

117TH CONGRESS
1ST SESSION

H. R. 1388

To require the Secretary of Labor to establish a program to provide grants for job guarantee programs.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2021

Mrs. WATSON COLEMAN (for herself and Ms. OMAR) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, 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 require the Secretary of Labor to establish a program to provide grants for job guarantee programs.

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.**

4 This Act may be cited as the “Workforce Promotion
5 and Access Act” or the “WPA Act”.

6 **SEC. 2. JOB GUARANTEE GRANT PROGRAM.**

7 (a) DEFINITIONS.—In this section:

1 (1) ELIGIBLE ENTITY.—The term “eligible enti-
2 ty” means an entity that is a political subdivision of
3 a State, Tribal entity, outlying area, or a combina-
4 tion of contiguous political subdivisions or Tribal en-
5 tities that—

6 (A) has an unemployment rate that is
7 equal to the lower of 10 or 80 percent of the
8 national unemployment rate, as determined by
9 the Bureau of Labor Statistics (except in the
10 case of Tribal entities which may submit their
11 own employment data where no such Federal
12 data is available for such entities) based on the
13 most recent data available at the time the Sec-
14 retary solicits applications for grants under this
15 section; and

16 (B) submits an application in accordance
17 with subsection (e).

18 (2) JOB GUARANTEE PROGRAM.—The term
19 “job guarantee program” means a program that
20 meets the requirements of subsection (c).

21 (3) RURAL AREA.—The term “rural area”
22 means an area that is located outside of an urban
23 area.

24 (4) TRIBAL ENTITY.—The term “Tribal entity”
25 means an Indian tribe or tribal organization as such

1 terms are defined in section 4 of the Indian Self-De-
2 termination Act (25 U.S.C. 5304).

3 (5) URBAN AREA.—The term “urban area”
4 means an urbanized area (a region of 50,000 or
5 more residents) and an urbanized cluster (an area
6 encompassing between 2,500 and 50,000 residents),
7 according to the Census Bureau’s urban-rural classi-
8 fication in the 2010 census.

9 (6) SECRETARY.—The term “Secretary” means
10 the Secretary of Labor.

11 (7) WIOA DEFINITIONS.—The terms “adult
12 education and literacy activities”, “career planning”,
13 “individual with a barrier to employment”, “in-de-
14 mand industry sector or occupation”, “local board”,
15 “outlying area”, “recognized postsecondary creden-
16 tial”, “State”, “State board”, “supportive services”,
17 and “workplace learning advisor” have the meanings
18 given such terms in section 3 of the Workforce Inno-
19 vation and Opportunity Act (29 U.S.C. 3102).

20 (b) ESTABLISHMENT.—

21 (1) IN GENERAL.—The Secretary shall establish
22 a program to provide competitive grants to eligible
23 entities to establish programs to ensure that any in-
24 dividual within the area served by the entity who ap-

1 plies for a job through the program will be provided
2 with employment as provided for in this section.

3 (2) TERMINATION.—Federal funding for a job
4 guarantee program established under a grant under
5 this section shall terminate on the earlier of—

6 (A) the end of the 3-year period beginning
7 on the date of the grant; or

8 (B) the date of any revocation of the
9 grantee as an eligible entity.

10 (3) GRANT RENEWAL.—An eligible entity that
11 receives a grant under this section may reapply
12 under this section for an additional grant after the
13 first 3-year grant period.

14 (c) JOB GUARANTEE PROGRAMS.—A job guarantee
15 program meets the requirements of this subsection if the
16 jobs provided under such program—

17 (1) are available to any unemployed individual
18 who—

19 (A) is 18 years of age or older; and

20 (B) resides in the eligible entity as of the
21 date that the grant is awarded under this sub-
22 section to such eligible entity,

23 except that participants may be released, and/or sus-
24 pended if they fail to perform the stipulated duties
25 or they are generally disruptive to the workplace in-

1 involved under procedures established by the Secretary
2 that provide for an opportunity for a review of such
3 determinations;

4 (2) are, with respect to individual participants,
5 included as part of an established bargaining unit
6 and covered by any applicable collective bargaining
7 agreement in effect if similarly situated employees
8 are part of such unit and represented by an exclu-
9 sive bargaining representative;

10 (3) are available for the duration of the pro-
11 gram;

12 (4) provide a wage of not less than the greater
13 of—

14 (A) \$15 per hour, or the hourly wage oth-
15 erwise required to be paid to employees in the
16 area to be served under the program, whichever
17 is greater;

18 (B) the prevailing wage in the area in-
19 volved for a similar job as required by chapter
20 67 of title 41, United States Code, and other
21 related laws; or

22 (C) the applicable wage under an applica-
23 ble collective bargaining agreement as provided
24 for under paragraph (2);

1 (5) provide for coverage of the worker under a
2 health insurance program that is comparable to that
3 offered to Federal employees under the Federal Em-
4 ployee Health Benefits Program; and

5 (6) provide at a minimum—

6 (A) family and medical leave consistent
7 with the provisions of the Family and Medical
8 Leave Act of 1993 and applicable State law, ex-
9 cept that such leave shall be paid leave; and

10 (B) the Emergency Paid Sick Leave Act
11 under division E of the Families First
12 Coronavirus Response Act (29 U.S.C. 2601
13 note).

14 (d) OTHER USES.—Funds may be used to provide
15 workers in a job guarantee program with—

16 (1) supportive services, which can include trans-
17 portation, child care, dependent care, housing, and
18 needs-related payments, that are necessary to enable
19 an individual to participate in activities authorized
20 under this Act;

21 (2) access to a workplace learning advisor to
22 support the education, skill development, job train-
23 ing, career planning, and credentials required to
24 progress toward career goals of such employees in
25 order to meet employer requirements related to job

1 openings and career advancements that support eco-
2 nomic self-sufficiency;

3 (3) adult education and literacy activities, in-
4 cluding those provided by public libraries;

5 (4) activities that assist justice-involved individ-
6 uals, formerly incarcerated individuals, and individ-
7 uals with criminal records in reentering the work-
8 force; and

9 (5) financial literacy activities including those
10 described in section 129(b)(2)(D) of the Workforce
11 Innovation and Opportunity Act.

12 (e) APPLICATIONS.—An eligible entity seeking a
13 grant under this section shall submit an application to the
14 Secretary at such time, in such manner, and containing
15 such information as the Secretary may require. Such ap-
16 plication shall include—

17 (1) a description of the geographic area and
18 population that the entity intends to serve under the
19 job guarantee program established under the grant,
20 including the area unemployment rate, underemploy-
21 ment rate, unemployment rate for individuals with
22 disabilities, poverty rate, housing vacancy rate, crime
23 rate, household income, home-ownership rate, labor
24 force participation rate, and educational attainment;

1 (2) to the extent practicable, a description of
2 the jobs that will be offered under the job guarantee
3 program, including—

4 (A) a description of supports provided to
5 individuals with disabilities and accommoda-
6 tions required under the Americans with Dis-
7 abilities Act of 1990 (42 U.S.C. 12101 et seq.);
8 and

9 (B) a description of supports and proce-
10 dures to ensure job access and opportunities for
11 individuals with criminal records, including in-
12 formation on physical and programmatic acces-
13 sibility, in accordance with section 188 of the
14 Workforce Innovation and Opportunity Act, if
15 applicable, and the Americans with Disabilities
16 Act of 1990, for individuals with disabilities;

17 (3) the need in the area for jobs to be per-
18 formed, including for jobs designated as a high-skill,
19 high-wage or in-demand industry sector or occupa-
20 tion by the Secretary, State board, or local board;

21 (4) a description of State, local, or philan-
22 thropic funding, including through coordination and
23 in-kind or nonfinancial support, if any, that will be
24 provided to assist in carrying out the job guarantee
25 program;

1 (5) an assurance that the eligible entity will es-
2 tablish—

3 (A) a public internet website, in conjunc-
4 tion with the Secretary, to post all available
5 jobs under the job guarantee program; and

6 (B) a process for individuals to apply for
7 such jobs;

8 (6) a comprehensive plan to describe how the
9 funding under the program will leverage existing or
10 anticipated local, State, and Federal funding;

11 (7) an assurance that necessary administrative
12 data systems and information technology infrastruc-
13 ture are available, or will be available, to provide for
14 full participation in the evaluation under subsection
15 (k);

16 (8) a description of how the eligible entity will
17 comply with the requirements described in sub-
18 section (c)(6);

19 (9) an assurance that the entity will enter into
20 an allocation agreement with the Secretary under
21 subsection (j)(2)(A); and

22 (10) an assurance that energy and infrastruc-
23 ture jobs provided under the program will not exae-
24 erbate the impacts of climate change.

1 (f) SELECTION.—In awarding such grant under this
2 section, the Secretary shall consider diversity in geo-
3 graphic location, urban-rural composition, and political en-
4 tity, including the representation of Tribal entities.

5 (g) AMOUNT OF GRANT.—

6 (1) ESTABLISHMENT OF FUND.—There is es-
7 tablished in the Treasury of the United States a sep-
8 arate account to be known as the “Job Guarantee
9 Program Trust Fund” (referred to in this section as
10 the “Fund”).

11 (2) TRANSFERS TO FUND.—There is hereby ap-
12 propriated to the Fund amounts equivalent to—

13 (A) taxes received in the Treasury under
14 subchapter C of chapter 36 of the Internal Rev-
15 enue Code of 1986; and

16 (B) interest earned on investment of
17 amounts in the Fund under rules similar to the
18 rules of section 9602(b) of such Code.

19 (3) USE OF AMOUNTS.—The Secretary shall use
20 amounts in the Fund to make payments to grantees
21 under grants under this section in accordance with
22 paragraph (4).

23 (4) PAYMENTS.—

24 (A) IN GENERAL.—The Secretary shall de-
25 termine the annual amount of a grant under

1 this section based on a formula to be developed
2 by the Secretary.

3 (B) PAYMENTS.—The Secretary shall
4 make payments to grantees under this section
5 in a manner determined appropriate by the Sec-
6 retary. The Secretary shall not make subse-
7 quent payments to a grantee after the initial
8 payment until the grantee certifies to the Sec-
9 retary that the grantee has expended, trans-
10 ferred, or obligated not less than 80 percent of
11 the most recent payment made under this sub-
12 section.

13 (h) LIMITATIONS.—An eligible entity may not use
14 amounts received under a grant under this section to—

15 (1) employ individuals who will replace, or lead
16 to the displacement of, existing employees, positions,
17 or individuals who would otherwise perform similar
18 employment, or disrupt existing contracts and collec-
19 tive bargaining agreements, as defined in section
20 181(b) of the Workforce Innovation and Opportunity
21 Act (Public Law 113–128);

22 (2) perform functions otherwise prohibited by
23 Federal, State, or local laws; and

24 (3) carry out other prohibited activities, as de-
25 termined by the Secretary.

1 (i) FEDERAL PROVISION OF JOBS IN PROGRAM
2 SITES.—

3 (1) GUIDANCE.—Not later than 30 days after
4 the date on which the Secretary awards the first
5 grant under this section, the Secretary shall—

6 (A) provide guidance to the heads of ap-
7 propriate Federal agencies to notify such agen-
8 cies of job guarantee programs established
9 under the grants awarded under this section;

10 (B) request that such agencies notify the
11 Secretary, within 30 days of the date on which
12 the guidance is received under paragraph (1),
13 of the number and types of jobs that each such
14 agency would make available through each of
15 the programs; and

16 (C) ensure that each such agency makes
17 best efforts to provide jobs through the pro-
18 grams established under such grants.

19 (2) APPLICATION OF PROVISIONS.—The re-
20 quirements of subsection (c) relating to wages and
21 benefits provided to participants in jobs provided
22 under job guarantee programs, and the limitations
23 in subsection (h), shall apply to Federal agencies
24 and jobs provided under this subsection, except that

1 a Federal agency shall employ each individual under
2 this subsection for up to 3 years.

3 (3) LISTING OF JOBS ON WEBSITE.—The Sec-
4 retary shall establish procedures to ensure that jobs
5 identified under paragraph (1)(B) are listed on the
6 appropriate public internet website as provided for
7 under subsection (e)(5)(A).

8 (4) REIMBURSEMENT.—At the end of each fis-
9 cal year, the Secretary shall transfer from the Fund
10 to each Federal agency that employs individuals
11 under a job guarantee program under this section,
12 an amount necessary to reimburse such agency for
13 the full cost of employing each such individual dur-
14 ing such fiscal year.

15 (j) TRAINING.—

16 (1) IN GENERAL.—The Secretary shall develop
17 procedures to support up to 8 weeks of paid training
18 (through privately or publicly funded training pro-
19 grams, such as those provided by the public work-
20 force system) to participants in order to perform du-
21 ties required by job guarantee programs under this
22 section, including a new period of training, not to
23 exceed 8 weeks, prior to commencing any new job
24 under the program.

1 (2) SPECIFIC POPULATIONS.—With respect to
2 certain populations with barriers to employment (as
3 defined in section 3(24) of the Workforce Innovation
4 and Opportunity Act (Public Law 113–128)), the 8-
5 week training period may include specific job-related
6 training and counseling and other general skills
7 training to prepare such individuals to reenter the
8 workforce.

9 (k) PRIORITIES AND AUDITS.—

10 (1) PRIORITIES.—Prior to awarding the initial
11 grants under this section, the Secretary shall issue
12 a list of national job priorities relating to jobs that
13 may be carried out under job guarantee programs,
14 that shall include but not be limited to child care,
15 care for seniors and individuals with disabilities,
16 clean energy jobs, community investment projects,
17 and sustainable infrastructure activities. The Sec-
18 retary shall take State board and local board sugges-
19 tions into consideration when issuing such list.

20 (2) AUDITS.—

21 (A) IN GENERAL.—The Secretary, acting
22 through the Inspector General of the Depart-
23 ment of Labor, shall carry out annual audits of
24 the use of grant funds provided to eligible enti-
25 ties under this section.

1 (B) ALLOCATION AGREEMENTS AND MIS-
2 USE OF FUNDS.—

3 (i) ALLOCATION AGREEMENTS.—An
4 eligible entity shall enter into an allocation
5 agreement with the Secretary that shall
6 provide that the Secretary shall recoup any
7 amounts paid to the entity under a grant
8 under this section if the results of an audit
9 under subparagraph (A) include a finding
10 that there was an intentional or reckless
11 misuse of such funds by such entity.

12 (ii) LOSS OF ELIGIBILITY.—An eligi-
13 ble entity that is determined to have fal-
14 sified or otherwise misstated data in any
15 report submitted to the Secretary with the
16 intent to deceive or mislead the Secretary
17 shall be ineligible to receive additional
18 funds under this section.

19 (l) REPORTS.—Not later than 90 days after the end
20 of each calendar year for which an eligible entity obligates
21 or expends any amounts made available under a grant
22 under this section, the eligible entity shall submit to the
23 Secretary a report that—

24 (1) specifies the amount of grant funds obli-
25 gated or expended for the preceding fiscal year;

1 (2) specifies any purposes for which the funds
2 were obligated or expended; and

3 (3) includes any other information that the Sec-
4 retary may require to more effectively administer the
5 grant program under this section, including the indi-
6 cators of performance under section 116(b)(2)(A)(i)
7 of the Workforce Innovation and Opportunity Act
8 (29 U.S.C. 3141(b)(2)(A)(i)), with the performance
9 data disaggregated by race, ethnicity, sex, age, and
10 membership in a population specified in section
11 3(24) of such Act (29 U.S.C. 3102(24)).

12 (m) EVALUATION.—The Chief Evaluation Officer at
13 the Department of Labor shall provide for the conduct of
14 an evaluation of the program, using a rigorous design and
15 evaluation methods to assess the implementation of the
16 programs and their impact on—

17 (1) overall employment, public-sector employ-
18 ment, and private-sector employment;

19 (2) private-sector employment, wages, and bene-
20 fits;

21 (3) poverty rate;

22 (4) public assistance spending and other Fed-
23 eral spending in the area served by the program;

24 (5) child health and educational outcomes;

1 (6) health and well-being of those with mental,
2 emotional, and behavioral health needs;

3 (7) incarceration rates;

4 (8) the environment, including air quality and
5 water quality;

6 (9) the indicators of performance as described
7 in subsection (l)(3); and

8 (10) other economic development and individual
9 outcome indicators, as determined by the Secretary.

10 (n) EXPANSION OF WORK OPPORTUNITY CREDIT TO
11 INCLUDE PARTICIPANTS IN JOB GUARANTEE PRO-
12 GRAMS.—

13 (1) IN GENERAL.—Subsection (d) of section 51
14 of the Internal Revenue Code of 1986 is amended—

15 (A) in paragraph (1)—

16 (i) in subparagraph (I), by striking
17 “or” at the end,

18 (ii) in subparagraph (J), by striking
19 the period at the end and inserting “, or”,
20 and

21 (iii) by adding at the end the fol-
22 lowing new subparagraph:

23 “(K) a qualified participant in a job guar-
24 antee program.”, and

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

3 “(16) QUALIFIED PARTICIPANT IN A JOB GUAR-
4 ANTEE PROGRAM.—The term ‘qualified participant
5 in a job guarantee program’ means any individual
6 who is certified by the designated local agency as
7 having participated in a job guarantee program
8 under section 2 of the Federal Jobs Guarantee Pro-
9 gram Act of 2020 for not less than 3 months during
10 the 6-month period ending on the hiring date.”.

11 (2) EFFECTIVE DATE.—The amendments made
12 by this subsection shall apply to individuals who
13 begin work for the employer after December 31,
14 2021.

15 (o) APPROPRIATIONS.—From funds in the Treasury
16 not otherwise appropriated, there are appropriated to the
17 Secretary such sums as may be necessary to carry out this
18 section.

19 **SEC. 3. TRANSACTION TAX.**

20 (a) IN GENERAL.—Chapter 36 of the Internal Rev-
21 enue Code of 1986 is amended by inserting after sub-
22 chapter B the following new subchapter:

23 **“Subchapter C—Tax on Trading Transactions**

“Sec. 4475. Tax on trading transactions.

“Sec. 4476. Derivative defined.

1 **“SEC. 4475. TAX ON TRADING TRANSACTIONS.**

2 “(a) IMPOSITION OF TAX.—There is hereby imposed
3 a tax on each covered transaction with respect to any secu-
4 rity.

5 “(b) RATE OF TAX.—The tax imposed under sub-
6 section (a) with respect to any covered transaction shall
7 be 0.1 percent of the specified base amount with respect
8 to such covered transaction.

9 “(c) SPECIFIED BASE AMOUNT.—For purposes of
10 this section, the term ‘specified base amount’ means—

11 “(1) except as provided in paragraph (2), the
12 fair market value of a security (determined as of the
13 time of the covered transaction), and

14 “(2) in the case of any payment with respect to
15 a derivative, the amount of such payment.

16 “(d) COVERED TRANSACTION.—For purposes of this
17 section—

18 “(1) IN GENERAL.—The term ‘covered trans-
19 action’ means—

20 “(A) except as provided in subparagraph
21 (B), any purchase if—

22 “(i) such purchase occurs on, or is
23 subject to the rules of, a qualified board or
24 exchange located in the United States, or

25 “(ii) the purchaser or seller is a
26 United States person, and

1 “(B) any transaction with respect to a de-
2 rivative if—

3 “(i) such derivative is traded on, or is
4 subject to the rules of, a qualified board or
5 exchange located in the United States, or

6 “(ii) any party with rights under such
7 derivative is a United States person.

8 “(2) EXCEPTION FOR INITIAL ISSUES.—No tax
9 shall be imposed under subsection (a) on any cov-
10 ered transaction with respect to the initial issuance
11 of any security described in subparagraph (A), (B),
12 or (C) of subsection (e)(1).

13 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
14 poses of this section—

15 “(1) SECURITY.—For purposes of this section,
16 the term ‘security’ means—

17 “(A) any share of stock in a corporation,

18 “(B) any partnership or beneficial owner-
19 ship interest in a partnership or trust,

20 “(C) except as provided in paragraph (2),
21 any note, bond, debenture, or other evidence of
22 indebtedness, and

23 “(D) any derivative (as defined in section
24 4476).

1 “(2) EXCEPTION FOR CERTAIN TRADED SHORT-
2 TERM INDEBTEDNESS.—A note, bond, debenture, or
3 other evidence of indebtedness which—

4 “(A) is traded on, or is subject to the rules
5 of, a qualified board or exchange located in the
6 United States, and

7 “(B) has a fixed maturity of not more
8 than 100 days,
9 shall not be treated as described in paragraph
10 (1)(C).

11 “(3) QUALIFIED BOARD OR EXCHANGE.—The
12 term ‘qualified board or exchange’ has the meaning
13 given such term by section 1256(g)(7).

14 “(f) BY WHOM PAID.—

15 “(1) IN GENERAL.—The tax imposed by this
16 section shall be paid by—

17 “(A) in the case of a transaction which oc-
18 curs on, or is subject to the rules of, a qualified
19 board or exchange located in the United States,
20 such qualified board or exchange, and

21 “(B) in the case of a purchase not de-
22 scribed in subparagraph (A) which is executed
23 by a broker (as defined in section 6045(c)(1))
24 which is a United States person, such broker.

1 “(2) SPECIAL RULES FOR DIRECT, ETC.,
2 TRANSACTIONS.—In the case of any transaction to
3 which paragraph (1) does not apply, the tax imposed
4 by this section shall be paid by—

5 “(A) in the case of a transaction described
6 in subsection (d)(1)(A)—

7 “(i) the purchaser if the purchaser is
8 a United States person, and

9 “(ii) the seller if the purchaser is not
10 a United States person, and

11 “(B) in the case of a transaction described
12 in subsection (d)(1)(B)—

13 “(i) the payor if the payor is a United
14 States person, and

15 “(ii) the payee if the payor is not a
16 United States person.

17 “(g) TREATMENT OF EXCHANGES AND PAYMENTS
18 WITH RESPECT TO DERIVATIVES.—For purposes of this
19 section—

20 “(1) TREATMENT OF EXCHANGES.—

21 “(A) IN GENERAL.—An exchange shall be
22 treated as the sale of the property transferred
23 and a purchase of the property received by each
24 party to the exchange.

1 “(B) CERTAIN DEEMED EXCHANGES.—In
2 the case of a distribution treated as an ex-
3 change for stock under section 302 or 331, the
4 corporation making such distribution shall be
5 treated as having purchased such stock for pur-
6 poses of this section.

7 “(2) PAYMENTS WITH RESPECT TO DERIVA-
8 TIVES TREATED AS SEPARATE TRANSACTIONS.—Ex-
9 cept as otherwise provided by the Secretary, any
10 payment with respect to any derivative shall be
11 treated as a separate transaction for purposes of
12 this section.

13 “(h) APPLICATION TO TRANSACTIONS BY CON-
14 TROLLED FOREIGN CORPORATIONS.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, a controlled foreign corporation shall be treated
17 as a United States person.

18 “(2) SPECIAL RULES FOR PAYMENT OF TAX ON
19 DIRECT, ETC., TRANSACTIONS.—In the case of any
20 transaction which is a covered transaction solely by
21 reason of paragraph (1) and which is not described
22 in subsection (f)(1)—

23 “(A) PAYMENT BY UNITED STATES SHARE-
24 HOLDERS.—Any tax which would (but for this
25 paragraph) be payable under subsection (f)(2)

1 by the controlled foreign corporation shall, in
2 lieu thereof, be paid by the United States
3 shareholders of such controlled foreign corpora-
4 tion as provided in subparagraph (B).

5 “(B) PRO RATA SHARES.—Each such
6 United States shareholder shall pay the same
7 proportion of such tax as—

8 “(i) the stock which such United
9 States shareholder owns (within the mean-
10 ing of section 958(a)) in such controlled
11 foreign corporation, bears to

12 “(ii) the stock so owned by all United
13 States shareholders in such controlled for-
14 eign corporation.

15 “(C) DEFINITIONS.—For purposes of this
16 subsection, the terms ‘United States share-
17 holder’ and ‘controlled foreign corporation’ have
18 the meanings given such terms in sections
19 951(b) and 957(a), respectively.

20 “(i) ADMINISTRATION.—The Secretary shall carry
21 out this section in consultation with the Securities and Ex-
22 change Commission and the Commodity Futures Trading
23 Commission.

24 “(j) GUIDANCE; REGULATIONS.—The Secretary
25 shall—

1 “(1) provide guidance regarding such informa-
2 tion reporting concerning covered transactions as the
3 Secretary deems appropriate, and

4 “(2) prescribe such regulations as are necessary
5 or appropriate to prevent avoidance of the purposes
6 of this section, including the use of non-United
7 States persons in such transactions.

8 **“SEC. 4476. DERIVATIVE DEFINED.**

9 “(a) IN GENERAL.—For purposes of this subchapter,
10 except as otherwise provided in this section, the term ‘de-
11 rivative’ means any contract (including any option, for-
12 ward contract, futures contract, short position, swap, or
13 similar contract) the value of which, or any payment or
14 other transfer with respect to which, is (directly or indi-
15 rectly) determined by reference to one or more of the fol-
16 lowing:

17 “(1) Any share of stock in a corporation.

18 “(2) Any partnership or beneficial ownership
19 interest in a partnership or trust.

20 “(3) Any evidence of indebtedness.

21 “(4) Except as provided in subsection (b)(1),
22 any real property.

23 “(5) Any commodity which is actively traded
24 (within the meaning of section 1092(d)(1)).

25 “(6) Any currency.

1 “(7) Any rate, price, amount, index, formula, or
2 algorithm.

3 “(8) Any other item as the Secretary may pre-
4 scribe.

5 Except as provided in regulations prescribed by the Sec-
6 retary to prevent the avoidance of the purposes of this
7 subchapter, such term shall not include any item described
8 in paragraphs (1) through (8).

9 “(b) EXCEPTIONS.—

10 “(1) CERTAIN REAL PROPERTY.—

11 “(A) IN GENERAL.—For purposes of this
12 subchapter, the term ‘derivative’ shall not in-
13 clude any contract with respect to interests in
14 real property (as defined in section
15 856(c)(5)(C)) if such contract requires physical
16 delivery of such real property.

17 “(B) OPTIONS TO SETTLE IN CASH.—

18 “(i) IN GENERAL.—For purposes of
19 subparagraph (A), a contract which pro-
20 vides for an option of cash settlement shall
21 not be treated as requiring physical deliv-
22 ery of real property unless the option is—

23 “(I) not exercisable uncondition-
24 ally, and

1 “(II) exercisable only in unusual
2 and exceptional circumstances.

3 “(ii) OPTION OF CASH SETTLE-
4 MENT.—For purposes of clause (i), a con-
5 tract provides an option of cash settlement
6 if the contract settles in (or could be set-
7 tled in) cash or property other than the
8 underlying real property.

9 “(2) SECURITIES LENDING, SALE-REPURCHASE,
10 AND SIMILAR FINANCING TRANSACTIONS.—To the
11 extent provided by the Secretary, for purposes of
12 this subchapter, the term ‘derivative’ shall not in-
13 clude the right to the return of the same or substan-
14 tially identical securities transferred in a securities
15 lending transaction, sale-repurchase transaction, or
16 similar financing transaction.

17 “(3) OPTIONS RECEIVED IN CONNECTION WITH
18 THE PERFORMANCE OF SERVICES.—For purposes of
19 this subchapter, the term ‘derivative’ shall not in-
20 clude any option described in section 83(e)(3) re-
21 ceived in connection with the performance of serv-
22 ices.

23 “(4) INSURANCE CONTRACTS, ANNUITIES, AND
24 ENDOWMENTS.—For purposes of this subchapter,
25 the term ‘derivative’ shall not include any insurance,

1 annuity, or endowment contract issued by an insur-
2 ance company to which subchapter L applies (or
3 issued by any foreign corporation to which such sub-
4 chapter would apply if such foreign corporation were
5 a domestic corporation).

6 “(5) DERIVATIVES WITH RESPECT TO STOCK
7 OF MEMBERS OF SAME WORLDWIDE AFFILIATED
8 GROUP.—For purposes of this subchapter, the term
9 ‘derivative’ shall not include any derivative (deter-
10 mined without regard to this paragraph) with re-
11 spect to stock issued by any member of the same
12 worldwide affiliated group (as defined in section
13 864(f)) in which the taxpayer is a member.

14 “(6) COMMODITIES USED IN NORMAL COURSE
15 OF TRADE OR BUSINESS.—For purposes of this sub-
16 chapter, the term ‘derivative’ shall not include any
17 contract with respect to any commodity if—

18 “(A) such contract requires physical deliv-
19 ery with the option of cash settlement only in
20 unusual and exceptional circumstances, and

21 “(B) such commodity is used (and is used
22 in quantities with respect to which such deriva-
23 tive relates) in the normal course of the tax-
24 payer’s trade or business (or, in the case of an
25 individual, for personal consumption).

1 “(c) CONTRACTS WITH EMBEDDED DERIVATIVE
2 COMPONENTS.—

3 “(1) IN GENERAL.—If a contract has derivative
4 and nonderivative components, then each derivative
5 component shall be treated as a derivative for pur-
6 poses of this subchapter. If the derivative component
7 cannot be separately valued, then the entire contract
8 shall be treated as a derivative for purposes of this
9 subchapter.

10 “(2) EXCEPTION FOR CERTAIN EMBEDDED DE-
11 RIVATIVE COMPONENTS OF DEBT INSTRUMENTS.—A
12 debt instrument shall not be treated as having a de-
13 rivative component merely because—

14 “(A) such debt instrument is denominated
15 in a nonfunctional currency (as defined in sec-
16 tion 988(c)(1)(C)(ii)), or

17 “(B) payments with respect to such debt
18 instrument are determined by reference to the
19 value of a nonfunctional currency (as so de-
20 fined).

21 “(d) TREATMENT OF AMERICAN DEPOSITORY RE-
22 CEIPTS AND SIMILAR INSTRUMENTS.—Except as other-
23 wise provided by the Secretary, for purposes of this sub-
24 chapter, American depository receipts (and similar instru-
25 ments) with respect to shares of stock in foreign corpora-

1 tions shall be treated as shares of stock in such foreign
2 corporations.”.

3 (b) INFORMATION REPORTING WITH RESPECT TO
4 CONTROLLED FOREIGN CORPORATIONS.—Section
5 6038(a)(1)(B) of such Code is amended by inserting “and
6 transactions which are covered transactions for purposes
7 of section 4475 by reason of the application of section
8 4475(h)(1) to such corporation” before the semicolon at
9 the end.

10 (c) CONFORMING AMENDMENT.—The table of sub-
11 chapters for chapter 36 of such Code is amended by in-
12 serting after the item relating to subchapter B the fol-
13 lowing new item:

“SUBCHAPTER C. TAX ON TRADING TRANSACTIONS”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to transactions after December 31,
16 2021.

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