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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mr. RANGEL (for himself, Mr. STARK, and Mr. McDERMOTT) introduced the following bill; which was referred to the Committee on

A BILL

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

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

3 **TITLE I—TAX PROVISIONS**

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

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

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

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

5 (c) TABLE OF CONTENTS.—The table of contents for
6 this title is as follows:

Sec. 1000. Short title, etc.

Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Temporary increase in earned income tax credit.

Sec. 1102. Temporary increase of refundable portion of child credit.

Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

Subtitle D—Housing Incentives

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

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

Subtitle E—Tax Incentives for Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

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

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

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

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

Sec. 1412. Exception for TARP recipients.

PART 3—INCENTIVES FOR NEW JOBS

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

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

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

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

- Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
- Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
- Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

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

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

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

PART 4—RECOVERY ZONE BONDS

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

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

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

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

- Sec. 1601. Extension of credit for electricity produced from certain renewable resources.
- Sec. 1602. Election of investment credit in lieu of production credit.
- Sec. 1603. Repeal of certain limitations on credit for renewable energy property.
- Sec. 1604. Coordination with renewable energy grants.

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

- Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.
- Sec. 1612. Increased limitation on issuance of qualified energy conservation bonds.

PART 3—ENERGY CONSERVATION INCENTIVES

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

PART 4—ENERGY RESEARCH INCENTIVES

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

Subtitle H—Other Provisions

PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS
FINANCED WITH CERTAIN TAX-FAVORED BONDS

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

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

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

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

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

1 **Subtitle A—Making Work Pay**

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

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

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

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

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

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

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

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

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

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

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

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

14 “(A) any nonresident alien individual,

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

20 “(C) an estate or trust.

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

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

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

8 (b) TREATMENT OF POSSESSIONS.—

9 (1) PAYMENTS TO POSSESSIONS.—

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

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

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

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

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

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

25 (3) DEFINITIONS AND SPECIAL RULES.—

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

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

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

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

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

12 (d) CONFORMING AMENDMENTS.—

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

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

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

“Sec. 36A. Making work pay credit.”.

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

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

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

4 **CREDIT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(A) the excess of—

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

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

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

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

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

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

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

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

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

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

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

3 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Subtitle D—Housing Incentives**

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **PART 1—TEMPORARY INVESTMENT INCENTIVES**

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

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

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

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

12 (b) CONFORMING AMENDMENTS.—

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

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

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

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

23 (B) by redesignating clause (ii) as clause
24 (v), and

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

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

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

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

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

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

18 (c) EFFECTIVE DATES.—

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

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

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

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

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

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

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

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

15 **PART 2—5-YEAR CARRYBACK OF OPERATING**
16 **LOSSES**

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

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

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

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

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

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

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

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

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

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

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

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

11 (e) EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

25 (1) any taxpayer if—

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

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

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

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

18 **PART 3—INCENTIVES FOR NEW JOBS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **PART 1—IMPROVED MARKETABILITY FOR TAX-**
6 **EXEMPT BONDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(1) \$10,000,000,000 for 2009,

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

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

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

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

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

8 “(2) MINIMUM ALLOCATIONS TO STATES.—

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

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

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

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

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

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

10 “(ii) 1.68.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(d) TAXABLE GOVERNMENTAL BOND.—

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

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

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

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

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

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

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

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

23 “(f) SPECIAL RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

9 **PART 4—RECOVERY ZONE BONDS**

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

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

13 **“PART III—RECOVERY ZONE BONDS**

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

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

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

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

15 “(a) ALLOCATIONS.—

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

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

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

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

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

8 “(3) ALLOCATIONS BY STATES.—

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

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

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

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

7 “(4) NATIONAL LIMITATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(b) RECOVERY ZONE FACILITY BOND.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 “PART III. RECOVERY ZONE BONDS.”.

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

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

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

1 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

2 “(1) ALLOCATION OF LIMITATION.—

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

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

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

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

19 “(B) section 146 shall not apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Subtitle G—Energy Incentives**

2 **PART 1—RENEWABLE ENERGY INCENTIVES**

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

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

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

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

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

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

19 (c) **EFFECTIVE DATE.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) CONFORMING AMENDMENTS.—

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

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

25 (c) EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) by striking subparagraph (C).

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

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

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

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

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

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

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

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

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

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

18 **PART 4—ENERGY RESEARCH INCENTIVES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) the sum of—

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

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

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

3 (2) 10.

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

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

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

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

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

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

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

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

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

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

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

5 **PROPERTY IN LIEU OF TAX CREDITS**

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

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

15 (b) GRANT AMOUNT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **SEC. 2000. SHORT TITLE.**

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

11 **Subtitle A—Unemployment**
12 **Insurance**

13 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
14 **COMPENSATION PROGRAM.**

15 (a) IN GENERAL.—Section 4007 of the Supplemental
16 Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C.
17 3304 note), as amended by section 4 of the Unemployment
18 Compensation Extension Act of 2008 (Public Law 110-
19 449; 122 Stat. 5015), is amended—

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

22 (2) in the heading for subsection (b)(2), by
23 striking “MARCH 31, 2009” and inserting “DECEM-
24 BER 31, 2009”; and

1 (3) in subsection (b)(3), by striking “August
2 27, 2009” and inserting “May 31, 2010”.

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

5 “(e) TRANSFER OF FUNDS.—Notwithstanding any
6 other provision of law, the Secretary of the Treasury shall
7 transfer from the general fund of the Treasury (from
8 funds not otherwise appropriated)—

9 “(1) to the extended unemployment compensa-
10 tion account (as established by section 905 of the
11 Social Security Act) such sums as the Secretary of
12 Labor estimates to be necessary to make payments
13 to States under this title by reason of the amend-
14 ments made by section 2001(a) of the Assistance for
15 Unemployed Workers and Struggling Families Act;
16 and

17 “(2) to the employment security administration
18 account (as established by section 901 of the Social
19 Security Act) such sums as the Secretary of Labor
20 estimates to be necessary for purposes of assisting
21 States in meeting administrative costs by reason of
22 the amendments referred to in paragraph (1).

23 There are appropriated from the general fund of the
24 Treasury, without fiscal year limitation, the sums referred

1 to in the preceding sentence and such sums shall not be
2 required to be repaid.”.

3 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
4 **BENEFITS.**

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

12 (b) PROVISIONS OF AGREEMENT.—

13 (1) ADDITIONAL COMPENSATION.—Any agree-
14 ment under this section shall provide that the State
15 agency of the State will make payments of regular
16 compensation to individuals in amounts and to the
17 extent that they would be determined if the State
18 law of the State were applied, with respect to any
19 week for which the individual is (disregarding this
20 section) otherwise entitled under the State law to re-
21 ceive regular compensation, as if such State law had
22 been modified in a manner such that the amount of
23 regular compensation (including dependents’ allow-
24 ances) payable for any week shall be equal to the
25 amount determined under the State law (before the

1 application of this paragraph) plus an additional
2 \$25.

3 (2) ALLOWABLE METHODS OF PAYMENT.—Any
4 additional compensation provided for in accordance
5 with paragraph (1) shall be payable either—

6 (A) as an amount which is paid at the
7 same time and in the same manner as any reg-
8 ular compensation otherwise payable for the
9 week involved; or

10 (B) at the option of the State, by pay-
11 ments which are made separately from, but on
12 the same weekly basis as, any regular com-
13 pensation otherwise payable.

14 (c) NONREDUCTION RULE.—An agreement under
15 this section shall not apply (or shall cease to apply) with
16 respect to a State upon a determination by the Secretary
17 that the method governing the computation of regular
18 compensation under the State law of that State has been
19 modified in a manner such that—

20 (1) the average weekly benefit amount of reg-
21 ular compensation which will be payable during the
22 period of the agreement (determined disregarding
23 any additional amounts attributable to the modifica-
24 tion described in subsection (b)(1)) will be less than

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

5 (d) PAYMENTS TO STATES.—

6 (1) IN GENERAL.—

7 (A) FULL REIMBURSEMENT.—There shall
8 be paid to each State which has entered into an
9 agreement under this section an amount equal
10 to 100 percent of—

11 (i) the total amount of additional
12 compensation (as described in subsection
13 (b)(1)) paid to individuals by the State
14 pursuant to such agreement; and

15 (ii) any additional administrative ex-
16 penses incurred by the State by reason of
17 such agreement (as determined by the Sec-
18 retary).

19 (B) TERMS OF PAYMENTS.—Sums payable
20 to any State by reason of such State's having
21 an agreement under this section shall be pay-
22 able, either in advance or by way of reimburse-
23 ment (as determined by the Secretary), in such
24 amounts as the Secretary estimates the State
25 will be entitled to receive under this section for

1 each calendar month, reduced or increased, as
2 the case may be, by any amount by which the
3 Secretary finds that his estimates for any prior
4 calendar month were greater or less than the
5 amounts which should have been paid to the
6 State. Such estimates may be made on the
7 basis of such statistical, sampling, or other
8 method as may be agreed upon by the Secretary
9 and the State agency of the State involved.

10 (2) CERTIFICATIONS.—The Secretary shall
11 from time to time certify to the Secretary of the
12 Treasury for payment to each State the sums pay-
13 able to such State under this section.

14 (3) APPROPRIATION.—There are appropriated
15 from the general fund of the Treasury, without fiscal
16 year limitation, such sums as may be necessary for
17 purposes of this subsection.

18 (e) APPLICABILITY.—

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

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

24 (B) ending before January 1, 2010.

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

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

17 (f) FRAUD AND OVERPAYMENTS.—The provisions of
18 section 4005 of the Supplemental Appropriations Act,
19 2008 (Public Law 110–252; 122 Stat. 2356) shall apply
20 with respect to additional compensation (as described in
21 subsection (b)(1)) to the same extent and in the same
22 manner as in the case of emergency unemployment com-
23 pensation.

24 (g) APPLICATION TO OTHER UNEMPLOYMENT BENE-
25 FITS.—

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

8 (2) ELIGIBILITY AND TERMINATION RULES.—
9 Additional compensation (as described in subsection
10 (b)(1))—

11 (A) shall not be payable, pursuant to this
12 subsection, with respect to any unemployment
13 benefits described in subsection (h)(3) for any
14 week beginning on or after the date specified in
15 subsection (e)(1)(B), except in the case of an
16 individual who was eligible to receive additional
17 compensation (as so described) in connection
18 with any regular compensation or any unem-
19 ployment benefits described in subsection (h)(3)
20 for any period of unemployment ending before
21 such date; and

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

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

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

7 (2) the term “emergency unemployment com-
8 pensation” means emergency unemployment com-
9 pensation under title IV of the Supplemental Appro-
10 propriations Act, 2008 (Public Law 110–252; 122 Stat.
11 2353); and

12 (3) any reference to unemployment benefits de-
13 scribed in this paragraph shall be considered to refer
14 to—

15 (A) extended compensation (as defined by
16 section 205 of the Federal-State Extended Un-
17 employment Compensation Act of 1970); and

18 (B) unemployment compensation (as de-
19 fined by section 85(b) of the Internal Revenue
20 Code of 1986) provided under any program ad-
21 ministered by a State under an agreement with
22 the Secretary.

1 **SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT**
2 **COMPENSATION MODERNIZATION.**

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

6 “Special Transfers in Fiscal Years 2009, 2010, and 2011
7 for Modernization

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

16 “(B) The maximum incentive payment allowable
17 under this subsection with respect to any State shall, as
18 determined by the Secretary of Labor, be equal to the
19 amount obtained by multiplying \$7,000,000,000 by the
20 same ratio as would apply under subsection (a)(2)(B) for
21 purposes of determining such State’s share of any excess
22 amount (as described in subsection (a)(1)) that would
23 have been subject to transfer to State accounts, as of Oc-
24 tober 1, 2008, under the provisions of subsection (a).

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

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

5 “(ii) the remainder shall be transferred to the
6 account of such State upon a certification under
7 paragraph (4)(B) that the State law of such State
8 meets the requirements of paragraph (3).

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

11 “(A) uses a base period that includes the most
12 recently completed calendar quarter before the start
13 of the benefit year for purposes of determining eligi-
14 bility for unemployment compensation; or

15 “(B) provides that, in the case of an individual
16 who would not otherwise be eligible for unemploy-
17 ment compensation under the State law because of
18 the use of a base period that does not include the
19 most recently completed calendar quarter before the
20 start of the benefit year, eligibility shall be deter-
21 mined using a base period that includes such cal-
22 endar quarter.

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

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

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

17 “(i) Domestic violence, verified by such
18 reasonable and confidential documentation as
19 the State law may require, which causes the in-
20 dividual reasonably to believe that such individ-
21 ual’s continued employment would jeopardize
22 the safety of the individual or of any member
23 of the individual’s immediate family (as defined
24 by the Secretary of Labor).

1 “(ii) The illness or disability of a member
2 of the individual’s immediate family (as defined
3 by the Secretary of Labor).

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

6 “(I) to a place from which it is im-
7 practical for such individual to commute;
8 and

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

11 “(C) Weekly unemployment compensation is
12 payable under this subparagraph to any individual
13 who is unemployed (as determined under the State
14 unemployment compensation law), has exhausted all
15 rights to regular unemployment compensation under
16 the State law, and is enrolled and making satisfac-
17 tory progress in a State-approved training program
18 or in a job training program authorized under the
19 Workforce Investment Act of 1998. Such programs
20 shall prepare individuals who have been separated
21 from a declining occupation, or who have been invol-
22 untarily and indefinitely separated from employment
23 as a result of a permanent reduction of operations
24 at the individual’s place of employment, for entry
25 into a high-demand occupation. The amount of un-

1 employment compensation payable under this sub-
2 paragraph to an individual for a week of unemploy-
3 ment shall be equal to the individual's average week-
4 ly benefit amount (including dependents' allowances)
5 for the most recent benefit year, and the total
6 amount of unemployment compensation payable
7 under this subparagraph to any individual shall be
8 equal to at least 26 times the individual's average
9 weekly benefit amount (including dependents' allow-
10 ances) for the most recent benefit year.

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

23 “(4)(A) Any State seeking an incentive payment
24 under this subsection shall submit an application therefor
25 at such time, in such manner, and complete with such in-

1 formation as the Secretary of Labor may within 60 days
2 after the date of the enactment of this subsection prescribe
3 (whether by regulation or otherwise), including informa-
4 tion relating to compliance with the requirements of para-
5 graph (2) or (3), as well as how the State intends to use
6 the incentive payment to improve or strengthen the State's
7 unemployment compensation program. The Secretary of
8 Labor shall, within 30 days after receiving a complete ap-
9 plication, notify the State agency of the State of the Sec-
10 retary's findings with respect to the requirements of para-
11 graph (2) or (3) (or both).

12 “(B)(i) If the Secretary of Labor finds that the State
13 law provisions (disregarding any State law provisions
14 which are not then currently in effect as permanent law
15 or which are subject to discontinuation) meet the require-
16 ments of paragraph (2) or (3), as the case may be, the
17 Secretary of Labor shall thereupon make a certification
18 to that effect to the Secretary of the Treasury, together
19 with a certification as to the amount of the incentive pay-
20 ment to be transferred to the State account pursuant to
21 that finding. The Secretary of the Treasury shall make
22 the appropriate transfer within 7 days after receiving such
23 certification.

24 “(ii) For purposes of clause (i), State law provisions
25 which are to take effect within 12 months after the date

1 of their certification under this subparagraph shall be con-
2 sidered to be in effect as of the date of such certification.

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

8 “(ii) No certification of compliance with the require-
9 ments of paragraph (3) may be made with respect to any
10 State whose State law is not in compliance with the re-
11 quirements of paragraph (2).

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

18 “(5)(A) Except as provided in subparagraph (B), any
19 amount transferred to the account of a State under this
20 subsection may be used by such State only in the payment
21 of cash benefits to individuals with respect to their unem-
22 ployment (including for dependents’ allowances and for
23 unemployment compensation under paragraph (3)(C)), ex-
24 clusive of expenses of administration.

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

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

22 “(7) For purposes of this subsection, the terms ‘ben-
23 efit year’, ‘base period’, and ‘week’ have the respective
24 meanings given such terms under section 205 of the Fed-

1 eral-State Extended Unemployment Compensation Act of
2 1970 (26 U.S.C. 3304 note).

3 “Special Transfer in Fiscal Year 2009 for Administration

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

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

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

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

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

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

9 “(D) staff-assisted reemployment services for
10 unemployment compensation claimants.”.

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

15 **Subtitle B—Assistance for** 16 **Vulnerable Individuals**

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

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

21 “(c) EMERGENCY FUND.—

22 “(1) ESTABLISHMENT.—There is established in
23 the Treasury of the United States a fund which
24 shall be known as the ‘Emergency Contingency
25 Fund for State Temporary Assistance for Needy

1 Families Programs’ (in this subsection referred to as
2 the ‘Emergency Fund’).

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

7 “(3) GRANTS.—

8 “(A) GRANT RELATED TO CASELOAD IN-
9 CREASES.—

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

14 “(I) requests a grant under this
15 subparagraph for the quarter; and

16 “(II) meets the requirement of
17 clause (ii) for the quarter.

18 “(ii) CASELOAD INCREASE REQUIRE-
19 MENT.—A State meets the requirement of
20 this clause for a quarter if the average
21 monthly assistance caseload of the State
22 for the quarter exceeds the average month-
23 ly assistance caseload of the State for the
24 corresponding quarter in the emergency
25 fund base year of the State.

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

14 “(B) GRANT RELATED TO INCREASED EX-
15 PENDITURES FOR NON-RECURRENT SHORT
16 TERM BENEFITS.—

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

21 “(I) requests a grant under this
22 subparagraph for the quarter; and

23 “(II) meets the requirement of
24 clause (ii) for the quarter.

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

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

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

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

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

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

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

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

22 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
23 MENTS TO DATA AND COLLECT NEEDED DATA.—In
24 determining the size of the caseload of a State and
25 the expenditures of a State for basic assistance, non-

1 recurrent short-term benefits, and subsidized em-
2 ployment, during any period for which the State re-
3 quests funds under this subsection, and during the
4 emergency fund base year of the State, the Sec-
5 retary may make appropriate adjustments to the
6 data to ensure that the data reflect expenditures
7 under the State program funded under this part and
8 qualified State expenditures. The Secretary may de-
9 velop a mechanism for collecting expenditure data,
10 including procedures which allow States to make
11 reasonable estimates, and may set deadlines for
12 making revisions to the data.

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

17 “(6) LIMITATIONS ON USE OF FUNDS.—A State
18 to which an amount is paid under this subsection
19 may use the amount only as authorized by section
20 404.

21 “(7) TIMING OF IMPLEMENTATION.—The Sec-
22 retary shall implement this subsection as quickly as
23 reasonably possible, pursuant to appropriate guid-
24 ance to States.

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

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

9 “(B) EMERGENCY FUND BASE YEAR.—

10 “(i) IN GENERAL.—The term ‘emer-
11 gency fund base year’ means, with respect
12 to a State and a category described in
13 clause (ii), whichever of fiscal year 2007 or
14 2008 is the fiscal year in which the
15 amount described by the category with re-
16 spect to the State is the lesser.

17 “(ii) CATEGORIES DESCRIBED.—The
18 categories described in this clause are the
19 following:

20 “(I) The average monthly assist-
21 ance caseload of the State.

22 “(II) The total expenditures of
23 the State for non-recurrent short term
24 benefits, whether under the State pro-

1 gram funded under this part or as
2 qualified State expenditures.

3 “(III) The total expenditures of
4 the State for subsidized employment,
5 whether under the State program
6 funded under this part or as qualified
7 State expenditures.

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

11 (b) TEMPORARY MODIFICATION OF CASELOAD RE-
12 DUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act
13 (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or
14 if the immediately preceding fiscal year is fiscal year 2009
15 or 2010, then, at State option, during the emergency fund
16 base year of the State with respect to the average monthly
17 assistance caseload of the State (within the meaning of
18 section 403(c)(8)(B)))” before “under the State”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on the date of the enactment
21 of this Act.

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

23 (a) PAYMENT AUTHORITY.—

24 (1) IN GENERAL.—At the earliest practicable
25 date in calendar year 2009 but not later than 90

1 days after the date of the enactment of this section,
2 the Commissioner of Social Security shall make a
3 one-time payment, subject to subsection (b)(2) of
4 this section, to each individual who is determined by
5 the Commissioner in calendar year 2009 to be an in-
6 dividual who—

7 (A) is entitled to a cash benefit under the
8 supplemental security income program under
9 title XVI of the Social Security Act (other than
10 pursuant to section 1611(e)(1)(B) of such Act)
11 for at least 1 day in the calendar month in
12 which the first payment under this section is to
13 be made; or

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

18 (ii) whose entitlement to that benefit
19 ceased in that 2-month period solely because
20 the income of the individual (and the income of
21 the spouse, if any, of the individual) exceeded
22 the applicable income limit described in para-
23 graph (1)(A) or (2)(A) of section 1611(a) of
24 such Act.

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

4 (A) in the case of an individual eligible for
5 a payment under this section who does not have
6 a spouse eligible for such a payment, an
7 amount equal to the average of the cash bene-
8 fits payable in the aggregate under section
9 1611 or 1619(a) of the Social Security Act to
10 eligible individuals who do not have an eligible
11 spouse, for the most recent month for which
12 data on payment of the benefits are available,
13 as determined by the Commissioner of Social
14 Security; or

15 (B) in the case of an individual eligible for
16 a payment under this section who has a spouse
17 eligible for such a payment, an amount equal to
18 the average of the cash benefits payable in the
19 aggregate under section 1611 or 1619(a) of the
20 Social Security Act to eligible individuals who
21 have an eligible spouse, for the most recent
22 month for which data on payment of the bene-
23 fits are available, as so determined.

24 (b) ADMINISTRATIVE PROVISIONS.—

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

11 (2) AUTHORITY TO MAKE PAYMENTS OVER THE
12 COURSE OF 2 MONTHS.—The Commissioner of So-
13 cial Security may provide for payments under this
14 section to be made over the course of 2 calendar
15 months as may be necessary for the effective and ef-
16 ficient administration of this section.

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

24 (4) NONASSIGNMENT.—The provisions of sec-
25 tion 207 of the Social Security Act shall apply with

1 respect to payments under this section to the same
2 extent as they apply in the case of title II of such
3 Act.

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

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

18 **SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD**
19 **SUPPORT LAW.**

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

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

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

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

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

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

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

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

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

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

17 (1) PROVISION OF PREMIUM ASSISTANCE.—

18 (A) REDUCTION OF PREMIUMS PAY-
19 ABLE.—In the case of any premium for a pe-
20 riod of coverage beginning on or after the date
21 of the enactment of this Act for COBRA con-
22 tinuation coverage with respect to any assist-
23 ance eligible individual, such individual shall be

1 treated for purposes of any COBRA continu-
2 ation provision as having paid the amount of
3 such premium if such individual pays 35 per-
4 cent of the amount of such premium (as deter-
5 mined without regard to this subsection).

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

10 (2) LIMITATION OF PERIOD OF PREMIUM AS-
11 SISTANCE.—

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

16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage
19 consisting of only dental, vision, coun-
20 seling, or referral services (or a combina-
21 tion thereof), coverage under a health re-
22 imbursement arrangement or a health
23 flexible spending arrangement, or coverage
24 of treatment that is furnished in an on-site
25 medical facility maintained by the em-

1 ployer and that consists primarily of first-
2 aid services, prevention and wellness care,
3 or similar care (or a combination thereof))
4 or is eligible for benefits under title XVIII
5 of the Social Security Act.

6 (ii) the earliest of—

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

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

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

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

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

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

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

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

18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the
20 involuntary termination of the covered employ-
21 ee’s employment and occurred during such pe-
22 riod.

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

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

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

23 (i) shall commence on the date of the
24 enactment of this Act, and

1 (ii) shall not extend beyond the period
2 of COBRA continuation coverage that
3 would have been required under the appli-
4 cable COBRA continuation coverage provi-
5 sion if the coverage had been elected as re-
6 quired under such provision.

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

11 (i) beginning on the date of the quali-
12 fying event, and

13 (ii) ending with the day before the
14 date of the enactment of this Act,

15 shall be disregarded for purposes of deter-
16 mining the 63-day periods referred to in section
17 701)(2) of the Employee Retirement Income
18 Security Act of 1974, section 9801(c)(2) of the
19 Internal Revenue Code of 1986, and section
20 2701(c)(2) of the Public Health Service Act.

21 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
22 MIUM ASSISTANCE.—In any case in which an indi-
23 vidual requests treatment as an assistance eligible
24 individual and is denied such treatment by the group
25 health plan by reason of such individual's ineligi-

1 bility for COBRA continuation coverage, the Sec-
2 retary of Labor (or the Secretary of Health and
3 Human services in connection with COBRA continu-
4 ation coverage which is provided other than pursu-
5 ant to part 6 of subtitle B of title I of the Employee
6 Retirement Income Security Act of 1974), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary. Such Secretary
12 shall make a determination regarding such individ-
13 ual's eligibility within 10 business days after receipt
14 of such individual's application for review under this
15 paragraph.

16 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
17 OF FEDERAL AND STATE PROGRAMS.—Notwith-
18 standing any other provision of law, any premium
19 reduction with respect to an assistance eligible indi-
20 vidual under this subsection shall not be considered
21 income or resources in determining eligibility for, or
22 the amount of assistance or benefits provided under,
23 any other public benefit provided under Federal law
24 or the law of any State or political subdivision there-
25 of.

1 (7) NOTICES TO INDIVIDUALS.—

2 (A) GENERAL NOTICE.—

3 (i) IN GENERAL.—In the case of no-
4 tices provided under section 606(4) of the
5 Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1166(4)), section
7 4980B(f)(6)(D) of the Internal Revenue
8 Code of 1986, section 2206(4) of the Pub-
9 lic Health Service Act (42 U.S.C. 300bb-
10 6(4)), or section 8905a(f)(2)(A) of title 5,
11 United States Code, with respect to indi-
12 viduals who, during the period described in
13 paragraph (3)(A), become entitled to elect
14 COBRA continuation coverage, such no-
15 tices shall include an additional notifica-
16 tion to the recipient of the availability of
17 premium reduction with respect to such
18 coverage under this subsection.

19 (ii) ALTERNATIVE NOTICE.—In the
20 case of COBRA continuation coverage to
21 which the notice provision under such sec-
22 tions does not apply, the Secretary of
23 Labor, in consultation with the Secretary
24 of the Treasury and the Secretary of
25 Health and Human Services, shall, in co-

1 ordination with administrators of the
2 group health plans (or other entities) that
3 provide or administer the COBRA continu-
4 ation coverage involved, provide rules re-
5 quiring the provision of such notice.

6 (iii) FORM.—The requirement of the
7 additional notification under this subpara-
8 graph may be met by amendment of exist-
9 ing notice forms or by inclusion of a sepa-
10 rate document with the notice otherwise
11 required.

12 (B) SPECIFIC REQUIREMENTS.—Each ad-
13 ditional notification under subparagraph (A)
14 shall include—

15 (i) the forms necessary for estab-
16 lishing eligibility for premium reduction
17 under this subsection,

18 (ii) the name, address, and telephone
19 number necessary to contact the plan ad-
20 ministrator and any other person main-
21 taining relevant information in connection
22 with such premium reduction,

23 (iii) a description of the extended elec-
24 tion period provided for in paragraph
25 (4)(A),

1 (iv) a description of the obligation of
2 the qualified beneficiary under paragraph
3 (2)(C) to notify the plan providing continu-
4 ation coverage of eligibility for subsequent
5 coverage under another group health plan
6 or eligibility for benefits under title XVIII
7 of the Social Security Act and the penalty
8 provided for failure to so notify the plan,
9 and

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

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

1 (D) MODEL NOTICES.—Not later than 30
2 days after the date of enactment of this Act,
3 the Secretary of the Labor, in consultation with
4 the Secretary of the Treasury and the Secretary
5 of Health and Human Services, shall prescribe
6 models for the additional notification required
7 under this paragraph.

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

13 (9) OUTREACH.—The Secretary of Labor, in
14 consultation with the Secretary of the Treasury and
15 the Secretary of Health and Human Services, shall
16 provide outreach consisting of public education and
17 enrollment assistance relating to premium reduction
18 provided under this subsection. Such outreach shall
19 target employers, group health plan administrators,
20 public assistance programs, States, insurers, and
21 other entities as determined appropriate by such
22 Secretaries. Such outreach shall include an initial
23 focus on those individuals electing continuation cov-
24 erage who are referred to in paragraph (7)(C). In-
25 formation on such premium reduction, including en-

1 rollment, shall also be made available on website of
2 the Departments of Labor, Treasury, and Health
3 and Human Services.

4 (10) DEFINITIONS.—For purposes of this sub-
5 section—

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

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

1 (C) COBRA CONTINUATION PROVISION.—
2 The term “COBRA continuation provision”
3 means the provisions of law described in sub-
4 paragraph (B).

5 (D) COVERED EMPLOYEE.—The term
6 “covered employee” has the meaning given such
7 term in section 607(2) of the Employee Retirement
8 Income Security Act of 1974.

9 (E) QUALIFIED BENEFICIARY.—The term
10 “qualified beneficiary” has the meaning given
11 such term in section 607(3) of the Employee
12 Retirement Income Security Act of 1974.

13 (F) GROUP HEALTH PLAN.—The term
14 “group health plan” has the meaning given
15 such term in section 607(1) of the Employee
16 Retirement Income Security Act of 1974.

17 (G) STATE.—The term “State” includes
18 the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, Amer-
20 ican Samoa, and the Commonwealth of the
21 Northern Mariana Islands.

22 (11) REPORTS.—

23 (A) INTERIM REPORT.—The Secretary of
24 the Treasury shall submit an interim report to
25 the Committee on Education and Labor, the

1 Committee on Ways and Means, and the Com-
2 mittee on Energy and Commerce of the House
3 of Representatives and the Committee on
4 Health, Education, Labor, and Pensions and
5 the Committee on Finance of the Senate re-
6 garding the premium reduction provided under
7 this subsection that includes—

8 (i) the number of individuals provided
9 such assistance as of the date of the re-
10 port; and

11 (ii) the total amount of expenditures
12 incurred (with administrative expenditures
13 noted separately) in connection with such
14 assistance as of the date of the report.

15 (B) FINAL REPORT.—As soon as prac-
16 ticable after the last period of COBRA continu-
17 ation coverage for which premium reduction is
18 provided under this section, the Secretary of the
19 Treasury shall submit a final report to each
20 Committee referred to in subparagraph (A) that
21 includes—

22 (i) the number of individuals provided
23 premium reduction under this section;

1 (ii) the average dollar amount
2 (monthly and annually) of premium reduc-
3 tions provided to such individuals; and

4 (iii) the total amount of expenditures
5 incurred (with administrative expenditures
6 noted separately) in connection with pre-
7 mium reduction under this section.

8 (12) COBRA PREMIUM ASSISTANCE.—

9 (A) IN GENERAL.—Subchapter B of chap-
10 ter 65 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following
12 new section:

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

14 “(a) IN GENERAL.—The entity to whom premiums
15 are payable under COBRA continuation coverage shall be
16 reimbursed for the amount of premiums not paid by plan
17 beneficiaries by reason of section 3002(a) of the Health
18 Insurance Assistance for the Unemployed Act of 2009.
19 Such amount shall be treated as a credit against the re-
20 quirement of such entity to make deposits of payroll taxes.
21 To the extent that such amount exceeds the amount of
22 such taxes, the Secretary shall pay to such entity the
23 amount of such excess. No payment may be made under
24 this subsection to an entity with respect to any assistance
25 eligible individual until after such entity has received the

1 reduced premium from such individual required under sec-
2 tion 3002(a)(1)(A) of such Act.

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

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

8 “(2) amounts required to be deducted for the
9 payroll period under section 3102 (relating to FICA
10 employee taxes), and

11 “(3) amounts of the taxes imposed for the pay-
12 roll period under section 3111 (relating to FICA em-
13 ployer taxes).

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

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

24 “(e) REPORTING.—

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

5 “(A) an attestation of involuntary termi-
6 nation of employment for each covered em-
7 ployee on the basis of whose termination entitle-
8 ment to reimbursement is claimed under sub-
9 section (a), and

10 “(B) a report of the amount of payroll
11 taxes offset under subsection (a) for the report-
12 ing period and the estimated offsets of such
13 taxes for the subsequent reporting period in
14 connection with reimbursements under sub-
15 section (a).

16 “(2) TIMING OF REPORTS RELATING TO
17 AMOUNT OF PAYROLL TAXES.— Reports required
18 under paragraph (1)(B) shall be submitted at the
19 same time as deposits of taxes imposed by chapters
20 21, 22, and 24 or at such time as is specified by the
21 Secretary.

22 “(f) REGULATIONS.—The Secretary may issue such
23 regulations or other guidance as may be necessary or ap-
24 propriate to carry out this section, including the require-
25 ment to report information or the establishment of other

1 methods for verifying the correct amounts of payments
2 and credits under this section.”.

3 (B) SOCIAL SECURITY TRUST FUNDS HELD
4 HARMLESS.—In determining any amount trans-
5 ferred or appropriated to any fund under the
6 Social Security Act, section 6431 of the Inter-
7 nal Revenue Code of 1986 shall not be taken
8 into account.

9 (C) CLERICAL AMENDMENT.—The table of
10 sections for subchapter B of chapter 65 of the
11 Internal Revenue Code of 1986 is amended by
12 adding at the end the following new item:

“Sec. 6431. COBRA premium assistance.”.

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

16 (13) PENALTY FOR FAILURE TO NOTIFY
17 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
18 PREMIUM ASSISTANCE.—

19 (A) IN GENERAL.—Part I of subchapter B
20 of chapter 68 of the Internal Revenue Code of
21 1986 is amended by adding at the end the fol-
22 lowing new section:

1 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
2 **PLAN OF CESSATION OF ELIGIBILITY FOR**
3 **COBRA PREMIUM ASSISTANCE.**

4 “(a) IN GENERAL.—Any person required to notify a
5 group health plan under section 3002(a)(2)(C) of the
6 Health Insurance Assistance for the Unemployed Act of
7 2009 who fails to make such a notification at such time
8 and in such manner as the Secretary of Labor may require
9 shall pay a penalty of 110 percent of the premium reduc-
10 tion provided under such section after termination of eligi-
11 bility under such subsection.

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

16 (B) CLERICAL AMENDMENT.—The table of
17 sections of part I of subchapter B of chapter 68
18 of such Code is amended by adding at the end
19 the following new item:

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

20 (C) EFFECTIVE DATE.—The amendments
21 made by this paragraph shall apply to failures
22 occurring after the date of the enactment of
23 this Act.

24 (14) COORDINATION WITH HCTC.—

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

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

16 (B) EFFECTIVE DATE.—The amendment
17 made by subparagraph (A) shall apply to tax-
18 able years ending after the date of the enact-
19 ment of this Act.

20 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
21 ANCE FROM GROSS INCOME.—

22 (A) IN GENERAL.—Part III of subchapter
23 B of chapter 1 of the Internal Revenue Code of
24 1986 is amended by inserting after section
25 139B the following new section:

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

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

7 (B) CLERICAL AMENDMENT.—The table of
8 sections for part III of subchapter B of chapter
9 1 of such Code is amended by inserting after
10 the item relating to section 139B the following
11 new item:

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

12 (C) EFFECTIVE DATE.—The amendments
13 made by this paragraph shall apply to taxable
14 years ending after the date of the enactment of
15 this Act.

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

18 (1) ERISA AMENDMENT.—Section 602(2)(A)
19 of the Employee Retirement Income Security Act of
20 1974 is amended by adding at the end the following
21 new clauses:

22 “(x) SPECIAL RULE FOR OLDER OR
23 LONG-TERM EMPLOYEES GENERALLY.—In
24 the case of a qualifying event described in
25 section 603(2) with respect to a covered

1 employee who (as of such qualifying event)
2 has attained age 55 or has completed 10
3 or more years of service with the entity
4 that is the employer at the time of the
5 qualifying event, clauses (i) and (ii) shall
6 not apply.

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

11 (2) IRC AMENDMENT.—Clause (i) of section
12 4980B(f)(2)(B) of the Internal Revenue Code of
13 1986 is amended by adding at the end the following
14 new subclauses:

15 “(X) SPECIAL RULE FOR OLDER
16 OR LONG-TERM EMPLOYEES GEN-
17 ERALLY.—In the case of a qualifying
18 event described in paragraph (3)(B)
19 with respect to a covered employee
20 who (as of such qualifying event) has
21 attained age 55 or has completed 10
22 or more years of service with the enti-
23 ty that is the employer at the time of
24 the qualifying event, subclauses (I)
25 and (II) shall not apply.

1 “(XI) YEAR OF SERVICE.— For
2 purposes of this clause, the term ‘year
3 of service’ shall have the meaning pro-
4 vided in section 202(a)(3) of the Em-
5 ployee Retirement Income Security
6 Act of 1974.”.

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

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

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

1 (4) EFFECTIVE DATE OF AMENDMENTS.—The
2 amendments made by this subsection shall apply to
3 periods of coverage which would (without regard to
4 the amendments made by this section) end on or
5 after the date of the enactment of this Act.

6 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
7 **FOR THE UNEMPLOYED.**

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

10 (1) in subsection (a)(10)(A)(ii)—

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

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

15 (C) by adding at the end the following new
16 subclause

17 “(XX) who are described in sub-
18 section (dd)(1) (relating to certain un-
19 employed individuals and their fami-
20 lies);”; and

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

23 “(dd)(1) Individuals described in this paragraph
24 are—

25 “(A) individuals who—

1 “(i) are within one or more of the categories de-
2 scribed in paragraph (2), as elected under the State
3 plan; and

4 “(ii) meet the applicable requirements of para-
5 graph (3); and

6 “(B) individuals who—

7 “(i) are the spouse, or dependent child under
8 19 years of age, of an individual described in sub-
9 paragraph (A); and

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

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

13 “(A) Individuals who are receiving unemploy-
14 ment compensation benefits.

15 “(B) Individuals who were receiving, but have
16 exhausted, unemployment compensation benefits on
17 or after July 1, 2008.

18 “(C) Individuals who are involuntarily unem-
19 ployed and were involuntarily separated from em-
20 ployment on or after September 1, 2008, and before
21 January 1, 2011, whose family gross income does
22 not exceed a percentage specified by the State (not
23 to exceed 200 percent) of the income official poverty
24 line (as defined by the Office of Management and
25 Budget, and revised annually in accordance with sec-

1 tion 673(2) of the Omnibus Budget Reconciliation
2 Act of 1981) applicable to a family of the size in-
3 volved, and who, but for subsection
4 (a)(10)(A)(ii)(XX), are not eligible for medical as-
5 sistance under this title or health assistance under
6 title XXI.

7 “(D) Individuals who are involuntarily unem-
8 ployed and were involuntarily separated from em-
9 ployment on or after September 1, 2008, and before
10 January 1, 2011, who are members of households
11 participating in the supplemental nutrition assist-
12 ance program established under the Food and Nutri-
13 tion Act of 2008 (7 U.S.C. 2011 et seq), and who,
14 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
15 ble for medical assistance under this title or health
16 assistance under title XXI.

17 A State plan may elect one or more of the categories de-
18 scribed in this paragraph but may not elect the category
19 described in subparagraph (B) unless the State plan also
20 elects the category described in subparagraph (A).

21 “(3) The requirements of this paragraph with respect
22 to an individual are the following:

23 “(A) In the case of individuals within a cat-
24 egory described in subparagraph (A) or (B) of para-
25 graph (2), the individual was involuntarily separated

1 from employment on or after September 1, 2008,
2 and before January 1, 2011, or meets such com-
3 parable requirement as the Secretary specifies
4 through rule, guidance, or otherwise in the case of
5 an individual who was an independent contractor.

6 “(B) The individual is not otherwise covered
7 under creditable coverage, as defined in section
8 2701(e) of the Public Health Service Act (42 U.S.C.
9 300gg(e)), but applied without regard to paragraph
10 (1)(F) of such section and without regard to cov-
11 erage provided by reason of the application of sub-
12 section (a)(10)(A)(ii)(XX).

13 “(4)(A) No income or resources test shall be applied
14 with respect to any category of individuals described in
15 subparagraph (A), (B), or (D) of paragraph (2) who are
16 eligible for medical assistance only by reason of the appli-
17 cation of subsection (a)(10)(A)(ii)(XX).

18 “(B) Nothing in this subsection shall be construed
19 to prevent a State from imposing a resource test for the
20 category of individuals described in paragraph (2)(C)).

21 “(C) In the case of individuals provided medical as-
22 sistance by reason of the application of subsection
23 (a)(10)(A)(ii)(XX), the requirements of subsections
24 (i)(22) and (x) shall not apply.”.

25 (b) 100 PERCENT FEDERAL MATCHING RATE.—

1 (1) FMAP FOR TIME-LIMITED PERIOD.—The
2 third sentence of section 1905(b) of such Act (42
3 U.S.C. 1396d(b)) is amended by inserting before the
4 period at the end the following: “and for items and
5 services furnished on or after the date of enactment
6 of this Act and before January 1, 2011, to individ-
7 uals who are eligible for medical assistance only by
8 reason of the application of section
9 1902(a)(10)(A)(ii)(XX)”.

10 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-
11 TRATIVE COSTS.—Notwithstanding any other provi-
12 sion of law, for purposes of applying section 1903(a)
13 of the Social Security Act (42 U.S.C. 1396b(a)),
14 with respect to expenditures incurred on or after the
15 date of the enactment of this Act and before Janu-
16 ary 1, 2011, for costs of administration (including
17 outreach and the modification and operation of eligi-
18 bility information systems) attributable to eligibility
19 determination and enrollment of individuals who are
20 eligible for medical assistance only by reason of the
21 application of section 1902(a)(10)(A)(ii)(XX) of
22 such Act, as added by subsection (a)(1), the Federal
23 matching percentage shall be 100 percent instead of
24 the matching percentage otherwise applicable.

1 (c) CONFORMING AMENDMENTS.—(1) Section
 2 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-
 3 ed by inserting “1902(a)(10)(A)(ii)(XX), or” after
 4 “1902(a)(10)(A)(ii)(XIX),”.

5 (2) Section 1905(a) of such Act (42 U.S.C.
 6 1396d(a)) is amended, in the matter preceding paragraph
 7 (1)—

8 (A) by striking “or” at the end of clause (xii);

9 (B) by adding “or” at the end of clause (xiii);

10 and

11 (C) by inserting after clause (xiii) the following
 12 new clause:

13 “(xiv) individuals described in section
 14 1902(dd)(1),”.

15 **TITLE IV—HEALTH**
 16 **INFORMATION TECHNOLOGY**

17 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

18 (a) SHORT TITLE.—This title may be cited as the
 19 “Health Information Technology for Economic and Clin-
 20 ical Health Act” or the “HITECH Act”.

21 (b) TABLE OF CONTENTS OF TITLE.—The table of
 22 contents of this title is as follows:

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND
QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

“Sec. 3001. Office of the National Coordinator for Health Information
Technology.

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

“Sec. 3004. Process for adoption of endorsed recommendations; adoption
of initial set of standards, implementation specifications,
and certification criteria.

“Sec. 3005. Application and use of adopted standards and implementation
specifications by Federal agencies.

“Sec. 3006. Voluntary application and use of adopted standards and im-
plementation specifications by private entities.

“Sec. 3007. Federal health information technology.

“Sec. 3008. Transitions.

“Sec. 3009. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION
TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and imple-
mentation specifications.

Sec. 4112. Application to private entities.

Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.

Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

Sec. 4301. Grant, loan, and demonstration programs.

“Subtitle B—Incentives for the Use of Health Information Technology

“Sec. 3011. Immediate funding to strengthen the health information tech-
nology infrastructure.

“Sec. 3012. Health information technology implementation assistance.

“Sec. 3013. State grants to promote health information technology.

“Sec. 3014. Competitive grants to States and Indian tribes for the devel-
opment of loan programs to facilitate the widespread
adoption of certified EHR technology.

“Sec. 3015. Demonstration program to integrate information technology
into clinical education.

“Sec. 3016. Information technology professionals on health care.

“Sec. 3017. General grant and loan provisions.

“Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

- Sec. 4311. Incentives for eligible professionals.
- Sec. 4312. Incentives for hospitals.
- Sec. 4313. Treatment of payments and savings; implementation funding.
- Sec. 4314. Study on application of HIT payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle D—Privacy

- Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 4402. Notification in the case of breach.
- Sec. 4403. Education on Health Information Privacy.
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 4406. Conditions on certain contacts as part of health care operations.
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 4408. Business associate contracts required for certain entities.
- Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 4410. Improved enforcement.
- Sec. 4411. Audits.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;
EFFECTIVE DATE; REPORTS

- Sec. 4421. Relationship to other laws.
- Sec. 4422. Regulatory references.
- Sec. 4423. Effective date.
- Sec. 4424. Studies, reports, guidance.

Subtitle E—Miscellaneous Medicare Provisions

- Sec. 4501. Moratoria on certain Medicare regulations.
- Sec. 4502. Long-term care hospital technical corrections.

1 **Subtitle A—Promotion of Health**
2 **Information Technology**

3 **PART I—IMPROVING HEALTH CARE QUALITY,**
4 **SAFETY, AND EFFICIENCY**

5 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**
6 **ON.**

7 The Public Health Service Act (42 U.S.C. 201 et
8 seq.) is amended by adding at the end the following:

9 **“TITLE XXX—HEALTH INFORMA-**
10 **TION TECHNOLOGY AND**
11 **QUALITY**

12 **“SEC. 3000. DEFINITIONS.**

13 “In this title:

14 “(1) **CERTIFIED EHR TECHNOLOGY.**—The term
15 ‘certified EHR technology’ means a qualified elec-
16 tronic health record that is certified pursuant to sec-
17 tion 3001(c)(5) as meeting standards adopted under
18 section 3004 that are applicable to the type of
19 record involved (as determined by the Secretary,
20 such as an ambulatory electronic health record for
21 office-based physicians or an inpatient hospital elec-
22 tronic health record for hospitals).

23 “(2) **ENTERPRISE INTEGRATION.**—The term
24 ‘enterprise integration’ means the electronic linkage
25 of health care providers, health plans, the govern-

1 ment, and other interested parties, to enable the
2 electronic exchange and use of health information
3 among all the components in the health care infra-
4 structure in accordance with applicable law, and
5 such term includes related application protocols and
6 other related standards.

7 “(3) HEALTH CARE PROVIDER.—The term
8 ‘health care provider’ means a hospital, skilled nurs-
9 ing facility, nursing facility, home health entity or
10 other long term care facility, health care clinic, Fed-
11 erally qualified health center, group practice (as de-
12 fined in section 1877(h)(4) of the Social Security
13 Act), a pharmacist, a pharmacy, a laboratory, a phy-
14 sician (as defined in section 1861(r) of the Social
15 Security Act), a practitioner (as described in section
16 1842(b)(18)(C) of the Social Security Act), a pro-
17 vider operated by, or under contract with, the Indian
18 Health Service or by an Indian tribe (as defined in
19 the Indian Self-Determination and Education Assist-
20 ance Act), tribal organization, or urban Indian orga-
21 nization (as defined in section 4 of the Indian
22 Health Care Improvement Act), a rural health clinic,
23 a covered entity under section 340B, and any other
24 category of facility or clinician determined appro-
25 priate by the Secretary.

1 “(4) HEALTH INFORMATION.—The term ‘health
2 information’ has the meaning given such term in
3 section 1171(4) of the Social Security Act.

4 “(5) HEALTH INFORMATION TECHNOLOGY.—
5 The term ‘health information technology’ means
6 hardware, software, integrated technologies and re-
7 lated licenses, intellectual property, upgrades, and
8 packaged solutions sold as services that are specifi-
9 cally designed for use by health care entities for the
10 electronic creation, maintenance, or exchange of
11 health information.

12 “(6) HEALTH PLAN.—The term ‘health plan’
13 has the meaning given such term in section 1171(5)
14 of the Social Security Act.

15 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
16 Policy Committee’ means such Committee estab-
17 lished under section 3002(a).

18 “(8) HIT STANDARDS COMMITTEE.—The term
19 ‘HIT Standards Committee’ means such Committee
20 established under section 3003(a).

21 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
22 FORMATION.—The term ‘individually identifiable
23 health information’ has the meaning given such term
24 in section 1171(6) of the Social Security Act.

1 “(10) LABORATORY.—The term ‘laboratory’
2 has the meaning given such term in section 353(a).

3 “(11) NATIONAL COORDINATOR.—The term
4 ‘National Coordinator’ means the head of the Office
5 of the National Coordinator for Health Information
6 Technology established under section 3001(a).

7 “(12) PHARMACIST.—The term ‘pharmacist’
8 has the meaning given such term in section 804(2)
9 of the Federal Food, Drug, and Cosmetic Act.

10 “(13) QUALIFIED ELECTRONIC HEALTH
11 RECORD.—The term ‘qualified electronic health
12 record’ means an electronic record of health-related
13 information on an individual that—

14 “(A) includes patient demographic and
15 clinical health information, such as medical his-
16 tory and problem lists; and

17 “(B) has the capacity—

18 “(i) to provide clinical decision sup-
19 port;

20 “(ii) to support physician order entry;

21 “(iii) to capture and query informa-
22 tion relevant to health care quality; and

23 “(iv) to exchange electronic health in-
24 formation with, and integrate such infor-
25 mation from other sources.

1 “(14) STATE.—The term ‘State’ means each of
2 the several States, the District of Columbia, Puerto
3 Rico, the Virgin Islands, Guam, American Samoa,
4 and the Northern Mariana Islands.

5 **“Subtitle A—Promotion of Health**
6 **Information Technology**

7 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
8 **HEALTH INFORMATION TECHNOLOGY.**

9 “(a) ESTABLISHMENT.—There is established within
10 the Department of Health and Human Services an Office
11 of the National Coordinator for Health Information Tech-
12 nology (referred to in this section as the ‘Office’). The Of-
13 fice shall be headed by a National Coordinator who shall
14 be appointed by the Secretary and shall report directly to
15 the Secretary.

16 “(b) PURPOSE.—The National Coordinator shall per-
17 form the duties under subsection (c) in a manner con-
18 sistent with the development of a nationwide health infor-
19 mation technology infrastructure that allows for the elec-
20 tronic use and exchange of information and that—

21 “(1) ensures that each patient’s health informa-
22 tion is secure and protected, in accordance with ap-
23 plicable law;

1 “(2) improves health care quality, reduces med-
2 ical errors, and advances the delivery of patient-cen-
3 tered medical care;

4 “(3) reduces health care costs resulting from
5 inefficiency, medical errors, inappropriate care, du-
6 plicative care, and incomplete information;

7 “(4) provides appropriate information to help
8 guide medical decisions at the time and place of
9 care;

10 “(5) ensures the inclusion of meaningful public
11 input in such development of such infrastructure;

12 “(6) improves the coordination of care and in-
13 formation among hospitals, laboratories, physician
14 offices, and other entities through an effective infra-
15 structure for the secure and authorized exchange of
16 health care information;

17 “(7) improves public health activities and facili-
18 tates the early identification and rapid response to
19 public health threats and emergencies, including bio-
20 terror events and infectious disease outbreaks;

21 “(8) facilitates health and clinical research and
22 health care quality;

23 “(9) promotes prevention of chronic diseases;

24 “(10) promotes a more effective marketplace,
25 greater competition, greater systems analysis, in-

1 creased consumer choice, and improved outcomes in
2 health care services; and

3 “(11) improves efforts to reduce health dispari-
4 ties.

5 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

6 “(1) STANDARDS.—The National Coordinator
7 shall review and determine whether to endorse each
8 standard, implementation specification, and certifi-
9 cation criterion for the electronic exchange and use
10 of health information that is recommended by the
11 HIT Standards Committee under section 3003 for
12 purposes of adoption under section 3004. The Coor-
13 dinator shall make such determination, and report to
14 the Secretary such determination, not later than 45
15 days after the date the recommendation is received
16 by the Coordinator.

17 “(2) HIT POLICY COORDINATION.—

18 “(A) IN GENERAL.—The National Coordi-
19 nator shall coordinate health information tech-
20 nology policy and programs of the Department
21 with those of other relevant executive branch
22 agencies with a goal of avoiding duplication of
23 efforts and of helping to ensure that each agen-
24 cy undertakes health information technology ac-
25 tivities primarily within the areas of its greatest

1 expertise and technical capability and in a man-
2 ner towards a coordinated national goal.

3 “(B) HIT POLICY AND STANDARDS COM-
4 MITTEES.—The National Coordinator shall be a
5 leading member in the establishment and oper-
6 ations of the HIT Policy Committee and the
7 HIT Standards Committee and shall serve as a
8 liaison among those two Committees and the
9 Federal Government.

10 “(3) STRATEGIC PLAN.—

11 “(A) IN GENERAL.—The National Coordi-
12 nator shall, in consultation with other appro-
13 priate Federal agencies (including the National
14 Institute of Standards and Technology), update
15 the Federal Health IT Strategic Plan (devel-
16 oped as of June 3, 2008) to include specific ob-
17 jectives, milestones, and metrics with respect to
18 the following:

19 “(i) The electronic exchange and use
20 of health information and the enterprise
21 integration of such information.

22 “(ii) The utilization of an electronic
23 health record for each person in the United
24 States by 2014.

1 “(iii) The incorporation of privacy and
2 security protections for the electronic ex-
3 change of an individual’s individually iden-
4 tifiable health information.

5 “(iv) Ensuring security methods to
6 ensure appropriate authorization and elec-
7 tronic authentication of health information
8 and specifying technologies or methodolo-
9 gies for rendering health information unus-
10 able, unreadable, or indecipherable.

11 “(v) Specifying a framework for co-
12 ordination and flow of recommendations
13 and policies under this subtitle among the
14 Secretary, the National Coordinator, the
15 HIT Policy Committee, the HIT Standards
16 Committee, and other health information
17 exchanges and other relevant entities.

18 “(vi) Methods to foster the public un-
19 derstanding of health information tech-
20 nology.

21 “(vii) Strategies to enhance the use of
22 health information technology in improving
23 the quality of health care, reducing medical
24 errors, reducing health disparities, improv-

1 ing public health, and improving the con-
2 tinuity of care among health care settings.

3 “(B) COLLABORATION.—The strategic
4 plan shall be updated through collaboration of
5 public and private entities.

6 “(C) MEASURABLE OUTCOME GOALS.—
7 The strategic plan update shall include measur-
8 able outcome goals.

9 “(D) PUBLICATION.—The National Coor-
10 dinator shall republish the strategic plan, in-
11 cluding all updates.

12 “(4) WEBSITE.—The National Coordinator
13 shall maintain and frequently update an Internet
14 website on which there is posted information on the
15 work, schedules, reports, recommendations, and
16 other information to ensure transparency in pro-
17 motion of a nationwide health information tech-
18 nology infrastructure.

19 “(5) CERTIFICATION.—

20 “(A) IN GENERAL.—The National Coordi-
21 nator, in consultation with the Director of the
22 National Institute of Standards and Tech-
23 nology, shall develop a program (either directly
24 or by contract) for the voluntary certification of
25 health information technology as being in com-

1 pliance with applicable certification criteria
2 adopted under this subtitle. Such program shall
3 include testing of the technology in accordance
4 with section 4201(b) of the HITECH Act.

5 “(B) CERTIFICATION CRITERIA DE-
6 SCRIBED.—In this title, the term ‘certification
7 criteria’ means, with respect to standards and
8 implementation specifications for health infor-
9 mation technology, criteria to establish that the
10 technology meets such standards and implemen-
11 tation specifications.

12 “(6) REPORTS AND PUBLICATIONS.—

13 “(A) REPORT ON ADDITIONAL FUNDING
14 OR AUTHORITY NEEDED.—Not later than 12
15 months after the date of the enactment of this
16 title, the National Coordinator shall submit to
17 the appropriate committees of jurisdiction of
18 the House of Representatives and the Senate a
19 report on any additional funding or authority
20 the Coordinator or the HIT Policy Committee
21 or HIT Standards Committee requires to evalu-
22 ate and develop standards, implementation
23 specifications, and certification criteria, or to
24 achieve full participation of stakeholders in the
25 adoption of a nationwide health information

1 technology infrastructure that allows for the
2 electronic use and exchange of health informa-
3 tion.

4 “(B) IMPLEMENTATION REPORT.—The
5 National Coordinator shall prepare a report
6 that identifies lessons learned from major pub-
7 lic and private health care systems in their im-
8 plementation of health information technology,
9 including information on whether the tech-
10 nologies and practices developed by such sys-
11 tems may be applicable to and usable in whole
12 or in part by other health care providers.

13 “(C) ASSESSMENT OF IMPACT OF HIT ON
14 COMMUNITIES WITH HEALTH DISPARITIES AND
15 UNINSURED, UNDERINSURED, AND MEDICALLY
16 UNDERSERVED AREAS.—The National Coordi-
17 nator shall assess and publish the impact of
18 health information technology in communities
19 with health disparities and in areas with a high
20 proportion of individuals who are uninsured,
21 underinsured, and medically underserved indi-
22 viduals (including urban and rural areas) and
23 identify practices to increase the adoption of
24 such technology by health care providers in
25 such communities.

1 “(D) EVALUATION OF BENEFITS AND
2 COSTS OF THE ELECTRONIC USE AND EX-
3 CHANGE OF HEALTH INFORMATION.—The Na-
4 tional Coordinator shall evaluate and publish
5 evidence on the benefits and costs of the elec-
6 tronic use and exchange of health information
7 and assess to whom these benefits and costs ac-
8 crue.

9 “(E) RESOURCE REQUIREMENTS.—The
10 National Coordinator shall estimate and publish
11 resources required annually to reach the goal of
12 utilization of an electronic health record for
13 each person in the United States by 2014, in-
14 cluding the required level of Federal funding,
15 expectations for regional, State, and private in-
16 vestment, and the expected contributions by vol-
17 unteers to activities for the utilization of such
18 records.

19 “(7) ASSISTANCE.—The National Coordinator
20 may provide financial assistance to consumer advo-
21 cacy groups and not-for-profit entities that work in
22 the public interest for purposes of defraying the cost
23 to such groups and entities to participate under,
24 whether in whole or in part, the National Tech-
25 nology Transfer Act of 1995 (15 U.S.C. 272 note).

1 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
2 INFORMATION NETWORK.—The National Coordi-
3 nator shall establish a governance mechanism for the
4 nationwide health information network.

5 “(d) DETAIL OF FEDERAL EMPLOYEES.—

6 “(1) IN GENERAL.—Upon the request of the
7 National Coordinator, the head of any Federal agen-
8 cy is authorized to detail, with or without reimburse-
9 ment from the Office, any of the personnel of such
10 agency to the Office to assist it in carrying out its
11 duties under this section.

12 “(2) EFFECT OF DETAIL.—Any detail of per-
13 sonnel under paragraph (1) shall—

14 “(A) not interrupt or otherwise affect the
15 civil service status or privileges of the Federal
16 employee; and

17 “(B) be in addition to any other staff of
18 the Department employed by the National Co-
19 ordinator.

20 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
21 standing any other provision of law, the Office may
22 accept detailed personnel from other Federal agen-
23 cies without regard to whether the agency described
24 under paragraph (1) is reimbursed.

1 “(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
2 THE NATIONAL COORDINATOR.—Not later than 12
3 months after the date of the enactment of this title, the
4 Secretary shall appoint a Chief Privacy Officer of the Of-
5 fice of the National Coordinator, whose duty it shall be
6 to advise the National Coordinator on privacy, security,
7 and data stewardship of electronic health information and
8 to coordinate with other Federal agencies (and similar pri-
9 vacy officers in such agencies), with State and regional
10 efforts, and with foreign countries with regard to the pri-
11 vacy, security, and data stewardship of electronic individ-
12 ually identifiable health information.

13 **“SEC. 3002. HIT POLICY COMMITTEE.**

14 “(a) ESTABLISHMENT.—There is established a HIT
15 Policy Committee to make policy recommendations to the
16 National Coordinator relating to the implementation of a
17 nationwide health information technology infrastructure,
18 including implementation of the strategic plan described
19 in section 3001(e)(3).

20 “(b) DUTIES.—

21 “(1) RECOMMENDATIONS ON HEALTH INFOR-
22 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
23 Policy Committee shall recommend a policy frame-
24 work for the development and adoption of a nation-
25 wide health information technology infrastructure

1 that permits the electronic exchange and use of
2 health information as is consistent with the strategic
3 plan under section 3001(c)(3) and that includes the
4 recommendations under paragraph (2). The Com-
5 mittee shall update such recommendations and make
6 new recommendations as appropriate.

7 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-
8 MENT.—

9 “(A) IN GENERAL.—The HIT Policy Com-
10 mittee shall recommend the areas in which
11 standards, implementation specifications, and
12 certification criteria are needed for the elec-
13 tronic exchange and use of health information
14 for purposes of adoption under section 3004
15 and shall recommend an order of priority for
16 the development, harmonization, and recogni-
17 tion of such standards, specifications, and cer-
18 tification criteria among the areas so rec-
19 ommended. Such standards and implementation
20 specifications shall include named standards,
21 architectures, and software schemes for the au-
22 thentication and security of individually identifi-
23 able health information and other information
24 as needed to ensure the reproducible develop-

1 ment of common solutions across disparate en-
2 tities.

3 “(B) AREAS REQUIRED FOR CONSIDER-
4 ATION.—For purposes of subparagraph (A), the
5 HIT Policy Committee shall make recommenda-
6 tions for at least the following areas:

7 “(i) Technologies that protect the pri-
8 vacy of health information and promote se-
9 curity in a qualified electronic health
10 record, including for the segmentation and
11 protection from disclosure of specific and
12 sensitive individually identifiable health in-
13 formation with the goal of minimizing the
14 reluctance of patients to seek care (or dis-
15 close information about a condition) be-
16 cause of privacy concerns, in accordance
17 with applicable law, and for the use and
18 disclosure of limited data sets of such in-
19 formation.

20 “(ii) A nationwide health information
21 technology infrastructure that allows for
22 the electronic use and accurate exchange of
23 health information.

1 “(iii) The utilization of a certified
2 electronic health record for each person in
3 the United States by 2014.

4 “(iv) Technologies that as a part of a
5 qualified electronic health record allow for
6 an accounting of disclosures made by a
7 covered entity (as defined for purposes of
8 regulations promulgated under section
9 264(e) of the Health Insurance Portability
10 and Accountability Act of 1996) for pur-
11 poses of treatment, payment, and health
12 care operations (as such terms are defined
13 for purposes of such regulations).

14 “(v) The use of certified electronic
15 health records to improve the quality of
16 health care, such as by promoting the co-
17 ordination of health care and improving
18 continuity of health care among health
19 care providers, by reducing medical errors,
20 by improving population health, and by ad-
21 vancing research and education.

22 “(C) OTHER AREAS FOR CONSIDER-
23 ATION.—In making recommendations under
24 subparagraph (A), the HIT Policy Committee
25 may consider the following additional areas:

1 “(i) The appropriate uses of a nation-
2 wide health information infrastructure, in-
3 cluding for purposes of—

4 “(I) the collection of quality data
5 and public reporting;

6 “(II) biosurveillance and public
7 health;

8 “(III) medical and clinical re-
9 search; and

10 “(IV) drug safety.

11 “(ii) Self-service technologies that fa-
12 cilitate the use and exchange of patient in-
13 formation and reduce wait times.

14 “(iii) Telemedicine technologies, in
15 order to reduce travel requirements for pa-
16 tients in remote areas.

17 “(iv) Technologies that facilitate home
18 health care and the monitoring of patients
19 recuperating at home.

20 “(v) Technologies that help reduce
21 medical errors.

22 “(vi) Technologies that facilitate the
23 continuity of care among health settings.

24 “(vii) Technologies that meet the
25 needs of diverse populations.

1 “(viii) Any other technology that the
2 HIT Policy Committee finds to be among
3 the technologies with the greatest potential
4 to improve the quality and efficiency of
5 health care.

6 “(3) FORUM.—The HIT Policy Committee shall
7 serve as a forum for broad stakeholder input with
8 specific expertise in policies relating to the matters
9 described in paragraphs (1) and (2).

10 “(c) MEMBERSHIP AND OPERATIONS.—

11 “(1) IN GENERAL.—The National Coordinator
12 shall provide leadership in the establishment and op-
13 erations of the HIT Policy Committee.

14 “(2) MEMBERSHIP.—The membership of the
15 HIT Policy Committee shall at least reflect pro-
16 viders, ancillary healthcare workers, consumers, pur-
17 chasers, health plans, technology vendors, research-
18 ers, relevant Federal agencies, and individuals with
19 technical expertise on health care quality, privacy
20 and security, and on the electronic exchange and use
21 of health information.

22 “(3) CONSIDERATION.—The National Coordi-
23 nator shall ensure that the relevant recommenda-
24 tions and comments from the National Committee

1 on Vital and Health Statistics are considered in the
2 development of policies.

3 “(d) APPLICATION OF FACCA.—The Federal Advisory
4 Committee Act (5 U.S.C. App.), other than section 14 of
5 such Act, shall apply to the HIT Policy Committee.

6 “(e) PUBLICATION.—The Secretary shall provide for
7 publication in the Federal Register and the posting on the
8 Internet website of the Office of the National Coordinator
9 for Health Information Technology of all policy rec-
10 ommendations made by the HIT Policy Committee under
11 this section.

12 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

13 “(a) ESTABLISHMENT.—There is established a com-
14 mittee to be known as the HIT Standards Committee to
15 recommend to the National Coordinator standards, imple-
16 mentation specifications, and certification criteria for the
17 electronic exchange and use of health information for pur-
18 poses of adoption under section 3004, consistent with the
19 implementation of the strategic plan described in section
20 3001(c)(3) and beginning with the areas listed in section
21 3002(b)(2)(B) in accordance with policies developed by
22 the HIT Policy Committee.

23 “(b) DUTIES.—

24 “(1) STANDARD DEVELOPMENT.—

1 “(A) IN GENERAL.—The HIT Standards
2 Committee shall recommend to the National
3 Coordinator standards, implementation speci-
4 fications, and certification criteria described in
5 subsection (a) that have been developed, har-
6 monized, or recognized by the HIT Standards
7 Committee. The HIT Standards Committee
8 shall update such recommendations and make
9 new recommendations as appropriate, including
10 in response to a notification sent under section
11 3004(b)(2). Such recommendations shall be
12 consistent with the latest recommendations
13 made by the HIT Policy Committee.

14 “(B) PILOT TESTING OF STANDARDS AND
15 IMPLEMENTATION SPECIFICATIONS.—In the de-
16 velopment, harmonization, or recognition of
17 standards and implementation specifications,
18 the HIT Standards Committee shall, as appro-
19 priate, provide for the testing of such standards
20 and specifications by the National Institute for
21 Standards and Technology under section 4201
22 of the HITECH Act.

23 “(C) CONSISTENCY.—The standards, im-
24 plementation specifications, and certification
25 criteria recommended under this subsection

1 shall be consistent with the standards for infor-
2 mation transactions and data elements adopted
3 pursuant to section 1173 of the Social Security
4 Act.

5 “(2) FORUM.—The HIT Standards Committee
6 shall serve as a forum for the participation of a
7 broad range of stakeholders to provide input on the
8 development, harmonization, and recognition of
9 standards, implementation specifications, and certifi-
10 cation criteria necessary for the development and
11 adoption of a nationwide health information tech-
12 nology infrastructure that allows for the electronic
13 use and exchange of health information.

14 “(3) SCHEDULE.—Not later than 90 days after
15 the date of the enactment of this title, the HIT
16 Standards Committee shall develop a schedule for
17 the assessment of policy recommendations developed
18 by the HIT Policy Committee under section 3002.
19 The HIT Standards Committee shall update such
20 schedule annually. The Secretary shall publish such
21 schedule in the Federal Register.

22 “(4) PUBLIC INPUT.—The HIT Standards
23 Committee shall conduct open public meetings and
24 develop a process to allow for public comment on the
25 schedule described in paragraph (3) and rec-

1 ommendations described in this subsection. Under
2 such process comments shall be submitted in a time-
3 ly manner after the date of publication of a rec-
4 ommendation under this subsection.

5 “(c) MEMBERSHIP AND OPERATIONS.—

6 “(1) IN GENERAL.—The National Coordinator
7 shall provide leadership in the establishment and op-
8 erations of the HIT Standards Committee.

9 “(2) MEMBERSHIP.—The membership of the
10 HIT Standards Committee shall at least reflect pro-
11 viders, ancillary healthcare workers, consumers, pur-
12 chasers, health plans, technology vendors, research-
13 ers, relevant Federal agencies, and individuals with
14 technical expertise on health care quality, privacy
15 and security, and on the electronic exchange and use
16 of health information.

17 “(3) CONSIDERATION.—The National Coordi-
18 nator shall ensure that the relevant recommenda-
19 tions and comments from the National Committee
20 on Vital and Health Statistics are considered in the
21 development of standards.

22 “(4) ASSISTANCE.—For the purposes of car-
23 rying out this section, the Secretary may provide or
24 ensure that financial assistance is provided by the
25 HIT Standards Committee to defray in whole or in

1 part any membership fees or dues charged by such
2 Committee to those consumer advocacy groups and
3 not for profit entities that work in the public inter-
4 est as a part of their mission.

5 “(d) APPLICATION OF FACA.—The Federal Advisory
6 Committee Act (5 U.S.C. App.), other than section 14,
7 shall apply to the HIT Standards Committee.

8 “(e) PUBLICATION.—The Secretary shall provide for
9 publication in the Federal Register and the posting on the
10 Internet website of the Office of the National Coordinator
11 for Health Information Technology of all recommenda-
12 tions made by the HIT Standards Committee under this
13 section.

14 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
15 **COMMENDATIONS; ADOPTION OF INITIAL SET**
16 **OF STANDARDS, IMPLEMENTATION SPECI-**
17 **FICATIONS, AND CERTIFICATION CRITERIA.**

18 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-
19 OMMENDATIONS.—

20 “(1) REVIEW OF ENDORSED STANDARDS, IM-
21 PLEMENTATION SPECIFICATIONS, AND CERTIFI-
22 CATION CRITERIA.—Not later than 90 days after the
23 date of receipt of standards, implementation speci-
24 fications, or certification criteria endorsed under sec-
25 tion 3001(c), the Secretary, in consultation with rep-

1 representatives of other relevant Federal agencies, shall
2 jointly review such standards, implementation speci-
3 fications, or certification criteria and shall determine
4 whether or not to propose adoption of such stand-
5 ards, implementation specifications, or certification
6 criteria.

7 “(2) DETERMINATION TO ADOPT STANDARDS,
8 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
9 CATION CRITERIA.—If the Secretary determines—

10 “(A) to propose adoption of any grouping
11 of such standards, implementation specifica-
12 tions, or certification criteria, the Secretary
13 shall, by regulation, determine whether or not
14 to adopt such grouping of standards, implemen-
15 tation specifications, or certification criteria; or

16 “(B) not to propose adoption of any group-
17 ing of standards, implementation specifications,
18 or certification criteria, the Secretary shall no-
19 tify the National Coordinator and the HIT
20 Standards Committee in writing of such deter-
21 mination and the reasons for not proposing the
22 adoption of such recommendation.

23 “(3) PUBLICATION.—The Secretary shall pro-
24 vide for publication in the Federal Register of all de-

1 terminations made by the Secretary under para-
2 graph (1).

3 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
4 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
5 CRITERIA.—

6 “(1) IN GENERAL.—Not later than December
7 31, 2009, the Secretary shall, through the rule-
8 making process described in section 3003, adopt an
9 initial set of standards, implementation specifica-
10 tions, and certification criteria for the areas required
11 for consideration under section 3002(b)(2)(B).

12 “(2) APPLICATION OF CURRENT STANDARDS,
13 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
14 CATION CRITERIA.—The standards, implementation
15 specifications, and certification criteria adopted be-
16 fore the date of the enactment of this title through
17 the process existing through the Office of the Na-
18 tional Coordinator for Health Information Tech-
19 nology may be applied towards meeting the require-
20 ment of paragraph (1).

21 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
22 **ARDS AND IMPLEMENTATION SPECIFICA-**
23 **TIONS BY FEDERAL AGENCIES.**

24 “For requirements relating to the application and use
25 by Federal agencies of the standards and implementation

1 specifications adopted under section 3004, see section
2 4111 of the HITECH Act.

3 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
4 **ED STANDARDS AND IMPLEMENTATION**
5 **SPECIFICATIONS BY PRIVATE ENTITIES.**

6 “(a) IN GENERAL.—Except as provided under section
7 4112 of the HITECH Act, any standard or implementa-
8 tion specification adopted under section 3004 shall be vol-
9 untary with respect to private entities.

10 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-
11 title shall be construed to require that a private entity that
12 enters into a contract with the Federal Government apply
13 or use the standards and implementation specifications
14 adopted under section 3004 with respect to activities not
15 related to the contract.

16 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
17 **NOLOGY.**

18 “(a) IN GENERAL.—The National Coordinator shall
19 support the development, routine updating and provision
20 of qualified EHR technology (as defined in section 3000)
21 consistent with subsections (b) and (c) unless the Sec-
22 retary determines that the needs and demands of pro-
23 viders are being substantially and adequately met through
24 the marketplace.

1 “(b) CERTIFICATION.—In making such EHR tech-
2 nology publicly available, the National Coordinator shall
3 ensure that the qualified EHR technology described in
4 subsection (a) is certified under the program developed
5 under section 3001(c)(3) to be in compliance with applica-
6 ble standards adopted under section 3003(a).

7 “(c) AUTHORIZATION TO CHARGE A NOMINAL
8 FEE.—The National Coordinator may impose a nominal
9 fee for the adoption by a health care provider of the health
10 information technology system developed or approved
11 under subsection (a) and (b). Such fee shall take into ac-
12 count the financial circumstances of smaller providers, low
13 income providers, and providers located in rural or other
14 medically underserved areas.

15 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion shall be construed to require that a private or govern-
17 ment entity adopt or use the technology provided under
18 this section.

19 **“SEC. 3008. TRANSITIONS.**

20 “(a) ONCHIT.—To the extent consistent with sec-
21 tion 3001, all functions, personnel, assets, liabilities, and
22 administrative actions applicable to the National Coordi-
23 nator for Health Information Technology appointed under
24 Executive Order 13335 or the Office of such National Co-
25 ordinator on the date before the date of the enactment

1 of this title shall be transferred to the National Coordi-
2 nator appointed under section 3001(a) and the Office of
3 such National Coordinator as of the date of the enactment
4 of this title.

5 “(b) AHIC.—

6 “(1) To the extent consistent with sections
7 3002 and 3003, all functions, personnel, assets, and
8 liabilities applicable to the AHIC Successor, Inc.
9 doing business as the National eHealth Collaborative
10 as of the day before the date of the enactment of
11 this title shall be transferred to the HIT Policy
12 Committee or the HIT Standards Committee, estab-
13 lished under section 3002(a) or 3003(a), as appro-
14 priate, as of the date of the enactment of this title.

15 “(2) In carrying out section 3003(b)(1)(A),
16 until recommendations are made by the HIT Policy
17 Committee, recommendations of the HIT Standards
18 Committee shall be consistent with the most recent
19 recommendations made by such AHIC Successor,
20 Inc.

21 “(c) RULES OF CONSTRUCTION.—

22 “(1) ONCHIT.—Nothing in section 3001 or
23 subsection (a) shall be construed as requiring the
24 creation of a new entity to the extent that the Office
25 of the National Coordinator for Health Information

1 Technology established pursuant to Executive Order
2 13335 is consistent with the provisions of section
3 3001.

4 “(2) AHIC.—Nothing in sections 3002 or 3003
5 or subsection (b) shall be construed as prohibiting
6 the AHIC Successor, Inc. doing business as the Na-
7 tional eHealth Collaborative from modifying its char-
8 ter, duties, membership, and any other structure or
9 function required to be consistent with section 3002
10 and 3003 in a manner that would permit the Sec-
11 retary to choose to recognize such Community as the
12 HIT Policy Committee or the HIT Standards Com-
13 mittee.

14 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
15 **LAW.**

16 “(a) IN GENERAL.—With respect to the relation of
17 this title to HIPAA privacy and security law:

18 “(1) This title may not be construed as having
19 any effect on the authorities of the Secretary under
20 HIPAA privacy and security law.

21 “(2) The purposes of this title include ensuring
22 that the health information technology standards
23 and implementation specifications adopted under
24 section 3004 take into account the requirements of
25 HIPAA privacy and security law.

1 “(b) DEFINITION.—For purposes of this section, the
2 term ‘HIPAA privacy and security law’ means—

3 “(1) the provisions of part C of title XI of the
4 Social Security Act, section 264 of the Health Insur-
5 ance Portability and Accountability Act of 1996, and
6 subtitle D of title IV of the HITECH Act; and

7 “(2) regulations under such provisions.

8 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

9 “There is authorized to be appropriated to the Office
10 of the National Coordinator for Health Information Tech-
11 nology to carry out this subtitle \$250,000,000 for fiscal
12 year 2009.”.

13 **SEC. 4102. TECHNICAL AMENDMENT.**

14 Section 1171(5) of the Social Security Act (42 U.S.C.
15 1320d) is amended by striking “or C” and inserting “C,
16 or D”.

17 **PART II—APPLICATION AND USE OF ADOPTED**

18 **HEALTH INFORMATION TECHNOLOGY**

19 **STANDARDS; REPORTS**

20 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**

21 **ADOPTED STANDARDS AND IMPLEMENTA-**

22 **TION SPECIFICATIONS.**

23 (a) SPENDING ON HEALTH INFORMATION TECH-
24 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-
25 ecutive Order issued on August 22, 2006, relating to pro-

1 moting quality and efficient health care in Federal govern-
2 ment administered or sponsored health care programs) im-
3 plements, acquires, or upgrades health information tech-
4 nology systems used for the direct exchange of individually
5 identifiable health information between agencies and with
6 non-Federal entities, it shall utilize, where available,
7 health information technology systems and products that
8 meet standards and implementation specifications adopted
9 under section 3004(b) of the Public Health Service Act,
10 as added by section 4101.

11 (b) FEDERAL INFORMATION COLLECTION ACTIVI-
12 TIES.—With respect to a standard or implementation
13 specification adopted under section 3004(b) of the Public
14 Health Service Act, as added by section 4101, the Presi-
15 dent shall take measures to ensure that Federal activities
16 involving the broad collection and submission of health in-
17 formation are consistent with such standard or implemen-
18 tation specification, respectively, within three years after
19 the date of such adoption.

20 (c) APPLICATION OF DEFINITIONS.—The definitions
21 contained in section 3000 of the Public Health Service
22 Act, as added by section 4101, shall apply for purposes
23 of this part.

1 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

2 Each agency (as defined in such Executive Order
3 issued on August 22, 2006, relating to promoting quality
4 and efficient health care in Federal government adminis-
5 tered or sponsored health care programs) shall require in
6 contracts or agreements with health care providers, health
7 plans, or health insurance issuers that as each provider,
8 plan, or issuer implements, acquires, or upgrades health
9 information technology systems, it shall utilize, where
10 available, health information technology systems and prod-
11 ucts that meet standards and implementation specifica-
12 tions adopted under section 3004(b) of the Public Health
13 Service Act, as added by section 4101.

14 **SEC. 4113. STUDY AND REPORTS.**

15 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-
16 TEM.—Not later than 2 years after the date of the enact-
17 ment of this Act and annually thereafter, the Secretary
18 of Health and Human Services shall submit to the appro-
19 priate committees of jurisdiction of the House of Rep-
20 resentatives and the Senate a report that—

21 (1) describes the specific actions that have been
22 taken by the Federal Government and private enti-
23 ties to facilitate the adoption of a nationwide system
24 for the electronic use and exchange of health infor-
25 mation;

1 (2) describes barriers to the adoption of such a
2 nationwide system; and

3 (3) contains recommendations to achieve full
4 implementation of such a nationwide system.

5 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-
6 PORT.—

7 (1) STUDY.—The Secretary of Health and
8 Human Services shall carry out, or contract with a
9 private entity to carry out, a study that examines
10 methods to create efficient reimbursement incentives
11 for improving health care quality in Federally quali-
12 fied health centers, rural health clinics, and free
13 clinics.

14 (2) REPORT.—Not later than 2 years after the
15 date of the enactment of this Act, the Secretary of
16 Health and Human Services shall submit to the ap-
17 propriate committees of jurisdiction of the House of
18 Representatives and the Senate a report on the
19 study carried out under paragraph (1).

20 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
21 PORT.—

22 (1) IN GENERAL.—The Secretary of Health and
23 Human Services shall carry out, or contract with a
24 private entity to carry out, a study of matters relat-
25 ing to the potential use of new aging services tech-

1 nology to assist seniors, individuals with disabilities,
2 and their caregivers throughout the aging process.

3 (2) MATTERS TO BE STUDIED.—The study
4 under paragraph (1) shall include—

5 (A) an evaluation of—

6 (i) methods for identifying current,
7 emerging, and future health technology
8 that can be used to meet the needs of sen-
9 iors and individuals with disabilities and
10 their caregivers across all aging services
11 settings, as specified by the Secretary;

12 (ii) methods for fostering scientific in-
13 novation with respect to aging services
14 technology within the business and aca-
15 demic communities; and

16 (iii) developments in aging services
17 technology in other countries that may be
18 applied in the United States; and

19 (B) identification of—

20 (i) barriers to innovation in aging
21 services technology and devising strategies
22 for removing such barriers; and

23 (ii) barriers to the adoption of aging
24 services technology by health care pro-

1 viders and consumers and devising strate-
2 gies to removing such barriers.

3 (3) REPORT.—Not later than 24 months after
4 the date of the enactment of this Act, the Secretary
5 shall submit to the appropriate committees of juris-
6 diction of the House of Representatives and of the
7 Senate a report on the study carried out under para-
8 graph (1).

9 (4) DEFINITIONS.—For purposes of this sub-
10 section:

11 (A) AGING SERVICES TECHNOLOGY.—The
12 term “aging services technology” means health
13 technology that meets the health care needs of
14 seniors, individuals with disabilities, and the
15 caregivers of such seniors and individuals.

16 (B) SENIOR.—The term “senior” has such
17 meaning as specified by the Secretary.

18 **Subtitle B—Testing of Health**
19 **Information Technology**

20 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**
21 **TECHNOLOGY TESTING.**

22 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
23 TATION SPECIFICATIONS.—In coordination with the HIT
24 Standards Committee established under section 3003 of
25 the Public Health Service Act, as added by section 4101,

1 with respect to the development of standards and imple-
2 mentation specifications under such section, the Director
3 of the National Institute for Standards and Technology
4 shall test such standards and implementation specifica-
5 tions, as appropriate, in order to assure the efficient im-
6 plementation and use of such standards and implementa-
7 tion specifications.

8 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
9 tion with the HIT Standards Committee established under
10 section 3003 of the Public Health Service Act, as added
11 by section 4101, with respect to the development of stand-
12 ards and implementation specifications under such sec-
13 tion, the Director of the National Institute of Standards
14 and Technology shall support the establishment of a con-
15 formance testing infrastructure, including the develop-
16 ment of technical test beds. The development of this con-
17 formance testing infrastructure may include a program to
18 accredit independent, non-Federal laboratories to perform
19 testing.

20 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

21 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
22 GRATION RESEARCH CENTERS.—

23 (1) IN GENERAL.—The Director of the National
24 Institute of Standards and Technology, in consulta-
25 tion with the Director of the National Science Foun-

1 dation and other appropriate Federal agencies, shall
2 establish a program of assistance to institutions of
3 higher education (or consortia thereof which may in-
4 clude nonprofit entities and Federal Government
5 laboratories) to establish multidisciplinary Centers
6 for Health Care Information Enterprise Integration.

7 (2) REVIEW; COMPETITION.—Grants shall be
8 awarded under this subsection on a merit-reviewed,
9 competitive basis.

10 (3) PURPOSE.—The purposes of the Centers de-
11 scribed in paragraph (1) shall be—

12 (A) to generate innovative approaches to
13 health care information enterprise integration
14 by conducting cutting-edge, multidisciplinary
15 research on the systems challenges to health
16 care delivery; and

17 (B) the development and use of health in-
18 formation technologies and other complemen-
19 tary fields.

20 (4) RESEARCH AREAS.—Research areas may in-
21 clude—

22 (A) interfaces between human information
23 and communications technology systems;

24 (B) voice-recognition systems;

1 (C) software that improves interoperability
2 and connectivity among health information sys-
3 tems;

4 (D) software dependability in systems crit-
5 ical to health care delivery;

6 (E) measurement of the impact of informa-
7 tion technologies on the quality and productivity
8 of health care;

9 (F) health information enterprise manage-
10 ment;

11 (G) health information technology security
12 and integrity; and

13 (H) relevant health information technology
14 to reduce medical errors.

15 (5) APPLICATIONS.—An institution of higher
16 education (or a consortium thereof) seeking funding
17 under this subsection shall submit an application to
18 the Director of the National Institute of Standards
19 and Technology at such time, in such manner, and
20 containing such information as the Director may re-
21 quire. The application shall include, at a minimum,
22 a description of—

23 (A) the research projects that will be un-
24 dertaken by the Center established pursuant to

1 assistance under paragraph (1) and the respec-
2 tive contributions of the participating entities;

3 (B) how the Center will promote active col-
4 laboration among scientists and engineers from
5 different disciplines, such as information tech-
6 nology, biologic sciences, management, social
7 sciences, and other appropriate disciplines;

8 (C) technology transfer activities to dem-
9 onstrate and diffuse the research results, tech-
10 nologies, and knowledge; and

11 (D) how the Center will contribute to the
12 education and training of researchers and other
13 professionals in fields relevant to health infor-
14 mation enterprise integration.

15 (b) NATIONAL INFORMATION TECHNOLOGY RE-
16 SEARCH AND DEVELOPMENT PROGRAM.—The National
17 High-Performance Computing Program established by
18 section 101 of the High-Performance Computing Act of
19 1991 (15 U.S.C. 5511) shall coordinate Federal research
20 and development programs related to the development and
21 deployment of health information technology, including ac-
22 tivities related to—

23 (1) computer infrastructure;

24 (2) data security;

- 1 (3) development of large-scale, distributed, reli-
2 able computing systems;
- 3 (4) wired, wireless, and hybrid high-speed net-
4 working;
- 5 (5) development of software and software-inten-
6 sive systems;
- 7 (6) human-computer interaction and informa-
8 tion management technologies; and
- 9 (7) the social and economic implications of in-
10 formation technology.

11 **Subtitle C—Incentives for the Use**
12 **of Health Information Technology**

13 **PART I—GRANTS AND LOANS FUNDING**

14 **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**
15 **GRAMS.**

16 Title XXX of the Public Health Service Act, as added
17 by section 4101, is amended by adding at the end the fol-
18 lowing new subtitle:

19 **“Subtitle B—Incentives for the Use**
20 **of Health Information Technology**

21 **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**
22 **HEALTH INFORMATION TECHNOLOGY INFRA-**
23 **STRUCTURE.**

24 “(a) IN GENERAL.—The Secretary of Health and
25 Human Services shall, using amounts appropriated under

1 section 3018, invest in the infrastructure necessary to
2 allow for and promote the electronic exchange and use of
3 health information for each individual in the United States
4 consistent with the goals outlined in the strategic plan de-
5 veloped by the National Coordinator (and as available)
6 under section 3001. To the greatest extent practicable, the
7 Secretary shall ensure that any funds so appropriated
8 shall be used for the acquisition of health information
9 technology that meets standards and certification criteria
10 adopted before the date of the enactment of this title until
11 such date as the standards are adopted under section
12 3004. The Secretary shall invest funds through the dif-
13 ferent agencies with expertise in such goals, such as the
14 Office of the National Coordinator for Health Information
15 Technology, the Health Resources and Services Adminis-
16 tration, the Agency for Healthcare Research and Quality,
17 the Centers of Medicare & Medicaid Services, the Centers
18 for Disease Control and Prevention, and the Indian
19 Health Service to support the following:

20 “(1) Health information technology architecture
21 that will support the nationwide electronic exchange
22 and use of health information in a secure, private,
23 and accurate manner, including connecting health
24 information exchanges, and which may include up-
25 dating and implementing the infrastructure nec-

1 essary within different agencies of the Department
2 of Health and Human Services to support the elec-
3 tronic use and exchange of health information.

4 “(2) Development and adoption of appropriate
5 certified electronic health records for categories of
6 providers not eligible for support under title XVIII
7 or XIX of the Social Security Act for the adoption
8 of such records.

9 “(3) Training on and dissemination of informa-
10 tion on best practices to integrate health information
11 technology, including electronic health records, into
12 a provider’s delivery of care, consistent with best
13 practices learned from the Health Information Tech-
14 nology Research Center developed under section 302,
15 including community health centers receiving assist-
16 ance under section 330 of the Public Health Service
17 Act, covered entities under section 340B of such
18 Act, and providers participating in one or more of
19 the programs under titles XVIII, XIX, and XXI of
20 the Social Security Act (relating to Medicare, Med-
21 icaid, and the State Children’s Health Insurance
22 Program).

23 “(4) Infrastructure and tools for the promotion
24 of telemedicine, including coordination among Fed-
25 eral agencies in the promotion of telemedicine.

1 information, the Secretary, acting through the Office of
2 the National Coordinator, shall establish a health informa-
3 tion technology extension program to provide health infor-
4 mation technology assistance services to be carried out
5 through the Department of Health and Human Services.
6 The National Coordinator shall consult with other Federal
7 agencies with demonstrated experience and expertise in in-
8 formation technology services, such as the National Insti-
9 tute of Standards and Technology, in developing and im-
10 plementing this program.

11 “(b) HEALTH INFORMATION TECHNOLOGY RE-
12 SEARCH CENTER.—

13 “(1) IN GENERAL.—The Secretary shall create
14 a Health Information Technology Research Center
15 (in this section referred to as the ‘Center’) to pro-
16 vide technical assistance and develop or recognize
17 best practices to support and accelerate efforts to
18 adopt, implement, and effectively utilize health infor-
19 mation technology that allows for the electronic ex-
20 change and use of information in compliance with
21 standards, implementation specifications, and certifi-
22 cation criteria adopted under section 3004(b).

23 “(2) INPUT.—The Center shall incorporate
24 input from—

1 “(A) other Federal agencies with dem-
2 onstrated experience and expertise in informa-
3 tion technology services such as the National
4 Institute of Standards and Technology;

5 “(B) users of health information tech-
6 nology, such as providers and their support and
7 clerical staff and others involved in the care and
8 care coordination of patients, from the health
9 care and health information technology indus-
10 try; and

11 “(C) others as appropriate.

12 “(3) PURPOSES.—The purposes of the Center
13 are to—

14 “(A) provide a forum for the exchange of
15 knowledge and experience;

16 “(B) accelerate the transfer of lessons
17 learned from existing public and private sector
18 initiatives, including those currently receiving
19 Federal financial support;

20 “(C) assemble, analyze, and widely dis-
21 seminate evidence and experience related to the
22 adoption, implementation, and effective use of
23 health information technology that allows for
24 the electronic exchange and use of information

1 including through the regional centers described
2 in subsection (c);

3 “(D) provide technical assistance for the
4 establishment and evaluation of regional and
5 local health information networks to facilitate
6 the electronic exchange of information across
7 health care settings and improve the quality of
8 health care;

9 “(E) provide technical assistance for the
10 development and dissemination of solutions to
11 barriers to the exchange of electronic health in-
12 formation; and

13 “(F) learn about effective strategies to
14 adopt and utilize health information technology
15 in medically underserved communities.

16 “(c) HEALTH INFORMATION TECHNOLOGY RE-
17 GIONAL EXTENSION CENTERS.—

18 “(1) IN GENERAL.—The Secretary shall provide
19 assistance for the creation and support of regional
20 centers (in this subsection referred to as ‘regional
21 centers’) to provide technical assistance and dissemi-
22 nate best practices and other information learned
23 from the Center to support and accelerate efforts to
24 adopt, implement, and effectively utilize health infor-
25 mation technology that allows for the electronic ex-

1 change and use of information in compliance with
2 standards, implementation specifications, and certifi-
3 cation criteria adopted under section 3004. Activities
4 conducted under this subsection shall be consistent
5 with the strategic plan developed by the National
6 Coordinator, (and, as available) under section 3001.

7 “(2) AFFILIATION.—Regional centers shall be
8 affiliated with any US-based nonprofit institution or
9 organization, or group thereof, that applies and is
10 awarded financial assistance under this section. Indi-
11 vidual awards shall be decided on the basis of merit.

12 “(3) OBJECTIVE.—The objective of the regional
13 centers is to enhance and promote the adoption of
14 health information technology through—

15 “(A) assistance with the implementation,
16 effective use, upgrading, and ongoing mainte-
17 nance of health information technology, includ-
18 ing electronic health records, to healthcare pro-
19 viders nationwide;

20 “(B) broad participation of individuals
21 from industry, universities, and State govern-
22 ments;

23 “(C) active dissemination of best practices
24 and research on the implementation, effective
25 use, upgrading, and ongoing maintenance of

1 health information technology, including elec-
2 tronic health records, to health care providers
3 in order to improve the quality of healthcare
4 and protect the privacy and security of health
5 information;

6 “(D) participation, to the extent prac-
7 ticable, in health information exchanges; and

8 “(E) utilization, when appropriate, of the
9 expertise and capability that exists in federal
10 agencies other than the Department; and

11 “(F) integration of health information
12 technology, including electronic health records,
13 into the initial and ongoing training of health
14 professionals and others in the healthcare in-
15 dustry that would be instrumental to improving
16 the quality of healthcare through the smooth
17 and accurate electronic use and exchange of
18 health information.

19 “(4) REGIONAL ASSISTANCE.—Each regional
20 center shall aim to provide assistance and education
21 to all providers in a region, but shall prioritize any
22 direct assistance first to the following:

23 “(A) Public or not-for-profit hospitals or
24 critical access hospitals.

1 “(B) Federally qualified health centers (as
2 defined in section 1861(aa)(4) of the Social Se-
3 curity Act).

4 “(C) Entities that are located in rural and
5 other areas that serve uninsured, underinsured,
6 and medically underserved individuals (regard-
7 less of whether such area is urban or rural).

8 “(D) Individual or small group practices
9 (or a consortium thereof) that are primarily fo-
10 cused on primary care.

11 “(5) FINANCIAL SUPPORT.—The Secretary may
12 provide financial support to any regional center cre-
13 ated under this subsection for a period not to exceed
14 four years. The Secretary may not provide more
15 than 50 percent of the capital and annual operating
16 and maintenance funds required to create and main-
17 tain such a center, except in an instance of national
18 economic conditions which would render this cost-
19 share requirement detrimental to the program and
20 upon notification to Congress as to the justification
21 to waive the cost-share requirement.

22 “(6) NOTICE OF PROGRAM DESCRIPTION AND
23 AVAILABILITY OF FUNDS.—The Secretary shall pub-
24 lish in the Federal Register, not later than 90 days
25 after the date of the enactment of this Act, a draft

1 description of the program for establishing regional
2 centers under this subsection. Such description shall
3 include the following:

4 “(A) A detailed explanation of the program
5 and the programs goals.

6 “(B) Procedures to be followed by the ap-
7 plicants.

8 “(C) Criteria for determining qualified ap-
9 plicants.

10 “(D) Maximum support levels expected to
11 be available to centers under the program.

12 “(7) APPLICATION REVIEW.—The Secretary
13 shall subject each application under this subsection
14 to merit review. In making a decision whether to ap-
15 prove such application and provide financial support,
16 the Secretary shall consider at a minimum the mer-
17 its of the application, including those portions of the
18 application regarding—

19 “(A) the ability of the applicant to provide
20 assistance under this subsection and utilization
21 of health information technology appropriate to
22 the needs of particular categories of health care
23 providers;

24 “(B) the types of service to be provided to
25 health care providers;

1 “(C) geographical diversity and extent of
2 service area; and

3 “(D) the percentage of funding and
4 amount of in-kind commitment from other
5 sources.

6 “(8) BIENNIAL EVALUATION.—Each regional
7 center which receives financial assistance under this
8 subsection shall be evaluated biennially by an evalua-
9 tion panel appointed by the Secretary. Each evalua-
10 tion panel shall be composed of private experts, none
11 of whom shall be connected with the center involved,
12 and of Federal officials. Each evaluation panel shall
13 measure the involved center’s performance against
14 the objective specified in paragraph (3). The Sec-
15 retary shall not continue to provide funding to a re-
16 gional center unless its evaluation is overall positive.

17 “(9) CONTINUING SUPPORT.—After the second
18 year of assistance under this subsection a regional
19 center may receive additional support under this
20 subsection if it has received positive evaluations and
21 a finding by the Secretary that continuation of Fed-
22 eral funding to the center was in the best interest
23 of provision of health information technology exten-
24 sion services.

1 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**
2 **MATION TECHNOLOGY.**

3 “(a) IN GENERAL.—The Secretary, acting through
4 the National Coordinator, shall establish a program in ac-
5 cordance with this section to facilitate and expand the
6 electronic movement and use of health information among
7 organizations according to nationally recognized stand-
8 ards.

9 “(b) PLANNING GRANTS.—The Secretary may award
10 a grant to a State or qualified State-designated entity (as
11 described in subsection (d)) that submits an application
12 to the Secretary at such time, in such manner, and con-
13 taining such information as the Secretary may specify, for
14 the purpose of planning activities described in subsection
15 (b).

16 “(c) IMPLEMENTATION GRANTS.—The Secretary
17 may award a grant to a State or qualified State designated
18 entity that—

19 “(1) has submitted, and the Secretary has ap-
20 proved, a plan described in subsection (c) (regardless
21 of whether such plan was prepared using amounts
22 awarded under paragraph (1)); and

23 “(2) submits an application at such time, in
24 such manner, and containing such information as
25 the Secretary may specify.

1 “(d) USE OF FUNDS.—Amounts received under a
2 grant under subsection (a)(3) shall be used to conduct ac-
3 tivities to facilitate and expand the electronic movement
4 and use of health information among organizations ac-
5 cording to nationally recognized standards through activi-
6 ties that include—

7 “(1) enhancing broad and varied participation
8 in the authorized and secure nationwide electronic
9 use and exchange of health information;

10 “(2) identifying State or local resources avail-
11 able towards a nationwide effort to promote health
12 information technology;

13 “(3) complementing other Federal grants, pro-
14 grams, and efforts towards the promotion of health
15 information technology;

16 “(4) providing technical assistance for the de-
17 velopment and dissemination of solutions to barriers
18 to the exchange of electronic health information;

19 “(5) promoting effective strategies to adopt and
20 utilize health information technology in medically
21 underserved communities;

22 “(6) assisting patients in utilizing health infor-
23 mation technology;

24 “(7) encouraging clinicians to work with Health
25 Information Technology Regional Extension Centers

1 as described in section 3012, to the extent they are
2 available and valuable;

3 “(8) supporting public health agencies’ author-
4 ized use of and access to electronic health informa-
5 tion;

6 “(9) promoting the use of electronic health
7 records for quality improvement including through
8 quality measures reporting; and

9 “(10) such other activities as the Secretary may
10 specify.

11 “(e) PLAN.—

12 “(1) IN GENERAL.—A plan described in this
13 subsection is a plan that describes the activities to
14 be carried out by a State or by the qualified State-
15 designated entity within such State to facilitate and
16 expand the electronic movement and use of health
17 information among organizations according to na-
18 tionally recognized standards and implementation
19 specifications.

20 “(2) REQUIRED ELEMENTS.—A plan described
21 in paragraph (1) shall—

22 “(A) be pursued in the public interest;

23 “(B) be consistent with the strategic plan
24 developed by the National Coordinator, (and, as
25 available) under section 3001;

1 “(C) include a description of the ways the
2 State or qualified State-designated entity will
3 carry out the activities described in subsection
4 (b); and

5 “(D) contain such elements as the Sec-
6 retary may require.

7 “(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
8 purposes of this section, to be a qualified State-designated
9 entity, with respect to a State, an entity shall—

10 “(1) be designated by the State as eligible to
11 receive awards under this section;

12 “(2) be a not-for-profit entity with broad stake-
13 holder representation on its governing board;

14 “(3) demonstrate that one of its principal goals
15 is to use information technology to improve health
16 care quality and efficiency through the authorized
17 and secure electronic exchange and use of health in-
18 formation;

19 “(4) adopt nondiscrimination and conflict of in-
20 terest policies that demonstrate a commitment to
21 open, fair, and nondiscriminatory participation by
22 stakeholders; and

23 “(5) conform to such other requirements as the
24 Secretary may establish.

1 “(g) REQUIRED CONSULTATION.—In carrying out
2 activities described in subsections (a)(2) and (a)(3), a
3 State or qualified State-designated entity shall consult
4 with and consider the recommendations of—

5 “(1) health care providers (including providers
6 that provide services to low income and underserved
7 populations);

8 “(2) health plans;

9 “(3) patient or consumer organizations that
10 represent the population to be served;

11 “(4) health information technology vendors;

12 “(5) health care purchasers and employers;

13 “(6) public health agencies;

14 “(7) health professions schools, universities and
15 colleges;

16 “(8) clinical researchers;

17 “(9) other users of health information tech-
18 nology such as the support and clerical staff of pro-
19 viders and others involved in the care and care co-
20 ordination of patients; and

21 “(10) such other entities, as may be determined
22 appropriate by the Secretary.

23 “(h) CONTINUOUS IMPROVEMENT.—The Secretary
24 shall annually evaluate the activities conducted under this
25 section and shall, in awarding grants under this section,

1 implement the lessons learned from such evaluation in a
2 manner so that awards made subsequent to each such
3 evaluation are made in a manner that, in the determina-
4 tion of the Secretary, will lead towards the greatest im-
5 provement in quality of care, decrease in costs, and the
6 most effective authorized and secure electronic exchange
7 of health information.

8 “(i) REQUIRED MATCH.—

9 “(1) IN GENERAL.—For a fiscal year (begin-
10 ning with fiscal year 2011), the Secretary may not
11 make a grant under subsection (a) to a State unless
12 the State agrees to make available non-Federal con-
13 tributions (which may include in-kind contributions)
14 toward the costs of a grant awarded under sub-
15 section (a)(3) in an amount equal to—

16 “(A) for fiscal year 2011, not less than \$1
17 for each \$10 of Federal funds provided under
18 the grant;

19 “(B) for fiscal year 2012, not less than \$1
20 for each \$7 of Federal funds provided under
21 the grant; and

22 “(C) for fiscal year 2013 and each subse-
23 quent fiscal year, not less than \$1 for each \$3
24 of Federal funds provided under the grant.

1 “(2) AUTHORITY TO REQUIRE STATE MATCH
2 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
3 any fiscal year during the grant program under this
4 section before fiscal year 2011, the Secretary may
5 determine the extent to which there shall be required
6 a non-Federal contribution from a State receiving a
7 grant under this section.

8 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
9 **TRIBES FOR THE DEVELOPMENT OF LOAN**
10 **PROGRAMS TO FACILITATE THE WIDE-**
11 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**
12 **NOLOGY.**

13 “(a) IN GENERAL.—The National Coordinator may
14 award competitive grants to eligible entities for the estab-
15 lishment of programs for loans to health care providers
16 to conduct the activities described in subsection (e).

17 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of
18 this subsection, the term ‘eligible entity’ means a State
19 or Indian tribe (as defined in the Indian Self-Determina-
20 tion and Education Assistance Act) that—

21 “(1) submits to the National Coordinator an
22 application at such time, in such manner, and con-
23 taining such information as the National Coordi-
24 nator may require;

1 “(2) submits to the National Coordinator a
2 strategic plan in accordance with subsection (d) and
3 provides to the National Coordinator assurances that
4 the entity will update such plan annually in accord-
5 ance with such subsection;

6 “(3) provides assurances to the National Coor-
7 dinator that the entity will establish a Loan Fund
8 in accordance with subsection (c);

9 “(4) provides assurances to the National Coor-
10 dinator that the entity will not provide a loan from
11 the Loan Fund to a health care provider unless the
12 provider agrees to—

13 “(A) submit reports on quality measures
14 adopted by the Federal Government (by not
15 later than 90 days after the date on which such
16 measures are adopted), to—

17 “(i) the Director of the Centers for
18 Medicare & Medicaid Services (or his or
19 her designee), in the case of an entity par-
20 ticipating in the Medicare program under
21 title XVIII of the Social Security Act or
22 the Medicaid program under title XIX of
23 such Act; or

24 “(ii) the Secretary in the case of other
25 entities;

1 “(B) demonstrate to the satisfaction of the
2 Secretary (through criteria established by the
3 Secretary) that any certified EHR technology
4 purchased, improved, or otherwise financially
5 supported under a loan under this section is
6 used to exchange health information in a man-
7 ner that, in accordance with law and standards
8 (as adopted under section 3005) applicable to
9 the exchange of information, improves the qual-
10 ity of health care, such as promoting care co-
11 ordination; and

12 “(C) comply with such other requirements
13 as the entity or the Secretary may require;

14 “(D) include a plan on how health care
15 providers involved intend to maintain and sup-
16 port the certified EHR technology over time;

17 “(E) include a plan on how the health care
18 providers involved intend to maintain and sup-
19 port the certified EHR technology that would
20 be purchased with such loan, including the type
21 of resources expected to be involved and any
22 such other information as the State or Indian
23 Tribe, respectively, may require; and

24 “(5) agrees to provide matching funds in ac-
25 cordance with subsection (i).

1 “(c) ESTABLISHMENT OF FUND.—For purposes of
2 subsection (b)(3), an eligible entity shall establish a cer-
3 tified EHR technology loan fund (referred to in this sub-
4 section as a ‘Loan Fund’) and comply with the other re-
5 quirements contained in this section. A grant to an eligible
6 entity under this section shall be deposited in the Loan
7 Fund established by the eligible entity. No funds author-
8 ized by other provisions of this title to be used for other
9 purposes specified in this title shall be deposited in any
10 Loan Fund.

11 “(d) STRATEGIC PLAN.—

12 “(1) IN GENERAL.—For purposes of subsection
13 (b)(2), a strategic plan of an eligible entity under
14 this subsection shall identify the intended uses of
15 amounts available to the Loan Fund of such entity.

16 “(2) CONTENTS.—A strategic plan under para-
17 graph (1), with respect to a Loan Fund of an eligi-
18 ble entity, shall include for a year the following:

19 “(A) A list of the projects to be assisted
20 through the Loan Fund during such year.

21 “(B) A description of the criteria and
22 methods established for the distribution of
23 funds from the Loan Fund during the year.

1 “(C) A description of the financial status
2 of the Loan Fund as of the date of submission
3 of the plan.

4 “(D) The short-term and long-term goals
5 of the Loan Fund.

6 “(e) USE OF FUNDS.—Amounts deposited in a Loan
7 Fund, including loan repayments and interest earned on
8 such amounts, shall be used only for awarding loans or
9 loan guarantees, making reimbursements described in sub-
10 section (g)(4)(A), or as a source of reserve and security
11 for leveraged loans, the proceeds of which are deposited
12 in the Loan Fund established under subsection (a). Loans
13 under this section may be used by a health care provider
14 to—

15 “(1) facilitate the purchase of certified EHR
16 technology;

17 “(2) enhance the utilization of certified EHR
18 technology;

19 “(3) train personnel in the use of such tech-
20 nology; or

21 “(4) improve the secure electronic exchange of
22 health information.

23 “(f) TYPES OF ASSISTANCE.—Except as otherwise
24 limited by applicable State law, amounts deposited into a

1 Loan Fund under this subsection may only be used for
2 the following:

3 “(1) To award loans that comply with the fol-
4 lowing:

5 “(A) The interest rate for each loan shall
6 not exceed the market interest rate.

7 “(B) The principal and interest payments
8 on each loan shall commence not later than 1
9 year after the date the loan was awarded, and
10 each loan shall be fully amortized not later than
11 10 years after the date of the loan.

12 “(C) The Loan Fund shall be credited with
13 all payments of principal and interest on each
14 loan awarded from the Loan Fund.

15 “(2) To guarantee, or purchase insurance for,
16 a local obligation (all of the proceeds of which fi-
17 nance a project eligible for assistance under this
18 subsection) if the guarantee or purchase would im-
19 prove credit market access or reduce the interest
20 rate applicable to the obligation involved.

21 “(3) As a source of revenue or security for the
22 payment of principal and interest on revenue or gen-
23 eral obligation bonds issued by the eligible entity if
24 the proceeds of the sale of the bonds will be depos-
25 ited into the Loan Fund.

1 “(4) To earn interest on the amounts deposited
2 into the Loan Fund.

3 “(5) To make reimbursements described in sub-
4 section (g)(4)(A).

5 “(g) ADMINISTRATION OF LOAN FUNDS.—

6 “(1) COMBINED FINANCIAL ADMINISTRATION.—

7 An eligible entity may (as a convenience and to
8 avoid unnecessary administrative costs) combine, in
9 accordance with applicable State law, the financial
10 administration of a Loan Fund established under
11 this subsection with the financial administration of
12 any other revolving fund established by the entity if
13 otherwise not prohibited by the law under which the
14 Loan Fund was established.

15 “(2) COST OF ADMINISTERING FUND.—Each el-
16 igible entity may annually use not to exceed 4 per-
17 cent of the funds provided to the entity under a
18 grant under this subsection to pay the reasonable
19 costs of the administration of the programs under
20 this section, including the recovery of reasonable
21 costs expended to establish a Loan Fund which are
22 incurred after the date of the enactment of this title.

23 “(3) GUIDANCE AND REGULATIONS.—The Na-
24 tional Coordinator shall publish guidance and pro-

1 mulgate regulations as may be necessary to carry
2 out the provisions of this section, including—

3 “(A) provisions to ensure that each eligible
4 entity commits and expends funds allotted to
5 the entity under this subsection as efficiently as
6 possible in accordance with this title and appli-
7 cable State laws; and

8 “(B) guidance to prevent waste, fraud, and
9 abuse.

10 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

11 “(A) IN GENERAL.—A Loan Fund estab-
12 lished under this subsection may accept con-
13 tributions from private sector entities, except
14 that such entities may not specify the recipient
15 or recipients of any loan issued under this sub-
16 section. An eligible entity may agree to reim-
17 burse a private sector entity for any contribu-
18 tion made under this subparagraph, except that
19 the amount of such reimbursement may not be
20 greater than the principal amount of the con-
21 tribution made.

22 “(B) AVAILABILITY OF INFORMATION.—
23 An eligible entity shall make publicly available
24 the identity of, and amount contributed by, any
25 private sector entity under subparagraph (A)

1 and may issue letters of commendation or make
2 other awards (that have no financial value) to
3 any such entity.

4 “(h) MATCHING REQUIREMENTS.—

5 “(1) IN GENERAL.—The National Coordinator
6 may not make a grant under subsection (a) to an el-
7 igible entity unless the entity agrees to make avail-
8 able (directly or through donations from public or
9 private entities) non-Federal contributions in cash to
10 the costs of carrying out the activities for which the
11 grant is awarded in an amount equal to not less
12 than \$1 for each \$5 of Federal funds provided under
13 the grant.

14 “(2) DETERMINATION OF AMOUNT OF NON-
15 FEDERAL CONTRIBUTION.—In determining the
16 amount of non-Federal contributions that an eligible
17 entity has provided pursuant to subparagraph (A),
18 the National Coordinator may not include any
19 amounts provided to the entity by the Federal Gov-
20 ernment.

21 “(i) EFFECTIVE DATE.—The Secretary may not
22 make an award under this section prior to January 1,
23 2010.

1 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
2 **FORMATION TECHNOLOGY INTO CLINICAL**
3 **EDUCATION.**

4 “(a) IN GENERAL.—The Secretary may award grants
5 under this section to carry out demonstration projects to
6 develop academic curricula integrating certified EHR
7 technology in the clinical education of health professionals.
8 Such awards shall be made on a competitive basis and
9 pursuant to peer review.

10 “(b) ELIGIBILITY.—To be eligible to receive a grant
11 under subsection (a), an entity shall—

12 “(1) submit to the Secretary an application at
13 such time, in such manner, and containing such in-
14 formation as the Secretary may require;

15 “(2) submit to the Secretary a strategic plan
16 for integrating certified EHR technology in the clin-
17 ical education of health professionals to reduce med-
18 ical errors and enhance health care quality;

19 “(3) be—

20 “(A) a school of medicine, osteopathic
21 medicine, dentistry, or pharmacy, a graduate
22 program in behavioral or mental health, or any
23 other graduate health professions school;

24 “(B) a graduate school of nursing or phy-
25 sician assistant studies;

1 “(C) a consortium of two or more schools
2 described in subparagraph (A) or (B); or

3 “(D) an institution with a graduate med-
4 ical education program in medicine, osteopathic
5 medicine, dentistry, pharmacy, nursing, or phy-
6 sician assistance studies.

7 “(4) provide for the collection of data regarding
8 the effectiveness of the demonstration project to be
9 funded under the grant in improving the safety of
10 patients, the efficiency of health care delivery, and
11 in increasing the likelihood that graduates of the
12 grantee will adopt and incorporate certified EHR
13 technology, in the delivery of health care services;
14 and

15 “(5) provide matching funds in accordance with
16 subsection (d).

17 “(c) USE OF FUNDS.—

18 “(1) IN GENERAL.—With respect to a grant
19 under subsection (a), an eligible entity shall—

20 “(A) use grant funds in collaboration with
21 2 or more disciplines; and

22 “(B) use grant funds to integrate certified
23 EHR technology into community-based clinical
24 education.

1 “(2) LIMITATION.—An eligible entity shall not
2 use amounts received under a grant under sub-
3 section (a) to purchase hardware, software, or serv-
4 ices.

5 “(d) FINANCIAL SUPPORT.—The Secretary may not
6 provide more than 50 percent of the costs of any activity
7 for which assistance is provided under subsection (a), ex-
8 cept in an instance of national economic conditions which
9 would render the cost-share requirement under this sub-
10 section detrimental to the program and upon notification
11 to Congress as to the justification to waive the cost-share
12 requirement.

13 “(e) EVALUATION.—The Secretary shall take such
14 action as may be necessary to evaluate the projects funded
15 under this section and publish, make available, and dis-
16 seminate the results of such evaluations on as wide a basis
17 as is practicable.

18 “(f) REPORTS.—Not later than 1 year after the date
19 of enactment of this title, and annually thereafter, the Sec-
20 retary shall submit to the Committee on Health, Edu-
21 cation, Labor, and Pensions and the Committee on Fi-
22 nance of the Senate, and the Committee on Energy and
23 Commerce of the House of Representatives a report
24 that—

1 “(1) describes the specific projects established
2 under this section; and

3 “(2) contains recommendations for Congress
4 based on the evaluation conducted under subsection
5 (e).

6 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
7 **ON HEALTH CARE.**

8 “(a) IN GENERAL.—The Secretary, in consultation
9 with the Director of the National Science Foundation,
10 shall provide assistance to institutions of higher education
11 (or consortia thereof) to establish or expand medical
12 health informatics education programs, including certifi-
13 cation, undergraduate, and masters degree programs, for
14 both health care and information technology students to
15 ensure the rapid and effective utilization and development
16 of health information technologies (in the United States
17 health care infrastructure).

18 “(b) ACTIVITIES.—Activities for which assistance
19 may be provided under subsection (a) may include the fol-
20 lowing:

21 “(1) Developing and revising curricula in med-
22 ical health informatics and related disciplines.

23 “(2) Recruiting and retaining students to the
24 program involved.

1 “(3) Acquiring equipment necessary for student
2 instruction in these programs, including the installa-
3 tion of testbed networks for student use.

4 “(4) Establishing or enhancing bridge programs
5 in the health informatics fields between community
6 colleges and universities.

7 “(c) PRIORITY.—In providing assistance under sub-
8 section (a), the Secretary shall give preference to the fol-
9 lowing:

10 “(1) Existing education and training programs.

11 “(2) Programs designed to be completed in less
12 than six months.

13 “(d) FINANCIAL SUPPORT.—The Secretary may not
14 provide more than 50 percent of the costs of any activity
15 for which assistance is provided under subsection (a), ex-
16 cept in an instance of national economic conditions which
17 would render the cost-share requirement under this sub-
18 section detrimental to the program and upon notification
19 to Congress as to the justification to waive the cost-share
20 requirement.

21 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

22 “(a) REPORTS.—The Secretary may require that an
23 entity receiving assistance under this title shall submit to
24 the Secretary, not later than the date that is 1 year after

1 the date of receipt of such assistance, a report that in-
2 cludes—

3 “(1) an analysis of the effectiveness of the ac-
4 tivities for which the entity receives such assistance,
5 as compared to the goals for such activities; and

6 “(2) an analysis of the impact of the project on
7 health care quality and safety.

8 “(b) REQUIREMENT TO IMPROVE QUALITY OF CARE
9 AND DECREASE IN COSTS.—The National Coordinator
10 shall annually evaluate the activities conducted under this
11 title and shall, in awarding grants, implement the lessons
12 learned from such evaluation in a manner so that awards
13 made subsequent to each such evaluation are made in a
14 manner that, in the determination of the National Coordi-
15 nator, will result in the greatest improvement in the qual-
16 ity and efficiency of health care.

17 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

18 “For the purposes of carrying out this subtitle, there
19 is authorized to be appropriated such sums as may be nec-
20 essary for each of the fiscal years 2009 through 2013.
21 Amounts so appropriated shall remain available until ex-
22 pended.”.

1 **PART II—MEDICARE PROGRAM**

2 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

3 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
4 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
5 ing at the end the following new subsection:

6 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
7 USE OF CERTIFIED EHR TECHNOLOGY.—

8 “(1) INCENTIVE PAYMENTS.—

9 “(A) IN GENERAL.—Subject to the suc-
10 ceeding subparagraphs of this paragraph, with
11 respect to covered professional services fur-
12 nished by an eligible professional during a pay-
13 ment year (as defined in subparagraph (E)), if
14 the eligible professional is a meaningful EHR
15 user (as determined under paragraph (2)) for
16 the reporting period with respect to such year,
17 in addition to the amount otherwise paid under
18 this part, there also shall be paid to the eligible
19 professional (or to an employer or facility in the
20 cases described in clause (A) of section
21 1842(b)(6)), from the Federal Supplementary
22 Medical Insurance Trust Fund established
23 under section 1841 an amount equal to 75 per-
24 cent of the Secretary’s estimate (based on
25 claims submitted not later than 2 months after
26 the end of the payment year) of the allowed

1 charges under this part for all such covered
2 professional services furnished by the eligible
3 professional during such year.

4 “(B) LIMITATIONS ON AMOUNTS OF IN-
5 CENTIVE PAYMENTS.—

6 “(i) IN GENERAL.—In no case shall
7 the amount of the incentive payment pro-
8 vided under this paragraph for an eligible
9 professional for a payment year exceed the
10 applicable amount specified under this sub-
11 paragraph with respect to such eligible
12 professional and such year.

13 “(ii) AMOUNT.—Subject to clause
14 (iii), the applicable amount specified in this
15 subparagraph for an eligible professional is
16 as follows:

17 “(I) For the first payment year
18 for such professional, \$15,000.

19 “(II) For the second payment
20 year for such professional, \$12,000.

21 “(III) For the third payment
22 year for such professional, \$8,000.

23 “(IV) For the fourth payment
24 year for such professional, \$4,000.

1 “(V) For the fifth payment year
2 for such professional, \$2,000.

3 “(VI) For any succeeding pay-
4 ment year for such professional, \$0.

5 “(iii) PHASE DOWN FOR ELIGIBLE
6 PROFESSIONALS FIRST ADOPTING EHR
7 AFTER 2013.—If the first payment year for
8 an eligible professional is after 2013, then
9 the amount specified in this subparagraph
10 for a payment year for such professional is
11 the same as the amount specified in clause
12 (ii) for such payment year for an eligible
13 professional whose first payment year is
14 2013. If the first payment year for an eli-
15 gible professional is after 2015 then the
16 applicable amount specified in this sub-
17 paragraph for such professional for such
18 year and any subsequent year shall be \$0.

19 “(C) NON-APPLICATION TO HOSPITAL-
20 BASED ELIGIBLE PROFESSIONALS.—

21 “(i) IN GENERAL.—No incentive pay-
22 ment may be made under this paragraph
23 in the case of a hospital-based eligible pro-
24 fessional.

1 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
2 FESSIONAL.—For purposes of clause (i),
3 the term ‘hospital-based eligible profes-
4 sional’ means, with respect to covered pro-
5 fessional services furnished by an eligible
6 professional during the reporting period for
7 a payment year, an eligible professional,
8 such as a pathologist, anesthesiologist, or
9 emergency physician, who furnishes sub-
10 stantially all of such services in a hospital
11 setting (whether inpatient or outpatient)
12 and through the use of the facilities and
13 equipment, including computer equipment,
14 of the hospital.

15 “(D) PAYMENT.—

16 “(i) FORM OF PAYMENT.—The pay-
17 ment under this paragraph may be in the
18 form of a single consolidated payment or
19 in the form of such periodic installments
20 as the Secretary may specify.

21 “(ii) COORDINATION OF APPLICATION
22 OF LIMITATION FOR PROFESSIONALS IN
23 DIFFERENT PRACTICES.—In the case of an
24 eligible professional furnishing covered pro-
25 fessional services in more than one practice

1 (as specified by the Secretary), the Sec-
2 retary shall establish rules to coordinate
3 the incentive payments, including the ap-
4 plication of the limitation on amounts of
5 such incentive payments under this para-
6 graph, among such practices.

7 “(iii) COORDINATION WITH MED-
8 ICAID.—The Secretary shall seek, to the
9 maximum extent practicable, to avoid du-
10 plicative requirements from Federal and
11 State Governments to demonstrate mean-
12 ingful use of certified EHR technology
13 under this title and title XIX. In doing so,
14 the Secretary may deem satisfaction of
15 State requirements for such meaningful
16 use for a payment year under title XIX to
17 be sufficient to qualify as meaningful use
18 under this subsection and subsection (a)(7)
19 and vice versa. The Secretary may also ad-
20 just the reporting periods under such title
21 and such subsections in order to carry out
22 this clause.

23 “(E) PAYMENT YEAR DEFINED.—

1 “(i) IN GENERAL.—For purposes of
2 this subsection, the term ‘payment year’
3 means a year beginning with 2011.

4 “(ii) FIRST, SECOND, ETC. PAYMENT
5 YEAR.—The term ‘first payment year’
6 means, with respect to covered professional
7 services furnished by an eligible profes-
8 sional, the first year for which an incentive
9 payment is made for such services under
10 this subsection. The terms ‘second pay-
11 ment year’, ‘third payment year’, ‘fourth
12 payment year’, and ‘fifth payment year’
13 mean, with respect to covered professional
14 services furnished by such eligible profes-
15 sional, each successive year immediately
16 following the first payment year for such
17 professional.

18 “(2) MEANINGFUL EHR USER.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), an eligible professional shall be
21 treated as a meaningful EHR user for a report-
22 ing period for a payment year (or, for purposes
23 of subsection (a)(7), for a reporting period
24 under such subsection for a year) if each of the
25 following requirements is met:

1 “(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible profes-
3 sional demonstrates to the satisfaction of
4 the Secretary, in accordance with subpara-
5 graph (C)(i), that during such period the
6 professional is using certified EHR tech-
7 nology in a meaningful manner, which
8 shall include the use of electronic pre-
9 scribing as determined to be appropriate
10 by the Secretary.

11 “(ii) INFORMATION EXCHANGE.—The
12 eligible professional demonstrates to the
13 satisfaction of the Secretary, in accordance
14 with subparagraph (C)(i), that during such
15 period such certified EHR technology is
16 connected in a manner that provides, in
17 accordance with law and standards appli-
18 cable to the exchange of information, for
19 the electronic exchange of health informa-
20 tion to improve the quality of health care,
21 such as promoting care coordination.

22 “(iii) REPORTING ON MEASURES
23 USING EHR.—Subject to subparagraph
24 (B)(ii) and using such certified EHR tech-
25 nology, the eligible professional submits in-

1 formation for such period, in a form and
2 manner specified by the Secretary, on such
3 clinical quality measures and such other
4 measures as selected by the Secretary
5 under subparagraph (B)(i).

6 The Secretary may provide for the use of alter-
7 native means for meeting the requirements of
8 clauses (i), (ii), and (iii) in the case of an eligi-
9 ble professional furnishing covered professional
10 services in a group practice (as defined by the
11 Secretary). The Secretary shall seek to improve
12 the use of electronic health records and health
13 care quality over time by requiring more strin-
14 gent measures of meaningful use selected under
15 this paragraph.

16 “(B) REPORTING ON MEASURES.—

17 “(i) SELECTION.—The Secretary shall
18 select measures for purposes of subpara-
19 graph (A)(iii) but only consistent with the
20 following:

21 “(I) The Secretary shall provide
22 preference to clinical quality measures
23 that have been endorsed by the entity
24 with a contract with the Secretary
25 under section 1890(a).

1 “(II) Prior to any measure being
2 selected under this subparagraph, the
3 Secretary shall publish in the Federal
4 Register such measure and provide for
5 a period of public comment on such
6 measure.

7 “(III) The Secretary shall, to the
8 extent practicable, select the same
9 measures for purposes of subpara-
10 graph (A)(iii) as are selected for qual-
11 ity purposes under title XIX.

12 “(ii) LIMITATION.—The Secretary
13 may not require the electronic reporting of
14 information on clinical quality measures
15 under subparagraph (A)(iii) unless the
16 Secretary has the capacity to accept the in-
17 formation electronically, which may be on
18 a pilot basis.

19 “(iii) COORDINATION OF REPORTING
20 OF INFORMATION.—In selecting such
21 measures, and in establishing the form and
22 manner for reporting measures under sub-
23 paragraph (A)(iii), the Secretary shall seek
24 to avoid redundant or duplicative reporting

1 otherwise required, including reporting
2 under subsection (k)(2)(C).

3 “(C) DEMONSTRATION OF MEANINGFUL
4 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
5 FORMATION EXCHANGE.—

6 “(i) IN GENERAL.—A professional
7 may satisfy the demonstration requirement
8 of clauses (i) and (ii) of subparagraph (A)
9 through means specified by the Secretary,
10 which may include—

11 “(I) an attestation;

12 “(II) the submission of claims
13 with appropriate coding (such as a
14 code indicating that a patient encoun-
15 ter was documented using certified
16 EHR technology);

17 “(III) a survey response;

18 “(IV) reporting under subpara-
19 graph (A)(iii); and

20 “(V) other means specified by the
21 Secretary.

22 “(ii) USE OF PART D DATA.—Not-
23 withstanding sections 1860D–15(d)(2)(B)
24 and 1860D–15(f)(2), the Secretary may
25 use data regarding drug claims submitted

1 for purposes of section 1860D–15 that are
2 necessary for purposes of subparagraph
3 (A).

4 “(3) APPLICATION.—

5 “(A) PHYSICIAN REPORTING SYSTEM
6 RULES.—Paragraphs (5), (6), and (8) of sub-
7 section (k) shall apply for purposes of this sub-
8 section in the same manner as they apply for
9 purposes of such subsection.

10 “(B) COORDINATION WITH OTHER PAY-
11 MENTS.—The provisions of this subsection shall
12 not be taken into account in applying the provi-
13 sions of subsection (m) of this section and of
14 section 1833(m) and any payment under such
15 provisions shall not be taken into account in
16 computing allowable charges under this sub-
17 section.

18 “(C) LIMITATIONS ON REVIEW.—There
19 shall be no administrative or judicial review
20 under section 1869, section 1878, or otherwise
21 of the determination of any incentive payment
22 under this subsection and the payment adjust-
23 ment under subsection (a)(7), including the de-
24 termination of a meaningful EHR user under
25 paragraph (2), a limitation under paragraph

1 (1)(B), and the exception under subsection
2 (a)(7)(B).

3 “(D) POSTING ON WEBSITE.—The Sec-
4 retary shall post on the Internet website of the
5 Centers for Medicare & Medicaid Services, in an
6 easily understandable format, a list of the
7 names, business addresses, and business phone
8 numbers of the eligible professionals who are
9 meaningful EHR users and, as determined ap-
10 propriate by the Secretary, of group practices
11 receiving incentive payments under paragraph
12 (1).

13 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
14 For purposes of this section, the term ‘certified
15 EHR technology’ means a qualified electronic health
16 record (as defined in 3000(13) of the Public Health
17 Service Act) that is certified pursuant to section
18 3001(c)(5) of such Act as meeting standards adopt-
19 ed under section 3004 of such Act that are applica-
20 ble to the type of record involved (as determined by
21 the Secretary, such as an ambulatory electronic
22 health record for office-based physicians or an inpa-
23 tient hospital electronic health record for hospitals).

24 “(5) DEFINITIONS.—For purposes of this sub-
25 section:

1 “(A) COVERED PROFESSIONAL SERV-
2 ICES.—The term ‘covered professional services’
3 has the meaning given such term in subsection
4 (k)(3).

5 “(B) ELIGIBLE PROFESSIONAL.—The term
6 ‘eligible professional’ means a physician, as de-
7 fined in section 1861(r).

8 “(C) REPORTING PERIOD.—The term ‘re-
9 porting period’ means any period (or periods),
10 with respect to a payment year, as specified by
11 the Secretary.”.

12 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
13 1848(a) of the Social Security Act (42 U.S.C. 1395w-
14 4(a)) is amended by adding at the end the following new
15 paragraph:

16 “(7) INCENTIVES FOR MEANINGFUL USE OF
17 CERTIFIED EHR TECHNOLOGY.—

18 “(A) ADJUSTMENT.—

19 “(i) IN GENERAL.—Subject to sub-
20 paragraphs (B) and (D), with respect to
21 covered professional services furnished by
22 an eligible professional during 2016 or any
23 subsequent payment year, if the eligible
24 professional is not a meaningful EHR user
25 (as determined under subsection (o)(2)) for

1 a reporting period for the year, the fee
2 schedule amount for such services fur-
3 nished by such professional during the year
4 (including the fee schedule amount for pur-
5 poses of determining a payment based on
6 such amount) shall be equal to the applica-
7 ble percent of the fee schedule amount that
8 would otherwise apply to such services
9 under this subsection (determined after ap-
10 plication of paragraph (3) but without re-
11 gard to this paragraph).

12 “(ii) APPLICABLE PERCENT.—Subject
13 to clause (iii), for purposes of clause (i),
14 the term ‘applicable percent’ means—

15 “(I) for 2016, 99 percent;

16 “(II) for 2017, 98 percent; and

17 “(III) for 2018 and each subse-
18 quent year, 97 percent.

19 “(iii) AUTHORITY TO DECREASE AP-
20 PPLICABLE PERCENTAGE FOR 2019 AND
21 SUBSEQUENT YEARS.—For 2019 and each
22 subsequent year, if the Secretary finds that
23 the proportion of eligible professionals who
24 are meaningful EHR users (as determined
25 under subsection (o)(2)) is less than 75

1 percent, the applicable percent shall be de-
2 creased by 1 percentage point from the ap-
3 plicable percent in the preceding year, but
4 in no case shall the applicable percent be
5 less than 95 percent.

6 “(B) SIGNIFICANT HARDSHIP EXCEP-
7 TION.—The Secretary may, on a case-by-case
8 basis, exempt an eligible professional from the
9 application of the payment adjustment under
10 subparagraph (A) if the Secretary determines,
11 subject to annual renewal, that compliance with
12 the requirement for being a meaningful EHR
13 user would result in a significant hardship, such
14 as in the case of an eligible professional who
15 practices in a rural area without sufficient
16 Internet access. In no case may an eligible pro-
17 fessional be granted an exemption under this
18 subparagraph for more than 5 years.

19 “(C) APPLICATION OF PHYSICIAN REPORT-
20 ING SYSTEM RULES.—Paragraphs (5), (6), and
21 (8) of subsection (k) shall apply for purposes of
22 this paragraph in the same manner as they
23 apply for purposes of such subsection.

24 “(D) NON-APPLICATION TO HOSPITAL-
25 BASED ELIGIBLE PROFESSIONALS.—No pay-

1 ment adjustment may be made under subpara-
2 graph (A) in the case of hospital-based eligible
3 professionals (as defined in subsection
4 (o)(1)(C)(ii)).

5 “(E) DEFINITIONS.—For purposes of this
6 paragraph:

7 “(i) COVERED PROFESSIONAL SERV-
8 ICES.—The term ‘covered professional
9 services’ has the meaning given such term
10 in subsection (k)(3).

11 “(ii) ELIGIBLE PROFESSIONAL.—The
12 term ‘eligible professional’ means a physi-
13 cian, as defined in section 1861(r).

14 “(iii) REPORTING PERIOD.—The term
15 ‘reporting period’ means, with respect to a
16 year, a period specified by the Secretary.”.

17 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
18 ELIGIBLE PROFESSIONALS.—Section 1853 of the Social
19 Security Act (42 U.S.C. 1395w–23) is amended by adding
20 at the end the following new subsection:

21 “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
22 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
23 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
24 NOLOGY.—

1 “(1) IN GENERAL.—Subject to paragraphs (3)
2 and (4), in the case of a qualifying MA organization,
3 the provisions of sections 1848(o) and 1848(a)(7)
4 shall apply with respect to eligible professionals de-
5 scribed in paragraph (2) of the organization who the
6 organization attests under paragraph (6) to be
7 meaningful EHR users in a similar manner as they
8 apply to eligible professionals under such sections.
9 Incentive payments under paragraph (3) shall be
10 made to and payment adjustments under paragraph
11 (4) shall apply to such qualifying organizations.

12 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
13 With respect to a qualifying MA organization, an eli-
14 gible professional described in this paragraph is an
15 eligible professional (as defined for purposes of sec-
16 tion 1848(o)) who—

17 “(A)(i) is employed by the organization, or

18 “(ii)(I) is employed by, or is a partner of,
19 an entity that through contract with the organi-
20 zation furnishes at least 80 percent of the enti-
21 ty’s patient care services to enrollees of such or-
22 ganization; and

23 “(II) furnishes at least 75 percent of the
24 professional services of the eligible professional
25 to enrollees of the organization; and

1 “(B) furnishes, on average, at least 20
2 hours per week of patient care services.

3 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
4 MENTS.—

5 “(A) IN GENERAL.—In applying section
6 1848(o) under paragraph (1), instead of the ad-
7 ditional payment amount under section
8 1848(o)(1)(A) and subject to subparagraph
9 (B), the Secretary may substitute an amount
10 determined by the Secretary to the extent fea-
11 sible and practical to be similar to the esti-
12 mated amount in the aggregate that would be
13 payable if payment for services furnished by
14 such professionals was payable under part B in-
15 stead of this part.

16 “(B) AVOIDING DUPLICATION OF PAY-
17 MENTS.—

18 “(i) IN GENERAL.—If an individual is
19 an eligible professional described in para-
20 graph (2) and also is eligible for the max-
21 imum incentive payment under section
22 1848(o)(1)(A) for the same payment pe-
23 riod, the payment incentive shall be made
24 only under such section and not under this
25 subsection.

1 “(ii) METHODS.—In the case of an in-
2 dividual who is an eligible professional de-
3 scribed in paragraph (2) and also is eligi-
4 ble for an incentive payment under section
5 1848(o)(1)(A) but is not described in
6 clause (i) for the same payment period, the
7 Secretary shall develop a process—

8 “(I) to ensure that duplicate pay-
9 ments are not made with respect to
10 an eligible professional both under
11 this subsection and under section
12 1848(o)(1)(A); and

13 “(II) to collect data from Medi-
14 care Advantage organizations to en-
15 sure against such duplicate payments.

16 “(C) FIXED SCHEDULE FOR APPLICATION
17 OF LIMITATION ON INCENTIVE PAYMENTS FOR
18 ALL ELIGIBLE PROFESSIONALS.—In applying
19 section 1848(o)(1)(B)(ii) under subparagraph
20 (A), in accordance with rules specified by the
21 Secretary, a qualifying MA organization shall
22 specify a year (not earlier than 2011) that shall
23 be treated as the first payment year for all eli-
24 gible professionals with respect to such organi-
25 zation.

1 “(4) PAYMENT ADJUSTMENT.—

2 “(A) IN GENERAL.—In applying section
3 1848(a)(7) under paragraph (1), instead of the
4 payment adjustment being an applicable per-
5 cent of the fee schedule amount for a year
6 under such section, subject to subparagraph
7 (D), the payment adjustment under paragraph
8 (1) shall be equal to the percent specified in
9 subparagraph (B) for such year of the payment
10 amount otherwise provided under this section
11 for such year.

12 “(B) SPECIFIED PERCENT.—The percent
13 specified under this subparagraph for a year is
14 100 percent minus a number of percentage
15 points equal to the product of—

16 “(i) the number of percentage points
17 by which the applicable percent (under sec-
18 tion 1848(a)(7)(A)(ii)) for the year is less
19 than 100 percent; and

20 “(ii) the Medicare physician expendi-
21 ture proportion specified in subparagraph
22 (C) for the year.

23 “(C) MEDICARE PHYSICIAN EXPENDITURE
24 PROPORTION.—The Medicare physician expend-
25 iture proportion under this subparagraph for a

1 year is the Secretary's estimate of the propor-
2 tion, of the expenditures under parts A and B
3 that are not attributable to this part, that are
4 attributable to expenditures for physicians'
5 services.

6 “(D) APPLICATION OF PAYMENT ADJUST-
7 MENT.—In the case that a qualifying MA orga-
8 nization attests that not all eligible profes-
9 sionals are meaningful EHR users with respect
10 to a year, the Secretary shall apply the payment
11 adjustment under this paragraph based on the
12 proportion of such eligible professionals that are
13 not meaningful EHR users for such year.

14 “(5) QUALIFYING MA ORGANIZATION DE-
15 FINED.—In this subsection and subsection (m), the
16 term ‘qualifying MA organization’ means a Medicare
17 Advantage organization that is organized as a health
18 maintenance organization (as defined in section
19 2791(b)(3) of the Public Health Service Act).

20 “(6) MEANINGFUL EHR USER ATTESTATION.—
21 For purposes of this subsection and subsection (m),
22 a qualifying MA organization shall submit an attes-
23 tation, in a form and manner specified by the Sec-
24 retary which may include the submission of such at-

1 testation as part of submission of the initial bid
2 under section 1854(a)(1)(A)(iv), identifying—

3 “(A) whether each eligible professional de-
4 scribed in paragraph (2), with respect to such
5 organization is a meaningful EHR user (as de-
6 fined in section 1848(o)(3)) for a year specified
7 by the Secretary; and

8 “(B) whether each eligible hospital de-
9 scribed in subsection (m)(1), with respect to
10 such organization, is a meaningful EHR user
11 (as defined in section 1886(n)(3)) for an appli-
12 cable period specified by the Secretary.”.

13 (d) CONFORMING AMENDMENTS.—Section 1853 of
14 the Social Security Act (42 U.S.C. 1395w–23) is amend-
15 ed—

16 (1) in subsection (a)(1)(A), by striking “and
17 (i)” and inserting “(i), and (l)”;

18 (2) in subsection (c)—

19 (A) in paragraph (1)(D)(i), by striking
20 “section 1886(h)” and inserting “sections
21 1848(o) and 1886(h)”;

22 (B) in paragraph (6)(A), by inserting after
23 “under part B,” the following: “excluding ex-
24 penditures attributable to subsections (a)(7)
25 and (o) of section 1848,”; and

1 (3) in subsection (f), by inserting “and for pay-
2 ments under subsection (l)” after “with the organi-
3 zation”.

4 (e) CONFORMING AMENDMENTS TO E-PRE-
5 SCRIBING.—

6 (1) Section 1848(a)(5)(A) of the Social Security
7 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

8 (A) in clause (i), by striking “or any sub-
9 sequent year” and inserting “, 2013, 2014, or
10 2015”; and

11 (B) in clause (ii), by striking “and each
12 subsequent year” and inserting “and 2015”.

13 (2) Section 1848(m)(2) of such Act (42 U.S.C.
14 1395w-4(m)(2)) is amended—

15 (A) in subparagraph (A), by striking “For
16 2009” and inserting “Subject to subparagraph
17 (D), for 2009”; and

18 (B) by adding at the end the following new
19 subparagraph:

20 “(D) LIMITATION WITH RESPECT TO EHR
21 INCENTIVE PAYMENTS.—The provisions of this
22 paragraph shall not apply to an eligible profes-
23 sional (or, in the case of a group practice under
24 paragraph (3)(C), to the group practice) if, for
25 the reporting period the eligible professional (or

1 group practice) receives an incentive payment
2 under subsection (o)(1)(A) with respect to a
3 certified EHR technology (as defined in sub-
4 section (o)(6)(A)) that has the capability of
5 electronic prescribing.”.

6 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

7 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
8 cial Security Act (42 U.S.C. 1395ww) is amended by add-
9 ing at the end the following new subsection:

10 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
11 USE OF CERTIFIED EHR TECHNOLOGY.—

12 “(1) IN GENERAL.—Subject to the succeeding
13 provisions of this subsection, with respect to inpa-
14 tient hospital services furnished by an eligible hos-
15 pital during a payment year (as defined in para-
16 graph (2)(G)), if the eligible hospital is a meaningful
17 EHR user (as determined under paragraph (3)) for
18 the reporting period with respect to such year, in ad-
19 dition to the amount otherwise paid under this sec-
20 tion, there also shall be paid to the eligible hospital,
21 from the Federal Hospital Insurance Trust Fund es-
22 tablished under section 1817, an amount equal to
23 the applicable amount specified in paragraph (2)(A)
24 for the hospital for such payment year.

25 “(2) PAYMENT AMOUNT.—

1 “(A) IN GENERAL.—Subject to the suc-
2 ceeding subparagraphs of this paragraph, the
3 applicable amount specified in this subpara-
4 graph for an eligible hospital for a payment
5 year is equal to the product of the following:

6 “(i) INITIAL AMOUNT.—The sum of—

7 “(I) the base amount specified in
8 subparagraph (B); plus

9 “(II) the discharge related
10 amount specified in subparagraph (C)
11 for a 12-month period selected by the
12 Secretary with respect to such pay-
13 ment year.

14 “(ii) MEDICARE SHARE.—The Medi-
15 care share as specified in subparagraph
16 (D) for the hospital for a period selected
17 by the Secretary with respect to such pay-
18 ment year.

19 “(iii) TRANSITION FACTOR.—The
20 transition factor specified in subparagraph
21 (E) for the hospital for the payment year.

22 “(B) BASE AMOUNT.—The base amount
23 specified in this subparagraph is \$2,000,000.

24 “(C) DISCHARGE RELATED AMOUNT.—The
25 discharge related amount specified in this sub-

1 paragraph for a 12-month period selected by
2 the Secretary shall be determined as the sum of
3 the amount, based upon total discharges (re-
4 gardless of any source of payment) for the pe-
5 riod, for each discharge up to the 23,000th dis-
6 charge as follows:

7 “(i) For the 1,150th through the
8 9,200nd discharge, \$200.

9 “(ii) For the 9,201st through the
10 13,800th discharge, 50 percent of the
11 amount specified in clause (i).

12 “(iii) For the 13,801st through the
13 23,000th discharge, 30 percent of the
14 amount specified in clause (i).

15 “(D) MEDICARE SHARE.—The Medicare
16 share specified under this subparagraph for a
17 hospital for a period selected by the Secretary
18 for a payment year is equal to the fraction—

19 “(i) the numerator of which is the
20 sum (for such period and with respect to
21 the hospital) of—

22 “(I) the number of inpatient-bed-
23 days (as established by the Secretary)
24 which are attributable to individuals

1 with respect to whom payment may be
2 made under part A; and

3 “(II) the number of inpatient-
4 bed-days (as so established) which are
5 attributable to individuals who are en-
6 rolled with a Medicare Advantage or-
7 ganization under part C; and

8 “(ii) the denominator of which is the
9 product of—

10 “(I) the total number of inpa-
11 tient-bed-days with respect to the hos-
12 pital during such period; and

13 “(II) the total amount of the hos-
14 pital’s charges during such period, not
15 including any charges that are attrib-
16 utable to charity care (as such term is
17 used for purposes of hospital cost re-
18 porting under this title), divided by
19 the total amount of the hospital’s
20 charges during such period.

21 Insofar as the Secretary determines that data
22 are not available on charity care necessary to
23 calculate the portion of the formula specified in
24 clause (ii)(II), the Secretary shall use data on
25 uncompensated care and may adjust such data

1 so as to be an appropriate proxy for charity
2 care including a downward adjustment to elimi-
3 nate bad debt data from uncompensated care
4 data. In the absence of the data necessary, with
5 respect to a hospital, for the Secretary to com-
6 pute the amount described in clause (ii)(II), the
7 amount under such clause shall be deemed to
8 be 1. In the absence of data, with respect to a
9 hospital, necessary to compute the amount de-
10 scribed in clause (i)(II), the amount under such
11 clause shall be deemed to be 0.

12 “(E) TRANSITION FACTOR SPECIFIED.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), the transition factor specified in this
15 subparagraph for an eligible hospital for a
16 payment year is as follows:

17 “(I) For the first payment year
18 for such hospital, 1.

19 “(II) For the second payment
20 year for such hospital, $\frac{3}{4}$.

21 “(III) For the third payment
22 year for such hospital, $\frac{1}{2}$.

23 “(IV) For the fourth payment
24 year for such hospital, $\frac{1}{4}$.

1 “(V) For any succeeding pay-
2 ment year for such hospital, 0.

3 “(ii) PHASE DOWN FOR ELIGIBLE
4 HOSPITALS FIRST ADOPTING EHR AFTER
5 2013.—If the first payment year for an eli-
6 gible hospital is after 2013, then the tran-
7 sition factor specified in this subparagraph
8 for a payment year for such hospital is the
9 same as the amount specified in clause (i)
10 for such payment year for an eligible hos-
11 pital for which the first payment year is
12 2013. If the first payment year for an eli-
13 gible hospital is after 2015 then the transi-
14 tion factor specified in this subparagraph
15 for such hospital and for such year and
16 any subsequent year shall be 0.

17 “(F) FORM OF PAYMENT.—The payment
18 under this subsection for a payment year may
19 be in the form of a single consolidated payment
20 or in the form of such periodic installments as
21 the Secretary may specify.

22 “(G) PAYMENT YEAR DEFINED.—

23 “(i) IN GENERAL.—For purposes of
24 this subsection, the term ‘payment year’

1 means a fiscal year beginning with fiscal
2 year 2011.

3 “(ii) FIRST, SECOND, ETC. PAYMENT
4 YEAR.—The term ‘first payment year’
5 means, with respect to inpatient hospital
6 services furnished by an eligible hospital,
7 the first fiscal year for which an incentive
8 payment is made for such services under
9 this subsection. The terms ‘second pay-
10 ment year’, ‘third payment year’, and
11 ‘fourth payment year’ mean, with respect
12 to an eligible hospital, each successive year
13 immediately following the first payment
14 year for that hospital.

15 “(3) MEANINGFUL EHR USER.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), an eligible hospital shall be treated
18 as a meaningful EHR user for a reporting pe-
19 riod for a payment year (or, for purposes of
20 subsection (b)(3)(B)(ix), for a reporting period
21 under such subsection for a fiscal year) if the
22 following requirements are met:

23 “(i) MEANINGFUL USE OF CERTIFIED
24 EHR TECHNOLOGY.—The eligible hospital
25 demonstrates to the satisfaction of the Sec-

1 retary, in accordance with subparagraph
2 (C)(i), that during such period the hospital
3 is using certified EHR technology in a
4 meaningful manner.

5 “(ii) INFORMATION EXCHANGE.—The
6 eligible hospital demonstrates to the satis-
7 faction of the Secretary, in accordance
8 with subparagraph (C)(i), that during such
9 period such certified EHR technology is
10 connected in a manner that provides, in
11 accordance with law and standards appli-
12 cable to the exchange of information, for
13 the electronic exchange of health informa-
14 tion to improve the quality of health care,
15 such as promoting care coordination.

16 “(iii) REPORTING ON MEASURES
17 USING EHR.—Subject to subparagraph
18 (B)(ii) and using such certified EHR tech-
19 nology, the eligible hospital submits infor-
20 mation for such period, in a form and
21 manner specified by the Secretary, on such
22 clinical quality measures and such other
23 measures as selected by the Secretary
24 under subparagraph (B)(i).

1 The Secretary shall seek to improve the use of
2 electronic health records and health care quality
3 over time by requiring more stringent measures
4 of meaningful use selected under this para-
5 graph.

6 “(B) REPORTING ON MEASURES.—

7 “(i) SELECTION.—The Secretary may
8 select measures for purposes of subpara-
9 graph (A)(iii) but only consistent with the
10 following:

11 “(I) The Secretary shall provide
12 preference to clinical quality measures
13 that have been selected for purposes
14 of applying subsection (b)(3)(B)(viii)
15 or that have been endorsed by the en-
16 tity with a contract with the Secretary
17 under section 1890(a).

18 “(II) Prior to any measure (other
19 than a clinical quality measure that
20 has been selected for purposes of ap-
21 plying subsection (b)(3)(B)(viii))
22 being selected under this subpara-
23 graph, the Secretary shall publish in
24 the Federal Register such measure

1 and provide for a period of public
2 comment on such measure.

3 “(ii) LIMITATIONS.—The Secretary
4 may not require the electronic reporting of
5 information on clinical quality measures
6 under subparagraph (A)(iii) unless the
7 Secretary has the capacity to accept the in-
8 formation electronically, which may be on
9 a pilot basis.

10 “(iii) COORDINATION OF REPORTING
11 OF INFORMATION.—In selecting such
12 measures, and in establishing the form and
13 manner for reporting measures under sub-
14 paragraph (A)(iii), the Secretary shall seek
15 to avoid redundant or duplicative reporting
16 with reporting otherwise required, includ-
17 ing reporting under subsection
18 (b)(3)(B)(viii).

19 “(C) DEMONSTRATION OF MEANINGFUL
20 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
21 FORMATION EXCHANGE.—

22 “(i) IN GENERAL.—A hospital may
23 satisfy the demonstration requirement of
24 clauses (i) and (ii) of subparagraph (A)

1 through means specified by the Secretary,
2 which may include—

3 “(I) an attestation;

4 “(II) the submission of claims
5 with appropriate coding (such as a
6 code indicating that inpatient care
7 was documented using certified EHR
8 technology);

9 “(III) a survey response;

10 “(IV) reporting under subpara-
11 graph (A)(iii); and

12 “(V) other means specified by the
13 Secretary.

14 “(ii) USE OF PART D DATA.—Not-
15 withstanding sections 1860D–15(d)(2)(B)
16 and 1860D–15(f)(2), the Secretary may
17 use data regarding drug claims submitted
18 for purposes of section 1860D–15 that are
19 necessary for purposes of subparagraph
20 (A).

21 “(4) APPLICATION.—

22 “(A) LIMITATIONS ON REVIEW.—There
23 shall be no administrative or judicial review
24 under section 1869, section 1878, or otherwise
25 of the determination of any incentive payment

1 under this subsection and the payment adjust-
2 ment under subsection (b)(3)(B)(ix), including
3 the determination of a meaningful EHR user
4 under paragraph (3), determination of meas-
5 ures applicable to services furnished by eligible
6 hospitals under this subsection, and the excep-
7 tion under subsection (b)(3)(B)(ix)(II).

8 “(B) POSTING ON WEBSITE.—The Sec-
9 retary shall post on the Internet website of the
10 Centers for Medicare & Medicaid Services, in an
11 easily understandable format, a list of the
12 names of the eligible hospitals that are mean-
13 ingful EHR users under this subsection or sub-
14 section (b)(3)(B)(ix) and other relevant data as
15 determined appropriate by the Secretary. The
16 Secretary shall ensure that a hospital has the
17 opportunity to review the other relevant data
18 that are to be made public with respect to the
19 hospital prior to such data being made public.

20 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
21 The term ‘certified EHR technology’ has the mean-
22 ing given such term in section 1848(o)(4).

23 “(6) DEFINITIONS.—For purposes of this sub-
24 section:

1 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
2 gible hospital’ means a subsection (d) hospital.

3 “(B) REPORTING PERIOD.—The term ‘re-
4 porting period’ means any period (or periods),
5 with respect to a payment year, as specified by
6 the Secretary.”.

7 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—
8 Section 1886(b)(3)(B) of the Social Security Act (42
9 U.S.C. 1395ww(b)(3)(B)) is amended—

10 (1) in clause (viii)(I), by inserting “(or, begin-
11 ning with fiscal year 2016, by one-quarter)” after
12 “2.0 percentage points”; and

13 (2) by adding at the end the following new
14 clause:

15 “(ix)(I) For purposes of clause (i) for fiscal year
16 2016 and each subsequent fiscal year, in the case of an
17 eligible hospital (as defined in subsection (n)(6)(A)) that
18 is not a meaningful EHR user (as defined in subsection
19 (n)(3)) for the reporting period for such fiscal year, three-
20 quarters of the applicable percentage increase otherwise
21 applicable under clause (i) for such fiscal year shall be
22 reduced by 33 $\frac{1}{3}$ percent for fiscal year 2016, 66 $\frac{2}{3}$ per-
23 cent for fiscal year 2017, and 100 percent for fiscal year
24 2018 and each subsequent fiscal year. Such reduction
25 shall apply only with respect to the fiscal year involved

1 and the Secretary shall not take into account such reduc-
2 tion in computing the applicable percentage increase under
3 clause (i) for a subsequent fiscal year.

4 “(II) The Secretary may, on a case-by-case basis, ex-
5 empt a subsection (d) hospital from the application of sub-
6 clause (I) with respect to a fiscal year if the Secretary
7 determines, subject to annual renewal, that requiring such
8 hospital to be a meaningful EHR user during such fiscal
9 year would result in a significant hardship, such as in the
10 case of a hospital in a rural area without sufficient Inter-
11 net access. In no case may a hospital be granted an ex-
12 emption under this subclause for more than 5 years.

13 “(III) For fiscal year 2016 and each subsequent fis-
14 cal year, a State in which hospitals are paid for services
15 under section 1814(b)(3) shall adjust the payments to
16 each subsection (d) hospital in the State that is not a
17 meaningful EHR user (as defined in subsection (n)(3))
18 in a manner that is designed to result in an aggregate
19 reduction in payments to hospitals in the State that is
20 equivalent to the aggregate reduction that would have oc-
21 curred if payments had been reduced to each subsection
22 (d) hospital in the State in a manner comparable to the
23 reduction under the previous provisions of this clause. The
24 State shall report to the Secretary the methodology it will

1 use to make the payment adjustment under the previous
2 sentence.

3 “(IV) For purposes of this clause, the term ‘reporting
4 period’ means, with respect to a fiscal year, any period
5 (or periods), with respect to the fiscal year, as specified
6 by the Secretary.”.

7 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
8 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
9 rity Act (42 U.S.C. 1395w-23), as amended by section
10 __311(c), is further amended by adding at the end the
11 following new subsection:

12 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
13 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
14 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
15 NOLOGY.—

16 “(1) APPLICATION.—Subject to paragraphs (3)
17 and (4), in the case of a qualifying MA organization,
18 the provisions of sections 1886(n) and
19 1886(b)(3)(B)(ix) shall apply with respect to eligible
20 hospitals described in paragraph (2) of the organiza-
21 tion which the organization attests under subsection
22 (l)(6) to be meaningful EHR users in a similar man-
23 ner as they apply to eligible hospitals under such
24 sections. Incentive payments under paragraph (3)
25 shall be made to and payment adjustments under

1 paragraph (4) shall apply to such qualifying organi-
2 zations.

3 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
4 respect to a qualifying MA organization, an eligible
5 hospital described in this paragraph is an eligible
6 hospital that is under common corporate governance
7 with such organization and serves individuals en-
8 rolled under an MA plan offered by such organiza-
9 tion.

10 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
11 MENTS.—

12 “(A) IN GENERAL.—In applying section
13 1886(n)(2) under paragraph (1), instead of the
14 additional payment amount under section
15 1886(n)(2), there shall be substituted an
16 amount determined by the Secretary to be simi-
17 lar to the estimated amount in the aggregate
18 that would be payable if payment for services
19 furnished by such hospitals was payable under
20 part A instead of this part. In implementing the
21 previous sentence, the Secretary—

22 “(i) shall, insofar as data to deter-
23 mine the discharge related amount under
24 section 1886(n)(2)(C) for an eligible hos-
25 pital are not available to the Secretary, use

1 such alternative data and methodology to
2 estimate such discharge related amount as
3 the Secretary determines appropriate; and
4 “*(ii)* shall, insofar as data to deter-
5 mine the medicare share described in sec-
6 tion 1886(n)(2)(D) for an eligible hospital
7 are not available to the Secretary, use such
8 alternative data and methodology to esti-
9 mate such share, which data and method-
10 ology may include use of the inpatient bed
11 days (or discharges) with respect to an eli-
12 gible hospital during the appropriate pe-
13 riod which are attributable to both individ-
14 uals for whom payment may be made
15 under part A or individuals enrolled in an
16 MA plan under a Medicare Advantage or-
17 ganization under this part as a proportion
18 of the total number of patient-bed-days (or
19 discharges) with respect to such hospital
20 during such period.

21 “(B) AVOIDING DUPLICATION OF PAY-
22 MENTS.—

23 “*(i)* IN GENERAL.—In the case of a
24 hospital that for a payment year is an eli-
25 gible hospital described in paragraph (2),

1 is an eligible hospital under section
2 1886(n), and for which at least one-third
3 of their discharges (or bed-days) of Medi-
4 care patients for the year are covered
5 under part A, payment for the payment
6 year shall be made only under section
7 1886(n) and not under this subsection.

8 “(ii) METHODS.—In the case of a
9 hospital that is an eligible hospital de-
10 scribed in paragraph (2) and also is eligi-
11 ble for an incentive payment under section
12 1886(n) but is not described in clause (i)
13 for the same payment period, the Secretary
14 shall develop a process—

15 “(I) to ensure that duplicate pay-
16 ments are not made with respect to
17 an eligible hospital both under this
18 subsection and under section 1886(n);
19 and

20 “(II) to collect data from Medi-
21 care Advantage organizations to en-
22 sure against such duplicate payments.

23 “(4) PAYMENT ADJUSTMENT.—

24 “(A) Subject to paragraph (3), in the case
25 of a qualifying MA organization (as defined in

1 section 1853(l)(5)), if, according to the attesta-
2 tion of the organization submitted under sub-
3 section (l)(6) for an applicable period, one or
4 more eligible hospitals (as defined in section
5 1886(n)(6)(A)) that are under common cor-
6 porate governance with such organization and
7 that serve individuals enrolled under a plan of-
8 fered by such organization are not meaningful
9 EHR users (as defined in section 1886(n)(3))
10 with respect to a period, the payment amount
11 payable under this section for such organization
12 for such period shall be the percent specified in
13 subparagraph (B) for such period of the pay-
14 ment amount otherwise provided under this sec-
15 tion for such period.

16 “(B) SPECIFIED PERCENT.—The percent
17 specified under this subparagraph for a year is
18 100 percent minus a number of percentage
19 points equal to the product of—

20 “(i) the number of the percentage
21 point reduction effected under section
22 1886(b)(3)(B)(ix)(I) for the period; and

23 “(ii) the Medicare hospital expendi-
24 ture proportion specified in subparagraph
25 (C) for the year.

1 “(C) MEDICARE HOSPITAL EXPENDITURE
2 PROPORTION.—The Medicare hospital expendi-
3 ture proportion under this subparagraph for a
4 year is the Secretary’s estimate of the propor-
5 tion, of the expenditures under parts A and B
6 that are not attributable to this part, that are
7 attributable to expenditures for inpatient hos-
8 pital services.

9 “(D) APPLICATION OF PAYMENT ADJUST-
10 MENT.—In the case that a qualifying MA orga-
11 nization attests that not all eligible hospitals
12 are meaningful EHR users with respect to an
13 applicable period, the Secretary shall apply the
14 payment adjustment under this paragraph
15 based on a methodology specified by the Sec-
16 retary, taking into account the proportion of
17 such eligible hospitals, or discharges from such
18 hospitals, that are not meaningful EHR users
19 for such period.”.

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 1814(b) of the Social Security Act
22 (42 U.S.C. 1395f(b)) is amended—

23 (A) in paragraph (3), in the matter pre-
24 ceding subparagraph (A), by inserting “, sub-

1 ject to section 1886(d)(3)(B)(ix)(III),” after
2 “then”; and

3 (B) by adding at the end the following:
4 “For purposes of applying paragraph (3), there
5 shall be taken into account incentive payments,
6 and payment adjustments under subsection
7 (b)(3)(B)(ix) or (n) of section 1886.”.

8 (2) Section 1851(i)(1) of the Social Security
9 Act (42 U.S.C. 1395w-21(i)(1)) is amended by
10 striking “and 1886(h)(3)(D)” and inserting
11 “1886(h)(3)(D), and 1853(m)”.

12 (3) Section 1853 of the Social Security Act (42
13 U.S.C. 1395w-23), as amended by section
14 4311(d)(1), is amended—

15 (A) in subsection (c)—

16 (i) in paragraph (1)(D)(i), by striking
17 “1848(o)” and inserting “, 1848(o), and
18 1886(n)”;

19 (ii) in paragraph (6)(A), by inserting
20 “and subsections (b)(3)(B)(ix) and (n) of
21 section 1886” after “section 1848”; and

22 (B) in subsection (f), by inserting “and
23 subsection (m)” after “under subsection (l)”.

1 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
2 **PLEMENTATION FUNDING.**

3 (a) PREMIUM HOLD HARMLESS.—

4 (1) IN GENERAL.—Section 1839(a)(1) of the
5 Social Security Act (42 U.S.C. 1395r(a)(1)) is
6 amended by adding at the end the following: “In ap-
7 plying this paragraph there shall not be taken into
8 account additional payments under section 1848(o)
9 and section 1853(l)(3) and the Government con-
10 tribution under section 1844(a)(3).”.

11 (2) PAYMENT.—Section 1844(a) of such Act
12 (42 U.S.C. 1395w(a)) is amended—

13 (A) in paragraph (2), by striking the pe-
14 riod at the end and inserting “; plus”; and

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

17 “(3) a Government contribution equal to the
18 amount of payment incentives payable under sec-
19 tions 1848(o) and 1853(l)(3).”.

20 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
21 of the Social Security Act (42 U.S.C. 1395iii), as added
22 by section 7002(a) of the Supplemental Appropriations
23 Act, 2008 (Public Law 110–252) and as amended by sec-
24 tion 188(a)(2) of the Medicare Improvements for Patients
25 and Providers Act of 2008 (Public Law 110–275; 122

1 Stat. 2589) and by section 6 of the QI Program Supple-
2 mental Funding Act of 2008, is amended—

3 (1) in subsection (a)—

4 (A) by inserting “medicare” before “fee-
5 for-service”; and

6 (B) by inserting before the period at the
7 end the following: “including, but not limited
8 to, an increase in the conversion factor under
9 section 1848(d) to address, in whole or in part,
10 any projected shortfall in the conversion factor
11 for 2014 relative to the conversion factor for
12 2008 and adjustments to payments for items
13 and services furnished by providers of services
14 and suppliers under such original medicare fee-
15 for-service program”; and

16 (2) in subsection (b)—

17 (A) in paragraph (1), by striking “during
18 fiscal year 2014,” and all that follows and in-
19 serting the following: “during—

20 “(A) fiscal year 2014, \$22,290,000,000;
21 and

22 “(B) fiscal year 2020 and each subsequent
23 fiscal year, the Secretary’s estimate, as of July
24 1 of the fiscal year, of the aggregate reduction
25 in expenditures under this title during the pre-

1 ceding fiscal year directly resulting from the re-
2 duction in payment amounts under sections
3 1848(a)(7), 1853(l)(4), 1853(m)(4), and
4 1886(b)(3)(B)(ix).”; and

5 (B) by adding at the end the following new
6 paragraph:

7 “(4) NO EFFECT ON PAYMENTS IN SUBSE-
8 QUENT YEARS.—In the case that expenditures from
9 the Fund are applied to, or otherwise affect, a pay-
10 ment rate for an item or service under this title for
11 a year, the payment rate for such item or service
12 shall be computed for a subsequent year as if such
13 application or effect had never occurred.”.

14 (c) IMPLEMENTATION FUNDING.—In addition to
15 funds otherwise available, out of any funds in the Treas-
16 ury not otherwise appropriated, there are appropriated to
17 the Secretary of Health and Human Services for the Cen-
18 ter for Medicare & Medicaid Services Program Manage-
19 ment Account, \$60,000,000 for each of fiscal years 2009
20 through 2015 and \$30,000,000 for each succeeding fiscal
21 year through fiscal year 2019, which shall be available for
22 purposes of carrying out the provisions of (and amend-
23 ments made by) this part. Amounts appropriated under
24 this subsection for a fiscal year shall be available until ex-
25 ended.

1 **SEC. 4314. STUDY ON APPLICATION OF HIT PAYMENT IN-**
2 **CENTIVES FOR PROVIDERS NOT RECEIVING**
3 **OTHER INCENTIVE PAYMENTS.**

4 (a) STUDY.—

5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services shall conduct a study to determine
7 the extent to which and manner in which payment
8 incentives (such as under title XVIII or XIX of the
9 Social Security Act) and other funding for purposes
10 of implementing and using qualified health informa-
11 tion technology should be made available to health
12 care providers who are receiving minimal or no pay-
13 ment incentives or other funding under this Act,
14 under title XVIII or XIX of the Social Security Act,
15 or otherwise, for such purposes.

16 (2) DETAILS OF STUDY.—Such study shall in-
17 clude an examination of—

18 (A) the adoption rates of qualified health
19 information technology by such health care pro-
20 viders;

21 (B) the clinical utility of such technology
22 by such health care providers;

23 (C) whether the services furnished by such
24 health care providers are appropriate for or
25 would benefit from the use of such technology;

1 (D) the extent to which such health care
2 providers work in settings that might otherwise
3 receive an incentive payment or other funding
4 under this Act, title XVIII or XIX of the Social
5 Security Act, or otherwise;

6 (E) the potential costs and the potential
7 benefits of making payment incentives and
8 other funding available to such health care pro-
9 viders; and

10 (F) any other issues the Secretary deems
11 to be appropriate.

12 (b) REPORT.—Not later than June 30, 2010, the
13 Secretary shall submit to Congress a report on the find-
14 ings and conclusions of the study conducted under sub-
15 section (a).

16 **PART III—MEDICAID FUNDING**

17 **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-** 18 **ATION PAYMENTS; IMPLEMENTATION FUND-** 19 **ING.**

20 (a) IN GENERAL.—Section 1903 of the Social Secu-
21 rity Act (42 U.S.C. 1396b) is amended—

22 (1) in subsection (a)(3)—

23 (A) by striking “and” at the end of sub-
24 paragraph (D);

1 (B) by striking “plus” at the end of sub-
2 paragraph (E) and inserting “and”; and

3 (C) by adding at the end the following new
4 subparagraph:

5 “(F)(i) 100 percent of so much of the
6 sums expended during such quarter as are at-
7 tributable to payments for certified EHR tech-
8 nology (and support services including mainte-
9 nance and training that is for, or is necessary
10 for the adoption and operation of, such tech-
11 nology) by Medicaid providers described in sub-
12 section (t)(1); and

13 “(ii) 90 percent of so much of the sums ex-
14 pended during such quarter as are attributable
15 to payments for reasonable administrative ex-
16 penses related to the administration of pay-
17 ments described in clause (i) if the State meets
18 the condition described in subsection (t)(9);
19 plus”; and

20 (2) by inserting after subsection (s) the fol-
21 lowing new subsection:

22 “(t)(1) For purposes of subsection (a)(3)(F), the pay-
23 ments for certified EHR technology (and support services
24 including maintenance that is for, or is necessary for the
25 operation of, such technology) by Medicaid providers de-

1 scribed in this paragraph are payments made by the State
2 in accordance with this subsection of 85 percent of the
3 net allowable costs of Medicaid providers (as defined in
4 paragraph (2)) for such technology (and support services).

5 “(2) In this subsection and subsection (a)(3)(F), the
6 term ‘Medicaid provider’ means—

7 “(A) an eligible professional (as defined in
8 paragraph (3)(B)) who is not hospital-based and has
9 at least 30 percent of the professional’s patient vol-
10 ume (as estimated in accordance with standards es-
11 tablished by the Secretary) attributable to individ-
12 uals who are receiving medical assistance under this
13 title; and

14 “(B)(i) a children’s hospital, (ii) an acute-care
15 hospital that is not described in clause (i) and that
16 has at least 10 percent of the hospital’s patient vol-
17 ume (as estimated in accordance with standards es-
18 tablished by the Secretary) attributable to individ-
19 uals who are receiving medical assistance under this
20 title, or (iii) a Federally-qualified health center or
21 rural health clinic that has at least 30 percent of the
22 center’s or clinic’s patient volume (as estimated in
23 accordance with standards established by the Sec-
24 retary) attributable to individuals who are receiving
25 medical assistance under this title.

1 A professional shall not qualify as a Medicaid provider
2 under this subsection unless the professional has waived,
3 in a manner specified by the Secretary, any right to pay-
4 ment under section 1848(o) with respect to the adoption
5 or support of certified EHR technology by the profes-
6 sional. In applying clauses (ii) and (iii) of subparagraph
7 (B), the standards established by the Secretary for patient
8 volume shall include individuals enrolled in a Medicaid
9 managed care plan (under section 1903(m) or section
10 1932).

11 “(3) In this subsection and subsection (a)(3)(F):

12 “(A) The term ‘certified EHR technology’
13 means a qualified electronic health record (as de-
14 fined in 3000(13) of the Public Health Service Act)
15 that is certified pursuant to section 3001(c)(5) of
16 such Act as meeting standards adopted under sec-
17 tion 3004 of such Act that are applicable to the type
18 of record involved (as determined by the Secretary,
19 such as an ambulatory electronic health record for
20 office-based physicians or an inpatient hospital elec-
21 tronic health record for hospitals).

22 “(B) The term ‘eligible professional’ means a
23 physician as defined in paragraphs (1) and (2) of
24 section 1861(r), and includes a nurse mid-wife and
25 a nurse practitioner.

1 “(C) The term ‘hospital-based’ means, with re-
2 spect to an eligible professional, a professional (such
3 as a pathologist, anesthesiologist, or emergency phy-
4 sician) who furnishes substantially all of the individ-
5 ual’s professional services in a hospital setting
6 (whether inpatient or outpatient) and through the
7 use of the facilities and equipment, including com-
8 puter equipment, of the hospital.

9 “(4)(A) The term ‘allowable costs’ means, with re-
10 spect to certified EHR technology of a Medicaid provider,
11 costs of such technology (and support services including
12 maintenance and training that is for, or is necessary for
13 the adoption and operation of, such technology) as deter-
14 mined by the Secretary to be reasonable.

15 “(B) The term ‘net allowable costs’ means allowable
16 costs reduced by any payment that is made to the provider
17 involved from any other source that is directly attributable
18 to payment for certified EHR technology or services de-
19 scribed in subparagraph (A).

20 “(C) In no case shall—

21 “(i) the aggregate allowable costs under this
22 subsection (covering one or more years) with respect
23 to a Medicaid provider described in paragraph
24 (2)(A) for purchase and initial implementation of
25 certified EHR technology (and services described in

1 subparagraph (A)) exceed \$25,000 or include costs
2 over a period of longer than 5 years;

3 “(ii) for costs not described in clause (i) relat-
4 ing to the operation, maintenance, or use of certified
5 EHR technology, the annual allowable costs under
6 this subsection with respect to such a Medicaid pro-
7 vider for costs not described in clause (i) for any
8 year exceed \$10,000;

9 “(iii) payment described in paragraph (1) for
10 costs described in clause (ii) be made with respect
11 to such a Medicaid provider over a period of more
12 than 5 years;

13 “(iv) the aggregate allowable costs under this
14 subsection with respect to such a Medicaid provider
15 for all costs exceed \$75,000; or

16 “(v) the allowable costs, whether for purchase
17 and initial implementation, maintenance, or other-
18 wise, for a Medicaid provider described in paragraph
19 (2)(B) exceed such aggregate or annual limitation as
20 the Secretary shall establish, based on an amount
21 determined by the Secretary as being adequate to
22 adopt and maintain certified EHR technology, con-
23 sistent with paragraph (6).

1 “(5) Payments described in paragraph (1) are not in
2 accordance with this subsection unless the following re-
3 quirements are met:

4 “(A) The State provides assurances satisfactory
5 to the Secretary that amounts received under sub-
6 section (a)(3)(F) with respect to costs of a Medicaid
7 provider are paid directly to such provider without
8 any deduction or rebate.

9 “(B) Such Medicaid provider is responsible for
10 payment of the costs described in such paragraph
11 that are not provided under this title.

12 “(C) With respect to payments to such Med-
13 icaid provider for costs other than costs related to
14 the initial adoption of certified EHR technology, the
15 Medicaid provider demonstrates meaningful use of
16 certified EHR technology through a means that is
17 approved by the State and acceptable to the Sec-
18 retary, and that may be based upon the methodolo-
19 gies applied under section 1848(o) or 1886(n).

20 “(D) To the extent specified by the Secretary,
21 the certified EHR technology is compatible with
22 State or Federal administrative management sys-
23 tems.

1 “(6)(A) In no case shall the payments described in
2 paragraph (1), with respect to a hospital, exceed in the
3 aggregate the product of—

4 “(i) the overall hospital HIT amount for the
5 hospital computed under subparagraph (B); and

6 “(ii) the Medicaid share for such hospital com-
7 puted under subparagraph (C).

8 “(B) For purposes of this paragraph, the overall hos-
9 pital HIT amount, with respect to a hospital, is the sum
10 of the applicable amounts specified in section
11 1886(n)(2)(A) for such hospital for the first 4 payment
12 years (as estimated by the Secretary) determined as if the
13 Medicare share specified in clause (ii) of such section were
14 1. The Secretary shall publish in the Federal Register the
15 overall hospital HIT amount for each hospital eligible for
16 payments under this subsection. In computing amounts
17 under clause (ii) for payment years after the first payment
18 year, the Secretary shall assume that in subsequent pay-
19 ment years discharges increase at an annual rate of 2 per-
20 cent per year.

21 “(C) The Medicaid share computed under this sub-
22 paragraph, for a hospital for a period specified by the Sec-
23 retary, shall be calculated in the same manner as the
24 Medicare share under section 1886(n)(2)(D) for such a
25 hospital and period, except that there shall be substituted

1 for the numerator under clause (i) of such section the
2 amount that is equal to the number of inpatient-bed-days
3 (as established by the Secretary) which are attributable
4 to individuals who are receiving medical assistance under
5 this title and who are not described in section
6 1886(n)(2)(D)(i). In computing inpatient-bed-days under
7 the previous sentence, the Secretary shall take into ac-
8 count inpatient-bed-days attributable to inpatient-bed-
9 days that are paid for individuals enrolled in a Medicaid
10 managed care plan (under section 1903(m) or section
11 1932).

12 “(7) With respect to health care providers other than
13 hospitals, the Secretary shall ensure coordination of the
14 different programs for payment of such health care pro-
15 viders for adoption or use of health information technology
16 (including certified EHR technology), as well as payments
17 for such health care providers provided under this title or
18 title XVIII, to assure no duplication of funding.

19 “(8) In carrying out paragraph (5)(C), the State and
20 Secretary shall seek, to the maximum extent practicable,
21 to avoid duplicative requirements from Federal and State
22 Governments to demonstrate meaningful use of certified
23 EHR technology under this title and title XVIII. In doing
24 so, the Secretary may deem satisfaction of requirements
25 for such meaningful use for a payment year under title

1 XVIII to be sufficient to qualify as meaningful use under
2 this subsection. The Secretary may also specify the report-
3 ing periods under this subsection in order to carry out this
4 paragraph.

5 “(9) In order to be provided Federal financial partici-
6 pation under subsection (a)(3)(F)(ii), a State must dem-
7 onstrate to the satisfaction of the Secretary, that the
8 State—

9 “(A) is using the funds provided for the pur-
10 poses of administering payments under this sub-
11 section, including tracking of meaningful use by
12 Medicaid providers;

13 “(B) conducting adequate oversight of the pro-
14 gram under this subsection, including routine track-
15 ing of meaningful use attestations and reporting
16 mechanisms; and

17 “(C) be pursuing initiatives to encourage the
18 adoption of certified EHR technology to promote
19 health care quality and the exchange of health care
20 information under this title, subject to applicable
21 laws and regulations governing such exchange.

22 “(10) The Secretary shall periodically submit reports
23 to the Committee on Energy and Commerce of the House
24 of Representatives and the Committee on Finance of the

1 Senate on status, progress, and oversight of payments
2 under paragraph (1).”.

3 (b) IMPLEMENTATION FUNDING.—In addition to
4 funds otherwise available, out of any funds in the Treas-
5 ury not otherwise appropriated, there are appropriated to
6 the Secretary of Health and Human Services for the Cen-
7 ter for Medicare & Medicaid Services Program Manage-
8 ment Account, \$40,000,000 for each of fiscal years 2009
9 through 2015 and \$20,000,000 for each succeeding fiscal
10 year through fiscal year 2019, which shall be available for
11 purposes of carrying out the provisions of (and the amend-
12 ments made by) this part. Amounts appropriated under
13 this subsection for a fiscal year shall be available until ex-
14 pended.

15 **Subtitle D—Privacy**

16 **SEC. 4400. DEFINITIONS.**

17 In this subtitle, except as specified otherwise:

18 (1) BREACH.—The term “breach” means the
19 unauthorized acquisition, access, use, or disclosure
20 of protected health information which compromises
21 the security, privacy, or integrity of protected health
22 information maintained by or on behalf of a person.
23 Such term does not include any unintentional acqui-
24 sition, access, use, or disclosure of such information
25 by an employee or agent of the covered entity or

1 business associate involved if such acquisition, ac-
2 cess, use, or disclosure, respectively, was made in
3 good faith and within the course and scope of the
4 employment or other contractual relationship of such
5 employee or agent, respectively, with the covered en-
6 tity or business associate and if such information is
7 not further acquired, accessed, used, or disclosed by
8 such employee or agent.

9 (2) BUSINESS ASSOCIATE.—The term “business
10 associate” has the meaning given such term in sec-
11 tion 160.103 of title 45, Code of Federal Regula-
12 tions.

13 (3) COVERED ENTITY.—The term “covered en-
14 tity” has the meaning given such term in section
15 160.103 of title 45, Code of Federal Regulations.

16 (4) DISCLOSE.—The terms “disclose” and “dis-
17 closure” have the meaning given the term “disclo-
18 sure” in section 160.103 of title 45, Code of Federal
19 Regulations.

20 (5) ELECTRONIC HEALTH RECORD.—The term
21 “electronic health record” means an electronic
22 record of health-related information on an individual
23 that is created, gathered, managed, and consulted by
24 authorized health care clinicians and staff.

1 (6) HEALTH CARE OPERATIONS.—The term
2 “health care operation” has the meaning given such
3 term in section 164.501 of title 45, Code of Federal
4 Regulations.

5 (7) HEALTH CARE PROVIDER.—The term
6 “health care provider” has the meaning given such
7 term in section 160.103 of title 45, Code of Federal
8 Regulations.

9 (8) HEALTH PLAN.—The term “health plan”
10 has the meaning given such term in section 1171(5)
11 of the Social Security Act.

12 (9) NATIONAL COORDINATOR.—The term “Na-
13 tional Coordinator” means the head of the Office of
14 the National Coordinator for Health Information
15 Technology established under section 3001(a) of the
16 Public Health Service Act, as added by section
17 4101.

18 (10) PAYMENT.—The term “payment” has the
19 meaning given such term in section 164.501 of title
20 45, Code of Federal Regulations.

21 (11) PERSONAL HEALTH RECORD.—The term
22 “personal health record” means an electronic record
23 of individually identifiable health information on an
24 individual that can be drawn from multiple sources

1 and that is managed, shared, and controlled by or
2 for the individual.

3 (12) PROTECTED HEALTH INFORMATION.—The
4 term “protected health information” has the mean-
5 ing given such term in section 160.103 of title 45,
6 Code of Federal Regulations.

7 (13) SECRETARY.—The term “Secretary”
8 means the Secretary of Health and Human Services.

9 (14) SECURITY.—The term “security” has the
10 meaning given such term in section 164.304 of title
11 45, Code of Federal Regulations.

12 (15) STATE.—The term “State” means each of
13 the several States, the District of Columbia, Puerto
14 Rico, the Virgin Islands, Guam, American Samoa,
15 and the Northern Mariana Islands.

16 (16) TREATMENT.—The term “treatment” has
17 the meaning given such term in section 164.501 of
18 title 45, Code of Federal Regulations.

19 (17) USE.—The term “use” has the meaning
20 given such term in section 160.103 of title 45, Code
21 of Federal Regulations.

22 (18) VENDOR OF PERSONAL HEALTH
23 RECORDS.—The term “vendor of personal health
24 records” means an entity, other than a covered enti-

1 ty (as defined in paragraph (3)), that offers or
2 maintains a personal health record.

3 **PART I—IMPROVED PRIVACY PROVISIONS AND**
4 **SECURITY PROVISIONS**

5 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**
6 **PENALTIES TO BUSINESS ASSOCIATES OF**
7 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
8 **SECURITY PROVISIONS.**

9 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-
10 tions 164.308, 164.310, 164.312, and 164.316 of title 45,
11 Code of Federal Regulations, shall apply to a business as-
12 sociate of a covered entity in the same manner that such
13 sections apply to the covered entity. The additional re-
14 quirements of this title that relate to security and that
15 are made applicable with respect to covered entities shall
16 also be applicable to such a business associate and shall
17 be incorporated into the business associate agreement be-
18 tween the business associate and the covered entity.

19 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-
20 ALTIES.—In the case of a business associate that violates
21 any security provision specified in subsection (a), sections
22 1176 and 1177 of the Social Security Act (42 U.S.C.
23 1320d-5, 1320d-6) shall apply to the business associate
24 with respect to such violation in the same manner such

1 sections apply to a covered entity that violates such secu-
2 rity provision.

3 (c) ANNUAL GUIDANCE.—For the first year begin-
4 ning after the date of the enactment of this Act and annu-
5 ally thereafter, the Secretary of Health and Human Serv-
6 ices shall, in consultation with industry stakeholders, an-
7 nually issue guidance on the most effective and appro-
8 priate technical safeguards for use in carrying out the sec-
9 tions referred to in subsection (a) and the security stand-
10 ards in subpart C of part 164 of title 45, Code of Federal
11 Regulations, as such provisions are in effect as of the date
12 before the enactment of this Act.

13 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

14 (a) IN GENERAL.—A covered entity that accesses,
15 maintains, retains, modifies, records, stores, destroys, or
16 otherwise holds, uses, or discloses unsecured protected
17 health information (as defined in subsection (h)(1)) shall,
18 in the case of a breach of such information that is discov-
19 ered by the covered entity, notify each individual whose
20 unsecured protected health information has been, or is
21 reasonably believed by the covered entity to have been,
22 accessed, acquired, or disclosed as a result of such breach.

23 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
24 NESS ASSOCIATE.—A business associate of a covered enti-
25 ty that accesses, maintains, retains, modifies, records,

1 stores, destroys, or otherwise holds, uses, or discloses un-
2 secured protected health information shall, following the
3 discovery of a breach of such information, notify the cov-
4 ered entity of such breach. Such notice shall include the
5 identification of each individual whose unsecured protected
6 health information has been, or is reasonably believed by
7 the business associate to have been, accessed, acquired,
8 or disclosed during such breach.

9 (c) BREACHES TREATED AS DISCOVERED.—For pur-
10 poses of this section, a breach shall be treated as discov-
11 ered by a covered entity or by a business associate as of
12 the first day on which such breach is known to such entity
13 or associate, respectively, (including any person, other
14 than the individual committing the breach, that is an em-
15 ployee, officer, or other agent of such entity or associate,
16 respectively) or should reasonably have been known to
17 such entity or associate (or person) to have occurred.

18 (d) TIMELINESS OF NOTIFICATION.—

19 (1) IN GENERAL.—Subject to subsection (g), all
20 notifications required under this section shall be
21 made without unreasonable delay and in no case
22 later than 60 calendar days after the discovery of a
23 breach by the covered entity involved (or business
24 associate involved in the case of a notification re-
25 quired under subsection (b)).

1 (2) BURDEN OF PROOF.—The covered entity in-
2 volved (or business associate involved in the case of
3 a notification required under subsection (b)), shall
4 have the burden of demonstrating that all notifica-
5 tions were made as required under this part, includ-
6 ing evidence demonstrating the necessity of any
7 delay.

8 (e) METHODS OF NOTICE.—

9 (1) INDIVIDUAL NOTICE.—Notice required
10 under this section to be provided to an individual,
11 with respect to a breach, shall be provided promptly
12 and in the following form:

13 (A) Written notification by first-class mail
14 to the individual (or the next of kin of the indi-
15 vidual if the individual is deceased) at the last
16 known address of the individual or the next of
17 kin, respectively, or, if specified as a preference
18 by the individual, by electronic mail. The notifi-
19 cation may be provided in one or more mailings
20 as information is available.

21 (B) In the case in which there is insuffi-
22 cient, or out-of-date contact information (in-
23 cluding a phone number, email address, or any
24 other form of appropriate communication) that
25 precludes direct written (or, if specified by the

1 individual under subparagraph (A), electronic)
2 notification to the individual, a substitute form
3 of notice shall be provided, including, in the
4 case that there are 10 or more individuals for
5 which there is insufficient or out-of-date contact
6 information, a conspicuous posting for a period
7 determined by the Secretary on the home page
8 of the Web site of the covered entity involved or
9 notice in major print or broadcast media, in-
10 cluding major media in geographic areas where
11 the individuals affected by the breach likely re-
12 side. Such a notice in media or web posting will
13 include a toll-free phone number where an indi-
14 vidual can learn whether or not the individual's
15 unsecured protected health information is pos-
16 sibly included in the breach.

17 (C) In any case deemed by the covered en-
18 tity involved to require urgency because of pos-
19 sible imminent misuse of unsecured protected
20 health information, the covered entity, in addi-
21 tion to notice provided under subparagraph (A),
22 may provide information to individuals by tele-
23 phone or other means, as appropriate.

24 (2) MEDIA NOTICE.—Notice shall be provided
25 to prominent media outlets serving a State or juris-

1 diction, following the discovery of a breach described
2 in subsection (a), if the unsecured protected health
3 information of more than 500 residents of such
4 State or jurisdiction is, or is reasonably believed to
5 have been, accessed, acquired, or disclosed during
6 such breach.

7 (3) NOTICE TO SECRETARY.—Notice shall be
8 provided to the Secretary by covered entities of un-
9 secured protected health information that has been
10 acquired or disclosed in a breach. If the breach was
11 with respect to 500 or more individuals than such
12 notice must be provided immediately. If the breach
13 was with respect to less than 500 individuals, the
14 covered entity involved may maintain a log of any
15 such breach occurring and annually submit such a
16 log to the Secretary documenting such breaches
17 occurring during the year involved.

18 (4) POSTING ON HHS PUBLIC WEBSITE.—The
19 Secretary shall make available to the public on the
20 Internet website of the Department of Health and
21 Human Services a list that identifies each covered
22 entity involved in a breach described in subsection
23 (a) in which the unsecured protected health informa-
24 tion of more than 500 individuals is acquired or dis-
25 closed.

1 (f) CONTENT OF NOTIFICATION.—Regardless of the
2 method by which notice is provided to individuals under
3 this section, notice of a breach shall include, to the extent
4 possible, the following:

5 (1) A brief description of what happened, in-
6 cluding the date of the breach and the date of the
7 discovery of the breach, if known.

8 (2) A description of the types of unsecured pro-
9 tected health information that were involved in the
10 breach (such as full name, Social Security number,
11 date of birth, home address, account number, or dis-
12 ability code).

13 (3) The steps individuals should take to protect
14 themselves from potential harm resulting from the
15 breach.

16 (4) A brief description of what the covered enti-
17 ty involved is doing to investigate the breach, to
18 mitigate losses, and to protect against any further
19 breaches.

20 (5) Contact procedures for individuals to ask
21 questions or learn additional information, which
22 shall include a toll-free telephone number, an e-mail
23 address, Web site, or postal address.

24 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
25 ENFORCEMENT PURPOSES.—If a law enforcement official

1 determines that a notification, notice, or posting required
2 under this section would impede a criminal investigation
3 or cause damage to national security, such notification,
4 notice, or posting shall be delayed in the same manner
5 as provided under section 164.528(a)(2) of title 45, Code
6 of Federal Regulations, in the case of a disclosure covered
7 under such section.

8 (h) UNSECURED PROTECTED HEALTH INFORMA-
9 TION.—

10 (1) DEFINITION.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), for purposes of this section, the
13 term “unsecured protected health information”
14 means protected health information that is not
15 secured through the use of a technology or
16 methodology specified by the Secretary in the
17 guidance issued under paragraph (2).

18 (B) EXCEPTION IN CASE TIMELY GUID-
19 ANCE NOT ISSUED.—In the case that the Sec-
20 retary does not issue guidance under paragraph
21 (2) by the date specified in such paragraph, for
22 purposes of this section, the term “unsecured
23 protected health information” shall mean pro-
24 tected health information that is not secured by
25 a technology standard that renders protected

1 health information unusable, unreadable, or in-
2 decipherable to unauthorized individuals and is
3 developed or endorsed by a standards devel-
4 oping organization that is accredited by the
5 American National Standards Institute.

6 (2) GUIDANCE.—For purposes of paragraph (1)
7 and section 407(f)(3), not later than the date that
8 is 60 days after the date of the enactment of this
9 Act, the Secretary shall, after consultation with
10 stakeholders, issue (and annually update) guidance
11 specifying the technologies and methodologies that
12 render protected health information unusable,
13 unreadable, or indecipherable to unauthorized indi-
14 viduals.

15 (i) REPORT TO CONGRESS ON BREACHES.—

16 (1) IN GENERAL.—Not later than 12 months
17 after the date of the enactment of this Act and an-
18 nually thereafter, the Secretary shall prepare and
19 submit to the Committee on Finance and the Com-
20 mittee on Health, Education, Labor, and Pensions
21 of the Senate and the Committee on Ways and
22 Means and the Committee on Energy and Commerce
23 of the House of Representatives a report containing
24 the information described in paragraph (2) regard-

1 rights and responsibilities related to Federal privacy and
2 security requirements for protected health information.

3 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
4 FORMATION.—Not later than 12 months after the date of
5 the enactment of this Act, the Office for Civil Rights with-
6 in the Department of Health and Human Services shall
7 develop and maintain a multi-faceted national education
8 initiative to enhance public transparency regarding the
9 uses of protected health information, including programs
10 to educate individuals about the potential uses of their
11 protected health information, the effects of such uses, and
12 the rights of individuals with respect to such uses. Such
13 programs shall be conducted in a variety of languages and
14 present information in a clear and understandable man-
15 ner.

16 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
17 **PENALTIES TO BUSINESS ASSOCIATES OF**
18 **COVERED ENTITIES.**

19 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
20 In the case of a business associate of a covered entity that
21 obtains or creates protected health information pursuant
22 to a written contract (or other written arrangement) de-
23 scribed in section 164.502(e)(2) of title 45, Code of Fed-
24 eral Regulations, with such covered entity, the business
25 associate may use and disclose such protected health infor-

1 mation only if such use or disclosure, respectively, is in
2 compliance with each applicable requirement of section
3 164.504(e) of such title. The additional requirements of
4 this subtitle that relate to privacy and that are made ap-
5 plicable with respect to covered entities shall also be appli-
6 cable to such a business associate and shall be incor-
7 porated into the business associate agreement between the
8 business associate and the covered entity.

9 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
10 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
11 title 45, Code of Federal Regulations, shall apply to a
12 business associate described in subsection (a), with respect
13 to compliance with such subsection, in the same manner
14 that such section applies to a covered entity, with respect
15 to compliance with the standards in sections 164.502(e)
16 and 164.504(e) of such title, except that in applying such
17 section 164.504(e)(1)(ii) each reference to the business as-
18 sociate, with respect to a contract, shall be treated as a
19 reference to the covered entity involved in such contract.

20 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
21 ALTIES.—In the case of a business associate that violates
22 any provision of subsection (a) or (b), the provisions of
23 sections 1176 and 1177 of the Social Security Act (42
24 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-
25 sociate with respect to such violation in the same manner

1 as such provisions apply to a person who violates a provi-
2 sion of part C of title XI of such Act.

3 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
4 **SALES OF HEALTH INFORMATION; ACCOUNT-**
5 **ING OF CERTAIN PROTECTED HEALTH IN-**
6 **FORMATION DISCLOSURES; ACCESS TO CER-**
7 **TAIN INFORMATION IN ELECTRONIC FOR-**
8 **MAT.**

9 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-
10 CLOSURES OF HEALTH INFORMATION.—In the case that
11 an individual requests under paragraph (a)(1)(i)(A) of
12 section 164.522 of title 45, Code of Federal Regulations,
13 that a covered entity restrict the disclosure of the pro-
14 tected health information of the individual, notwith-
15 standing paragraph (a)(1)(ii) of such section, the covered
16 entity must comply with the requested restriction if—

17 (1) except as otherwise required by law, the dis-
18 closure is to a health plan for purposes of carrying
19 out payment or health care operations (and is not
20 for purposes of carrying out treatment); and

21 (2) the protected health information pertains
22 solely to a health care item or service for which the
23 health care provider involved has been paid out of
24 pocket in full.

1 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
2 THE LIMITED DATA SET OR THE MINIMUM NEC-
3 ESSARY.—

4 (1) IN GENERAL.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a covered entity shall be treated as
7 being in compliance with section 164.502(b)(1)
8 of title 45, Code of Federal Regulations, with
9 respect to the use, disclosure, or request of pro-
10 tected health information described in such sec-
11 tion, only if the covered entity limits such pro-
12 tected health information, to the extent prac-
13 ticable, to the limited data set (as defined in
14 section 164.514(e)(2) of such title) or, if needed
15 by such entity, to the minimum necessary to ac-
16 complish the intended purpose of such use, dis-
17 closure, or request, respectively.

18 (B) GUIDANCE.—Not later than 18
19 months after the date of the enactment of this
20 section, the Secretary shall issue guidance on
21 what constitutes “minimum necessary” for pur-
22 poses of subpart E of part 164 of title 45, Code
23 of Federal Regulation. In issuing such guidance
24 the Secretary shall take into consideration the
25 guidance under section 4424(c).

1 (C) SUNSET.—Subparagraph (A) shall not
2 apply on and after the effective date on which
3 the Secretary issues the guidance under sub-
4 paragraph (B).

5 (2) DETERMINATION OF MINIMUM NEC-
6 ESSARY.—For purposes of paragraph (1), in the
7 case of the disclosure of protected health informa-
8 tion, the covered entity or business associate dis-
9 closing such information shall determine what con-
10 stitutes the minimum necessary to accomplish the
11 intended purpose of such disclosure.

12 (3) APPLICATION OF EXCEPTIONS.—The excep-
13 tions described in section 164.502(b)(2) of title 45,
14 Code of Federal Regulations, shall apply to the re-
15 quirement under paragraph (1) as of the effective
16 date described in section 4423 in the same manner
17 that such exceptions apply to section 164.502(b)(1)
18 of such title before such date.

19 (4) RULE OF CONSTRUCTION.—Nothing in this
20 subsection shall be construed as affecting the use,
21 disclosure, or request of protected health information
22 that has been de-identified.

23 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
24 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
25 TITY USES ELECTRONIC HEALTH RECORD.—

1 (1) IN GENERAL.—In applying section 164.528
2 of title 45, Code of Federal Regulations, in the case
3 that a covered entity uses or maintains an electronic
4 health record with respect to protected health infor-
5 mation—

6 (A) the exception under paragraph
7 (a)(1)(i) of such section shall not apply to dis-
8 closures through an electronic health record
9 made by such entity of such information; and

10 (B) an individual shall have a right to re-
11 ceive an accounting of disclosures described in
12 such paragraph of such information made by
13 such covered entity during only the three years
14 prior to the date on which the accounting is re-
15 quested.

16 (2) REGULATIONS.—The Secretary shall pro-
17 mulgate regulations on what information shall be
18 collected about each disclosure referred to in para-
19 graph (1)(A) not later than 18 months after the
20 date on which the Secretary adopts standards on ac-
21 counting for disclosure described in the section
22 3002(b)(2)(B)(iv) of the Public Health Service Act,
23 as added by section 4101. Such regulations shall
24 only require such information to be collected through
25 an electronic health record in a manner that takes

1 into account the interests of individuals in learning
2 the circumstances under which their protected health
3 information is being disclosed and takes into account
4 the administrative burden of accounting for such
5 disclosures.

6 (3) CONSTRUCTION.—Nothing in this sub-
7 section shall be construed as requiring a covered en-
8 tity to account for disclosures of protected health in-
9 formation that are not made by such covered entity
10 or by a business associate acting on behalf of the
11 covered entity.

12 (4) EFFECTIVE DATE.—

13 (A) CURRENT USERS OF ELECTRONIC
14 RECORDS.—In the case of a covered entity inso-
15 far as it acquired an electronic health record as
16 of January 1, 2009, paragraph (1) shall apply
17 to disclosures, with respect to protected health
18 information, made by the covered entity from
19 such a record on and after January 1, 2014.

20 (B) OTHERS.—In the case of a covered en-
21 tity insofar as it acquires an electronic health
22 record after January 1, 2009, paragraph (1)
23 shall apply to disclosures, with respect to pro-
24 tected health information, made by the covered

1 entity from such record on and after the later
2 of the following:

3 (i) January 1, 2011; or

4 (ii) the date that it acquires an elec-
5 tronic health record.

6 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
7 later than 18 months after the date of the enactment of
8 this title, the Secretary shall promulgate regulations to
9 eliminate from the definition of health care operations
10 under section 164.501 of title 45, Code of Federal Regula-
11 tions, those activities that can reasonably and efficiently
12 be conducted through the use of information that is de-
13 identified (in accordance with the requirements of section
14 164.514(b) of such title) or that should require a valid
15 authorization for use or disclosure. In promulgating such
16 regulations, the Secretary may choose to narrow or clarify
17 activities that the Secretary chooses to retain in the defini-
18 tion of health care operations and the Secretary shall take
19 into account the report under section 424(d). In such reg-
20 ulations the Secretary shall specify the date on which such
21 regulations shall apply to disclosures made by a covered
22 entity, but in no case would such date be sooner than the
23 date that is 24 months after the date of the enactment
24 of this section.

1 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
2 RECORDS OR PROTECTED HEALTH INFORMATION OB-
3 TAINED FROM ELECTRONIC HEALTH RECORDS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), a covered entity or business associate
6 shall not directly or indirectly receive remuneration
7 in exchange for any protected health information of
8 an individual unless the covered entity obtained from
9 the individual, in accordance with section 164.508 of
10 title 45, Code of Federal Regulations, a valid au-
11 thorization that includes, in accordance with such
12 section, a specification of whether the protected
13 health information can be further exchanged for re-
14 munerated by the entity receiving protected health
15 information of that individual.

16 (2) EXCEPTIONS.—Paragraph (1) shall not
17 apply in the following cases:

18 (A) The purpose of the exchange is for re-
19 search or public health activities (as described
20 in sections 164.501, 164.512(i), and 164.512(b)
21 of title 45, Code of Federal Regulations) and
22 the price charged reflects the costs of prepara-
23 tion and transmittal of the data for such pur-
24 pose.

1 (B) The purpose of the exchange is for the
2 treatment of the individual and the price
3 charges reflects not more than the costs of
4 preparation and transmittal of the data for
5 such purpose.

6 (C) The purpose of the exchange is the
7 health care operation specifically described in
8 subparagraph (iv) of paragraph (6) of the defi-
9 nition of health care operations in section
10 164.501 of title 45, Code of Federal Regula-
11 tions.

12 (D) The purpose of the exchange is for re-
13 munerated that is provided by a covered entity
14 to a business associate for activities involving
15 the exchange of protected health information
16 that the business associate undertakes on behalf
17 of and at the specific request of the covered en-
18 tity pursuant to a business associate agreement.

19 (E) The purpose of the exchange is to pro-
20 vide an individual with a copy of the individ-
21 ual's protected health information pursuant to
22 section 164.524 of title 45, Code of Federal
23 Regulations.

24 (F) The purpose of the exchange is other-
25 wise determined by the Secretary in regulations

1 to be similarly necessary and appropriate as the
2 exceptions provided in subparagraphs (A)
3 through (E).

4 (3) REGULATIONS.—The Secretary shall pro-
5 mulgate regulations to carry out paragraph (this
6 subsection, including exceptions described in para-
7 graph (2), not later than 18 months after the date
8 of the enactment of this title.

9 (4) EFFECTIVE DATE.—Paragraph (1) shall
10 apply to exchanges occurring on or after the date
11 that is 6 months after the date of the promulgation
12 of final regulations implementing this subsection.

13 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
14 TRONIC FORMAT.—In applying section 164.524 of title
15 45, Code of Federal Regulations, in the case that a cov-
16 ered entity uses or maintains an electronic health record
17 with respect to protected health information of an indi-
18 vidual—

19 (1) the individual shall have a right to obtain
20 from such covered entity a copy of such information
21 in an electronic format; and

22 (2) notwithstanding paragraph (c)(4) of such
23 section, any fee that the covered entity may impose
24 for providing such individual with a copy of such in-
25 formation (or a summary or explanation of such in-

1 formation) if such copy (or summary or explanation)
2 is in an electronic form shall not be greater than the
3 entity's labor costs in responding to the request for
4 the copy (or summary or explanation).

5 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**
6 **OF HEALTH CARE OPERATIONS.**

7 (a) **MARKETING.**—

8 (1) **IN GENERAL.**—A communication by a cov-
9 ered entity or business associate that is about a
10 product or service and that encourages recipients of
11 the communication to purchase or use the product
12 or service shall not be considered a health care oper-
13 ation for purposes of subpart E of part 164 of title
14 45, Code of Federal Regulations, unless the commu-
15 nication is made as described in subparagraph (i),
16 (ii), or (iii) of paragraph (1) of the definition of
17 marketing in section 164.501 of such title.

18 (2) **PAYMENT FOR CERTAIN COMMUNICA-**
19 **TIONS.**—A covered entity or business associate may
20 not receive direct or indirect payment in exchange
21 for making any communication described in sub-
22 paragraph (i), (ii), or (iii) of paragraph (1) of the
23 definition of marketing in section 164.501 of title
24 45, Code of Federal Regulations, except—

1 (A) a business associate of a covered entity
2 may receive payment from the covered entity
3 for making any such communication on behalf
4 of the covered entity that is consistent with the
5 written contract (or other written arrangement)
6 described in section 164.502(e)(2) of such title
7 between such business associate and covered en-
8 tity; and

9 (B) a covered entity may receive payment
10 in exchange for making any such communica-
11 tion if the entity obtains from the recipient of
12 the communication, in accordance with section
13 164.508 of title 45, Code of Federal Regula-
14 tions, a valid authorization (as described in
15 paragraph (b) of such section) with respect to
16 such communication.

17 (b) FUNDRAISING.—Fundraising for the benefit of a
18 covered entity shall not be considered a health care oper-
19 ation for purposes of section 164.501 of title 45, Code of
20 Federal Regulations.

21 (c) EFFECTIVE DATE.—This section shall apply to
22 contracting occurring on or after the effective date speci-
23 fied under section 4423.

1 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
2 **MENT FOR VENDORS OF PERSONAL HEALTH**
3 **RECORDS AND OTHER NON-HIPAA COVERED**
4 **ENTITIES.**

5 (a) IN GENERAL.—In accordance with subsection (c),
6 each vendor of personal health records, following the dis-
7 covery of a breach of security of unsecured PHR identifi-
8 able health information that is in a personal health record
9 maintained or offered by such vendor, and each entity de-
10 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
11 lowing the discovery of a breach of security of such infor-
12 mation that is obtained through a product or service pro-
13 vided by such entity, shall—

14 (1) notify each individual who is a citizen or
15 resident of the United States whose unsecured PHR
16 identifiable health information was acquired by an
17 unauthorized person as a result of such a breach of
18 security; and

19 (2) notify the Federal Trade Commission.

20 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
21 VIDERS.—A third party service provider that provides
22 services to a vendor of personal health records or to an
23 entity described in clause (ii) or (iii) of section
24 4424(b)(1)(A) in connection with the offering or mainte-
25 nance of a personal health record or a related product or
26 service and that accesses, maintains, retains, modifies,

1 records, stores, destroys, or otherwise holds, uses, or dis-
2 closes unsecured PHR identifiable health information in
3 such a record as a result of such services shall, following
4 the discovery of a breach of security of such information,
5 notify such vendor or entity, respectively, of such breach.
6 Such notice shall include the identification of each indi-
7 vidual whose unsecured PHR identifiable health informa-
8 tion has been, or is reasonably believed to have been,
9 accessed, acquired, or disclosed during such breach.

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—

12 Subsections (c), (d), (e), and (f) of section 402 shall apply
13 to a notification required under subsection (a) and a ven-
14 dor of personal health records, an entity described in sub-
15 section (a) and a third party service provider described
16 in subsection (b), with respect to a breach of security
17 under subsection (a) of unsecured PHR identifiable health
18 information in such records maintained or offered by such
19 vendor, in a manner specified by the Federal Trade Com-
20 mission.

21 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
22 ceipt of a notification of a breach of security under sub-
23 section (a)(2), the Federal Trade Commission shall notify
24 the Secretary of such breach.

1 (e) ENFORCEMENT.—A violation of subsection (a) or
2 (b) shall be treated as an unfair and deceptive act or prac-
3 tice in violation of a regulation under section 18(a)(1)(B)
4 of the Federal Trade Commission Act (15 U.S.C.
5 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
6 tices.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) BREACH OF SECURITY.—The term “breach
9 of security” means, with respect to unsecured PHR
10 identifiable health information of an individual in a
11 personal health record, acquisition of such informa-
12 tion without the authorization of the individual.

13 (2) PHR IDENTIFIABLE HEALTH INFORMA-
14 TION.—The term “PHR identifiable health informa-
15 tion” means individually identifiable health informa-
16 tion, as defined in section 1171(6) of the Social Se-
17 curity Act (42 U.S.C. 1320d(6)), and includes, with
18 respect to an individual, information—

19 (A) that is provided by or on behalf of the
20 individual; and

21 (B) that identifies the individual or with
22 respect to which there is a reasonable basis to
23 believe that the information can be used to
24 identify the individual.

1 (3) UNSECURED PHR IDENTIFIABLE HEALTH
2 INFORMATION.—

3 (A) IN GENERAL.—Subject to subpara-
4 graph (B), the term “unsecured PHR identifi-
5 able health information” means PHR identifi-
6 able health information that is not protected
7 through the use of a technology or methodology
8 specified by the Secretary in the guidance
9 issued under section 4402(h)(2).

10 (B) EXCEPTION IN CASE TIMELY GUID-
11 ANCE NOT ISSUED.—In the case that the Sec-
12 retary does not issue guidance under section
13 4402(h)(2) by the date specified in such sec-
14 tion, for purposes of this section, the term “un-
15 secured PHR identifiable health information”
16 shall mean PHR identifiable health information
17 that is not secured by a technology standard
18 that renders protected health information unus-
19 able, unreadable, or indecipherable to unauthor-
20 ized individuals and that is developed or en-
21 dored by a standards developing organization
22 that is accredited by the American National
23 Standards Institute.

24 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

1 (1) REGULATIONS; EFFECTIVE DATE.—To
2 carry out this section, the Secretary of Health and
3 Human Services shall promulgate interim final regu-
4 lations by not later than the date that is 180 days
5 after the date of the enactment of this section. The
6 provisions of this section shall apply to breaches of
7 security that are discovered on or after the date that
8 is 30 days after the date of publication of such in-
9 terim final regulations.

10 (2) SUNSET.—The provisions of this section
11 shall not apply to breaches of security occurring on
12 or after the earlier of the following the dates:

13 (A) The date on which a standard relating
14 to requirements for entities that are not covered
15 entities that includes requirements relating to
16 breach notification has been promulgated by the
17 Secretary.

18 (B) The date on which a standard relating
19 to requirements for entities that are not covered
20 entities that includes requirements relating to
21 breach notification has been promulgated by the
22 Federal Trade Commission and has taken ef-
23 fect.

1 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
2 **FOR CERTAIN ENTITIES.**

3 Each organization, with respect to a covered entity,
4 that provides data transmission of protected health infor-
5 mation to such entity (or its business associate) and that
6 requires access on a routine basis to such protected health
7 information, such as a Health Information Exchange Or-
8 ganization, Regional Health Information Organization, E-
9 prescribing Gateway, or each vendor that contracts with
10 a covered entity to allow that covered entity to offer a per-
11 sonal health record to patients as part of its electronic
12 health record, is required to enter into a written contract
13 (or other written arrangement) described in section
14 164.502(e)(2) of title 45, Code of Federal Regulations and
15 a written contract (or other arrangement) described in
16 section 164.308(b) of such title, with such entity and shall
17 be treated as a business associate of the covered entity
18 for purposes of the provisions of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this title.

22 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
23 **DISCLOSURES CRIMINAL PENALTIES.**

24 Section 1177(a) of the Social Security Act (42 U.S.C.
25 1320d-6(a)) is amended by adding at the end the fol-
26 lowing new sentence: “For purposes of the previous sen-

1 tence, a person (including an employee or other individual)
2 shall be considered to have obtained or disclosed individ-
3 ually identifiable health information in violation of this
4 part if the information is maintained by a covered entity
5 (as defined in the HIPAA privacy regulation described in
6 section 1180(b)(3)) and the individual obtained or dis-
7 closed such information without authorization.”.

8 **SEC. 4410. IMPROVED ENFORCEMENT.**

9 (a) IN GENERAL.—Section 1176 of the Social Secu-
10 rity Act (42 U.S.C. 1320d-5) is amended—

11 (1) in subsection (b)(1), by striking “the act
12 constitutes an offense punishable under section
13 1177” and inserting “a penalty has been imposed
14 under section 1177 with respect to such act”; and

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

17 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-
18 GLECT.—

19 “(1) IN GENERAL.—A violation of a provision
20 of this part due to willful neglect is a violation for
21 which the Secretary is required to impose a penalty
22 under subsection (a)(1).

23 “(2) REQUIRED INVESTIGATION.—For purposes
24 of paragraph (1), the Secretary shall formally inves-
25 tigate any complaint of a violation of a provision of

1 this part if a preliminary investigation of the facts
2 of the complaint indicate such a possible violation
3 due to willful neglect.”.

4 (b) EFFECTIVE DATE; REGULATIONS.—

5 (1) The amendments made by subsection (a)
6 shall apply to penalties imposed on or after the date
7 that is 24 months after the date of the enactment
8 of this title.

9 (2) Not later than 18 months after the date of
10 the enactment of this title, the Secretary of Health
11 and Human Services shall promulgate regulations to
12 implement such amendments.

13 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY
14 PENALTIES COLLECTED.—

15 (1) IN GENERAL.—Subject to the regulation
16 promulgated pursuant to paragraph (3), any civil
17 monetary penalty or monetary settlement collected
18 with respect to an offense punishable under this sub-
19 title or section 1176 of the Social Security Act (42
20 U.S.C. 1320d-5) insofar as such section relates to
21 privacy or security shall be transferred to the Office
22 of Civil Rights of the Department of Health and
23 Human Services to be used for purposes of enforcing
24 the provisions of this subtitle and subparts C and E
25 of part 164 of title 45, Code of Federal Regulations,

1 as such provisions are in effect as of the date of en-
2 actment of this Act.

3 (2) GAO REPORT.—Not later than 18 months
4 after the date of the enactment of this title, the
5 Comptroller General shall submit to the Secretary a
6 report including recommendations for a methodology
7 under which an individual who is harmed by an act
8 that constitutes an offense referred to in paragraph
9 (1) may receive a percentage of any civil monetary
10 penalty or monetary settlement collected with re-
11 spect to such offense.

12 (3) ESTABLISHMENT OF METHODOLOGY TO
13 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
14 HARMED INDIVIDUALS.—Not later than 3 years
15 after the date of the enactment of this title, the Sec-
16 retary shall establish by regulation and based on the
17 recommendations submitted under paragraph (2), a
18 methodology under which an individual who is
19 harmed by an act that constitutes an offense re-
20 ferred to in paragraph (1) may receive a percentage
21 of any civil monetary penalty or monetary settlement
22 collected with respect to such offense.

23 (4) APPLICATION OF METHODOLOGY.—The
24 methodology under paragraph (3) shall be applied
25 with respect to civil monetary penalties or monetary

1 settlements imposed on or after the effective date of
2 the regulation.

3 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
4 TARY PENALTIES.—

5 (1) IN GENERAL.—Section 1176(a)(1) of the
6 Social Security Act (42 U.S.C. 1320d-5(a)(1)) is
7 amended by striking “who violates a provision of
8 this part a penalty of not more than” and all that
9 follows and inserting the following: “who violates a
10 provision of this part—

11 “(A) in the case of a violation of such pro-
12 vision in which it is established that the person
13 did not know (and by exercising reasonable dili-
14 gence would not have known) that such person
15 violated such provision, a penalty for each such
16 violation of an amount that is at least the
17 amount described in paragraph (3)(A) but not
18 to exceed the amount described in paragraph
19 (3)(D);

20 “(B) in the case of a violation of such pro-
21 vision in which it is established that the viola-
22 tion was due to reasonable cause and not to
23 willful neglect, a penalty for each such violation
24 of an amount that is at least the amount de-

1 scribed in paragraph (3)(B) but not to exceed
2 the amount described in paragraph (3)(D); and

3 “(C) in the case of a violation of such pro-
4 vision in which it is established that the viola-
5 tion was due to willful neglect—

6 “(i) if the violation is corrected as de-
7 scribed in subsection (b)(3)(A), a penalty
8 in an amount that is at least the amount
9 described in paragraph (3)(C) but not to
10 exceed the amount described in paragraph
11 (3)(D); and

12 “(ii) if the violation is not corrected
13 as described in such subsection, a penalty
14 in an amount that is at least the amount
15 described in paragraph (3)(D).

16 In determining the amount of a penalty under
17 this section for a violation, the Secretary shall
18 base such determination on the nature and ex-
19 tent of the violation and the nature and extent
20 of the harm resulting from such violation.”.

21 (2) TIERS OF PENALTIES DESCRIBED.—Section
22 1176(a) of such Act (42 U.S.C. 1320d-5(a)) is fur-
23 ther amended by adding at the end the following
24 new paragraph:

1 “(3) TIERS OF PENALTIES DESCRIBED.—For
2 purposes of paragraph (1), with respect to a viola-
3 tion by a person of a provision of this part—

4 “(A) the amount described in this subpara-
5 graph is \$100 for each such violation, except
6 that the total amount imposed on the person
7 for all such violations of an identical require-
8 ment or prohibition during a calendar year may
9 not exceed \$25,000;

10 “(B) the amount described in this subpara-
11 graph is \$1,000 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed \$100,000;

16 “(C) the amount described in this subpara-
17 graph is \$10,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed \$250,000; and

22 “(D) the amount described in this sub-
23 paragraph is \$50,000 for each such violation,
24 except that the total amount imposed on the
25 person for all such violations of an identical re-

1 requirement or prohibition during a calendar year
2 may not exceed \$1,500,000.”.

3 (3) CONFORMING AMENDMENTS.—Section
4 1176(b) of such Act (42 U.S.C. 1320d-5(b)) is
5 amended—

6 (A) by striking paragraph (2) and redesignig-
7 nating paragraphs (3) and (4) as paragraphs
8 (2) and (3), respectively; and

9 (B) in paragraph (2), as so redesignated—

10 (i) in subparagraph (A), by striking
11 “in subparagraph (B), a penalty may not
12 be imposed under subsection (a) if” and all
13 that follows through “the failure to comply
14 is corrected” and inserting “in subpara-
15 graph (B) or subsection (a)(1)(C), a pen-
16 alty may not be imposed under subsection
17 (a) if the failure to comply is corrected”;
18 and

19 (ii) in subparagraph (B), by striking
20 “(A)(ii)” and inserting “(A)” each place it
21 appears.

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to violations occurring
24 after the date of the enactment of this title.

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS

2 GENERAL.—

3 (1) IN GENERAL.—Section 1176 of the Social
4 Security Act (42 U.S.C. 1320d–5) is amended by
5 adding at the end the following new subsection:

6 “(c) ENFORCEMENT BY STATE ATTORNEYS GEN-
7 ERAL.—

8 “(1) CIVIL ACTION.—Except as provided in
9 subsection (b), in any case in which the attorney
10 general of a State has reason to believe that an in-
11 terest of one or more of the residents of that State
12 has been or is threatened or adversely affected by
13 any person who violates a provision of this part, the
14 attorney general of the State, as *parens patriae*, may
15 bring a civil action on behalf of such residents of the
16 State in a district court of the United States of ap-
17 propriate jurisdiction—

18 “(A) to enjoin further such violation by the
19 defendant; or

20 “(B) to obtain damages on behalf of such
21 residents of the State, in an amount equal to
22 the amount determined under paragraph (2).

23 “(2) STATUTORY DAMAGES.—

24 “(A) IN GENERAL.—For purposes of para-
25 graph (1)(B), the amount determined under

1 this paragraph is the amount calculated by mul-
2 tiplied the number of violations by up to \$100.
3 For purposes of the preceding sentence, in the
4 case of a continuing violation, the number of
5 violations shall be determined consistent with
6 the HIPAA privacy regulations (as defined in
7 section 1180(b)(3)) for violations of subsection
8 (a).

9 “(B) LIMITATION.—The total amount of
10 damages imposed on the person for all viola-
11 tions of an identical requirement or prohibition
12 during a calendar year may not exceed \$25,000.

13 “(C) REDUCTION OF DAMAGES.—In as-
14 sessing damages under subparagraph (A), the
15 court may consider the factors the Secretary
16 may consider in determining the amount of a
17 civil money penalty under subsection (a) under
18 the HIPAA privacy regulations.

19 “(3) ATTORNEY FEES.—In the case of any suc-
20 cessful action under paragraph (1), the court, in its
21 discretion, may award the costs of the action and
22 reasonable attorney fees to the State.

23 “(4) NOTICE TO SECRETARY.—The State shall
24 serve prior written notice of any action under para-
25 graph (1) upon the Secretary and provide the Sec-

1 retary with a copy of its complaint, except in any
2 case in which such prior notice is not feasible, in
3 which case the State shall serve such notice imme-
4 diately upon instituting such action. The Secretary
5 shall have the right—

6 “(A) to intervene in the action;

7 “(B) upon so intervening, to be heard on
8 all matters arising therein; and

9 “(C) to file petitions for appeal.

10 “(5) CONSTRUCTION.—For purposes of bring-
11 ing any civil action under paragraph (1), nothing in
12 this section shall be construed to prevent an attor-
13 ney general of a State from exercising the powers
14 conferred on the attorney general by the laws of that
15 State.

16 “(6) VENUE; SERVICE OF PROCESS.—

17 “(A) VENUE.—Any action brought under
18 paragraph (1) may be brought in the district
19 court of the United States that meets applicable
20 requirements relating to venue under section
21 1391 of title 28, United States Code.

22 “(B) SERVICE OF PROCESS.—In an action
23 brought under paragraph (1), process may be
24 served in any district in which the defendant—

25 “(i) is an inhabitant; or

1 “(ii) maintains a physical place of
2 business.

3 “(7) LIMITATION ON STATE ACTION WHILE
4 FEDERAL ACTION IS PENDING.—If the Secretary has
5 instituted an action against a person under sub-
6 section (a) with respect to a specific violation of this
7 part, no State attorney general may bring an action
8 under this subsection against the person with re-
9 spect to such violation during the pendency of that
10 action.

11 “(8) APPLICATION OF CMP STATUTE OF LIM-
12 TATION.—A civil action may not be instituted with
13 respect to a violation of this part unless an action
14 to impose a civil money penalty may be instituted
15 under subsection (a) with respect to such violation
16 consistent with the second sentence of section
17 1128A(c)(1).”.

18 (2) CONFORMING AMENDMENTS.—Subsection
19 (b) of such section, as amended by subsection (d)(3),
20 is amended—

21 (A) in paragraph (1), by striking “A pen-
22 alty may not be imposed under subsection (a)”
23 and inserting “No penalty may be imposed
24 under subsection (a) and no damages obtained
25 under subsection (c)”;

1 (B) in paragraph (2)(A)—

2 (i) in the matter before clause (i), by
3 striking “a penalty may not be imposed
4 under subsection (a)” and inserting “no
5 penalty may be imposed under subsection
6 (a) and no damages obtained under sub-
7 section (c)”;

8 (ii) in clause (ii), by inserting “or
9 damages” after “the penalty”;

10 (C) in paragraph (2)(B)(i), by striking
11 “The period” and inserting “With respect to
12 the imposition of a penalty by the Secretary
13 under subsection (a), the period”;

14 (D) in paragraph (3), by inserting “and
15 any damages under subsection (c)” after “any
16 penalty under subsection (a)”.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to violations occurring
19 after the date of the enactment of this Act.

20 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-
21 TION.—Such section is further amended by adding at the
22 end the following new subsection:

23 “(d) ALLOWING CONTINUED USE OF CORRECTIVE
24 ACTION.—Nothing in this section shall be construed as
25 preventing the Office of Civil Rights of the Department

1 of Health and Human Services from continuing, in its dis-
2 cretion, to use corrective action without a penalty in cases
3 where the person did not know (and by exercising reason-
4 able diligence would not have known) of the violation in-
5 volved.”.

6 **SEC. 4411. AUDITS.**

7 The Secretary shall provide for periodic audits to en-
8 sure that covered entities and business associates that are
9 subject to the requirements of this subtitle and subparts
10 C and E of part 164 of title 45, Code of Federal Regula-
11 tions, as such provisions are in effect as of the date of
12 enactment of this Act, comply with such requirements.

13 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
14 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
15 **PORTS**

16 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

17 (a) APPLICATION OF HIPAA STATE PREEMPTION.—
18 Section 1178 of the Social Security Act (42 U.S.C.
19 1320d–7) shall apply to a provision or requirement under
20 this subtitle in the same manner that such section applies
21 to a provision or requirement under part C of title XI of
22 such Act or a standard or implementation specification
23 adopted or established under sections 1172 through 1174
24 of such Act.

1 (b) HEALTH INSURANCE PORTABILITY AND AC-
2 COUNTABILITY ACT.—The standards governing the pri-
3 vacy and security of individually identifiable health infor-
4 mation promulgated by the Secretary under sections
5 262(a) and 264 of the Health Insurance Portability and
6 Accountability Act of 1996 shall remain in effect to the
7 extent that they are consistent with this subtitle. The Sec-
8 retary shall by rule amend such Federal regulations as re-
9 quired to make such regulations consistent with this sub-
10 title.

11 **SEC. 4422. REGULATORY REFERENCES.**

12 Each reference in this subtitle to a provision of the
13 Code of Federal Regulations refers to such provision as
14 in effect on the date of the enactment of this title (or to
15 the most recent update of such provision).

16 **SEC. 4423. EFFECTIVE DATE.**

17 Except as otherwise specifically provided, the provi-
18 sions of part I shall take effect on the date that is 12
19 months after the date of the enactment of this title.

20 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

21 (a) REPORT ON COMPLIANCE.—

22 (1) IN GENERAL.—For the first year beginning
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Health, Education,

1 Labor, and Pensions of the Senate and the Com-
2 mittee on Ways and Means and the Committee on
3 Energy and Commerce of the House of Representa-
4 tives a report concerning complaints of alleged viola-
5 tions of law, including the provisions of this subtitle
6 as well as the provisions of subparts C and E of part
7 164 of title 45, Code of Federal Regulations, (as
8 such provisions are in effect as of the date of enact-
9 ment of this Act) relating to privacy and security of
10 health information that are received by the Secretary
11 during the year for which the report is being pre-
12 pared. Each such report shall include, with respect
13 to such complaints received during the year—

14 (A) the number of such complaints;

15 (B) the number of such complaints re-
16 solved informally, a summary of the types of
17 such complaints so resolved, and the number of
18 covered entities that received technical assist-
19 ance from the Secretary during such year in
20 order to achieve compliance with such provi-
21 sions and the types of such technical assistance
22 provided;

23 (C) the number of such complaints that
24 have resulted in the imposition of civil monetary
25 penalties or have been resolved through mone-

1 tary settlements, including the nature of the
2 complaints involved and the amount paid in
3 each penalty or settlement;

4 (D) the number of compliance reviews con-
5 ducted and the outcome of each such review;

6 (E) the number of subpoenas or inquiries
7 issued;

8 (F) the Secretary's plan for improving
9 compliance with and enforcement of such provi-
10 sions for the following year; and

11 (G) the number of audits performed and a
12 summary of audit findings pursuant to section
13 4411.

14 (2) AVAILABILITY TO PUBLIC.—Each report
15 under paragraph (1) shall be made available to the
16 public on the Internet website of the Department of
17 Health and Human Services.

18 (b) STUDY AND REPORT ON APPLICATION OF PRI-
19 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
20 COVERED ENTITIES.—

21 (1) STUDY.—Not later than one year after the
22 date of the enactment of this title, the Secretary, in
23 consultation with the Federal Trade Commission,
24 shall conduct a study, and submit a report under
25 paragraph (2), on privacy and security requirements

1 for entities that are not covered entities or business
2 associates as of the date of the enactment of this
3 title, including—

4 (A) requirements relating to security, pri-
5 vacy, and notification in the case of a breach of
6 security or privacy (including the applicability
7 of an exemption to notification in the case of
8 individually identifiable health information that
9 has been rendered unusable, unreadable, or in-
10 decipherable through technologies or methodolo-
11 gies recognized by appropriate professional or-
12 ganization or standard setting bodies to provide
13 effective security for the information) that
14 should be applied to—

15 (i) vendors of personal health records;

16 (ii) entities that offer products or
17 services through the website of a vendor of
18 personal health records;

19 (iii) entities that are not covered enti-
20 ties and that offer products or services
21 through the websites of covered entities
22 that offer individuals personal health
23 records;

24 (iv) entities that are not covered enti-
25 ties and that access information in a per-

1 sonal health record or send information to
2 a personal health record; and

3 (v) third party service providers used
4 by a vendor or entity described in clause
5 (i), (ii), (iii), or (iv) to assist in providing
6 personal health record products or services;

7 (B) a determination of which Federal gov-
8 ernment agency is best equipped to enforce
9 such requirements recommended to be applied
10 to such vendors, entities, and service providers
11 under subparagraph (A); and

12 (C) a timeframe for implementing regula-
13 tions based on such findings.

14 (2) REPORT.—The Secretary shall submit to
15 the Committee on Finance, the Committee on
16 Health, Education, Labor, and Pensions, and the
17 Committee on Commerce of the Senate and the
18 Committee on Ways and Means and the Committee
19 on Energy and Commerce of the House of Rep-
20 resentatives a report on the findings of the study
21 under paragraph (1) and shall include in such report
22 recommendations on the privacy and security re-
23 quirements described in such paragraph.

24 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
25 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—

1 Not later than 12 months after the date of the enactment
2 of this title, the Secretary shall, in consultation with stake-
3 holders, issue guidance on how best to implement the re-
4 quirements for the de-identification of protected health in-
5 formation under section 164.514(b) of title 45, Code of
6 Federal Regulations.

7 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
8 Not later than one year after the date of the enactment
9 of this title, the Comptroller General of the United States
10 shall submit to the Committee on Health, Education,
11 Labor, and Pensions of the Senate and the Committee on
12 Ways and Means and the Committee on Energy and Com-
13 merce of the House of Representatives a report on the
14 best practices related to the disclosure among health care
15 providers of protected health information of an individual
16 for purposes of treatment of such individual. Such report
17 shall include an examination of the best practices imple-
18 mented by States and by other entities, such as health
19 information exchanges and regional health information or-
20 ganizations, an examination of the extent to which such
21 best practices are successful with respect to the quality
22 of the resulting health care provided to the individual and
23 with respect to the ability of the health care provider to
24 manage such best practices, and an examination of the
25 use of electronic informed consent for disclosing protected

1 health information for treatment, payment, and health
2 care operations.

3 **Subtitle E—Miscellaneous**
4 **Medicare Provisions**

5 **SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULA-**
6 **TIONS.**

7 (a) DELAY IN PHASE OUT OF MEDICARE HOSPICE
8 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING
9 FISCAL YEAR 2009.—Notwithstanding any other provi-
10 sion of law, including the final rule published on August
11 8, 2008, 73 Federal Register 46464 et seq., relating to
12 Medicare Program; Hospice Wage Index for Fiscal Year
13 2009, the Secretary of Health and Human Services shall
14 not phase out or eliminate the budget neutrality adjust-
15 ment factor in the Medicare hospice wage index before Oc-
16 tober 1, 2009, and the Secretary shall recompute and
17 apply the final Medicare hospice wage index for fiscal year
18 2009 as if there had been no reduction in the budget neu-
19 trality adjustment factor.

20 (b) NON-APPLICATION OF PHASED-OUT INDIRECT
21 MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR
22 FISCAL YEAR 2009.—

23 (1) IN GENERAL.—Section 412.322 of title 42,
24 Code of Federal Regulations, shall be applied with-
25 out regard to paragraph (c) of such section, and the

1 Secretary of Health and Human Services shall re-
2 compute payments for discharges occurring on or
3 after October 1, 2008, as if such paragraph had
4 never been in effect.

5 (2) NO EFFECT ON SUBSEQUENT YEARS.—
6 Nothing in paragraph (1) shall be construed as hav-
7 ing any effect on the application of paragraph (d) of
8 section 412.322 of title 42, Code of Federal Regula-
9 tions.

10 (c) FUNDING FOR IMPLEMENTATION.—In addition to
11 funds otherwise available, for purposes of implementing
12 the provisions of subsections (a) and (b), including costs
13 incurred in reprocessing claims in carrying out such provi-
14 sions, the Secretary of Health and Human Services shall
15 provide for the transfer from the Federal Hospital Insur-
16 ance Trust Fund established under section 1817 of the
17 Social Security Act (42 U.S.C. 1395i) to the Centers for
18 Medicare & Medicaid Services Program Management Ac-
19 count of \$2,000,000 for fiscal year 2009.

20 **SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL COR-**
21 **RECTIONS.**

22 (a) PAYMENT.—Subsection (c) of section 114 of the
23 Medicare, Medicaid, and SCHIP Extension Act of 2007
24 (Public Law 110–173) is amended—

25 (1) in paragraph (1)—

1 (A) by amending the heading to read as
2 follows: “DELAY IN APPLICATION OF 25 PER-
3 CENT PATIENT THRESHOLD PAYMENT ADJUST-
4 MENT”;

5 (B) by striking “the date of the enactment
6 of this Act” and inserting “July 1, 2007,”; and

7 (C) in subparagraph (A), by inserting “or
8 to a long-term care hospital, or satellite facility,
9 that as of December 29, 2007, was co-located
10 with an entity that is a provider-based, off-cam-
11 pus location of a subsection (d) hospital which
12 did not provide services payable under section
13 1886(d) of the Social Security Act at the off-
14 campus location” after “freestanding long-term
15 care hospitals”; and

16 (2) in paragraph (2)—

17 (A) in subparagraph (B)(ii), by inserting
18 “or that is described in section 412.22(h)(3)(i)
19 of such title” before the period; and

20 (B) in subparagraph (C), by striking “the
21 date of the enactment of this Act” and insert-
22 ing “October 1, 2007 (or July 1, 2007, in the
23 case of a satellite facility described in section
24 412.22(h)(3)(i) of title 42, Code of Federal
25 Regulations)”.

1 (b) MORATORIUM.—Subsection (d)(3)(A) of such sec-
2 tion is amended by striking “if the hospital or facility”
3 and inserting “if the hospital or facility obtained a certifi-
4 cate of need for an increase in beds that is in a State
5 for which such certificate of need is required and that was
6 issued on or after April 1, 2005, and before December
7 29, 2007, or if the hospital or facility”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall be effective and apply as if included in
10 the enactment of the Medicare, Medicaid, and SCHIP Ex-
11 tension Act of 2007 (Public Law 110–173).