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111TH CONGRESS
1ST SESSION

H. R. 598

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2009

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TAX PROVISIONS

SECTION 1000. SHORT TITLE, ETC.

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

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is

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

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

Sec. 1000. Short title, etc.

Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Temporary increase in earned income tax credit.
Sec. 1102. Temporary increase of refundable portion of child credit.

Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

Subtitle D—Housing Incentives

Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.
Sec. 1302. Coordination of low-income housing credit and low-income housing grants.

Subtitle E—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

Sec. 1401. Special allowance for certain property acquired during 2009.
Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1411. 5-year carryback of operating losses.
Sec. 1412. Exception for TARP recipients.

PART III—INCENTIVES FOR NEW JOBS

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

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

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

Subtitle F—Fiscal Relief for State and Local Governments

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

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

PART II—TAX CREDIT BONDS FOR SCHOOLS

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

PART III—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

Sec. 1521. Taxable bond option for governmental bonds.

PART IV—RECOVERY ZONE BONDS

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

PART V—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

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

Subtitle G—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

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

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

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

PART III—ENERGY CONSERVATION INCENTIVES

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

PART IV—ENERGY RESEARCH INCENTIVES

Sec. 1631. Increased research credit for energy research.

Subtitle H—Other Provisions

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

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

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

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

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

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

Subtitle A—Making Work Pay

SEC. 1001. MAKING WORK PAY CREDIT.

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

"SEC. 36A. MAKING WORK PAY CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

"(1) 6.2 percent of earned income of the taxpayer, or

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

"(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be

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

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any individual other than—

"(A) any nonresident alien individual,

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

"(C) an estate or trust.

"(2) EARNED INCOME.—The term 'earned income' has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For pur-

poses of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

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

(b) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided

to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

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

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

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

(3) DEFINITIONS AND SPECIAL RULES.—

(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

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

(c) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or

made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(d) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) is amended by inserting "36A," after "36,".

(2) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "36A," after "36,".

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

"Sec. 36A. Making work pay credit.".

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

Subtitle B—Additional Tax Relief for Families With Children

SEC. 1101. TEMPORARY INCREASE IN EARNED INCOME TAX CREDIT.

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

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

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

"(B) REDUCTION OF MARRIAGE PENALTY.—

"(i) IN GENERAL.—The dollar amount in effect under paragraph (2)(B) shall be $5,000.

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

"(I) such dollar amount, multiplied by

"(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

"(iii) ROUNDING.—Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).".

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

SEC. 1102. TEMPORARY INCREASE OF REFUNDABLE PORTION OF CHILD CREDIT.

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

"(4) SPECIAL RULE FOR 2009 AND 2010.—Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009 or 2010, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be zero.".

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

Subtitle C—American Opportunity Tax Credit

SEC. 1201. AMERICAN OPPORTUNITY TAX CREDIT.

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

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

''(1) INCREASE IN CREDIT.—The Hope Scholarship Credit shall be an amount equal to the sum of—

''(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

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

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

and (C) of subsection (b)(2) shall be applied by substituting '4' for '2'.

"(3) QUALIFIED TUITION AND RELATED EXPENSES TO INCLUDE REQUIRED COURSE MATERIALS.—Subsection (f)(1)(A) shall be applied by substituting 'tuition, fees, and course materials' for 'tuition and fees'.

"(4) INCREASE IN AGI LIMITS FOR HOPE SCHOLARSHIP CREDIT.—In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

"(ii) $80,000 ($160,000 in the case of a joint return), bears to

"(B) $10,000 ($20,000 in the case of a joint return).

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

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

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

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

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

"(6) PORTION OF CREDIT MADE REFUNDABLE.—40 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child

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

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) is amended by inserting ''25A(i),'' after ''23,''.

(2) Section 25(e)(1)(C)(ii) is amended by inserting ''25A(i),'' after ''24,''.

(3) Section 26(a)(1) is amended by inserting ''25A(i),'' after ''24,''.

(4) Section 25B(g)(2) is amended by inserting ''25A(i),'' after ''23,''.

(5) Section 904(i) is amended by inserting ''25A(i),'' after ''24,''.

(6) Section 1400C(d)(2) is amended by inserting ''25A(i),'' after ''24,''.

(7) Section 1324(b)(2) of title 31, United States Code, is amended by inserting ''25A,'' before ''35''.

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

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

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

(e) TREASURY STUDIES REGARDING EDUCATION INCENTIVES.—

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

(2) STUDY REGARDING IMPOSITION OF COMMUNITY SERVICE REQUIREMENTS.—The Secretary of the Treasury, or the Secretary's delegate, shall study the feasibility of requiring students to perform community service as a condition of taking their tuition and related expenses into account under section 25A of the Internal Revenue Code of 1986.

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

Subtitle D—Housing Incentives

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

(a) IN GENERAL.—Paragraph (4) of section 36(f) is amended by adding at the end the following new subparagraph:

"(D) WAIVER OF RECAPTURE FOR PURCHASES IN 2009.—In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008, and before July 1, 2009—

"(i) paragraph (1) shall not apply, and

"(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.".

(b) CONFORMING AMENDMENT.—Subsection (g) of section 36 is amended by striking "subsection (c)" and inserting "subsections (c) and (f)(4)(D)".

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

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

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

"(9) COORDINATION WITH LOW-INCOME HOUSING GRANTS.—

"(A) REDUCTION IN STATE HOUSING CREDIT CEILING FOR LOW-INCOME HOUSING GRANTS RECEIVED IN 2009.—For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1711 of the American Recovery and Reinvestment Tax Act of 2009.

"(B) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).".

Subtitle E—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

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

(1) by striking ''January 1, 2010'' and inserting ''January 1, 2011'', and

(2) by striking ''January 1, 2009'' each place it appears and inserting ''January 1, 2010''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168 is amended by striking ''JANUARY 1, 2009'' and inserting ''JANUARY 1, 2010''.

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

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

(A) by striking ''and'' at the end of clause (i),

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

(C) by inserting after clause (i) the following new clauses:

"(ii) 'April 1, 2008' shall be substituted for 'January 1, 2008' in subparagraph (A)(iii)(I) thereof,

"(iii) 'January 1, 2009' shall be substituted for 'January 1, 2010' each place it appears,

"(iv) 'January 1, 2010' shall be substituted for 'January 1, 2011' in subparagraph (A)(iv) thereof, and".

(4) Subparagraph (B) of section 168(l)(5) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(5) Subparagraph (B) of section 1400N(d)(3) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

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

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

SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

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

(1) by striking ''2008'' and inserting ''2008, or 2009'', and

(2) by striking ''2008'' in the heading thereof and inserting ''2008, AND 2009''.

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

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

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

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

''(H) CARRYBACK FOR 2008 AND 2009 NET OPERATING LOSSES.—In the case of a net operating loss for any taxable year ending during 2008 or 2009—

''(i) subparagraph (A)(i) shall be applied by substituting '5' for '2',

"(ii) subparagraph (E)(ii) shall be applied by substituting '4' for '2', and

"(iii) subparagraph (F) shall not apply.".

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

"(I) the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during 2001, 2002, 2008, or 2009 and carryovers of net operating losses to taxable years ending during such calendar years, or".

(c) ELECTION TO CARRY BACK A FEWER NUMBER OF YEARS.—Subsection (k) of section 172 is amended by inserting "or may elect to apply such subsection by substituting a whole number less than 5 for '5' in such subsection" before the period at the end of the first sentence.

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

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

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

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to net operating losses arising in taxable years ending after December 31, 2007.

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

(3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) shall apply to losses from operations arising in taxable years ending after December 31, 2007.

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

(A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

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

(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term ''applicable date'' means the date which is 60 days after the date of the enactment of this Act.

SEC. 1412. EXCEPTION FOR TARP RECIPIENTS.

The amendments made by this part shall not apply to—

(1) any taxpayer if—

(A) the Federal Government acquires, at any time, an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or

(B) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act,

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

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

PART III—INCENTIVES FOR NEW JOBS

SEC. 1421. INCENTIVES TO HIRE UNEMPLOYED VETERANS AND DISCONNECTED YOUTH.

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

"(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—

"(A) IN GENERAL.—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) UNEMPLOYED VETERAN.—The term 'unemployed veteran' means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

"(I) having been discharged or released from active duty in the Armed Forces during 2008, 2009, or 2010, and

"(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

"(ii) DISCONNECTED YOUTH.—The term 'disconnected youth' means any individual who is certified by the designated local agency—

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

"(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

"(III) as not regularly employed during such 6-month period, and

"(IV) as not readily employable by reason of lacking a sufficient number of basic skills.".

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

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

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

(a) FINDINGS.—Congress finds as follows:

(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

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

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

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

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

(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

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

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

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

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

(A) is pursuant to a written binding contract entered into on or before such date, or

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

Securities and Exchange Commision required by reason of such ownership change.

Subtitle F—Fiscal Relief for State and Local Governments

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

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

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

"(7) DE MINIMIS EXCEPTION FOR BONDS ISSUED DURING 2009 OR 2010.—

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

"(B) LIMITATION.—The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

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

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

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

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

SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION TO TAX-EXEMPT INTEREST EXPENSE ALLOCATION RULES FOR FINANCIAL INSTITUTIONS.

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

''(G) SPECIAL RULES FOR OBLIGATIONS ISSUED DURING 2009 AND 2010.—

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

or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting '$30,000,000' for '$10,000,000'.

"(ii) SPECIAL RULE FOR POOLED FINANCINGS.—In the case of a pooled financing issue issued during 2009 or 2010—

"(I) subparagraph (F) shall not apply, and

"(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue).

"(iii) POOLED FINANCING ISSUE.—For purposes of this subparagraph, the term 'pooled financing issue' means any issue the proceeds of which are used directly or indirectly to make or finance loans to 2 or more ultimate borrowers all of whom are qualified borrowers.

"(iv) QUALIFIED PORTION.—For purposes of this subparagraph, the term 'qualified portion' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

"(v) QUALIFIED BORROWER.—For purposes of this subparagraph, the term 'qualified borrower' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).".

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

SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT BONDS.

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

"(vi) EXCEPTION FOR BONDS ISSUED IN 2009 AND 2010.—For purposes of clause (i), the term 'private activity bond' shall

not include any bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).''.

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

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

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

PART II—TAX CREDIT BONDS FOR SCHOOLS

SEC. 1511. QUALIFIED SCHOOL CONSTRUCTION BONDS.

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

"SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.

"(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—For purposes of this subchapter, the term 'qualified school construction bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

"(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

"(3) the issuer designates such bond for purposes of this section.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the sum of—

"(1) the limitation amount allocated under subsection (d) for such calendar year to such issuer, and

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

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

"(1) $10,000,000,000 for 2009,

"(2) $10,000,000,000 for 2010, and

"(3) except as provided in subsection (f), zero after 2010.

"(d) 60 PERCENT OF LIMITATION ALLOCATED AMONG STATES.—

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

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

"(2) MINIMUM ALLOCATIONS TO STATES.—

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

"(i) the amount allocated to such State under this subsection for such year, and

"(ii) the aggregate amounts allocated under subsection (e) to large local educational agencies in such State for such year,

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

"(B) ADJUSTED MINIMUM PERCENTAGE.—A State's adjusted minimum percentage for any calendar year is the product of—

"(i) the minimum percentage described in section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334(d)) for such State for the most recent fiscal year ending before such calendar year, multiplied by

"(ii) 1.68.

"(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

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

2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

''(e) 40 PERCENT OF LIMITATION ALLOCATED AMONG LARGEST SCHOOL DISTRICTS.—

''(1) IN GENERAL.—40 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated under paragraph (2) by the Secretary among local educational agencies which are large local educational agencies for such year.

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

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

"(4) LARGE LOCAL EDUCATIONAL AGENCY.—For purposes of this section, the term 'large local educational agency' means, with respect to a calendar year, any local educational agency if such agency is—

"(A) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, or

"(B) 1 of not more than 25 local educational agencies (other than those described in subparagraph (A)) that the Secretary of Education determines (based on the most recent data available satisfactory to the Secretary) are

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

''(f) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

''(1) the amount allocated under subsection (d) to any State, exceeds

''(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

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

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d) is amended by striking ''or'' at the end of subparagraph (C), by inserting ''or'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) a qualified school construction bond,''.

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

by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).".

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

"Sec. 54F. Qualified school construction bonds.".

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

SEC. 1512. EXTENSION AND EXPANSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Section 54E(c)(1) is amended by striking "and 2009" and inserting "and $1,400,000,000 for 2009 and 2010".

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

PART III—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:

"Subpart J—Taxable Bond Option for Governmental Bonds

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

"SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS.

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

"(b) AMOUNT OF CREDIT.—The amount of the credit determined under this subsection with respect to any interest payment date for a taxable governmental bond is 35 percent of the amount of interest payable by the issuer with respect to such date.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

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

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

"(d) TAXABLE GOVERNMENTAL BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'taxable governmental bond' means any obligation (other than a private activity bond) if—

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

"(B) the issuer makes an irrevocable election to have this section apply.

"(2) APPLICABLE RULES.—For purposes of applying paragraph (1)—

"(A) a taxable governmental bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

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

"(C) a bond shall not be treated as a taxable governmental bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

"(e) INTEREST PAYMENT DATE.—For purposes of this section, the term 'interest payment date' means any date on which the holder of record of the taxable governmental bond is entitled to a payment of interest under such bond.

"(f) SPECIAL RULES.—

"(1) INTEREST ON TAXABLE GOVERNMENTAL BONDS INCLUDIBLE IN GROSS INCOME FOR FED-

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

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

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

"(1) ISSUER ALLOWED REFUNDABLE CREDIT.—In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6431.

"(2) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' means any taxable governmental bond issued as part of an issue if—

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

"(B) the issuer makes an irrevocable election to have this subsection apply.".

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

"SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

"(a) IN GENERAL.—In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

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

"(c) APPLICATION OF ARBITRAGE RULES.—For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

"(d) INTEREST PAYMENT DATE.—For purposes of this subsection, the term 'interest payment date' means each date on which interest is payable by the issuer under the terms of the bond.

"(e) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' has the meaning given such term in section 54AA(h).".

(c) CONFORMING AMENDMENTS.—

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

(2) Section 54A(c)(1)(B) is amended by striking "subpart C" and inserting "subparts C and J".

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

(4) Section 6401(b)(1) is amended by striking "and I" and inserting "I, and J".

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

"Subpart J. Taxable bond option for governmental bonds.".

(6) The table of section for subchapter B of chapter 65 is amended by adding at the end the following new item:

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

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

the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax.

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

PART IV—RECOVERY ZONE BONDS

SEC. 1531. RECOVERY ZONE BONDS.

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

"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.

"SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.

"(a) ALLOCATIONS.—

"(1) IN GENERAL.—The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

"(2) 2008 STATE EMPLOYMENT DECLINE.—For purposes of this subsection, the term '2008 State

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

"(A) the number of individuals employed in such State determined for December 2007, over

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

"(3) ALLOCATIONS BY STATES.—

"(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion the each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State.

"(B) LARGE MUNICIPALITIES.—For purposes of subparagraph (A), the term 'large municipality' means a municipality with a population of more than 100,000.

"(C) DETERMINATION OF LOCAL EMPLOYMENT DECLINES.—For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the

same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

"(4) NATIONAL LIMITATIONS.—

"(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—There is a national recovery zone economic development bond limitation of $10,000,000,000.

"(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of $15,000,000,000.

"(b) RECOVERY ZONE.—For purposes of this part, the term 'recovery zone' means—

"(1) any area designated by the issuer as having significant poverty, unemployment, or rate of home foreclosures, and

"(2) any area for which a designation as an empowerment zone or renewal community is in effect.

"SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

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

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

"(2) subsection (b) of such section shall be applied by substituting '40 percent' for '35 percent'.

"(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone economic development bond' means any taxable governmental bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

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

"(B) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

"(c) QUALIFIED ECONOMIC DEVELOPMENT PURPOSE.—For purposes of this section, the term 'qualified

economic development purpose' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

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

"(2) expenditures for public infrastructure and construction of public facilities, and

"(3) expenditures for job training and educational programs.

"SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.

"(a) IN GENERAL.—For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any recovery zone facility bond.

"(b) RECOVERY ZONE FACILITY BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone facility bond' means any bond issued as part of an issue if—

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

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

"(C) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

"(c) RECOVERY ZONE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—

"(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the recovery zone took effect,

"(B) the original use of which in the recovery zone commences with the taxpayer, and

"(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

"(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except that—

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

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

"(3) SPECIAL RULES FOR SUBSTANTIAL RENOVATIONS AND SALE-LEASEBACK.—Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

"(d) NONAPPLICATION OF CERTAIN RULES.—Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.".

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

"PART III. RECOVERY ZONE BONDS.".

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

SEC. 1532. TRIBAL ECONOMIC DEVELOPMENT BONDS.

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

"(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

"(1) ALLOCATION OF LIMITATION.—

"(A) IN GENERAL.—The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

"(B) NATIONAL LIMITATION.—There is a national tribal economic development bond limitation of $2,000,000,000.

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

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

"(B) section 146 shall not apply.

"(3) TRIBAL ECONOMIC DEVELOPMENT BOND.—

"(A) IN GENERAL.—For purposes of this section, the term 'tribal economic development bond' means any bond issued by an Indian tribal government—

"(i) the interest on which is not exempt from tax under section 103 by reason of subsection (c) (determined without regard to this subsection) but would be so exempt if issued by a State or local government, and

"(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

"(B) EXCEPTIONS.—The term tribal economic development bond shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

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

"(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

"(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1).".

(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the studies conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

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

PART V—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

SEC. 1541. REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS.

Section 3402 is amended by striking subsection (t).

Subtitle G—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

SEC. 1601. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

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

(1) by striking ''2010'' in paragraph (1) and inserting ''2013'',

(2) by striking ''2011'' each place it appears in paragraphs (2), (3), (4), (6), (7), and (9) and inserting ''2014'', and

(3) by striking ''2012'' in paragraph (11)(B) and inserting ''2014''.

(b) TECHNICAL AMENDMENT.—Paragraph (5) of section 45(d) is amended by striking ''and before'' and all that follows and inserting ''and before October 3, 2008.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

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

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

SEC. 1602. ELECTION OF INVESTMENT CREDIT IN LIEU OF PRODUCTION CREDIT.

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

"(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

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

"(i) such facility shall be treated as energy property for purposes of this section, and

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

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

"(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term 'qualified investment credit facility' means any facility described in paragraph (1), (2), (3),

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

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

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

(a) REPEAL OF LIMITATION ON CREDIT FOR QUALIFIED SMALL WIND ENERGY PROPERTY.—Paragraph (4) of section 48(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C).

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

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

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(1) is amended by striking ''(8), and (9)'' and inserting ''and (8)''.

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2),the amendment made by this section shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) shall apply to taxable years beginning after December 31, 2008.

SEC. 1604. COORDINATION WITH RENEWABLE ENERGY GRANTS.

Section 48 is amended by adding at the end the following new subsection:

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

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

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

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

"(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

"(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

"(3) TREATMENT OF GRANTS.—Any such grant shall—

"(A) not be includible in the gross income of the taxpayer, but

"(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in

the same manner as a credit allowed under subsection (a).''.

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

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

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

''(4) ADDITIONAL LIMITATION.—The national new clean renewable energy bond limitation shall be increased by $1,600,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (2) and (3).''.

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

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

''(4) ADDITIONAL LIMITATION.—The national qualified energy conservation bond limitation shall be increased by $2,400,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (1), (2), and (3).''.

PART III—ENERGY CONSERVATION INCENTIVES

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

(a) IN GENERAL.—Section 25C is amended by striking subsections (a) and (b) and inserting the following new subsections:

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

"(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

"(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500.".

(b) EXTENSION.—Section 25C(g)(2) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

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

SEC. 1622. MODIFICATION OF CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

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

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

"(1) MAXIMUM CREDIT FOR FUEL CELLS.—In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.".

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

(A) by striking all that precedes subparagraph (B) and inserting the following:

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

"(A) MAXIMUM EXPENDITURES FOR FUEL CELLS.—The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.", and

(B) by striking subparagraph (C).

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

SEC. 1623. TEMPORARY INCREASE IN CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

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

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

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

"(i) subsection (a) shall be applied by substituting '50 percent' for '30 percent',

"(ii) subsection (b)(1) shall be applied by substituting '$50,000' for '$30,000', and

"(iii) subsection (b)(2) shall be applied by substituting '$2,000' for '$1,000', and

"(B) in the case of any such property which relates to hydrogen, subsection (b) shall be applied by substituting '$200,000' for '$30,000'.".

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

PART IV—ENERGY RESEARCH INCENTIVES

SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RESEARCH.

(a) IN GENERAL.—Section 41 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

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

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

"(2) QUALIFIED ENERGY RESEARCH EXPENSES.—For purposes of this subsection, the term 'qualified energy research expenses' means so much of the taxpayer's qualified research expenses as are related to the fields of fuel cells and battery technology, renewable energy, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

"(3) COORDINATION WITH OTHER RESEARCH CREDITS.—

"(A) INCREMENTAL CREDIT.—The amount of qualified energy research expenses taken into account under subsection (a)(1)(A) shall not exceed the base amount.

"(B) ALTERNATIVE SIMPLIFIED CREDIT.—For purposes of subsection (c)(5), the amount of qualified energy research expenses taken into account for the taxable year for which the credit is being determined shall not exceed—

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

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

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

"(C) BASIC RESEARCH AND ENERGY RESEARCH CONSORTIUM PAYMENTS.—Any amount taken into account under paragraph (1) shall not be taken into account under paragraph (2) or (3) of subsection (a).".

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

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

Subtitle H—Other Provisions

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

SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

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

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

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

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

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

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

SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009.

(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term ''low-income housing grant election amount'' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

(1) the sum of—

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

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

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

(2) 10.

(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-

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

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

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

cluding a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

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

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

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

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

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

(a) IN GENERAL.—Upon application, the Secretary of Energy shall, within 60 days of the application and subject to the requirements of this section, provide a grant to each person who places in service specified energy property during 2009 or 2010 to reimburse such person for a portion of the expense of such facility as provided in subsection (b).

(b) GRANT AMOUNT.—

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

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (c), and

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

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

(c) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term ''specified energy property'' means any of the following:

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

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

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

(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

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

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

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

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

(d) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of Energy shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the facility is disposed of, or otherwise ceases to be a qualified renewable energy facility, the Secretary of Energy shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of Energy determines appropriate.

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

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

(g) COORDINATION BETWEEN DEPARTMENTS OF TREASURY AND ENERGY.—The Secretary of the Treasury shall provide the Secretary of Energy with such technical assistance as the Secretary of Energy may require in carrying out this section. The Secretary of Energy shall provide the Secretary of the Treasury with such information as the Secretary of the Treasury may require in carrying out the amendment made by section 1604.

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

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

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

SEC. 2000. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the ''Assistance for Unemployed Workers and Struggling Families Act''.

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

Sec. 2000. Short title, etc.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.
Sec. 2002. Increase in unemployment compensation benefits.
Sec. 2003. Special transfers for unemployment compensation modernization.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.
Sec. 2102. One-time emergency SSI payment.
Sec. 2103. Temporary resumption of prior child support law.

Subtitle A—Unemployment Insurance

SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

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

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

(1) by striking ''March 31, 2009'' each place it appears and inserting ''December 31, 2009'';

(2) in the heading for subsection (b)(2), by striking ''MARCH 31, 2009'' and inserting ''DECEMBER 31, 2009''; and

(3) in subsection (b)(3), by striking ''August 27, 2009'' and inserting ''May 31, 2010''.

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

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

''(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act; and

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

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

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

SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the ''Secretary''). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this

section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

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

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

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

(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

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

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

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

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

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

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

an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

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

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

(e) APPLICABILITY.—

(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

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

(B) ending before January 1, 2010.

(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JANUARY 1, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after June 30, 2010.

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

with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

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

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

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

for any period of unemployment ending before such date; and

(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

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

(1) the terms ''compensation'', ''regular compensation'', ''benefit year'', ''State'', ''State agency'', ''State law'', and ''week'' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);

(2) the term ''emergency unemployment compensation'' means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353); and

(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970); and

(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue

Code of 1986) provided under any program administered by a State under an agreement with the Secretary.

SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT COMPENSATION MODERNIZATION.

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

"Special Transfers in Fiscal Years 2009, 2010, and 2011 for Modernization

"(f)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter 'incentive payments') to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

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

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

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

"(i) one-third shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (2); and

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

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

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

"(B) provides that, in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be deter-

mined using a base period that includes such calendar quarter.

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

"(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time (and not full-time) work, except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual's base period do not include part-time work.

"(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term 'compelling family reason' means the following:

"(i) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individ-

ual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the Secretary of Labor).

"(ii) The illness or disability of a member of the individual's immediate family (as defined by the Secretary of Labor).

"(iii) The need for the individual to accompany such individual's spouse—

"(I) to a place from which it is impractical for such individual to commute; and

"(II) due to a change in location of the spouse's employment.

"(C) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998. Such programs shall prepare individuals who have been separated from a declining occupation, or who have been invol-

untarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation. The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year, and the total amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

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

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

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

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

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

"(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

"(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not otherwise eligible for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.

"(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

"(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2011.

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

of cash benefits to individuals with respect to their unemployment (including for dependents' allowances and for unemployment compensation under paragraph (3)(C)), exclusive of expenses of administration.

"(B) A State may, subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to 'subsections (a) and (b)' in subparagraph (D) thereof to include this subsection), use any amount transferred to the account of such State under this subsection for the administration of its unemployment compensation law and public employment offices.

"(6) Out of any money in the Federal unemployment account not otherwise appropriated, the Secretary of the Treasury shall reserve $7,000,000,000 for incentive payments under this subsection. Any amount so reserved shall not be taken into account for purposes of any determination under section 902, 910, or 1203 of the amount in the Federal unemployment account as of any given time. Any amount so reserved for which the Secretary of the Treasury has not received a certification under paragraph (4)(B) by the deadline described in paragraph (4)(C)(iii) shall, upon the close of fiscal year 2011, become unrestricted as to use as part of the Federal unemployment account.

"(7) For purposes of this subsection, the terms 'benefit year', 'base period', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

"Special Transfer in Fiscal Year 2009 for Administration

"(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).

"(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying $500,000,000 by the same ratio as determined under subsection (f)(1)(B) with respect to such State.

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

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

"(B) improved outreach to individuals who might be eligible for regular unemployment compensation by virtue of any provisions of the State law which are described in subparagraph (A);

"(C) the improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation; and

"(D) staff-assisted reemployment services for unemployment compensation claimants.".

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

Subtitle B—Assistance for Vulnerable Individuals

SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.

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

"(c) EMERGENCY FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund which shall be known as the 'Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs' (in this subsection referred to as the 'Emergency Fund').

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

"(3) GRANTS.—

"(A) GRANT RELATED TO CASELOAD INCREASES.—

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

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) CASELOAD INCREASE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the average monthly assistance caseload of the State

for the quarter exceeds the average monthly assistance caseload of the State for the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be 80 percent of the amount (if any) by which the total expenditures of the State for basic assistance (as defined by the Secretary) in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total expenditures of the State for such assistance for the corresponding quarter in the emergency fund base year of the State.

"(B) GRANT RELATED TO INCREASED EXPENDITURES FOR NON-RECURRENT SHORT-TERM BENEFITS.—

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

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) NON-RECURRENT SHORT-TERM EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for non-recurrent short-term benefits in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total such expenditures of the State for non-recurrent short-term benefits in the corresponding quarter in the emergency fund base year of the State.

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

"(C) GRANT RELATED TO INCREASED EXPENDITURES FOR SUBSIDIZED EMPLOYMENT.—

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

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) SUBSIDIZED EMPLOYMENT EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for subsidized employment in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total of such expenditures of the State in the corresponding quarter in the emergency fund base year of the State.

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

"(4) AUTHORITY TO MAKE NECESSARY ADJUSTMENTS TO DATA AND COLLECT NEEDED DATA.—In determining the size of the caseload of a State and the expenditures of a State for basic assistance, nonrecurrent short-term benefits, and subsidized employment, during any period for which the State requests funds under this subsection, and during the emergency fund base year of the State, the Secretary may make appropriate adjustments to the data to ensure that the data reflect expenditures under the State program funded under this part and qualified State expenditures. The Secretary may develop a mechanism for collecting expenditure data, including procedures which allow States to make reasonable estimates, and may set deadlines for making revisions to the data.

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

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

"(7) TIMING OF IMPLEMENTATION.—The Secretary shall implement this subsection as quickly as reasonably possible, pursuant to appropriate guidance to States.

"(8) DEFINITIONS.—In this subsection:

"(A) AVERAGE MONTHLY ASSISTANCE CASELOAD.—The term 'average monthly assistance caseload' means, with respect to a State and a quarter, the number of families receiving assistance during the quarter under the State program funded under this part or as qualified State expenditures, subject to adjustment under paragraph (4).

"(B) EMERGENCY FUND BASE YEAR.—

"(i) IN GENERAL.—The term 'emergency fund base year' means, with respect to a State and a category described in clause (ii), whichever of fiscal year 2007 or 2008 is the fiscal year in which the amount described by the category with respect to the State is the lesser.

"(ii) CATEGORIES DESCRIBED.—The categories described in this clause are the following:

"(I) The average monthly assistance caseload of the State.

"(II) The total expenditures of the State for non-recurrent short-term benefits, whether under the State program funded under this part or as qualified State expenditures.

"(III) The total expenditures of the State for subsidized employment, whether under the State program funded under this part or as qualified State expenditures.

"(C) QUALIFIED STATE EXPENDITURES.—The term 'qualified State expenditures' has the meaning given the term in section 409(a)(7).".

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

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

SEC. 2102. ONE-TIME EMERGENCY SSI PAYMENT.

(a) PAYMENT AUTHORITY.—

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

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

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

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

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

(A) in the case of an individual eligible for a payment under this section who does not have a spouse eligible for such a payment, an amount equal to the average of the cash benefits payable in the aggregate under section 1611 or 1619(a) of the Social Security Act to eligible individuals who do not have an eligible spouse, for the most recent month for which data on payment of the benefits are available, as determined by the Commissioner of Social Security; or

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

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

(b) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO WITHHOLD PAYMENT TO RECOVER PRIOR OVERPAYMENT OF SSI BENEFITS.—The Commissioner of Social Security may withhold part or all of a payment otherwise required to be made under subsection (a) of this section to an individual, in order to recover a prior overpayment of benefits to the individual under the supplemental security income program under title XVI of the Social Security Act, subject to the limitations of section 1631(b) of such Act.

(2) AUTHORITY TO MAKE PAYMENTS OVER THE COURSE OF 2 MONTHS.—The Commissioner of Social Security may provide for payments under this section to be made over the course of 2 calendar months as may be necessary for the effective and efficient administration of this section.

(3) PAYMENT TO BE DISREGARDED IN DETERMINING UNDERPAYMENTS UNDER THE SSI PROGRAM.—A payment under subsection (a) shall be

disregarded in determining whether there has been an underpayment of benefits under the supplemental security income program under title XVI of the Social Security Act.

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

(c) PAYMENTS TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income to the recipient, and shall not be regarded as a resource of the recipient for the month of receipt and the following 6 months, for purposes of determining the eligibility of any individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(d) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary to carry out this section.

SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD SUPPORT LAW.

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

TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED

SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE OF TITLE.—This title may be cited as the ''Health Insurance Assistance for the Unemployed Act of 2009''.

(b) TABLE OF CONTENTS OF TITLE.—The table of 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.

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

(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

1 (1) PROVISION OF PREMIUM ASSISTANCE.—

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

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

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

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

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

1 consisting of only dental, vision, coun-
2 seling, or referral services (or a combina-
3 tion thereof), coverage under a health re-
4 imbursement arrangement or a health
5 flexible spending arrangement, or coverage
6 of treatment that is furnished in an on-site
7 medical facility maintained by the em-
8 ployer and that consists primarily of first-
9 aid services, prevention and wellness care,
10 or similar care (or a combination thereof))
11 or is eligible for benefits under title XVIII
12 of the Social Security Act.
13 (ii) the earliest of—
14 (I) the date which is 12 months
15 after the first day of first month that
16 paragraph (1)(A) applies with respect
17 to such individual,
18 (II) the date following the expira-
19 tion of the maximum period of con-
20 tinuation coverage required under the
21 applicable COBRA continuation cov-
22 erage provision, or
23 (III) the date following the expi-
24 ration of the period of continuation

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

(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

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

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

(A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,

(B) such qualified beneficiary elects such coverage, and

(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

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

(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

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

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

(C) PREEXISTING CONDITIONS.—With respect to a qualified beneficiary who elects COBRA continuation coverage pursuant to subparagraph (A), the period—

(i) beginning on the date of the qualifying event, and

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

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

1 Internal Revenue Code of 1986, and section
2 2701(c)(2) of the Public Health Service Act.
3 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
4 MIUM ASSISTANCE.—In any case in which an indi-
5 vidual requests treatment as an assistance eligible
6 individual and is denied such treatment by the group
7 health plan by reason of such individual's ineligi-
8 bility for COBRA continuation coverage, the Sec-
9 retary of Labor (or the Secretary of Health and
10 Human services in connection with COBRA continu-
11 ation coverage which is provided other than pursu-
12 ant to part 6 of subtitle B of title I of the Employee
13 Retirement Income Security Act of 1974), in con-
14 sultation with the Secretary of the Treasury, shall
15 provide for expedited review of such denial. An indi-
16 vidual shall be entitled to such review upon applica-
17 tion to such Secretary in such form and manner as
18 shall be provided by such Secretary. Such Secretary
19 shall make a determination regarding such individ-
20 ual's eligibility within 10 business days after receipt
21 of such individual's application for review under this
22 paragraph.
23 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
24 OF FEDERAL AND STATE PROGRAMS.—Notwith-
25 standing any other provision of law, any premium

reduction with respect to an assistance eligible individual under this subsection shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law or the law of any State or political subdivision thereof.

(7) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb–6(4)), or section 8905a(f)(2)(A) of title 5, United States Code, with respect to individuals who, during the period described in paragraph (3)(A), become entitled to elect COBRA continuation coverage, such notices shall include an additional notification to the recipient of the availability of premium reduction with respect to such coverage under this subsection.

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in coordination with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

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

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

(iii) a description of the extended election period provided for in paragraph (4)(A),

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act and the penalty provided for failure to so notify the plan, and

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium.

(C) NOTICE RELATING TO RETROACTIVE COVERAGE.—In the case of an individual described in paragraph (3)(A) who has elected

COBRA continuation coverage as of the date of enactment of this Act or an individual described in paragraph (4)(A), the administrator of the group health plan (or other entity) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A).

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

(8) SAFEGUARDS.—The Secretary of the Treasury shall provide such rules, procedures, regulations, and other guidance as may be necessary and appropriate to prevent fraud and abuse under this subsection.

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

provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including enrollment, shall also be made available on website of the Departments of Labor, Treasury, and Health and Human Services.

(10) DEFINITIONS.—For purposes of this subsection—

(A) ADMINISTRATOR.—The term ''administrator'' has the meaning given such term in section 3(16) of the Employee Retirement Income Security Act of 1974.

(B) COBRA CONTINUATION COVERAGE.—The term ''COBRA continuation coverage'' means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than

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

(C) COBRA CONTINUATION PROVISION.—The term ''COBRA continuation provision'' means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term ''covered employee'' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term ''qualified beneficiary'' has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

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

(G) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of

Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) REPORTS.—

(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—

(i) the number of individuals provided such assistance as of the date of the report; and

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

(B) FINAL REPORT.—As soon as practicable after the last period of COBRA continuation coverage for which premium reduction is provided under this section, the Secretary of the

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

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

(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

(iii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction under this section.

(12) COBRA PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6431. COBRA PREMIUM ASSISTANCE.

"(a) IN GENERAL.—The entity to whom premiums are payable under COBRA continuation coverage shall be reimbursed for the amount of premiums not paid by plan beneficiaries by reason of section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009. Such amount shall be treated as a credit against the requirement of such entity to make deposits of payroll taxes.

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

"(b) PAYROLL TAXES.—For purposes of this section, the term 'payroll taxes' means—

"(1) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding),

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

"(3) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

"(c) TREATMENT OF CREDIT.—Except as otherwise provided by the Secretary, the credit described in subsection (a) shall be applied as though the employer had paid to the Secretary, on the day that the qualified beneficiary's premium payment is received, an amount equal to such credit.

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

"(e) REPORTING.—

"(1) IN GENERAL.—Each entity entitled to reimbursement under subsection (a) for any period shall submit such reports as the Secretary may require, including—

"(A) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a), and

"(B) a report of the amount of payroll taxes offset under subsection (a) for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a).

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

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

"(f) REGULATIONS.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including the requirement to report information or the establishment of other methods for verifying the correct amounts of payments and credits under this section.".

(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount transferred or appropriated to any fund under the Social Security Act, section 6431 of the Internal Revenue Code of 1986 shall not be taken into account.

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

"Sec. 6431. COBRA premium assistance.".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.

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

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE.

''(a) IN GENERAL.—Any person required to notify a group health plan under section 3002(a)(2)(C)) of the Health Insurance Assistance for the Unemployed Act of 2009 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of 110 percent of the premium reduction provided under such section after termination of eligibility under such subsection.

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

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

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

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

(14) COORDINATION WITH HCTC.—

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

''(9) COBRA PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

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

"SEC. 139C. COBRA PREMIUM ASSISTANCE.

''In the case of an assistance eligible individual (as defined in section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.''.

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

''Sec. 139C. COBRA premium assistance.''.

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

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

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

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

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

"(xi) YEAR OF SERVICE.—For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3).".

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

"(X) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee

who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, subclauses (I) and (II) shall not apply.

"(XI) YEAR OF SERVICE.—For purposes of this clause, the term 'year of service' shall have the meaning provided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.".

(3) PHSA AMENDMENT.—Section 2202(2)(A) of the Public Health Service Act is amended by adding at the end the following new clauses:

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

"(ix) YEAR OF SERVICE.—For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.".

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

SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE FOR THE UNEMPLOYED.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking "or" at the end of subclause (XVIII);

(B) by adding "or" at the end of subclause (XIX); and

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

"(XX) who are described in subsection (dd)(1) (relating to certain unemployed individuals and their families);"; and

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

"(dd)(1) Individuals described in this paragraph are—

"(A) individuals who—

"(i) are within one or more of the categories described in paragraph (2), as elected under the State plan; and

"(ii) meet the applicable requirements of paragraph (3); and

"(B) individuals who—

"(i) are the spouse, or dependent child under 19 years of age, of an individual described in subparagraph (A); and

"(ii) meet the requirement of paragraph (3)(B).

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

"(A) Individuals who are receiving unemployment compensation benefits.

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

"(C) Individuals who are involuntarily unemployed and were involuntarily separated from em-

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

13 "(D) Individuals who are involuntarily unem-
14 ployed and were involuntarily separated from em-
15 ployment on or after September 1, 2008, and before
16 January 1, 2011, who are members of households
17 participating in the supplemental nutrition assist-
18 ance program established under the Food and Nutri-
19 tion Act of 2008 (7 U.S.C. 2011 et seq), and who,
20 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
21 ble for medical assistance under this title or health
22 assistance under title XXI.

23 A State plan may elect one or more of the categories de-
24 scribed in this paragraph but may not elect the category

1 described in subparagraph (B) unless the State plan also
2 elects the category described in subparagraph (A).
3 "(3) The requirements of this paragraph with respect
4 to an individual are the following:
5 "(A) In the case of individuals within a cat-
6 egory described in subparagraph (A) or (B) of para-
7 graph (2), the individual was involuntarily separated
8 from employment on or after September 1, 2008,
9 and before January 1, 2011, or meets such com-
10 parable requirement as the Secretary specifies
11 through rule, guidance, or otherwise in the case of
12 an individual who was an independent contractor.
13 "(B) The individual is not otherwise covered
14 under creditable coverage, as defined in section
15 2701(c) of the Public Health Service Act (42 U.S.C.
16 300gg(c)), but applied without regard to paragraph
17 (1)(F) of such section and without regard to cov-
18 erage provided by reason of the application of sub-
19 section (a)(10)(A)(ii)(XX).
20 "(4)(A) No income or resources test shall be applied
21 with respect to any category of individuals described in
22 subparagraph (A), (B), or (D) of paragraph (2) who are
23 eligible for medical assistance only by reason of the appli-
24 cation of subsection (a)(10)(A)(ii)(XX).

1 "(B) Nothing in this subsection shall be construed
2 to prevent a State from imposing a resource test for the
3 category of individuals described in paragraph (2)(C)).
4 "(C) In the case of individuals provided medical as-
5 sistance by reason of the application of subsection
6 (a)(10)(A)(ii)(XX), the requirements of subsections
7 (i)(22) and (x) shall not apply.".
8 (b) 100 PERCENT FEDERAL MATCHING RATE.—
9 (1) FMAP FOR TIME-LIMITED PERIOD.—The
10 third sentence of section 1905(b) of such Act (42
11 U.S.C. 1396d(b)) is amended by inserting before the
12 period at the end the following: "and for items and
13 services furnished on or after the date of enactment
14 of this Act and before January 1, 2011, to individ-
15 uals who are eligible for medical assistance only by
16 reason of the application of section
17 1902(a)(10)(A)(ii)(XX)".
18 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-
19 TRATIVE COSTS.—Notwithstanding any other provi-
20 sion of law, for purposes of applying section 1903(a)
21 of the Social Security Act (42 U.S.C. 1396b(a)),
22 with respect to expenditures incurred on or after the
23 date of the enactment of this Act and before Janu-
24 ary 1, 2011, for costs of administration (including
25 outreach and the modification and operation of eligi-

bility information systems) attributable to eligibility determination and enrollment of individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX) of such Act, as added by subsection (a)(1), the Federal matching percentage shall be 100 percent instead of the matching percentage otherwise applicable.

(c) CONFORMING AMENDMENTS.—(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amended by inserting ''1902(a)(10)(A)(ii)(XX), or'' after ''1902(a)(10)(A)(ii)(XIX),''.

(2) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter preceding paragraph (1)—

(A) by striking ''or'' at the end of clause (xii);

(B) by adding ''or'' at the end of clause (xiii); and

(C) by inserting after clause (xiii) the following new clause:

''(xiv) individuals described in section 1902(dd)(1),''.

TITLE IV—HEALTH INFORMATION TECHNOLOGY

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''.

(b) TABLE OF CONTENTS OF TITLE.—The table of 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 implementation 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 implementation specifications.
Sec. 4112. Application to private entities.
Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.
Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

Part I—Grants and Loans Funding

Sec. 4301. Grant, loan, and demonstration programs.

''Subtitle B—Incentives for the Use of Health Information Technology

''Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.
''Sec. 3012. Health information technology implementation assistance.
''Sec. 3013. State grants to promote health information technology.
''Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.
''Sec. 3015. Demonstration program to integrate information technology into clinical education.
''Sec. 3016. Information technology professionals on health care.
''Sec. 3017. General grant and loan provisions.
''Sec. 3018. Authorization for appropriations.

Part II—Medicare Program

Sec. 4311. Incentives for eligible professionals.
Sec. 4312. Incentives for hospitals.
Sec. 4313. Treatment of payments and savings; implementation funding.
Sec. 4314. Study on application of 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.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"SEC. 3000. DEFINITIONS.

''In this title:

''(1) CERTIFIED EHR TECHNOLOGY.—The term 'certified EHR technology' means a qualified electronic health record that is certified pursuant to section 3001(c)(5) as meeting standards adopted under section 3004 that are applicable to the type of

1 record involved (as determined by the Secretary,
2 such as an ambulatory electronic health record for
3 office-based physicians or an inpatient hospital elec-
4 tronic health record for hospitals).

5 "(2) ENTERPRISE INTEGRATION.—The term
6 'enterprise integration' means the electronic linkage
7 of health care providers, health plans, the govern-
8 ment, and other interested parties, to enable the
9 electronic exchange and use of health information
10 among all the components in the health care infra-
11 structure in accordance with applicable law, and
12 such term includes related application protocols and
13 other related standards.

14 "(3) HEALTH CARE PROVIDER.—The term
15 'health care provider' means a hospital, skilled nurs-
16 ing facility, nursing facility, home health entity or
17 other long-term care facility, health care clinic, Fed-
18 erally qualified health center, group practice (as de-
19 fined in section 1877(h)(4) of the Social Security
20 Act), a pharmacist, a pharmacy, a laboratory, a phy-
21 sician (as defined in section 1861(r) of the Social
22 Security Act), a practitioner (as described in section
23 1842(b)(18)(C) of the Social Security Act), a pro-
24 vider operated by, or under contract with, the Indian
25 Health Service or by an Indian tribe (as defined in

1 the Indian Self-Determination and Education Assist-
2 ance Act), tribal organization, or urban Indian orga-
3 nization (as defined in section 4 of the Indian
4 Health Care Improvement Act), a rural health clinic,
5 a covered entity under section 340B, and any other
6 category of facility or clinician determined appro-
7 priate by the Secretary.

8 ''(4) HEALTH INFORMATION.—The term 'health
9 information' has the meaning given such term in
10 section 1171(4) of the Social Security Act.

11 ''(5) HEALTH INFORMATION TECHNOLOGY.—
12 The term 'health information technology' means
13 hardware, software, integrated technologies and re-
14 lated licenses, intellectual property, upgrades, and
15 packaged solutions sold as services that are specifi-
16 cally designed for use by health care entities for the
17 electronic creation, maintenance, or exchange of
18 health information.

19 ''(6) HEALTH PLAN.—The term 'health plan'
20 has the meaning given such term in section 1171(5)
21 of the Social Security Act.

22 ''(7) HIT POLICY COMMITTEE.—The term 'HIT
23 Policy Committee' means such Committee estab-
24 lished under section 3002(a).

1 "(8) HIT STANDARDS COMMITTEE.—The term
2 'HIT Standards Committee' means such Committee
3 established under section 3003(a).
4 "(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
5 FORMATION.—The term 'individually identifiable
6 health information' has the meaning given such term
7 in section 1171(6) of the Social Security Act.
8 "(10) LABORATORY.—The term 'laboratory'
9 has the meaning given such term in section 353(a).
10 "(11) NATIONAL COORDINATOR.—The term
11 'National Coordinator' means the head of the Office
12 of the National Coordinator for Health Information
13 Technology established under section 3001(a).
14 "(12) PHARMACIST.—The term 'pharmacist'
15 has the meaning given such term in section 804(2)
16 of the Federal Food, Drug, and Cosmetic Act.
17 "(13) QUALIFIED ELECTRONIC HEALTH
18 RECORD.—The term 'qualified electronic health
19 record' means an electronic record of health-related
20 information on an individual that—
21 "(A) includes patient demographic and
22 clinical health information, such as medical his-
23 tory and problem lists; and
24 "(B) has the capacity—

"(i) to provide clinical decision support;

"(ii) to support physician order entry;

"(iii) to capture and query information relevant to health care quality; and

"(iv) to exchange electronic health information with, and integrate such information from other sources.

"(14) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"Subtitle A—Promotion of Health Information Technology

"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

"(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary and shall report directly to the Secretary.

"(b) PURPOSE.—The National Coordinator shall perform the duties under subsection (c) in a manner con-

1 sistent with the development of a nationwide health infor-
2 mation technology infrastructure that allows for the elec-
3 tronic use and exchange of information and that—

4 "(1) ensures that each patient's health informa-
5 tion is secure and protected, in accordance with ap-
6 plicable law;

7 "(2) improves health care quality, reduces med-
8 ical errors, and advances the delivery of patient-cen-
9 tered medical care;

10 "(3) reduces health care costs resulting from
11 inefficiency, medical errors, inappropriate care, du-
12 plicative care, and incomplete information;

13 "(4) provides appropriate information to help
14 guide medical decisions at the time and place of
15 care;

16 "(5) ensures the inclusion of meaningful public
17 input in such development of such infrastructure;

18 "(6) improves the coordination of care and in-
19 formation among hospitals, laboratories, physician
20 offices, and other entities through an effective infra-
21 structure for the secure and authorized exchange of
22 health care information;

23 "(7) improves public health activities and facili-
24 tates the early identification and rapid response to

1 public health threats and emergencies, including bio-
2 terror events and infectious disease outbreaks;
3 ''(8) facilitates health and clinical research and
4 health care quality;
5 ''(9) promotes prevention of chronic diseases;
6 ''(10) promotes a more effective marketplace,
7 greater competition, greater systems analysis, in-
8 creased consumer choice, and improved outcomes in
9 health care services; and
10 ''(11) improves efforts to reduce health dispari-
11 ties.
12 ''(c) DUTIES OF THE NATIONAL COORDINATOR.—
13 ''(1) STANDARDS.—The National Coordinator
14 shall review and determine whether to endorse each
15 standard, implementation specification, and certifi-
16 cation criterion for the electronic exchange and use
17 of health information that is recommended by the
18 HIT Standards Committee under section 3003 for
19 purposes of adoption under section 3004. The Coor-
20 dinator shall make such determination, and report to
21 the Secretary such determination, not later than 45
22 days after the date the recommendation is received
23 by the Coordinator.
24 ''(2) HIT POLICY COORDINATION.—

1 "(A) IN GENERAL.—The National Coordi-
2 nator shall coordinate health information tech-
3 nology policy and programs of the Department
4 with those of other relevant executive branch
5 agencies with a goal of avoiding duplication of
6 efforts and of helping to ensure that each agen-
7 cy undertakes health information technology ac-
8 tivities primarily within the areas of its greatest
9 expertise and technical capability and in a man-
10 ner towards a coordinated national goal.
11 "(B) HIT POLICY AND STANDARDS COM-
12 MITTEES.—The National Coordinator shall be a
13 leading member in the establishment and oper-
14 ations of the HIT Policy Committee and the
15 HIT Standards Committee and shall serve as a
16 liaison among those two Committees and the
17 Federal Government.
18 "(3) STRATEGIC PLAN.—
19 "(A) IN GENERAL.—The National Coordi-
20 nator shall, in consultation with other appro-
21 priate Federal agencies (including the National
22 Institute of Standards and Technology), update
23 the Federal Health IT Strategic Plan (devel-
24 oped as of June 3, 2008) to include specific ob-

1 jectives, milestones, and metrics with respect to
2 the following:
3 "(i) The electronic exchange and use
4 of health information and the enterprise
5 integration of such information.
6 "(ii) The utilization of an electronic
7 health record for each person in the United
8 States by 2014.
9 "(iii) The incorporation of privacy and
10 security protections for the electronic ex-
11 change of an individual's individually iden-
12 tifiable health information.
13 "(iv) Ensuring security methods to
14 ensure appropriate authorization and elec-
15 tronic authentication of health information
16 and specifying technologies or methodolo-
17 gies for rendering health information unus-
18 able, unreadable, or indecipherable.
19 "(v) Specifying a framework for co-
20 ordination and flow of recommendations
21 and policies under this subtitle among the
22 Secretary, the National Coordinator, the
23 HIT Policy Committee, the HIT Standards
24 Committee, and other health information
25 exchanges and other relevant entities.

1 "(vi) Methods to foster the public un-
2 derstanding of health information tech-
3 nology.
4 "(vii) Strategies to enhance the use of
5 health information technology in improving
6 the quality of health care, reducing medical
7 errors, reducing health disparities, improv-
8 ing public health, and improving the con-
9 tinuity of care among health care settings.
10 "(B) COLLABORATION.—The strategic
11 plan shall be updated through collaboration of
12 public and private entities.
13 "(C) MEASURABLE OUTCOME GOALS.—
14 The strategic plan update shall include measur-
15 able outcome goals.
16 "(D) PUBLICATION.—The National Coor-
17 dinator shall republish the strategic plan, in-
18 cluding all updates.
19 "(4) WEBSITE.—The National Coordinator
20 shall maintain and frequently update an Internet
21 website on which there is posted information on the
22 work, schedules, reports, recommendations, and
23 other information to ensure transparency in pro-
24 motion of a nationwide health information tech-
25 nology infrastructure.

1 "(5) CERTIFICATION.—

2 "(A) IN GENERAL.—The National Coordi-
3 nator, in consultation with the Director of the
4 National Institute of Standards and Tech-
5 nology, shall develop a program (either directly
6 or by contract) for the voluntary certification of
7 health information technology as being in com-
8 pliance with applicable certification criteria
9 adopted under this subtitle. Such program shall
10 include testing of the technology in accordance
11 with section 4201(b) of the HITECH Act.

12 "(B) CERTIFICATION CRITERIA DE-
13 SCRIBED.—In this title, the term 'certification
14 criteria' means, with respect to standards and
15 implementation specifications for health infor-
16 mation technology, criteria to establish that the
17 technology meets such standards and implemen-
18 tation specifications.

19 "(6) REPORTS AND PUBLICATIONS.—

20 "(A) REPORT ON ADDITIONAL FUNDING
21 OR AUTHORITY NEEDED.—Not later than 12
22 months after the date of the enactment of this
23 title, the National Coordinator shall submit to
24 the appropriate committees of jurisdiction of
25 the House of Representatives and the Senate a

1 report on any additional funding or authority
2 the Coordinator or the HIT Policy Committee
3 or HIT Standards Committee requires to evalu-
4 ate and develop standards, implementation
5 specifications, and certification criteria, or to
6 achieve full participation of stakeholders in the
7 adoption of a nationwide health information
8 technology infrastructure that allows for the
9 electronic use and exchange of health informa-
10 tion.

11 "(B) IMPLEMENTATION REPORT.—The
12 National Coordinator shall prepare a report
13 that identifies lessons learned from major pub-
14 lic and private health care systems in their im-
15 plementation of health information technology,
16 including information on whether the tech-
17 nologies and practices developed by such sys-
18 tems may be applicable to and usable in whole
19 or in part by other health care providers.

20 "(C) ASSESSMENT OF IMPACT OF HIT ON
21 COMMUNITIES WITH HEALTH DISPARITIES AND
22 UNINSURED, UNDERINSURED, AND MEDICALLY
23 UNDERSERVED AREAS.—The National Coordi-
24 nator shall assess and publish the impact of
25 health information technology in communities

with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals (including urban and rural areas) and identify practices to increase the adoption of such technology by health care providers in such communities.

"(D) EVALUATION OF BENEFITS AND COSTS OF THE ELECTRONIC USE AND EXCHANGE OF HEALTH INFORMATION.—The National Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.

"(E) RESOURCE REQUIREMENTS.—The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an electronic health record for each person in the United States by 2014, including the required level of Federal funding, expectations for regional, State, and private investment, and the expected contributions by volunteers to activities for the utilization of such records.

1 "(7) ASSISTANCE.—The National Coordinator
2 may provide financial assistance to consumer advo-
3 cacy groups and not-for-profit entities that work in
4 the public interest for purposes of defraying the cost
5 to such groups and entities to participate under,
6 whether in whole or in part, the National Tech-
7 nology Transfer Act of 1995 (15 U.S.C. 272 note).
8 "(8) GOVERNANCE FOR NATIONWIDE HEALTH
9 INFORMATION NETWORK.—The National Coordi-
10 nator shall establish a governance mechanism for the
11 nationwide health information network.
12 "(d) DETAIL OF FEDERAL EMPLOYEES.—
13 "(1) IN GENERAL.—Upon the request of the
14 National Coordinator, the head of any Federal agen-
15 cy is authorized to detail, with or without reimburse-
16 ment from the Office, any of the personnel of such
17 agency to the Office to assist it in carrying out its
18 duties under this section.
19 "(2) EFFECT OF DETAIL.—Any detail of per-
20 sonnel under paragraph (1) shall—
21 "(A) not interrupt or otherwise affect the
22 civil service status or privileges of the Federal
23 employee; and

"(B) be in addition to any other staff of the Department employed by the National Coordinator.

"(3) ACCEPTANCE OF DETAILEES.—Notwithstanding any other provision of law, the Office may accept detailed personnel from other Federal agencies without regard to whether the agency described under paragraph (1) is reimbursed.

"(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF THE NATIONAL COORDINATOR.—Not later than 12 months after the date of the enactment of this title, the Secretary shall appoint a Chief Privacy Officer of the Office of the National Coordinator, whose duty it shall be to advise the National Coordinator on privacy, security, and data stewardship of electronic health information and to coordinate with other Federal agencies (and similar privacy officers in such agencies), with State and regional efforts, and with foreign countries with regard to the privacy, security, and data stewardship of electronic individually identifiable health information.

"SEC. 3002. HIT POLICY COMMITTEE.

"(a) ESTABLISHMENT.—There is established a HIT Policy Committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure,

1 including implementation of the strategic plan described
2 in section 3001(c)(3).
3 "(b) DUTIES.—
4 "(1) RECOMMENDATIONS ON HEALTH INFOR-
5 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
6 Policy Committee shall recommend a policy frame-
7 work for the development and adoption of a nation-
8 wide health information technology infrastructure
9 that permits the electronic exchange and use of
10 health information as is consistent with the strategic
11 plan under section 3001(c)(3) and that includes the
12 recommendations under paragraph (2). The Com-
13 mittee shall update such recommendations and make
14 new recommendations as appropriate.
15 "(2) SPECIFIC AREAS OF STANDARD DEVELOP-
16 MENT.—
17 "(A) IN GENERAL.—The HIT Policy Com-
18 mittee shall recommend the areas in which
19 standards, implementation specifications, and
20 certification criteria are needed for the elec-
21 tronic exchange and use of health information
22 for purposes of adoption under section 3004
23 and shall recommend an order of priority for
24 the development, harmonization, and recogni-
25 tion of such standards, specifications, and cer-

1 tification criteria among the areas so rec-
2 ommended. Such standards and implementation
3 specifications shall include named standards,
4 architectures, and software schemes for the au-
5 thentication and security of individually identifi-
6 able health information and other information
7 as needed to ensure the reproducible develop-
8 ment of common solutions across disparate en-
9 tities.

10 "(B) AREAS REQUIRED FOR CONSIDER-
11 ATION.—For purposes of subparagraph (A), the
12 HIT Policy Committee shall make recommenda-
13 tions for at least the following areas:

14 "(i) Technologies that protect the pri-
15 vacy of health information and promote se-
16 curity in a qualified electronic health
17 record, including for the segmentation and
18 protection from disclosure of specific and
19 sensitive individually identifiable health in-
20 formation with the goal of minimizing the
21 reluctance of patients to seek care (or dis-
22 close information about a condition) be-
23 cause of privacy concerns, in accordance
24 with applicable law, and for the use and

1 disclosure of limited data sets of such in-
2 formation.
3 ''(ii) A nationwide health information
4 technology infrastructure that allows for
5 the electronic use and accurate exchange of
6 health information.
7 ''(iii) The utilization of a certified
8 electronic health record for each person in
9 the United States by 2014.
10 ''(iv) Technologies that as a part of a
11 qualified electronic health record allow for
12 an accounting of disclosures made by a
13 covered entity (as defined for purposes of
14 regulations promulgated under section
15 264(c) of the Health Insurance Portability
16 and Accountability Act of 1996) for pur-
17 poses of treatment, payment, and health
18 care operations (as such terms are defined
19 for purposes of such regulations).
20 ''(v) The use of certified electronic
21 health records to improve the quality of
22 health care, such as by promoting the co-
23 ordination of health care and improving
24 continuity of health care among health
25 care providers, by reducing medical errors,

by improving population health, and by advancing research and education.

"(C) OTHER AREAS FOR CONSIDERATION.—In making recommendations under subparagraph (A), the HIT Policy Committee may consider the following additional areas:

"(i) The appropriate uses of a nationwide health information infrastructure, including for purposes of—

"(I) the collection of quality data and public reporting;

"(II) biosurveillance and public health;

"(III) medical and clinical research; and

"(IV) drug safety.

"(ii) Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.

"(iii) Telemedicine technologies, in order to reduce travel requirements for patients in remote areas.

"(iv) Technologies that facilitate home health care and the monitoring of patients recuperating at home.

1 "(v) Technologies that help reduce
2 medical errors.
3 "(vi) Technologies that facilitate the
4 continuity of care among health settings.
5 "(vii) Technologies that meet the
6 needs of diverse populations.
7 "(viii) Any other technology that the
8 HIT Policy Committee finds to be among
9 the technologies with the greatest potential
10 to improve the quality and efficiency of
11 health care.
12 "(3) FORUM.—The HIT Policy Committee shall
13 serve as a forum for broad stakeholder input with
14 specific expertise in policies relating to the matters
15 described in paragraphs (1) and (2).
16 "(c) MEMBERSHIP AND OPERATIONS.—
17 "(1) IN GENERAL.—The National Coordinator
18 shall provide leadership in the establishment and op-
19 erations of the HIT Policy Committee.
20 "(2) MEMBERSHIP.—The membership of the
21 HIT Policy Committee shall at least reflect pro-
22 viders, ancillary healthcare workers, consumers, pur-
23 chasers, health plans, technology vendors, research-
24 ers, relevant Federal agencies, and individuals with
25 technical expertise on health care quality, privacy

1 and security, and on the electronic exchange and use
2 of health information.
3 "(3) CONSIDERATION.—The National Coordi-
4 nator shall ensure that the relevant recommenda-
5 tions and comments from the National Committee
6 on Vital and Health Statistics are considered in the
7 development of policies.
8 "(d) APPLICATION OF FACA.—The Federal Advisory
9 Committee Act (5 U.S.C. App.), other than section 14 of
10 such Act, shall apply to the HIT Policy Committee.
11 "(e) PUBLICATION.—The Secretary shall provide for
12 publication in the Federal Register and the posting on the
13 Internet website of the Office of the National Coordinator
14 for Health Information Technology of all policy rec-
15 ommendations made by the HIT Policy Committee under
16 this section.
17 **"SEC. 3003. HIT STANDARDS COMMITTEE.**
18 "(a) ESTABLISHMENT.—There is established a com-
19 mittee to be known as the HIT Standards Committee to
20 recommend to the National Coordinator standards, imple-
21 mentation specifications, and certification criteria for the
22 electronic exchange and use of health information for pur-
23 poses of adoption under section 3004, consistent with the
24 implementation of the strategic plan described in section
25 3001(c)(3) and beginning with the areas listed in section

1 3002(b)(2)(B) in accordance with policies developed by
2 the HIT Policy Committee.
3 "(b) DUTIES.—
4 "(1) STANDARD DEVELOPMENT.—
5 "(A) IN GENERAL.—The HIT Standards
6 Committee shall recommend to the National
7 Coordinator standards, implementation speci-
8 fications, and certification criteria described in
9 subsection (a) that have been developed, har-
10 monized, or recognized by the HIT Standards
11 Committee. The HIT Standards Committee
12 shall update such recommendations and make
13 new recommendations as appropriate, including
14 in response to a notification sent under section
15 3004(b)(2). Such recommendations shall be
16 consistent with the latest recommendations
17 made by the HIT Policy Committee.
18 "(B) PILOT TESTING OF STANDARDS AND
19 IMPLEMENTATION SPECIFICATIONS.—In the de-
20 velopment, harmonization, or recognition of
21 standards and implementation specifications,
22 the HIT Standards Committee shall, as appro-
23 priate, provide for the testing of such standards
24 and specifications by the National Institute for

1 Standards and Technology under section 4201
2 of the HITECH Act.
3 "(C) CONSISTENCY.—The standards, im-
4 plementation specifications, and certification
5 criteria recommended under this subsection
6 shall be consistent with the standards for infor-
7 mation transactions and data elements adopted
8 pursuant to section 1173 of the Social Security
9 Act.
10 "(2) FORUM.—The HIT Standards Committee
11 shall serve as a forum for the participation of a
12 broad range of stakeholders to provide input on the
13 development, harmonization, and recognition of
14 standards, implementation specifications, and certifi-
15 cation criteria necessary for the development and
16 adoption of a nationwide health information tech-
17 nology infrastructure that allows for the electronic
18 use and exchange of health information.
19 "(3) SCHEDULE.—Not later than 90 days after
20 the date of the enactment of this title, the HIT
21 Standards Committee shall develop a schedule for
22 the assessment of policy recommendations developed
23 by the HIT Policy Committee under section 3002.
24 The HIT Standards Committee shall update such

1 schedule annually. The Secretary shall publish such
2 schedule in the Federal Register.
3 "(4) PUBLIC INPUT.—The HIT Standards
4 Committee shall conduct open public meetings and
5 develop a process to allow for public comment on the
6 schedule described in paragraph (3) and rec-
7 ommendations described in this subsection. Under
8 such process comments shall be submitted in a time-
9 ly manner after the date of publication of a rec-
10 ommendation under this subsection.
11 "(c) MEMBERSHIP AND OPERATIONS.—
12 "(1) IN GENERAL.—The National Coordinator
13 shall provide leadership in the establishment and op-
14 erations of the HIT Standards Committee.
15 "(2) MEMBERSHIP.—The membership of the
16 HIT Standards Committee shall at least reflect pro-
17 viders, ancillary healthcare workers, consumers, pur-
18 chasers, health plans, technology vendors, research-
19 ers, relevant Federal agencies, and individuals with
20 technical expertise on health care quality, privacy
21 and security, and on the electronic exchange and use
22 of health information.
23 "(3) CONSIDERATION.—The National Coordi-
24 nator shall ensure that the relevant recommenda-
25 tions and comments from the National Committee

on Vital and Health Statistics are considered in the development of standards.

"(4) ASSISTANCE.—For the purposes of carrying out this section, the Secretary may provide or ensure that financial assistance is provided by the HIT Standards Committee to defray in whole or in part any membership fees or dues charged by such Committee to those consumer advocacy groups and not for profit entities that work in the public interest as a part of their mission.

"(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, shall apply to the HIT Standards Committee.

"(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all recommendations made by the HIT Standards Committee under this section.

"SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS; ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.

"(a) PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS.—

"(1) REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

"(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

"(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not to adopt such grouping of standards, implementation specifications, or certification criteria; or

"(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT

1 Standards Committee in writing of such deter-
2 mination and the reasons for not proposing the
3 adoption of such recommendation.

4 "(3) PUBLICATION.—The Secretary shall pro-
5 vide for publication in the Federal Register of all de-
6 terminations made by the Secretary under para-
7 graph (1).

8 "(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
9 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
10 CRITERIA.—

11 "(1) IN GENERAL.—Not later than December
12 31, 2009, the Secretary shall, through the rule-
13 making process described in section 3003, adopt an
14 initial set of standards, implementation specifica-
15 tions, and certification criteria for the areas required
16 for consideration under section 3002(b)(2)(B).

17 "(2) APPLICATION OF CURRENT STANDARDS,
18 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
19 CATION CRITERIA.—The standards, implementation
20 specifications, and certification criteria adopted be-
21 fore the date of the enactment of this title through
22 the process existing through the Office of the Na-
23 tional Coordinator for Health Information Tech-
24 nology may be applied towards meeting the require-
25 ment of paragraph (1).

"SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.

"For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 4111 of the HITECH Act.

"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

"(a) IN GENERAL.—Except as provided under section 4112 of the HITECH Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.

"(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications adopted under section 3004 with respect to activities not related to the contract.

"SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator shall support the development, routine updating and provision of qualified EHR technology (as defined in section 3000) consistent with subsections (b) and (c) unless the Sec-

1 retary determines that the needs and demands of pro-
2 viders are being substantially and adequately met through
3 the marketplace.

4 "(b) CERTIFICATION.—In making such EHR tech-
5 nology publicly available, the National Coordinator shall
6 ensure that the qualified EHR technology described in
7 subsection (a) is certified under the program developed
8 under section 3001(c)(3) to be in compliance with applica-
9 ble standards adopted under section 3003(a).

10 "(c) AUTHORIZATION TO CHARGE A NOMINAL
11 FEE.—The National Coordinator may impose a nominal
12 fee for the adoption by a health care provider of the health
13 information technology system developed or approved
14 under subsection (a) and (b). Such fee shall take into ac-
15 count the financial circumstances of smaller providers, low
16 income providers, and providers located in rural or other
17 medically underserved areas.

18 "(d) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to require that a private or govern-
20 ment entity adopt or use the technology provided under
21 this section.

22 **"SEC. 3008. TRANSITIONS.**

23 "(a) ONCHIT.—To the extent consistent with sec-
24 tion 3001, all functions, personnel, assets, liabilities, and
25 administrative actions applicable to the National Coordi-

1 nator for Health Information Technology appointed under
2 Executive Order 13335 or the Office of such National Co-
3 ordinator on the date before the date of the enactment
4 of this title shall be transferred to the National Coordi-
5 nator appointed under section 3001(a) and the Office of
6 such National Coordinator as of the date of the enactment
7 of this title.

8 "(b) AHIC.—

9 "(1) To the extent consistent with sections
10 3002 and 3003, all functions, personnel, assets, and
11 liabilities applicable to the AHIC Successor, Inc.
12 doing business as the National eHealth Collaborative
13 as of the day before the date of the enactment of
14 this title shall be transferred to the HIT Policy
15 Committee or the HIT Standards Committee, estab-
16 lished under section 3002(a) or 3003(a), as appro-
17 priate, as of the date of the enactment of this title.

18 "(2) In carrying out section 3003(b)(1)(A),
19 until recommendations are made by the HIT Policy
20 Committee, recommendations of the HIT Standards
21 Committee shall be consistent with the most recent
22 recommendations made by such AHIC Successor,
23 Inc.

24 "(c) RULES OF CONSTRUCTION.—

1 "(1) ONCHIT.—Nothing in section 3001 or
2 subsection (a) shall be construed as requiring the
3 creation of a new entity to the extent that the Office
4 of the National Coordinator for Health Information
5 Technology established pursuant to Executive Order
6 13335 is consistent with the provisions of section
7 3001.
8 "(2) AHIC.—Nothing in sections 3002 or 3003
9 or subsection (b) shall be construed as prohibiting
10 the AHIC Successor, Inc. doing business as the Na-
11 tional eHealth Collaborative from modifying its char-
12 ter, duties, membership, and any other structure or
13 function required to be consistent with section 3002
14 and 3003 in a manner that would permit the Sec-
15 retary to choose to recognize such Community as the
16 HIT Policy Committee or the HIT Standards Com-
17 mittee.
18 **"SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
19 **LAW.**
20 "(a) IN GENERAL.—With respect to the relation of
21 this title to HIPAA privacy and security law:
22 "(1) This title may not be construed as having
23 any effect on the authorities of the Secretary under
24 HIPAA privacy and security law.

"(2) The purposes of this title include ensuring that the health information technology standards and implementation specifications adopted under section 3004 take into account the requirements of HIPAA privacy and security law.

"(b) DEFINITION.—For purposes of this section, the term 'HIPAA privacy and security law' means—

"(1) the provisions of part C of title XI of the Social Security Act, section 264 of the Health Insurance Portability and Accountability Act of 1996, and subtitle D of title IV of the HITECH Act; and

"(2) regulations under such provisions.

"SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to the Office of the National Coordinator for Health Information Technology to carry out this subtitle $250,000,000 for fiscal year 2009.".

SEC. 4102. TECHNICAL AMENDMENT.

Section 1171(5) of the Social Security Act (42 U.S.C. 1320d) is amended by striking "or C" and inserting "C, or D".

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined in the Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal Government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004(b) of the Public Health Service Act, as added by section 4101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation specification adopted under section 3004(b) of the Public Health Service Act, as added by section 4101, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implemen-

1 tation specification, respectively, within three years after
2 the date of such adoption.

3 (c) APPLICATION OF DEFINITIONS.—The definitions
4 contained in section 3000 of the Public Health Service
5 Act, as added by section 4101, shall apply for purposes
6 of this part.

7 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

8 Each agency (as defined in such Executive Order
9 issued on August 22, 2006, relating to promoting quality
10 and efficient health care in Federal Government adminis-
11 tered or sponsored health care programs) shall require in
12 contracts or agreements with health care providers, health
13 plans, or health insurance issuers that as each provider,
14 plan, or issuer implements, acquires, or upgrades health
15 information technology systems, it shall utilize, where
16 available, health information technology systems and prod-
17 ucts that meet standards and implementation specifica-
18 tions adopted under section 3004(b) of the Public Health
19 Service Act, as added by section 4101.

20 **SEC. 4113. STUDY AND REPORTS.**

21 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-
22 TEM.—Not later than 2 years after the date of the enact-
23 ment of this Act and annually thereafter, the Secretary
24 of Health and Human Services shall submit to the appro-

1 priate committees of jurisdiction of the House of Rep-
2 resentatives and the Senate a report that—
3 (1) describes the specific actions that have been
4 taken by the Federal Government and private enti-
5 ties to facilitate the adoption of a nationwide system
6 for the electronic use and exchange of health infor-
7 mation;
8 (2) describes barriers to the adoption of such a
9 nationwide system; and
10 (3) contains recommendations to achieve full
11 implementation of such a nationwide system.
12 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-
13 PORT.—
14 (1) STUDY.—The Secretary of Health and
15 Human Services shall carry out, or contract with a
16 private entity to carry out, a study that examines
17 methods to create efficient reimbursement incentives
18 for improving health care quality in federally quali-
19 fied health centers, rural health clinics, and free
20 clinics.
21 (2) REPORT.—Not later than 2 years after the
22 date of the enactment of this Act, the Secretary of
23 Health and Human Services shall submit to the ap-
24 propriate committees of jurisdiction of the House of

1 Representatives and the Senate a report on the
2 study carried out under paragraph (1).
3 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
4 PORT.—
5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services shall carry out, or contract with a
7 private entity to carry out, a study of matters relat-
8 ing to the potential use of new aging services tech-
9 nology to assist seniors, individuals with disabilities,
10 and their caregivers throughout the aging process.
11 (2) MATTERS TO BE STUDIED.—The study
12 under paragraph (1) shall include—
13 (A) an evaluation of—
14 (i) methods for identifying current,
15 emerging, and future health technology
16 that can be used to meet the needs of sen-
17 iors and individuals with disabilities and
18 their caregivers across all aging services
19 settings, as specified by the Secretary;
20 (ii) methods for fostering scientific in-
21 novation with respect to aging services
22 technology within the business and aca-
23 demic communities; and

(iii) developments in aging services technology in other countries that may be applied in the United States; and

(B) identification of—

(i) barriers to innovation in aging services technology and devising strategies for removing such barriers; and

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term ''aging services technology'' means health technology that meets the health care needs of seniors, individuals with disabilities, and the caregivers of such seniors and individuals.

(B) SENIOR.—The term ''senior'' has such meaning as specified by the Secretary.

Subtitle B—Testing of Health Information Technology

SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards and Technology shall support the establishment of a conformance testing infrastructure, including the develop-

1 ment of technical test beds. The development of this con-
2 formance testing infrastructure may include a program to
3 accredit independent, non-Federal laboratories to perform
4 testing.

5 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

6 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
7 GRATION RESEARCH CENTERS.—

8 (1) IN GENERAL.—The Director of the National
9 Institute of Standards and Technology, in consulta-
10 tion with the Director of the National Science Foun-
11 dation and other appropriate Federal agencies, shall
12 establish a program of assistance to institutions of
13 higher education (or consortia thereof which may in-
14 clude nonprofit entities and Federal Government
15 laboratories) to establish multidisciplinary Centers
16 for Health Care Information Enterprise Integration.

17 (2) REVIEW; COMPETITION.—Grants shall be
18 awarded under this subsection on a merit-reviewed,
19 competitive basis.

20 (3) PURPOSE.—The purposes of the Centers de-
21 scribed in paragraph (1) shall be—

22 (A) to generate innovative approaches to
23 health care information enterprise integration
24 by conducting cutting-edge, multidisciplinary

research on the systems challenges to health care delivery; and

(B) the development and use of health information technologies and other complementary fields.

(4) RESEARCH AREAS.—Research areas may include—

(A) interfaces between human information and communications technology systems;

(B) voice-recognition systems;

(C) software that improves interoperability and connectivity among health information systems;

(D) software dependability in systems critical to health care delivery;

(E) measurement of the impact of information technologies on the quality and productivity of health care;

(F) health information enterprise management;

(G) health information technology security and integrity; and

(H) relevant health information technology to reduce medical errors.

(5) APPLICATIONS.—An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director of the National Institute of Standards and Technology at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center established pursuant to assistance under paragraph (1) and the respective contributions of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;

(C) technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and

(D) how the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.

(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The National High-Performance Computing Program established by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall coordinate Federal research and development programs related to the development and deployment of health information technology, including activities related to—

(1) computer infrastructure;

(2) data security;

(3) development of large-scale, distributed, reliable computing systems;

(4) wired, wireless, and hybrid high-speed networking;

(5) development of software and software-intensive systems;

(6) human-computer interaction and information management technologies; and

(7) the social and economic implications of information technology.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 4101, is amended by adding at the end the following new subtitle:

"Subtitle B—Incentives for the Use of Health Information Technology

"SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

''(a) IN GENERAL.—The Secretary of Health and Human Services shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and as available) under section 3001. To the greatest extent practicable, the Secretary shall ensure that any funds so appropriated shall be used for the acquisition of health information technology that meets standards and certification criteria adopted before the date of the enactment of this title until

1 such date as the standards are adopted under section
2 3004. The Secretary shall invest funds through the dif-
3 ferent agencies with expertise in such goals, such as the
4 Office of the National Coordinator for Health Information
5 Technology, the Health Resources and Services Adminis-
6 tration, the Agency for Healthcare Research and Quality,
7 the Centers of Medicare & Medicaid Services, the Centers
8 for Disease Control and Prevention, and the Indian
9 Health Service to support the following:

10 "(1) Health information technology architecture
11 that will support the nationwide electronic exchange
12 and use of health information in a secure, private,
13 and accurate manner, including connecting health
14 information exchanges, and which may include up-
15 dating and implementing the infrastructure nec-
16 essary within different agencies of the Department
17 of Health and Human Services to support the elec-
18 tronic use and exchange of health information.

19 "(2) Development and adoption of appropriate
20 certified electronic health records for categories of
21 providers not eligible for support under title XVIII
22 or XIX of the Social Security Act for the adoption
23 of such records.

24 "(3) Training on and dissemination of informa-
25 tion on best practices to integrate health information

technology, including electronic health records, into a provider's delivery of care, consistent with best practices learned from the Health Information Technology Research Center developed under section 302, including community health centers receiving assistance under section 330 of the Public Health Service Act, covered entities under section 340B of such Act, and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children's Health Insurance Program).

''(4) Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.

''(5) Promotion of the interoperability of clinical data repositories or registries.

''(6) Promotion of technologies and best practices that enhance the protection of health information by all holders of individually identifiable health information.

''(7) Improve and expand the use of health information technology by public health departments.

1 "(8) Provide $300 million to support regional
2 or sub-national efforts towards health information
3 exchange.
4 "(b) COORDINATION.—The Secretary shall ensure
5 funds under this section are used in a coordinated manner
6 with other health information promotion activities.
7 "(c) ADDITIONAL USE OF FUNDS.—In addition to
8 using funds as provided in subsection (a), the Secretary
9 may use amounts appropriated under section 3018 to
10 carry out activities that are provided for under laws in
11 effect on the date of the enactment of this title.

12 **"SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**
13 **MENTATION ASSISTANCE.**

14 "(a) HEALTH INFORMATION TECHNOLOGY EXTEN-
15 SION PROGRAM.—To assist health care providers to adopt,
16 implement, and effectively use certified EHR technology
17 that allows for the electronic exchange and use of health
18 information, the Secretary, acting through the Office of
19 the National Coordinator, shall establish a health informa-
20 tion technology extension program to provide health infor-
21 mation technology assistance services to be carried out
22 through the Department of Health and Human Services.
23 The National Coordinator shall consult with other Federal
24 agencies with demonstrated experience and expertise in in-
25 formation technology services, such as the National Insti-

1 tute of Standards and Technology, in developing and im-
2 plementing this program.

3 "(b) HEALTH INFORMATION TECHNOLOGY RE-
4 SEARCH CENTER.—

5 "(1) IN GENERAL.—The Secretary shall create
6 a Health Information Technology Research Center
7 (in this section referred to as the 'Center') to pro-
8 vide technical assistance and develop or recognize
9 best practices to support and accelerate efforts to
10 adopt, implement, and effectively utilize health infor-
11 mation technology that allows for the electronic ex-
12 change and use of information in compliance with
13 standards, implementation specifications, and certifi-
14 cation criteria adopted under section 3004(b).

15 "(2) INPUT.—The Center shall incorporate
16 input from—

17 "(A) other Federal agencies with dem-
18 onstrated experience and expertise in informa-
19 tion technology services such as the National
20 Institute of Standards and Technology;

21 "(B) users of health information tech-
22 nology, such as providers and their support and
23 clerical staff and others involved in the care and
24 care coordination of patients, from the health

1 care and health information technology indus-
2 try; and
3 "(C) others as appropriate.
4 "(3) PURPOSES.—The purposes of the Center
5 are to—
6 "(A) provide a forum for the exchange of
7 knowledge and experience;
8 "(B) accelerate the transfer of lessons
9 learned from existing public and private sector
10 initiatives, including those currently receiving
11 Federal financial support;
12 "(C) assemble, analyze, and widely dis-
13 seminate evidence and experience related to the
14 adoption, implementation, and effective use of
15 health information technology that allows for
16 the electronic exchange and use of information
17 including through the regional centers described
18 in subsection (c);
19 "(D) provide technical assistance for the
20 establishment and evaluation of regional and
21 local health information networks to facilitate
22 the electronic exchange of information across
23 health care settings and improve the quality of
24 health care;

1 "(E) provide technical assistance for the
2 development and dissemination of solutions to
3 barriers to the exchange of electronic health in-
4 formation; and
5 "(F) learn about effective strategies to
6 adopt and utilize health information technology
7 in medically underserved communities.
8 "(c) HEALTH INFORMATION TECHNOLOGY RE-
9 GIONAL EXTENSION CENTERS.—
10 "(1) IN GENERAL.—The Secretary shall provide
11 assistance for the creation and support of regional
12 centers (in this subsection referred to as 'regional
13 centers') to provide technical assistance and dissemi-
14 nate best practices and other information learned
15 from the Center to support and accelerate efforts to
16 adopt, implement, and effectively utilize health infor-
17 mation technology that allows for the electronic ex-
18 change and use of information in compliance with
19 standards, implementation specifications, and certifi-
20 cation criteria adopted under section 3004. Activities
21 conducted under this subsection shall be consistent
22 with the strategic plan developed by the National
23 Coordinator, (and, as available) under section 3001.
24 "(2) AFFILIATION.—Regional centers shall be
25 affiliated with any U.S.-based nonprofit institution

1 or organization, or group thereof, that applies and
2 is awarded financial assistance under this section.
3 Individual awards shall be decided on the basis of
4 merit.

5 ''(3) OBJECTIVE.—The objective of the regional
6 centers is to enhance and promote the adoption of
7 health information technology through—

8 ''(A) assistance with the implementation,
9 effective use, upgrading, and ongoing mainte-
10 nance of health information technology, includ-
11 ing electronic health records, to healthcare pro-
12 viders nationwide;

13 ''(B) broad participation of individuals
14 from industry, universities, and State govern-
15 ments;

16 ''(C) active dissemination of best practices
17 and research on the implementation, effective
18 use, upgrading, and ongoing maintenance of
19 health information technology, including elec-
20 tronic health records, to health care providers
21 in order to improve the quality of healthcare
22 and protect the privacy and security of health
23 information;

24 ''(D) participation, to the extent prac-
25 ticable, in health information exchanges; and

1 "(E) utilization, when appropriate, of the
2 expertise and capability that exists in Federal
3 agencies other than the Department; and
4 "(F) integration of health information
5 technology, including electronic health records,
6 into the initial and ongoing training of health
7 professionals and others in the healthcare in-
8 dustry that would be instrumental to improving
9 the quality of healthcare through the smooth
10 and accurate electronic use and exchange of
11 health information.
12 "(4) REGIONAL ASSISTANCE.—Each regional
13 center shall aim to provide assistance and education
14 to all providers in a region, but shall prioritize any
15 direct assistance first to the following:
16 "(A) Public or not-for-profit hospitals or
17 critical access hospitals.
18 "(B) Federally qualified health centers (as
19 defined in section 1861(aa)(4) of the Social Se-
20 curity Act).
21 "(C) Entities that are located in rural and
22 other areas that serve uninsured, underinsured,
23 and medically underserved individuals (regard-
24 less of whether such area is urban or rural).

"(D) Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.

"(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this Act, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:

"(A) A detailed explanation of the program and the programs goals.

"(B) Procedures to be followed by the applicants.

1 "(C) Criteria for determining qualified ap-
2 plicants.
3 "(D) Maximum support levels expected to
4 be available to centers under the program.
5 "(7) APPLICATION REVIEW.—The Secretary
6 shall subject each application under this subsection
7 to merit review. In making a decision whether to ap-
8 prove such application and provide financial support,
9 the Secretary shall consider at a minimum the mer-
10 its of the application, including those portions of the
11 application regarding—
12 "(A) the ability of the applicant to provide
13 assistance under this subsection and utilization
14 of health information technology appropriate to
15 the needs of particular categories of health care
16 providers;
17 "(B) the types of service to be provided to
18 health care providers;
19 "(C) geographical diversity and extent of
20 service area; and
21 "(D) the percentage of funding and
22 amount of in-kind commitment from other
23 sources.
24 "(8) BIENNIAL EVALUATION.—Each regional
25 center which receives financial assistance under this

subsection shall be evaluated biennially by an evaluation panel appointed by the Secretary. Each evaluation panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

"(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

"(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as described in subsection (d)) that submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may specify, for the purpose of planning activities described in subsection (b).

"(c) IMPLEMENTATION GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity that—

"(1) has submitted, and the Secretary has approved, a plan described in subsection (c) (regardless of whether such plan was prepared using amounts awarded under paragraph (1)); and

"(2) submits an application at such time, in such manner, and containing such information as the Secretary may specify.

"(d) USE OF FUNDS.—Amounts received under a grant under subsection (a)(3) shall be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards through activities that include—

1 "(1) enhancing broad and varied participation
2 in the authorized and secure nationwide electronic
3 use and exchange of health information;
4 "(2) identifying State or local resources avail-
5 able towards a nationwide effort to promote health
6 information technology;
7 "(3) complementing other Federal grants, pro-
8 grams, and efforts towards the promotion of health
9 information technology;
10 "(4) providing technical assistance for the de-
11 velopment and dissemination of solutions to barriers
12 to the exchange of electronic health information;
13 "(5) promoting effective strategies to adopt and
14 utilize health information technology in medically
15 underserved communities;
16 "(6) assisting patients in utilizing health infor-
17 mation technology;
18 "(7) encouraging clinicians to work with Health
19 Information Technology Regional Extension Centers
20 as described in section 3012, to the extent they are
21 available and valuable;
22 "(8) supporting public health agencies' author-
23 ized use of and access to electronic health informa-
24 tion;

1 "(9) promoting the use of electronic health
2 records for quality improvement including through
3 quality measures reporting; and
4 "(10) such other activities as the Secretary may
5 specify.
6 "(e) PLAN.—
7 "(1) IN GENERAL.—A plan described in this
8 subsection is a plan that describes the activities to
9 be carried out by a State or by the qualified State-
10 designated entity within such State to facilitate and
11 expand the electronic movement and use of health
12 information among organizations according to na-
13 tionally recognized standards and implementation
14 specifications.
15 "(2) REQUIRED ELEMENTS.—A plan described
16 in paragraph (1) shall—
17 "(A) be pursued in the public interest;
18 "(B) be consistent with the strategic plan
19 developed by the National Coordinator, (and, as
20 available) under section 3001;
21 "(C) include a description of the ways the
22 State or qualified State-designated entity will
23 carry out the activities described in subsection
24 (b); and

1 "(D) contain such elements as the Sec-
2 retary may require.
3 "(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
4 purposes of this section, to be a qualified State-designated
5 entity, with respect to a State, an entity shall—
6 "(1) be designated by the State as eligible to
7 receive awards under this section;
8 "(2) be a not-for-profit entity with broad stake-
9 holder representation on its governing board;
10 "(3) demonstrate that one of its principal goals
11 is to use information technology to improve health
12 care quality and efficiency through the authorized
13 and secure electronic exchange and use of health in-
14 formation;
15 "(4) adopt nondiscrimination and conflict of in-
16 terest policies that demonstrate a commitment to
17 open, fair, and nondiscriminatory participation by
18 stakeholders; and
19 "(5) conform to such other requirements as the
20 Secretary may establish.
21 "(g) REQUIRED CONSULTATION.—In carrying out
22 activities described in subsections (a)(2) and (a)(3), a
23 State or qualified State-designated entity shall consult
24 with and consider the recommendations of—

1 "(1) health care providers (including providers
2 that provide services to low income and underserved
3 populations);
4 "(2) health plans;
5 "(3) patient or consumer organizations that
6 represent the population to be served;
7 "(4) health information technology vendors;
8 "(5) health care purchasers and employers;
9 "(6) public health agencies;
10 "(7) health professions schools, universities and
11 colleges;
12 "(8) clinical researchers;
13 "(9) other users of health information tech-
14 nology such as the support and clerical staff of pro-
15 viders and others involved in the care and care co-
16 ordination of patients; and
17 "(10) such other entities, as may be determined
18 appropriate by the Secretary.
19 "(h) CONTINUOUS IMPROVEMENT.—The Secretary
20 shall annually evaluate the activities conducted under this
21 section and shall, in awarding grants under this section,
22 implement the lessons learned from such evaluation in a
23 manner so that awards made subsequent to each such
24 evaluation are made in a manner that, in the determina-
25 tion of the Secretary, will lead towards the greatest im-

1 provement in quality of care, decrease in costs, and the
2 most effective authorized and secure electronic exchange
3 of health information.

4 "(i) REQUIRED MATCH.—

5 "(1) IN GENERAL.—For a fiscal year (begin-
6 ning with fiscal year 2011), the Secretary may not
7 make a grant under subsection (a) to a State unless
8 the State agrees to make available non-Federal con-
9 tributions (which may include in-kind contributions)
10 toward the costs of a grant awarded under sub-
11 section (a)(3) in an amount equal to—

12 "(A) for fiscal year 2011, not less than $1
13 for each $10 of Federal funds provided under
14 the grant;

15 "(B) for fiscal year 2012, not less than $1
16 for each $7 of Federal funds provided under
17 the grant; and

18 "(C) for fiscal year 2013 and each subse-
19 quent fiscal year, not less than $1 for each $3
20 of Federal funds provided under the grant.

21 "(2) AUTHORITY TO REQUIRE STATE MATCH
22 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
23 any fiscal year during the grant program under this
24 section before fiscal year 2011, the Secretary may
25 determine the extent to which there shall be required

a non-Federal contribution from a State receiving a grant under this section.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

"(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

"(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

"(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

1 "(3) provides assurances to the National Coor-
2 dinator that the entity will establish a Loan Fund
3 in accordance with subsection (c);
4 "(4) provides assurances to the National Coor-
5 dinator that the entity will not provide a loan from
6 the Loan Fund to a health care provider unless the
7 provider agrees to—
8 "(A) submit reports on quality measures
9 adopted by the Federal Government (by not
10 later than 90 days after the date on which such
11 measures are adopted), to—
12 "(i) the Director of the Centers for
13 Medicare & Medicaid Services (or his or
14 her designee), in the case of an entity par-
15 ticipating in the Medicare program under
16 title XVIII of the Social Security Act or
17 the Medicaid program under title XIX of
18 such Act; or
19 "(ii) the Secretary in the case of other
20 entities;
21 "(B) demonstrate to the satisfaction of the
22 Secretary (through criteria established by the
23 Secretary) that any certified EHR technology
24 purchased, improved, or otherwise financially
25 supported under a loan under this section is

used to exchange health information in a manner that, in accordance with law and standards (as adopted under section 3005) applicable to the exchange of information, improves the quality of health care, such as promoting care coordination; and

"(C) comply with such other requirements as the entity or the Secretary may require;

"(D) include a plan on how health care providers involved intend to maintain and support the certified EHR technology over time;

"(E) include a plan on how the health care providers involved intend to maintain and support the certified EHR technology that would be purchased with such loan, including the type of resources expected to be involved and any such other information as the State or Indian tribe, respectively, may require; and

"(5) agrees to provide matching funds in accordance with subsection (i).

"(c) ESTABLISHMENT OF FUND.—For purposes of subsection (b)(3), an eligible entity shall establish a certified EHR technology loan fund (referred to in this subsection as a 'Loan Fund') and comply with the other requirements contained in this section. A grant to an eligible

1 entity under this section shall be deposited in the Loan
2 Fund established by the eligible entity. No funds author-
3 ized by other provisions of this title to be used for other
4 purposes specified in this title shall be deposited in any
5 Loan Fund.

6 "(d) STRATEGIC PLAN.—

7 "(1) IN GENERAL.—For purposes of subsection
8 (b)(2), a strategic plan of an eligible entity under
9 this subsection shall identify the intended uses of
10 amounts available to the Loan Fund of such entity.

11 "(2) CONTENTS.—A strategic plan under para-
12 graph (1), with respect to a Loan Fund of an eligi-
13 ble entity, shall include for a year the following:

14 "(A) A list of the projects to be assisted
15 through the Loan Fund during such year.

16 "(B) A description of the criteria and
17 methods established for the distribution of
18 funds from the Loan Fund during the year.

19 "(C) A description of the financial status
20 of the Loan Fund as of the date of submission
21 of the plan.

22 "(D) The short-term and long-term goals
23 of the Loan Fund.

24 "(e) USE OF FUNDS.—Amounts deposited in a Loan
25 Fund, including loan repayments and interest earned on

1 such amounts, shall be used only for awarding loans or
2 loan guarantees, making reimbursements described in sub-
3 section (g)(4)(A), or as a source of reserve and security
4 for leveraged loans, the proceeds of which are deposited
5 in the Loan Fund established under subsection (a). Loans
6 under this section may be used by a health care provider
7 to—

8 "(1) facilitate the purchase of certified EHR
9 technology;

10 "(2) enhance the utilization of certified EHR
11 technology;

12 "(3) train personnel in the use of such tech-
13 nology; or

14 "(4) improve the secure electronic exchange of
15 health information.

16 "(f) TYPES OF ASSISTANCE.—Except as otherwise
17 limited by applicable State law, amounts deposited into a
18 Loan Fund under this subsection may only be used for
19 the following:

20 "(1) To award loans that comply with the fol-
21 lowing:

22 "(A) The interest rate for each loan shall
23 not exceed the market interest rate.

24 "(B) The principal and interest payments
25 on each loan shall commence not later than 1

year after the date the loan was awarded, and each loan shall be fully amortized not later than 10 years after the date of the loan.

"(C) The Loan Fund shall be credited with all payments of principal and interest on each loan awarded from the Loan Fund.

"(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this subsection) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation involved.

"(3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the eligible entity if the proceeds of the sale of the bonds will be deposited into the Loan Fund.

"(4) To earn interest on the amounts deposited into the Loan Fund.

"(5) To make reimbursements described in subsection (g)(4)(A).

"(g) ADMINISTRATION OF LOAN FUNDS.—

"(1) COMBINED FINANCIAL ADMINISTRATION.—An eligible entity may (as a convenience and to avoid unnecessary administrative costs) combine, in

accordance with applicable State law, the financial administration of a Loan Fund established under this subsection with the financial administration of any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.

"(2) COST OF ADMINISTERING FUND.—Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this subsection to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.

"(3) GUIDANCE AND REGULATIONS.—The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

"(A) provisions to ensure that each eligible entity commits and expends funds allotted to the entity under this subsection as efficiently as possible in accordance with this title and applicable State laws; and

"(B) guidance to prevent waste, fraud, and abuse.

1 "(4) PRIVATE SECTOR CONTRIBUTIONS.—

2 "(A) IN GENERAL.—A Loan Fund estab-
3 lished under this subsection may accept con-
4 tributions from private sector entities, except
5 that such entities may not specify the recipient
6 or recipients of any loan issued under this sub-
7 section. An eligible entity may agree to reim-
8 burse a private sector entity for any contribu-
9 tion made under this subparagraph, except that
10 the amount of such reimbursement may not be
11 greater than the principal amount of the con-
12 tribution made.

13 "(B) AVAILABILITY OF INFORMATION.—
14 An eligible entity shall make publicly available
15 the identity of, and amount contributed by, any
16 private sector entity under subparagraph (A)
17 and may issue letters of commendation or make
18 other awards (that have no financial value) to
19 any such entity.

20 "(h) MATCHING REQUIREMENTS.—

21 "(1) IN GENERAL.—The National Coordinator
22 may not make a grant under subsection (a) to an el-
23 igible entity unless the entity agrees to make avail-
24 able (directly or through donations from public or
25 private entities) non-Federal contributions in cash to

the costs of carrying out the activities for which the grant is awarded in an amount equal to not less than $1 for each $5 of Federal funds provided under the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

"(i) EFFECTIVE DATE.—The Secretary may not make an award under this section prior to January 1, 2010.

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

"(a) IN GENERAL.—The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

"(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

1 "(1) submit to the Secretary an application at
2 such time, in such manner, and containing such in-
3 formation as the Secretary may require;
4 "(2) submit to the Secretary a strategic plan
5 for integrating certified EHR technology in the clin-
6 ical education of health professionals to reduce med-
7 ical errors and enhance health care quality;
8 "(3) be—
9 "(A) a school of medicine, osteopathic
10 medicine, dentistry, or pharmacy, a graduate
11 program in behavioral or mental health, or any
12 other graduate health professions school;
13 "(B) a graduate school of nursing or phy-
14 sician assistant studies;
15 "(C) a consortium of two or more schools
16 described in subparagraph (A) or (B); or
17 "(D) an institution with a graduate med-
18 ical education program in medicine, osteopathic
19 medicine, dentistry, pharmacy, nursing, or phy-
20 sician assistance studies.
21 "(4) provide for the collection of data regarding
22 the effectiveness of the demonstration project to be
23 funded under the grant in improving the safety of
24 patients, the efficiency of health care delivery, and
25 in increasing the likelihood that graduates of the

1 grantee will adopt and incorporate certified EHR
2 technology, in the delivery of health care services;
3 and
4 "(5) provide matching funds in accordance with
5 subsection (d).
6 "(c) USE OF FUNDS.—
7 "(1) IN GENERAL.—With respect to a grant
8 under subsection (a), an eligible entity shall—
9 "(A) use grant funds in collaboration with
10 2 or more disciplines; and
11 "(B) use grant funds to integrate certified
12 EHR technology into community-based clinical
13 education.
14 "(2) LIMITATION.—An eligible entity shall not
15 use amounts received under a grant under sub-
16 section (a) to purchase hardware, software, or serv-
17 ices.
18 "(d) FINANCIAL SUPPORT.—The Secretary may not
19 provide more than 50 percent of the costs of any activity
20 for which assistance is provided under subsection (a), ex-
21 cept in an instance of national economic conditions which
22 would render the cost-share requirement under this sub-
23 section detrimental to the program and upon notification
24 to Congress as to the justification to waive the cost-share
25 requirement.

1 "(e) EVALUATION.—The Secretary shall take such
2 action as may be necessary to evaluate the projects funded
3 under this section and publish, make available, and dis-
4 seminate the results of such evaluations on as wide a basis
5 as is practicable.

6 "(f) REPORTS.—Not later than 1 year after the date
7 of enactment of this title, and annually thereafter, the Sec-
8 retary shall submit to the Committee on Health, Edu-
9 cation, Labor, and Pensions and the Committee on Fi-
10 nance of the Senate, and the Committee on Energy and
11 Commerce of the House of Representatives a report
12 that—

13 "(1) describes the specific projects established
14 under this section; and

15 "(2) contains recommendations for Congress
16 based on the evaluation conducted under subsection
17 (e).

18 **"SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
19 **ON HEALTH CARE.**

20 "(a) IN GENERAL.—The Secretary, in consultation
21 with the Director of the National Science Foundation,
22 shall provide assistance to institutions of higher education
23 (or consortia thereof) to establish or expand medical
24 health informatics education programs, including certifi-
25 cation, undergraduate, and masters degree programs, for

1 both health care and information technology students to
2 ensure the rapid and effective utilization and development
3 of health information technologies (in the United States
4 health care infrastructure).

5 "(b) ACTIVITIES.—Activities for which assistance
6 may be provided under subsection (a) may include the fol-
7 lowing:

8 "(1) Developing and revising curricula in med-
9 ical health informatics and related disciplines.

10 "(2) Recruiting and retaining students to the
11 program involved.

12 "(3) Acquiring equipment necessary for student
13 instruction in these programs, including the installa-
14 tion of testbed networks for student use.

15 "(4) Establishing or enhancing bridge programs
16 in the health informatics fields between community
17 colleges and universities.

18 "(c) PRIORITY.—In providing assistance under sub-
19 section (a), the Secretary shall give preference to the fol-
20 lowing:

21 "(1) Existing education and training programs.

22 "(2) Programs designed to be completed in less
23 than six months.

24 "(d) FINANCIAL SUPPORT.—The Secretary may not
25 provide more than 50 percent of the costs of any activity

for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

"(a) REPORTS.—The Secretary may require that an entity receiving assistance under this title shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—

"(1) an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and

"(2) an analysis of the impact of the project on health care quality and safety.

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this title and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National Coordi-

1 nator, will result in the greatest improvement in the qual-
2 ity and efficiency of health care.

3 **"SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 "For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nec-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.".

9 **PART II—MEDICARE PROGRAM**

10 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

11 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
12 cial Security Act (42 U.S.C. 1395w–4) is amended by add-
13 ing at the end the following new subsection:

14 "(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 "(1) INCENTIVE PAYMENTS.—

17 "(A) IN GENERAL.—Subject to the suc-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.

"(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

"(ii) AMOUNT.—Subject to clause (iii), the applicable amount specified in this subparagraph for an eligible professional is as follows:

1 "(I) For the first payment year
2 for such professional, $15,000.
3 "(II) For the second payment
4 year for such professional, $12,000.
5 "(III) For the third payment
6 year for such professional, $8,000.
7 "(IV) For the fourth payment
8 year for such professional, $4,000.
9 "(V) For the fifth payment year
10 for such professional, $2,000.
11 "(VI) For any succeeding pay-
12 ment year for such professional, $0.
13 "(iii) PHASE DOWN FOR ELIGIBLE
14 PROFESSIONALS FIRST ADOPTING EHR
15 AFTER 2013.—If the first payment year for
16 an eligible professional is after 2013, then
17 the amount specified in this subparagraph
18 for a payment year for such professional is
19 the same as the amount specified in clause
20 (ii) for such payment year for an eligible
21 professional whose first payment year is
22 2013. If the first payment year for an eli-
23 gible professional is after 2015 then the
24 applicable amount specified in this sub-

1 paragraph for such professional for such
2 year and any subsequent year shall be $0.
3 "(C) NON-APPLICATION TO HOSPITAL-
4 BASED ELIGIBLE PROFESSIONALS.—
5 "(i) IN GENERAL.—No incentive pay-
6 ment may be made under this paragraph
7 in the case of a hospital-based eligible pro-
8 fessional.
9 "(ii) HOSPITAL-BASED ELIGIBLE PRO-
10 FESSIONAL.—For purposes of clause (i),
11 the term 'hospital-based eligible profes-
12 sional' means, with respect to covered pro-
13 fessional services furnished by an eligible
14 professional during the reporting period for
15 a payment year, an eligible professional,
16 such as a pathologist, anesthesiologist, or
17 emergency physician, who furnishes sub-
18 stantially all of such services in a hospital
19 setting (whether inpatient or outpatient)
20 and through the use of the facilities and
21 equipment, including computer equipment,
22 of the hospital.
23 "(D) PAYMENT.—
24 "(i) FORM OF PAYMENT.—The pay-
25 ment under this paragraph may be in the

form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

"(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. In doing so, the Secretary may deem satisfaction of State requirements for such meaningful use for a payment year under title XIX to be sufficient to qualify as meaningful use

1 under this subsection and subsection (a)(7)
2 and vice versa. The Secretary may also ad-
3 just the reporting periods under such title
4 and such subsections in order to carry out
5 this clause.
6 ''(E) PAYMENT YEAR DEFINED.—
7 ''(i) IN GENERAL.—For purposes of
8 this subsection, the term 'payment year'
9 means a year beginning with 2011.
10 ''(ii) FIRST, SECOND, ETC. PAYMENT
11 YEAR.—The term 'first payment year'
12 means, with respect to covered professional
13 services furnished by an eligible profes-
14 sional, the first year for which an incentive
15 payment is made for such services under
16 this subsection. The terms 'second pay-
17 ment year', 'third payment year', 'fourth
18 payment year', and 'fifth payment year'
19 mean, with respect to covered professional
20 services furnished by such eligible profes-
21 sional, each successive year immediately
22 following the first payment year for such
23 professional.
24 ''(2) MEANINGFUL EHR USER.—

1 "(A) IN GENERAL.—For purposes of para-
2 graph (1), an eligible professional shall be
3 treated as a meaningful EHR user for a report-
4 ing period for a payment year (or, for purposes
5 of subsection (a)(7), for a reporting period
6 under such subsection for a year) if each of the
7 following requirements is met:
8 "(i) MEANINGFUL USE OF CERTIFIED
9 EHR TECHNOLOGY.—The eligible profes-
10 sional demonstrates to the satisfaction of
11 the Secretary, in accordance with subpara-
12 graph (C)(i), that during such period the
13 professional is using certified EHR tech-
14 nology in a meaningful manner, which
15 shall include the use of electronic pre-
16 scribing as determined to be appropriate
17 by the Secretary.
18 "(ii) INFORMATION EXCHANGE.—The
19 eligible professional demonstrates to the
20 satisfaction of the Secretary, in accordance
21 with subparagraph (C)(i), that during such
22 period such certified EHR technology is
23 connected in a manner that provides, in
24 accordance with law and standards appli-
25 cable to the exchange of information, for

the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subpara-

graph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(III) The Secretary shall, to the extent practicable, select the same measures for purposes of subparagraph (A)(iii) as are selected for quality purposes under title XIX.

"(ii) LIMITATION.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(3) APPLICATION.—

"(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

"(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

"(C) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review

under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (a)(7), including the determination of a meaningful EHR user under paragraph (2), a limitation under paragraph (1)(B), and the exception under subsection (a)(7)(B).

"(D) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).

"(4) CERTIFIED EHR TECHNOLOGY DEFINED.—For purposes of this section, the term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applica-

ble to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

"(5) DEFINITIONS.—For purposes of this subsection:

"(A) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(B) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(C) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.".

(b) INCENTIVE PAYMENT ADJUSTMENT.—Section 1848(a) of the Social Security Act (42 U.S.C. 1395w–4(a)) is amended by adding at the end the following new paragraph:

"(7) INCENTIVES FOR MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(A) ADJUSTMENT.—

1 "(i) IN GENERAL.—Subject to sub-
2 paragraphs (B) and (D), with respect to
3 covered professional services furnished by
4 an eligible professional during 2016 or any
5 subsequent payment year, if the eligible
6 professional is not a meaningful EHR user
7 (as determined under subsection (o)(2)) for
8 a reporting period for the year, the fee
9 schedule amount for such services fur-
10 nished by such professional during the year
11 (including the fee schedule amount for pur-
12 poses of determining a payment based on
13 such amount) shall be equal to the applica-
14 ble percent of the fee schedule amount that
15 would otherwise apply to such services
16 under this subsection (determined after ap-
17 plication of paragraph (3) but without re-
18 gard to this paragraph).
19 "(ii) APPLICABLE PERCENT.—Subject
20 to clause (iii), for purposes of clause (i),
21 the term 'applicable percent' means—
22 "(I) for 2016, 99 percent;
23 "(II) for 2017, 98 percent; and
24 "(III) for 2018 and each subse-
25 quent year, 97 percent.

1 "(iii) AUTHORITY TO DECREASE AP-
2 PLICABLE PERCENTAGE FOR 2019 AND
3 SUBSEQUENT YEARS.—For 2019 and each
4 subsequent year, if the Secretary finds that
5 the proportion of eligible professionals who
6 are meaningful EHR users (as determined
7 under subsection (o)(2)) is less than 75
8 percent, the applicable percent shall be de-
9 creased by 1 percentage point from the ap-
10 plicable percent in the preceding year, but
11 in no case shall the applicable percent be
12 less than 95 percent.
13 "(B) SIGNIFICANT HARDSHIP EXCEP-
14 TION.—The Secretary may, on a case-by-case
15 basis, exempt an eligible professional from the
16 application of the payment adjustment under
17 subparagraph (A) if the Secretary determines,
18 subject to annual renewal, that compliance with
19 the requirement for being a meaningful EHR
20 user would result in a significant hardship, such
21 as in the case of an eligible professional who
22 practices in a rural area without sufficient
23 Internet access. In no case may an eligible pro-
24 fessional be granted an exemption under this
25 subparagraph for more than 5 years.

"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

"(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (o)(1)(C)(ii)).

"(E) DEFINITIONS.—For purposes of this paragraph:

"(i) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(ii) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(iii) REPORTING PERIOD.—The term 'reporting period' means, with respect to a year, a period specified by the Secretary.".

(c) APPLICATION TO CERTAIN HMO-AFFILIATED ELIGIBLE PROFESSIONALS.—Section 1853 of the Social

1 Security Act (42 U.S.C. 1395w–23) is amended by adding
2 at the end the following new subsection:

3 "(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
4 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
5 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
6 NOLOGY.—

7 "(1) IN GENERAL.—Subject to paragraphs (3)
8 and (4), in the case of a qualifying MA organization,
9 the provisions of sections 1848(o) and 1848(a)(7)
10 shall apply with respect to eligible professionals de-
11 scribed in paragraph (2) of the organization who the
12 organization attests under paragraph (6) to be
13 meaningful EHR users in a similar manner as they
14 apply to eligible professionals under such sections.
15 Incentive payments under paragraph (3) shall be
16 made to and payment adjustments under paragraph
17 (4) shall apply to such qualifying organizations.

18 "(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
19 With respect to a qualifying MA organization, an eli-
20 gible professional described in this paragraph is an
21 eligible professional (as defined for purposes of sec-
22 tion 1848(o)) who—

23 "(A)(i) is employed by the organization, or

24 "(ii)(I) is employed by, or is a partner of,
25 an entity that through contract with the organi-

1 zation furnishes at least 80 percent of the enti-
2 ty's patient care services to enrollees of such or-
3 ganization; and
4 "(II) furnishes at least 75 percent of the
5 professional services of the eligible professional
6 to enrollees of the organization; and
7 "(B) furnishes, on average, at least 20
8 hours per week of patient care services.
9 "(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
10 MENTS.—
11 "(A) IN GENERAL.—In applying section
12 1848(o) under paragraph (1), instead of the ad-
13 ditional payment amount under section
14 1848(o)(1)(A) and subject to subparagraph
15 (B), the Secretary may substitute an amount
16 determined by the Secretary to the extent fea-
17 sible and practical to be similar to the esti-
18 mated amount in the aggregate that would be
19 payable if payment for services furnished by
20 such professionals was payable under part B in-
21 stead of this part.
22 "(B) AVOIDING DUPLICATION OF PAY-
23 MENTS.—
24 "(i) IN GENERAL.—If an individual is
25 an eligible professional described in para-

graph (2) and also is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive shall be made only under such section and not under this subsection.

"(ii) METHODS.—In the case of an individual who is an eligible professional described in paragraph (2) and also is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph

(A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.

"(4) PAYMENT ADJUSTMENT.—

"(A) IN GENERAL.—In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

"(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

"(i) the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and

"(ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.

"(C) MEDICARE PHYSICIAN EXPENDITURE PROPORTION.—The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for physicians' services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible professionals are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of such eligible professionals that are not meaningful EHR users for such year.

"(5) QUALIFYING MA ORGANIZATION DEFINED.—In this subsection and subsection (m), the term 'qualifying MA organization' means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).

"(6) MEANINGFUL EHR USER ATTESTATION.—For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying—

"(A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1848(o)(3)) for a year specified by the Secretary; and

"(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.".

(d) CONFORMING AMENDMENTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (a)(1)(A), by striking "and (i)" and inserting "(i), and (l)";

(2) in subsection (c)—

(A) in paragraph (1)(D)(i), by striking "section 1886(h)" and inserting "sections 1848(o) and 1886(h)"; and

(B) in paragraph (6)(A), by inserting after "under part B," the following: "excluding expenditures attributable to subsections (a)(7) and (o) of section 1848,"; and

(3) in subsection (f), by inserting "and for payments under subsection (l)" after "with the organization".

(e) CONFORMING AMENDMENTS TO E-PRESCRIBING.—

(1) Section 1848(a)(5)(A) of the Social Security Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—

(A) in clause (i), by striking "or any subsequent year" and inserting ", 2013, 2014, or 2015"; and

(B) in clause (ii), by striking "and each subsequent year" and inserting "and 2015".

(2) Section 1848(m)(2) of such Act (42 U.S.C. 1395w–4(m)(2)) is amended—

(A) in subparagraph (A), by striking "For 2009" and inserting "Subject to subparagraph (D), for 2009"; and

(B) by adding at the end the following new subparagraph:

"(D) LIMITATION WITH RESPECT TO EHR INCENTIVE PAYMENTS.—The provisions of this paragraph shall not apply to an eligible professional (or, in the case of a group practice under paragraph (3)(C), to the group practice) if, for the reporting period the eligible professional (or group practice) receives an incentive payment under subsection (o)(1)(A) with respect to a certified EHR technology (as defined in subsection (o)(6)(A)) that has the capability of electronic prescribing.".

SEC. 4312. INCENTIVES FOR HOSPITALS.

(a) INCENTIVE PAYMENT.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

"(n) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for

the reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

"(2) PAYMENT AMOUNT.—

"(A) IN GENERAL.—Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

"(i) INITIAL AMOUNT.—The sum of—

"(I) the base amount specified in subparagraph (B); plus

"(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

"(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the hospital for a period selected

by the Secretary with respect to such payment year.

"(iii) TRANSITION FACTOR.—The transition factor specified in subparagraph (E) for the hospital for the payment year.

"(B) BASE AMOUNT.—The base amount specified in this subparagraph is $2,000,000.

"(C) DISCHARGE RELATED AMOUNT.—The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, based upon total discharges (regardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

"(i) For the 1,150th through the 9,200th discharge, $200.

"(ii) For the 9,201st through the 13,800th discharge, 50 percent of the amount specified in clause (i).

"(iii) For the 13,801st through the 23,000th discharge, 30 percent of the amount specified in clause (i).

"(D) MEDICARE SHARE.—The Medicare share specified under this subparagraph for a

1 hospital for a period selected by the Secretary
2 for a payment year is equal to the fraction—
3 "(i) the numerator of which is the
4 sum (for such period and with respect to
5 the hospital) of—
6 "(I) the number of inpatient-bed-
7 days (as established by the Secretary)
8 which are attributable to individuals
9 with respect to whom payment may be
10 made under part A; and
11 "(II) the number of inpatient-
12 bed-days (as so established) which are
13 attributable to individuals who are en-
14 rolled with a Medicare Advantage or-
15 ganization under part C; and
16 "(ii) the denominator of which is the
17 product of—
18 "(I) the total number of inpa-
19 tient-bed-days with respect to the hos-
20 pital during such period; and
21 "(II) the total amount of the hos-
22 pital's charges during such period, not
23 including any charges that are attrib-
24 utable to charity care (as such term is
25 used for purposes of hospital cost re-

1 porting under this title), divided by
2 the total amount of the hospital's
3 charges during such period.
4 Insofar as the Secretary determines that data
5 are not available on charity care necessary to
6 calculate the portion of the formula specified in
7 clause (ii)(II), the Secretary shall use data on
8 uncompensated care and may adjust such data
9 so as to be an appropriate proxy for charity
10 care including a downward adjustment to elimi-
11 nate bad debt data from uncompensated care
12 data. In the absence of the data necessary, with
13 respect to a hospital, for the Secretary to com-
14 pute the amount described in clause (ii)(II), the
15 amount under such clause shall be deemed to
16 be 1. In the absence of data, with respect to a
17 hospital, necessary to compute the amount de-
18 scribed in clause (i)(II), the amount under such
19 clause shall be deemed to be 0.
20 "(E) TRANSITION FACTOR SPECIFIED.—
21 "(i) IN GENERAL.—Subject to clause
22 (ii), the transition factor specified in this
23 subparagraph for an eligible hospital for a
24 payment year is as follows:

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, ¾.

"(III) For the third payment year for such hospital, ½.

"(IV) For the fourth payment year for such hospital, ¼.

"(V) For any succeeding payment year for such hospital, 0.

"(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

1 "(F) FORM OF PAYMENT.—The payment
2 under this subsection for a payment year may
3 be in the form of a single consolidated payment
4 or in the form of such periodic installments as
5 the Secretary may specify.
6 "(G) PAYMENT YEAR DEFINED.—
7 "(i) IN GENERAL.—For purposes of
8 this subsection, the term 'payment year'
9 means a fiscal year beginning with fiscal
10 year 2011.
11 "(ii) FIRST, SECOND, ETC. PAYMENT
12 YEAR.—The term 'first payment year'
13 means, with respect to inpatient hospital
14 services furnished by an eligible hospital,
15 the first fiscal year for which an incentive
16 payment is made for such services under
17 this subsection. The terms 'second pay-
18 ment year', 'third payment year', and
19 'fourth payment year' mean, with respect
20 to an eligible hospital, each successive year
21 immediately following the first payment
22 year for that hospital.
23 "(3) MEANINGFUL EHR USER.—
24 "(A) IN GENERAL.—For purposes of para-
25 graph (1), an eligible hospital shall be treated

as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (b)(3)(B)(ix), for a reporting period under such subsection for a fiscal year) if the following requirements are met:

"(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the hospital is using certified EHR technology in a meaningful manner.

"(ii) INFORMATION EXCHANGE.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph

(B)(ii) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary may select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATIONS.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are

1 necessary for purposes of subparagraph
2 (A).
3 "(4) APPLICATION.—
4 "(A) LIMITATIONS ON REVIEW.—There
5 shall be no administrative or judicial review
6 under section 1869, section 1878, or otherwise
7 of the determination of any incentive payment
8 under this subsection and the payment adjust-
9 ment under subsection (b)(3)(B)(ix), including
10 the determination of a meaningful EHR user
11 under paragraph (3), determination of meas-
12 ures applicable to services furnished by eligible
13 hospitals under this subsection, and the excep-
14 tion under subsection (b)(3)(B)(ix)(II).
15 "(B) POSTING ON WEBSITE.—The Sec-
16 retary shall post on the Internet website of the
17 Centers for Medicare & Medicaid Services, in an
18 easily understandable format, a list of the
19 names of the eligible hospitals that are mean-
20 ingful EHR users under this subsection or sub-
21 section (b)(3)(B)(ix) and other relevant data as
22 determined appropriate by the Secretary. The
23 Secretary shall ensure that a hospital has the
24 opportunity to review the other relevant data

that are to be made public with respect to the hospital prior to such data being made public.

"(5) CERTIFIED EHR TECHNOLOGY DEFINED.—The term 'certified EHR technology' has the meaning given such term in section 1848(o)(4).

"(6) DEFINITIONS.—For purposes of this subsection:

"(A) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means a subsection (d) hospital.

"(B) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.".

(b) INCENTIVE MARKET BASKET ADJUSTMENT.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in clause (viii)(I), by inserting "(or, beginning with fiscal year 2016, by one-quarter)" after "2.0 percentage points"; and

(2) by adding at the end the following new clause:

"(ix)(I) For purposes of clause (i) for fiscal year 2016 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection

1 (n)(3)) for the reporting period for such fiscal year, three-
2 quarters of the applicable percentage increase otherwise
3 applicable under clause (i) for such fiscal year shall be
4 reduced by 33⅓ percent for fiscal year 2016, 66⅔ per-
5 cent for fiscal year 2017, and 100 percent for fiscal year
6 2018 and each subsequent fiscal year. Such reduction
7 shall apply only with respect to the fiscal year involved
8 and the Secretary shall not take into account such reduc-
9 tion in computing the applicable percentage increase under
10 clause (i) for a subsequent fiscal year.

11 ''(II) The Secretary may, on a case-by-case basis, ex-
12 empt a subsection (d) hospital from the application of sub-
13 clause (I) with respect to a fiscal year if the Secretary
14 determines, subject to annual renewal, that requiring such
15 hospital to be a meaningful EHR user during such fiscal
16 year would result in a significant hardship, such as in the
17 case of a hospital in a rural area without sufficient Inter-
18 net access. In no case may a hospital be granted an ex-
19 emption under this subclause for more than 5 years.

20 ''(III) For fiscal year 2016 and each subsequent fis-
21 cal year, a State in which hospitals are paid for services
22 under section 1814(b)(3) shall adjust the payments to
23 each subsection (d) hospital in the State that is not a
24 meaningful EHR user (as defined in subsection (n)(3))
25 in a manner that is designed to result in an aggregate

1 reduction in payments to hospitals in the State that is
2 equivalent to the aggregate reduction that would have oc-
3 curred if payments had been reduced to each subsection
4 (d) hospital in the State in a manner comparable to the
5 reduction under the previous provisions of this clause. The
6 State shall report to the Secretary the methodology it will
7 use to make the payment adjustment under the previous
8 sentence.

9 ''(IV) For purposes of this clause, the term 'reporting
10 period' means, with respect to a fiscal year, any period
11 (or periods), with respect to the fiscal year, as specified
12 by the Secretary.''.

13 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
14 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
15 rity Act (42 U.S.C. 1395w–23), as amended by section
16 311(c), is further amended by adding at the end the fol-
17 lowing new subsection:

18 ''(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
19 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
20 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
21 NOLOGY.—

22 ''(1) APPLICATION.—Subject to paragraphs (3)
23 and (4), in the case of a qualifying MA organization,
24 the provisions of sections 1886(n) and
25 1886(b)(3)(B)(ix) shall apply with respect to eligible

hospitals described in paragraph (2) of the organization which the organization attests under subsection (l)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

"(2) ELIGIBLE HOSPITAL DESCRIBED.—With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

"(3) ELIGIBLE HOSPITAL INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—In applying section 1886(n)(2) under paragraph (1), instead of the additional payment amount under section 1886(n)(2), there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under

1 part A instead of this part. In implementing the
2 previous sentence, the Secretary—
3 "(i) shall, insofar as data to deter-
4 mine the discharge related amount under
5 section 1886(n)(2)(C) for an eligible hos-
6 pital are not available to the Secretary, use
7 such alternative data and methodology to
8 estimate such discharge related amount as
9 the Secretary determines appropriate; and
10 "(ii) shall, insofar as data to deter-
11 mine the medicare share described in sec-
12 tion 1886(n)(2)(D) for an eligible hospital
13 are not available to the Secretary, use such
14 alternative data and methodology to esti-
15 mate such share, which data and method-
16 ology may include use of the inpatient bed
17 days (or discharges) with respect to an eli-
18 gible hospital during the appropriate pe-
19 riod which are attributable to both individ-
20 uals for whom payment may be made
21 under part A or individuals enrolled in an
22 MA plan under a Medicare Advantage or-
23 ganization under this part as a proportion
24 of the total number of patient-bed-days (or

1 discharges) with respect to such hospital
2 during such period.
3 "(B) AVOIDING DUPLICATION OF PAY-
4 MENTS.—
5 "(i) IN GENERAL.—In the case of a
6 hospital that for a payment year is an eli-
7 gible hospital described in paragraph (2),
8 is an eligible hospital under section
9 1886(n), and for which at least one-third
10 of their discharges (or bed-days) of Medi-
11 care patients for the year are covered
12 under part A, payment for the payment
13 year shall be made only under section
14 1886(n) and not under this subsection.
15 "(ii) METHODS.—In the case of a
16 hospital that is an eligible hospital de-
17 scribed in paragraph (2) and also is eligi-
18 ble for an incentive payment under section
19 1886(n) but is not described in clause (i)
20 for the same payment period, the Secretary
21 shall develop a process—
22 "(I) to ensure that duplicate pay-
23 ments are not made with respect to
24 an eligible hospital both under this

subsection and under section 1886(n); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(4) PAYMENT ADJUSTMENT.—

"(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(l)(5)), if, according to the attestation of the organization submitted under subsection (l)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in subparagraph (B) for such period of the payment amount otherwise provided under this section for such period.

"(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is

100 percent minus a number of percentage points equal to the product of—

"(i) the number of the percentage point reduction effected under section 1886(b)(3)(B)(ix)(I) for the period; and

"(ii) the Medicare hospital expenditure proportion specified in subparagraph (C) for the year.

"(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such

hospitals, that are not meaningful EHR users for such period.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting '', subject to section 1886(d)(3)(B)(ix)(III),'' after ''then''; and

(B) by adding at the end the following: ''For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (b)(3)(B)(ix) or (n) of section 1886.''.

(2) Section 1851(i)(1) of the Social Security Act (42 U.S.C. 1395w–21(i)(1)) is amended by striking ''and 1886(h)(3)(D)'' and inserting ''1886(h)(3)(D), and 1853(m)''.

(3) Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4311(d)(1), is amended—

(A) in subsection (c)—

(i) in paragraph (1)(D)(i), by striking ''1848(o)'' and inserting '', 1848(o), and 1886(n)''; and

(ii) in paragraph (6)(A), by inserting "and subsections (b)(3)(B)(ix) and (n) of section 1886" after "section 1848"; and

(B) in subsection (f), by inserting "and subsection (m)" after "under subsection (l)".

SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IMPLEMENTATION FUNDING.

(a) PREMIUM HOLD HARMLESS.—

(1) IN GENERAL.—Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: "In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).".

(2) PAYMENT.—Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended—

(A) in paragraph (2), by striking the period at the end and inserting "; plus"; and

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

"(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).".

1 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
2 of the Social Security Act (42 U.S.C. 1395iii), as added
3 by section 7002(a) of the Supplemental Appropriations
4 Act, 2008 (Public Law 110–252) and as amended by sec-
5 tion 188(a)(2) of the Medicare Improvements for Patients
6 and Providers Act of 2008 (Public Law 110–275; 122
7 Stat. 2589) and by section 6 of the QI Program Supple-
8 mental Funding Act of 2008, is amended—
9 (1) in subsection (a)—
10 (A) by inserting ''medicare'' before ''fee-
11 for-service''; and
12 (B) by inserting before the period at the
13 end the following: ''including, but not limited
14 to, an increase in the conversion factor under
15 section 1848(d) to address, in whole or in part,
16 any projected shortfall in the conversion factor
17 for 2014 relative to the conversion factor for
18 2008 and adjustments to payments for items
19 and services furnished by providers of services
20 and suppliers under such original medicare fee-
21 for-service program''; and
22 (2) in subsection (b)—
23 (A) in paragraph (1), by striking ''during
24 fiscal year 2014,'' and all that follows and in-
25 serting the following: ''during—

"(A) fiscal year 2014, $22,290,000,000; and

"(B) fiscal year 2020 and each subsequent fiscal year, the Secretary's estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this title during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix)."; and

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

"(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT YEARS.—In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service shall be computed for a subsequent year as if such application or effect had never occurred.".

(c) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $60,000,000 for each of fiscal years 2009

through 2015 and $30,000,000 for each succeeding fiscal year through fiscal year 2019, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

SEC. 4314. STUDY ON APPLICATION OF HIT PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using qualified health information technology should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XVIII or XIX of the Social Security Act, or otherwise, for such purposes.

(2) DETAILS OF STUDY.—Such study shall include an examination of—

(A) the adoption rates of qualified health information technology by such health care providers;

(B) the clinical utility of such technology by such health care providers;

(C) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;

(D) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, title XVIII or XIX of the Social Security Act, or otherwise;

(E) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

(F) any other issues the Secretary deems to be appropriate.

(b) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).

PART III—MEDICAID FUNDING

SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking ''and'' at the end of subparagraph (D);

(B) by striking ''plus'' at the end of subparagraph (E) and inserting ''and''; and

(C) by adding at the end the following new subparagraph:

''(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

''(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets

1 the condition described in subsection (t)(9);
2 plus''; and
3 (2) by inserting after subsection (s) the fol-
4 lowing new subsection:
5 ''(t)(1) For purposes of subsection (a)(3)(F), the pay-
6 ments for certified EHR technology (and support services
7 including maintenance that is for, or is necessary for the
8 operation of, such technology) by Medicaid providers de-
9 scribed in this paragraph are payments made by the State
10 in accordance with this subsection of 85 percent of the
11 net allowable costs of Medicaid providers (as defined in
12 paragraph (2)) for such technology (and support services).
13 ''(2) In this subsection and subsection (a)(3)(F), the
14 term 'Medicaid provider' means—
15 ''(A) an eligible professional (as defined in
16 paragraph (3)(B)) who is not hospital-based and has
17 at least 30 percent of the professional's patient vol-
18 ume (as estimated in accordance with standards es-
19 tablished by the Secretary) attributable to individ-
20 uals who are receiving medical assistance under this
21 title; and
22 ''(B)(i) a children's hospital;
23 ''(ii) an acute-care hospital that is not described
24 in clause (i) and that has at least 10 percent of the
25 hospital's patient volume (as estimated in accord-

1 ance with standards established by the Secretary)
2 attributable to individuals who are receiving medical
3 assistance under this title; or
4 "(iii) a Federally-qualified health center or
5 rural health clinic that has at least 30 percent of the
6 center's or clinic's patient volume (as estimated in
7 accordance with standards established by the Sec-
8 retary) attributable to individuals who are receiving
9 medical assistance under this title.
10 A professional shall not qualify as a Medicaid provider
11 under this subsection unless the professional has waived,
12 in a manner specified by the Secretary, any right to pay-
13 ment under section 1848(o) with respect to the adoption
14 or support of certified EHR technology by the profes-
15 sional. In applying clauses (ii) and (iii) of subparagraph
16 (B), the standards established by the Secretary for patient
17 volume shall include individuals enrolled in a Medicaid
18 managed care plan (under section 1903(m) or section
19 1932).
20 "(3) In this subsection and subsection (a)(3)(F):
21 "(A) The term 'certified EHR technology'
22 means a qualified electronic health record (as de-
23 fined in 3000(13) of the Public Health Service Act)
24 that is certified pursuant to section 3001(c)(5) of
25 such Act as meeting standards adopted under sec-

1 tion 3004 of such Act that are applicable to the type
2 of record involved (as determined by the Secretary,
3 such as an ambulatory electronic health record for
4 office-based physicians or an inpatient hospital elec-
5 tronic health record for hospitals).

6 ''(B) The term 'eligible professional' means a
7 physician as defined in paragraphs (1) and (2) of
8 section 1861(r), and includes a nurse mid-wife and
9 a nurse practitioner.

10 ''(C) The term 'hospital-based' means, with re-
11 spect to an eligible professional, a professional (such
12 as a pathologist, anesthesiologist, or emergency phy-
13 sician) who furnishes substantially all of the individ-
14 ual's professional services in a hospital setting
15 (whether inpatient or outpatient) and through the
16 use of the facilities and equipment, including com-
17 puter equipment, of the hospital.

18 ''(4)(A) The term 'allowable costs' means, with re-
19 spect to certified EHR technology of a Medicaid provider,
20 costs of such technology (and support services including
21 maintenance and training that is for, or is necessary for
22 the adoption and operation of, such technology) as deter-
23 mined by the Secretary to be reasonable.

24 ''(B) The term 'net allowable costs' means allowable
25 costs reduced by any payment that is made to the provider

1 involved from any other source that is directly attributable
2 to payment for certified EHR technology or services de-
3 scribed in subparagraph (A).

4 "(C) In no case shall—

5 "(i) the aggregate allowable costs under this
6 subsection (covering one or more years) with respect
7 to a Medicaid provider described in paragraph
8 (2)(A) for purchase and initial implementation of
9 certified EHR technology (and services described in
10 subparagraph (A)) exceed $25,000 or include costs
11 over a period of longer than 5 years;

12 "(ii) for costs not described in clause (i) relat-
13 ing to the operation, maintenance, or use of certified
14 EHR technology, the annual allowable costs under
15 this subsection with respect to such a Medicaid pro-
16 vider for costs not described in clause (i) for any
17 year exceed $10,000;

18 "(iii) payment described in paragraph (1) for
19 costs described in clause (ii) be made with respect
20 to such a Medicaid provider over a period of more
21 than 5 years;

22 "(iv) the aggregate allowable costs under this
23 subsection with respect to such a Medicaid provider
24 for all costs exceed $75,000; or

1 "(v) the allowable costs, whether for purchase
2 and initial implementation, maintenance, or other-
3 wise, for a Medicaid provider described in paragraph
4 (2)(B) exceed such aggregate or annual limitation as
5 the Secretary shall establish, based on an amount
6 determined by the Secretary as being adequate to
7 adopt and maintain certified EHR technology, con-
8 sistent with paragraph (6).
9 "(5) Payments described in paragraph (1) are not in
10 accordance with this subsection unless the following re-
11 quirements are met:
12 "(A) The State provides assurances satisfactory
13 to the Secretary that amounts received under sub-
14 section (a)(3)(F) with respect to costs of a Medicaid
15 provider are paid directly to such provider without
16 any deduction or rebate.
17 "(B) Such Medicaid provider is responsible for
18 payment of the costs described in such paragraph
19 that are not provided under this title.
20 "(C) With respect to payments to such Med-
21 icaid provider for costs other than costs related to
22 the initial adoption of certified EHR technology, the
23 Medicaid provider demonstrates meaningful use of
24 certified EHR technology through a means that is
25 approved by the State and acceptable to the Sec-

1 retary, and that may be based upon the methodolo-
2 gies applied under section 1848(o) or 1886(n).
3 "(D) To the extent specified by the Secretary,
4 the certified EHR technology is compatible with
5 State or Federal administrative management sys-
6 tems.
7 "(6)(A) In no case shall the payments described in
8 paragraph (1), with respect to a hospital, exceed in the
9 aggregate the product of—
10 "(i) the overall hospital HIT amount for the
11 hospital computed under subparagraph (B); and
12 "(ii) the Medicaid share for such hospital com-
13 puted under subparagraph (C).
14 "(B) For purposes of this paragraph, the overall hos-
15 pital HIT amount, with respect to a hospital, is the sum
16 of the applicable amounts specified in section
17 1886(n)(2)(A) for such hospital for the first 4 payment
18 years (as estimated by the Secretary) determined as if the
19 Medicare share specified in clause (ii) of such section were
20 1. The Secretary shall publish in the Federal Register the
21 overall hospital HIT amount for each hospital eligible for
22 payments under this subsection. In computing amounts
23 under clause (ii) for payment years after the first payment
24 year, the Secretary shall assume that in subsequent pay-

1 ment years discharges increase at an annual rate of 2 per-
2 cent per year.

3 "(C) The Medicaid share computed under this sub-
4 paragraph, for a hospital for a period specified by the Sec-
5 retary, shall be calculated in the same manner as the
6 Medicare share under section 1886(n)(2)(D) for such a
7 hospital and period, except that there shall be substituted
8 for the numerator under clause (i) of such section the
9 amount that is equal to the number of inpatient-bed-days
10 (as established by the Secretary) which are attributable
11 to individuals who are receiving medical assistance under
12 this title and who are not described in section
13 1886(n)(2)(D)(i). In computing inpatient-bed-days under
14 the previous sentence, the Secretary shall take into ac-
15 count inpatient-bed-days attributable to inpatient-bed-
16 days that are paid for individuals enrolled in a Medicaid
17 managed care plan (under section 1903(m) or section
18 1932).

19 "(7) With respect to health care providers other than
20 hospitals, the Secretary shall ensure coordination of the
21 different programs for payment of such health care pro-
22 viders for adoption or use of health information technology
23 (including certified EHR technology), as well as payments
24 for such health care providers provided under this title or
25 title XVIII, to assure no duplication of funding.

1 "(8) In carrying out paragraph (5)(C), the State and
2 Secretary shall seek, to the maximum extent practicable,
3 to avoid duplicative requirements from Federal and State
4 Governments to demonstrate meaningful use of certified
5 EHR technology under this title and title XVIII. In doing
6 so, the Secretary may deem satisfaction of requirements
7 for such meaningful use for a payment year under title
8 XVIII to be sufficient to qualify as meaningful use under
9 this subsection. The Secretary may also specify the report-
10 ing periods under this subsection in order to carry out this
11 paragraph.

12 "(9) In order to be provided Federal financial partici-
13 pation under subsection (a)(3)(F)(ii), a State must dem-
14 onstrate to the satisfaction of the Secretary, that the
15 State—

16 "(A) is using the funds provided for the pur-
17 poses of administering payments under this sub-
18 section, including tracking of meaningful use by
19 Medicaid providers;

20 "(B) conducting adequate oversight of the pro-
21 gram under this subsection, including routine track-
22 ing of meaningful use attestations and reporting
23 mechanisms; and

24 "(C) be pursuing initiatives to encourage the
25 adoption of certified EHR technology to promote

health care quality and the exchange of health care information under this title, subject to applicable laws and regulations governing such exchange.

"(10) The Secretary shall periodically submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on status, progress, and oversight of payments under paragraph (1).".

(b) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $40,000,000 for each of fiscal years 2009 through 2015 and $20,000,000 for each succeeding fiscal year through fiscal year 2019, which shall be available for purposes of carrying out the provisions of (and the amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

Subtitle D—Privacy

SEC. 4400. DEFINITIONS.

In this subtitle, except as specified otherwise:

(1) BREACH.—The term "breach" means the unauthorized acquisition, access, use, or disclosure

of protected health information which compromises the security, privacy, or integrity of protected health information maintained by or on behalf of a person. Such term does not include any unintentional acquisition, access, use, or disclosure of such information by an employee or agent of the covered entity or business associate involved if such acquisition, access, use, or disclosure, respectively, was made in good faith and within the course and scope of the employment or other contractual relationship of such employee or agent, respectively, with the covered entity or business associate and if such information is not further acquired, accessed, used, or disclosed by such employee or agent.

(2) BUSINESS ASSOCIATE.—The term ''business associate'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term ''covered entity'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms ''disclose'' and ''disclosure'' have the meaning given the term ''disclosure'' in section 160.103 of title 45, Code of Federal Regulations.

(5) ELECTRONIC HEALTH RECORD.—The term ''electronic health record'' means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(6) HEALTH CARE OPERATIONS.—The term ''health care operation'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(7) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(8) HEALTH PLAN.—The term ''health plan'' has the meaning given such term in section 1171(5) of the Social Security Act.

(9) NATIONAL COORDINATOR.—The term ''National Coordinator'' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 4101.

(10) PAYMENT.—The term ''payment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(11) PERSONAL HEALTH RECORD.—The term ''personal health record'' means an electronic record of individually identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(14) SECURITY.—The term ''security'' has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.

(15) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(16) TREATMENT.—The term ''treatment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(17) USE.—The term ''use'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term ''vendor of personal health records'' means an entity, other than a covered entity (as defined in paragraph (3)), that offers or maintains a personal health record.

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.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C.

1320d–5, 1320d–6) shall apply to the business associate with respect to such violation in the same manner such sections apply to a covered entity that violates such security provision.

(c) ANNUAL GUIDANCE.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall, in consultation with industry stakeholders, annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date before the enactment of this Act.

SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.

(a) IN GENERAL.—A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information (as defined in subsection (h)(1)) shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
2 NESS ASSOCIATE.—A business associate of a covered enti-
3 ty that accesses, maintains, retains, modifies, records,
4 stores, destroys, or otherwise holds, uses, or discloses un-
5 secured protected health information shall, following the
6 discovery of a breach of such information, notify the cov-
7 ered entity of such breach. Such notice shall include the
8 identification of each individual whose unsecured protected
9 health information has been, or is reasonably believed by
10 the business associate to have been, accessed, acquired,
11 or disclosed during such breach.
12 (c) BREACHES TREATED AS DISCOVERED.—For pur-
13 poses of this section, a breach shall be treated as discov-
14 ered by a covered entity or by a business associate as of
15 the first day on which such breach is known to such entity
16 or associate, respectively, (including any person, other
17 than the individual committing the breach, that is an em-
18 ployee, officer, or other agent of such entity or associate,
19 respectively) or should reasonably have been known to
20 such entity or associate (or person) to have occurred.
21 (d) TIMELINESS OF NOTIFICATION.—
22 (1) IN GENERAL.—Subject to subsection (g), all
23 notifications required under this section shall be
24 made without unreasonable delay and in no case
25 later than 60 calendar days after the discovery of a

breach by the covered entity involved (or business associate involved in the case of a notification required under subsection (b)).

(2) BURDEN OF PROOF.—The covered entity involved (or business associate involved in the case of a notification required under subsection (b)), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(e) METHODS OF NOTICE.—

(1) INDIVIDUAL NOTICE.—Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:

(A) Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.

(B) In the case in which there is insufficient, or out-of-date contact information (in-

1 cluding a phone number, e-mail address, or any
2 other form of appropriate communication) that
3 precludes direct written (or, if specified by the
4 individual under subparagraph (A), electronic)
5 notification to the individual, a substitute form
6 of notice shall be provided, including, in the
7 case that there are 10 or more individuals for
8 which there is insufficient or out-of-date contact
9 information, a conspicuous posting for a period
10 determined by the Secretary on the home page
11 of the website of the covered entity involved or
12 notice in major print or broadcast media, in-
13 cluding major media in geographic areas where
14 the individuals affected by the breach likely re-
15 side. Such a notice in media or web posting will
16 include a toll-free phone number where an indi-
17 vidual can learn whether or not the individual's
18 unsecured protected health information is pos-
19 sibly included in the breach.
20 (C) In any case deemed by the covered en-
21 tity involved to require urgency because of pos-
22 sible imminent misuse of unsecured protected
23 health information, the covered entity, in addi-
24 tion to notice provided under subparagraph (A),

may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided to prominent media outlets serving a State or jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(3) NOTICE TO SECRETARY.—Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity involved may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occuring during the year involved.

(4) POSTING ON HHS PUBLIC WEBSITE.—The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered

1 entity involved in a breach described in subsection
2 (a) in which the unsecured protected health informa-
3 tion of more than 500 individuals is acquired or dis-
4 closed.

5 (f) CONTENT OF NOTIFICATION.—Regardless of the
6 method by which notice is provided to individuals under
7 this section, notice of a breach shall include, to the extent
8 possible, the following:

9 (1) A brief description of what happened, in-
10 cluding the date of the breach and the date of the
11 discovery of the breach, if known.

12 (2) A description of the types of unsecured pro-
13 tected health information that were involved in the
14 breach (such as full name, Social Security number,
15 date of birth, home address, account number, or dis-
16 ability code).

17 (3) The steps individuals should take to protect
18 themselves from potential harm resulting from the
19 breach.

20 (4) A brief description of what the covered enti-
21 ty involved is doing to investigate the breach, to
22 mitigate losses, and to protect against any further
23 breaches.

24 (5) Contact procedures for individuals to ask
25 questions or learn additional information, which

shall include a toll-free telephone number, an e-mail address, website, or postal address.

(g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

(h) UNSECURED PROTECTED HEALTH INFORMATION.—

(1) DEFINITION.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this section, the term ''unsecured protected health information'' means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph (2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under paragraph (2) by the date specified in such paragraph, for

1 purposes of this section, the term ''unsecured
2 protected health information'' shall mean pro-
3 tected health information that is not secured by
4 a technology standard that renders protected
5 health information unusable, unreadable, or in-
6 decipherable to unauthorized individuals and is
7 developed or endorsed by a standards devel-
8 oping organization that is accredited by the
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)
11 and section 407(f)(3), not later than the date that
12 is 60 days after the date of the enactment of this
13 Act, the Secretary shall, after consultation with
14 stakeholders, issue (and annually update) guidance
15 specifying the technologies and methodologies that
16 render protected health information unusable,
17 unreadable, or indecipherable to unauthorized indi-
18 viduals.

19 (i) REPORT TO CONGRESS ON BREACHES.—

20 (1) IN GENERAL.—Not later than 12 months
21 after the date of the enactment of this Act and an-
22 nually thereafter, the Secretary shall prepare and
23 submit to the Committee on Finance and the Com-
24 mittee on Health, Education, Labor, and Pensions
25 of the Senate and the Committee on Ways and

Means and the Committee on Energy and Commerce of the House of Representatives a report containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).

(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

(A) the number and nature of such breaches; and

(B) actions taken in response to such breaches.

(j) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 4403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in

each regional office of the Department of Health and Human Services to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information.

(b) EDUCATION INITIATIVE ON USES OF HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this Act, the Office for Civil Rights within the Department of Health and Human Services shall develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information, including programs to educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. Such programs shall be conducted in a variety of languages and present information in a clear and understandable manner.

SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES.

(a) APPLICATION OF CONTRACT REQUIREMENTS.—In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) de-

1 scribed in section 164.502(e)(2) of title 45, Code of Fed-
2 eral Regulations, with such covered entity, the business
3 associate may use and disclose such protected health infor-
4 mation only if such use or disclosure, respectively, is in
5 compliance with each applicable requirement of section
6 164.504(e) of such title. The additional requirements of
7 this subtitle that relate to privacy and that are made ap-
8 plicable with respect to covered entities shall also be appli-
9 cable to such a business associate and shall be incor-
10 porated into the business associate agreement between the
11 business associate and the covered entity.

12 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
13 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
14 title 45, Code of Federal Regulations, shall apply to a
15 business associate described in subsection (a), with respect
16 to compliance with such subsection, in the same manner
17 that such section applies to a covered entity, with respect
18 to compliance with the standards in sections 164.502(e)
19 and 164.504(e) of such title, except that in applying such
20 section 164.504(e)(1)(ii) each reference to the business as-
21 sociate, with respect to a contract, shall be treated as a
22 reference to the covered entity involved in such contract.

23 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
24 ALTIES.—In the case of a business associate that violates
25 any provision of subsection (a) or (b), the provisions of

sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5, 1320d–6) shall apply to the business associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

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.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the

1 health care provider involved has been paid out of
2 pocket in full.
3 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
4 THE LIMITED DATA SET OR THE MINIMUM NEC-
5 ESSARY.—
6 (1) IN GENERAL.—
7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), a covered entity shall be treated as
9 being in compliance with section 164.502(b)(1)
10 of title 45, Code of Federal Regulations, with
11 respect to the use, disclosure, or request of pro-
12 tected health information described in such sec-
13 tion, only if the covered entity limits such pro-
14 tected health information, to the extent prac-
15 ticable, to the limited data set (as defined in
16 section 164.514(e)(2) of such title) or, if needed
17 by such entity, to the minimum necessary to ac-
18 complish the intended purpose of such use, dis-
19 closure, or request, respectively.
20 (B) GUIDANCE.—Not later than 18
21 months after the date of the enactment of this
22 section, the Secretary shall issue guidance on
23 what constitutes "minimum necessary" for pur-
24 poses of subpart E of part 164 of title 45, Code
25 of Federal Regulation. In issuing such guidance

the Secretary shall take into consideration the guidance under section 4424(c).

(C) SUNSET.—Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).

(2) DETERMINATION OF MINIMUM NECESSARY.—For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

(3) APPLICATION OF EXCEPTIONS.—The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 4423 in the same manner that such exceptions apply to section 164.502(b)(1) of such title before such date.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.

(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES REQUIRED IF COVERED ENTITY USES ELECTRONIC HEALTH RECORD.—

(1) IN GENERAL.—In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—

(A) the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and

(B) an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.

(2) REGULATIONS.—The Secretary shall promulgate regulations on what information shall be collected about each disclosure referred to in paragraph (1)(A) not later than 18 months after the date on which the Secretary adopts standards on accounting for disclosure described in the section 3002(b)(2)(B)(iv) of the Public Health Service Act,

as added by section 4101. Such regulations shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burden of accounting for such disclosures.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a covered entity to account for disclosures of protected health information that are not made by such covered entity or by a business associate acting on behalf of the covered entity.

(4) EFFECTIVE DATE.—

(A) CURRENT USERS OF ELECTRONIC RECORDS.—In the case of a covered entity insofar as it acquired an electronic health record as of January 1, 2009, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such a record on and after January 1, 2014.

(B) OTHERS.—In the case of a covered entity insofar as it acquires an electronic health record after January 1, 2009, paragraph (1)

shall apply to disclosures, with respect to protected health information, made by the covered entity from such record on and after the later of the following:

(i) January 1, 2011; or

(ii) the date that it acquires an electronic health record.

(d) REVIEW OF HEALTH CARE OPERATIONS.—Not later than 18 months after the date of the enactment of this title, the Secretary shall promulgate regulations to eliminate from the definition of health care operations under section 164.501 of title 45, Code of Federal Regulations, those activities that can reasonably and efficiently be conducted through the use of information that is de-identified (in accordance with the requirements of section 164.514(b) of such title) or that should require a valid authorization for use or disclosure. In promulgating such regulations, the Secretary may choose to narrow or clarify activities that the Secretary chooses to retain in the definition of health care operations and the Secretary shall take into account the report under section 424(d). In such regulations the Secretary shall specify the date on which such regulations shall apply to disclosures made by a covered entity, but in no case would such date be sooner than the

1 date that is 24 months after the date of the enactment
2 of this section.

3 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
4 RECORDS OR PROTECTED HEALTH INFORMATION OB-
5 TAINED FROM ELECTRONIC HEALTH RECORDS.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), a covered entity or business associate
8 shall not directly or indirectly receive remuneration
9 in exchange for any protected health information of
10 an individual unless the covered entity obtained from
11 the individual, in accordance with section 164.508 of
12 title 45, Code of Federal Regulations, a valid au-
13 thorization that includes, in accordance with such
14 section, a specification of whether the protected
15 health information can be further exchanged for re-
16 muneration by the entity receiving protected health
17 information of that individual.

18 (2) EXCEPTIONS.—Paragraph (1) shall not
19 apply in the following cases:

20 (A) The purpose of the exchange is for re-
21 search or public health activities (as described
22 in sections 164.501, 164.512(i), and 164.512(b)
23 of title 45, Code of Federal Regulations) and
24 the price charged reflects the costs of prepara-

tion and transmittal of the data for such purpose.

(B) The purpose of the exchange is for the treatment of the individual and the price charges reflects not more than the costs of preparation and transmittal of the data for such purpose.

(C) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of health care operations in section 164.501 of title 45, Code of Federal Regulations.

(D) The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.

(E) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.

(F) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (E).

(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out paragraph (this subsection, including exceptions described in paragraph (2), not later than 18 months after the date of the enactment of this title.

(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.

(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format; and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose

for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART OF HEALTH CARE OPERATIONS.

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A covered entity or business associate may not receive direct or indirect payment in exchange for making any communication described in subparagraph (i), (ii), or (iii) of paragraph (1) of the

1 definition of marketing in section 164.501 of title
2 45, Code of Federal Regulations, except—
3 (A) a business associate of a covered entity
4 may receive payment from the covered entity
5 for making any such communication on behalf
6 of the covered entity that is consistent with the
7 written contract (or other written arrangement)
8 described in section 164.502(e)(2) of such title
9 between such business associate and covered en-
10 tity; and
11 (B) a covered entity may receive payment
12 in exchange for making any such communica-
13 tion if the entity obtains from the recipient of
14 the communication, in accordance with section
15 164.508 of title 45, Code of Federal Regula-
16 tions, a valid authorization (as described in
17 paragraph (b) of such section) with respect to
18 such communication.
19 (b) FUNDRAISING.—Fundraising for the benefit of a
20 covered entity shall not be considered a health care oper-
21 ation for purposes of section 164.501 of title 45, Code of
22 Federal Regulations.
23 (c) EFFECTIVE DATE.—This section shall apply to
24 contracting occurring on or after the effective date speci-
25 fied under section 4423.

SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIREMENT FOR VENDORS OF PERSONAL HEALTH RECORDS AND OTHER NON-HIPAA COVERED ENTITIES.

(a) IN GENERAL.—In accordance with subsection (c), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each entity described in clause (ii) or (iii) of section 4424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

(1) notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such a breach of security; and

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 4424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or 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 57*a*(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 dorsed by a standards developing organization
22 that is accredited by the American National
23 Standards Institute.
24 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

(1) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this section. The provisions of this section shall apply to breaches of security that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

(2) SUNSET.—The provisions of this section shall not apply to breaches of security occurring on or after the earlier of the following the dates:

(A) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Secretary.

(B) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Federal Trade Commission and has taken effect.

SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: ''For purposes of the previous sen-

tence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.''.

SEC. 4410. IMPROVED ENFORCEMENT.

(a) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended—

(1) in subsection (b)(1), by striking ''the act constitutes an offense punishable under section 1177'' and inserting ''a penalty has been imposed under section 1177 with respect to such act''; and

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

''(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—

''(1) IN GENERAL.—A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

''(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of

this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.''.

(b) EFFECTIVE DATE; REGULATIONS.—

(1) The amendments made by subsection (a) shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.

(2) Not later than 18 months after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate regulations to implement such amendments.

(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY PENALTIES COLLECTED.—

(1) IN GENERAL.—Subject to the regulation promulgated pursuant to paragraph (3), any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d–5) insofar as such section relates to privacy or security shall be transferred to the Office of Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations,

as such provisions are in effect as of the date of enactment of this Act.

(2) GAO REPORT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary

settlements imposed on or after the effective date of the regulation.

(d) TIERED INCREASE IN AMOUNT OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d–5(a)(1)) is amended by striking ''who violates a provision of this part a penalty of not more than'' and all that follows and inserting the following: ''who violates a provision of this part—

''(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);

''(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount de-

scribed in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

"(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

"(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

"(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.".

(2) TIERS OF PENALTIES DESCRIBED.—Section 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is further amended by adding at the end the following new paragraph:

"(3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

"(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

"(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

"(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000; and

"(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical re-

quirement or prohibition during a calendar year may not exceed $1,500,000.''.

(3) CONFORMING AMENDMENTS.—Section 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(B) in paragraph (2), as so redesignated—

(i) in subparagraph (A), by striking ''in subparagraph (B), a penalty may not be imposed under subsection (a) if'' and all that follows through ''the failure to comply is corrected'' and inserting ''in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected''; and

(ii) in subparagraph (B), by striking ''(A)(ii)'' and inserting ''(A)'' each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

(e) ENFORCEMENT THROUGH STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection:

"(e) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

"(1) CIVIL ACTION.—Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

"(A) to enjoin further such violation by the defendant; or

"(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

"(2) STATUTORY DAMAGES.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the amount determined under

this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

"(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

"(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

"(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

"(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Sec-

retary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein; and

"(C) to file petitions for appeal.

"(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

"(6) VENUE; SERVICE OF PROCESS.—

"(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

"(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

"(i) is an inhabitant; or

"(ii) maintains a physical place of business.

"(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

"(8) APPLICATION OF CMP STATUTE OF LIMITATION.—A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1128A(c)(1).".

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking "A penalty may not be imposed under subsection (a)" and inserting "No penalty may be imposed under subsection (a) and no damages obtained under subsection (c)";

(B) in paragraph (2)(A)—

(i) in the matter before clause (i), by striking ''a penalty may not be imposed under subsection (a)'' and inserting ''no penalty may be imposed under subsection (a) and no damages obtained under subsection (c)''; and

(ii) in clause (ii), by inserting ''or damages'' after ''the penalty'';

(C) in paragraph (2)(B)(i), by striking ''The period'' and inserting ''With respect to the imposition of a penalty by the Secretary under subsection (a), the period''; and

(D) in paragraph (3), by inserting ''and any damages under subsection (c)'' after ''any penalty under subsection (a)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Such section is further amended by adding at the end the following new subsection:

''(d) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Nothing in this section shall be construed as preventing the Office of Civil Rights of the Department

of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.''.

SEC. 4411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 4421. RELATIONSHIP TO OTHER LAWS.

(a) APPLICATION OF HIPAA STATE PREEMPTION.—Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of such Act or a standard or implementation specification adopted or established under sections 1172 through 1174 of such Act.

(b) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.—The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle.

SEC. 4422. REGULATORY REFERENCES.

Each reference in this subtitle to a provision of the Code of Federal Regulations refers to such provision as in effect on the date of the enactment of this title (or to the most recent update of such provision).

SEC. 4423. EFFECTIVE DATE.

Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

SEC. 4424. STUDIES, REPORTS, GUIDANCE.

(a) REPORT ON COMPLIANCE.—

(1) IN GENERAL.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Health, Education,

Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report concerning complaints of alleged violations of law, including the provisions of this subtitle as well as the provisions of subparts C and E of part 164 of title 45, Code of Federal Regulations, (as such provisions are in effect as of the date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—

(A) the number of such complaints;

(B) the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;

(C) the number of such complaints that have resulted in the imposition of civil monetary 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

for entities that are not covered entities or business associates as of the date of the enactment of this title, including—

(A) requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—

(i) vendors of personal health records;

(ii) entities that offer products or services through the website of a vendor of personal health records;

(iii) entities that are not covered entities and that offer products or services through the s of covered entities that offer individuals personal health records;

(iv) entities that are not covered entities and that access information in a per-

sonal health record or send information to a personal health record; and

(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing personal health record products or services;

(B) a determination of which Federal Government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

(C) a timeframe for implementing regulations based on such findings.

(2) REPORT.—The Secretary shall submit to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on Commerce of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the findings of the study under paragraph (1) and shall include in such report recommendations on the privacy and security requirements described in such paragraph.

(c) GUIDANCE ON IMPLEMENTATION SPECIFICATION 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)—

(A) by amending the heading to read as follows: ''DELAY IN APPLICATION OF 25 PERCENT PATIENT THRESHOLD PAYMENT ADJUSTMENT'';

(B) by striking ''the date of the enactment of this Act'' and inserting ''July 1, 2007,''; and

(C) in subparagraph (A), by inserting ''or to a long-term care hospital, or satellite facility, that as of December 29, 2007, was co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide services payable under section 1886(d) of the Social Security Act at the off-campus location'' after ''freestanding long-term care hospitals''; and

(2) in paragraph (2)—

(A) in subparagraph (B)(ii), by inserting ''or that is described in section 412.22(h)(3)(i) of such title'' before the period; and

(B) in subparagraph (C), by striking ''the date of the enactment of this Act'' and inserting ''October 1, 2007 (or July 1, 2007, in the case of a satellite facility described in section 412.22(h)(3)(i) of title 42, Code of Federal Regulations)''.

(b) MORATORIUM.—Subsection (d)(3)(A) of such section is amended by striking ''if the hospital or facility'' and inserting ''if the hospital or facility obtained a certificate of need for an increase in beds that is in a State for which such certificate of need is required and that was issued on or after April 1, 2005, and before December 29, 2007, or if the hospital or facility''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective and apply as if included in the enactment of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173).

○