Workforce Investment
10 Act of 1998 (as amended by this Act).

11 (c) DEFINITION.—For purposes of this section, the
12 term “job training program” has the meaning given such
13 term in 507(d) of the Workforce Investment Act of 1998
14 (as amended by this Act).

15 **TITLE VIII—SPENDING LIMITS** 16 **AND DEFICIT CONTROL**

17 **SEC. 800. SHORT TITLE.**

18 This title may be cited as the “Spending Enforcement
19 and Control Act of 2010”.

20 **Subtitle A—Spending Limits and** 21 **Deficit Control**

22 **SEC. 801. DISCRETIONARY SPENDING LIMITS.**

23 (a) DISCRETIONARY SPENDING LIMITS.—Section
24 251 of the Balanced Budget and Emergency Deficit Con-
25 trol of Act of 1985 is amended to read as follows:

1 “(a) DISCRETIONARY SPENDING LIMITS.—The fiscal
2 years for the discretionary spending limits shall be as fol-
3 lows:

4 “(1) Fiscal year 2011: \$1,203,000,000,000 in
5 outlays.

6 “(2) Fiscal year 2012: \$1,144,000,000,000 in
7 outlays.

8 “(3) Fiscal year 2013: \$1,143,000,000,000 in
9 outlays.

10 “(4) Fiscal year 2014: \$1,143,000,000,000 in
11 outlays.

12 “(5) Fiscal year 2015: \$1,149,000,000,000 in
13 outlays.

14 “(6) Fiscal year 2016: \$1,165,000,000,000 in
15 outlays.

16 “(7) Fiscal year 2017: \$1,176,000,000,000 in
17 outlays.

18 “(8) Fiscal year 2018: \$1,184,000,000,000 in
19 outlays.

20 “(9) Fiscal year 2019: \$1,202,000,000,000 in
21 outlays.

22 “(b) SPENDING REDUCTION ORDER.—A spending re-
23 duction ordered shall be implemented using the procedures
24 set forth in section 256.”.

1 (b) CONFORMING AMENDMENT.—The item relating
2 to section 251 in the table of contents set forth in 250(c)
3 of the Balanced Budget and Emergency Deficit Control
4 Act of 1985 is amended to read as follows:

“Sec. 251. Discretionary spending limits.”.

5 **SEC. 802. TOTAL SPENDING LIMITS.**

6 (a) TOTAL SPENDING LIMITS.—After section 252 of
7 the Balanced Budget and Emergency Deficit Control Act
8 of 1985, add the following new section:

9 **“SEC. 252A. TOTAL SPENDING LIMITS.**

10 “(a) PROJECTIONS.—

11 “(1) OMB REPORT.—OMB shall prepare a re-
12 port comparing projected total spending under sec-
13 tion 257 and the total spending limits in subsection
14 (d), and include such report in the budget as sub-
15 mitted by the President annually under section
16 1105(a) of title 31, United States Code.

17 “(2) CBO REPORT.—CBO shall prepare a re-
18 port comparing projected total spending under sec-
19 tion 257 and the total spending limits in subsection
20 (d) and include such report in the CBO annual base-
21 line and reestimate of the President’s budget.

22 “(3) INCLUSION IN SPENDING REDUCTION OR-
23 DERS.—Reports prepared pursuant to this sub-
24 section shall be included in the spending reduction
25 report.

1 “(b) SPENDING REDUCTION ORDER.—A spending re-
2 duction order shall be implemented using the procedures
3 set forth in section 256.

4 “(c) FISCAL YEARS OF THE TOTAL SPENDING PE-
5 RIOD.—The fiscal years within the total spending period
6 shall be as follows:

7 “(1) Fiscal year 2011: 22.8 percent.

8 “(2) Fiscal year 2012: 21.6 percent.

9 “(3) Fiscal year 2013: 21.8 percent.

10 “(4) Fiscal year 2014: 21.9 percent.

11 “(5) Fiscal year 2015: 21.7 percent.

12 “(6) Fiscal year 2016: 22.0 percent.

13 “(7) Fiscal year 2017: 21.7 percent.

14 “(8) Fiscal year 2018: 21.6 percent.

15 “(9) Fiscal year 2019: 22.3 percent.

16 “(10) Fiscal year 2020: 22.3 percent.

17 “(11) Fiscal year 2021: 22.4 percent.

18 “(12) Fiscal year 2022: 22.6 percent.

19 “(13) Fiscal year 2023: 22.8 percent.

20 “(14) Fiscal year 2024: 22.9 percent.

21 “(15) Fiscal year 2025: 22.9 percent.

22 “(16) Fiscal year 2026: 23.2 percent.

23 “(17) Fiscal year 2027: 23.5 percent.

24 “(18) Fiscal year 2028: 23.6 percent.

25 “(19) Fiscal year 2029: 23.7 percent.

- 1 “(20) Fiscal year 2030: 23.8 percent.
- 2 “(21) Fiscal year 2031: 23.9 percent.
- 3 “(22) Fiscal year 2032: 24.0 percent.
- 4 “(23) Fiscal year 2033: 24.1 percent.
- 5 “(24) Fiscal year 2034: 24.1 percent.
- 6 “(25) Fiscal year 2035: 24.1 percent.
- 7 “(26) Fiscal year 2036: 24.1 percent.
- 8 “(27) Fiscal year 2037: 24.1 percent.
- 9 “(28) Fiscal year 2038: 23.9 percent.
- 10 “(29) Fiscal year 2039: 23.7 percent.
- 11 “(30) Fiscal year 2040: 23.5 percent.
- 12 “(31) Fiscal year 2041: 23.5 percent.
- 13 “(32) Fiscal year 2042: 23.4 percent.
- 14 “(33) Fiscal year 2043: 23.1 percent.
- 15 “(34) Fiscal year 2044: 23.0 percent.
- 16 “(35) Fiscal year 2045: 22.7 percent.
- 17 “(36) Fiscal year 2046: 22.4 percent.
- 18 “(37) Fiscal year 2047: 22.2 percent.
- 19 “(38) Fiscal year 2048: 21.9 percent.
- 20 “(39) Fiscal year 2049: 21.7 percent.
- 21 “(40) Fiscal year 2050: 21.6 percent.
- 22 “(41) Fiscal year 2051: 21.4 percent.
- 23 “(42) Fiscal year 2052: 21.2 percent.
- 24 “(43) Fiscal year 2053: 20.9 percent.
- 25 “(44) Fiscal year 2054: 20.9 percent.

- 1 “(45) Fiscal year 2055: 20.6 percent.
- 2 “(46) Fiscal year 2056: 20.3 percent.
- 3 “(47) Fiscal year 2057: 20.1 percent.
- 4 “(48) Fiscal year 2058: 20.0 percent.
- 5 “(49) Fiscal year 2059: 19.7 percent.
- 6 “(50) Fiscal year 2060: 19.6 percent.
- 7 “(51) Fiscal year 2061: 19.4 percent.
- 8 “(52) Fiscal year 2062: 19.2 percent.
- 9 “(53) Fiscal year 2063: 18.9 percent.
- 10 “(54) Fiscal year 2064: 18.8 percent.
- 11 “(55) Fiscal year 2065: 18.4 percent.
- 12 “(56) Fiscal year 2066: 18.2 percent.
- 13 “(57) Fiscal year 2067: 18.1 percent.
- 14 “(58) Fiscal year 2068: 17.6 percent.
- 15 “(59) Fiscal year 2069: 17.5 percent.
- 16 “(60) Fiscal year 2070: 17.1 percent.
- 17 “(61) Fiscal year 2071: 16.8 percent.
- 18 “(62) Fiscal year 2072: 16.6 percent.
- 19 “(63) Fiscal year 2073: 16.2 percent.
- 20 “(64) Fiscal year 2074: 16.0 percent.
- 21 “(65) Fiscal year 2075: 15.6 percent.
- 22 “(66) Fiscal year 2076: 15.4 percent.
- 23 “(67) Fiscal year 2077: 15.0 percent.
- 24 “(68) Fiscal year 2078: 14.7 percent.
- 25 “(69) Fiscal year 2079: 14.3 percent.

5 days before the President's budget submission.	CBO sequestration preview report.
President's budget submission ..	OMB sequestration preview report.
August 10	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO sequestration final report.
15 days after end of session	OMB sequestration final report; Presidential order.

1 “(b) SUBMISSION AND AVAILABILITY OF REPORTS.—

2 Each report required by this section shall be submitted
3 to the Committees on the Budget of the House of Rep-
4 resentatives and the Senate. On the following day a notice
5 of the report shall be printed in the Federal Register.

6 “(c) SEQUESTRATION PREVIEW REPORT.—

7 “(1) REPORTING REQUIREMENT.—On the dates
8 specified in subsection (a), OMB and CBO shall
9 issue a preview report regarding discretionary limits
10 and total spending limits, sequestration based on
11 laws enacted through those dates.

12 “(2) DISCRETIONARY SPENDING LIMIT SEQUES-
13 TRATION REPORT.—The preview report shall set
14 forth for the current year and the budget year the
15 following:

16 “(A) The discretionary spending limit;

17 “(B) The estimated discretionary spending
18 amount; and

19 “(C) The amount of reductions required
20 under section 251.

1 “(3) TOTAL SPENDING LIMIT SEQUESTRATION
2 REPORT.—The preview reports shall set forth for the
3 budget year estimates for the following:

4 “(A) The total spending limit;

5 “(B) The estimated total spending
6 amount; and

7 “(C) The amount of reductions required
8 under section 252A.

9 “(4) EXPLANATION OF DIFFERENCES.—The
10 OMB reports shall explain the differences between
11 OMB and CBO estimates for each item set forth in
12 this subsection.

13 “(d) SEQUESTRATION UPDATE REPORT.—On the
14 dates specified in subsection (a), OMB and CBO shall
15 issue a sequestration update report, reflecting laws en-
16 acted through those dates, containing all of the informa-
17 tion required in the sequestration preview report.

18 “(e) SEQUESTRATION FINAL REPORT.—

19 “(1) REPORTING REQUIREMENT.—On the dates
20 specified in subsection (a), OMB and CBO shall
21 issue a sequestration final report, reflecting laws en-
22 acted through those dates, containing all of the in-
23 formation required in the sequestration preview re-
24 port.

1 “(2) PRESIDENTIAL ORDER.—On the date spec-
2 ified in subsection (a), if in its sequestration final
3 report OMB estimates that any sequestration is re-
4 quired, the President shall issue an order fully im-
5 plementing without change all sequestrations re-
6 quired by the OMB calculations set forth in that re-
7 port. This order shall be effective on issuance.

8 “(f) GAO COMPLIANCE REPORT.—Upon request of
9 the Committee on the Budget of the House of Representa-
10 tives or the Senate, the Comptroller General shall submit
11 to the Congress and the President a report on—

12 “(1) the extent to which each order issued by
13 the President under this section complies with all of
14 the requirements contained in this part, either certi-
15 fying that the order fully and accurately complies
16 with such requirements or indicating the respects in
17 which it does not; and

18 “(2) the extent to which each report issued by
19 OMB or CBO under this section complies with all of
20 the requirements contained in this part, either certi-
21 fying that the report fully and accurately complies
22 with such requirements or indicating the respects in
23 which it does not.

24 “(g) LOW-GROWTH REPORT.—At any time, CBO and
25 OMB shall notify the Congress if—

1 “(1) during the period consisting of the quarter
2 during which such notification is given, the quarter
3 preceding such notification, and the 4 quarters fol-
4 lowing such notification, CBO or OMB has deter-
5 mined that real economic growth is projected or esti-
6 mated to be less than zero with respect to each of
7 any 2 consecutive quarters within such period; or

8 “(2) the most recent of the Department of
9 Commerce’s advance preliminary or final reports of
10 actual real economic growth indicate that the rate of
11 real economic growth for each of the most recently
12 reported quarter and the immediately preceding
13 quarter is less than one percent.

14 “(h) **ECONOMIC AND TECHNICAL ASSUMPTIONS.**—In
15 all reports required by this section, OMB shall use the
16 same economic and technical assumptions as used in the
17 most recent budget submitted by the President under sec-
18 tion 1105(a) of title 31, United States Code”.

19 **SEC. 812. SPENDING LIMITS ENFORCEMENT.**

20 (a) **CONFORMING AMENDMENTS TO SECTION 312.**—
21 Section 312 of the Congressional Budget Act of 1974 is
22 amended—

23 (1) by striking subsection (a) and inserting the
24 following:

1 “(a) BUDGET COMMITTEE DETERMINATIONS.—For
2 purposes of this title, the levels of new budget authority,
3 outlays, direct spending, deficits, revenues, and debt, or
4 the increases or decreases of such levels for purpose of
5 section 303, shall be determined on the basis of estimates
6 made by the Committee on the Budget of the House of
7 Representatives or the Senate, as applicable.”.

8 (2) by striking subsections (b) and (c) and re-
9 designating subsections (d), (e), and (f) as (g), (h),
10 and (i), respectively.

11 (b) ENFORCEMENT AMENDMENTS TO SECTION
12 312.—Section 312 of the Congressional Budget Act of
13 1974 is further amended by adding the following new sub-
14 sections:

15 “(b) DISCRETIONARY SPENDING LIMIT POINT OF
16 ORDER.—It shall not be in order in the House of Rep-
17 resentatives or the Senate to consider any bill, joint resolu-
18 tion, amendment, or conference report that—

19 “(1) causes the discretionary spending limits
20 for the budget year to be breached; or

21 “(2) increases the discretionary spending limits
22 for the budget year or any ensuing fiscal year.

23 “(c) TOTAL SPENDING LIMIT POINT OF ORDER.—
24 It shall not be in order in the House of Representatives

1 or the Senate to consider any bill, joint resolution, amend-
2 ment, or conference report that—

3 “(1) causes the total spending limits for the
4 budget year, as a percentage of gross domestic prod-
5 uct, to be breached; or

6 “(2) increases the total spending limits for the
7 budget year or any ensuing fiscal year after the
8 budget year, as a percentage of gross domestic prod-
9 uct.

10 “(d) REVENUE LIMIT POINT OF ORDER.—It shall
11 not be in order in the House of Representatives or the
12 Senate to consider any bill, joint resolution, amendment,
13 or conference report that increases levels of revenue above
14 19 percent of gross domestic product, as estimated by the
15 Committee on the Budget of the applicable House.

16 “(e) WAIVER OR SUSPENSION.—The provisions of
17 this section may be waived or suspended:

18 “(1) IN THE SENATE.—In the Senate only by
19 the affirmative vote of three-fifths of the Members,
20 duly chosen and sworn.

21 “(2) IN THE HOUSE OF REPRESENTATIVES.—In
22 the House of Representatives:

23 “(A) Only by a rule or order proposing
24 only to waive such provisions by an affirmative

1 vote of two-thirds of the Members, duly chosen
2 and sworn.

3 “(B) It shall not be in order to consider a
4 rule or order that waives the application of sub-
5 paragraph (A).

6 “(C) It shall not be in order for the Speak-
7 er to entertain a motion to suspend the applica-
8 tion of this section under clause 1 of rule XV
9 of the Rules of the House of Representatives.”.

10 **SEC. 813. SPENDING REDUCTION ORDERS.**

11 (a) IN GENERAL.—Section 256 of the Balanced
12 Budget and Emergency Deficit Control Act of 1985 is
13 amended to read as follows:

14 **“SEC. 256. SPENDING REDUCTION ORDER.**

15 “(a) GENERAL RULES.—

16 “(1) CALCULATION OF SPENDING REDUCTION
17 PERCENTAGE.—OMB shall include in its final
18 spending sequestration report a requirement that
19 each nonexempt spending account shall be reduced
20 by an amount of budget authority calculated by mul-
21 tiplying the baseline level of budgetary resources in
22 that account at that time by the uniform percentage
23 necessary to reduce outlays sufficient to eliminate an
24 excess spending amount.

1 “(2) EXEMPTIONS.—The following shall be ex-
2 empt from reduction under any order issued under
3 this part:

4 “(A) Payments for net interest.

5 “(B) Benefits payable under the old-age,
6 survivors, and disability insurance program es-
7 tablished under title II of the Social Security
8 Act if—

9 “(i) OASDI Trust Funds are actuari-
10 ally solvent in the 75-year period utilized
11 in the most recent annual report of the
12 Board of Trustees provided pursuant to
13 section 201(C)(2) of the Social Security
14 Act; and

15 “(ii) OASDI Trust Funds have not
16 run a cash deficit in the fiscal year prior
17 to the transmittal of the most recent Se-
18 questration Preview Report.

19 “(C) Benefits provided to veterans defined
20 as direct spending payable by the Department
21 of Veterans Affairs.

22 “(D) Obligated balances of budget author-
23 ity carried over from prior fiscal years.

24 “(E) Any obligations of the Federal Gov-
25 ernment required to be paid under the United

1 States Constitution or legally contractual obli-
2 gations.

3 “(F) Any program whose growth in the
4 budget year is equal to or less than the con-
5 sumer price index.

6 “(G) Intergovernmental transfers.

7 “(3) ONE-PERCENT REDUCTION LIMITATION.—
8 No program shall be subject to a spending reduction
9 of more than one percent of its budgetary resources.

10 “(4) CALCULATION OF SPENDING REDUC-
11 TION.—The percentage required to produce a spend-
12 ing reduction, as ordered by a spending reduction
13 order, shall be calculated by OMB by adding all
14 budgetary resources of the Government, and reduc-
15 ing that amount by an amount sufficient to reduce
16 the total amount of outlays of the Government to
17 equal, or lower, a level of outlays than the amount
18 set forth in the guideline period.

19 “(5) APPLICATION.—Once issued, a spending
20 reduction shall be applied to nonexempt programs as
21 follows:

22 “(A) Budgetary resources subject to a
23 spending reduction to any discretionary account
24 shall be permanently canceled.

1 “(B) The same percentage spending reduc-
2 tion shall apply to all programs, projects, and
3 activities within a budget account (with pro-
4 grams, projects, and activities as delineated in
5 the appropriation Act or accompanying report
6 for the relevant fiscal year covering that ac-
7 count, or for accounts not included in appro-
8 priation Acts, as delineated in the most recently
9 submitted President’s budget).

10 “(C) Administrative regulations imple-
11 menting a spending reduction shall be made
12 within 120 days of the issue of a spending re-
13 duction order.

14 “(6) OASDI SPECIAL PROCEDURES.—If the
15 OASDI Trust Funds are subject to sequestration,
16 then payments from such Trust Funds shall be
17 treated the same as other programs, except—

18 “(A) reductions from such Trust Funds
19 shall not exceed one percent of the 75-year un-
20 funded liability set forth in the most current
21 Social Security Trustees Report;

22 “(B) reduction in individual benefits shall
23 be implemented by increasing the Normal Re-
24 tirement Age (NRA) by an amount certified by
25 the Social Security Office of the Chief Actuary;

1 “(C) the increase in the NRA shall not be
2 applied to any beneficiary born in a year 55
3 years or before—

4 “(i) the year of the enactment of the
5 Roadmap for America’s Future Act of
6 2010; or

7 “(ii) the year in which the final
8 spending sequestration report is issued;
9 and

10 “(D) no change in the NRA shall be made
11 before it is fully phased-in under the Social Se-
12 curity Act as in effect before the date of enact-
13 ment of the Roadmap for America’s Future Act
14 of 2010.

15 “(b) EMERGENCIES.—No program shall be subject to
16 sequestration or counted for purposes of calculating a se-
17 quester if it is designated as an emergency under this sec-
18 tion and so designated by the President.”.

19 (b) LOW-GROWTH AMENDMENT.—Section 258(b) of
20 the Balanced Budget and Emergency Deficit Control Act
21 of 1985 is amended to read as follows:

22 “(b) SUSPENSION OF SEQUESTRATION PROCE-
23 DURES.—Upon the enactment of a declaration of war or
24 a joint resolution described in subsection (a)—

1 “(1) the subsequent issuance of any sequestra-
2 tion report to enforce the spending limits in sections
3 251 and 252A order is precluded;

4 “(2) sections 302(f), 310(d), and 311(a), of the
5 Congressional Budget Act of 1974 are suspended;
6 and

7 “(3) section 1103 of title 31, United States
8 Code, is suspended.”.

9 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

10 (1) REPEALS.—Sections 255 and 275 of the
11 Balanced Budget and Emergency Deficit Control
12 Act of 1985 are repealed.

13 (2) CONFORMING AMENDMENT.—The item re-
14 lating to section 256 in the table of contents set
15 forth in section 250(a) of the Balanced Budget and
16 Emergency Deficit Control Act of 1985 is amended
17 to read as follows:

 “Sec. 256. Spending reduction order.”.

18 **SEC. 814. ALTERNATE SPENDING REDUCTION LEGISLATION**
19 **IN THE HOUSE OF REPRESENTATIVES.**

20 (a) INTRODUCTION OF JOINT RESOLUTION.—At any
21 time after the Director of OMB issues a final order for
22 a fiscal year, but before the end of the session of Congress
23 in session on the date of the issuance of such order, the
24 majority leader of the House of Representatives may in-
25 troduce a joint resolution which contains provisions direct-

1 ing the President to modify the most recent final order
2 issued pursuant to this title, or provide an alternative to
3 eliminate the spending excess for such fiscal year or years.
4 After the introduction of the first such joint resolution in
5 either House of Congress in any calendar year, then no
6 other joint resolution introduced pursuant to this section
7 shall be subject to the procedures set forth in this section.

8 (b) PROCEDURES FOR CONSIDERATION OF JOINT
9 RESOLUTIONS.—

10 (1) Any committee of the House of Representa-
11 tives to which an alternative spending compliance
12 measure is referred shall report it to the House
13 without amendment not later than the seventh legis-
14 lative day after the date of its introduction. If a
15 committee fails to report the bill within that period
16 or the House has adopted a concurrent resolution
17 providing for adjournment sine die at the end of a
18 Congress, it shall be in order to move that the
19 House discharge the committee from further consid-
20 eration of the bill. Such a motion shall be in order
21 only at a time designated by the Speaker in the leg-
22 islative schedule within two legislative days after the
23 day on which the proponent announces his intention
24 to offer the motion. Such a motion shall not be in
25 order after a committee has reported a spending

1 compliance measure with respect to that special mes-
2 sage or after the House has disposed of a motion to
3 discharge with respect to that special message. The
4 previous question shall be considered as ordered on
5 the motion to its adoption without intervening mo-
6 tion except twenty minutes of debate equally divided
7 and controlled by the proponent and an opponent. If
8 such a motion is adopted, the House shall proceed
9 immediately to consider the spending compliance
10 measure bill in accordance with paragraph (3). A
11 motion to reconsider the vote by which the motion
12 is disposed of shall not be in order.

13 (2) After a spending compliance measure is re-
14 ported or a committee has been discharged from fur-
15 ther consideration, or the House has adopted a con-
16 current resolution providing for adjournment sine
17 die at the end of a Congress, it shall be in order to
18 move to proceed to consider the spending compliance
19 measure in the House. Such a motion shall be in
20 order only at a time designated by the Speaker in
21 the legislative schedule within two legislative days
22 after the day on which the proponent announces his
23 intention to offer the motion. Such a motion shall
24 not be in order after the House has disposed of a
25 motion to proceed with respect to that special mes-

1 sage. The previous question shall be considered as
2 ordered on the motion to its adoption without inter-
3 vening motion. A motion to reconsider the vote by
4 which the motion is disposed of shall not be in order.

5 (3) The spending compliance measure shall be
6 considered as read. All points of order against an
7 approval bill and against its consideration are
8 waived. The previous question shall be considered as
9 ordered on an approval bill to its passage without in-
10 tervening motion except five hours of debate equally
11 divided and controlled by the proponent and an op-
12 ponent and one motion to limit debate on the bill.
13 A motion to reconsider the vote on passage of the
14 bill shall not be in order.

15 (4) A spending compliance measure received
16 from the Senate shall not be referred to committee.

17 (c) VOTING.—The vote on final passage of a joint res-
18 olution or conference report thereon referred to in para-
19 graph (1) shall require approval of not less than three-
20 fifths of the Members of the House of Representatives.

21 **SEC. 815. ALTERNATE SPENDING REDUCTION LEGISLATION**

22 **IN THE SENATE.**

23 (a) INTRODUCTION OF JOINT RESOLUTION.—At any
24 time after OMB issues a final order for a fiscal year, but
25 before the end of the session of Congress in session on

1 the date of the issuance of such order, the majority leader
2 of either House of Congress may introduce a joint resolu-
3 tion which contains provisions directing the President to
4 modify the most recent final order provide an alternative
5 to eliminate the spending excess for such fiscal year or
6 years. After the introduction of the first such joint resolu-
7 tion in either House of Congress in any calendar year,
8 then no other joint resolution introduced in such House
9 in such calendar year shall be subject to the procedures
10 set forth in this section.

11 (b) PROCEDURES FOR CONSIDERATION OF JOINT
12 RESOLUTIONS.—

13 (1) REFERRAL TO COMMITTEE.—A joint resolu-
14 tion introduced in the Senate under subsection (a)
15 shall not be referred to a committee of the Senate
16 and shall be placed on the calendar pending disposi-
17 tion of such joint resolution in accordance with this
18 subsection.

19 (2) CONSIDERATION IN THE SENATE.—On or
20 after the third calendar day (excluding Saturdays,
21 Sundays, and legal holidays) beginning after a joint
22 resolution is introduced under subsection (a), not-
23 withstanding any rule or precedent of the Senate, in-
24 cluding rule XXII of the Standing Rules of the Sen-
25 ate, it is in order (even though a previous motion to

1 the same effect has been disagreed to) for any Mem-
2 ber of the Senate to move to proceed to the consider-
3 ation of the joint resolution. The motion is not in
4 order after the eighth calendar day (excluding Sat-
5 urdays, Sundays, and legal holidays) beginning after
6 a joint resolution (to which the motion applies) is in-
7 troduced. The joint resolution is privileged in the
8 Senate. A motion to reconsider the vote by which the
9 motion is agreed to or disagreed to shall not be in
10 order. If a motion to proceed to the consideration of
11 the joint resolution is agreed to, the Senate shall im-
12 mediately proceed to consideration of the joint reso-
13 lution without intervening motion, order, or other
14 business, and the joint resolution shall remain the
15 unfinished business of the Senate until disposed of.

16 (3) DEBATE IN THE SENATE.—

17 (A) In the Senate, debate on a joint resolu-
18 tion introduced under subsection (a), amend-
19 ments thereto, and all debatable motions and
20 appeals in connection therewith shall be limited
21 to not more than 10 hours, which shall be di-
22 vided equally between the majority leader and
23 the minority leader (or their designees).

24 (B) A motion to postpone, or a motion to
25 proceed to the consideration of other business is

1 not in order. A motion to reconsider the vote by
2 which the joint resolution is agreed to or dis-
3 agreed to is not in order, and a motion to re-
4 commit the joint resolution is not in order.

5 (C)(i) No amendment that is not germane
6 to the provisions of the joint resolution shall be
7 in order in the Senate. In the Senate, an
8 amendment, any amendment to an amendment,
9 or any debatable motion or appeal is debatable
10 for not to exceed 30 minutes to be equally di-
11 vided between, and controlled by, the mover and
12 the majority leader (or their designees), except
13 that in the event that the majority leader favors
14 the amendment, motion, or appeal, the minority
15 leader (or the minority leader's designee) shall
16 control the time in opposition to the amend-
17 ment, motion, or appeal.

18 (ii) In the Senate, an amendment that is
19 otherwise in order shall be in order notwith-
20 standing the fact that it amends the joint reso-
21 lution in more than one place or amends lan-
22 guage previously amended. It shall not be in
23 order in the Senate to vote on the question of
24 agreeing to such a joint resolution or any
25 amendment thereto unless the figures then con-

1 tained in such joint resolution or amendment
2 are mathematically consistent.

3 (4) VOTE ON FINAL PASSAGE.—Immediately
4 following the conclusion of the debate on a joint res-
5 olution introduced under subsection (a), a single
6 quorum call at the conclusion of the debate if re-
7 quested in accordance with the rules of the Senate,
8 and the disposition of any pending amendments
9 under paragraph (3), the vote on final passage of
10 the joint resolution shall occur.

11 (5) APPEALS.—Appeals from the decisions of
12 the Chair shall be decided without debate.

13 (6) CONFERENCE REPORTS.—In the Senate,
14 points of order under titles III and IV of the Con-
15 gressional Budget Act of 1974 are applicable to a
16 conference report on the joint resolution or any
17 amendments in disagreement thereto.

18 (7) RESOLUTION FROM OTHER HOUSE.—If, be-
19 fore the passage by the Senate of a joint resolution
20 of the Senate introduced under subsection (a), the
21 Senate receives from the House of Representatives a
22 joint resolution introduced under subsection (a),
23 then the following procedures shall apply:

1 (A) The joint resolution of the House of
2 Representatives shall not be referred to a com-
3 mittee and shall be placed on the calendar.

4 (B) With respect to a joint resolution in-
5 troduced under subsection (a) in the Senate—

6 (i) the procedure in the Senate shall
7 be the same as if no joint resolution had
8 been received from the House; but

9 (ii)(I) the vote on final passage shall
10 be on the joint resolution of the House if
11 it is identical to the joint resolution then
12 pending for passage in the Senate; or

13 (II) if the joint resolution from the
14 House is not identical to the joint resolu-
15 tion then pending for passage in the Sen-
16 ate and the Senate then passes the Senate
17 joint resolution, the Senate shall be consid-
18 ered to have passed the House joint resolu-
19 tion as amended by the text of the Senate
20 joint resolution.

21 (C) Upon disposition of the joint resolution
22 received from the House, it shall no longer be
23 in order to consider the resolution originated in
24 the Senate.

1 (8) SENATE ACTION ON HOUSE RESOLUTION.—

2 If the Senate receives from the House of Represent-
3 atives a joint resolution introduced pursuant to this
4 section after the Senate has disposed of a Senate
5 originated resolution which is identical to the House
6 passed joint resolution, the action of the Senate with
7 regard to the disposition of the Senate originated
8 joint resolution shall be deemed to be the action of
9 the Senate with regard to the House originated joint
10 resolution. If it is not identical to the House passed
11 joint resolution, then the Senate shall be considered
12 to have passed the joint resolution of the House as
13 amended by the text of the Senate joint resolution.

14 (9) The vote on final passage of a joint resolu-
15 tion or conference report thereon referred to in para-
16 graph (1) shall require approval of not less than
17 three-fifths of the Members of the Senate.

18 **Subtitle C—Long-Term Budgeting**

19 **SEC. 821. CBO AND OMB PROJECTIONS.**

20 (a) CONGRESSIONAL BUDGET OFFICE.—At the end
21 of section 308 of the Congressional Budget Act of 1974,
22 add the following:

23 “(d) LONG-TERM PROJECTIONS.—Not later than
24 February 15 of each calendar year after the date of enact-
25 ment of this subsection, the Director of the Congressional

1 Budget Office shall issue a report projecting total spend-
2 ing, revenue, deficits, and debt for 75 years beginning with
3 such fiscal year as a percentage of gross domestic product
4 annually based on current law levels as modified to main-
5 tain current policy.

6 “(e) CBO SPENDING REVIEW REPORT ISSUANCE.—
7 As a component of the report required by subsection (d),
8 the Congressional Budget Office shall issue a Spending
9 Review Report and transmit such report to the Commit-
10 tees on the Budget of the House of Representatives and
11 the Senate.

12 “(f) CONTENT OF SPENDING REVIEW REPORT.—The
13 content of the Spending Review Report referred to in sub-
14 section (e) shall include analyses of the following:

15 “(1) OASDI.—The solvency of the Old-Age,
16 Survivors, and Disability Insurance Trust Fund.

17 “(2) MEDICARE.—The long-range sustainability
18 of the spending levels of Medicare.

19 “(3) MEDICAID.—The long-range sustainability
20 of the spending levels of Medicaid.

21 “(4) OTHER DIRECT SPENDING.—The long-
22 range sustainability of spending levels of other direct
23 spending.

1 “(g) DEFINITIONS.—For purposes of the develop-
2 ment of the Spending Review Report referred to in sub-
3 section (b):

4 “(1) SOLVENCY OF THE OASDI.—The term ‘sol-
5 vency’ as used in this section means the solvency of
6 the Old-Age Security and Disability Insurance Trust
7 Funds over a 75-year period beginning in the year
8 the Spending Review Report is reported.

9 “(2) SUSTAINABILITY.—The term ‘sustain-
10 ability’ means the following:

11 “(A) MEDICARE.—The Medicare program
12 is sustainable if it is projected to grow, begin-
13 ning in the tenth year following the date of the
14 enactment of this Act from the fixed percentage
15 of Gross Domestic Product in the year prior to
16 the date of enactment of this subsection, ad-
17 justed by the adjustment formula as set forth
18 in section 252A(e) of the Balanced Budget and
19 Emergency Deficit Control Act of 1985.

20 “(B) MEDICAID.—The Medicaid program
21 is sustainable if its outlays, excluding those des-
22 ignated as emergencies, are projected to grow
23 from the fixed percentage of Gross Domestic
24 Product in the year prior to the date of the en-
25 actment of this Act, adjusted by a rate no high-

1 er than a blend of the Consumer Price Index
2 and the Medical Economic Index, as adjusted
3 after fiscal year 2018 using the same calcula-
4 tion, excluding benefits provided from the
5 OASDI Trust funds, as that set forth in section
6 252A(e) of the Balanced Budget and Emer-
7 gency Deficit Control Act of 1985 to reflect the
8 increase in the the number of Medicare eligible
9 retirees receiving benefiits in the program rel-
10 ative to fiscal year 2018.

11 “(C) OTHER DIRECT SPENDING.—Other
12 direct spending is direct spending other than
13 OASDI, the Medicare and Medicaid program
14 and is sustainable if it grows from a fixed per-
15 centage of gross domestic product in fiscal year
16 2008.”.

17 (b) OFFICE OF MANAGEMENT AND BUDGET.—Sec-
18 tion 1105(a) of title 31, United States Code, (as amended
19 by section 142(e)) is further amended by adding at the
20 end the following:

21 “(38) long-term projections of total spending
22 over 75 years as a percentage of gross domestic
23 product annually and the impact of proposed policies
24 over that period.”.

1 **SEC. 822. GAO AND OMB STATEMENTS OF THE FEDERAL**
2 **GOVERNMENT'S FINANCIAL CONDITION.**

3 (a) GOVERNMENT ACCOUNTABILITY OFFICE.—On or
4 before April 15 of each fiscal year, the Government Ac-
5 countability Office shall submit a report on the federal
6 government's financial condition, including the long-term
7 unfunded obligations.

8 (b) DEFINITION OF LONG-TERM UNFUNDED OBLI-
9 GATIONS.—Section 3 of the Congressional Budget Act of
10 1974 is further amended by adding at the end the fol-
11 lowing new paragraph, and redesignate the paragraph ac-
12 cordingly:

13 “(11) UNFUNDED OBLIGATIONS.—The term
14 ‘Unfunded Obligations’ means the dollar sum of the
15 Total Net Position as displayed in the United States
16 Government Balance Sheets contained within the
17 most recently published Financial Report of the
18 United States Government; plus the 75-year actu-
19 arial balances, using the intermediate open-group as-
20 sumption, of Medicare's Hospital Insurance, Supple-
21 mentary Medical Insurance, and Prescription Drug
22 programs contained within the most recently pub-
23 lished Annual Report of the Boards of Trustees of
24 the Federal Hospital Insurance and Federal Supple-
25 mentary Medical Insurance Trust Funds; plus the
26 75-year actuarial balance, using the intermediate

1 open group assumption, of the Old-Age Survivors
2 and Disability Insurance program contained within
3 the most recently published Annual Report of the
4 Board of Trustees of the Federal Old-Age and Sur-
5 vivors Insurance and Federal Disability Insurance
6 Trust Funds.”.

7 (c) OFFICE OF MANAGEMENT AND BUDGET.—Sec-
8 tion 1105(a) of title 31, United States Code, (as amended
9 by section 301(b)) is further amended by adding at the
10 end the following:

11 “(39) a report on the Federal Government’s fi-
12 nancial condition, the including the long-term un-
13 funded obligations.”.

14 **SEC. 823. FIVE-YEAR FISCAL SUSTAINABILITY REVIEW.**

15 Title III of the Congressional Budget Act of 1974
16 (as amended by section 126(a)) is further amended by
17 adding at the end the following new section:

18 “FIVE-YEAR FISCAL SUSTAINABILITY REVIEW

19 “SEC. 318. (a) CONGRESSIONAL SPENDING REVIEW
20 REPORT.—Not later than 15 calendar days after the date
21 of the transmittal of the report referred to in subsection
22 308(e), the Committees on the Budget of the House of
23 Representatives and the Senate shall issue, and have
24 printed in the Congressional Record, an assessment of
25 such report.

1 “(b) COMMITTEE RECOMMENDATIONS.—Not later
2 than 15 calendar days after the date of the report of the
3 review referred to in subsection (c), the committees of the
4 House of Representatives and the Senate shall consider
5 and vote to submit to the Committees on the Budget of
6 the House of Representatives and Senate, as applicable,
7 recommendations, if any, such committees deem appro-
8 priate in response to the Spending Review Report issued
9 pursuant to subsection (c).

10 “(c) EXPEDITED CONSIDERATION OF SPENDING RE-
11 VIEW LEGISLATION.—

12 “(1) CONSIDERATION IN THE HOUSE OF REP-
13 RESENTATIVES.—

14 “(A) INTRODUCTION OF SPENDING RE-
15 VIEW LEGISLATION.—

16 “(i) If the report referred to in section
17 308 indicates that the OASDI Trust
18 Funds are not solvent, or that Medicare,
19 Medicaid or other direct spending pro-
20 grams are not sustainable, or total spend-
21 ing exceeds the limits set forth in section
22 252A for any year within the 75-year pe-
23 riod referred to in such report, then not
24 later than 30 calendar days after the
25 transmittal of the report referred to in

1 subsection (a), if any, the majority leader
2 and minority leader of the House of Rep-
3 resentatives shall each introduce legislation
4 implementing to the extent practicable the
5 recommendations referred to in subsection
6 (d), or if necessary additional spending re-
7 duction sufficient to achieve the spending
8 levels referred to in subsection (b).

9 “(ii) If Spending Review Legislation
10 is not introduced pursuant to this subpara-
11 graph by the majority leader or minority
12 leader, then not later than 45 calendar
13 days after the transmittal of the report re-
14 ferred to in subsection (a), the chairman or
15 ranking member of the Committee on the
16 Budget shall introduce Spending Review
17 Legislation sufficient to achieve the same
18 spending levels.

19 “(iii) Spending review legislation shall
20 be referred solely to the Committee on the
21 Budget of the House of Representatives
22 which shall have sole jurisdiction of such
23 legislation.

24 “(iv) Spending review legislation in-
25 troduced pursuant to this section shall

1 cause total spending to be reduced by an
2 amount equal or greater than the amount
3 of the breach of the limits set forth in sec-
4 tion 252A, and shall cause the OASDI
5 Trust Funds to achieve solvency, and shall
6 cause Medicare, Medicaid, and other direct
7 spending programs to achieve sustain-
8 ability.

9 “(B) REFERRAL AND REPORTING.—The
10 Committee on the Budget of the House of Rep-
11 resentatives shall report Spending Review Leg-
12 islation to the House of Representatives not
13 later than the seventh legislative day after the
14 date of introduction of the legislation referred
15 to in subparagraph (A). If such committee fails
16 to report the Spending Review Legislation with-
17 in that period or the House of Representatives
18 has adopted a concurrent resolution providing
19 for adjournment sine die at the end of a Con-
20 gress, such committee shall be automatically
21 discharged from further consideration of the
22 Spending Review Legislation and it shall be
23 placed on the appropriate calendar.

24 “(C) PROCEEDING TO CONSIDERATION.—
25 After Spending Review Legislation is reported

1 by or discharged from the Committee on the
2 Budget or the House of Representatives has
3 adopted a concurrent resolution providing for
4 adjournment sine die at the end of a Congress,
5 it shall be in order to move to proceed to con-
6 sider the Spending Review Legislation in the
7 House of Representatives. Such a motion shall
8 be in order in the legislative schedule within
9 two legislative days after the day on which the
10 proponent announces his intention to offer the
11 motion. Such a motion shall not be in order
12 after the House of Representatives has disposed
13 of a motion to proceed with respect to that spe-
14 cial message. The previous question shall be
15 considered as ordered on the motion to its
16 adoption without intervening motion. A motion
17 to reconsider the vote by which the motion is
18 disposed of shall not be in order.

19 “(D) CONSIDERATION.—The Spending Re-
20 view Legislation shall be considered as read. All
21 points of order against Spending Review Legis-
22 lation and against its consideration are waived.
23 The previous question shall be considered as or-
24 dered on an Spending Review Legislation to its
25 passage without intervening motion except five

1 hours of debate equally divided and controlled
2 by the proponent and an opponent and one mo-
3 tion to limit debate on the Spending Review
4 Legislation. A motion to reconsider the vote on
5 passage of the Spending Review Legislation
6 shall not be in order.

7 “(E) SENATE SPENDING REVIEW LEGISLA-
8 TION.—Spending Review Legislation received
9 from the Senate shall not be referred to com-
10 mittee.

11 “(2) CONSIDERATION IN THE SENATE.—

12 “(A) MOTION TO PROCEED TO CONSIDER-
13 ATION.—A motion to proceed to the consider-
14 ation of Spending Review Legislation under this
15 subsection in the Senate shall not be debatable.
16 It shall not be in order to move to reconsider
17 the vote by which the motion to proceed is
18 agreed to or disagreed to.

19 “(B) LIMITS ON DEBATE.—Debate in the
20 Senate on Spending Review Legislation under
21 this subsection, and all debatable motions and
22 appeals in connection therewith (including de-
23 bate pursuant to subparagraph (D)), shall not
24 exceed 10 hours, equally divided and controlled
25 in the usual form.

1 “(C) APPEALS.—Debate in the Senate on
2 any debatable motion or appeal in connection
3 with Spending Review Legislation under this
4 subsection shall be limited to not more than 1
5 hour, to be equally divided and controlled in the
6 usual form.

7 “(D) MOTION TO LIMIT DEBATE.—A mo-
8 tion in the Senate to further limit debate on
9 Spending Review Legislation under this sub-
10 section is not debatable.

11 “(E) MOTION TO RECOMMIT.—A motion to
12 recommit Spending Review Legislation under
13 this subsection is not in order.

14 “(F) CONSIDERATION OF THE HOUSE OF
15 REPRESENTATIVES SPENDING REVIEW LEGISLA-
16 TION.—

17 “(i) IN GENERAL.—If the Senate has
18 received the House of Representatives com-
19 panion resolution to the Spending Review
20 Legislation introduced in the Senate prior
21 to the vote required under paragraph
22 (1)(C), then the Senate may consider, and
23 the vote under paragraph (1)(C) may
24 occur on, the House of Representatives
25 companion resolution.

1 “(ii) PROCEDURE AFTER VOTE ON
2 SENATE SPENDING REVIEW LEGISLA-
3 TION.—If the Senate votes, pursuant to
4 paragraph (1)(C), on the Spending Review
5 Legislation introduced in the Senate, then
6 immediately following that vote, or upon
7 receipt of the House of Representatives
8 companion resolution, the House of Rep-
9 resentatives Spending Review Legislation
10 shall be deemed to be considered, read the
11 third time, and the vote on passage of the
12 Senate resolution shall be considered to be
13 the vote on the Spending Review Legisla-
14 tion received from the House of Represent-
15 atives.

16 “(3) JURISDICTION.—The Committees on the
17 Budget of the House of Representatives and Senate
18 shall have exclusive jurisdiction over any Spending
19 Review Legislation and all the provisions therein for
20 all purposes of the rules of either House.”.

21 **SEC. 824. LONG-TERM RECONCILIATION.**

22 (a) LONG-TERM RECONCILIATION.—Section 310 of
23 the Congressional Budget Act of 1974 is amended as fol-
24 lows:

25 “(h) LONG-TERM RECONCILIATION DIRECTIVES.—

1 “(1) LONG-TERM RECONCILIATION DIREC-
2 TIVES.—In addition to a reconciliation measure as
3 set forth in subsection (a), a concurrent resolution
4 on the budget for any fiscal year, to the extent nec-
5 essary to effectuate the spending levels as set forth
6 for such categories in section 301(a) (providing for
7 long-term spending levels as a percentage of gross
8 domestic product) of such resolution, shall—

9 “(A) specify the total amount by which
10 Medicare, Medicaid, the OASDI Trust Funds,
11 and other direct spending outlays are to be re-
12 duced within the jurisdiction of a committee as
13 a percentage of gross domestic product of such
14 fiscal year; and

15 “(B) direct that committee to determine
16 and recommend changes to accomplish a reduc-
17 tion of such total amount for such categories as
18 a percentage of gross domestic product.

19 “(2) LIMITATION ON AMENDMENTS TO LONG-
20 TERM RECONCILIATION LEGISLATION.—

21 “(A) It shall not be in order in the House
22 of Representatives to consider any amendment
23 to a reconciliation bill or reconciliation resolu-
24 tion if such amendment decreases outlay reduc-
25 tions below the level of such outlay reductions

1 provided (for the fiscal years covered) in the
2 reconciliation instructions which relate to such
3 long-term reconciliation bill.

4 “(B) It shall not be in order in the Senate
5 to consider any amendment to a reconciliation
6 bill or reconciliation resolution if such amend-
7 ment decreases outlay reductions below the level
8 of such outlay reductions provided (for the fis-
9 cal years covered) in the reconciliation instruc-
10 tions which relate to such long-term reconcili-
11 ation bill.

12 “(C) Subparagraphs (A) and (B) shall not
13 apply if a declaration of war by the Congress is
14 in effect.

15 “(D) For purposes of this section, the lev-
16 els of outlays as a percentage of a gross domes-
17 tic product for a fiscal year shall be determined
18 on the basis of estimates made by the Com-
19 mittee on the Budget of the House of Rep-
20 resentatives or of the Senate.

21 “(E) The Committee on Rules of the
22 House of Representatives may make in order
23 amendments to achieve outlay reductions speci-
24 fied by reconciliation directives contained in a
25 concurrent resolution on the budget if a com-

1 committee or committees of the House of Rep-
2 representatives fail to submit recommended reduc-
3 tions in outlays as a percentage of gross domes-
4 tic product to its Committee on the Budget
5 pursuant to its instruction.

6 “(F) In the Senate, a motion to strike a
7 provision shall always be in order.

8 “(3) SUBJECT MATTER.—Subject matter in-
9 cluded in a long-term reconciliation bill may be any
10 of the following:

11 “(A) Any part of the Medicare program.

12 “(B) Medicaid.

13 “(C) The Old-Age, Survivors, and Dis-
14 ability Insurance Trust Fund.

15 “(D) Other direct spending.

16 “(4) APPLICATION.—Subsections (c), (d), and
17 (g) shall not apply to long-term reconciliation meas-
18 ures reported under this subsection.”.

19 “(b) CONFORMING AMENDMENT.—In section 310(b)
20 of the Congressional Budget Act of 1974, strike “sub-
21 section (a)” and insert “subsections (a) and (h)”.

22 **SEC. 825. LONG-TERM SPENDING INCREASE POINT OF**
23 **ORDER.**

24 “(a) IN GENERAL.—Title III of the Congressional
25 Budget Act of 1974 (as amended by section 303) is fur-

1 ther amended by adding at the end the following new sec-
2 tion:

3 “LONG-TERM SPENDING INCREASE POINT OF ORDER

4 “SEC. 317. (a) CONGRESSIONAL BUDGET OFFICE
5 ANALYSIS OF PROPOSALS.—The Director of the Congres-
6 sional Budget Office shall, to the extent practicable, pre-
7 pare for each bill and joint resolution reported from com-
8 mittee (except measures within the jurisdiction of the
9 Committee on Appropriations), and amendments thereto
10 and conference reports thereon, an estimate of whether
11 the measure causes, relative to current law, a net increase
12 in direct spending in excess of \$5,000,000,000 in any of
13 the four 10-year periods beginning in fiscal year 2019
14 through fiscal year 2058.

15 “(b) IN THE SENATE.—

16 “(1) POINT OF ORDER.—It shall not be in
17 order in the Senate to consider any bill, joint resolu-
18 tion, amendment, motion, or conference report that
19 causes a net increase in deficits in excess of
20 \$5,000,000,000 in any of the four 10-year periods
21 beginning in 2019 through 2058.

22 “(2) SUPERMAJORITY WAIVER AND APPEAL.—

23 “(A) This section may be waived or sus-
24 pended only by the affirmative vote of three-
25 fifths of the Members, duly chosen and sworn.

1 “(B) An affirmative vote of three-fifths of
2 the Members, duly chosen and sworn, shall be
3 required to sustain an appeal of the ruling of
4 the Chair on a point of order raised under this
5 section.

6 “(c) IN THE HOUSE OF REPRESENTATIVES.—

7 “(1) POINT OF ORDER.—It shall not be in
8 order in the House of Representatives to consider
9 any bill, joint resolution, amendment, motion, or
10 conference report that causes a net increase in defi-
11 cits in excess of \$5,000,000,000 in any of the four
12 10-year periods beginning in 2019 through 2058.

13 “(2) SUPERMAJORITY WAIVER AND APPEAL.—

14 “(A) This section may be waived or sus-
15 pended only by the affirmative vote of three-
16 fifths of the Members, duly chosen and sworn.

17 “(B) An affirmative vote of two-thirds of
18 the Members, duly chosen and sworn, shall be
19 required to sustain an appeal of the ruling of
20 the Chair on a point of order raised under this
21 section.

22 “(d) DETERMINATIONS OF BUDGET LEVELS.—For
23 purposes of this section, the levels of net deficit increases
24 shall be determined on the basis of estimates provided by

1 the chairmen of the Senate and House Committees on the
2 Budget, as applicable.”.

3 (b) CONFORMING AMENDMENT.—The table of con-
4 tents set forth in section 1(b) of the Congressional Budget
5 and Impoundment Control Act of 1974 is amended by in-
6 serting after the item relating to section 316 the following
7 new item:

“Sec. 317. Long-term spending increase point of order.”.

