

THE PRESIDENT’S PLAN FOR ECONOMIC GROWTH AND DEFICIT REDUCTION

LEGISLATIVE LANGUAGE AND ANALYSIS

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[HTTP://WWW.WHITEHOUSE.GOV/SITES/DEFAULT/FILES/OMB/LEGISLATIVE/REPORTS/AMERICAN-JOBS-ACT.PDF](http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/american-jobs-act.pdf)

MANDATORY SAVINGS

ELIMINATE DIRECT PAYMENTS

Legislative Proposal

SECTION 1. PAYMENT LIMITATIONS.

Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended in subsections (b)(1)(A) and (c)(1)(A) by inserting the following after the words “may not exceed” and before the dash:

“for the 2009, 2010, and 2011 crop years”.

SECTION 2. TERMINATION OF DIRECT PAYMENT PROGRAM

Section 1103 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8713) is amended by changing “2012” wherever it appears to “2011”.

Section 1303 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7953) is amended by changing “2012” wherever it appears to “2011”.

Sectional Analysis

Section 1 – Payment Limitations. Clarifies that the annual payment limit for direct payments is set at \$40,000 for the 2009, 2010, and 2011 crop years. Current law maintains a \$40,000 annual payment limit through the 2012 crop year.

Section 2 – Termination of Direct Payment Program. Terminates the direct payment program for both field crops and peanuts at the end of the 2011 crop year.

REDUCE SUBSIDIES TO CROP INSURANCE COMPANIES

Legislative Proposal

SECTION 1. CAP ON ADMINISTRATIVE AND OPERATING COSTS

Section 508(k)(4) of the Federal Crop Insurance Act (7 U.S.C. 1508(k)(4)) is amended by inserting the following new subparagraph:

“(G) Cap on Reimbursements.-Total reimbursements for administrative and operating costs for the 2013 insurance year for all types of policies and plans of insurance shall not exceed \$935,000,000. For subsequent insurance years this cap shall be increased by the same inflation factor as established for the administrative and operating costs cap in the 2011 Standard Reinsurance Agreement.”.

SECTION 2. CAP ON OVERALL RATE OF RETURN

Section 508(k)(3) of the Federal Crop Insurance Act (7 U.S.C. 1508(k)(3)) is amended by —

- (a) designating the existing paragraph (3) as a new subparagraph (A);
- (b) inserting as the paragraph header, “(3) Risk”; and
- (c) inserting the following new subparagraph:

“(B) Cap on Overall Rate of Return.-The target rate of return for all the companies combined for the 2013 and subsequent reinsurance years shall be 12.8 percent of retained premium.”.

SECTION 3. REDUCE THE CATASTROPHIC COVERAGE PREMIUM.

Section 508(d)(2) of the Federal Crop Insurance Act (7 U.S.C. 1508(d)(2)) is amended by striking subparagraph (A) and inserting the following:

“(A) Catastrophic Risk Protection.-In the case of catastrophic risk protection, the amount of premium established by the Corporation for all crops for which catastrophic risk protection coverage is available shall be reduced by the percentage equal to the difference between the average loss ratio for such crop and 100 percent, plus a reasonable reserve.”.

SECTION 4. REDUCE PREMIUM SUBSIDY 2 BASIS POINTS.

(a) In general.-Section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) is amended:

(1) In subsection (e)(2):

- (A) subparagraph (B)(i), by striking “67” and inserting “65”;
- (B) subparagraph (C)(i), by striking “64” and inserting “62”;
- (C) subparagraph (D)(i), by striking “59” and inserting “57”; and
- (D) subparagraph (E)(i), by striking “55” and inserting “53”.

(2) In subsection (e)(5)(C), by striking “80” and inserting “78”.

(3) In subsection (e)(6):

- (A) subparagraph (A)(i), by striking “59” and inserting “57”; and
- (B) subparagraph (B)(i), by striking “55” and inserting “53”.

(4) In subsection (e)(7):

- (A) subparagraph (A)(i), by striking “59” and inserting “57”;
- (B) subparagraph (B)(i), by striking “55” and inserting “53”; and
- (C) subparagraph (C)(i), by striking “51” and inserting “49”.

(b) Effective Date.--The amendments described in subsection (a) shall take effect beginning with the next contract change date after date of enactment of this Act.

Sectional Analysis

Section 1 – Cap on Administrative and Operating Costs. Caps the government’s reimbursements for administrative and operating costs at \$935 million for the 2012 insurance year, and increases the cap in subsequent years by the inflation factor established in the 2011 Standard Reinsurance Agreement.

Section 2 – Cap on Overall Rate of Return. Caps the overall rate of return for the companies providing subsidized crop insurance at 12.8 percent. In years that the 12.8 percent cap is reached, the Secretary of Agriculture is to determine how to distribute the returns among the companies.

Section 3 – Reduce the Catastrophic Coverage Premium. Amends the Federal Crop Insurance Act to reduce the premium charged for Catastrophic Risk Protection (CAT) insurance coverage by buying the percentage equal to the difference between the average loss ratio for a crop and 100 percent, plus a reasonable reserve. The reduced premium change will allow USDA to accurately reflect the true value for each crop and the true risk associated with CAT coverage.

Section 4 – Reduce Premium Subsidy by 2 Basis Points. Reduces the premium subsidy farmers receive (increases the premium farmers have to pay) by two basis points for all crop insurance policies that have a premium subsidy that is greater than 50 percent.

BETTER TARGET AGRICULTURE CONSERVATION ASSISTANCE

Legislative Proposal

SECTION 1. FARM SECURITY AND RURAL INVESTMENT PROGRAM.

Conservation Reserve Program

- (1) Section 1231(a) of the Food Security Act of 1985 (16 U.S.C. 3831(a)) is amended by striking “2012” and inserting “2021”.
- (2) Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended by striking “2010, 2011, and 2012,” and inserting “2010 and 2011,” and by adding at the end the following new sentence: “The Secretary may maintain, in the conservation reserve at any 1 time, up to 30,000,000 acres in fiscal years 2012 through 2021.”.
- (3) Section 1231B(a)(1) of the Food Security Act of 1985 (16 U.S.C. 3831b(a)(1)) is amended by striking “2012” and inserting “2021”.
- (4) Section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)) is amended in the introductory text by inserting “(and through 2021 for the environmental quality incentives program under chapter four and the conservation reserve program under subchapter B of chapter 1)” after “2012” and in paragraph (1) by striking “2012” each place it appears in subparagraphs (A) and (B) and inserting “2021” in each such place.

Environmental Quality Incentives Program

- (1) Section 1240B(a) of the Food Security Act of 1985 (16 U.S.C. 3839aa-2(a)) is amended by striking “2012” and inserting “2021”.
- (2) Section 1241(a)(6)(E) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(6)(E)) is amended by striking “\$1,750,000,000 in fiscal year 2012” and inserting “\$1,650,000,000 in fiscal years 2012 through 2021”.

Sectional Analysis

Cap the Conservation Reserve Program (CRP) at 30 million acres by 2012 (saving an estimated \$1.148 billion over ten years). This language gradually reduces the acreage enrolled in the program through attrition. High commodity prices have lowered demand for enrollment in CRP as more farmers look to increase planted acres.

Reduce the Environmental Quality Incentives Program by -\$100 million annually from the level authorized in the 2008 Farm Bill (saving an estimated \$1 billion over ten years).

EXTEND MANDATORY DISASTER ASSISTANCE

Legislative Proposal

SECTION 1. MANDATORY DISASTER ASSISTANCE

- (a) Termination of the Agricultural Disaster Relief Trust Fund –
- (1) Title IX of the Trade Act of 1974 (19 U.S.C. 2101 et seq.) is repealed.
 - (2) All of the unobligated balances of the Agricultural Disaster Relief Trust Fund available as of the date of enactment of this Act are hereby permanently cancelled.
 - (3) Any claims for assistance authorized under Section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) that occurred prior to the date of enactment of this Act for which payment had not been obligated prior to the date of enactment of this Act shall be paid out of the funds of the Commodity Credit Corporation.”
- (b) Section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) is amended:
- (1) in subsection (a), by striking paragraph (20) and renumbering the remaining paragraphs accordingly;
 - (2) by striking “Trust Fund” in each place it appears and inserting in lieu thereof, “funds, facilities and authorities of the Commodity Credit Corporation”;
 - (3) in subsection (f) by adding at the end the following new paragraph:
“(5) Funding – The Secretary shall use such sums as are necessary from the funds of the Commodity Credit Corporation to make tree assistance payments to eligible orchardist and nursery tree growers under this subsection.”
 - (4) in subsection (i) by striking “September 30, 2011” and inserting in lieu thereof, “August 31, 2016”.

Sectional Analysis

Section 1 – Mandatory Disaster Assistance. Terminates the Agricultural Disaster Relief Trust Fund (which was created to fund the mandatory disaster programs in the 2008 farm bill), and cancels any existing funds in the trust. Gives USDA’s Commodity Credit Corporation the authority to pay all claims for mandatory disaster assistance, and extends mandatory disaster assistance through August 31, 2016.

MODIFICATIONS TO DEFINED BENEFIT RETIREMENT SYSTEMS

Legislative Proposal

SEC.1.—Increase of Executive Branch Employee Contributions to Defined Benefit Retirement Systems, Increase of Agency Contributions for Purpose of Reducing Unfunded Liabilities, and Elimination of the Federal Employee Retirement System Annuity Supplement for New Employees

(a) None of the changes in this section shall apply to Judicial and Legislative Branches, or their employees.

(b) Civil Service Retirement System.—

(1) Employee Contributions to the Civil Service Retirement System.—Section 8334(c), title 5, United States Code, is amended in the table by:

(A) striking “7 ... After December 31, 2000.” and inserting in lieu thereof the following:

“7 ... December 31, 2000 through September 30, 2012.

“7.4 ... October 1, 2012 through September 30, 2013.

“7.8 ... October 1, 2013 through September 30, 2014.

“8.2 ... After September 30, 2014.”;

(B) striking “7.5 ... After December 31, 2000.” in each place it appears pertaining to employees of the Executive Branch and inserting in lieu thereof the following:

“7.5 ... December 31, 2000 through September 30, 2012.

“7.9 ... October 1, 2012 through September 30, 2013.

“8.3 ... October 1, 2013 through September 30, 2014.

“8.7 ... After September 30, 2014.”;

(C) striking “8 ... After December 31, 2000.” in each place it appears pertaining to employees of the Executive Branch and inserting in lieu thereof the following:

“8 ... January 1, 2001 through September 30, 2012.

“8.4 ... October 1, 2012 through September 30, 2013.

“8.8 ... October 1, 2013 through September 30, 2014.

“9.2 ... After September 30, 2014.”;

(D) striking “7.5 ...After June 29, 2008.” and inserting in lieu thereof the following:

- “7.5 ... June 30, 2008 through September 30, 2012.
- “7.9 ... October 1, 2012 through September 30, 2013.
- “8.3 ... October 1, 2013 through September 30, 2014.
- “8.7 ... After September 30, 2014.”.

(2) Employer Contributions to the Civil Service Retirement System.—Section 8334(a)(1)(B), title 5, United States Code, is amended:

(A) In clause (i) by striking “clause (ii)” and inserting in lieu thereof “clauses (ii) and (iii)”;

(B) By inserting at the end the following clause:

- “(iii) In the case of Executive Branch employees, the agency shall contribute the following percentage of basic pay:
 - “(I) Employee: 7;
 - “(II) law enforcement officer, firefighter; nuclear materials courier; and customs and border protection officer: 7.5; and
 - “(III) Judge of the United States Court of Appeals for the Armed Forces: 8.”

(c) The Federal Employee Retirement System—

(1) Employee Contributions.—Section 8422(a)(3), title 5, United States Code, is amended in the table by:

(A) striking “7 ... After December 31, 2000.” and inserting in lieu thereof the following:

- “7 ... January 1, 2001 to September 30, 2012.
- “7.4 ... October 1, 2012 to September 30, 2013.
- “7.8 ... October 1, 2013 to September 30, 2014.
- “8.2 ... After September 30, 2014.”;

(B) except in the material relating to Member and Congressional employee, by striking “7.5 ... After December 31, 2000.” in each place it appears and inserting in lieu thereof the following:

- “7.5 ... January 1, 2001 to September 30, 2012.
- “7.9 ... October 1, 2012 to September 30, 2013.
- “8.3 ... October 1, 2013 to September 30, 2014.
- “8.7 ... After September 30, 2014.”;

(C) striking “7.5 ... After June 29, 2008.” and inserting in lieu thereof the following:

“7.5 ... June 30, 2008 to September 30, 2012.
“7.9 ... October 1, 2012 to September 30, 2013.
“8.3. ... October 1, 2013 to September 30, 2014.
“8.7 ... After September 30, 2014.”.

(2) Increase of Agency Contributions for Purpose of Reducing Unfunded Liabilities.—Section 8423(a) of title 5, United States Code, is amended:

(A) in paragraphs (1)(A)(i) and (1)(B)(i), by adding before “the normal-cost” the following:

“from October 1, 2012, through September 30, 2013, 0.4 percent;
from October 1, 2013 through September 30, 2014, 0.8 percent; and
from October 1, 2014 through September 30, 2021, 1.2 percent; plus”; and

(B) in paragraph (4):

(i) by inserting after “(4)”, “(A)”; and

(ii) by inserting the following new subparagraph:

“(B) Amounts contributed to the Fund in excess of the normal-cost percentage shall be applied to the assets of the Civil Service Retirement System in the Civil Service Retirement and Disability Fund.”

(3) Elimination of FERS Annuity Supplement for those hired after date of enactment.—Section 8421(a)(3) of title 5, United States Code, is amended by adding at the end the following new subparagraph:

“(C) Unless retiring under section 8412(d) or (e), an individual first employed subject to this chapter on or after date of enactment is not entitled to an annuity supplement under this section unless the individual’s employment was based upon a written offer of employment made prior to date of enactment.”

(d) Foreign Service Retirement and Disability System—

(1) Increase of Employee Contributions to the Foreign Service Retirement and Disability System.—Section 805(a)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(1)) is amended by:

(A) inserting “(A)” after “(1)”; and

(B) striking “7.25” and inserting in lieu thereof “the following”;

(C) striking the period at the end of the first sentence and inserting in lieu thereof “.”;

(D) inserting at the end thereof the following:

- “(i) 7.25 percent of basic salary, through September 30, 2012;
- “(ii) 7.65 percent of basic salary, from October 1, 2012 through September 30, 2013;
- “(iii) 8.05 percent of basic salary, from October 1, 2013 through September 30, 2014; and
- “(iv) 8.45 percent of basic salary, after September 30, 2014.”; and

(E) Inserting a new subparagraph (B) as follows: “The employing agency shall contribute 7.25 percent of basic salary from the appropriations or fund used for payment of the salary of the participant, and shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the employing agency.”.

(2) Increase of Special Agent Contributions for to the Foreign Service Retirement and Disability System.— Section 805(a)(3) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(3)) is amended:

(A) by striking “‘7 percent’ the” and inserting in lieu thereof “the following”;

(B) by striking “, plus .25 percent.” and inserting in lieu thereof “.”; and

(C) by adding at the end thereof the following new subparagraphs:

- “(A) 7.25 of basic salary, through September 30, 2012;
- “(B) 7.65 percent of basic salary, from October 1, 2012 through September 30, 2013;
- “(C) 8.05 percent of basic salary, from October 1, 2013 through September 30, 2014; and
- “(D) 8.45 percent of basic salary, after September 30, 2014.”.

(3) Increase of Employee Contributions for Civilian Service. – Section 805(d)(1)(B) of the Foreign Service Act of 1980 (22 U.S.C. 4045(d)(1)(B)) is amended in the table by striking:

“After December 31, 2000.....7.”

and inserting in lieu thereof the following:

- “January 1, 2001 through September 30, 2012, inclusive.....7.
- “October 1, 2012 through September 30, 2013, inclusive.....7.4.
- “October 1, 2013, through September 30, 2014, inclusive..... 7.8.
- “After September 30,2014.....8.2.”

(4) Increase of Employee Contributions for Military or Naval Service Benefits. – Section 805(e)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4045(e)(1)) is amended:

(A) by striking “7” and inserting in lieu thereof “the following”; and

(B) by inserting before the period at the end of the first sentence the following :

- “(A) 7.25 , through September 30, 2012;
- “(B) 7.65 , from October 1, 2012 through September 30, 2013;
- “(C) 8.05 , from October 1, 2013 through September 30, 2014; and
- “(D) 8.45 , after September 30, 2014.”.

(e) Foreign Service Pension System—

(1) Increase of Member Contributions. – Section 856(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4071e(a)(2)) is amended by striking “7.55 After January 11, 2003” and inserting in lieu thereof:

- “7.50 ... January 1, 2001 through January 11, 2003.
- “7.55 ... January 12, 2003 through September 30, 2012.
- “7.95 ... October 1, 2012 through September 30, 2013.
- “8.35 ... October 1, 2013 through September 30, 2014.
- “8.75 ... After September 30, 2014.”.

(2) Increase of Agency Contributions for Purpose of Reducing Unfunded Liabilities. – Section 857(a) of the Foreign Service Act of 1980 (22 U.S.C. 4071f(a)) is amended by inserting the following after the period:

“Amounts contributed to the Fund in excess of the normal-cost percentage shall be applied to the assets of the Foreign Service Retirement and Disability Fund.”.

(f) Central Intelligence Agency Retirement and Disability System—

(1) Increase of Employee Contributions to the Central Intelligence Agency Retirement and Disability System.— Section 211(a)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(1)) is amended by striking “7” and inserting in lieu thereof “the following”; and by inserting before the period following the first sentence:

“7 ... through September 30, 2012.
“7.4 ... October 1, 2012 through September 30, 2013.
“7.8 ... October 1, 2013 through September 30, 2014.
“8.2 ... After September 30, 2014”.

(2) Maintain Employer Contributions to the Central Intelligence Agency Retirement and Disability System.— Section 211(a)(2) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(2)) is amended by striking “An equal amount” and inserting in lieu thereof “7 percent of the basic pay received by a participant for any pay period”.

(g) Tennessee Valley Authority Retirement System—Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) is amended by adding at the end thereof the following new subsection:

“(c) Employee contributions to defined benefit plans.
“(1) The chief executive officer and his appointees shall increase the total level of their contributions to their defined benefit retirement plans by .4% of their base salary from October 1, 2012 through September 30, 2013; by an additional .4% of their base salary from October 1, 2013 through September 30, 2014; and by an additional .4% of their base salary after December 31, 2014.
“(2) The amount of any increase contributed pursuant to paragraph (1) shall be applied to the assets of the Tennessee Valley Authority Retirement System.”

Sectional Analysis

Section 1(a) establishes that none of the changes in this civilian retirement reform shall apply to Judicial and Legislative Branches, or their employees.

Section 1(b) increases employee contributions to the Civil Service Retirement System (CSRS) by 1.2% of employee salaries over three years, beginning in FY2013, and maintains current employer contribution.

Section 1(c) increases Executive Branch employee contributions to the Federal Employee Retirement System by 1.2% of employee salaries over three years, beginning in FY2013, and maintains current employer contribution through 2021. Requires agencies to transfer a portion of their previous contributions (equaling 1.2% of their FERS employees' pay) to the CSRS within the Civil Service Retirement and Disability Fund. Eliminates FERS supplemental annuity for certain FERS employees (or those subsequently hired based on an existing offer) not required to retire at a mandatory age. The proposal excludes certain classes of employees including law enforcement, firefighters, and air traffic controllers, and does not apply to similar supplemental annuity provisions contained in other retirement systems.

Section 1(d) increases employee contributions to the Foreign Service Retirement and Disability System by 1.2% of employee salaries over three years, beginning in FY2013, and maintains current employer contribution. Agencies continue to direct a portion of their previous contributions (equaling 1.2% of their employees' pay) to the balance of the Foreign Service Retirement and Disability System.

Section 1(e) increases employee contributions to the Foreign Service Retirement and Disability System by 1.2% of employee salaries over three years, beginning in FY2013, and maintains current employer contribution. Agencies continue to direct a portion of their previous contributions (equaling 1.2% of their employees' pay) to the balance of the Foreign Service Retirement and Disability System.

Section 1(f) increases employee contributions to the Central Intelligence Agency Retirement and Disability System by 1.2% of employee salaries over three years, beginning in FY2013, and maintains current employer contribution. Agencies continue to direct a portion of their previous contributions (equaling 1.2% of their employees' pay) to the balance of the Central Intelligence Agency Retirement and Disability System.

Section 1(g) increases employee contributions to the defined benefits systems of the Tennessee Valley Authority (TVA) by the by 1.2% of employee salaries over three years, beginning in FY2013. TVA directs the amount of any increase to the assets of the Tennessee Valley Authority Retirement System.

NATIONAL COMMISSION ON FEDERAL PUBLIC SERVICE REFORM

Legislative Proposal

SEC. 1.—SHORT TITLE.

This Act may be cited as the “National Commission on Federal Public Service Reform Act of 2011”.

SEC. 2.—PURPOSE.

- (a) Purpose. —The purpose of this Act is to establish a Commission to review and make recommendations within fiscal restraints to modernize Federal personnel policies and practices, including those related to compensation, staff development and mobility, and personnel performance and motivation.

SEC. 3.—ESTABLISHMENT OF THE COMMISSION.

- (a) In General.—Within 60 days of enactment of this Act, there shall be established the National Commission on Federal Public Service Reform (referred to in this Act as the ‘Commission’). The Commission shall be considered an independent establishment under section 104 of title 5, United States Code, and a temporary organization under section 3161 of such title.

- (b) Composition.—The Commission shall be composed of 16 members, who shall be appointed not later than 60 days after the date of enactment of this Act, as follows—

- (1) The majority leader of the Senate shall appoint one member from among Members of the Senate.
- (2) The minority leader of the Senate shall appoint one member from among Members of the Senate.
- (3) The Speaker of the House of Representatives shall appoint one member from among Members of the House of Representatives.
- (4) The minority leader of the House of Representatives shall appoint one member from among Members of the House of Representatives.
- (5) The President, in consultation with the Speaker of the House of Representatives and the majority leader of the Senate, shall appoint—
 - (A) three members that are senior officials of Federal agencies that are members of the National Council on Federal Labor-Management Relations;
 - (B) three members that are representatives of Federal employee labor unions that are members of the National Council on Federal Labor-Management Relations;
 - (C) two members that are representatives of non-labor organizations representing Federal employees or retirees;
 - (D) two members that are leaders of private sector employers; and
 - (E) two members that are academic experts in the field of human resources.

- (b) Period of Appointment and Vacancies.—Members shall be appointed for the life of the Commission provided that they continue to be qualified for membership under subsection

- (c) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.
- (d) Meetings—
 - (1) The Commission shall hold its initial meeting as soon as practicable.
 - (2) After its initial meeting, the Commission shall meet upon the call of the Chairperson(s) or a majority of its members.
- (e) Quorum—Nine members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.
- (f) Chairperson(s)—The President will select one or more Chairpersons from among its members in consultation with the Speaker of the House and majority leader of the Senate.

SEC. 4.—DUTIES OF THE COMMISSION.

- (a) In General.—The Commission shall conduct a review to identify Federal and other personnel policies and practices that could improve the Federal personnel system’s ability to—
 - (1) attract, hire, retain, and utilize a highly qualified and diverse workforce;
 - (2) effectively review employee performance and provide feedback on employee performance in a way that develops and motivates employees;
 - (3) foster creativity and innovation;
 - (4) develop and train employees to meet agency missions, including leadership and management development;
 - (5) create a work environment that meets the missions of Federal agencies by engaging its employees; and
 - (6) adopt best practices on personnel policies in the public and private sector.
- (b) Recommendations.—The Commission shall develop legislative, regulatory, and administrative recommendations on reforms to modernize Federal personnel policies and practices within fiscal constraints based on this review.
- (c) Report.—Not later than nine months after the date of the first meeting of the Commission or one year after enactment of this Act, whichever is later, the Commission shall submit a written report to Congress and the President, which shall contain findings resulting from the review conducted under subsection (a) and recommendations described in subsection (b).

SEC. 5.—PERSONNEL AND ADMINISTRATIVE PROVISIONS.

- (a) Commission Members.—Members of the Commission who are not Federal employees shall not receive pay by reason of their service on the Commission, nor shall they be treated as Federal employees by reason of such service for any purpose, except as provided in section 3161 of title 5, United States Code.
- (b) Executive Director.—The Chairperson(s) of the Commission, in accordance with the rules agreed upon by the Commission, may appoint a Director. The Director shall be considered to

be an employee as defined in section 2105 of title 5, United States Code and shall be appointed and paid in accordance with section 3161 of such title.

- (c) Staff.—The Director, in consultation with the Chairperson(s) and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of additional personnel as may be necessary to enable the Commission to carry out its functions in accordance with section 3161 of title 5, United States Code.
- (d) Experts and Consultants.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates of basic pay not to exceed the daily rate paid to a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.
- (e) Travel Expenses.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.
- (f) Other Administrative Matters.—The Commission may—
 - (1) enter into agreements with the Administrator of General Services to procure necessary financial and administrative services;
 - (2) enter into contracts to procure supplies, services, and property; and
 - (3) enter into contracts with Federal, State, or local agencies, or private institutions or organizations, for the conduct of research or surveys, the preparation of reports, and other activities necessary to enable the Commission to perform its duties.

SEC. 6.—APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

- (a) In General.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Commission.

SEC. 7.—TERMINATION.

The Commission shall terminate 60 days after the date on which the Commission submits its report to Congress and the President.

SEC. 8.—AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of the Commission on Federal Public Service Reform.

Sectional Analysis

Section 1 states that the short title of the Act is the National Commission on Federal Public Service Reform Act of 2011.

Section 2 establishes the purpose of the Act is to review the existing Federal personnel system and make recommendations to the President and Congress.

Section 3: (a) Establishes the Commission as a temporary organization within 60 days of the enactment; (b) Determines that there will be 16 members: 2 appointed by the House and 2 appointed by the Senate, and 12 appointed by the President consistent with the following guidelines:

- 3 members shall be senior officials of Federal agencies;
- 3 members shall be representatives of Federal employee labor unions;
- 2 members shall be representatives of non-labor organizations representing Federal employees or retirees;
- 2 members shall be representatives of private sector employers;
- 2 members shall be academic experts in the field of human resources;

(c) determines the period of appointment to be the life of the Commission and vacancies to be filled in a manner consistent with the original appointment. (d) requires the first meeting to be held as soon as practicable. (e) requires that a quorum of nine members of the Commission are required for decisions, but a lesser number may hold hearings.

Section 4: (a) Establishes the duties of the Commission to be a review of Federal personnel system; (b) Requires recommendations to be reported based on the review and evaluation in subsection (a); and (c) Requires that a report be submitted to the President and Congress within nine months of the first meeting of the Commission with the findings and recommendations or twelve months from enactment, whichever is later.

Section 5: (a) Creates and Executive Director appointed by the Chairperson(s) and sets pay caps on the Executive Director; (b) Allows the Executive Director to appoint staff in consultation with the chairperson(s) and sets pay caps on the staff; (c) Allows the commission to procure experts and consultants; (d) Allows the Commission to accept detailees from government agencies; (e) Allows reimbursement of travel expenses for Commissioners; and (g) Allows the Commission to procure office space and supplies.

Section 6 establishes that the committee falls under the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Section 7 terminates the Commission 60 days after the date the Commission submits the report to the President and Congress.

Section 8 requests that the Commission be funded within already requested FY 2012 appropriations.

REVISE COST-SHARING REQUIREMENTS UNDER TRICARE PHARMACY PROGRAM

Legislative Proposal

SEC. XX.—REVISION TO COST-SHARING REQUIREMENTS UNDER TRICARE PHARMACY PROGRAM.

Section 1074g(a)(6) of title 10, United States Code, is amended—

(a) by striking the second sentence of subparagraph (A) and inserting “The Secretary of Defense shall periodically increase the cost-sharing requirements based on changes in the costs of pharmaceutical agents and other factors that the Secretary determines are relevant.”; and

(b) by adding at the end the following new subparagraphs:

“(C) Notwithstanding subparagraph (A), the Secretary, in the regulations prescribed under subsection (h), shall establish cost sharing requirements for prescriptions filled at TRICARE network retail pharmacies as follows:

“(i) For a prescription filled during the period beginning on October 1, 2011, and ending on September 30, 2013, 10 percent of the price for a generic pharmaceutical agent and 15 percent of the price for formulary and non-formulary pharmaceutical agents, as paid by the Secretary to the retail pharmacy.

“(ii) For a prescription filled during the period beginning on October 1, 2013, and ending on September 30, 2014, 20 percent of the price for generic drugs and 30 percent of the price for formulary and non-formulary pharmaceutical agents, as paid by the Secretary to the retail pharmacy.

“(iii) A beneficiary shall pay the cost sharing requirements under clauses (i) and (ii) for each 30-day supply of a pharmaceutical agent and for each prescription of a pharmaceutical agent for a supply that is less than 30 days.

“(D) Notwithstanding subparagraph (A), the Secretary, in the regulations prescribed under subsection (h), shall establish cost sharing requirements for prescriptions filled by the national mail-order program as follows:

“(i) For a prescription filled during the period beginning on October 1, 2011, and ending on September 30, 2013, a \$0 co-payment for a generic pharmaceutical agent, a \$20 co-payment for a formulary pharmaceutical agent, and a \$35 co-payment for a non-formulary pharmaceutical agent.

“(ii) For a prescription filled during the period beginning on October 1, 2013, and ending on September 30, 2014, a \$0 co-payment for a generic pharmaceutical agent, a \$20 co-payment for a formulary pharmaceutical agent, and a \$40 co-payment for a non-formulary pharmaceutical agent.

"(iii) For a prescription filled during the period beginning on October 1, 2014, and ending on September 30, 2015, a \$0 co-payment for a generic pharmaceutical agent, a \$25 co-payment for a formulary pharmaceutical agent, and a \$40 co-payment for a non-formulary pharmaceutical agent.

(iv) For a prescription filled during the period beginning on October 1, 2015, and ending on September 30, 2016, a \$0 co-payment for a generic pharmaceutical agent, a \$35 co-payment for a formulary pharmaceutical agent, and a \$40 co-payment for a non-formulary pharmaceutical agent.

“(v) For a prescription filled during the period beginning on October 1, 2016, and ending on September 30, 2017, a \$0 co-payment for a generic pharmaceutical agent, a \$40 co-payment for a formulary pharmaceutical agent, and a \$40 co-payment for a non-formulary pharmaceutical agent.

“(vi) A beneficiary shall pay the cost sharing requirements under clauses (i), (ii), (iii), (iv) and (v) for each 90-day supply of a pharmaceutical agent and for each prescription of a pharmaceutical agent for a supply that is less than 90 days.”.

Sectional Analysis

This provision would establish new pharmacy cost-shares for dependents of active duty service members, military retirees, and military retirees’ dependents. The current and proposed cost-shares are listed in the table below. Active duty service members, including activated guard and reservists, would not be affected.

	Current	FY12	FY13	FY14	FY15	FY16	FY17
Network Retail (1-month fill)							
Generic	\$3	10%	10%	20%	20%	20%	20%
Preferred Brand	\$9	15%	15%	30%	30%	30%	30%
Non-Preferred Brand	\$22	15%	15%	30%	30%	30%	30%
Mail-Order (3-month fill)							
Generic	\$3	\$0	\$0	\$0	\$0	\$0	\$0
Preferred Brand	\$9	\$20	\$20	\$20	\$25	\$35	\$40
Non-Preferred Brand	\$22	\$35	\$35	\$40	\$40	\$40	\$40

ESTABLISH TRICARE-FOR-LIFE ENROLLMENT FEE

Legislative Proposal

SEC. XX. ESTABLISHMENT OF TRICARE-FOR-LIFE ENROLLMENT FEE.

(a) ESTABLISHMENT OF ANNUAL FEE.—Section 1086(d)(3) of title 10, United States Code, is amended by adding at the end the following new subparagraphs:

“(D) For a person described in paragraph (2), the Secretary of Defense shall prescribe by regulation an annual enrollment fee, payment of which shall be an additional condition of eligibility for health care benefits under this chapter. The amount of the annual enrollment fee shall be as follows:

“(i) For fiscal year 2012, \$200.

“(ii) For fiscal year 2013, \$295.

“(iii) For a fiscal year after fiscal year 2013, the amount in effect under this subparagraph for the preceding fiscal year as adjusted by an amount for that fiscal year determined under regulations prescribed by the Secretary of Defense based on the anticipated increase or decrease in the cost of health care for persons described in paragraph (2) for that fiscal year.

“(E) Notwithstanding subparagraph (D), the Secretary of Defense may prescribe regulations to exempt from the requirement to pay an enrollment fee under that subparagraph the following persons:

“(i) A dependent of a member of the uniformed services who died while on active duty.

“(ii) A person retired under chapter 61 of this title.

“(iii) A dependent of a person retired under chapter 61 of this title.”.

(b) EFFECTIVE DATE.—The annual enrollment fee required to be established by subparagraph (D) of section 1086(d)(3) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2012.

Sectional Analysis

This provision would establish a new enrollment fee for TRICARE-for-Life beneficiaries. In the TRICARE-for-Life program, beneficiaries are required to enroll in Medicare upon reaching age 65, in order to continue receiving TRICARE coverage. For services covered by both TRICARE and Medicare, TRICARE acts as the second payer to Medicare. The beneficiary is required to pay Medicare Part B premiums. Under this proposal, the beneficiary would need to also pay the new enrollment fee, in order to continue receiving TRICARE benefits. The planned fee amounts for FY13 through FY17 are below. After fiscal year 2014, the Secretary of Defense is to adjust the fees annually based on the increase in the cost of health for beneficiaries. The provision

gives the Secretary of Defense the authority to exempt disability retirees, disability retiree dependents, and survivors of service members who died on active duty from the new enrollment fee.

Current	FY12	FY13	FY14	FY15*	FY16*	FY17*
\$0	\$0	\$200	\$295	\$312	\$331	\$352

*Notional, since after FY14, the fees are to be adjusted annually by the Secretary of Defense based on the increase in the cost of health care for beneficiaries.

**TAXPAYER REIMBURSEMENT OF EXECUTIVE COMPENSATION PAID BY
FEDERAL CONTRACTORS**

Legislative Proposal

**Sec. ____ TAXPAYER REIMBURSEMENT OF EXECUTIVE COMPENSATION PAID
BY FEDERAL CONTRACTORS.**

- (a) Section 1127 of Title 41, United States Code, is amended to read as follows:
“§ 1127. Determining benchmark compensation amount
“For purposes of section 4304(a)(16) of this title and section 2324(e)(1)(P) of title 10, the Administrator shall determine a benchmark compensation amount to apply for each fiscal year, which shall be equal to the pay rate for positions at level I of the Executive Schedule (as listed at section 5312 of title 5) for the calendar year that begins on January 1 of that fiscal year.”.
- (b) This amendment shall take effect beginning with the determination of the benchmark compensation amount that shall apply for Fiscal Year 2011.

Sectional Analysis

This proposal replaces the formula for calculating the cap on the amount that the Federal government will reimburse Federal contractors for executive compensation with a reimbursement cap equal to the Executive Schedule Level I pay rate. Under current law, the cap is determined by the median amount of annual compensation for the five most highly compensated management employees at publicly-owned companies with annual sales over \$50 million. This proposal changes the cap to be consistent with the pay rate for Federal positions at level I of the Executive Schedule. This provision would result in savings to the Federal government and would bring greater parity between what the Federal government pays its own executives and the amount it reimburses contractors for their executives' compensation.

FANNIE MAE AND FREDDIE MAC: CREATION OF NEW GUARANTEE FEE

Legislative Proposal

SEC. X. Establishment of Housing GSE Conservatorship Recoupment Guarantee Fee.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by inserting after subparagraph (K) the following new subparagraphs:

- “(L) The Agency shall, as conservator, by regulation or order –
- i. require each regulated enterprise under conservatorship to charge an annual Conservatorship Recoupment Guarantee Fee of not less than 10 basis points of the principal balance of all mortgages secured by a one- to four- unit residence purchased or securitized by the regulated enterprise on or after January 1, 2013, in connection with any guarantee issued by the enterprise of the timely payment of principal and interest on securities, notes, and other obligations based on or backed by mortgages on residential real properties designed principally for occupancy by one to four families; or
 - ii. require each regulated enterprise under conservatorship to charge a Conservatorship Recoupment Delivery Fee on all mortgages secured by a one- to four- unit residence purchased or securitized by the regulated enterprise on or after January 1, 2013, in an amount that the Agency estimates will impose a cost to participants in the mortgage market equivalent to the fee defined in clause (i).
- (M) The Agency shall prohibit a regulated enterprise under conservatorship from offsetting the cost of the fee established in subparagraph (L) to mortgage originators, borrowers and investors by decreasing other charges, fees, or premiums, or in any other manner.”.

Sectional Analysis

Amendment to the Federal Housing Finance Agency’s Authorities as Conservator

Paragraph (L) would mandate that the Federal Housing Finance Agency (FHFA) require that Fannie Mae and Freddie Mac impose an additional fee, the Conservatorship Recoupment Guarantee Fee, on all single-family mortgages guaranteed on or after January 1, 2013. The fee would be no less than 10 basis points of the unpaid principal balance of mortgages in each year and would remain in place until the enterprises are no longer in conservatorship. FHFA would have the discretion to impose either an annual fee under (i) or a onetime fee of equivalent total value under (ii) to be charged at the time of single-family mortgage purchases and securitizations in lieu of the annual fee.

Paragraph (M) prohibits Fannie Mae and Freddie Mac from reducing their existing fees or charges to offset the impact of the new fee.

TRANSPORTATION SECURITY ADMINISTRATION
MANDATORY PASSENGER FEES

Legislative Proposal

SEC.XX --- AVIATION PASSENGER SECURITY FEE AUTHORITY

Section 44940 of Title 49, United States Code, is amended –

- (a) by striking subsection (c) and inserting in lieu thereof “(c) Minimum fee. Fees imposed under subsection (a)(1) may not be less than \$5.00 per one-way trip in 2012; \$5.50 in 2013; \$6.00 in 2014; \$6.50 in 2015; \$7.00 in 2016; and \$7.50 in 2017 and each succeeding fiscal year.”; and
- (b) in paragraph (3) of subsection (d), by striking “the imposition or collection of such fee, or both” and inserting in lieu thereof “the imposition, amount, and collection of such fee”.

SEC.XX MANDATORY AVIATION PASSENGER SECURITY FEE SAVINGS

- (a) Title 49, United States Code, is amended by adding after Section 44945 the following new section –

“§ 44946. Mandatory Aviation Passenger Fee Savings.—Notwithstanding section 4494(f) of this title, following the first \$250,000,000 derived from fees received under section 44940(a)(1) and deposited in the Aviation Security Capital Fund pursuant to section 44923(h) of this title, a total of \$15,000,000,000 over ten years from the date of enactment, to be derived from fees received under section 44940(a)(1) of this title, shall be deposited into the General Fund of the Treasury pursuant to section 3302 of Title 31, United States Code, according to the following schedule: \$10,000,000 in 2012; \$735,000,000 in 2013; \$1,041,000,000 in 2014; \$1,362,000,000 in 2015; \$1,663,000,000 in 2016; \$2,012,000,000 in 2017; \$2,023,000,000 in 2018; \$2,037,000,000 in 2019; \$2,051,000,000 in 2020; and \$2,066,000,000 in 2021.”; and

- (b) Section 44940(d)(4) of Title 49, United States Code, is amended by striking “section 44923” and inserting in lieu thereof “sections 44923 and 44946”.

Sectional Analysis

This proposed statutory language would revise the current aviation security passenger fee (fee) structure and establish new mandatory savings for deficit reduction.

Since its establishment in 2001, under the Aviation and Transportation Security Act, the fee has been limited to \$2.50 per passenger enplanement with a maximum fee of \$5.00 per one-way trip. This fee was originally intended to recover the full costs of aviation security, but currently recovers approximately 43 percent of these costs.

The new proposal will replace the current “per-enplanement” fee structure with a “per one-way trip” fee structure. It will also remove the current statutory fee limit and replace it with a statutory fee minimum that can be adjusted through regulation when necessary. Finally, it will set aside a specific amount of fee revenue to be returned to the General Fund for deficit reduction over ten years. All amounts are scalable to ensure a minimum amount of mandatory savings.

- Subsection X(a) would strike the current fee structure language and replace it with a minimum fee per one-way trip.
- Subsection X(b) would insert language that would permit DHS to change the fee (to an amount equal to or above the statutory minimum) via regulation.
- Section XX would add a new section to Title 49 that would set aside \$15 billion in mandatory savings to be deposited in the General Fund over ten years for the purpose of deficit reduction, with the remaining new revenues going towards discretionary offsets.

FEDERAL AVIATION ADMINISTRATION
MANDATORY AIR TRAFFIC SERVICES FEES

Legislative Proposal

SEC. XX.—AIR TRAFFIC SERVICES SURCHARGE.

Title 49, United States Code is amended by adding at the end the following:

“Section 48115. Air traffic services surcharge

“(a) IN GENERAL.—

“(1) Effective October 1, 2012, the Administrator of the Federal Aviation Administration shall impose a surcharge of \$100 per flight for air traffic control costs. Except as provided in subsection (b), owners or operators of aircraft in the national airspace system shall pay the surcharges assessed under this section. All surcharges collected pursuant to this subsection shall be deposited in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502).

“(b) EXCEPTIONS.—

“(1) MILITARY AND CERTAIN OTHER AIRCRAFT.—A surcharge may not be assessed under this section for military aircraft, public aircraft (as defined in section 40102) air ambulance aircraft, agricultural aircraft, or to for military or non-commercial civil aircraft of a foreign government.

“(2) EXEMPTION APPLICABILITY.—A surcharge may not be assessed under this section for—

“(A) piston engined aircraft; or

“(B) turboprop or turboshaft aircraft operating outside of controlled airspace.

“(3) FLIGHT PLAN INFORMATION.—Any person required to file a flight plan with the Administration, including operators of flights described in paragraphs (1) and (2), shall specify in the plan whether the person is engaged in an operation for compensation or hire, a general aviation operation, or a military or public aircraft operation for purposes of this section.

“(4) CANADA TO CANADA FLIGHTS.—The Administrator may waive a surcharge that would otherwise be assessed under this chapter for flights that operate in United States-controlled airspace but takeoff and land at an airport in Canada without an intermediate stop outside Canada, if the Administrator determines that not assessing and collecting the surcharge for such flights would be in the public interest.

“(c) ADMINISTRATIVE PROVISIONS.—

“(1) SURCHARGES PAYABLE TO THE ADMINISTRATOR.—Surcharges assessed and amounts collected under this section are payable to the Administrator. The Administrator may refund any surcharge, or portion thereof, paid by mistake in excess of the amount required. The Administrator may enter into agreements with other Federal agencies to collect surcharges assessed under this section on behalf of the Administration.

“(2) COLLECTION PROCEDURES.—The Administrator shall establish procedures for the collection of surcharges. These procedures shall establish the frequency of payment, deadlines for payment, a maximum amount of surcharges that may be outstanding on the account of any person, and such other limitations and conditions as the Administrator determines are necessary to obtain prompt payment of surcharges.

“(3) FAILURE TO PAY REQUIRED SURCHARGES.—If the Administrator determines that any person has failed to pay surcharges when due under this section, or to comply with any limitation or condition on payment under this section, or has failed to provide the Administration with the correct information in the person’s flight plan or by other means regarding the nature of the flight, including whether the person engaged in an operation for compensation or hire or general aviation operation, the Administrator may—

“(A) assess interest charges, using a rate equal to 150 percent of a rate determined by the Secretary based on the average of bond equivalent yields on 13-week Treasury bills auctioned during the previous calendar quarter, to be predetermined quarterly, on amounts that have not been paid by the deadline;

“(B) change the required payment schedule for such person;

“(C) offset any amount of surcharges owed by withholding any payment otherwise owed or due to the person by the Secretary or the Administrator; or

“(D) impose a civil penalty for each day amounts remain unpaid, or take other appropriate enforcement action under this subtitle.

“(4) ACTION WHEN FUTURE PAYMENT IN JEOPARDY.—If the Administrator reasonably determines that an aircraft owner or operator will not pay its required surcharges when due, the Administrator may change the required payment schedule for such person.

“(d) EFFECT ON PREVIOUS PROVISIONS.—Unless otherwise specified, nothing in this section shall be construed as affecting fees previously authorized and established under chapter 453.

“(e) ADMINISTRATION OF SURCHARGE.—The requirements applicable to developing and issuing rules

under subchapter II of chapter 5 of title 5 shall not apply to the actions of the Secretary or the Administrator under this section.

“(f) DEFINITIONS.—In this section:

“(1) AGRICULTURAL AIRCRAFT.—The term ‘agricultural aircraft’ means an aircraft used to make aerial applications for agricultural, forestry, or public health purposes.

“(2) AIR AMBULANCE AIRCRAFT.—The term ‘air ambulance aircraft’ means—

“(A) rotorcraft which are engaged in an operation to provide emergency medical services; or

“(B) fixed-wing aircraft which are equipped for and exclusively dedicated to providing acute care medical services.

“(3) FLIGHT.—The term ‘flight’ means a takeoff and landing by an aircraft.

(b) Conforming amendments. Section 9502(a) of the Internal Revenue Code of 1986 (26 U.S.C. 9502(a)) is amended by striking “or” after “section 9503(c)(7)” and inserting before the period at the end “, or section 48115(a)(1) of title 49, United States Code.”

Sectional Analysis

This Section would introduce a new mandatory surcharge for air traffic services to more equitably share the cost of air traffic services across the aviation user community and establish new mandatory savings for deficit reduction.

Currently, roughly two thirds of the air traffic control system’s costs are covered by those using its services through aviation excise taxes that are deposited into the Airport and Airway Trust Fund. Most of the tax revenue is collected from commercial aviation through ticket taxes, segment fees, international head taxes, and fuel taxes. General aviation users currently pay a fuel tax, however this revenue does not cover their fair-share-use of air traffic services. Further, all flights that use controlled airspace, require a similar level of air traffic services.

This Section would:

- Establish a \$100 per flight surcharge, levied on commercial airline and GA operators in controlled airspace. Military aircraft, public aircraft, air ambulances, aircraft operating outside of controlled airspace, piston aircraft, and Canada-to-Canada flights would be exempted. The revenues generated by the surcharge would be deposited into the Airport and Airway Trust Fund.

- Amend the Airport and Airway Trust Fund authority to apply to these new mandatory surcharge revenues.

**POSTAL SERVICE RETIREE HEALTH BENEFITS AND RETIREMENT
RESTRUCTURING**

Legislative Proposal

SEC. 101. POSTAL SERVICE RETIREE HEALTH BENEFITS.

(a) Section 8906(g)(2)(A) of title 5, United States Code, is amended by striking “September 30, 2016” and inserting “September 30, 2011”.

(b) Section 8909a of title 5, United States Code, is amended—

(1) in the section header by striking “BENEFIT” and inserting “BENEFITS”;

(2) in subsection (d)(2)(A) by striking “the fiscal year ending on September 30 of that year” and inserting “the most recently ended fiscal year” in both locations where that phrase appears;

(3) in subsection (d)(3)(A)—

(A) in clause (v) by striking “\$5,500,000,000” and inserting “\$0”;

(B) in clause (vi) by striking “\$5,600,000,000” and inserting “\$856,000,000”;

(C) in clause (vii) by striking “\$5,600,000,000” and inserting “\$1,276,000,000”;

(D) in clause (viii) by striking “\$5,700,000,000” and inserting “\$5,423,000,000”;

(E) in clause (ix) by striking “\$5,700,000,000” and inserting “\$5,573,000,000”; and

(F) in clause (x) by striking “\$5,800,000,000” and inserting “\$5,829,000,000”; and

(4) by amending subsection (d)(3)(B) to read:

“(B)(i) Not later than September 30, 2012, and by September 30 of each succeeding year through 2016, the United States Postal Service shall pay into such Fund the net present value computed under paragraph (1).

“(ii) Not later than September 30, 2017, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund the sum of—

“(I) the net present value computed under paragraph (1); and

“(II) any annual installment computed under paragraph (2)(B).”.

SEC. 102. TRANSFER OF AMOUNTS FROM THE FEDERAL EMPLOYEES RETIREMENT SYSTEM.

(a) Postal Service Surplus or Liability Based on Federal Employees Retirement System

Contributions - Section 8461 of title 5, United States Code, is amended by adding at the end the following:

“(o)(1) In this subsection, the term ‘Postal surplus or supplemental liability’ means the estimated difference, as determined by the Office of Personnel Management (the Office), between--

“(A) the actuarial present value of all future benefits payable under this chapter from the Fund to current or former employees of the United States Postal Service and their survivors; and

“(B) the sum of--

“(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this chapter under section 8422;

“(ii) the actuarial present value of the future contributions to be made by the Postal Service with respect to employees of the United States Postal Service currently subject to this chapter under section 8423(a);

“(iii) that portion of the Fund, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the System by the United States Postal Service and its employees, plus the earnings on such amounts while in the System; and

“(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

“(2)(A) The Office shall determine the Postal surplus or supplemental liability as of the close of the fiscal year ending September 30, 2009, and for each fiscal year thereafter.

“(B)(i) If the result of a determination under subparagraph (A) for a fiscal year is a surplus, the amount of the surplus shall remain in the Fund until distribution is made as authorized under this subparagraph.

“(ii) If the result of a determination under subparagraph (A) for fiscal year 2009 is a surplus equal to or exceeding the sum of amounts in (I) and (II), that amount shall be transferred, upon request of the Postmaster General of the United States, to the Postal Service Fund established by 39 U.S.C. 2003, according to the schedule below. If the surplus determination for fiscal year 2009 is less than this sum, amounts shall be transferred each year according to the schedule, with reductions as needed to amounts designated by first reducing the amount for 2013, and if necessary, for 2012:

“(I) \$3,450,000,000 by no later than June 30, 2012;

“(II) \$3,450,000,000 by no later than June 30, 2013;

“(III) if at any time during fiscal year 2012, the Postal Service Board of Governors determines that within 30 days the Postal Service is expected to have a cash balance of less than \$750,000,000 in the Postal Service Fund at any point, the Postmaster General of the United States may request the Office to advance up to a total of \$1,500,000,000 from subclause (II) to (I) in order to satisfy cash needs, so long as the total sum of clauses (I) and (II) does not exceed the amount of the surplus as determined in this subsection; and

“(IV) the advances described in subclause (III) can be made only if the Postal Service has reached its limit of borrowing from the Federal Financing Bank pursuant to section 2005(a)(2) of title 39, United States Code.

“(iii) If the result of a determination under subparagraph (A) for fiscal year 2010, or any fiscal year thereafter after taking into account transfers to or from the Postal Service required by previous years’ determinations, is a surplus, that amount, or any part of that amount, may be credited to the Postal Service for payment of the amount required under section 8423 for the next applicable fiscal year.

“(C)(i) If the result of a determination under clause (2)(A) for fiscal year 2009, or any year thereafter after taking into account transfers to or from the Postal Service required by previous years’ determinations, is a supplemental liability, the Office shall establish an

amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability over 30 years.

“(ii) An amortization schedule under this subparagraph shall be established by the Office in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the then most recent valuation of the System.

“(iii) The United States Postal Service shall pay each amount required under an amortization schedule under this subparagraph to the Office, not later than the date scheduled by the Office but no less than once per year.

“(3) Notwithstanding any other provision of law, the amount of any payment under any other subsection of this section that is based upon the amount of the supplemental liability shall be computed disregarding the portion of the supplemental liability that the Office determines will be liquidated by payments under this subsection.

“(4)(A) Not later than 10 days after making a determination under clause (2), the Office shall notify the United States Postal Service of the determination.

“(B) Not later than 30 days after the date on which the United States Postal Service receives the notice under subclause (A), the Postmaster General of the United States Postal Service may request from the Office all supporting documentation reasonable and necessary to review the determination.

“(C) The Office shall respond fully to a request under subclause (B) not later than 30 days after the date on which the Office receives the request.

“(D) Not later than 90 days after the date on which the United States Postal Service receives the information requested under subclause (B), the United States Postal Service may appeal the determination of the Office to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may recommend to the Director any adjustment with respect to any such amount which the Board determines appropriate. The Director’s decision on the recommendation of the Board of Actuaries under this subsection shall be provided within 30 days of receipt of the appeal and shall be final.”.

SECTION 103. EFFECTIVE DATE AND SAVINGS CLAUSE

(a) The amendments made by sections 101 and 102 shall be effective upon enactment.

(b) Any payments made for the period after September 30, 2011, under the provisions of section 8906(g)(2)(A) of title 5, United States Code, as it existed prior to the amendments made by the Act, shall be credited against the payments required by section 8909a(d)(3)(B)(i) of title 5, United States Code, as amended by this Act.

(c) Any transfer to the U.S. Postal Service authorized by Section 102 of this Act may be used by the Postal Service to offer voluntary separation incentive payments to current employees, consistent with Postal Service efforts to optimize its workforce.

SECTION 104. ADJUSTMENT TO STATUTORY PAY-AS-YOU-GO

Section 3 of the Statutory Pay-As-You-Go Act of 2010, Public Law 111-139, is amended in paragraph (4)(B) –

(1) by inserting “of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund” after “off-budget effects”; and

- (2) by inserting at the end the following: “Notwithstanding Section 2009a of title 39, United States Code, for purposes of these definitions, off-budget effects of the Postal Service Fund shall be counted as budgetary effects.”

TITLE II--POSTAL SERVICE RESTRUCTURING

SEC. 201. FREQUENCY OF MAIL DELIVERY.

Section 101 of title 39, United States Code, is amended by adding at the end the following new subsection:

“(h) Effective January 1, 2013, nothing in this title or any other provision of law shall be considered to prevent the Postal Service from taking whatever actions may be necessary to provide for 5-day delivery of mail and a commensurate adjustment in areas now receiving delivery on five or fewer days, subject to the requirements of section 3661.”.

SEC. 202. EXPANSION OF RETAIL ALTERNATIVES.

(a) In General- The United States Postal Service shall develop and may implement a plan for the expansion of retail alternatives to post offices, such as--

- (1) self-service kiosks;
- (2) vending machines;
- (3) transactions via the Internet;
- (4) Postal Service employees or contractors on delivery routes;
- (5) contract postal units; and
- (6) other contractors.

(b) Contents- In developing the plan under subsection (a), the Postal Service shall--

- (1) where possible, provide for an increase in customers' access to postal services;
- (2) consider the impact of any decisions on small communities and rural areas by defining standards for geographic coverage that guarantee Postal Service customers a degree of access to postal services consistent with the obligations of the Postal Service under section 101(b) of title 39, United States Code; and
- (3) ensure that--

(A) postal service continues in small communities and rural areas after implementation of the plan; and

(B) community input is solicited where otherwise required by Federal law.

(c) Submission of Plan- Not later than six months after the date of enactment of this Act, the United States Postal Service shall--

- (1) submit the plan developed under subsection (a) to the President, the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Governmental Reform of the House of Representatives; and
- (2) make the plan available to the public.

(d) Report on Progress- Each of the first 5 years after the date of enactment of this Act, the Postmaster General shall include in the annual report under section 2402 of title 39, United States Code, an update on the progress made in implementing the plan under this section.

TITLE III—ENHANCED COMMERCIAL FLEXIBILITY

SEC. 301. COOPERATION WITH OTHER AGENCIES.

Section 411 of title 39, United States Code, is amended in the first sentence by striking “and the Government Printing Office” and inserting “, the Government Printing Office, and agencies and other units of State and local governments,”.

SEC. 302. WINE AND BEER SHIPPING.

(a) Mailability-

(1) NONMAILABLE ARTICLES- Section 1716(f) of title 18, United States Code, is amended by striking “mails” and inserting “mails, except to the extent that the mailing is allowable under section 3001(p) of title 39”.

(2) INTOXICANTS- Section 1154(a) of title 18, United States Code, is amended, by inserting `or, with respect to the mailing of wine or malt beverages, to the extent allowed under section 3001(p) of title 39' after `mechanical purposes'.

(b) Regulations- Section 3001 of title 39, United States Code, is amended by adding at the end the following:

“(p)(1) Wine or malt beverages shall be considered mailable if mailed--

“(A) by a licensed winery or brewery, in accordance with applicable regulations under paragraph (2); and

“(B) in accordance with the law of the State, territory, or district of the United States where the addressee or duly authorized agent takes delivery.

“(2) The Postal Service shall prescribe such regulations as may be necessary to carry out this subsection, including regulations providing that--

“(A) the mailing shall be by a means established by the Postal Service to ensure direct delivery to the addressee or a duly authorized agent at a postal facility;

“(B) the addressee (and any duly authorized agent) shall be an individual at least 21 years of age, and shall present a valid, government-issued photo identification at the time of delivery;

“(C) the wine or malt beverages may not be for resale or other commercial purpose; and

“(D) the winery or brewery involved shall--

“(i) certify in writing to the satisfaction of the Postal Service, through a registration process administered by the Postal Service, that the mailing is not in violation of any provision of this subsection or regulation prescribed under this subsection; and

“(ii) provide any other information or affirmation that the Postal Service may require, including with respect to the prepayment of State alcohol beverage taxes.

“(3) For purposes of this subsection--

“(A) a winery shall be considered to be licensed if it holds an appropriate basic permit issued--

“(i) under the Federal Alcohol Administration Act; and

“(ii) under the law of the State in which the winery is located; and

“(B) a brewery shall be considered to be licensed if--

“(i) it possesses a notice of registration and bond approved by the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury; and

“(ii) it is licensed to manufacture and sell beer in the State in which the brewery is located.”.

(c) Effective Date- The amendments made by this section shall take effect on the earlier of--

(1) the date on which the Postal Service issues regulations under section 3001(p) of title 39, United States Code, as amended by this section; or

(2) 120 days after the date of enactment of this Act.

TITLE IV – PRICING FLEXIBILITY

SEC. 401. EXIGENT RATE CASE.

Not later than 90 days after the enactment of this section, the United States Postal Service (Postal Service) shall decide, and issue a written determination setting forth its decision, whether the Postal Service continues to support the exigent rate increase request that the Postal Service originally submitted to the Postal Regulatory Commission on July 6, 2010, as modified to account for the rate increases effective on April 17, 2011. If the Postal Service, prior to the end of that 90-day period, issues a written determination stating that the Postal Service continues to support such request, then that request is hereby approved and shall have the same legal force and effect as if the Postal Regulatory Commission had approved such request on the date of the Postal Service’s issuance of that written determination.

SEC. 402. PRICING FLEXIBILITY.

Section 3622(d)(2) of title 39, United States Code, is amended—

(a) in subparagraph (A), by striking the existing text and inserting in lieu thereof, “Scope of limitation.—Except as provided under subparagraph (C), the annual limitations under paragraph (1)(A) shall apply to the group of market-dominant products as a whole.”;

(b) in subparagraph (B), by striking “any class” and inserting in lieu thereof, “market dominant products as a whole”; and

(c) in subparagraph (C)(iii)(IV), by striking “any class or service” and inserting in lieu thereof, “the group of market dominant products as a whole”.

Sectional Analysis

SEC. 101. POSTAL SERVICE RETIREE HEALTH BENEFITS.

Section 101 restructures how the Postal Service (USPS) pays its retiree health benefits premiums and pre-funds its retiree health benefit liabilities. Section 101(a) provides for the Postal Service Retiree Health Benefits Fund (the Fund) to pay annual premiums for retirees instead of being directly paid for by USPS. This change accelerates what would have occurred in FY 2017 under current law.

Section 101(b) replaces the current law statutory prefunding payment stream for USPS to pre-fund retiree health benefits between FY 2012 and FY 2016 with a new payment stream during those same years. Section 101(b) is consistent with enactment in the FY 2012 Continuing Resolution of the requested provision that would change the due date of the September 30, 2011 \$5.5 billion USPS payment to OPM to December 31, 2011. Taken together with the accelerated implementation of the normal cost payment stream discussed in the next paragraph, this new payment schedule would result in overall lower near-term payments by USPS to the OPM Fund, including the \$5.5 billion originally due by September 30, 2011, that the Continuing Resolution request would delay to December 31, 2011, \$4.3 billion of the payment due by September 30, 2012, and \$4.0 billion of the payment due by September 30, 2013. This is accomplished by lowering the prefunding payment stream to \$0 for the December 31, 2011, payment, \$856 million for the September 30, 2012, payment, and \$1.276 billion for the September 30, 2013 payment. USPS payments for FY 2014 through FY 2016 would be the same overall as under current law.

Section 101(b) further requires USPS, beginning in FY 2012, to pay into the Fund the per capita accruing costs (normal costs) of USPS employees. This change accelerates what would have occurred in FY 2017 under current law. Finally, Section 101(b) continues the current-law requirement that USPS pay down its remaining health benefit unfunded liabilities through a 40-year amortization payment beginning in FY 2017.

SEC. 102. TRANSFER OF AMOUNTS FROM THE FEDERAL EMPLOYEES RETIREMENT SYSTEM.

Section 102 directs the Office of Personnel Management (OPM) to determine the Postal surplus or supplemental liability for Postal employees in the Federal Employee Retirement System (FERS) and transfer certain surplus amounts to the Postal Service.

Each fiscal year starting from 2009, OPM shall determine the surplus or supplemental liability for USPS employees participating in FERS.

If the result of the determination for 2009 is a surplus, OPM shall transfer to the Postal Service the following amounts: (a) \$3.45 billion by 9/30/12; and (b) \$3.45 billion by 9/30/13. If the surplus determination is less than this amount, transfers will be reduced as necessary beginning with the 2013 transfer amount.

If at any time during FY 2012, the Postal Service Fund is projected within the next 30 days to have a cash balance of less than \$750 million, the Postmaster General can request an acceleration of up to \$1.5 billion of the transfer scheduled to occur in FY 2013, to ensure adequate operating cash balances on hand. USPS cannot receive the accelerated transfer if it has not reached its maximum amount of authorized borrowing from the Federal Financing Bank.

If the result of the determination for fiscal year 2010 or thereafter is a surplus, after taking into account any transfers required by previous-year determinations, that surplus may be returned to USPS in the form of a credit toward what USPS would normally pay that next year for its FERS employer contribution.

If the result of the determination for 2009 or thereafter is a liability, OPM shall establish a 30-year amortization schedule for USPS to pay OPM the supplemental liability. Within 10 days of making a determination that USPS owes a supplemental liability, OPM must notify USPS. Within 30 days of that notification, the Postmaster General may request documentation from OPM supporting OPM's determination. Within 90 days of USPS receiving the supporting documentation from OPM, USPS may appeal the determination to the Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review OPM's calculations and recommend any appropriate adjustments to the Director of OPM. The determination of the Director will be provided within 30 days of receiving the USPS appeal and will be final.

SEC. 103. POSTAL SERVICE RETIREE HEALTH BENEFITS.

Section 103 makes the effective date of Sections 101 and 102 the date of enactment of the legislation, provides that any amounts paid by USPS during FY 2012 for retiree premiums shall be credited toward USPS's payment of the per capita normal cost during FY 2012, and permits any FERS-related transfers to USPS pursuant to Section 102 to be used for voluntary separation incentive payments for current employees, consistent with USPS efforts to optimize its workforce.

SEC. 104. ADJUSTMENT TO STATUTORY PAY-AS-YOU-GO

Section 104 amends the Statutory Pay-As-You-Go (PAYGO) Act of 2010 to treat the transactions of the Postal Service Fund as "budgetary effects," thereby measuring Postal Service transactions on a unified budget basis for PAYGO purposes.

TITLE II--POSTAL SERVICE RESTRUCTURING

SEC. 201. FREQUENCY OF MAIL DELIVERY.

Section 201 states that, beginning on January 1, 2013, notwithstanding any other provision of law, the United States Postal Service, if it chooses to shift to 5-day delivery of mail, can take appropriate actions to implement that change. Consistent with 39 U.S.C. 3661, USPS would still follow the normal process of requesting an advisory opinion from the Postal Regulatory Commission prior to implementing any change which would generally affect service on a nationwide or substantially nationwide basis.

SEC. 202. EXPANSION OF RETAIL ALTERNATIVES.

Section 202 requires USPS to develop a plan for the expansion of retail alternatives to post offices and define standards for geographic coverage that guarantee Postal Service customers a degree of access to postal services consistent with existing law (39 U.S.C. 101(b)). USPS shall submit the plan to the President and Congress within six months of enactment and can implement the plan thereafter. For the next five years, USPS shall report annually on its progress in implementing the plan.

TITLE III--ENHANCED COMMERCIAL FLEXIBILITY

SEC. 301. COOPERATION WITH OTHER AGENCIES.

Section 301 allows USPS to enter into agreements with State and local governments for the joint use of property and services.

SEC. 302. WINE AND BEER SHIPPING.

Section 302 makes wine and malt beverages mailable, subject to such regulations as the Postal Service shall promulgate. The amendments made by this section shall take effect the earlier of the date when USPS issues new regulations or 120 days after enactment.

TITLE IV – PRICING FLEXIBILITY

SEC. 401. EXIGENT RATE CASE

Section 401 authorizes the Postal Service, if it so decides, to re-express its support for its exigent rate increase request that was submitted to the Postal Regulatory Commission on July 6, 2010, as adjusted by the rate increases effective on April 17, 2011. If the Postal Service chooses to re-support the exigent rate case, it would be considered approved as if it were approved by the Postal Regulatory Commission. The rate increase would enable USPS to cover more of its costs, and represents a one-time 3.9 percent aggregate increase to postage rates. In subsequent years postage rate increases would be limited as under current law to the rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U).

SEC. 402. PRICING FLEXIBILITY FOR MARKET DOMINANT PRODUCTS

Section 402 authorizes the Postal Service to adjust how it sets prices for market dominant products within the current statutory CPI-U rate cap. Current law requires USPS to set prices based on revenue per piece for each class of mail (e.g., first-class, periodicals), up to the level of CPI-U. Section 402 permits the Postal Service to apply the CPI-U increase to any combination of classes of mail, as long as the total average revenue of market dominant mail does not exceed the CPI-U.

PENSION BENEFIT GUARANTY CORPORATION PREMIUM INCREASES

Legislative Proposal

SEC. 101. —INCREASES IN FLAT-RATE PREMIUMS.

(a) FLAT-RATE PREMIUMS.—

(1) SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by inserting “and before 2014” after “December 31, 2005” and by inserting “and for plan years beginning after December 31, 2014, an amount equal to the sum of \$70 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year” at the end.

(B) PHASE-IN. – Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by inserting “and before 2013” after “calendar year after 2006” and “applicable” before “premium rate specified in clause (i)” in subparagraph (F), renumbering subparagraphs (G) and (H) as “(I)” and “(J)”, respectively, and inserting new subparagraphs (G) and (H) as follows:

“(G) For each plan year beginning in a calendar year after 2013 and before 2021, there shall be substituted for the applicable premium rate specified in clause (i) of subparagraph (A) an amount equal to --

- “(i) \$44 for plan years beginning in 2014,
- “(ii) \$48 for years beginning in 2015,
- “(iii) \$51 for plan years beginning in 2016,
- “(iv) \$55 for plan years beginning in 2017,
- “(v) \$59 for plan years beginning in 2018,
- “(vi) \$63 for plan years beginning in 2019,
- “(vii) \$66 for plan years beginning in 2020.

“If the amount determined under this subparagraph is not a multiple of \$1, such product shall be rounded to the nearest multiple of \$1.

“(H) For each plan year beginning in a calendar year after 2021, there shall be substituted for “\$70” an amount equal to the greater of—

- “(i) the product derived by multiplying “\$70” by the ratio of—
 - “(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to
 - (II) the national average wage index (as so defined) for 2019; and”
- “(ii) the premium rate in effect under clause (i) of subparagraph (A) for plan years beginning in the preceding calendar year.

“If the amount determined under this subparagraph is not a multiple of \$1, such product shall be rounded to the nearest multiple of \$1.”.

(b) EFFECTIVE DATES.—Except as otherwise provided in this section, the amendments made by this section shall apply to plan years beginning after December 31, 2013.

SEC. 102. —VARIABLE RATE PREMIUMS

Section 4006(a) of the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1306) is amended—

(a) by striking paragraph (3)(E)(ii) and inserting the following:

“(ii) For plan years beginning before the effective date of regulations under subsection (a)(8), the amount determined for any plan year shall be an amount equal to \$9.00 for each \$1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year. For plan years beginning on or after the effective date of regulations under subsection (a)(8), the amount determined under such regulation.”

(b) by inserting the following new subsection (a)(8):

“(8) VARIABLE-RATE PREMIUMS

“(A) IN GENERAL.— After taking into consideration the recommendation of the Director, the Board shall set a variable rate premium schedule under subparagraph (3)(E) in such amounts as the Board determines to be necessary and appropriate to provide sufficient revenue for the Corporation to carry out its functions under this title.

“(B) FACTORS TO BE CONSIDERED.—In setting premiums under subparagraph (A), the board of directors shall consider the following factors:

“(i) The risk of losses to the Corporation from plan terminations in the current year and future years;

“(ii) The probability and amount of potential claims from a plan, taking into account such factors as the plan’s assets and liabilities, the financial condition of the contributing sponsor, and such other factors as the board of directors considers relevant;

“(iii) The Corporation’s estimated investment and other sources of income; and

“(iv) Any other factors the Board may determine to be appropriate, consistent with the requirements of this paragraph.”

“(C) RESTRICTIONS –

“(i) No changes may take effect prior to—

“(I) October 1, 2013;

“(II) Approval of the Board of a revised schedule of premiums; and

“(III) Issuance by the Corporation of final regulations implementing this section

“(ii) **Counter-Cyclical.** Premiums under this section shall, to the extent considered to be feasible by the Board in its discretion, be designed so as to minimize increases during times when the economy or markets are weak.

“(iii) The Board shall not, in establishing a schedule of premiums, promulgate regulations or other guidance requiring reliance on credit ratings, as provided by section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). The Corporation may use existing publically-available measures of risk or exposure.”

“(iv) The Corporation shall phase in any increase over a reasonable period of time as the Board may determine.

“(v) Any regulation under this paragraph (a)(8) shall be reviewable by Congress in the same manner as a “major rule” under Section 804(2) of 5 USC Chapter 8 (Congressional Review Act).”

“(D) INFORMATION EXEMPT FROM DISCLOSURE REQUIREMENTS — No information with respect to any plan sponsor that is used in determining premiums under this section may be disclosed to the public. Any such information submitted to the Corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such premium filing or other information may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subparagraph is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.”

“(E) CONSULTATION WITH STAKEHOLDERS. In setting the additional premium under subparagraph (8)(A) of this section, the Board shall consult with individuals or organizations representing the interest of employees, the interest of employers who maintain single-employer pension plans insured by the Corporation, and the interest of the general public.”

“(F) HARDSHIP WAIVER.—The Corporation shall establish procedures whereby a plan sponsor may request a temporary waiver of all or part of premiums payable during a plan fiscal year based upon a showing of substantial business hardship. The Board shall be notified of waivers approved through such procedures as established by the Corporation within 30 days of such approval.

“(G) LIMITATIONS ON PREMIUMS.—Notwithstanding any other provision of this section—

The total premiums payable under section 4006(a)(3)(A)(i) for any plan shall not exceed four times the amount of such premiums payable with respect to the plan for the 2010 plan year, on a per participant basis.

SEC. 103. —CERTIFICATION AND ADJUSTMENTS.

(a) TOTAL PREMIUMS. – For the period from fiscal year 2014 through 2021, the Board shall not prescribe premiums that are estimated to generate total premiums above the current baseline for such period, inclusive, exceeding \$17 billion.

(b) CERTIFICATION. – No changes in either premium may take effect prior to certification by two-thirds of the Corporation’s board of directors that the resulting premiums are estimated to generate at least \$16 billion in total premiums above the current baseline as of date of enactment.

(c) ADJUSTMENTS REQUIRED. – If the Board cannot make the certification required pursuant to paragraph (b) of this section, the Board shall make adjustments to premiums sufficient to ensure an increase in total premiums of at least \$16 billion above the current baseline as of date of enactment.”

SEC. 104. —TRANSITION PROVISIONS.

(a) CONTINUATION OF EXISTING PREMIUMS.—

No provision of this subtitle or any amendment made by this subtitle shall be construed as affecting the authority of the Corporation to set or collect premiums pursuant to any regulations in effect before the effective date of the final regulations prescribed under section 105.

(b) EXISTING REGULATIONS.—

The premium regulations in effect immediately before the date of the enactment of this Act shall continue to apply to all insured plans until such regulations are modified by the Corporation.

SEC. 105. —REGULATIONS REQUIRED.

Section 4006(a) of the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1306) is amended by inserting the following new paragraph—

(9) REGULATIONS REQUIRED.—Not later than 120 days before the date on which a new schedule of premiums under paragraph (8) is to become effective—

(A) The Corporation shall publish in the Federal Register a notice of the determination described in paragraph (8), the basis for the determination, the amount of the increase in the premium, and the anticipated increase in premium income that would result from the increase

in the premium rate. The notice shall invite public comment and shall provide for a public hearing. Any such hearing shall be commenced not later than 90 days before the date on which the increase is to become effective.

(B) The board of directors shall review the hearing record established under subparagraph (A) and shall, not later than 60 days before the date on which the increase is to become effective, determine (after consideration of the comments received) whether the amount of the increase should be changed and shall publish its determination in the Federal Register.

Sectional Analysis

Section 101 gradually increases the single-employer flat-rate premium from \$44 in plan year 2014 to \$70 in plan year 2021. The premium would be indexed to wage inflation thereafter. Section 102 gives the Board of Directors of the Pension Benefit Guaranty Corporation (the PBGC Board) discretion to increase the single-employer variable-rate premium, beginning in 2014. The increases would be implemented through regulation and, to the extent feasible, be designed to minimize increases during economic downturns. Increases would be phased-in gradually. The Corporation cannot rely on credit ratings in establishing its new premium schedule, but could utilize publically available measures of risk or exposure. To avoid undue hardship, total premiums in this section would be capped at four-times the amount paid in the 2012 plan year, and hardship waivers would be available.

Section 103 caps the total premium revenue PBGC can prescribe from fiscal years 2014-2021 at \$17 billion above the current baseline. Subsection (b) requires the PBGC Board to certify that the premiums will generate at least \$16 billion. If the Board cannot make this certification, the Board may make further adjustments to both the flat and variable rate premiums.

Section 104 ensures that the existing premium schedule and premium regulations remain in effect until the effective date of the new premium increases.

Section 105 prescribes the regulatory process PBGC must follow in implementing the new variable rate premium schedule. The Corporation must publish in the Federal Register the projected amount of the premium increase and the basis for this determination no later than 120 days before the effective date. PBGC must solicit public comment and hold a public hearing.

**REFORM THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) BY
ELIMINATING THE PREMIUM SUBSIDY FOR CERTAIN PROPERTIES**

Legislative Proposal

SEC. XX. PHASE-IN OF ACTUARIAL RATES FOR CERTAIN PRE-FIRM PROPERTIES.

(a) IN GENERAL.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended—

(1) in subsection (c), in the introductory phrase preceding paragraph (1), by striking “the limitations provided under paragraph (1) and (2)” and inserting in lieu thereof “subsection (e)”;

(2) in subsection (c), paragraph (1), by striking “, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e)”;

(3) in subsection (e), by inserting “(1) or” before “(2)”, by striking “or (3)”, and by inserting “and subsection (g)” after “subsection (c)”;

(4) after subsection (f), by inserting the following two new subsections:
“(g) TRANSITION FOR CERTAIN PROPERTIES COVERED BY FLOOD INSURANCE UPON EFFECTIVE DATE.

“(1) INCREASE OF RATES OVER TIME. In the case of any property as specified below that, as of the effective date of this subsection, is covered under a policy for flood insurance made available under the National Flood Insurance Program for which the chargeable premium rates are less than the applicable estimated premium rate under section 1307(a)(1) for the area in which the property is located, the Administrator of the Federal Emergency Management Agency shall increase the chargeable premium rates for such property over time to such applicable estimated risk premium under section 1307(a)(1). This subsection applies to the following properties:

“(A) Commercial Properties. Any nonresidential property.

“(B) Second Homes and Vacation Homes. Any residential property that is not the primary residence of any individual for at least two years during the five year period ending on the date of the effective date of a policy for flood insurance made available under the National Flood Insurance Program.

“(C) Homes Sold to New Owners. Any single family property that –

“(i) is purchased after the date of the enactment of this subsection,
and

“(ii) has been constructed or substantially improved, if such construction or improvement was started (as determined by the Administrator) before the later of --

“(I) December 31, 1994, or

“(II) the effective date of the initial flood insurance rate map published by the Administrator under paragraph (2) of section 1360(a) for the area in which such property is located.

.”(D) Homes Damaged or Improved. Any property that, on or after the date of the enactment of this subsection, has --

“(i) experienced or sustained substantial damage exceeding 50 percent of the fair market value of such property, or

“(ii) been substantially improved, with such improvement exceeding 50 percent of the fair market value of such property.

“(E) Homes with Multiple Claims. Any severe repetitive loss property as defined in section 1361A(b) of the National Flood Insurance Act.

“(2) ANNUAL INCREASE. The Administrator shall implement the increase under paragraph (1) by increasing the chargeable premium rates for the property (after application of any increase in the premium rates otherwise applicable to such property) by 20 percent during the 12-month period that begins upon the effective date of this subsection, and by an additional 20 percent during each of the following 12-month periods until that property reaches full risk premiums. Any increase in chargeable premium rates for a property pursuant to this subsection shall not be considered for purposes of the limitation under section 1308(e) of this Act.

[“(h) DEPOSIT OF ADDITIONAL NEW PREMIUM REVENUE. Additional net premium revenue derived under subsection (g) shall be deposited into the General Fund.”.]

(b) EFFECTIVE DATE –The provisions of subsection (g) and (h) of Section 1308(c), as added by this section, shall take effect beginning upon the expiration of the 12 month period after the date of enactment of this section.

Sectional Analysis

Currently there are 1.2 million (20 percent) NFIP properties that are charged premiums well below the actuarial value of the insured liability. On average (including subsidized and unsubsidized policies) NFIP premium collections cover approximately 70 percent of the actuarial value of the insured liability. To address this concern, the Administration proposes language,

based on similar language passed by the House in H.R.1309, that would impact approximately 375,000 of the 1.2 million (30 percent) subsidized policies. Specifically, the language would:

- Increase premiums over approximately five years for a subset of subsidized properties: non-residential or non-primary residences, residences sold to new owners, and severe repetitive loss properties.
- Redefine severe repetitive loss properties as residences with at least four paid claims greater than \$5,000 or with two paid claims that cumulatively exceed the market value of the house.
- One year after enactment, increase premiums for all policy holders fitting the above named categories (non-residential or non-primary residences, residences sold to new owners, and severe repetitive loss properties) by 20 percent per year until the amount collected covers the full expected cost of the insurance.
- New policies that fit this category of subsidized properties one year after enactment would immediately pay the full cost actuarial premium.

CIVILIAN PROPERTY REALIGNMENT

Legislative Proposal

PURPOSE—To expedite the disposal of unneeded Federal civilian property and realize savings.

SEC. 1. —SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE. - This Act may be cited as the "Civilian Property Realignment Act".

(b) TABLE OF CONTENTS. - The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Establishment of Civilian Property Realignment Board.
- Sec. 5. Board Meetings.
- Sec. 6. Board Duties and OMB Review Process.
- Sec. 7. Co-location among Postal Service Properties.
- Sec. 8. Realignment of Real Property owned or managed by the Bureau of Overseas Building Operations.
- Sec. 9. Congressional Consideration of Board Recommendations.
- Sec. 10. Implementation of Board Recommendations by Executive Agencies.
- Sec. 11. Authorization of Appropriation and Funding.
- Sec. 12. Pay and Travel Expenses.
- Sec. 13. Executive Director.
- Sec. 14. Staff.
- Sec. 15. Contracting Authority.
- Sec. 16. Termination.
- Sec. 17. Preclusion of Judicial Review.
- Sec. 18. Report by the Board to OMB within Two Years.

SEC. 2. —PURPOSE

PURPOSE. The purpose of this Act is to expedite the disposal of unneeded Federal civilian property and realize savings by taking steps to:

- (a) create a fair process that will result in the timely disposal and realignment of Federal civilian real property;
- (b) streamline the current legal framework to accelerate the disposal and realignment of civilian real property in the Federal government's inventory;
- (c) facilitate the disposal of unneeded Federal civilian real properties that are currently subject to legal restrictions that prevent their disposal.

- (d) reduce the operating and maintenance costs of Federal civilian real properties through the disposal of unneeded properties and realignment of other real properties by consolidating, co-locating, and reconfiguring space, and through the realization of other operational efficiencies;
- (e) create incentives for Federal agencies to achieve greater efficiency in their inventories of civilian real property by enabling agencies to benefit from the sale proceeds; and
- (f) assist Federal agencies and the United States Postal Service in achieving the government's sustainability goals by reducing excess space, inventory, and energy consumption, as well as by leveraging new technologies.

SEC. 3. —DEFINITIONS.

(a) Federal Civilian Real Property.

(1) For the purpose of this Act, the terms "Federal civilian real property" and "civilian real property" refer to all Federal real property assets, including, but not limited to, buildings, land, warehouses, facilities, or other physical structures, under the custody and control of any executive agency, that are used for civilian purposes.

(2) This definition shall not be construed as including any of the following types of property:

(A) military installations;

(B) those properties that are excluded for reasons of national security or homeland security by the Director of the Office of Management and Budget (OMB);

(C) those properties that are excepted from the definition of "property" at 40 U.S.C. 102(9), except it does include constructed assets that may reside upon these properties;

(D) designated wilderness areas or land managed as part of the national wildlife refuge system, except it does include constructed assets within or on the land;

(E) Indian lands, as defined by section 203 of the Public Lands Corps Act of 1993 (16 U.S.C. 1722), except it does include constructed assets within or on the land;

(F) those properties operated or maintained by the Tennessee Valley Authority pursuant to the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831, et seq).

(b) Executive Agency. For the purpose of this act, the term "executive agency" means an executive department or independent establishment in the executive branch of the Government, or a wholly owned Government corporation as defined by 5 U.S.C. 105, 101, 104, and 103. For

the purposes of this act, unless otherwise specified, this definition also applies to the term “agency.”

(c) Postal property. For the purpose of this act, the term “postal property” or “real property owned by the United States Postal Service” means all real property owned by the United States Postal Service, consistent with 39 U.S.C. 201.

(d) Field Office. For the purpose of this act, the term “field office” means any Federal office that is not the Headquarters office location for the Federal agency.

(e) Disposal. For the purpose of this act, the term “disposal” means any action that constitutes the removal of a property from the Federal inventory or that produces revenue for the Federal government from its inventory, including, but not limited to, sale, deed, demolition, or exchange.

(f) Military installations. For the purpose of this act, the term “military installations” means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control.

SEC. 4. — ESTABLISHMENT OF CIVILIAN PROPERTY REALIGNMENT BOARD.

(a) There is established an independent board to be known as the Civilian Property Realignment Board (Board). The Board shall be considered an independent entity of the Federal government as defined by 5 U.S.C. 104.

(b) The Board shall carry out the duties specified for it in this Act.

(c) The Board shall be composed of seven members appointed by the President. The Board shall have at least two members with experience in the private sector and at least two members with experience in the public sector.

(d) The President shall designate one member of the Board to serve as Chair of the Board. The Chair shall preside over meetings of the Board and be responsible for establishing the agenda of Board meetings and hearings.

(e) The Chair of the Board shall serve for two years, and may be eligible for one reappointment at the discretion of the President. For the six members first appointed to the Board, the President shall designate two members to serve for one year, two members to serve for two years, and two members to serve for three years. Thereafter, each newly appointed member of the Board shall serve for three years starting from the date on which the President appoints the member. The President at his discretion may reappoint any member to one additional term of three years. In the event that the term of any member ends before the President has appointed a successor, the member may continue to serve for 90 more calendar days or until a successor is appointed. The President may remove a member from the Board at will.

(f) Notwithstanding the requirements under 5 U.S.C. 2105, including the required supervision under 5 U.S.C. 2105(a)(3), the members of the Board shall be deemed Federal employees.

SEC. 5. — BOARD HEARINGS AND MEETINGS

(a) The Board shall conduct hearings on the properties it is taking under consideration for its next report to Congress, and those hearings, except for those in which classified information is being considered, shall be open to the public. Any hearing open to the public shall be announced in the Federal Register and on a Federal Website at least 14 calendar days in advance. For all public hearings, the Board shall release an agenda and a listing of materials relevant to the topics to be discussed. Board meetings shall not be open to members of the public, unless the Board requests a public meeting by unanimous vote.

(b) All proceedings, information, and deliberations of the Board shall be open, upon request, to the Chairman and the ranking minority party member of:

(1) the House Subcommittee on Economic Development, Public Buildings, and Emergency Management of the Committee on Transportation and Infrastructure;

(2) the House Subcommittee on Government Management of the Committee on Oversight and Government Reform;

(3) the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs; and

(4) the Senate Subcommittee on Transportation and Infrastructure of the Committee on Environmental and Public Works.

SEC. 6. —BOARD DUTIES AND OMB REVIEW PROCESS

(a) The Board shall identify opportunities for the Federal government to significantly reduce its inventory of Federal civilian real property and opportunities for Federal civilian property to co-locate into Postal property, as applicable.

(b) The Board will perform an independent analysis of the inventory of Federal civilian real properties to identify properties that can be removed from the Federal inventory and otherwise disposed of, transferred, consolidated, co-located, or reconfigured, so as to reduce the civilian real property inventory and operating costs of the Federal government and promote operational efficiencies that the Federal Government can realize in its operation and maintenance of Federal civilian real properties. Consistent with section 7 of this Act, the Board will also perform analyses of Postal property.

(c) To assist in this analysis, the Board will obtain recommendations from Federal agencies, which shall include the identification of:

- (1) Federal civilian real properties that can be sold for proceeds and otherwise disposed of, transferred, consolidated, co-located, or reconfigured, so as to reduce the civilian real property inventory and operating costs of the Federal government;
- (2) operational efficiencies that the Federal Government can realize in its operation and maintenance of Federal civilian real properties;
- (3) the anticipated cost of disposal, transfer, consolidation, co-location, or reconfiguration of Federal civilian real properties identified in Section 6(c)(1) of this Act;
- (4) properties that may be appropriate for one of the Federal no-cost conveyances authorized by a provision of law enumerated in Section 10(e) of this Act; and
- (5) the environmental effects of the disposal, transfer, consolidation, co-location, or reconfiguration of the Federal civil real properties identified in Section 6(c)(1) and of any reasonable alternatives to such Federal civil real properties, and potential mitigation of any of the adverse environmental effects.

(d) The Board shall perform an independent review of the recommendations provided by Federal agencies.

(e) After performing an independent analysis and receiving the recommendations from the agencies, the Board shall conduct public hearings to give any stakeholders a chance to offer comments. The Board is required to publish a list of the properties under consideration for inclusion in its report and its analysis of those properties five days prior to the hearing. All testimony before the Board at a public hearing under this paragraph shall be presented under oath or affirmation.

(f) The Board shall, at a minimum, biannually (twice a year) transmit to the Director of OMB, and publicly post on a Federal website and in the Federal register, a report containing the Board's findings, conclusions, and recommendations for the disposal, transfer, consolidation, co-location, and reconfiguration of Federal civilian real properties and for other operational efficiencies that can be realized in the Federal government's operation and maintenance of such properties. Consistent with section 7 of this Act, the report may also contain recommendations for the co-location of Federal civilian real properties into Postal properties.

(1) The Board shall include in the report instructions for how to accomplish recommended activities.

(2) In addition the Board shall enumerate a separate list of Federal civilian properties that the Board deems most fit for conveyance under one of the public benefit programs authorized by a provision of law enumerated in section 10(e) of this Act. Consistent with section 10(f) of this Act, this separate list shall be concurrently reviewed for potential use by the homeless and for any of the other public benefit programs authorized by a

provision of law enumerated in section 10(e) of this Act. The final disposition of these properties shall be governed by the requirements in section 10(f) of this Act.

(3) In deciding which properties to include in its report the Board shall evaluate and consider whether, to date, the efforts of an agency have been effective in aligning its real property inventory size with the purpose and goals of the agency.

(4) The Board's decision as to the final disposition of a property, including, but not limited to, sale, conveyance, or demolition, and whether it shall be included on the separate list of properties that should be conveyed under a public benefit conveyance program should be guided by the following criteria:

- a. the socioeconomic makeup, skills, population, economy and government of the community in which it is located;
- b. the interest in the community for using the property to support economic development; the state or local government; parks, trails, and outdoor recreation; or the public interest, including suitability and need for the property's use to assist the homeless;
- c. the highest and best use of the property;
- d. the amount of environmental remediation needed on the property;
- e. whether the property has been listed, or is eligible to be listed, in the National Register of Historic Places;
- f. with respect to any constructed assets analyzed in accordance with section 6(b), whether the proposed use is consistent with the purposes of the applicable land management system, including the purposes for which that unit was established, and other applicable law;
- g. other environmental effects of disposition of the property; and
- h. any other factors deemed relevant to real property by OMB.

(5) The Board shall transmit its first report to OMB within 180 calendar days of the date of enactment of this Act. The Board shall seek to develop consensus recommendations, but if consensus cannot be obtained, the Board may include in its report recommendations that are supported by a majority of the Board.

(6) For any recommendation that involves any Postal property, the Board may only recommend a co-location, consistent with section 7 of this Act.

(7) For any recommendation that involves any property outside of the United States and its territories that is owned or managed by the State Department's Bureau of Overseas

Building Operations, the Board may only recommend properties consistent with section 8 of this Act.

(8) For any recommendation that involves constructed assets falling within sections 3(a)(2)(C)-(E), disposal is limited to demolition of the constructed assets, and such constructed asset may only be transferred, consolidated, co-located, or reconfigured within the applicable land management system of that agency.

(g) Upon receipt of the Board's report, the OMB Director shall conduct a review of such recommendations. In conducting this review, the Director shall take into consideration the views and recommendations of the Federal agencies. Not later than 25 calendar days of receiving the Board's recommendations, and consistent with sections 7 and 8, the OMB Director shall transmit to the Board and Congress a report that sets forth the Director's approval or disapproval of the Board's recommendations.

(1) If the OMB Director approves all of the Board's recommendations, the Director shall also transmit a copy of the recommendations to the Congress.

(2) If the OMB Director disapproves of the Board's recommendations, in whole or in part, the Director shall transmit to the Board and Congress the reasons for that disapproval. After considering the Director's reasons, the Board shall then transmit to the Director another list of recommendations within 10 calendar days.

(3) If the OMB Director approves the entire subsequent list of recommendations of the Board referred to in (2), the Director shall transmit a copy of such recommendations to Congress with a report certifying approval of the revisions within 10 calendar days.

(4) If the OMB Director does not transmit an approval of the entire subsequent list to Congress within 10 calendar days, the report expires and may not be resubmitted to OMB during that fiscal year. The Director shall transmit to the Board and Congress the reasons for that disapproval.

SEC. 7. —CO-LOCATION AMONG POSTAL SERVICE PROPERTIES

(a) On an annual basis the Board shall identify and create a list of civilian real property assets that are agency field offices that are suitable for co-location into another Federal civilian real property asset.

(1) On the same list, within 30 calendar days of the creation of the list in section 7(a) of this Act, the Board shall identify which of the field offices listed are within reasonable proximity to a Postal property. Reasonable proximity shall be determined by taking into account whether a field office would be able to fulfill its mission if it were located at the same location as the Postal property.

(2) Within 90 calendar days of the creation of the list in section 7(a) of this Act, the Board shall evaluate those Postal properties that are reasonably proximate to the field

offices in section 7(a) of this Act, to determine whether they would be suitable for having proximate field offices co-located into them.

(b) Upon conclusion of the evaluations described in section 7(a)(2) of this Act, the Board shall compile a list of Postal properties that have been found to be suitable for having a field office described in section 7(a) of this Act co-located into them, and will provide this list to the Postmaster General of the United States Postal Service.

(c) Within 90 calendar days of the receipt of the list provided to it under section 7(b) of this Act, the United States Postal Service shall review this list and send a report to the Board. The report shall include the conclusions of this review by the United States Postal Service. The United States Postal Service and the Board may disclose any research or information each has on the potential for a co-location into any specific property owned by the United States Postal Service.

(d) Consistent with section 6 of this Act, the Board may only include recommendations of co-locations of civilian real property assets into Postal properties in its report to the OMB Director if the Postal properties considered for co-location are on the list provided to the United States Postal Service pursuant to section 7(b) of this Act and the United States Postal Service has submitted a report on the list to the Board pursuant to section 7(c) of this Act.

(e) Consistent with section 6 of this Act, no later than 20 calendar days after the submission of the Board's report to the OMB Director or no later than 7 calendar days after the Board's submission of a list of recommendations to the OMB Director pursuant to section 6(g)(2) of this Act, the Postmaster General may remove any transaction that involves a Postal property from the Board report or list of recommendations made pursuant to section 6(g)(2) of this Act that the OMB Director is considering for transmission to Congress.

(f) Co-locations recommended by the Board into any Postal property, shall consist of a Federal civilian real property asset owned or leased by an executive agency, entering into a lease for space within a property owned by the United States Postal Service. The initial lease term shall be determined by the two parties entering into the lease, but shall not be less than five years. The cost of the annual lease must be within five percent of the prevailing market standard leasing rate for a similarly situated space.

(g) Consistent with section 6 of this Act, when the Board recommends a co-location into assets identified in section 7(b) of this Act, the Board shall define:

(1) the civilian agency asset that is to co-locate into the Postal property; and

(2) the prevailing market lease rate that is to be used as a benchmark in the co-location.

(h) The Board shall set the terms of the co-location, including the lease term and the annual lease cost, if the executive agency maintaining custody or control of the civilian real property asset that is to be co-located into United States Postal Service property, consistent with section 6 and 7 of this Act, is unable to reach a leasing agreement with the United States Postal Service within 180 calendar days of the Board's recommendation of the co-location in its report.

(i) Nothing in this section shall restrict the ability of an executive agency or the United States Postal Service to request from the OMB Director or the Board funding from the Asset Proceeds and Space Management Fund to support the cost of implementing a co-location.

(j) Except for section 10(f) of this Act, transactions recommended for federal civilian properties to be co-located into Postal properties must comply with the requirements of section 10 of this Act as if they were transactions recommended by the Board for properties owned by executive agencies.

(k) For the purposes of this Act, no proceeds from the disposal of any civilian property owned by the United States Postal Service shall be deposited into any account created by this Act. Proceeds resulting from the disposal of any civilian property owned by the United States Postal Service shall be deposited into the fund authorized by 39 U.S.C. 2003.

SEC. 8. —REALIGNMENT OF REAL PROPERTY OWNED OR MANAGED BY THE BUREAU OF OVERSEAS BUILDING OPERATIONS

(a) On an annual basis the Board shall identify and create a list of assets located outside of the United States of America and its territories that are owned or managed by the Department of State's Bureau of Overseas Building Operations that can:

(1) be sold for proceeds so as to reduce the civilian real property inventory and operating costs of the Federal government; or

(2) be otherwise disposed of, transferred, consolidated, co-located, or reconfigured so as to reduce the operating costs of the Federal government.

(b) The Board shall provide this list created pursuant to section 8(a) of this Act to the Secretary of State.

(c) Within 90 calendar days of the receipt of the list created pursuant to section 8(b) of this Act, the Department of State shall review this list and send a report to the Board. The report shall include the conclusions of this review by the Department of State. The Department of State and the Board may disclose property level information to each other.

(d) Consistent with section 6 of this Act, the Board may only make recommendations in its report to the OMB Director involving civilian real property assets that are located outside of the United States of America and its territories and owned or managed by the Department of State's Bureau of Overseas Building Operations if the assets are on the list provided to the Department of State pursuant to section 8(b) of this Act and the Department of State has submitted a report on the list to the Board pursuant to section 8(c) of this Act.

(e) Consistent with section 6 of this Act, no later than 20 calendar days after the submission of the Board's report to the OMB Director or no later than 7 calendar days after the Board's submission of a list of recommendations to the OMB Director pursuant to section 6(g)(2) of this

Act, the Secretary of State may remove any transaction that involves a civilian real property asset that is located outside of the United States of America and its territories and owned or managed by the Department of State's Bureau of Overseas Building Operations from the Board report or list of recommendations made pursuant to section 6(g)(2) of this Act that the OMB Director is considering for transmission to Congress.

(f) Nothing in this section shall restrict the ability of the Department of State to appeal to the OMB Director or the Board for funding by the Board's Asset Proceeds and Space Management Fund to support the cost of implementing a recommendation or other real property-related activity.

(g) For the purposes of this Act, proceeds from the disposal of assets located outside of the United States of America and its territories that are owned or managed by the Department of State's Bureau of Overseas Building Operations as identified by the Board and disposed of pursuant to this Act shall be deposited into the Asset Proceeds and Space Management Fund. Proceeds from the disposal of assets by the Department of State that are not pursuant to this Act shall be retained by the Department of State.

SEC. 9. —CONGRESSIONAL CONSIDERATION OF BOARD RECOMMENDATIONS

(a) Within 45 calendar days from the date of the OMB Director's transmission to Congress of the approved recommendations, Congress may enact a joint resolution to disapprove the entire list of recommendations in the report written by the Board and submitted by the OMB Director, with no changes or amendments allowed.

(b) For Congress to pass such a joint resolution disapproving the recommendations, a resolution to disapprove of the recommendations must be introduced within the 10 calendar day period beginning on the date on which the OMB Director transmits the report to the Congress.

(c) If this resolution is introduced in the House of Representatives, it shall be referred to the House Committee on Oversight and Government Reform. If this resolution is introduced in the Senate, it shall be referred to the Senate Committee on Homeland Security and Governmental Affairs. Congress may invite the Board, Federal agencies, and other experts to testify in person.

(d) If the committee to which a resolution is referred has not reported such a resolution (or an identical resolution) by the end of the 20 calendar day period beginning on the date from which the OMB Director transmits the report to the Congress, such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved where any member may move to proceed on the resolution.

(e) If Congress fails to pass such a joint resolution within 45 calendar days from the date of the OMB Director's transmission to Congress, then the recommendations immediately gain legal force, and agencies shall commence the preparation and carrying out of recommended activities pursuant to section 10(a) of this Act.

(f) This section is enacted by Congress —

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in this subsection, and it supersedes other rules only to the extent that is it inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 10. —IMPLEMENTATION OF BOARD RECOMMENDATIONS BY EXECUTIVE AGENCIES

(a) Subject to section 9 of this Act, the agencies shall prepare and carry out each recommendation of the Board transmitted to the Congress by the Director pursuant to section 6(g) of this Act. Preparations to implement recommendations shall begin immediately. The agencies shall commence physical implementation of all such recommendations no later than two years after the date on which the Director transmits a report to the Congress pursuant to section 6(g) of this Act containing the recommendations and complete all such recommendations no later than the end of the six-year period beginning on the date on which the Director transmits a report to the Congress pursuant to section 6(g) of this Act containing the recommendations. For recommendations that will take longer than the six-year period due to extenuating circumstances, agencies shall notify OMB as soon as the circumstance presents itself with an estimated time to complete the recommendation. In such cases, the Director may extend the period for completion of the recommendation for a period of up to an additional two years.

(b) In carrying out any recommendations under this part, the agencies may:

(1) acquire such land, construct such replacement facilities, and conduct such advance planning and design as may be required to transfer functions from one location to another;

(2) provide outplacement assistance to civilian employees employed by the agency at a location subject to a recommendation;

(3) carry out activities for the purposes of environmental restoration and mitigation at any such installation; and

(4) reimburse other Federal agencies for actions performed at the request of the Board with respect to any such recommendation.

(c) Specific Authorities.

(1) Notwithstanding any other provisions of the laws that govern the disposal authorities of the Federal agencies, all disposals implemented as a result of a Board recommendation shall be implemented in accordance with sections 2, 3, 6, 9, 10, 11, and 12 of this Act. Where the currently existing disposal authority for an agency is inconsistent with this Act, this Act's provisions control the implementation of a disposal recommended by the Board. To the extent that the disposal authorities are otherwise consistent with this Act, an agency shall implement a recommendation in the Board's report to dispose a property by utilizing its existing disposal authorities, whether it has been delegated disposal authority by the Administrator of the General Services Administration, pursuant to the Federal Property Act, it has an independent disposal authority, or it must work in partnership with the General Services Administration.

(2) In accordance with section 10 of this Act, when implementing a recommendation to consolidate, reconfigure, co-locate, or realign a real property asset, all agencies are authorized to take such action as is necessary to implement the approved recommended actions of the Board. Consistent with sections 6 and 9 of this Act, the Board's report may instruct a Federal agency to utilize the expertise of the General Services Administration in carrying out a recommended consolidation, reconfiguration, co-location, or realignment. Any Federal agency, at its discretion, is also authorized, consistent with existing law and funding, to contract with the General Services Administration for assistance or consultation on implementing a recommendation to consolidate, reconfigure, co-locate, or realign a real property asset.

(3) The identification of any Federal civilian real property as an asset to be disposed, consolidated, reconfigured, or otherwise realigned in a report published by the Board temporarily freezes any transaction with respect to that property that would prevent a recommendation from being carried out within the end of the statutory deadline for Congress to consider the Board's report, whether exercised by the agency maintaining custody or control of the property, or an agency acting on behalf of that custodial agency. All such transactions shall remain frozen until the recommended action on the identified property is disapproved by Congress pursuant to section 9(e) of this Act, is withheld from transmission to Congress by the OMB Director, or is not disapproved by Congress pursuant to section 9(e) of this Act. In the event of disapproval or withholding, all such transactions are unfrozen and the agency maintaining custody or control over the property may resume its management of the property unrestricted. Otherwise, consistent with sections 9 and 10 of this Act, an agency shall implement the recommended action.

(d) For any transaction identified, recommended or commenced as a result of this Act, the Board shall determine whether and to what extent an agency shall implement the transaction notwithstanding any legal priorities or requirements to enter into a transaction to convey a Federal civilian real property for less than fair market value or in a transaction that mandates the exclusion of other market participants.

(e) Any recommendation or commencement of a disposal, consolidation, reconfiguration, co-location, or realignment of civilian real property shall not be subject to—

- (1) section 545(b)(8) of title 40, United States Code;
- (2) sections 550, 554, and 553 of title 40, United States Code;
- (3) section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411);
- (4) any section of An Act Authorizing the Transfer of Certain Real Property for Wildlife, or other Purposes (16 U.S.C. 667b);
- (5) section 47151 of title 49, United State Code;
- (6) sections 107 and 317 of title 23, United States Code;
- (7) section 1304(b) of title 40, United States Code;
- (8) section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d));
- (9) any other provision of law authorizing the conveyance of real property owned by the Federal Government for no consideration; and
- (10) any congressional notification requirement other than that in section 545 of title 40, United States Code.

(f) Public Benefit.

- (1) Consistent with section 6(f) of this Act, the Board shall submit to the Secretary of Housing and Urban Development (Secretary of HUD), on the same day it submits its report to the Director of the OMB, all known information on the buildings or properties that are listed in the separate list of properties intended for conveyance under a public benefit conveyance program authorized by a provision of law enumerated in section 10(e) of this Act. Within 60 calendar days the Secretary of HUD must report to the Board on the suitability of all the properties on this list for use as a property benefitting the mission of assistance to the homeless.
- (2) Within 90 calendar days of the Board's first submission of its report to the Director of the OMB, any representatives of the homeless proposing interest in the use of property that the Board has determined should be conveyed under any of the public benefits authorized by a provision of law enumerated in section 10(e) of this Act, may submit a notice of interest containing the following to the Board and to the Secretary of HUD:
 - a. a description of the homeless assistance program that the representative proposes to carry out at the installation;
 - b. an assessment of the need for the program;

- c. a description of the extent to which the program is or will be coordinated in the communities in the vicinity of the property with the local Continuum of Care, as defined by Section 1301 of the Helping Families Save Their Homes Act of 2009;
- d. a description of grants currently funded through the McKinney-Vento homeless assistance programs;
- e. a description of the buildings and property that are necessary in order to carry out the program;
- f. a description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program;
- g. an assessment of the time required in order to commence carrying out the program; and
- h. The ability of the provider to financially and clinically support a homeless use.

(3) The Secretary of HUD shall review and certify submissions from representatives of the homeless and submit to the Board an assessment of the validity and merits of the notice of interest within 120 calendar days from the date the Board submits its report to the OMB Director. In the case where more than one notice of interest is entered for a property, the Secretary shall indicate to the Board which planned use of the property for the homeless has more merit.

(4) Within 90 calendar days of the Board's submission to the Director of the OMB and public release of the Board's report, any parties proposing interest, for a use that is not homeless assistance, in the property that the Board has listed pursuant to section 6(f)(2) of this Act, may submit a notice of interest to the Board and to the Federal agency that is otherwise tasked by law to review applications for the statutory public benefit conveyance program under which the party is applying. The notice of interest must contain the information otherwise required in an application under the law creating the conveyance program and must be for a program authorized by a provision of law listed in section 10(e) of this Act.

(5) Federal agencies tasked with reviewing applications for public benefit conveyance programs, that receive notices of interest with information pertaining to the certification of the validity of a proposed public benefit conveyance that is not for homeless assistance and is authorized by a provision of law enumerated in section 10(e) of this Act, shall review and certify submissions from parties proposing such future use for the property and submit to the Board an assessment of the validity and merits of the information contained in the notice of interest within 120 calendar days from the date the Board submits its report to the OMB Director. In the case where more than one notice of interest is entered for a property, the head of the reviewing agency shall indicate to the Board which planned use of the property has more merit.

(6) To give disposing agencies instruction as to the final disposition of the properties in its inventory that have been recommended for a public benefit conveyance program, subject to section 9 of this Act, the Board shall compile all assessments resulting from submitted notices of interest, for any of the public benefit conveyance programs authorized by a provision of law enumerated in section 10(e) of this Act, that have been submitted to it on the list of properties that the Board deemed suitable for conveyance under a public benefit program, and shall forward them to the agencies that maintain custody and control over the civilian real properties to be conveyed.

(7) In the event a property reviewed by HUD is found to be fit for use by the homeless and HUD has identified a representative of the homeless whose notice of interest is certified, or, in the event of more than one notice of interest on the property, whose notice of interest is deemed to have the most merit by HUD, the agency maintaining custody or control of the property, in accordance with section 10 of this Act, shall commence conveyance of the property to that representative of the homeless, subject to section 9 of this Act. In the event a reviewed property is found to be unfit for use by the homeless, or there is no identified notice of interest on the property by a representative of the homeless, the disposing agency maintaining custody or control shall then look to whether there are any parties that have expressed interest in the property for one of those uses authorized by a provision of law enumerated in section 10(e) of this Act that are not homeless assistance and whether any Federal reviewing agency has certified one of those uses. If so, the disposing agency maintaining custody or control of the property shall commence conveyance of the property to that party that proposed the certified use, subject to section 9 of this Act. In the event that there is more than one party that has expressed interest in the property in this manner, the disposing agency maintaining custody or control shall have the discretion to choose among them, but shall look to where the property will be used for its highest and best use.

(8) In the event a property does not qualify for, or there is no interest in a property reviewed for, one of those uses authorized by a provision of law enumerated in section 10(e) of this Act, the disposing agency maintaining custody or control shall have the discretion to choose among any other remaining ways to implement a disposition of the property, subject to section 9 of this Act.

(9) An agency shall convey property under this sub-section utilizing the same disposal authorities as in section 10(c)(1) of this Act.

(g) Environmental Considerations.

(1) (A) When implementing the recommended actions for properties that have been identified in the Board's report, as specified in section 6(f), and subject to paragraph (2) of this subsection and in compliance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq), including section 120(h) thereof (42 U.S.C. 9620(h)), Federal agencies may enter into an agreement to transfer by deed real property with any person.

(B) The head of the disposing agency may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the head of the disposing agency considers appropriate to protect the interests of the United States. Such additional terms and conditions shall not affect or diminish any rights or obligations of the federal agencies under CERCLA section 120(h) (including, without limitation, the requirements of CERCLA section 120(h)(3)(A) and section CERCLA 120(h)(3)(C)(iv)).

(2) A transfer of real property or facilities may be made under paragraph (1) only if the head of the disposing agency certifies to the Board and Congress that:

(A) the costs of all environmental restoration, waste management, and environmental compliance activities otherwise to be paid by the disposing agency with respect to the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the head of the disposing agency; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) In the case of property covered by a certification under paragraph 2(A), the disposing agency may pay the recipient of such property or facilities an amount equal to the lesser of:

(A) the amount by which the costs incurred by the recipient of such property or facilities for all environmental restoration, waste management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as specified in such certification; or

(B) the amount by which the costs (as determined by the head of the disposing agency) that would otherwise have been incurred by the Secretary for such restoration, waste management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as so specified.

(4) As part of an agreement under section (g) paragraph (1) of this Act, the head of the disposing agency shall, in accordance with applicable law, disclose to the person to whom the property or facilities will be transferred information possessed by the Agency regarding the environmental restoration, waste management, and environmental compliance activities described in section (1) that relate to the property or facilities. The Agency shall provide such information before entering into the agreement.

(5) For the purposes of granting time extensions under section 10(a), the Director shall give the need for significant environmental remediation to a piece of property more weight than any other factor in determining whether to grant a two-year extension to implement a Board recommendation.

(6) Nothing in this Act shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the National Environmental Policy Act of 1969, or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(h) No provision of law shall be construed as restricting the use of funds for disposing or realigning Federal civilian real property in accordance with an approved recommendation that gains legal force under section 9, except in the case of a provision of law which specifically refers to a particular asset of Federal civilian real property and expressly states that such restriction shall apply to such asset notwithstanding this Act.

SEC. 11. —AUTHORIZATION OF APPROPRIATIONS AND FUNDING

(a) There are authorized to be appropriated, including for the activities of the Board, such funds as are necessary to carry out this section.

(b) Civilian Property Realignment Board—Salaries and Expenses. There is hereby established on the books of the Treasury an account to be known as the "Civilian Property Realignment Board—Salaries and Expenses" account.

(1) There shall be deposited into the account such amounts, as are provided in appropriations acts, for those necessary payments for salaries and expenses to accomplish the administrative needs of the Board.

(2) If no amounts are appropriated for the salaries and expenses of the Board for a particular fiscal year, then the OMB Director may support the Board's activities under this section during that fiscal year by approving either or both of the following actions:

(A) a transfer to the Board of amounts from the "Civilian Property Realignment Board—Asset Proceeds and Space Management Fund" with such transferred amounts thereby appropriated and to remain available during that fiscal year, and

(B) a transfer to the Board of not more than \$8,000,000 from unobligated amounts in accounts of Federal executive agencies.

(c) Civilian Property Realignment Board—Asset Proceeds and Space Management Fund. There is hereby established on the books of the Treasury an account to be known as the "Civilian Property Realignment Board—Asset Proceeds and Space Management Fund." The following amounts shall be deposited into the account and are hereby appropriated and shall remain available until expended for the specified purposes:

(1) Such amounts as are provided in appropriations acts, to remain available until expended, for the disposal, space consolidation, co-location, and re-configuration actions of Federal agencies consistent with the provisions of this Act and with the consent of the OMB Director; and

(2) Gross proceeds received from the disposal of any civilian real property pursuant to a recommendation of the Board that is implemented pursuant to section 9 of this Act. The Board, with the consent of the OMB Director, may transfer, from the gross proceeds to an executive agency, amounts to cover the necessary costs associated with the disposal of property.

(3) Net proceeds (which are gross proceeds received from the disposal of any civilian real property pursuant to a recommendation of the Board, less the amounts transferred from this account under section 11(b)(2)(A) and (c)(2) of this Act), shall be divided between the General Fund of the Treasury, Federal executive agencies (for the purpose of real property management reinvestment), and the Asset Proceeds and Space Management Fund. On an annual basis, the OMB Director shall determine how the net proceeds shall be distributed, through transfer, between the General Fund, Federal agencies, and the Asset Proceeds and Space Management Fund, but in no case shall the General Fund receive less than sixty percent of the net proceeds. In support of these duties, the Board, with the consent of the OMB Director, may transfer, from the Space Management Fund, to a Federal agency or the U.S. Postal Service, amounts:

(A) to cover the necessary costs associated with—

(i) consolidation, co-location, and reconfiguration actions;

(ii) other actions taken to otherwise realize operational efficiencies, including but not limited to such actions as environmental restoration; and

(B) for outplacement assistance to Federal employees who work at a Federal property that is affected by actions taken under this section, and whose employment would be terminated as a result of such disposal, consolidation, or other realignment.

(4) The amounts transferred pursuant to section 11(c)(3)(A)-(B) under this sub-section must be obligated by the recipient agency within three years of the transfer. Any amounts that are not obligated within three years shall be transferred back to the Asset Proceeds and Space Management Fund.

SEC. 12. —PAY AND TRAVEL EXPENSES

(a) Pay.

(1) Each member, other than the Chair of the Board, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Board.

(2) The Chair of the Board shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314, of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Board.

(b) Travel. Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

SEC. 13. —EXECUTIVE DIRECTOR

(a) The Board shall appoint an Executive Director.

(b) For the purposes of this Act, the Board may appoint an Executive Director without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(c) Consistent with 5 U.S.C. 3132(a)(2), the Executive Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, except that an individual so appointed may not receive pay outside of the pay range of the Senior Executive Service.

SEC. 14. —STAFF

(a) Subject to paragraph (b), the Executive Director, with the approval of the Board, may appoint and fix the pay of additional personnel.

(b) The Executive Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the maximum rate of basic pay for GS-15 under section 5332 of title 5, United States Code.

(c) Upon request of the Executive Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Board to assist the Board in carrying out its duties under this part. The Executive Director, with the approval of the Board, is authorized to request both reimbursable and non-reimbursable detailees.

SEC. 15. —CONTRACTING AUTHORITY

(a) The Board may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(b) The Board may lease space and acquire personal property.

SEC. 16. —TERMINATION

The Board shall cease operations and terminate 12 years from the date of the enactment of this Act. This Act shall expire 180 calendar days after that date.

SEC. 17. —PRECLUSION OF JUDICIAL REVIEW

The following actions shall not be subject to judicial review:

- (a) Actions of the Board under Section 6, 7, and 8 of this Act.
- (b) Actions of the Director of OMB under Section 6(g) of this Act.
- (c) Actions of the Board, the Secretary of HUD, and Federal agencies under Section 10(f) of this Act.

SEC. 18. —REPORT BY THE BOARD TO OMB WITHIN TWO YEARS

The Board shall submit a report to OMB within two years from the date of enactment of this Act that contains the Board's conclusions and recommendations on ways that the process created by this Act could be more efficient consistent with the purposes of this Act. This report shall at a minimum include conclusions and recommendations regarding:

- (a) whether postal property should be treated by this Act in the same manner as Federal civilian real property or through the process outlined in section 7 of this Act;
- (b) whether civilian real property assets that are located outside of the United States of America and its territories and owned or managed by the Department of State's Bureau of Overseas Building Operations should be treated by this Act in the same manner as other Federal civilian real property or through the process outlined in section 8 of this Act; and
- (c) the implementation and effectiveness of the process outlined in section 10 of this Act.

Sectional Analysis

Section 1

Section 1 would provide a short title for the bill, i.e., "Civilian Property Realignment Act" and contains a table of contents.

Section 2

Section 2 would explain the purpose of Act as expediting the disposal of unneeded Federal civilian properties and realize savings.

Section 3

Section 3 would define Federal civilian real property, executive agencies, postal properties, military installations, field offices, and disposal for the purpose of this Act. Federal civilian real property excludes military properties, properties that involve national security or homeland security, national parks, wildlife refuges, designated wilderness areas, Indian land, and properties that would be considered national treasures or monuments. Constructed assets within public lands may be considered for a recommended action (e.g. demolition) by the Board; however, this bill is not intended to create inholdings.

Section 4

Section 4 would establish the Civilian Property Realignment Board (Board), which consists of seven members appointed by the President, one of whom will be designated as the Chairperson. Board members are intended to be real property experts from either or both the public and private sector. However, the position on the Board would be the member's only job; this is not a board made up of detailees that already have high-ranking positions at other agencies. Members of the Board are Federal employees.

Section 5

Section 5 would describe the Board meeting and hearing process. All hearings, other than those where classified information shall be discussed, shall be open to the public. Board meetings, as part of the Board's day-to-day operations, shall generally not be open to the public. All proceedings shall be open to the Chairman and ranking minority party member of the four relevant House and Senate sub-committees on government oversight and real property as requested.

Section 6

Section 6 would define the processes to formulate, review, and transmit recommendations of the Board. While formulating its recommendations, the board will take into account, among other criteria, the community in which the property is located; the highest and best use of the property; the potential uses of the properties for homeless assistance, parks and recreation, or other public benefits; the historical nature of the facility; the environmental effects of a proposed action; whether the action would create an inholding; and whether significant environmental remediation must be done to the property. The Board will also be charged with reviewing whether past actions by agencies have adequately addressed real estate management. Postal properties may only be recommended for co-location. Note only properties that are included in Board recommendations that are not disapproved by Congress are subject to the authorities under this Act. The remaining properties are not subject to the authorities under this Act.

In transmitting its recommendations to the Director of OMB, the Board will include instructions for how to accomplish the recommended activities, such as instructions to dispose of a property by sale. In addition, the Board will enumerate a separate list of properties that should

be reviewed for potential use by the homeless or for other public benefits outlined in section 10(e).

If the Director approves the first set of recommendations, the recommendations are transmitted to Congress. If the Director disapproves, the Director passes comments to the Board on his disapproval and the Board will follow-up with a subsequent report that may or may not address the Director's comments. If the Director approves the subsequent report, the recommendations are transmitted to Congress. If the Director disapproves, the process is terminated. Reasons for disapproval are transmitted to the Board and Congress. The Director may not line-item veto any recommendation; he may only approve or disapprove of the Board's report in whole.

Section 7

Section 7 would create a process for the Board to recommend co-locations into United States Postal Service owned properties. The Postal Service must comment formally on certain properties that the Board considers for co-location. The Postmaster General may veto inclusion of any transactions that involve postal properties.

Section 8

Section 8 would create a process for the Department of State's Bureau of Overseas Building Operations to comment on properties considered by the Board. The Department of State must comment formally on certain properties that the Board considers for disposal, consolidation, reconfiguration, or realignment. The Secretary of State may veto inclusion of any transactions that involve international consular and diplomatic properties.

Section 9

Section 9 would define the process by which Congress will review the Board's recommendations. If no joint resolution is passed by Congress within a 45 calendar day period that affirmatively disapproves of the Board's report as a whole, then agencies shall immediately commence planning and implementing the Board's recommendations.

Section 10

Section 10 would define the process for implementing the Board's recommendations and related authorities of the Board and agencies.

- Defines the timeline by which recommendations from the Board should be initiated (within two years) and completed (within six years) by the applicable agencies. Grants the possibility of an extension only in extenuating circumstances.
- Grants authority to use funds from its revolving fund to reimburse agencies for expenses the agencies incur while implementing the Board's recommendations.

- Outlines that agencies' existing authorities to dispose or realign a property identified by the Board in a report (but only those properties – NOT the rest of the agency's inventory) will temporarily be frozen for 90 days until the Board's recommendation with respect to that property is disapproved by Congress, disapproved by the OMB Director, or is to be implemented consistent with the process outlined in section 9 regarding Congressional consideration. Aside from the exemptions for certain public benefit conveyance reviews and proceeds retention, agencies shall otherwise use their existing authorities when disposing of property.
- Any disposal of civilian real property will not be subject to public benefit conveyance programs as outlined below. The programs require agencies to subject its excess properties to interested non-Federal entities for potential public use; e.g., homeless assistance and parks and recreation. Rather than being subject to such reviews for all properties, the Board will choose which properties will be subject to these reviews. Applying these programs only to a selected subset of properties will significantly reduce the administrative requirements and associated period of time that agencies government-wide must maintain a property after it has been identified as excess. The Board will consider such potential public uses during its deliberation phase prior to transmitting recommendations to the Director of OMB. At the discretion of the Board, the Board may recommend a property to be further reviewed for public benefits, in which interested parties from non-Federal entities shall have an opportunity to submit a notice of interest, and related information required by the programs below, to the Board and Federal agencies.
 - section 545(b)(8) of title 40, United States Code [GSA authority to negotiate a sale];
 - sections 550, 554, and 553 of title 40, United States Code [Education, Public Health, Park and Recreation, Self Help Housing, Historic Monument, Correctional, Law Enforcement, Emergency Management Response, Port Facility];
 - section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411);
 - section 667(b) – (d) of title 16, United States Code [Wildlife Conservation];
 - section 47151 of title 49, United State Code [Public Airport];
 - sections 107 and 317 of title 23, United States Code [Highway];
 - section 1304(b) of title 40, United States Code [Widening of Public Roads];
 - section 1622(d) of title 50, United States Code Appended [Power Transmission Lines];
 - any other provision of law authorizing the conveyance of Federally-owned real property;
 - any congressional notification other than section 545 of title 40, United States Code.
- Provision to clarify how this Act does not affect or change current environmental law. For example, clarifies that this Act is subject to all requirements of CERCLA and that agencies implementing recommended disposals may utilize CERCLA Early Transfer Authority pursuant to CERCLA Section 120(h)(3). Note that the National Environmental Policy Act (NEPA) and other environmental requirements apply to this Act in full.
- Waiver clause, to remove the possibility of any appropriations bill provision trying to limit the Board's actions.

Section 11

Section 11 would authorize an appropriation to support the Board. In addition, it would establish accounts (salary and expenses as well as revolving fund) on the books of the Treasury and defines the purposes for the funding, including appropriations, transfers of budget authority, and sale proceeds. Net proceeds (after paying disposal costs) will be distributed to the general fund (at least 60 percent), Federal agencies, and the Board's revolving fund.

Section 12

Section 12 would define the pay and travel schedules for the Board members.

Section 13

Section 13 would establish an Executive Director and define the pay schedule.

Section 14

Section 14 would authorize staff for the Board and define the pay schedule.

Section 15

Section 15 would authorize the Board to contract, lease space, and acquire personal property.

Section 16

Section 16 would establish a sunset clause for the Board at 12 years from enactment.

Section 17

Section 17 would prevent judicial review of actions by the Board under section 6 of this Act; actions taken by the OMB Director under section 6, 7, and 8 of this Act; or actions taken by the Board, the Secretary of HUD, and Federal agencies under section 10(f) of this Act.

Section 18

Section 18 would mandate that the Board draft and transmit a report within two years to OMB that contains the Board's conclusions and recommendations on ways that the process created by this Act could be more efficient consistent with the purposes of this Act. At a minimum the Board's report should include comments on the effect of section 7, section 8, and section 10 as currently drafted.

**INTERNAL REVENUE SERVICE PROGRAM INTEGRITY AND
UNEMPLOYMENT INSURANCE IMPROPER PAYMENT REVIEWS**

Legislative Proposal

Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(a) by redesignating subparagraph (D) as subparagraph (F); and

(b) by inserting after subparagraph (C) the following new subparagraphs:

“(D) INTERNAL REVENUE SERVICE TAX ENFORCEMENT.—

“(i) IN GENERAL.—If a bill or joint resolution is reported making appropriations in a fiscal year to the Internal Revenue Service of not less than the first amount specified in subclauses (I) through (X) of clause (ii) for tax activities for that fiscal year, including tax compliance to address the Federal tax gap (taxes owed but not paid), and provides an additional appropriation for tax activities, including tax compliance to address the Federal tax gap, of up to an amount further specified in that subclause, then the discretionary spending limits, allocation to the Committees on Appropriations of each House, and aggregates for that fiscal year may be adjusted by the amount in budget authority not to exceed the amount of additional appropriations for tax activities, including tax compliance to address the Federal tax gap provided in such legislation for that fiscal year.

“(ii) AMOUNTS SPECIFIED.—The amounts specified are—

“(I) for fiscal year 2012, an appropriation of [\$7,979,000,000], and an additional appropriation of [\$2,519,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(II) for fiscal year 2013, an appropriation of [\$7,979,000,000], and an additional appropriation of [\$3,132,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(III) for fiscal year 2014, an appropriation of [\$8,204,000,000], and an additional appropriation of [\$3,542,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(IV) for fiscal year 2015, an appropriation of [\$8,444,000,000], and an additional appropriation of [\$3,975,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(V) for fiscal year 2016, an appropriation of [\$8,710,000,000], and an additional appropriation of [\$4,486,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(VI) for fiscal year 2017, an appropriation of [\$9,012,000,000], and an additional appropriation of [\$4,538,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(VII) for fiscal year 2018, an appropriation of [\$9,330,000,000], and an additional appropriation of [\$4,585,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(VIII) for fiscal year 2019, an appropriation of [\$9,667,000,000], and an additional appropriation of [\$4,626,000,000] for tax activities, including tax compliance to address the Federal tax gap;

“(IX) for fiscal year 2020, an appropriation of [\$9,989,000,000], and an additional appropriation of [\$4,688,000,000] for tax activities, including tax compliance to address the Federal tax gap; and

“(X) for fiscal year 2021, an appropriation of [\$10,315,000,000], and an additional appropriation of [\$4,754,000,000] for tax activities, including tax compliance to address the Federal tax gap.

“(iii) DEFINITION.—As used in this subparagraph, the term “additional appropriation for tax activities, including tax compliance to address the Federal tax gap” means new and continuing investments in expanding and improving the effectiveness and efficiency of the overall tax enforcement and compliance program of the Internal Revenue Service and fully funding operational support activities at the Internal Revenue Service. New and continuing investments include additional resources for implementing new authorities and for conducting additional examinations, audits, and enhanced third party data matching.

“(iv) APPROPRIATION.—The first amount specified in subclauses (I) through (X) of clause (ii) is the amount under one or more headings in an appropriations act for the Internal Revenue Service that is specified to pay for the costs of tax activities, including tax compliance to address the Federal tax gap.

“(v) ADDITIONAL AMOUNT.—The amounts further specified in subclauses (I) through (X) of clause (ii) are the amounts under one or more headings in an appropriations act for the Internal Revenue Service for the amount of the additional appropriation for tax activities, including tax compliance to address the Federal tax gap, but such adjustment shall be 0 (zero) unless the appropriations Act under the heading “Operations Support” for the Internal Revenue Service provides that such sums as are necessary shall be available, under the “Operations Support” heading, to fully support tax enforcement and compliance activities.

“(E) UNEMPLOYMENT INSURANCE IMPROPER PAYMENT REVIEWS.—

“(i) IN GENERAL.—If a bill or joint resolution is reported making appropriations in a fiscal year of the first amount specified in subclauses (I) through (X) of clause (ii) for in-person reemployment and eligibility assessments and unemployment insurance improper payment reviews under the heading “State Unemployment Insurance and Employment Service Operations” for the Department of Labor for that fiscal year, and provides an additional appropriation for in-person reemployment and eligibility assessments and unemployment insurance improper payment reviews under the heading “State Unemployment Insurance and Employment Service Operations” for the Department of Labor of

up to an amount further specified in that subclause, then the discretionary spending limits, allocation to the Committees on Appropriations of each House, and aggregates for that year may be adjusted by an amount in budget authority not to exceed the additional appropriation provided in such legislation for that purpose for that fiscal year.

“(ii) AMOUNTS SPECIFIED.—The amounts specified are—

“(I) for fiscal year 2012, an appropriation of \$60,000,000, and an additional appropriation of \$10,000,000;

“(II) for fiscal year 2013, an appropriation of \$60,000,000, and an additional appropriation of \$15,000,000;

“(III) for fiscal year 2014, an appropriation of \$61,000,000, and an additional appropriation of \$19,000,000;

“(IV) for fiscal year 2015, an appropriation of \$61,000,000, and an additional appropriation of \$24,000,000;

“(V) for fiscal year 2016, an appropriation of \$62,000,000, and an additional appropriation of \$28,000,000;

“(VI) for fiscal year 2017, an appropriation of \$63,000,000, and an additional appropriation of \$28,000,000;

“(VII) for fiscal year 2018, an appropriation of \$64,000,000, and an additional appropriation of \$29,000,000;

“(VIII) for fiscal year 2019, an appropriation of \$64,000,000, and an additional appropriation of \$30,000,000;

“(IX) for fiscal year 2020, an appropriation of \$65,000,000, and an additional appropriation of \$31,000,000; and

“(X) for fiscal year 2021, an appropriation of \$66,000,000, and an additional appropriation of \$31,000,000.

“(iii) DEFINITIONS.—As used in this subparagraph, the terms “in-person reemployment and eligibility assessments” and “unemployment improper payment reviews” mean reviews or assessments conducted in local workforce offices to determine the continued eligibility of an unemployment insurance claimant under the Federal Unemployment Tax Act, title III of the Social Security Act, and applicable State laws, to ensure they are meeting their obligation to search for work as a condition of eligibility, and to speed their return to work.

“(iv) ADDITIONAL APPROPRIATION.—The amounts further specified in subclauses (I) through (X) of clause (ii) are the amounts under the heading “State Unemployment Insurance and Employment Service Operations” for the Department of Labor for the amount of the additional appropriation for in-person reemployment and eligibility assessments and unemployment insurance improper payment reviews, but such adjustment shall be 0 (zero) unless the appropriations Act providing such additional appropriation also provides the full amount requested under the heading “State Unemployment Insurance and Employment

Service Operations” for the Department of Labor for grants to States for the administration of State unemployment insurance laws in the budget submitted for that fiscal year under section 1105 of title 31, United States Code.”.

Sectional Analysis

Internal Revenue Service (IRS) Tax Enforcement Program Integrity. This section provides for an adjustment to the statutory discretionary caps in section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011 (P.L. 111-25) for the Committees on Appropriations of each House for an additional appropriation for “Internal Revenue Service Tax Enforcement” for additional tax enforcement and compliance activities aimed at increasing revenue and closing the tax gap through comprehensive enforcement of the laws. For fiscal year 2012, this section provides for an additional appropriation of up to \$2,519,000,000 on top of an appropriation of \$7,979,000,000 for additional tax enforcement and compliance activities to ensure the fairness of the tax system and assist taxpayers in meeting their tax obligations. The base and additional appropriation amounts specified under this section would increase annually through fiscal year 2021, at which point an additional appropriation of \$4,754,000,000 would be added to an appropriation of \$10,315,000,000 for these activities. This section also specifies that the cap adjustment shall be 0 (zero) unless a base amount of tax enforcement funding is not provided to the IRS Enforcement and Operations Support accounts.

Unemployment Insurance Improper Payment Reviews. This section also provides for an adjustment to the statutory discretionary caps in section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011 (P.L. 112-25), for an additional appropriation for “State Unemployment Insurance and Employment Services Operations” for in-person reemployment and eligibility assessments. For fiscal year 2012, this proposal provides for an additional appropriation of up to \$10,000,000 on top of an appropriation of \$60,000,000 for reemployment and eligibility assessments to ensure that unemployment insurance claimants are meeting their obligation to search for work and to speed their return to work. The base and additional appropriation amounts specified under this section would increase annually through fiscal year 2021, at which point an additional appropriation of \$31,000,000 would be added to an appropriation of \$66,000,000 for these assessments. This section also specifies that the cap adjustment shall be 0 (zero) unless the full amount is provided for grants to States for the administration of State unemployment insurance laws.

IMPROVE COLLECTION OF PENSION INFORMATION
FROM STATES AND LOCALITIES

Legislative Proposal

PURPOSE—To require information for administration of the government pension offset and windfall elimination provisions.

SEC. 1. —REQUIRE INFORMATION FOR ADMINISTRATION OF THE GOVERNMENT PENSION OFFSET AND WINDFALL ELIMINATION PROVISIONS

(a) In General —. The heading preceding section 205(v) of the Social Security Act shall read as follows:

“State and Local Pension Information to be Provided to the Commissioner”

(b) Section 205 of the Social Security Act (42 U.S.C. 405) is amended by adding a new subsection (v), as follows:

“(v)(1) Each State or local government entity shall provide the Commissioner, in such form and at such time and frequency as specified by the Commissioner, the information specified in paragraph (2). Such information relates to any designated distribution (as defined in section 3405(e)(1) of the Internal Revenue Code of 1986) paid under any employer deferred compensation plan (as defined in section 3405(e)(5) of such Code) of such State, if based in whole or in part on services for a State (or political subdivision thereof, as defined in section 218(b)(2)) which did not constitute employment (as defined in section 3121(b) of such Code). Such information shall be provided by the State or local government entity for each participant who is receiving or has received such designated distribution.

“(2) The following information shall be provided to the Commissioner:

“(a) The name and Social Security account number of such participant receiving such designated distribution; and

“(b) Such other information as the Commissioner may require by regulation, in order to administer the provisions of section 202(k)(5) and sections 215(a)(7), and 215(d)(3).”

(c) Appropriation.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Commissioner of Social Security a total of \$50,000,000 for fiscal year 2012, to remain available until expended, to carry out the provisions of this section.

(d) Grants to State and Local Governments. From the appropriation specified in subsection (c), the Commissioner may make grants to a State or local government to assist the government entity in developing a system for submitting the information described in section 205(v)(2) of the Social Security Act, as added by subsection (b).

(e) Effective Date. — The amendments made by this section shall be effective after December 31, 2013.

Sectional Analysis

This bill would improve the administration of the government pension offset (GPO) provision and the windfall elimination provision (WEP). It would require State and local government pension payers to report information directly to the Social Security Administration (SSA) if a pension paid to a former government employee is based in any part on work that was not covered by Social Security. SSA could use this information to compare these reports with beneficiary payment records and examine cases that indicate the possibility that WEP or GPO applies. SSA would obtain data on these pensions in a more timely and consistent manner. This would reduce overpayments that occur when SSA determines that a beneficiary should have been subject to WEP or GPO but was not. The amendment would thereby improve SSA's stewardship over the program and the Social Security trust funds.

The bill would appropriate funding of \$50 million for fiscal year 2012 (to remain available until expended) for the development of automated data exchanges for State and local government pension payers to submit this information to SSA and would allow for grants to State and local governments for this purpose.

The provisions of this bill would require that State and local governments provide pension information to SSA beginning after December 2013. It would take time for SSA to work with the State and local governments to establish compatible systems for transmitting and receiving the required data and to establish a process for verifying data accuracy. Therefore, SSA has assumed that it will first be ready to use these additional data for enforcement purposes beginning in FY 2015.

**DEBT COLLECTIONS: LEVY ON CERTAIN PAYMENTS AND
FEDERAL OFFSETS FOR STATE COLLECTIONS**

Legislative Proposal

SEC. ____ . CONTINUING LEVY ON CERTAIN PAYMENTS. Section 6331(h) of the Internal Revenue Code of 1986 (26 U.S.C. 6331(h)) is amended by striking “goods” in paragraph (3), and inserting in lieu thereof “property, goods,”.

Sectional Analysis

This section would clarify that the IRS can levy 100 percent of any payment due to a federal vendor with unpaid tax liabilities, including payments made for the sale or lease of real estate and other types of property not considered “goods or services.” The current statutory language “goods or services sold or leased” is interpreted as excluding payments for the sale or lease of real estate or other types of property not considered “goods or services.” The proposal would be effective for payments made after the proposal’s date of enactment.

Legislative Proposal

SEC. ____ . CONTINUING LEVY ON CERTAIN PAYMENTS. Section 6331(h) of the Internal Revenue Code of 1986 (26 U.S.C. 6331(h)) is amended by inserting “, and Medicare provider and supplier payments” immediately before the concluding period in paragraph (3).

Sectional Analysis

This section would allow Treasury to levy up to 100 percent of a payment to a Medicare provider to collect unpaid taxes. The proposal would be effective for payments made after the date of enactment.

Legislative Proposal

SEC. ____ . AUTHORITY TO MAKE CREDITS OR REFUNDS. Section 6402(e) of the Internal Revenue Code of 1986 (26 U.S.C. 6402(e)) is amended by striking paragraph (2) and renumbering the remaining paragraphs accordingly.

Sectional Analysis

Removal of paragraph (2) of Section 6402(e) would allow Treasury to offset Federal tax refunds to collect delinquent state tax obligations regardless of where the debtor resides. Collections will be returned to States.

**DEBT COLLECTION – AUTHORITY TO CONTACT DELINQUENT DEBTORS VIA
THEIR CELL PHONES**

Legislative Proposal

SEC. XX – DEBT COLLECTION IMPROVEMENTS

(a) IN GENERAL. Section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b)) is amended:

(1) in paragraph (1)(A)(iii), by inserting “, unless such call is made to collect a debt owed to or guaranteed by the United States” after “charged for the call”;

(2) in paragraph (1)(B), by inserting “, is made pursuant to the collection of a debt owed to or guaranteed by the United States,” after “purposes”;

(3) in paragraph (2):

(A) in subparagraph (F)(ii), by striking the “and” at the end;

(B) in subparagraph (G)(ii), by striking the period at the end and inserting in lieu thereof, “; and”; and

(C) by adding a new subparagraph (H), as follows: “(H) may restrict or limit the number and duration of calls made to a cell phone to collect a debt owed to or guaranteed by the United States.”.

(b) DEADLINE FOR REGULATIONS. The Federal Communications Commission, in consultation with the Consumer Financial Protection Bureau, shall prescribe regulations to implement the amendments made by this section not later than nine months after the date of enactment of this Act.

(c) EFFECTIVE DATE. The amendments to section 227(b) of the Communications Act of 1934 made by this section shall take effect on the date of enactment of this Act.

Sectional Analysis

This section would amend the Communications Act of 1934 to allow for the use of automatic dialing systems and prerecorded voice messages by private collection contractors in the collection of debt owed to or guaranteed by the United States when calling wireless telephone numbers. Under current law, the use of these systems and methods by private collection contractors is prohibited when making calls to emergency telephone lines, hospital guest rooms, and wireless telephone services where the called party is charged for the call. These prohibitions do not apply to Federal agencies and their employees. The current exceptions for emergency lines and hospital rooms would not be changed. Subsection (a) also amends the Communications Act of 1934 to provide authority to the Federal Communications Commission (FCC) to limit the number and duration of calls made by private collection contractors in the collection of debt owed to or guaranteed by the United States.

Subsection (b) would require the FCC, in consultation with the Consumer Financial Protection Bureau, to issue regulations within nine months to implement this section.

Subsection (c) would make the amendments in this section effective on the date of enactment.

ABANDONED MINE LANDS HARDROCK RECLAMATION FUND

Legislative Proposal

SECTION 1. HARDROCK ABANDONED MINE RECLAMATION FUND.

(a) Establishment; administration.

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the “Hardrock Abandoned Mine Reclamation Fund” (hereinafter referred to as the “fund”) which shall be administered by the Secretary of the Interior.

(b) Sources of deposits to fund.

The fund shall consist of amounts deposited in the fund, from time to time derived from—

(1) the reclamation fees levied under section 2;

(2) donations by any persons, corporations, associations, and foundations for the purposes of this Act; and

(3) recovered moneys as provided for in this Act.

(c) State and Tribal funds.

Pursuant to an approved State or Tribal hardrock abandoned mine reclamation program required under section 6, States or Tribes receiving grants under this Act shall establish and administer abandoned hardrock mine reclamation funds (State or Tribal funds).

(d) Use of moneys.

Moneys in the fund shall be allocated pursuant to section 4 and may be used for the following purposes:

(1) reclamation and restoration of land and water resources adversely affected by past hardrock mining, including but not limited to—

(A) reclamation and restoration of abandoned hardrock mine exploration, extraction, processing, and waste disposal areas;

(B) sealing and filling abandoned underground entries and voids;

(C) planting of land adversely affected by past hardrock mining to prevent erosion and sedimentation;

(D) prevention, abatement, treatment, and control of water pollution created by hardrock mine drainage, including restoration of streambeds and construction and operation of water treatment plants; and

(E) prevention, abatement, and control of hardrock mine subsidence;

(2) enforcement and collection of the reclamation fee provided for in section 2 of this Act;

(3) restoration, reclamation, abatement, control, or prevention of the adverse effects of hardrock mining that constitute an emergency as provided for under this Act.

(4) grants to the States and Tribes to accomplish the purposes of this Act;

(5) administrative expenses of each State or Tribe to accomplish the purposes of this Act; and

(6) all other necessary expenses to accomplish the purposes of this Act.

(e) Availability of moneys; no fiscal year limitation.

Moneys from the fund shall be available to carry out the purposes of this title without fiscal year limitation and without further appropriation.

(f) General limitation on obligation authority.

(1) Beginning October 1, 2012, the Secretary shall, during each fiscal year, allocate not less than 95 percent of the amount deposited into the fund under subsection (b) from the previous fiscal year to Federal agencies, States, and Tribes with lands eligible for hardrock reclamation as described in this Act.

(2) For moneys deposited into the fund pursuant to section 11, the Secretary shall distribute all amounts to the State, Tribe, or Federal agency responsible for the recovery of those moneys.

SEC. 2. RECLAMATION FEE.

(a) Payment; rate.

(1) All operators of hardrock mining operations shall pay to the Secretary of the Interior, for deposit into the fund, a reclamation fee based on the tons of material displaced by the operation.

(2) The rate of payment for the reclamation fee shall be 7.8 cents per ton of material displaced for fiscal years 2012 through 2015.

(3) Beginning in 2016 and in each subsequent fiscal year, the Secretary may, after opportunity for public comment, promulgate regulations to adjust the fee rate, provided, however, that the adjusted fee shall be based on a rate per ton of material displaced by the hardrock mining operation and shall take effect at the beginning of the next fiscal year.

(b) Due date.

The reclamation fee shall be paid no later than 30 days after the end of each calendar quarter beginning on January 1, 2012. The Secretary shall establish a late fee schedule and impose such fees to encourage timely payment.

(c) Submission of statement.

In addition to the reclamation fee, all operators of hardrock mining operations shall submit a sworn and notarized statement of the amount of material displaced during the calendar quarter, the type and volume of mineral removed, and the method of mineral removal.

(d) Audits.

(1) The Secretary, or any duly designated officer, employee, or representative of the Secretary, shall conduct such audits of all hardrock mining operations including, without limitation, all hardrock exploration, extraction, processing, and waste disposal areas as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees assessed and compliance with the provisions of this Act.

(2) (A) For purposes of performing such audits, the Secretary or his designee shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, electronic data, and other relevant documents and records of any person subject to the provisions of this Act, which must be maintained by all operators of hardrock mining operations subject to this Act for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(B) If an operator of a hardrock mining operation does not maintain or make available books and records as required in this paragraph, the Secretary shall estimate the fee due under this section based upon the nature and acreage of the hardrock mining operation, plus an additional 20 percent.

(e) Penalties.

(1) Any person, corporate officer, agent or director, on behalf of a hardrock mine operator, who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification required in this section shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(2) Nothing in this section shall be construed as preempting any penalties, which could be punished by a fine, imprisonment, or both, under any other applicable Federal law.

(f) Failure to report or pay fees.

The President may withhold the issuance of new mining permits or other federal mining-related approvals to any person who has failed to report or pay the fees required by this section, and require an operator of a hardrock mining operation to shutdown or suspend mining operations upon notice from the Secretary that the operator has not reported or paid the fees required by this section."

(g) Civil action to recover fee.

Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, along with statutory interest, from hardrock mine operators subject to the provisions of this Act in any court of competent jurisdiction in any action at law to compel payment of debts.

(h) Cooperation of other agencies.

All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section.

SEC. 3. ADVISORY COUNCIL.

(a) Establishment; function.

The Secretary shall establish the Hardrock Abandoned Mine Lands Advisory Council to—

(1) advise the Secretary in the development and periodic review of criteria to rank the most dangerous and environmentally damaging hardrock abandoned mine sites; and

(2) recommend to the Secretary the sites to be funded based on the submissions from Federal agencies, States, and Tribes under section 7 of this Act.

(b) Members.

The Advisory Council shall consist of nine voting members, to be appointed by the Secretary, as follows—

(1) Three persons who have experience in the administration of a hardrock abandoned mine land reclamation program within a State or Tribe;

(2) Three persons who have experience in the administration of a hardrock abandoned mine land reclamation program within a Federal agency, except that the Advisory Council shall always contain one representative of the Bureau of Land Management and one representative of the Forest Service;

(3) A person who is recognized as an environmental representative active in the reclamation of hardrock abandoned mine sites;

(4) A person who is an employee or officer of a hardrock mining operation subject to the provisions of this Act; and

(5) A person representing the academic community with knowledge of reclamation of hardrock abandoned mine sites.

(c) Terms of service.

(1) Members of the Advisory Council shall be appointed for terms of 3 years, except that, of the members first appointed, three members shall be appointed for a term of 1 year and three members shall be appointed for a term of 2 years.

(2) A member may be reappointed to serve on the Advisory Council.

(3) A vacancy on the Advisory Council shall be filled in the same manner as the original appointment.

(d) Chairperson and procedures.

The Advisory Council shall elect a chairperson and establish such rules and procedures as it deems necessary or desirable.

(e) Employee Status.—A member of the Advisory Council shall not receive pay by reason of his service on the Council but may be reimbursed for travel expenses incurred in carrying out official duties in accordance with section 5703 of title 5, United States Code. A member shall not be considered an employee of the Federal Government by reason of any such service, except for the purposes of the following provisions of law:

(1) Chapter 81 of title 5, relating to compensation for work-related injuries;

(2) Chapter 171 of title 28 and any other Federal statute relating to tort liability; and

(3) If the member is a special Government employee (as opposed to a representative of outside interests), provisions relating to employee conduct, ethics, and conflict of interest in 18 U.S.C. chapter 11, 5 U.S.C. chapter 73, and the Ethics in Government Act of 1978 (5 U.S.C. Appendix).

(f) Administrative support.

The Secretary is authorized to provide to the Advisory Council such necessary administrative support as he determines to be appropriate and shall designate an appropriate officer to serve as the Secretary's liaison to the council.

(g) Applicable law.

The Advisory Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.) and, if terminated pursuant to subsection (f), may, at the discretion of the Secretary, be reconstituted with similar membership pursuant to the Federal Advisory Committee Act.

SEC. 4. ALLOCATION OF FUNDS.

(a) Allocation to Federal agencies, States, and Tribes.

(1) The Secretary shall allocate 90 percent of the amounts deposited into the fund during the previous fiscal year for distribution through grants to Federal agencies, States, and Tribes with lands and waters eligible for reclamation under this Act.

(2) In allocating the funds described in paragraph (1) above, the Secretary shall consider recommendations made by the Abandoned Hardrock Mine Lands Advisory Council.

(3) Federal agencies receiving funds under this section are required to:

(A) notify the Secretary, within 60 days of enactment of this Act for all existing mining permits, and within 60 days of approval for all subsequently approved mining permits or other Federal mining-related approvals granted to an operator of a hardrock mining;

(B) agree to withhold the issuance of all new mining permits or other Federal mining-related approvals to any person who has failed to report or pay the fees required by section 2; and

(C) require an operator of a hardrock mining operation to shutdown or suspend mining operations upon notice from the Secretary that the operator has not reported or paid the fees required by section 2.

(4) Any State or Tribe receiving funds under this section is required to have in place an abandoned mine reclamation program approved pursuant to the provisions of section 6.

(5) Funds allocated to a State, Tribe, or Federal agency under this section shall be returned and deposited into the fund for reallocation under this section during the next fiscal year if not expended within 5 years after the date of the grant award.

(b) Use of funds.

(1) The funds allocated through reclamation grants by the Secretary under this section shall only be used for annual reclamation project planning including scoping, construction, and program administration consistent with this Act.

(2) Where allocations provided from the fund are not sufficient to achieve reclamation or abate the hazard of a particular abandoned mine site, a Federal agency, State, or Tribe, or a combination thereof, may use funding from any other source not otherwise precluded by law in addition to the funds allocated pursuant to this section to address the reclamation of the abandoned mine.

(c) Administrative Grants.

(1) Up to 5 percent of the amounts deposited into the fund during the previous fiscal year may be allocated at the discretion of the Secretary through administrative grants to provide administrative support of not more than \$1.5 million annually to each State and Indian tribe with eligible land and water that is operating under an approved abandoned mine reclamation program.

(2) Administrative grants provided under this section are intended to help ensure the maintenance of approved reclamation programs, including through –

(A) the maintenance of the inventory established pursuant to section 8; and

(B) project planning and program administration, including the preparation of project applications pursuant to section 7.

(3) In making grants available under this subsection, the Secretary shall consider the extent of eligible lands and waters pursuant to section 5; the total amount of historical reclamation expenditures; and the outcome of any previous application of the ranking criteria developed pursuant to Section 3(a),.

(d) Emergency Abandoned Mine Land Issues.

Amounts available in the fund that are not allocated pursuant to subsection (a) or subsection (c) are authorized to be allocated to the Secretary for the purpose of carrying out the provisions of section 10 relating to emergencies.

SEC. 5. ELIGIBLE LANDS AND WATER.

(a) Eligible lands.

Except as provided in subsection (b), lands and waters eligible for reclamation grants under this Act are those that—

(1) have been mined for hardrock minerals or affected by such mining, exploration, processing;

(2) have been abandoned or left in inadequate reclamation status prior to the date of enactment of this Act; and

(3) pose a risk of physical hazards to persons or are a source of environmental degradation.

(b) Exception.

Sites and areas designated or eligible for remedial action under any other Act shall not be eligible for expenditures from the fund unless specifically authorized by the Secretary.

SEC. 6. STATE AND TRIBAL ABANDONED HARDROCK RECLAMATION PROGRAMS.

(a) Submission of State or Tribal Abandoned Hardrock Reclamation Plan.

If a State has within its borders or a Tribe on its Indian lands any eligible lands and water and it desires to receive funding from the Secretary for a hardrock abandoned mining reclamation program, it must submit to the Secretary a State or Tribal Abandoned Hardrock Reclamation Plan.

(b) Contents of a State or Tribal Hardrock Abandoned Reclamation Plan.

(1) Each State or Tribal Abandoned Hardrock Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the process used for identifying eligible lands and water, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this Act.

(2) The State or Tribal Abandoned Hardrock Reclamation Plan shall include provisions that require the State or Tribe to:

(A) notify the Secretary of all existing and new mining permits or other State or Tribal mining-related approvals granted to an operator of a hardrock mining operation within 60 days;

(B) agree to withhold the issuance of all new mining permits or other State or Tribal mining-related approvals to any person who has failed to report or pay the fees required by section 2;

(C) require an operator of a hardrock mining operation to shutdown or suspend mining operations upon notice from the Secretary that the operator has not reported or paid the fees required by section 2; and

(D) establish an appropriate State or Tribal account to serve as a State or Tribal hardrock abandoned mine reclamation fund to receive grants and funding under this Act.

(c) Approval of a State or Tribal Program; withdrawal.

(1) The Secretary shall approve a hardrock reclamation program when he determines that a State or Tribe has—

(A) developed and submitted a State or Tribal Abandoned Hardrock Reclamation Plan for the reclamation of hardrock abandoned mines;

(B) enacted the necessary State or Tribal legislation to implement the relevant provisions of this Act; and

(C) established an appropriate State or Tribal account to serve as a State or Tribal fund to receive grants from this title.

(2) The Secretary shall withdraw such approval if he determines upon the basis of information provided under this Act that the reclamation program is not in compliance with the regulations, procedures, guidelines, and requirements established by the Secretary under this Act.

SEC. 7. APPLICATION FOR HARDROCK MINING RECLAMATION FUNDS.

(a) Timing of application.

At regular intervals, as determined by the Secretary, but no less than annually, each Federal agency, or State, or Tribe with an approved reclamation program may submit to the Secretary an application for the administrative support of the approved hardrock abandoned mine reclamation program, the implementation of specific reclamation projects, or both.

(b) Contents of application for an administrative grant.

The application for an administrative grant shall include—

(1) a description of the program administrative activities to be accomplished during the grant period;

(2) estimated costs of proposed activities; and

(3) information and assessments demonstrating that the amounts requested are necessary to support specific reclamation objectives that will be submitted to the Secretary for funding consideration.

(c) Contents of application for a reclamation grant.

The application for a reclamation grant shall include—

(1) a general description of each proposed project, including the type of reclamation or planning activity to be performed, the general location, and the name of the landowner;

(2) an explanation as to why the Federal agency or State and Tribe selected each proposed project from among all of the eligible lands and water in its jurisdiction, including the extent of public involvement in the selection process, if any;

(3) a statement of the estimated benefits in such terms as: number of acres to be restored, miles of stream to be improved, acres of surface lands to be protected from subsidence, and population protected from subsidence, air and water pollution, and mine hazards;

(4) an estimated cost of each proposed project, including the actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses;

(5) an assessment of the project based on the criteria developed by the Advisory Council pursuant to section 3; and

(6) any other information requested by the Secretary, except the Secretary cannot require the application to include the submission of complete project plans and specifications.

SEC. 8. INVENTORY.

Notwithstanding any other provision of this Act, the Secretary shall, after opportunity for public comment, promulgate regulations to carry out the development and regular maintenance of a nationwide inventory of lands and waters that fit the criteria under section 5 and would be eligible for reclamation grants under this Act. The regulations shall establish standardized procedures for entering and maintaining data in the inventory.

SEC. 9. LIENS

(a) Filing of statement and appraisal; lien.

(1) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past hardrock mining practices on privately owned land, the Secretary or the State or Tribe, pursuant to an approved reclamation program, shall itemize the funds so expended and may file the statement of funds expended in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before and after the restoration, reclamation, abatement, control, or prevention of adverse

effects of past hardrock mining practices if the funds expended result in a significant increase in property value.

(2) The statement and appraisal filed under paragraph (1) shall constitute a lien upon the land which shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past hardrock mining practices.

(3) No lien shall be filed under this subsection against the property of any person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed hereunder.

(b) Petition.

(1) Within sixty days of the filing of a lien under subsection (a), the landowner may proceed as provided by local law to dispute the appraised increase in the market value of the land submitted under paragraph (a)(2), and seek a determination regarding the value of the lien.

(2) The amount reported by any proceedings pursuant to paragraph (1) to be the increase in value of the premises resulting from the restoration, reclamation, abatement, control, or prevention of the adverse effects of past hardrock mining practices shall constitute the amount of the lien and shall be recorded with the county office in which the land lies and which has the responsibility under local law for the recording of judgments against land.

(3) A lien filed pursuant to paragraph (2) shall supersede the initial lien filed pursuant to subsection (a).

(4) Any party aggrieved by the decision may appeal as provided by local law.

SEC. 10. EMERGENCY POWERS.

(a) Use of funds by the Secretary.

The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of hardrock mining on eligible federal lands and waters or on eligible lands and waters within states or Indian lands that do not have an approved abandoned hardrock reclamation program if the Secretary finds that—

(1) an emergency exists that constitutes a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of hardrock mining.

(b) Use of funds by States and Tribes.

States and Tribes with an approved abandoned hardrock reclamation program are eligible to receive and use funds allocated to the Secretary under section 4(d) for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of hardrock mining on eligible lands and waters, if the Secretary finds that—

(1) an emergency exists that constitutes a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of hardrock mining; and

(3) the expenses related to the administration and related activities associated with the emergency restoration, reclamation, abatement, control or prevention, including site investigation, development, design, and inspection, are funded by moneys other than those provided to the State or Tribe under this subsection.

(c) Right of entry to protect health and safety.

(1) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where an emergency exists and any other land that provides access to the land where an emergency exists in order to restore, reclaim, abate, control, or prevent the adverse effects of hardrock mining and to do all things necessary or expedient to protect the public health, safety, or general welfare.

(2) Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property or of trespass thereon. Funds expended for emergency work under this section and the benefits accruing to the land shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the land for any alleged damages by virtue of such entry.

(3) This provision is not intended to create new rights of action or eliminate existing immunities.

SEC. 11. RECOVERY.

(a) Right of recovery.

To the extent that a Federal agency or a State or Tribe uses money from the fund to restore, reclaim, abate, control, or prevent the adverse impacts of hardrock mining practices on eligible lands and waters as provided for in this Act, the Federal agency, State, or Tribe shall have a right of recovery against the persons or entities responsible for leaving those lands or waters in an inadequate reclamation status for which the expenditures from the fund were required.

(b) Distribution of recovered moneys.

Notwithstanding paragraph (b) of Section 1, any moneys recovered as a result of this section will be distributed during the next fiscal year in reclamation grants to the Federal agency, State, or Tribe that recovered the funds, and used for the purpose of restoration, reclamation, abatement, control, or prevention of the adverse impacts of hardrock mining.

SEC. 12. MISCELLANEOUS POWERS.

(a) Engage in work, promulgate rules and regulations, and carry out various activities to implement and administer this Act.

The Secretary or a State or Tribe operating under an approved hardrock abandoned mining reclamation program shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this Act.

(b) Engage in cooperative projects.

The Secretary or a State or Tribe operating under an approved hardrock abandoned mining reclamation program shall have the power and authority to engage in cooperative projects under this Act with any Federal agency, any State and their governmental agencies, and any Tribe and related tribal authorities.

(c) Request for action to restrain interference with regard to this Act.

The Secretary or a State or Tribe operating under an approved hardrock abandoned mining reclamation program may request the Attorney General, who is authorized to initiate, in addition to any other remedies provided for in this Act, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this Act.

(d) Construct and operate plants for control and treatment of water pollution resulting from mine drainage.

(1) The Secretary or a State or Tribe operating under an approved abandoned hardrock mining reclamation program shall have the power and authority to construct and operate a plant or plants, including major interceptors and other facilities, for the control and treatment of water pollution resulting from mine drainage, the extent of which may be dependent on the ultimate use of the water.

(2) The provisions of this subsection are not intended to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*)

(e) Transfer of funds.

The Secretary may transfer funds to other appropriate departments, boards, commissions, and agencies of the United States for the purpose of carrying out the reclamation activities authorized by this Act.

(f) Liability.

(1) No Federal agency, State, or Tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a reclamation program approved under this section.

(2) This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the Federal agency, State or Tribe. For purposes of this paragraph, reckless, willful, or wanton misconduct shall constitute gross negligence.

SEC. 13. INTERAGENCY COOPERATION.

All departments, boards, commissions, and agencies of the United States shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer provisions of this Act.

SEC. 14. DEFINITIONS.

For the purposes of this Act—

(1) “Advisory Council” means the Abandoned Hardrock Mine Lands Advisory Council established pursuant to section 3;

(2) “Federal agency” means any Federal agency or Federally-owned and chartered corporation with responsibility for managing Federal lands, such as the Bureau of Land Management, Forest Service, and the National Park Service;

(3) “Federal lands” means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

(4) “fund” means the Abandoned Hardrock Mine Reclamation Fund established pursuant to section 1;

(5) “hardrock” means any mineral mined under the 1872 Mining Law, 30 U.S.C. §§ 22-54, and with respect to State, Indian, and private lands, any minerals on those lands that would be considered hardrock minerals if such minerals had been mined under the 1872 Mining Law; provided, however, that if subsequent to the date of enactment of this Act, any minerals mined under the 1872 Mining Law are transferred from the requirements of the 1872 Mining Law to different statutory requirements, those minerals so transferred will continue to be subject to the provisions of this Act;

(6) “hardrock mining operations” means any activities or operations conducted to mine minerals under the 1872 Mining Law, 30 U.S.C. §§ 22-54, and, with respect to State, Indian, and private

lands, any activities or operations conducted on such lands to mine minerals that would be considered hardrock minerals if such minerals had been mined under the 1872 Mining Law; provided, however, that if subsequent to the date of enactment of this Act, any minerals mined under the 1872 Mining Law are transferred from the requirements of the 1872 Mining Law to different statutory requirements, those activities or operations conducted on lands to mine those minerals so transferred will continue to be subject to the provisions of this Act;

(7) “Indian lands” means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe;

(8) “Indian tribe” means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(9) “material displaced” means crude ore plus waste dislodged from its geologic location at the time hardrock operations begins from surface, underground, and in-situ mines;

(10) “operator” means any person, partnership, or corporation engaged in hardrock mining who removes or intends to displace more than one thousand tons of material from its original geographic location;

(11) “person” means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(12) “processing” means processes downstream of beneficiation employed to prepare hardrock mineral ore into the final marketable product, including but not limited to smelting and electrolytic refining;

(13) “ton” means 2,000 pounds avoirdupois (.90718 metric ton);

(14) “Secretary” means the Secretary of the Interior, except where otherwise described;

(15) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

SEC. 15. OTHER FEDERAL LAWS AND AGENCIES.

(a) Construction of this Act as superseding, amending modifying, or repealing certain laws.

Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21a), the National Environmental Policy Act of 1969 (42 U.S.C. § 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to –

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. § 721-740).

- (2) The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801 et seq.).
- (3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. § 1251 et seq.), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.
- (4) The Clean Air Act, as amended (42 U.S.C. § 7401 et seq.).
- (5) The Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.).
- (6) The Refuse Act of 1899 (33 U.S.C. § 407).
- (7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. §§ 661-666c).
- (8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. § 181 et seq.).
- (9) The 1872 Mining Law (30 U.S.C. § 22-54).
- (10) The Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. § 1201 et seq.).
- (11) The Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601-9675).
- (12) The Federal Land Policy and Management Act of 1976, (43 U.S.C. § 1701 et seq.)
- (13) All Federal criminal statutes under title 18 of the United States Code.

(b) Effect on authority of Secretary or heads of other Federal agencies.

Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate hardrock abandoned mining operations on land under their jurisdiction.

(c) Major Federal action.

Approval of the State and Tribal abandoned mine land reclamation programs by the Secretary shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332).

Sectional Analysis

Section 1 HARDROCK ABANDONED MINE RECLAMATION FUND

This section creates the Hardrock Abandoned Mine Reclamation Fund on the books of the Treasury, names the funding sources that are deposited into the fund, lists the general uses of the fund, and provides that the moneys in the fund are generally available without further appropriation.

Sec. 2 RECLAMATION FEE

This section sets the initial rate of the fee (7.8 cents per ton of material displaced); a due date, recordkeeping and submission requirements, and authorizes penalties and enforcement actions for fee collection. This section authorizes the Secretary to promulgate regulations adjusting the fee rate after an initial period of no less than three years.

Sec. 3 ADVISORY COUNCIL

This section creates a nine-member council, comprised of individuals with abandoned mine land reclamation experience, governed the Federal Advisory Committee Act (FACA). Under this section, the council shall advise the Secretary in the development and periodic review of criteria for ranking hardrock AML sites, and recommend to the Secretary the sites to be funded based upon review of submissions for funding.

Sec. 4 ALLOCATION OF THE FUND

This section describes the mandatory distributions to Federal agencies and to States and Tribes for hardrock AML reclamation activities within their jurisdictions. Under this section, 90 percent of the fund shall be allocated to Federal agencies, States and Tribes with lands and water eligible for reclamation; up to 5 percent of the fund may be made available by the Secretary to provide administrative support to States and Indian Tribes with approved AML reclamation programs. Unallocated amounts available in the Fund are authorized to be allocated to the Secretary.

Sec. 5 ELIGIBLE LANDS AND WATER

This section defines lands and waters eligible for reclamation under this Act, limiting eligibility to lands mined for hardrock minerals and abandoned prior to the enactment of this Act that are not covered by any other program unless specifically authorized by the Secretary.

Sec. 6 STATE AND TRIBAL RECLAMATION PROGRAMS

This section mandates the submission of state and tribal reclamation plans; establishes what the reclamation plans must include; and authorizes the Secretary to grant and withdraw approval of the plans.

Sec. 7 APPLICATION FOR HARDROCK MINING RECLAMATION FUNDS

This section establishes the requirements of Federal, State and Tribal grant applications for funding of AML programs and projects.

Sec. 8 INVENTORY

This section requires the Secretary to promulgate regulations related to the development and maintenance of a nationwide inventory of eligible lands and waters.

Sec. 9 LIENS

This section authorizes the filing of liens upon private lands if reclamation performed under the Act has led to a significant increase in the value of property. Any moneys recovered as a result will be deposited in the Hardrock AML Fund pursuant to section 1.

Sec. 10 EMERGENCY POWERS

This section authorizes the Secretary to respond to emergency reclamation needs. This section provides the Secretary with the right to enter any land for emergency response actions.

Sec. 11 RECOVERY

This section provides a right of recovery against responsible parties to Federal, State, local, or Tribal agencies that use the fund for reclamation projects. The section authorizes the return of recovered funds to the agency that recovered them for use in its AML reclamation program.

Sec. 12 MISCELLANEOUS POWERS

This section provides miscellaneous authorities to the Secretary and to States and Tribes to accomplish the purposes of the Act, including the authority to issue regulations and enter into cooperative agreements.

Sec. 13 INTERAGENCY COOPERATION

This section requires federal agency cooperation with the Secretary in implementation of the Act.

Sec. 14 DEFINITIONS

This section sets forth the definitions used in the Act.

Sec. 15 OTHER FEDERAL LAWS AND AGENCIES

This section states that the Act is not intended to affect or supersede other environmental laws. The section contains a list of environmental laws are not superseded, amended, modified, or repealed by the proposed legislation.

UNEMPLOYMENT COMPENSATION PROGRAM SOLVENCY IMPROVEMENT

Legislative Proposal

PURPOSE—To provide assistance to certain employers and States in 2011 and 2012, to improve the long-term solvency of the Unemployment Compensation program, and for other purposes.

SEC. 1. —SHORT TITLE.

This Act may be cited as the “Unemployment Compensation Program Solvency Improvement Act of 2011”.

SEC. 2. —EXTENSION OF ASSISTANCE FOR STATES WITH ADVANCES.

(a) IN GENERAL.—Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking “2010” and inserting “2012”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted on December 31, 2010.

SEC. 3. —REDUCTION IN THE RATE OF TAX.

(a) IN GENERAL.—Section 3301 of the Internal Revenue Code of 1986 (26 U.S.C. 3301) is amended—

(1) in paragraph (1), by striking “2010 and the first 6 months of calendar year 2011” and inserting “2013”; and

(2) in paragraph (2), by striking “6.0 percent in the case of the remainder of calendar year 2011” and inserting “5.78 percent in the case of calendar year 2014”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted on June 30, 2011..

SEC. 4. —MODIFICATIONS TO CREDIT REDUCTION.

(a) LIMIT ON TOTAL CREDITS.—(1) IN GENERAL.—Section 3302(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3302(c)) is amended—

(A) in paragraph (1), by striking “90 percent of the tax against which such credits are allowable” and inserting “5.4 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c))”;

(B) in paragraph (2)—

(i) by striking subparagraphs (B) and (C) and all that follows;

(ii) by striking the subparagraph (A) designation that precedes clause (i) and inserting such designation immediately after “(2)”;

(iii) in clause (i), by striking “5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State” and inserting “0.3 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c))”;

(iv) in clause (ii)—

(I) by striking “5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;” and inserting “0.3 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)), for each succeeding taxable year;”; and

(II) by striking the semicolon and inserting a period; and

(v) by inserting after subparagraph (A), as redesignated, the following subparagraph:

“(B) The provisions of subparagraph (A) shall be applied with respect to the taxable year beginning January 1, 2011, or any succeeding taxable year by deeming January 1, 2013 to be the first January 1 occurring after January 1, 2010. For purposes of subparagraph (A), consecutive taxable years in the period commencing January 1, 2013, shall be determined as if the taxable year which begins on January 1, 2013, were the taxable year immediately succeeding the taxable year which began on January 1, 2010. No taxpayer shall be subject to credit reductions under this paragraph for taxable years beginning January 1, 2011 and January 1, 2012.”.

([X]) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if enacted on December 31, 2010.

(b) DEFINITIONS AND SPECIAL RULES.—(1) IN GENERAL--Section 3302(d) of the Internal Revenue Code of 1986 (26 U.S.C. 3302(c)) is amended—

(A) by striking paragraphs (1), (4), (5), (6), and (7); and

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(c) EFFECTIVE DATE.—The amendments made by this subsection shall take effect upon enactment.

SEC. 5. —INCREASE IN THE TAXABLE WAGE BASE.

(a) DEFINITION OF WAGES.—(1) IN GENERAL.—Section 3306(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(b)) is amended—

(A) by redesignating paragraph (1) as paragraph (1)(A);

(B) by inserting after the subparagraph (A) designation, as redesignated, “for calendar years through 2013,”; and

(C) by inserting after subparagraph (A), as redesignated, the following new subparagraphs:

“(B) for calendar year 2014, subparagraph (A) shall be applied by substituting ‘\$15,000’ for ‘\$7,000’ in each place it appears; and

“(C) for calendar years beginning on or after January 1, 2015, subparagraph (A) shall be applied by substituting ‘the amount determined in accordance with subsection (v)’ for ‘\$7,000’ in each place it appears.

(2) INDEXING OF WAGES FOR CALENDAR YEAR 2015 AND THEREAFTER.—Section 3306 of the Internal Revenue Code of 1986 (26 U.S.C. 3306) is further amended by adding at the end the following new subsection:

“(v) Determination of wages for calendar year 2015 and thereafter.—

“(1) For the purposes of subsection (b)(1)(C), the amount determined under this subsection equals the product of amount of average wage growth, as determined in accordance with paragraph (2), multiplied by the amount of wages for the preceding calendar year, with such product rounded to the next higher multiple of one hundred dollars.

“(2)(A) For purposes of paragraph (1), the amount of annual wage growth shall be determined by dividing the average annual wage in the United States for the 12-month period ending on the prior June 30 by the average annual wage in the United States for the 12-month period ending on the second prior June 30, and rounding such ratio to the fifth decimal place.

“(B) For purposes of subparagraph (A), using data from the Quarterly Census of Employment and Wages (or a successor program), the average annual wage for a 12-month period shall be determined by dividing the total covered wages subject to contributions under all State unemployment compensation laws for such period by average covered employment

subject to contributions under all State unemployment compensation laws for such period, and rounding the result to the nearest whole dollar”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect upon enactment.

Sectional Analysis

1. No Interest Accrual or Payments on Advances (Loans) in 2011 and 2012.

- States with outstanding advances to pay unemployment compensation are required to begin making interest payments after a specified period of time.
- The American Recovery and Reinvestment Act of 2009 provided states two years of relief from interest accrual and payments. This provision expired on December 31, 2010.
- To extend this provision through December 31, 2012, section 2 of the bill amends section 1202(b)(10)(A) of the Social Security Act to strike “2010” and insert “2012”. This provision would take effect as if enacted on December 31, 2010.

2. No Federal Unemployment Tax Act (FUTA) credit reductions for taxable years 2011 and 2012.

- After a specified period of time, employers in states with outstanding advances to pay unemployment compensation are required to begin paying higher FUTA taxes (their credits against the FUTA tax are reduced) to pay back these advances.
- To give employers relief from these FUTA tax increases for taxable years 2011 and 2012, section 4(a)(1)(B)(v) of the bill provides that for the purpose of determining whether the FUTA credit reductions in section 3302(c)(2), FUTA, apply, the first January 1st following January 1, 2010, shall be deemed to be January 1, 2013. This provision would take effect as if enacted on December 31, 2010.

3. Restore the 0.2 Percent FUTA Surtax, Increase the Federal Taxable Wage Base to \$15,000 in 2014, Index the Taxable Wage Base to Wage Growth, and Lower the FUTA Tax Rate.

- This proposal will help states improve solvency, more equitably allocate tax liability among employers, and reverse decades of erosion in the proportion of wages subject to FUTA taxation while holding employers’ Federal unemployment taxes roughly constant.
- Section 3 of the bill amends section 3301, FUTA to: 1) restore the 6.2% FUTA rate from June 30, 2011 (when the rate had decreased to 6.0 percent) through 2013); and 2) reduce the FUTA rate to 5.78% in calendar year 2014 when the wage base increase takes effect and thereafter.

- To maintain the current maximum 5.4% FUTA employer tax credit when the new FUTA rate takes effect in 2014, section 4(a)(1)(A) of the bill amends section 3302(c)(1), FUTA to delete the language concerning a rate equal to 90 percent of the FUTA tax rate and substituting 5.4% of the total wages.”
- To eliminate unnecessary complicated additional employer tax credit reductions, in certain states with outstanding loan balances over an extended period, section 4(a)(1)(B)(i) of the bill strikes subparagraphs (B) and (C) of section 3302(c)(2), FUTA. These credit reductions have rarely been used and have not been used at all since the 1980s.
- To maintain the current schedule of FUTA employer tax credit reductions in certain states with outstanding loan balances, section 4(a)(1)(B)(iii) and (iv) of the bill amends section 3302(c)(2)(A), FUTA, to strike the language concerning 5 percent of the tax imposed and replace it with 0.3 percent of the total wages..”
- Definitions in section 3302(d), FUTA, would no longer be needed due to the amendments in section 4(a) of the bill. Section 4(b) of the bill strikes paragraphs (1), (4), (5), (6), and (7).
- Section 5(a)(1) of the bill amends section 3306(b)(1), FUTA, to maintain the current \$7,000 FUTA taxable wage base for calendar years through 2013, establish a \$15,000 taxable wage base for 2014, and provide for indexing the wage base beginning in 2015. Section 5(a)(2) of the bill amends section 3306 of FUTA to establish a new subsection (v) that describes the method of indexing. Under the new section 3306 (v)(1) of FUTA, the indexed amount is equal to the product of the amount of average wage growth multiplied by the amount of wages for the preceding year, rounded to the next higher multiple of one hundred dollars. Subsection (v)(2)(A) specifies that average annual wage growth is determined by dividing the average annual wage in the U.S. for the last 12-month period ending in the prior June 30 from the 12-month period ending on the June 30 two years prior. Subsection (v)(2)(B) provides that using data from the Quarterly Census of Employment and Wages, the average annual wage is determined by dividing covered wages subject to contributions under all State unemployment compensation laws for the 12-month period by the average covered employment subject to contributions under all State UC laws.

FINANCIAL CRISIS RESPONSIBILITY FEE

Legislative Proposal

Sec. 101. Short Title

This Act may be cited as the “Financial Crisis Responsibility Fee Act”.

Sec. 102. Definitions and Special Rules

In this Act -

(a) DEFINITIONS

(1) **APPROPRIATE FEDERAL AGENCY.**—The term ‘appropriate Federal agency’ means—

(A) For a covered firm that is a bank holding company, a savings and loan holding company, any company controlled by a bank holding company or savings and loan institution (other than a depository institution), a state member bank, a branch or agency of a foreign bank, a foreign bank that does not operate an insured branch, an agency or commercial lending company other than a Federal agency or any company that controls a registered broker or dealer but does not also control an insured depository institution, the Board of Governors of the Federal Reserve System;

(B) For a covered firm that is a national banking association, a Federal branch or agency of a foreign bank, or a federal savings association, the Office of the Comptroller of the Currency;

(C) For a covered firm that is a state nonmember insured bank, a foreign bank that has an insured branch, a state savings association, or a company that controls an insured depository institution and is not regulated as a bank holding company or a savings and loan association holding company, the Federal Deposit Insurance Corporation;

(D) For a covered firm that is a covered broker or dealer, the Securities and Exchange Commission.

(2) **BANK HOLDING COMPANY.**—The term “bank holding company” has the same meaning as in section 3(w)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(2)).

(3) **COVERED BROKER OR DEALER** —The term “covered broker or dealer” means a broker or dealer designated by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York as a primary dealer in government debt instruments.

(4) COVERED FIRM.—The term ‘covered firm’ means any corporation or other entity that is organized under the laws of the United States or any state or territory thereof if—

(A) as of January 14, 2010 such corporation or other entity was, or is at any time during a the beginning of the fiscal year for which this section is applicable, an insured depository institution, a bank holding company, a savings and loan holding company, a company that directly or indirectly controls an insured depository institution, a covered broker or dealer, or a company that directly or indirectly controls a covered broker or dealer; and

(B) has \$50,000,000,000 or more in total consolidated balance sheet assets that are associated with activities that are permissible for a bank holding company or a financial holding company under sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842 and 1843) at the beginning of the fiscal year.

(5) FEE. — The term “fee” means the Financial Crisis Responsibility Fee authorized under Section 103 of this Act.

(6) FINANCIAL HOLDING COMPANY.— The term ‘financial holding company’ has the same meaning as in section 2(p) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(2)(q))

(7) FISCAL YEAR. — The term “fiscal year” means the Government’s fiscal year beginning on October 1.

(8) FOREIGN BANKING ORGANIZATION.— The term ‘foreign banking organization’ means—

(A) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that—

- (i) Operates a branch, agency, or commercial lending company subsidiary in the United States;
- (ii) Controls a bank in the United States; or
- (iii) Controls an Edge corporation acquired after March 5, 1987; and

(B) Any company that directly or indirectly controls the foreign bank .

(9) SECRETARY. — The term “Secretary” means the Secretary of the Treasury.

(10) TOP-TIER COVERED FIRM.—The term ‘top-tier covered firm’ means a covered firm that controls one or more other covered firms but is not itself directly or indirectly controlled by another covered firm.

(11) ADDITIONAL DEFINITIONS.—For purposes of this chapter, the terms “insured depository institution” and “savings and loan holding company” shall have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)

(b) SPECIAL RULES.

(1) DETERMINATION OF CONTROL.—For purposes of this Act, a person shall be considered to control another person if the first such person directly or indirectly owns (or otherwise has the power to vote) 25 per cent or more of any class of voting securities of the second such person.

(2) TREATMENT OF CERTAIN AFFILIATED COMPANIES.—For purposes of determining the applicability of this Act and the amount of the Fee payable under section 103, the total consolidated balance sheet assets of any two or more corporations or other entities that are organized under the laws of the United States or any state or territory thereof that each meet any of the criteria described in section 102(a)(4)(A) and that are under common control, directly or indirectly, by the same person but that are not under common control, directly or indirectly, by any top-tier covered firm shall be consolidated together. If, following such consolidation, the amount and other characteristics of the combined balance sheet assets of such firms satisfy the criteria specified in section 102(a)(4)(B), each such firm shall be deemed a covered firm and the resulting amount of fee shall be appropriately apportioned by the Secretary.

Sec. 103. Financial Crisis Responsibility Fee

(a) Amount to be Collected – In order to recover the costs to the Federal Government of assistance provided through the Troubled Asset Relief Program and other Federal programs and activities, the Secretary, during the 10-year period beginning in fiscal year 2012 and continuing through the end of fiscal year 2021, shall assess a risk-based Financial Crisis Responsibility Fee that shall collect a total of \$30,000,000,000, net of any estimated corporate income tax deductions attributable to the Fee, during that period.

(b) Assessment and Schedule – (1) To collect the Fee, the Secretary shall establish, by regulation, an assessment schedule by fiscal year, including assessment base and rates, that—

(A) is designed, in the Secretary’s judgment, to result in the collection of a total of \$30,000,000,000, net of the estimated corporate income tax deduction, by the end of fiscal year 2021, and

(B) shall apply to –

(i) a top-tiered covered firm, with respect to the group consisting of such top-tier covered firm and each other covered firm controlled by such top-tier covered firm, and

(ii) A covered firm, if such covered firm is not controlled by a top-tier covered firm.

(2) To promote the full recovery of the economy and financial sector, the Secretary shall phase-in the assessment rate over the 10-year period, in a manner determined by the Secretary.

(c) Annual Adjustment – For each fiscal year, starting with fiscal year 2013, the Secretary —
(1) shall apply the fee to –

(A) a top-tiered covered firm, with respect to the group consisting of such top-tier covered firm and each other covered firm controlled by such top-tier covered firm, and

(B) A covered firm, if such covered firm is not controlled by a top-tier covered firm.

(2) shall adjust the rates under subsection (b) in a manner that is designed, in the Secretary’s judgment, to result in the collection of a total of \$30,000,000,000, net of the estimated corporate income tax deduction, by the end of fiscal year 2021.

(d) Extension of the Financial Crisis Responsibility Fee – (1) If the estimated cost of the Troubled Asset Relief Program, as projected in the Fiscal Year 2022 Budget of the U.S. Government, exceeds the total fee collections received as of the end of Fiscal Year 2021, the Secretary shall extend the operation of the Fee beyond the end of fiscal year 2021 in order to collect such excess amount.

(2) Assessment Schedule Under Extension – In order to collect, by the end of fiscal year 2026, the excess amount determined under paragraph (d), the Secretary shall establish, by regulation, an assessment schedule, including assessment base and rates, that—

(A) is designed, in the Secretary’s judgment, to result in the collection of such excess amount by the end of fiscal year 2026, and

(B) shall apply to—

(i) a top-tiered covered firm, with respect to the group consisting of such top-tier covered firm and each other covered firm controlled by such top-tier covered firm, and

(ii) A covered firm, if such covered firm is not controlled by a top-tier covered firm.

(3) Annual Adjustment – For each fiscal year, starting with fiscal year 2022, the Secretary —

(A) shall apply the fee to –

(i) a top-tiered covered firm, with respect to the group consisting of such top-tier covered firm and each other covered firm controlled by such top-tier covered firm, and

(ii) A covered firm, if such covered firm is not controlled by a top-tier covered firm.

(B) shall adjust the rates under subsection (b) in a manner that is designed, in the Secretary's judgment, to result in the collection of such excess amount as may be determined under this section by the end of fiscal year 2026.

(e) Deposit of Collections – All amounts collected pursuant to the Fee, during fiscal year 2012 and each fiscal year thereafter (including during the extension period, if applicable),--

(1) shall be deposited and credited as general revenue of the Treasury for the purposes of deficit reduction, and

(2) shall not be available for obligation.

Sec. 104. Other Provisions

(a) ASSISTANCE WITH ASSESSMENT AND COLLECTION.—The appropriate Federal agencies shall respond promptly to any request for information or assistance from the Secretary with regard to the determination or collection of any Fee to be determined or imposed under this Act.

(b) SEVERABILITY: RULE OF CONSTRUCTION.—It is the intent of Congress that the provisions of this Act be severable, and be construed to avoid the constitutional invalidity of any provision of the Act or any application of any provision of the Act to any person or circumstance. If a provision of this Act is held invalid, all valid provisions shall remain in effect. If a provision of this Act is held invalid in one or more of its applications to any person or circumstance, the Act shall remain in effect in all its valid applications. In any challenge to the constitutionality of any provision of this Act, a reviewing court shall construe such provision as necessary to avoid any constitutional invalidity.

Sectional Analysis

This proposed statutory language would introduce a new mandatory assessment on the largest financial companies to recover the expected cost of the Troubled Asset Relief Program and other Federal programs and activities, and to discourage the excessive risk taking that was a significant cause of the financial crisis of 2008.

Section 101: Short Title

Section 101 states that the Act may be cited as the “Financial Crisis Responsibility Fee Act”.

Section 102: Definitions

Section 102 defines terms in the Act. This section stipulates that the Financial Crisis Responsibility Fee (Fee) would be levied on financial companies with total consolidated assets equal to or greater than \$50,000,000,000, including – but not limited to –U.S.-based bank holding companies, certain broker dealers, and insured depository institutions.

Sec. 103. Financial Crisis Responsibility Fee

Section 103(a) directs the Secretary of the Treasury (Treasury) to collect a net total of \$30,000,000,000, during the ten-year period from fiscal year (FY) 2012 through FY 2021, to recover the costs to the Government of the Troubled Asset Relief Program (TARP) and to discourage excessive risk taking of the kind that significantly contributed to the financial crisis of 2008. This section specifies that the \$30,000,000,000 to be collected is net of the estimated effect on tax revenues; if otherwise eligible, fees paid under this Act are deductible under the Internal Revenue Code.

Section 103(b) requires the Treasury to promulgate regulation(s) establishing an assessment schedule that would detail the assessment base upon which the dollar assessment for each financial company would be calculated and the assessment rate that will be applied to the assessment base. This section also requires the Treasury to phase in the Fee over a 10-year period in order to promote the full recovery of the economy.

Section 103(c) directs the Treasury to annually reassess the financial companies with total consolidated assets equal to or greater than \$50,000,000,000 for which the fee will apply and adjust the applicable fee rate accordingly to reach the net \$30,000,000,000 target by the end of FY 2021.

Section 103(d) directs the Treasury to extend the Fee beyond FY 2021, for an additional five years, if the total estimated cost of TARP (as projected in the Fiscal Year 2022 Budget of the U.S. Government) exceeds the total net collections of \$30,000,000,000 from the Fee assessments. This section requires the Treasury to promulgate regulation(s) establishing an assessment schedule to collect, by the end of fiscal year 2026, the amount by which the total estimated cost of TARP exceeds the total estimated net collections from the Fee assessments for the 10-year period.

Section 103(e) directs the Treasury to deposit all Fee collections in the General Fund, to be credited as general revenue of the Treasury for the purposes of deficit reduction, and specifies that the collections shall not be available for obligation.

Section 104 includes miscellaneous and conforming provisions related to the Act, including rulemaking authority and a severability clause.

INCREASE PESTICIDE USER CHARGES

Legislative Proposal

SECTION 1. AMENDMENT TO FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT TO AUTHORIZE COLLECTION OF CERTAIN FEES.

(a) Section 4 of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.136a-1) (the "Act") is amended -

- (1) by striking subsection (i)(5)(A) and inserting in lieu thereof "IN GENERAL.— Subject to other provisions of this paragraph, each registrant of a pesticide shall pay an annual fee by January 15 of each year for each registration.";
- (2) in subsection (i)(5)(C), by striking "\$22,000,000 for each of fiscal years 2008 through 2012" and inserting in lieu thereof "\$47,000,000 in fiscal year 2012, \$49,000,000 in fiscal year 2013, \$50,000,000 in fiscal year 2014, \$52,000,000 in fiscal year 2015, \$53,000,000 in fiscal year 2016, \$55,000,000 in fiscal year 2017, \$57,000,000 in fiscal year 2018, \$59,000,000 in fiscal year 2019, \$61,000,000 in fiscal year 2020, \$63,000,000 in fiscal year 2021, and each year thereafter.";
- (3) by striking subsection (i)(5)(D) in its entirety and relettering the remaining subparagraphs;
- (4) in subsection (i)(5)(E)(i)(I), by striking "for each of fiscal years 2008 through 2012";
- (5) in subsection (i)(5)(E)(i)(II), by striking "for each of fiscal years 2008 through 2012"; and
- (6) in subsection (k)(2)(A), by striking the first two sentences and inserting in lieu thereof the following:

"All moneys derived from fees collected by the Administrator under subsection (i) shall be deposited in the Fund. Of the amounts collected in fiscal year 2012, \$22,000,000 is hereby appropriated, and shall be available until expended. Amounts collected in excess of \$22,000,000 in fiscal year 2012 are authorized to be appropriated, to remain available until expended. Amounts collected in any subsequent fiscal year, are authorized to be appropriated, to remain available until expended."

(b) Section 33 of the Act (7 U.S.C. 136w-8) is amended -

- (1) by striking subsection (b)(6) and inserting the following -

"(6) Fee adjustment.

"(A) The Administrator shall increase the service fees payable for applications under paragraph (3) of section 33(b) submitted during fiscal year 2012 and each fiscal year thereafter by the amount calculated by the Administrator to result in the collection, during each such fiscal year, of an additional \$17,000,000 more than what was collected in 2011.

"(B) The fees required by section 33(b) shall be automatically adjusted annually by the same percentage as the adjustment in rates of pay for the General Schedule pay system, either as provided in section 5303 of title 5,

United States Code, or in accordance with another provision of law which supersedes that section.

"(C) The Administrator shall publish in the Federal Register the revised registration service fee schedule.";

- (2) by striking subsection (c)(4) and renumbering the remaining paragraph;
- (3) by striking subsection (d) (2) and (4) and renumbering the remaining paragraphs;
- (4) by striking subsection (j) and relettering the remaining subsections; and
- (5) by striking subsection (m).

SECTION 2. AMENDMENT TO FEDERAL FOOD, DRUG, AND COSMETIC ACT.

Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)), is amended by striking paragraphs (1) through (3) and inserting in lieu thereof the following -

"(1) Amount. The Administrator shall develop and publish in the Federal Register a schedule of fees within 90 days of the date of enactment of this Act that will, in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Administrator's functions under this section. This schedule shall include separate fee requirements, calculated to cover the Administrator's costs of responding to the particular activity, for-

- (A) the acceptance for filing of a petition submitted under subsection (d); and
- (B) the certification and filing in court of a transcript of the proceedings and the record under subsection (h).

In setting the tolerance fee schedule, the Administrator shall consult with the Secretary of Agriculture to consider impacts to minor uses. The Administrator shall not perform any function under this section for which a fee is required pursuant to this paragraph unless that fee has been paid in full.

"(2) Annual Fee Adjustment. The fees required by this section shall be automatically adjusted annually by the same percentage as the adjustment in rates of pay for the General Schedule pay system, either as provided in section 5303 of title 5, United States Code, or in accordance with another provision of law which supersedes that section. When these automatic adjustments are made, the Administrator shall publish notice of the adjusted fee schedule in the Federal Register as a final rule to become effective 30 days or more after publication.

"(3) Pesticide Tolerance User Fee Account. There is established in the Treasury of the United States a Pesticide Tolerance User Fee Account. Amounts authorized to be collected pursuant to subsection (m)(1) shall be deposited in this account. Amounts in the Pesticide Tolerance User Fee Account are authorized to be appropriated, to remain available until expended."

Sectional Analysis

Section 1 (a) amends Section 4(i)(5)(C) of FIFRA to increase collections of the Maintenance fee from \$22 million to \$47 million in 2012, \$49,000,000 in fiscal year 2013, \$50,000,000 in fiscal

year 2014, \$52,000,000 in fiscal year 2015, \$53,000,000 in fiscal year 2016, \$55,000,000 in fiscal year 2017, \$57,000,000 in fiscal year 2018, \$59,000,000 in fiscal year 2019, \$61,000,000 in fiscal year 2020, \$63,000,000 in fiscal year 2021, and each year thereafter. This section would improve per product fee equity and provide increased flexibility to EPA in establishing fee schedules by removing the firm-based ceilings for fees, except in the case of small businesses. This section also authorizes the Administrator to deposit fees into the Reregistration and Expedited Processing Fund and appropriates \$22 million of those deposits in fiscal year 2012. Amounts collected above that level, and amounts collected in subsequent years, are authorized to be appropriated in subsequent Acts.

Section 1(b) amends section 33(b)(6) of FIFRA to increase Registration Service fee collections in fiscal year 2012 by \$17 million above fiscal year 2011 collections, increasing collections each year thereafter with an automatic annual adjustment. This section also removes the minimum appropriation required in order for EPA to maintain fee collection authority.

Section 2 amends section 408(m) of FFDCFA by directing that tolerance fees be deposited into a new Pesticide Tolerance User Fee Account rather than in the Registration and Expedited Processing Fund and makes those fees available for use subject to appropriations. Section 2 also provides for an automatic annual adjustment of these fees and directs the Administrator to publish notification of the adjusted fees in the Federal Register.

LIFT THE CAP ON PRE-MANUFACTURE NOTICE USER CHARGES

Legislative Proposal

SECTION 1. AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

Section 26(b) of the Toxic Substances Control Act (15 U.S.C. 2625) is amended in paragraph (1) -

- (1) by striking “may” in the first sentence and inserting in lieu thereof “shall”;
- (2) by striking “any fee in excess of \$2,500 or”; and
- (3) by inserting in the third sentence "small business concerns and" after "account".

Sectional Analysis

This bill amends section 26(b) of the Toxic Substances Control Act (15 U.S.C. 2625) to eliminate the statutory cap on the amount of the fee that can be collected by the Environmental Protection Agency (EPA) for data submitted under section 4 or 5 of the Act. The cap will remain in place for small businesses as defined by this section.

Paragraph (1) is further amended to maintain the current requirement that in setting the fee, the Administrator shall take into account small business concerns as well as the applicant's ability to pay.

This bill does not revoke EPA's existing regulations regarding fees (40 C.F.R. part 700, subpart C).

ESTABLISH A HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM

Legislative Proposal

SECTION 1. DECLARATION OF PURPOSE.

- (a) Declaration- The purposes of this Act include:
- (1) establishing a hazardous waste electronic manifest system funded through user fees to track the management of hazardous waste under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.
 - (2) protecting human health and the environment by ensuring hazardous waste tracking information is electronically available for effective management of the handling, transportation, and disposal of hazardous waste.
 - (3) reducing the paperwork burden and providing cost savings to the users of a hazardous waste manifest system.
 - (4) developing with public and private sector input a hazardous waste electronic manifest system which meets the needs of users, so as to encourage the use and financial viability of an electronic manifest system.

SECTION 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

- (a) In General- Subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) is amended by adding at the end the following:

`SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

- `(a) Definitions- In this section:
- `(1) BOARD- The term `Board' means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).
 - `(2) FUND- The term `Fund' means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).
 - `(3) SYSTEM- The term `system' means the hazardous waste electronic manifest system established under subsection (b).
 - `(4) USER- The term `user' means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that--
 - `(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and
 - `(B)(i) elects to use the system to complete and transmit an electronic manifest format; or
 - `(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such

regulations as the Administrator may promulgate to require such a submission.

`(b) Establishment- Not later than 3 years after the date of enactment of this section, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

`(c) User Fees-

`(1) IN GENERAL- The Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

`(2) COLLECTION OF FEES- The Administrator shall--

`(A) collect the fees described in paragraph (1) from the users for the provision by the Administrator of system-related services; and

`(B) deposit the fees in the Fund for use in accordance with this subsection.

‘(3) APPROPRIATION ACTS- The fees the Administrator collects under this section and amounts deposited into the Fund:

‘(A) are available for obligation only to the extent provided in advance in appropriation acts, and

‘(B) remain available for obligation and expenditure without regard to fiscal year limitation.

`(4) FEE STRUCTURE-

`(A) IN GENERAL- The Administrator shall determine the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services.

`(B) ADJUSTMENTS IN FEE AMOUNT-

`(i) IN GENERAL- The Administrator shall increase or decrease amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will--

`(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient to cover current and projected system-related costs (including any necessary system upgrades); and

`(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

`(ii) EXCEPTION FOR INITIAL PERIOD OF OPERATION- The requirement described in clause (i)(II) shall not apply to any fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

`(iii) TIMING OF ADJUSTMENTS- Adjustments to service fees described in clause (i) shall be made--

`(I) initially, at the time at which initial development costs of the system have been recovered by the

Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and

(II) periodically thereafter, upon review of annual accounting or auditing reports, or at the Administrator's discretion in accordance with clause (i).

(d) Hazardous Waste Electronic Manifest System Fund- There is established in the Treasury of the United States a fund, to be known as the 'Hazardous Waste Electronic Manifest System Fund', consisting of such amounts as are deposited into the Fund under subsection (c).

(e) Authorization of Appropriations- There are authorized to be appropriated to the Administrator for development costs associated with the system under this section:

(1) \$2,000,000 for fiscal year 2012.

(2) \$5,000,000 for fiscal year 2013.

(3) \$4,000,000 for fiscal year 2014.

(4) \$4,000,000 for fiscal year 2015.

(f) Hazardous Waste Electronic Manifest System Advisory Board-

(1) ESTABLISHMENT- Not later than 3 years after the date of enactment of this section, the Administrator shall establish a board to be known as the 'Hazardous Waste Electronic Manifest System Advisory Board'.

(2) COMPOSITION- The Board shall be composed of 9 members, of which--

(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and

(B) 8 members shall be individuals appointed by the Administrator--

(i) at least 2 of whom shall have expertise in information technology;

(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subtitle (or an equivalent State program); and

(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

(3) DUTIES- The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

(g) Regulations-

(1) PROMULGATION-

(A) IN GENERAL- Not later than 1 year after the date of enactment of this section, the Administrator shall promulgate regulations to carry out this section.

(B) INCLUSIONS- The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to

the system copies of the paper manifests or an electronic representation of the manifest for data processing purposes.

`(C) REQUIREMENTS- The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, at least the same extent as paper manifests under applicable Federal and State law, for--

`(i) the ability to track and maintain legal accountability of--

`(I) the person who certifies that the information provided in the manifest is accurately described; and

`(II) the person who acknowledges receipt of the manifest;

`(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system;

and

`(iii) access to all publicly available information contained in the manifest.

`(2) EFFECTIVE DATE OF REGULATIONS- Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 3003 relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the regulation.

`(3) ADMINISTRATION- The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program is fully authorized to carry out those regulations in lieu of the Administrator.

`(h) Requirement of Compliance With Respect to Certain States- In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the State in which the facility is located--

`(1) complete the facility portion of the applicable manifest;

`(2) sign and date the facility certification; and

`(3) submit to the system a final copy of the manifest for data processing purposes.'.

(b) Conforming Amendment- The table of contents of the Solid Waste Disposal Act (42 U.S.C. 6901) is amended by inserting at the end of the items relating to subtitle C the following:

`Sec. 3024. Hazardous waste electronic manifest system.'.

Sectional Analysis

Section 1 outlines the purpose of the legislation, to provide the Administrator of the Environmental Protection Agency authority to develop an electronic manifest system for tracking hazardous waste and collect fees to cover the full cost of development, operation, and maintenance of the system.

Section 2(a) inserts the following subsections as Section 3024 of the Solid Waste Disposal Act (42 U.S.C. 6901):

Subsection (a) defines key terms in the proposed amendment.

Subsection (b) directs EPA to establish the e-manifest system within three years of enactment.

Subsection (c) provides EPA authority to collect fees subject to appropriation and establishes procedures for adjusting the amount of fees to be collected.

Subsection (d) creates the “Hazardous Waste Electronic Manifest System Fund” which will receive user fees paid to support the e-manifest system.

Subsection (e) authorizes appropriations from FY 2012 through FY 2015 for development of the e-manifest system.

Subsection (f) establishes an advisory board for EPA to receive input from information technology providers, the user community, and States when establishing fee levels and ensuring adequate operation of the system.

Subsection (g) directs EPA to promulgate regulations to support the system and transition to electronic documents within one year of enactment and clarifies that EPA will implement the program until State programs are fully authorized to implement the Federal regulations.

Subsection (h) requires facilities receiving hazardous waste to submit a manifest.

Section 2(b) includes a conforming amendment for the Solid Waste Disposal Act.

REAUTHORIZE THE SPECIAL ASSESSMENT FROM DOMESTIC NUCLEAR UTILITIES

Legislative Proposal

SEC. XX. -- REAUTHORIZATION OF THE URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND.

- (a) Section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g) is amended in subsection (b)(2) by striking “amounts contained within the Fund” and inserting “assessments collected pursuant to section 1802 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g–1) as amended”.
- (b) Section 1802 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g–1) is amended:
- (1) in subsection (a):
 - (A) by striking “\$518,233,333” and inserting “\$663,000,000”; and
 - (B) by striking “on October 24, 1992” and inserting “with fiscal year 2012”.
 - (2) in subsection (c):
 - (A) by striking “\$150,000,000” and inserting “\$200,000,000”;
 - (B) by inserting “beginning in fiscal year 2013” after “adjusted for inflation”;
 - (3) in subsection (d), by striking “for the period encompassing 15 years after the date of the enactment of this title” and inserting “through fiscal year 2026”; and
 - (4) in subsection (e):
 - (A) in paragraph (1), by striking “15 years after the date of the enactment of this title” and inserting “September 30, 2026”;
 - (B) in paragraph (2), by striking “\$2,250,000,000” and inserting “\$3,000,000,000”; and
 - (C) in paragraph (2) by inserting “beginning in fiscal year 2013” after “adjusted for inflation”.

Sectional Analysis

Section 1 would allow for the reauthorization of a special assessment from domestic utilities for deposit into the Uranium Enrichment Decontamination and Decommissioning Fund. The Fund was established in 1992 to pay, subject to appropriations, the decontamination and decommissioning (D&D) costs of the Department of Energy’s gaseous diffusion plants in Tennessee, Ohio, and Kentucky. The prior authorization of the special assessment from domestic utilities expired in 2007, and there currently is insufficient funding to cover the cost of D&D of the gaseous diffusion plants.

**REPEAL MANDATORY OIL AND GAS RESEARCH AND DEVELOPMENT
PROGRAM**

Legislative Proposal

SECTION 1. SUBTITLE J REPEALED.

Subtitle J of Title IX of the Energy Policy Act of 2005 (42 U.S.C. 16371-78) is repealed.

Sectional Analysis

The Energy Policy Act of 2005 required the Department of Energy to establish a new mandatory oil and gas research and development program (the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research program), funded by \$50 million per year from Federal revenues from oil and gas leases. This legislation would repeal subtitle J of Title IX in its entirety.

INSTITUTE A FEE ON NON-PRODUCING OIL AND GAS LEASES

Legislative Proposal

SECTION 1. PRODUCTION INCENTIVE FEE.

(a) To ensure the diligent development of Federal oil and gas leases the Secretary of the Interior shall, by regulation issued pursuant to this Act, assess and collect an annual production incentive fee of \$4 per acre on all oil and gas leases issued under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.), and the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) pursuant to a sale held after the promulgation of regulations under section 2.

(b) The production incentive fee authorized by this section shall –

(1) be effective upon the promulgation of regulations under this authority;

(2) be adjusted annually based on changes to the Implicit Price Deflator-Gross Domestic Product Index published by the Bureau of Economic Analysis in the U.S. Department of Commerce;

(3) be collected for each acre that is subject to a lease from which the drilling of a well has not commenced before the end of the lease year; and

(4) no longer be assessed after the operator has drilled a well on a lease subject to this Act.

(c) For purposes of this section, drilling a well on a lease, any part of which lies within the boundaries of an approved unit or communitization agreement, shall constitute drilling on every lease within the unit.

SECTION. 2. REGULATIONS.—The Secretary shall promulgate within 365 days of enactment of this Act separate regulations applicable to oil and gas development on federal onshore lands and on the submerged lands of the Outer Continental Shelf to implement this authority and that shall address the following circumstances that may require accommodation for development delays not caused by the lessee:

(1) lease suspensions approved by the Secretary;

(2) litigation in which the Department is a party and under which a court-issued order requires that development activities not take place on a lease;

(3) unusual or extraordinary actions that have been directed by the Department that delay diligent development activities by the leaseholder in order to meet environmental stipulations and considerations; and

(4) other delays in federal agency action that, in the determination of the Secretary, warrant relief from the production incentive fee for a designated period of time or other appropriate remedy to address the delay.

SECTION. 3. DISTRIBUTION OF PROCEEDS.— Proceeds from the production incentive fee authorized under section 1 shall be deposited in the miscellaneous receipts account of the United States Treasury.

SECTION. 4. FAILURE TO COMPLY.

(a) If any person fails to comply with the requirements of any regulation issued under this Act or any order issued to implement such a regulation with respect to a lease, the lease may be canceled by the Secretary if such default continues for the period of thirty days after mailing of the notice by registered letter to the lease owner at his record post office address.

(b) If a lease is cancelled for a violation of this section, no restitution of bonus, rent, or other funds invested in the lease, or other compensation, shall be provided to the lessee.

Sectional Analysis:

SECTION 1.—This section establishes an annual production incentive fee of \$4 per acre, to be assessed and collected by regulation issued by the Secretary of the Interior, on federal oil and gas leases both onshore and on the Outer Continental Shelf. The fee would apply to all new federal oil and gas leases issued pursuant to a sale held after the promulgation of regulations under section 2. The fee will act as a financial incentive to ensure that companies demonstrate due diligence to get their leases into production or relinquish them for development by new parties.

Subsection (b) provides that the new \$4 fee will be effective upon the promulgation of regulations under this Act; indexed annually based on changes to the Implicit Price Deflator-Gross Domestic Product Index, published by the Department of Commerce; collected for each acre that is subject to a lease from which a well has not commenced drilling before the end of the lease year; and no longer assessed on a lease once drilling has occurred on that lease.

Subsection (c) makes clear that drilling a well on a lease, any part of which lies within the boundaries of an approved unit or communitization agreement, shall constitute drilling on every lease within the unit.

SECTION. 2.—Requires the Secretary to promulgate regulations to implement this new fee authority within 365 days of enactment for both the onshore and offshore leasing programs. The regulations shall also include provisions to address certain delineated circumstances that may require accommodation for development delays not caused by the lessee.

SECTION. 3.—This section provides that all proceeds collected from application of the production incentive fee will be deposited into the miscellaneous receipts account of the U.S. Treasury.

SECTION. 4.—Section 4 provides that if any person fails to comply with the requirements of regulations issued under this authority, or any order issued to implement those regulations, with respect to a lease, the Secretary may cancel the lease if the default continues for a period of thirty days after mailing of the notice by registered letter to the lease owner at his record post office address. This section also provides that if a lease is cancelled under this authority, the lessee shall not be entitled to any restitution of bonuses, rents, or other funds invested in the lease, or any other compensation.

MAKE PERMANENT NET RECEIPTS SHARING FOR ENERGY MINERALS

Legislative Proposal

SECTION XX. AMENDMENT OF THE MINERAL LEASING ACT.

Section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)) is amended to read –

“(b) Deduction for administrative costs. In determining the amount of payments to the States under this section, beginning in fiscal year 2013 and for each year thereafter, the amount of such payments shall be reduced by two percent for any administrative or other costs incurred by the United States in carrying out the program authorized by this Act and that amount shall be deposited to miscellaneous receipts of the United States Treasury.”

Section Analysis

This amendment to subsection (b) of section 35 of the Mineral Leasing Act would provide permanent authority, beginning in fiscal year 2013, for reducing state revenue sharing payments so that states share in the cost of administering energy and minerals receipts from which they receive benefits. The change would provide for a two percent reduction from payments to states under this section (or one percent of total revenues collected). That amount would be deposited into miscellaneous receipts of the United States Treasury. An identical deduction from state mineral revenue sharing payments has been enacted annually through an appropriations provision since fiscal year 2008. The Budget assumes such a provision would be continued in fiscal year 2012 appropriations legislation, with this permanent legislation taking effect on October 1, 2012.

REFORM ABANDONED MINE LANDS (AML) PAYMENTS (COAL)

Legislative Proposal

SECTION 1. SHORT TITLE.

This Act may be cited as the “Priority Abandoned Coal Mine Reclamation Act Amendments of 2011”.

SEC. 2. AMENDMENTS TO THE SURFACE MINING CONTROL AND RECLAMATION ACT.

(a) Section 401 of the Surface Mining Control and Reclamation Act of 1977, (SMCRA) (30 U.S.C. 1231) is amended –

- (1) in the section title by inserting “Coal” before “Abandoned” ;
- (2) in subsection (a) by:
 - (A) inserting “and Tribal” after “State” in the heading;
 - (B) inserting “Coal” before “Abandoned” in the first sentence; and
 - (C) striking the last sentence.
- (3) in subsection (c) by:
 - (A) striking in paragraph (1) “:Provided, That” and all that follows;
 - (B) striking paragraphs (2) and (8);
 - (C) inserting “and Tribes” after “States” in paragraph (6);
 - (D) inserting “or Tribe” after “State” in paragraph (7); and
 - (E) renumbering the remaining paragraphs accordingly.
- (4) in subsection (f)(1) by:
 - (A) inserting “and any other available funds” after “subsection (b)”;
 - (B) striking “2007” and inserting “2011”.

(5) in subsection (f)(2) by:

(A) striking “2008” and inserting “2012” in both places it appears;

(B) amending subparagraph (A)(i) to read:

“(i) eighty percent of the amounts deposited into the fund in the previous fiscal year less any allocations as described in paragraphs (2), (3), and (4) of section 402(g); plus”;

(C) amending subparagraph (A)(ii) to read:

“(ii) the funds referred to in section 402(i)(2).”

(6) striking subsections (f)(3) and (5), and renumbering remaining subsection accordingly.

(7) by inserting after section 401(b) the following and redesignating the remaining subsections:

“(c) State and Tribal funds.

“Pursuant to an approved State or Tribal abandoned mine reclamation program required under section 405, States or Tribes receiving grants under this Act shall establish and administer abandoned mine reclamation funds.”

(b) Section 402 of SMCRA (30 U.S.C. 1232) is amended—

(1) by striking subsection (g) and inserting:

“(g) Allocation of funds.

“Except as provided in subsection (h), amounts deposited into the fund during the previous fiscal year shall be allocated by the Secretary to accomplish the purposes of this Act as follows:

“(1) Reclamation Grants.

“(A) The amount made available for distribution by the Secretary under section 401(g) shall be distributed annually through grants to the States or Indian tribes with lands and waters eligible for reclamation under this Act.

“(B) In allocating the funds described in clause (A), the Secretary shall consider recommendations made by the Coal Abandoned Mine Lands Advisory Council.

“(C) Any State or tribe receiving funds under this paragraph shall have in place an approved abandoned mine reclamation program pursuant to the provisions of section 405.

“(D) Funds allocated to a State or Indian tribe under this paragraph shall be returned and deposited into the fund for reallocation under this paragraph during the next fiscal year if not expended within five years after the date of the grant award.

“(E) Funds allocated by the Secretary under this paragraph shall only be used for reclamation projects, including design, construction, and administration consistent with this Act.

“(F) States or Indian tribes receiving funds under this paragraph may, in addition to the funds allocated pursuant to this paragraph, use funding from any other source not otherwise precluded by law in order to ensure the reclamation or abatement of the hazards of a particular abandoned mine site is achieved.

“(2) Administrative Grants.

“(A) Before funds are allocated pursuant to paragraph (1) of this subsection, the Secretary may, at his discretion, provide administrative grants of not more than \$10,000,000 annually to each State or Indian tribe with eligible land and water and that is operating under an approved abandoned mine reclamation program.

“(B) Administrative grants provided under this paragraph are intended to ensure the maintenance of approved reclamation programs, including through –

“(i) the maintenance of the inventory established pursuant to section 403(b); and

“(ii) project planning and program administration, including the preparation of project applications pursuant to section 412.

“(C) In making grants available under this paragraph, the Secretary shall consider the extent of eligible lands and waters pursuant to section 404; the total amount of historical reclamation expenditures; and the outcome of any previous application of the ranking criteria developed pursuant to section 411.

“(3) Emergency abandoned mine land.

“(A) In fiscal year 2012, before funds are allocated pursuant to paragraph (1) of this subsection, the Secretary shall allocate \$20 million from the fund for grants to States and Indian tribes for the purpose of carrying out the provisions of section 410 relating to emergencies.

“(B) In each fiscal year thereafter, before funds are allocated pursuant to paragraph (1) of this subsection, the Secretary shall allocate the amount needed to ensure that \$20 million is available from the fund for grants to States and Indian tribes for carrying out the provisions of section 410 relating to emergencies.

“(4) Council Administration.

“Before funds are allocated pursuant to paragraph (1) of this subsection, the Secretary shall allocate \$1 million to support the activities of the council established by section 411.

“(5) Federal administration.

“Amounts available in the fund that are not allocated pursuant to subsections (1), (2), (3), or (4) are available for administrative costs of the Office of Surface Mining, subject to further appropriation.

“(6) Notwithstanding any other provision of law, this subsection applies to the State of Tennessee”

(2) in subsection (i)(2) by striking “the Secretary of the Treasury” through the end of the sentence and inserting “the Secretary of the Treasury shall transfer to the Secretary of the Interior \$85.4 million annually for the three fiscal years beginning in fiscal year 2012, which shall be distributed to States and Indian tribes in the same manner as moneys are distributed from the fund under paragraph (1) of subsection (g).”

(c) Section 403 of SMCRA (Public Law No. 95-87 (1977); 30 U.S.C. 1233) is amended—

(1) by striking the portion of subsection (a) before the enumerated paragraphs and inserting:

“(a) Expenditure of moneys from the fund on lands and water eligible pursuant to section 404 for the purposes of this title shall reflect the following priorities in the order stated:”;

(2) by striking subsection (a)(1)(B)(ii) and inserting:

“(ii) are necessary to achieve the objectives of subparagraph (A);”;

(3) by striking subsection (a)(2)(B)(ii) and inserting:

“(ii) are necessary to achieve the objectives of subparagraph (A);”;

(4) by striking subsection (b); and

(5) by redesignating subsection (c) as subsection (b) and amending it as follows:

“(b) Inventory.

“The Secretary shall maintain an inventory of eligible lands and waters pursuant to section 404 which meet the priorities stated in paragraphs (1) and (2) of subsection (a). The inventory shall contain information necessary to provide guidance to the council pursuant to section 411(a). Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 405 may offer amendments, subject to the approval of the Secretary, to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405. On a regular basis, but not less than annually, the projects completed under this title shall be so noted on the inventory under standardized procedures established by the Secretary.”.

(d) Section 404 of SMCRA (30 U.S.C. 1234) is amended—

(1) in the first sentence by:

(A) striking “, except as provided for under section 411,”; and

(B) striking “August 3, 1977” and inserting “enactment of the Surface Mining Control, Reclamation and Enforcement Act of 1977”.

(2) in the second sentence by striking “, section 403(b)(1), and section 409”.

(e) Section 405 of SMCRA (30 U.S.C. 1235) is amended—

(1) by striking subsection (b) and inserting:

“(b) Submission of State or Tribal Reclamation Plan.

“If a State has within its borders, or an Indian tribe on its lands, any coal mined lands eligible for reclamation under this title, it may submit to the Secretary a State Reclamation Plan.”.

(2) in subsection (e) by striking “funded” and inserting “presented to the council pursuant to section 412”;

(3) by striking subsections (f) and (g);

(4) in subsection (h), by striking “subsection 402(g)” and inserting “paragraph (2) of 402(g)”; and

(5) by redesignating the subsections accordingly.

(f) Sections 406 (30 U.S.C. 1236) and 409 (30 U.S.C. 1239) of SMCRA are repealed.

(g) Section 410 of SMCRA (30 U.S.C. 1240) is amended by striking “is” in the portion of subsection (a) before the enumerated paragraphs and inserting “and States and Indian tribes eligible for grants under subsection 402(g) are”;

(h) Section 411 of SMCRA (Public Law No. 95-87 (1977); 30 U.S.C. 1240a) is repealed and replaced with the following—

“ SEC. 411 ADVISORY COUNCIL

“(a) Establishment; function.

“The Secretary shall establish the Coal Abandoned Mine Lands Advisory Council to—

“(1) advise the Secretary in the development and periodic review of criteria to rank the coal abandoned mine sites according to the degree to which they pose danger to the health or safety of the public, damage to the environment, or both; and

“(2) recommend to the Secretary the sites to be funded based on the submissions from States and Indian tribes under section 412 of this act, using the criteria developed in paragraph (1);

“(b) Members.

“The Advisory Council shall consist of six voting members, to be appointed by the Secretary, as follows—

“(1) Three persons who have experience in the administration of a coal abandoned mine land reclamation program within a State or Tribe;

“(2) One person who has experience in the administration of the coal abandoned mine land reclamation program within the Office of Surface Mining, Reclamation and Enforcement;

“(3) A person who is recognized as an environmental representative active in the reclamation of coal abandoned mine sites; and

“(4) A person who is an employee or officer of a coal mining operation subject to the provisions of this Act.

“(c) Terms of service.

“(1) Members of the Advisory Council shall be appointed for terms of 3 years, except that, of the members first appointed, three members shall be appointed for a term of 1 year and three members shall be appointed for a term of 2 years.

“(2) A member may be reappointed to serve on the Advisory Council.

“(3) A vacancy on the Advisory Council shall be filled in the same manner as the original appointment.

“(d) Chairperson and procedures.

“(1) The representative from the Office of Surface Mining Reclamation and Enforcement shall be the chairperson of the committee.

“(2) The Advisory Council shall establish such rules and procedures as it deems necessary or desirable.

“(e) Employee Status.—A member of the Advisory Council shall not receive pay by reason of his service on the Council but may be reimbursed for travel expenses incurred in carrying out official duties in accordance with section 5703 of title 5, United States Code. A member shall not be considered an employee of the Federal Government by reason of any such service, except for the purposes of the following provisions of law:

“(1) Chapter 81 of title 5, relating to compensation for work-related injuries;

“(2) Chapter 171 of title 28 and any other Federal statute relating to tort liability; and

“(3) If the member is a special Government employee (as opposed to a representative of outside interests), provisions relating to employee conduct, ethics, and conflict of interest in 18 U.S.C. chapter 11, 5 U.S.C. chapter 73, and the Ethics in Government Act of 1978 (5 U.S.C. Appendix).

“(f) Administrative support.

“The Secretary is authorized to provide to the Advisory Council such necessary administrative support as he determines to be appropriate and shall designate an appropriate officer to serve as the Secretary’s liaison to the council.

“(g) Applicable law.

“The Advisory Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.) and, if terminated pursuant to subsection (f), may, at the discretion of the Secretary, be reconstituted with similar membership pursuant to the Federal Advisory Committee Act.”.

(i) Section 412 of SMCRA (Public Law No. 95-87 (1977); 30 U.S.C. 1241) is amended as follows—

“SEC. 412 Application for Reclamation Funds

“(a) Timing of application.

“At regular intervals, but no less than annually, each State or Indian tribe with an approved reclamation program under Section 405 may submit to the Secretary an application for the administrative support of the approved reclamation program, the implementation of specific reclamation projects, or both.

“(b) Contents of application for an administrative grant.

“The application shall include—

“(1) a description of the program administrative activities to be accomplished during the grant period;

“(2) estimated costs of proposed activities; and

“(3) information and assessments demonstrating that the amounts requested are necessary to support specific reclamation objectives that will be submitted to the Secretary for consideration by the council pursuant to section 411 or projects funded by grants awarded prior to the date of enactment of this Act.

“(c) Contents of application for a reclamation grant.

“The application shall include—

“(1) a general description of each proposed project, including the type of reclamation to be performed, the general location, and the name of the landowner;

“(2) an explanation as to why the State or Tribe selected each proposed project from among all of the eligible lands and water in its jurisdiction, including the extent of public involvement in the selection process, if any;

“(3) a statement of the estimated benefits in such terms as: public health and safety problems to be eliminated, reduced risk to the community, environmental problems to be corrected, number of acres to be restored, miles of stream to be improved, and air and water pollution problems abated;

“(4) an estimated cost of each proposed project, including the construction costs, operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, cost savings to the project as a result of partnerships, and any other necessary administrative expenses;

“(5) an identification of lands or interests in lands to be acquired and the estimated cost; and

“(6) any other information requested by the Secretary, except the Secretary cannot require the application to include the submission of complete project plans and specifications.

“(d) Transition.

“(1) For fiscal year 2012, the Secretary shall award reclamation project grants competitively based on the proposals submitted in subsection (c). The Secretary may consult with the council in making his selections.

“(2) In awarding the reclamation project grants pursuant to paragraph (1), the Secretary shall consider any financial, legal, and other commitments made by the State or Indian tribe prior to the enactment of this Act.”.

Sectional Analysis

SEC. 1. SHORT TITLE.

This section establishes the short title of the legislation as the “Priority Abandoned Coal Mine Reclamation Act Amendments of 2011.”

SEC. 2. AMENDMENTS TO THE SURFACE MINING CONTROL AND RECLAMATION ACT.

This section makes a number of changes to the Surface Mining Control and Reclamation Act to implement the reforms proposed in the Administration’s 2012 Budget. This includes the creation of a competitive grant process, overseen by an Advisory Council, for the distribution of funding to States and Indian tribes for the reclamation of abandoned coal mine lands and the termination of unrestricted payments to States and Indian tribes that have been certified as completing coal reclamation work.

Subsection (a) makes certain conforming and other changes to section 401 of SMCRA, including changes to the distribution from the Coal Abandoned Mine Lands Fund and the Treasury. The legislation would distribute 80 percent of the AML Fund moneys collected annually, minus certain allocations to support spending on emergency activities and to support the newly created Advisory Council.

Subsection (b) amends section 402 of SMCRA, to delete provisions that establish formulaic payments to states and tribes and establishes

a competitive grant program for coal abandoned mine lands reclamation. Subsection (b) also includes authorization for allocation of funds by the Secretary for administrative grants, emergency reclamation activities, and for Federal administration of the program.

The subsection also includes changes to SMCRA's section 402(i)(2) to include the estimated \$85.4 million that is expected to be distributed from the Treasury to noncertified states in prior balance replacement funds for the next three years, which will be distributed in the same manner – through a competitive process – as the AML Fund moneys.

Subsection (h) repeals existing SMCRA section 411 that addressed certification and Treasury funding for states and tribes and, in its place, includes new provisions creating the Coal Abandoned Mine Lands Advisory Council composed of federal, state and nongovernmental representatives. The Advisory Council will establish criteria for ranking abandoned mine lands sites across the Nation and recommend funding allocations for projects that have been ranked, with grants being awarded to states and tribes for.

Subsection (i) delineates the process that states and tribes will follow for submission of both reclamation and administrative grants.

Because fiscal year 2012 is a transition year, the proposal provides for a competitive award of reclamation project grants by the Secretary, with a consultative role for the Advisory Council. This is intended to provide the Advisory Council with additional time to develop the required ranking criteria and to allow the Secretary to consider preexisting commitments States may have made with regard to future projects.

REFORM HARDROCK MINING ON FEDERAL LANDS

Legislative Proposal

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hardrock Mineral Leasing Act of 2011”.

SEC. 2. LEASING PROGRAM FOR GOLD, SILVER, LEAD, ZINC, COPPER, URANIUM, AND MOLYBDENUM.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) is amended by redesignating section 44 as section 51 and inserting after section 43 the following:

“SEC. 44. Prospecting permits, lands included, acreage.

“The Secretary is authorized, under such rules and regulations as he may prescribe, to grant any qualified applicant a prospecting permit which shall give the exclusive right to prospect for gold, silver, lead, zinc, copper, uranium, or molybdenum in lands belonging to the United States for a period of not exceeding two years: Provided, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land, in reasonably compact form.

“SEC. 45. Leases to permittees, survey of lands; royalties and annual rental.

“(a) Leases, royalties and rental.

“Upon showing to the satisfaction of the Secretary that valuable deposits of gold, silver, lead, zinc, copper, uranium, or molybdenum have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land included in the prospecting permit, as well as any nonmineral lands necessary for processing or milling operations, at a royalty of not less than 5 per centum of the quantity or gross value of the output of the gold, silver, lead, zinc, copper, uranium or molybdenum at the point of shipment to market, and the payment in advance of a rental of \$1 per acre per year, the rental paid for any one year to be credited against the royalties accruing for that year, the lands in such lease to be taken in reasonably compact form by legal subdivisions of the public land surveys.

“(b) Survey of lands.

“If the land has not been surveyed, the necessary survey shall be executed at the cost of the permittee, in accordance with regulations prescribed by the Secretary.

“(c) Lease terms, renewal.

“Leases under this section shall be for a period of 20 years with a preferential right in the lessee to renew for successive periods of 10 years upon such reasonable terms and conditions as may be prescribed by the Secretary, in consultation with the surface managing agency, unless otherwise provided by law at the expiration of such period.

“SEC. 46. Leases of lands not covered by permits or leases; acreage; annual rental.

“(a) Leasing of nonpermitted lands.

“Lands known to contain valuable deposits of gold, silver, lead, zinc, copper, uranium, and molybdenum that are not covered by permits or leases, as well as any nonmineral lands necessary for processing or milling operations, shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as the Secretary may adopt by regulation and in such areas as he shall fix, but shall not exceed two thousand five hundred sixty acres per lease.

“(b) Royalties and rental, terms.

“All leases issued under this section shall be conditioned upon the payment by the lessee of:

- (1) such royalty as may be fixed in the lease, which shall be not less than 5 percent of the gross value of the output of the gold, silver, lead, zinc, copper, uranium or molybdenum at the point of shipment to market; and
- (2) a rental of \$1 per acre per annum, to be paid in advance. The rental paid for any one year shall be credited against the royalties accruing for that year.

Leases under this section shall be for a period of 20 years with a preferential right in the lessee to renew for successive periods of 10 years upon such reasonable terms and conditions as may be prescribed by the Secretary, unless otherwise provided by law at the expiration of such period.

“SEC. 47. Lands containing other minerals.

“Prospecting permits or leases may be issued at the discretion of the Secretary under the provisions of this subchapter for deposits of gold, silver, lead, zinc, copper, uranium or molybdenum in public lands or federal mineral estates that also contain deposits of coal or other minerals on condition that such other deposits be reserved to the United States for disposal under applicable laws.

“SEC. 48. Disposition of royalties and rents from gold, silver, lead, zinc, copper, uranium, and molybdenum leases.

“Section 35 of this Act (30 U.S.C. 191) shall govern the disposition of all monies received from royalties and rentals under the provisions of this subchapter.

“SEC. 49. Laws Applicable.

“The general provisions of this Act (30 U.S.C. 181-196) shall apply to permits and leases under this subchapter.

“SEC. 50. Conversion of unpatented mining claim to noncompetitive lease

“(a) Conversion to noncompetitive lease.

“(1) The Secretary may, in his discretion, issue to the holder of an unpatented mining claim a noncompetitive lease for gold, silver, lead, zinc, copper, uranium, or molybdenum under the provisions of this section for the lands encompassed within such mining claim.

“(2) No claimant who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

“(b) Nonmineral lands.

“In any lease issued under subsection (a), the Secretary may, in his discretion, include nonmineral lands within the boundaries of any unpatented mill site associated with the unpatented mining claim to be converted to a noncompetitive lease.

“(c) Conditions for issuance.

“Issuance of noncompetitive leases under this section shall be conditioned upon—

“(1) (A) verification that the mining claim or site for which the noncompetitive lease is to be issued under subsection (a) is covered by a mining plan of operations that has been approved by the surface managing agency within 5 years of the petition for conversion under subsection (c)(4) and is in compliance with all applicable laws and regulations; or

“(B) If the mining claim or site is not covered by an approved mining plan of operations, a determination by the Secretary that the mining claim or site to be converted to a lease under this section was valid as of the date of this Act and as of the date of the petition for issuance of a noncompetitive lease;

“(2) relinquishment of the mining claims or sites;

“(3) concurrence of the surface managing agency, and any necessary and justifiable conditions for use and protection of nonmineral resources that agency may identify if other than the Bureau of Land Management;

“(4) a petition for issuance of a noncompetitive lease, together with the required rental and royalty, including back rental and royalty accruing from date of relinquishment, being filed with the Secretary;

“(5) A requirement in the lease for payment of rental, including back rentals accruing from the date of relinquishment, as applicable, of \$1 per acre per year;

“(6) A requirement in the lease for payment of royalty on the value of the output of gold, silver, lead, zinc, copper, uranium, or molybdenum at the mine, including all royalty on production made subsequent to the date of relinquishment;

“(7) A requirement in the lease to increase the applicable financial guarantee for operations under the lease or to provide a replacement financial guarantee if the existing financial guarantee does not meet the requirements under the applicable regulations; and

“(8) Publication in the Federal Register of a notice of the petition for conversion of the relinquished gold, silver, lead, zinc, copper, uranium, or molybdenum mining claim to a noncompetitive gold, silver, lead, zinc, copper, uranium, or molybdenum lease, including terms and conditions of conversion, such notice to be published at least thirty days in advance of the conversion, and a requirement in the lease for reimbursement of costs associated with the publication of such notice.

“(d) Effect of a petition on lands.

“The Secretary shall not issue any new lease affecting any of the lands covered by such mining claim for a reasonable period, as determined in accordance with regulations issued by the Secretary, after the filing of a petition for issuance of a noncompetitive lease under this section.

“(e) Effect of approved mining plan.

“The Secretary shall not be required to conduct environmental analysis under the National Environmental Policy Act before issuing a noncompetitive lease for any mining claim or site that satisfies the requirements of subsection (c)(1)(A), provided that surface disturbance authorized by such noncompetitive lease does not require a major modification to the approved mining plan of operations.

“(f) Area limitations.

“The area in any lease issued under this section shall not exceed the maximum area authorized by this Act to be leased to an individual or corporation.”

SEC. 3. AMENDMENTS TO MINERAL LEASING ACT GENERAL PROVISIONS.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) is amended –

(a) in section 1 (30 U.S.C. 181) by striking “ or gas” the first place it appears in the first sentence and inserting in lieu thereof “gas, gold, silver, lead, zinc, copper, uranium, or molybdenum”;

(b) in section 34 (30 U.S.C. 182) by striking “or gas” and inserting in lieu thereof “gas, gold, silver, lead, zinc, copper, uranium, or molybdenum”;

(c) in section 27 (30 U.S.C. 184) by –

(1) inserting after subsection (d) the following new subsection:

“(e) Gold, silver, lead, zinc, copper, uranium, or molybdenum leases, acreage

“No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, gold, silver, lead, zinc, copper, uranium, or molybdenum leases or permits on an aggregate of more than 20,480 acres in any one State.”;

(2) striking in subsection (k) “or sodium” and inserting “sodium, gold, silver, lead, zinc, copper, uranium, or molybdenum”; and

(3) redesignating the subsections accordingly.

(d) In section 37 (30 U.S.C. 193) by inserting the caption “(a) **Disposition of coal, phosphate, sodium, potassium, oil, oil shale, gas.**” before the existing paragraph and adding the following new subsection:

“(b) Disposition of gold, silver, lead, zinc, copper, uranium, and molybdenum.

“The deposits of gold, silver, lead, zinc, copper, uranium, and molybdenum, herein referred to, in lands valuable for such minerals, shall be subject to disposition only in the form and manner provided in this chapter, except --

(1) as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716 and 1719); and

(2) except as to valid claims for such minerals existent on the date of this Act, and thereafter maintained in compliance with the laws under which initiated.”.

SEC. 4. AMENDMENTS TO THE MINING LAW OF 1872.

(a) The Mining Law of 1872 (30 U.S.C. 28f) is amended—

(1) in subsection (a) by—

(A) striking “of \$100”;

(C) inserting after “site” “in an amount specified in subsection (d) of this section.”; and

(2) by striking subsection (d) and inserting in lieu thereof—

“(d) Amount and Adjustment of claim maintenance fee.

“(1) For purposes of this section, the claim maintenance fee shall be in the amount of \$140.

“(2) Beginning with the assessment year that starts on September 1 of the year after enactment of this Act, and for each of the five assessment years thereafter, the claim maintenance fee required by this section shall increase \$10 per claim or site per year from the fee required for the preceding assessment year, after which the fee will be adjusted according to section 28j(c) of title 30, United States Code”.

(b) Notwithstanding any other provision of law, the Secretary of the Interior shall not accept or process any application for a patent under sections 2325, 2329, 2332, 2333, or 2337 of the Revised Statutes (30 U.S.C. 29, 35, 37, 38, and 42), except if the Secretary determines that:

(1) the patent application was filed with the Secretary on or before September 30, 1994; and

(2) for vein or lode claims, all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) were fully complied with by the applicant by that date, or

(3) for placer claims, all requirements established under sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) were fully complied with by the applicant by that date, or

(4) for mill site claims all requirements established under section 2337 of the Revised Statutes (30 U.S.C. 42) were fully complied with by the applicant by that date.

Sectional Analysis

SECTION 1. SHORT TITLE.

Establishes the short title of the Act as the “Hardrock Mineral Leasing Act of 2011”.

SEC. 2. LEASING PROGRAM FOR GOLD, SILVER, LEAD, ZINC, COPPER, URANIUM, AND MOLYBDENUM.

This section amends the Mineral Leasing Act to authorize a leasing program for certain hardrock minerals, including gold, silver, lead, zinc, copper, uranium, and molybdenum on lands belonging to the United States, and to apply a royalty of not less than 5 percent gross value.

Subsection (a) adds new sections to the MLA establishing authority for the Secretary to grant prospecting permits for the covered minerals; to issue and renew leases, including royalties and rentals, of the lands included in the prospecting permits; and for the disposition of royalties and rents collected from the production of the covered minerals, among other provisions. Also included are provisions authorizing the conversion of unpatented mining claims to noncompetitive leases.

SEC. 3. AMENDMENTS TO MINERAL LEASING ACT GENERAL PROVISIONS.

This section makes conforming amendments to the general provisions of the MLA.

SEC. 4. AMENDMENTS TO THE MINING LAW OF 1872.

Section 4 makes changes to the Mining Law of 1872 (30 U.S.C. 28f) to increase the claim maintenance fee by approximately forty percent over five years in lieu of the adjustments currently authorized under 30 U.S.C. 28f. Under the provisions of this section, the fee would initially be set at the current value of \$140 and, beginning with the assessment year that begins on the September 1 of the year following enactment, and for each of the next five assessment years, the claim maintenance fee would increase \$10 per claim or site per year.

At the end of that period, the fee would be adjusted according to the process at section 30 USC 28j(c).

Section 4 also makes permanent the existing moratorium on new mining patent applications, and creates an exception for the processing of existing “grandfathered” applications filed on or before September 30, 1994.

BOOST FEDERAL SHARE OF GEOTHERMAL ENERGY RECEIPTS

Legislative Proposal

SEC. XX.—GEOTHERMAL ENERGY AMENDMENTS.

(a) PAYMENTS.—Section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) is amended by—

(1) striking subsection (a) and inserting the following in its place:

“(a) In General.—Except with respect to lands in the State of Alaska, all monies received by the United States from sales, bonuses, rentals, and royalties under this chapter shall be paid into the Treasury of the United States. Of amounts deposited under this subsection, subject to the provisions of subsection (b) of section 191 of this title and section 1004(a)(2) of this title, 50 percent shall be paid to the State within the boundaries of which the leased lands or geothermal resources are or were located.”; and

(2) deleting “or county” in subsection (b).

Sectional Analysis

This section would rescind changes made to section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) by section 224(b) of the Energy Policy Act of 2005. Prior to passage of the Energy Policy Act in 2005, geothermal revenues were split between the Federal government and states, with 50 percent of the revenues derived from the development of geothermal resources on Federal lands directed to the general fund of the Treasury of the United States and 50 percent to the states.

The Energy Policy Act changed this distribution to direct 50 percent of the revenue to states, 25 percent to counties, and, for a five year period, 25 percent to a “Geothermal Steam Act Implementation Fund,” which was discontinued through a provision in the fiscal year 2010 Interior Appropriations Act.

The change made by this proposal will discontinue payments to counties and restore the historic disposition of funds.

REPEAL OIL AND GAS FEE PROHIBITION AND MANDATORY PERMIT FUNDS

Legislative Proposal

SEC. XX.—COST RECOVERY.

(a) REPEAL OF FUND AND PROHIBITION.—Beginning in fiscal year 2013—

(1) section 35 of the Mineral Leasing Act of 1920 (30 U.S.C. 191) is amended by striking subsection (c) and inserting:

“(c) Unobligated balances in the Permit Processing Improvement Fund, established by section 365(g) of the Energy Policy Act of 2005, shall remain available to the Secretary of the Interior through fiscal year 2015 for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal land under the jurisdiction of the Pilot Project offices identified in section 365(d) of the Energy Policy Act of 2005.”; and

(2) section 365 of the Energy Policy Act of 2005 (42 U.S.C. 15924) is amended by striking subsection (i).

(b) REGULATIONS; AUTHORITY.—(1) The Secretary of the Interior shall promulgate regulations, which shall be effective after the amendments in subsection (a) take effect, to establish cost recovery fees for oil and gas applications for permits to drill and related use authorizations.

(2) Until such time as a new fee is established by regulation, the Secretary shall charge a cost recovery fee of \$6,500 for each oil and gas application for permit to drill received from an applicant.

Sectional Analysis

This section would repeal section 365(i), effective with fiscal year 2013, which prohibits the Secretary of the Interior from implementing a rulemaking that would allow a fee to recover costs in connection with processing applications for permits to drill (APDs) and use authorizations for oil and gas development on Federal lands. Instead, the section would require that the Secretary promulgate regulations to establish cost recovery fees for oil and gas APDs and related use authorizations and would provide for the continuation of the current interim fee of \$6,500 per APD. This interim fee would ensure the continuation of program funding while the Secretary finalizes the required regulations.

The section would also repeal language in section 35 of the Mineral Leasing Act (as amended by section 365 of the Energy Policy Act of 2005), effective in fiscal year 2013, that establishes the mandatory Permit Processing Improvement Fund. However, the amendment would continue to allow for distribution of unobligated balances, until expended, from that fund for the purposes provided in the section.

**REAUTHORIZE THE FEDERAL LAND TRANSACTION FACILITATION ACT
(FLTFA) OF 2000**

Legislative Proposal

SEC. XX. — REAUTHORIZE THE FEDERAL LAND TRANSACTION FACILITATION ACT (FLTFA) OF 2000

The Federal Land Transaction Facilitation Act (43 U.S.C. 2301 et seq.) is amended –

- (a) in section 203(2) by striking “on the date of enactment of this Act was” and inserting in its place “is”;
- (b) in section 205(a) by striking “(as in effect on the date of enactment of this Act)”;
- (c) by striking subsection (d) of section 205;
- (d) by striking subsection (f) of section 206;
- (e) in section 207(b) –
 - (1) by striking “under—“ and inserting “under the following –”;
 - (2) by amending paragraph (1) to read –

“(1) Public Law 96-586 (commonly known as the “Santini-Burton Act”) (94 Stat. 3381);”;
 - (3) by amending paragraph (2) to read –

“(2) Public Law 105-263 (the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343)), as amended;”;
 - (4) by adding at the end of subsection (b) –

“(3) Division III, Title C of Public Law 109-432 (commonly known as the ‘White Pine County Conservation, Recreation, and Development Act of 2006’ (120 Stat. 3028));

“(4) Public Law 108-424 (commonly known as the ‘Lincoln County Conservation, Recreation, and Development Act of 2004’ (118 Stat. 2403));

“(5) Subtitle F of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1132 note; Public Law 111-11);

“(6) Subtitle O of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www note, 1132 note; Public Law 111-11);

“(7) section 2601 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1108); or

“(8) section 2606 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1121).”.

Section Analysis:

SEC. XX. --- REAUTHORIZE THE FEDERAL LAND TRANSACTION FACILITATION ACT (FLTFA) OF 2000

The Federal Land Transaction Facilitation Act (FLTFA) provides the BLM the authority to sell lands identified for disposal through BLM's land use planning process before July 2000. The proceeds from those sales are deposited into the Federal Land Disposal Account. FLTFA stipulates that funds in the account may only be used to acquire inholdings within, and certain lands adjacent to, areas managed by the BLM, Forest Service, National Park Service and U.S. Fish and Wildlife Service in 11 western states and Alaska.

FLTFA authorization expired on July 24, 2010, and was later extended to July 24, 2011. This section would eliminate both the sunset of FLTFA and the land use planning date. All funds would continue to be used for acquisition of environmentally sensitive lands.

INLAND WATERWAYS CAPITAL INVESTMENT ACT

Legislative Proposal

SEC. 1. SHORT TITLE.— This Act may be cited as the “Inland Waterways Capital Investment Act of 2011”.

SEC. 2. USER FEE.— (a) **IN GENERAL.**— There is hereby imposed an annual user fee on each vessel that transports commercial cargo on the inland waterways of the United States, which shall be paid by the owner of the vessel. The Secretary of the Army shall determine the amount and structure of this fee for each fiscal year, with the goal of ensuring that the balance of receipts in the Inland Waterways Trust Fund established by 26 U.S.C. § 9506 is sufficient to cover the user-financed share of the costs of inland waterways capital investment.

(b) **AMOUNT AND STRUCTURE OF THE FEE.**—

(1) For the fiscal year beginning on October 1, 2011, the Secretary of the Army shall design the fee to provide for the collection of not less than \$35,000,000 in receipts.

(2) For the fiscal year beginning on October 1, 2012, the Secretary of the Army shall design the fee to provide for the collection of not less than \$75,000,000 in receipts.

(3) For the fiscal year beginning on October 1, 2013 and the next seven fiscal years thereafter, the Secretary of the Army shall design the fee for each fiscal year to provide for the collection of a total of not less than \$900,000,000 in receipts over the course of those eight fiscal years.

(4) For the fiscal year beginning on October 1, 2021 and each fiscal year thereafter, the Secretary of the Army shall design the fee for each fiscal year, with the objective of maintaining the balance of receipts in the Inland Waterways Trust Fund at the end of that fiscal year to not fall below \$50,000,000 or exceed \$150,000,000. In designing the fee during this period, the Secretary of the Army shall consider current and future spending levels for inland waterways capital investment, and the receipts from both the fee imposed by this section and the tax on fuel used in commercial transportation on inland waterways imposed by 26 U.S.C § 4042.

(5) In designing the fee, the Secretary of the Army may establish a two-tiered fee system, under which the fee for vessels that operate during the fiscal year only on those portions

of the inland waterways that do not involve passage through a lock would be lower than the fee for vessels that are eligible to use the locks.

(6) For purpose of this section, the balance of receipts shall be the net amount collected in the Inland Waterways Trust Fund from both the fee imposed by this section and the tax on fuel used in commercial transportation on inland waterways imposed by 26 U.S.C § 4042 that has not yet been made available for obligation or that will not become available for obligation until the following fiscal year or thereafter.

(c) DEPOSIT.— The Secretary of the Army shall deposit the amounts collected from the fee into the Inland Waterways Trust Fund. Such amounts shall be available for appropriation as provided for in 26 U.S.C § 9506(c), as amended by subsection 4(b) of this Act.

(d) EXEMPTION.— The fee shall not be imposed on vessels owned by:

(1) the Department of Defense in connection with the work of its military programs in support of the national defense;

(2) the Army Corps of Engineers civil works program or the Tennessee Valley Authority in connection with their work on the locks, dams, channels, and related structures that support commercial navigation; or

(3) the U.S. Coast Guard.

SEC. 3. INLAND WATERWAYS OF THE UNITED STATES.— Section 206 of the Inland Waterways Revenue Act of 1978, as amended (33 U.S.C § 1804) is amended by — (a) striking the title and the first paragraph in their entirety and inserting the following in lieu thereof

—

“INLAND WATERWAYS OF THE UNITED STATES.

The inland waterways of the United States consist of:"; and

(b) adding at the end thereof the following:

"(28) Barataria Bay Waterway, Louisiana: From Gulf Intracoastal Waterway to Gulf of Mexico with side channel to Grand Isle, 41.3 miles.

(29) Barkley Canal, Cumberland and Tennessee Rivers, Kentucky: Canal connecting Barkley Reservoir and Kentucky Reservoir, 1.75 miles.

(30) Bayou LaFourche and LaFourche-Jump Waterway, Louisiana: From mile 3 above the mouth at the Gulf of Mexico to Lockport, Louisiana, 47 miles.

- (31) Bayou Teche and Vermilion River, Louisiana: From Vermilion Bay 52 miles to General Mouton Avenue Bridge at Lafayette, Louisiana.
- (32) Bayou Teche, Louisiana: From mouth to Arnaudville, Louisiana, 106.5 miles.
- (33) Bayou Terrebonne, Louisiana: From Bush Canal 24.1 miles to Houma, Louisiana.
- (34) Big Sandy River, Kentucky and West Virginia: From junction with Ohio River to mile 26.8.
- (35) Black River, Wisconsin: From junction with Mississippi River to mile 1.4.
- (36) Canaveral Barge Canal, Florida: The shallow draft barge channel from the deepwater turning basin 11.5 miles to the Intracoastal Waterway.
- (37) Channel to Aransas Pass, Texas: From the junction with mile 534 of the Gulf Intracoastal Waterway for 7 miles to Aransas Pass.
- (38) Channel to Victoria, Texas: From junction with Gulf Intracoastal Waterway to mile 35.8, Victoria, Texas, and the Tributary Channel to Seadrift, Texas, 2 miles.
- (39) Chocolate Bayou, Texas: From junction with Gulf Intracoastal Waterway to mile 13.4.
- (40) Clinch River, Tennessee: From junction at mile 567.7 with Tennessee River through mile 61.5 on the Clinch River.
- (41) Colorado River and Flood Discharge Channels, Texas: From the junction with the Gulf Intracoastal Waterway to mile 15.6.
- (42) Columbia River between Vancouver and The Dalles: Columbia River for 85 miles between Vancouver, Washington, and The Dalles, Oregon.
- (43) Elk River Harbor, West Virginia: From the junction with the Kanawha River to mile 2.5.

- (44) Escambia and Conecuh Rivers: From the mouth at Escambia Bay, Florida to mile 7.
- (45) Freshwater Bayou, Louisiana: From the junction with the Gulf Intracoastal Waterway 23.1 miles to the Gulf of Mexico.
- (46) Gulf County Canal, Florida: From entrance at Gulf of Mexico to Gulf Intracoastal Waterway.
- (47) Gulf Intracoastal Waterway, Morgan City-Port Allen Route: From Morgan City, Louisiana to Port Allen, Louisiana, 64.1 miles.
- (48) Hiwassee River, Tennessee: From junction with Tennessee River to mile 20.5.
- (49) Inland Waterway from Franklin to the Mermentau River, Louisiana: From Bayou Teche at Franklin to Mermentau River with locks at Hanson Canal and in Schooner Bayou.
- (50) Intracoastal Waterway, Caloosahatchee River to Anclote River, Florida: From mouth of Caloosahatchee River to Anclote River, 160 miles.
- (51) Licking River, Kentucky: From the junction with mile 470 of the Ohio River to mile 8.
- (52) Little Kanawha River, West Virginia: From the junction with the Ohio River to mile 14.5.
- (53) Mermentau River, Bayous Nezpique and Des Cannes, Louisiana: Mermentau River from Gulf Intracoastal Waterway to mile 71.5; Bayou Nezpique from mouth to mile 25; Bayou Des Cannes from mouth to mile 8.5.
- (54) Mermentau River, Louisiana: Lower Mermentau River from Gulf Intracoastal Waterway to Gulf of Mexico; Inland Waterway from Vermilion Bay to the Mermentau River; and waterway from White Lake to Pecan Island.
- (55) Minnesota River, Minnesota: From the junction with the Mississippi River for 25.6 miles to Shakopee, Minnesota.

(56) Mouth of Yazoo River, Mississippi: From Mississippi River for 9.3 miles to junction of Old and Yazoo Rivers.

(57) Okeechobee Waterway, including St. Lucie Canal to Intracoastal Waterway: From junction with Intracoastal Waterway, Jacksonville to Miami, Florida, to Gulf of Mexico via Clewiston and channel across Lake Okeechobee, 154.6 miles; south shore levee channel from Port Mayaca to Clewiston, 36.7 miles; natural channels along northerly shore of the lake from Port Mayaca to Moore Haven Lock, 57.3 miles; Taylor Creek to Town of Okeechobee, Florida, 4 miles.

(58) Old River, Louisiana: From junction with Mississippi River to junction with Red River at mile 7.

(59) Pamlico River, North Carolina: Mouth to Washington, North Carolina.

(60) Petit Anse, Tigre and Carlin Bayous, Louisiana: Bayou Petit Anse from Gulf Intracoastal Waterway to head of Avery Island, 6.1 miles; Bayou Carlin from mouth to Lake Peigneur, 7.6 miles; Avery (McIlhenny) Canal from Gulf Intracoastal Waterway to Vermillion Bay, 2.7 miles.

(61) San Bernard River, Texas: From the junction with the Gulf Intracoastal Waterway to mile 26.0.

(62) St. Croix River, Minnesota and Wisconsin: From the junction with the Mississippi River 24.5 miles to Stillwater, Minnesota.

(63) St. Marks River, Florida: Mouth to Newport, Florida.

(64) Tributary Arroyo Colorado, Texas: From the junction with the Gulf Intracoastal Waterway for 26 miles to Port Harlingen, Texas.

(65) Waterway from Intracoastal Waterway to Bayou Dulac, Louisiana (Bayous Le Carpe and Grand Caillou): From Gulf Intracoastal Waterway at Houma, Louisiana through Bayous Le Carpe, Pelton, and Grand Caillou to Bayou Dulac, 16.3 miles.

(66) Wolf River, Tennessee: From junction with Mississippi River to mile 3.

(67) Yazoo River, Mississippi: From Old River, Mississippi, 161 miles to mouth of Yalobusha River."

SEC. 4. APPLICABLE COST-SHARE.— (a) Section 102 of the Water Resources Development Act of 1986 (33 U.S.C § 2212) is revised to read as follows —

“SEC. 102. INLAND WATERWAYS TRANSPORTATION.

(a) The owners of the vessels that transport commercial cargo on the inland waterways of the United States shall, together, be responsible for financing one-half of the costs of all inland waterways capital investment, through payment of the annual user fee imposed by section 2 of the Inland Waterways Capital Investment Act of 2011 and the tax on fuel used in commercial transportation on inland waterways imposed by 26 U.S.C § 4042.

(b) The term “inland waterways capital investment” refers to any Federal spending for commercial navigation on the inland waterways of the United States that involves the construction, replacement, rehabilitation, or expansion of a project, or a project feature, owned or operated by the United States Army Corps of Engineers.

(c) For purposes of this section, the term “construction” shall include project planning, design, engineering, and surveying; the acquisition of lands, easements, and rights-of-way, including for disposal of dredged material; relocations; and dam safety assurance, seepage control, and static stability correction work.

(b) Title 26 U.S.C. § 9506 is amended in subsection (c) to read as follows —

“(c) EXPENDITURES. —

(1) There is authorized to be appropriated from the Inland Waterways Trust Fund such sums as may be necessary to finance one-half of all costs of inland waterways capital investment. The General Fund of the Treasury is authorized to finance not more than the other one-half of these costs, and only to the extent that matching amounts have been appropriated from the Inland Waterways Trust Fund for such investment.

(2) There is authorized to be appropriated from the General Fund of the Treasury such sums as may be necessary to finance costs of routine operation and maintenance that supports commercial navigation on the inland waterways of the United States.”

SEC. 5. REGULATIONS.— The Secretary of the Army may prescribe such regulations as may be necessary to carry out this Act.

SEC. 6. CONFORMING AMENDMENTS. — (a) Title 26 U.S.C. § 4042 is amended in subsection (d)(1) by striking the phrase "any inland or intracoastal waterway" and inserting the following language in lieu thereof:

"the inland waterways".

(b) Title 26 U.S.C. § 4042 is amended in subsection (d)(2) by striking the phrase "**Inland or intracoastal waterway**" in its title and inserting the following language in lieu thereof:

"Inland waterways";

by striking the phrase "inland or intracoastal waterway" the next time that it appears and inserting the following language in lieu thereof:

"inland waterways";

by striking the phrase "any inland or intracoastal waterway of the United States which is" and inserting the following language in lieu thereof:

"the inland waterways of the United States as";

and by adding the phrase “, as amended” after “1978”.

(c) Section 205 of the Water Resources Development Act of 1992 (33 U.S.C § 2327) is amended in its first sentence by striking the phrase "inland and intracoastal waterway" and inserting the following language in lieu thereof:

"the inland waterways".

Sectional Analysis

The underlying intent of this legislation is to ensure the collection of sufficient revenue to cover the non-Federal share of the capital costs of inland waterways investment. The legislation achieves this purpose primarily by supplementing the current funding source, which consists of an excise tax of 20 cents per gallon on diesel fuel, with an annual user fee, which would be paid by the owners of vessels that transport commercial cargo on the inland waterways of the United States. Amounts collected from the user fee would be deposited into the Inland Waterways Trust Fund (IWTF). The Congress established the IWTF in the Inland Waterways Revenue Act of 1978 and revised the authorization for the IWTF in section 1405(a) of the Water Resources Development Act of 1986. (See 26 U.S.C. 4042).

Section 1 cites the title of the legislation, which is the “Inland Waterways Capital Investment Act of 2011”.

Section 2 establishes the annual user fee and sets forth the particulars regarding imposition of this fee.

Subsection 2(a) identifies the vessel owner as the party responsible for paying this fee, and requires the Secretary of the Army to establish the amount and structure of the fee for each fiscal year, with the goal of ensuring a sufficient balance of receipts in the IWTF to cover the user-financed share of inland waterways capital investment.

Subsection 2(b) establishes the amount and structure of the fee. This subsection includes authority to enable the Secretary of the Army to establish a two-tiered fee system, in recognition of the fact that while some vessels do not use the locks and dams on these waterways, most of the capital investment involves the locks and dams on these waterways. For the fiscal years 2012 and 2013, the Secretary of the Army is required to design the fee to provide for collection of not less than \$35 million and \$75 million, respectively. Over the period consisting of the next eight fiscal years, the Secretary of the Army is required to design the fee to provide for collection of not less than \$900 million in total. Thereafter, the Secretary of the Army is required to design the fee for each fiscal year with the objective of maintaining the balance of receipts in the IWTF at the end of that fiscal year to not fall below \$50 million or exceed \$150 million. Subsection 2(b) also specifies the meaning of the term “the balance of receipts”.

Subsection 2(c) requires the Secretary of the Army to deposit the amounts collected from the fee in the IWTF and specifies that the funds so deposited shall be available for appropriations from the IWTF, in accordance with 26 U.S.C. § 9506(c), as amended, which governs the appropriation of funds from the IWTF.

Subsection 2(d) provides for a limited governmental exemption from the requirement to pay the fee. The exemption would apply only to vessels owned by the Department of Defense, the Army Corps of Engineers, or the Tennessee Valley Authority and used for certain purposes, and to vessels owned by the U.S. Coast Guard.

Section 3 modifies section 206 of the Inland Waterways Revenue Act of 1978, as amended (33 U.S.C. 1804), to expand the list of existing waterways identified as inland waterways of the United States so as to provide a comprehensive list of such waterways. The fee imposed by section 2 of the Inland Waterways Capital Investment Act of 2011 and the tax on

fuel used in commercial transportation on inland waterways imposed by 26 U.S.C. § 4042 would apply to all of the inland waterways of the United States, including those newly listed in this section.

Section 3 would also revise section 206 of the Inland Waterways Revenue Act of 1978, as amended (33 U.S.C § 1804), to change the way in which it refers to certain waterways. Under section 206, this group of waterways is now called the “inland and intracoastal waterways” of the United States. Section 3 would replace this designation with the common name for this group of waterways, which is the “inland waterways” of the United States. The purpose of this change, which is only a change in nomenclature, is two-fold. First, it would simplify the official name of this category of waterways. Second, it would clarify that the two intracoastal waterways are in fact among the inland waterways of the United States (rather than a distinct category, separate from the inland waterways). The legislation would not change the legal status or official name of the two intracoastal waterways in any way. They would remain on the list of inland waterways.

Section 4 replaces the language in section 102 of the Water Resources Development Act of 1986 (P.L. 99-662, 100 Stat. 4084) with new language to clarify the scope of cost-sharing for inland waterways capital investment. The section also replaces the language in section (c) of 26 U.S.C. § 4042 with new language to clarify the authority for appropriating funds from the IWTF and from the General Fund to finance inland waterways capital investment and to finance routine operation and maintenance that supports commercial navigation on the inland waterways.

Section 5 authorizes the Secretary to issue regulations to carry out this Act.

Section 6 modifies 26 U.S.C. § 9506(d)(1) and (d)(2) to conform with the change in the official name of the inland waterways of the United States adopted in section 3 of the Inland Waterways Capital Investment Act of 2011.

OVERSEAS CONTINGENCY OPERATIONS LUMP SUM CAP

Legislative Language

Sec. ____ Overseas Contingency Operations/Global War on Terror Cap.

(a) Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking the existing text in its entirety and inserting in lieu thereof the following :

“(A)(i) EMERGENCY APPROPRIATIONS.—If, for any fiscal year, appropriations for discretionary accounts are enacted that the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements.

“(ii) OVERSEAS CONTINGENCY OPERATIONS/GLOBAL WAR ON TERRORISM.—If, for any fiscal year, appropriations for discretionary accounts are enacted that the Congress designates for Overseas Contingency Operations/Global War on Terrorism in statute on an account by account basis and the President subsequently so designates, the adjustment shall be the total of such appropriations in discretionary accounts designated for Overseas Contingency Operations/Global War on Terrorism, but shall not exceed—

“(I) for fiscal year 2012, \$126,544,000,000 in budget authority; and

“(II) for the total of fiscal years 2013–2021, \$450,000,000,000 in budget authority.

(b) Section 254(f)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting before the concluding period, “, the total amount of spending on Overseas Contingency Operations/Global War on Terrorism for fiscal years 2013-2021 and the estimated amount of budget authority adjustment for that purpose remaining for that period”.

Sectional Analysis

This provision would establish a cap on Overseas Contingency Operations (OCO) of \$126.5 billion in FY 2012 and \$450 billion over FY 2013 – FY 2021. From FY 2013 – FY 2021, the cap is cumulative and should not exceed \$450 billion over the nine year period; there are not hard annual caps within this nine-year period.

DEBT TRIGGER

Legislative Language

SEC. 1. SHORT TITLE.

This Act may be cited as the "Debt Reduction Act of 2011".

SEC. 2. DEFINITIONS.

Section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900) is amended—

(a) in subsection (a) by striking ""deficit targets" and inserting "debt reduction";
(b) in subsection(c)(2) by inserting before the period ", and the disallowance of tax expenditures"; and

(c) by inserting at the end of subsection (c):

"(22) The term "debt" means debt held by the public less net federal financial assets and is calculated as—

"(A) debt held by the public;

"(B) minus financial assets of the Government, consistent with total asset accounts reported in Table 6 of the Monthly Treasury Statement, including cash and other monetary assets, non-Federal securities of the National Railroad Retirement Investment Trust, net balances of direct loan and guaranteed loan financing accounts, and miscellaneous asset accounts;

"(C) plus financial liabilities of the Government, consistent with total liability accounts in Table 6 of the Monthly Treasury Statement other than total borrowing from the public.

"(23) The term "capped baseline" means the projection described in section 253(h).

"(24) The term "monthly unemployment rate" means the monthly civilian unemployment rate, seasonally adjusted, as published by the Bureau of Labor Statistics."

SEC. 3. ENFORCING DEBT REDUCTION.

The Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking section 253 (2 U.S.C. 903) and inserting—

"SEC. 253. ENFORCING DEBT REDUCTION.

"(a) PURPOSE.—The purpose of this section is to set declining annual ceilings for debt, beginning with fiscal year 2013, enforced by sequestration of spending, including tax expenditures in the tax code.

"(b) DEBT TRIGGERS.—A debt trigger is used to determine the fourth outyear target (as calculated in subsection (c)(1)) which, if exceeded, triggers a budget year sequestration at the end of the then-current session of Congress.

"(1) FIXED DEBT TRIGGERS.—A fixed debt trigger is a debt trigger based on the amount of debt as a percentage of gross domestic product (GDP) as of the end of fiscal year 2013.

"(A) FISCAL YEAR 2013.—When OMB issues its sequestration preview report for fiscal year 2014, OMB shall calculate the fixed debt trigger for fiscal year 2013 by dividing OMB's capped baseline estimate of debt at the end of fiscal year 2013 by OMB's estimate of GDP for that year and rounding the result to the nearest tenth of one percent.

"(B) SUBSEQUENT FISCAL YEARS.—OMB shall calculate the fixed debt trigger for each subsequent fiscal year by subtracting 0.2 percentage points from the fixed debt trigger for the previous fiscal year.

"(2) ABOVE-PATH DEBT TRIGGER.—The above-path debt trigger is a debt trigger for the fourth outyear that applies whenever OMB's capped baseline estimate of debt as a percentage of GDP for the current year is greater than the fixed debt trigger for the current year. When OMB issues its sequestration preview report for fiscal year 2015 and for each subsequent fiscal year, OMB shall calculate the above-path debt trigger, when applicable, as follows—

"(A) divide OMB's capped baseline estimate of debt at the end of the current year by OMB's estimate of GDP for that year and round the result to the nearest tenth of one percent; and

"(B) subtract ten percentage points.

"(3) BELOW-PATH DEBT TRIGGER.—The below-path debt trigger is a debt trigger for the fourth outyear that applies whenever OMB's capped baseline estimate of debt as a percentage of GDP for the current year is less than the fixed debt trigger for the current year. When OMB issues its sequestration preview report for fiscal year 2015 and for

each subsequent fiscal year, OMB shall calculate the below-path debt trigger, when applicable, as follows—

"(A) divide OMB's capped baseline estimate of debt at the end of the current year by OMB's estimate of GDP for that year and round the result to the nearest tenth of one percent; and

"(B) subtract one percentage point.

"(c) PREVIEW REPORT PROJECTION OF EXCESS DEBT.—Each year when OMB issues its sequestration preview report, OMB shall determine if there is any five-year excess debt or budget-year excess debt.

"(1) FIVE-YEAR EXCESS DEBT.—

"(A) FOURTH OUTYEAR TARGET.—The fourth outyear target is:

"(i) the below-path debt trigger, if OMB's capped baseline estimate of debt as a percentage of GDP for the current year is less than the fixed debt trigger for the current year;

"(ii) the fixed debt trigger for the fourth outyear, if OMB's capped baseline estimate of debt as a percentage of GDP for the current year is equal to the fixed debt trigger for the current year; or

"(iii) the higher of the fixed debt trigger for the fourth outyear or the above-path debt trigger, if OMB's capped baseline estimate of debt as a percentage of GDP for the current year is greater than the fixed debt trigger for the current year.

"(B) CALCULATION OF FIVE-YEAR EXCESS DEBT.—OMB shall calculate the five-year excess debt by—

"(i) dividing OMB's capped baseline estimate of debt at the end of the fourth outyear by OMB's estimate of GDP for that year and rounding the result to the nearest tenth of one percent;

"(ii) subtracting the fourth outyear target;

"(iii) adjusting the difference to zero if it is less than zero;

"(iv) multiplying the difference (as adjusted) by OMB's estimate of GDP for the fourth outyear to convert the difference to dollars; and

"(v) reducing the product by 10 percent to account for debt service savings.

"(2) BUDGET-YEAR EXCESS DEBT.—"Budget-year excess debt" is the larger of the backload prevention measure or debt in excess of the budget-year ceiling.

"(A) BACKLOAD PREVENTION MEASURE.—

"(i) PURPOSE.—The purpose of the backload prevention measure is to require a minimum amount of debt reduction in the budget year in order to discourage enactment of legislation that postpones debt reduction to the end of the five-year budget horizon.

"(ii) CALCULATION.—OMB shall calculate the backload prevention measure by taking the five-year excess debt calculated pursuant to paragraph (1) and dividing by 10.

"(B) DEBT IN EXCESS OF THE BUDGET-YEAR CEILING.—

"(i) PURPOSE.—The purpose of calculating debt in excess of the budget-year ceiling is to require debt as a percentage of GDP to either decline or remain stable from the current year to the budget year.

"(ii) DEFINITIONS.—

"(I) CURRENT-YEAR DEBT RATIO.—The current-year debt ratio equals OMB's capped baseline estimate of debt at the end of the current year divided by GDP for that year, rounded to the nearest tenth of one percent.

"(II) DEBT REDUCTION PERCENTAGE.—The debt reduction percentage is calculated as follows:

"(AA) subtract the fourth outyear target from the current-year debt ratio;

"(BB) divide the difference by five and round the result to the nearest tenth of one percent; and

"(CC) subtract 0.2 percentage points.

"(III) BUDGET-YEAR CEILING.—The budget-year ceiling equals the current-year debt ratio minus the debt reduction percentage.

"(IV) BUDGET-YEAR DEBT RATIO.—The budget-year debt ratio equals OMB's capped baseline estimate of debt at the end of the budget year divided by GDP for that year, rounded to the nearest tenth of one percent.

"(iii) CALCULATION.—Debt in excess of the budget-year ceiling is calculated as follows:

"(I) subtract the budget-year ceiling from the budget-year debt ratio;

"(II) reduce the difference, as adjusted, by 2 percent to account for debt service;

"(III) adjust the difference to zero if it is less than zero; and

"(IV) multiply the difference, as adjusted, by OMB's estimate of GDP for the budget year to convert the difference to dollars.

"(3) *DE MINIMIS* AMOUNT.—Excess debt calculated in this subsection shall be rounded to the nearest \$1,000,000.

"(d) EXCESS DEBT REDUCTION SCORECARD.—

"(1) IN GENERAL.—For each session of Congress, OMB shall maintain and make publicly available a periodically updated scorecard displaying OMB's estimates of the budget-year excess debt and the five-year excess debt published in OMB's sequestration preview report, the effect on debt (excluding debt service) by year for the current year through the fourth outyear of legislation enacted during that session, and any remaining budget-year excess debt and five-year excess debt.

"(2) OMB ESTIMATES.—OMB's estimates of the effect of enacted legislation on debt shall be made using current economic and technical assumptions, and shall be prepared in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(e) END-OF-SESSION REPORT AND SEQUESTRATION ORDER.—On the date specified in section 254(f), OMB shall make publicly available and cause to be printed in the Federal Register its End-Of-Session Report and any sequestration order issued under section 254(f)(5).

"(1) CALCULATION OF END-OF-SESSION EXCESS DEBT.—When OMB issues its End-Of-Session Report, and after any sequestration under sections 251 and 251A of this Act or under section 5(b) of the Statutory Pay-As-You-Go Act of 2010, OMB shall calculate the remaining budget-year excess debt and five-year excess debt by—

"(A) starting with the estimates of budget-year excess debt and five-year excess debt published in OMB's sequestration preview report;

"(B) subtracting OMB's estimates of the net effect on debt (excluding debt service) in the budget year and in the fourth outyear, respectively, of legislation enacted during that session, as reported on OMB's excess debt reduction scorecard, except that the calculation of budget-year excess debt shall not include the effect on debt of any of the following legislation enacted during that session of Congress—

"(1) appropriations designated as emergency requirements under section 251(b)(2)(A)(i) or as disaster relief under section 251(b)(2)(D) of this Act, or

"(2) provisions designated as emergency requirements under section 4(g)(1) of the Statutory Pay-As-You-Go Act of 2010; and

"(C) subtracting the debt effect (excluding debt service) in the budget year and in the fourth outyear, respectively, of any sequestration required by section 251(a) or section 251A of this Act or by section 5(b) of the Statutory Pay-As-You-Go Act of 2010.

"(2) END-OF-SESSION REPORT.—OMB's End-of-Session report shall include OMB's calculation of the remaining budget-year excess debt and the remaining five-year excess debt, OMB's up-to-date excess debt reduction scorecard, information about any sequestration order required under paragraph (3), and any other data and explanations appropriate to enhance public understanding of this section and actions taken under it.

"(3) SEQUESTRATION ORDER.—If OMB's end-of-session report shows any remaining budget-year excess debt or five-year excess debt, OMB shall prepare and the President shall issue a sequestration order under section 254(f)(5) that, upon issuance,

“(A) reduces debt at the end of the budget year by the greater of the remaining budget-year excess debt or one-fifth of the remaining five-year excess debt, if that greater amount exceeds \$15 billion;

“(B) obtains half of the required reductions from outlays and half from tax expenditures; and

“(C) obtains half of the required outlay reductions from non-exempt defense function accounts (function 050 accounts) and half from non-exempt, non-defense accounts (all other non-exempt accounts).

"(f) OUTLAY REDUCTIONS.—A sequestration order issued under section 254(f)(5) shall achieve the required outlay reductions as follows:

"(1) DEFENSE.—Each non-exempt defense account shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to make the reductions in defense outlays required by subsection (e)(3)(C), except that, if any military personnel are exempt, adjustments shall be made under the procedure set forth in section 251(a)(3).

"(2) NON-DEFENSE.—Each non-exempt, non-defense account shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to make the reductions in non-defense outlays required by subsection (e)(3)(C), except that—

"(A) the Medicare program specified in section 256(d) shall not be reduced more than 2 percent;

"(B) the health programs set forth in section 256(e) shall not be reduced by more than 2 percent; and

"(C) if subparagraphs (A) and (B) limit reductions to the programs covered by those subparagraphs, then the uniform percentage applicable to all other non-exempt programs under this paragraph shall be increased to a level sufficient to achieve the required reduction in outlays.

"(3) COUNT OUTYEAR SAVINGS TOWARD THE BUDGET-YEAR SEQUESTRATION.—For the purpose of determining reductions under this subsection, outlay reductions that would occur in the following four fiscal years from the sequestration of budget-year budgetary resources shall be credited as outlay reductions for the fiscal year of the sequestration.

"(4) PART-YEAR APPROPRIATIONS.—If, on the date specified in subsection (e), there is in effect a law making or continuing appropriations for part of a fiscal year for any non-exempt budget account, then the dollar sequestration calculated for that account shall be accomplished as specified in section 251(a)(4).

"(g) SEQUESTRATION OF TAX EXPENDITURES.—

"(1) To implement the required sequestration, itemized deductions, specified above-the-line deductions, and the tax value of certain exclusions from income shall be limited as set forth below:

"(A) The portion of an individual's itemized deductions and specified above-the-line deductions that reduces the amount of taxable income subject to tax under section 1 or section 55 of the Internal Revenue Code at a rate higher than a specified percentage determined by the Secretary of the Treasury or his designee is disallowed.

"(B) For any individual to whom subparagraph (A) applies, the amount of tax imposed under section 1 or section 55 of the Internal Revenue Code shall be reduced in an amount equal to the product of the itemized deductions and specified above-the-line deductions disallowed under subparagraph (A) and the percentage specified under subparagraph (A).

"(C) The tax value of the exclusion from income of tax-exempt interest, foreign excluded income, and employer sponsored health and insurance coverage shall be limited in a manner similar to that described in subparagraphs (A) and (B).

"(D) The percentage specified under subparagraph (A) shall be a whole number that the Secretary estimates will, when applied to itemized deductions, specified above-the-line deductions, and the exclusions from income specified in subparagraph (C), reduce tax expenditures by the amount required by subsection (e)(3).

"(E) For purposes of this provision, specified above-the-line deductions shall include the domestic production activities deduction, certain trade and business deductions of employees, deductions for moving expenses, deductions related to Archer MSAs, deductions for interest on education loans, deductions

for higher education expenses, deductions related to health savings accounts, and deductions for health insurance costs of self-employed individuals.

"(2) Paragraph (1) shall be effective for the taxable year beginning on January 1 of the budget year for which sequestration applies.

"(3) Paragraph (1) shall apply only to taxpayers with adjusted gross income for the taxable year specified in paragraph (2) in excess of: \$250,000 in the case of married taxpayers filing jointly, \$225,000 in the case of heads of household, \$125,000 in the case of married taxpayers filing separately, and \$200,000 in the case of all other individuals.

"(4) The Secretary of the Treasury or his designee shall prescribe such regulations or other guidance as may be appropriate to carry out this provision.

"(5) For purposes of this subsection, reductions in tax expenditures that would occur in the following four fiscal years shall be credited as reductions in the fiscal year of the sequestration.

"(h) CAPPED BASELINE ASSUMPTIONS.—For purposes of this section, the term "capped baseline" means the baseline described in section 257, except for the adjustments specified in this subsection.

"(1) BASELINE FOR DIRECT SPENDING AND RECEIPTS.—The capped baseline for direct spending and receipts shall be adjusted to include the estimated effect of any sequestration required pursuant to section 251A.

"(2) BASELINE FOR DISCRETIONARY ACCOUNTS.—

"(A) BUDGET AUTHORITY.—The baseline amounts of discretionary budget authority for each account shall be adjusted by a uniform percentage so that total discretionary budget authority equals the discretionary spending limits for budget authority, if any, specified in section 251 less any reductions required pursuant to section 251A.

"(B) OUTLAYS.—The baseline for discretionary outlays for each account shall equal OMB's estimate of the outlays that would result from the discretionary budget authority calculated pursuant to subparagraph (A).

"(3) CURRENT POLICY ADJUSTMENTS.—In order to be a realistic projection of the fiscal trajectory, the capped baseline shall include adjustments for continuation of current policy for the Alternative Minimum Tax, estate tax relief, and extension of middle-

income tax cuts, until legislation is enacted that designates (as provided in subparagraph (E)) one or more provisions of that legislation as permanently obviating the need for the current policy adjustment.

"(A) ALTERNATIVE MINIMUM TAX (AMT).—In any year, the capped baseline shall assume the lesser of—

"(i) revenue collections under current law; or

"(ii) revenue collections as if AMT law had been amended by making commensurate adjustments in the exemption amounts for joint and single filers in such a manner that the share of taxpayers with AMT liability or lost credits that would occur as a result of the AMT would not in any year be estimated to exceed the share of taxpayers affected by the AMT in tax year 2010.

"(B) ESTATE TAX RELIEF.—In any year, the capped baseline shall assume the lesser of—

"(i) revenue collections under current law; or

"(ii) revenue collections as if estate and gift tax law had been amended so that the tax rates, nominal exemption amounts, and related parameters in effect for tax year 2009 had remained in effect, with nominal exemption amounts indexed for inflation after tax year 2009 consistent with subparagraph (D).

"(C) MIDDLE INCOME TAX CUTS.—In any year, the capped baseline shall assume the lesser of—

"(i) revenue collections under current law; or

"(ii) revenue collections as if provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) or the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) that amended the Internal Revenue Code of 1986 (or provisions in later statutes further amending the amendments made by EGTRRA or JGTRRA through December 31, 2009) had been made permanent, other than—

"(I) amendments to the Estate and Gift Tax;

"(II) amendments to the AMT;

"(III) the income tax rates on ordinary income that apply to individuals with adjusted gross incomes in tax year 2010 greater than \$200,000 for single filers and \$250,000 for joint filers, with these income levels indexed for inflation in each subsequent year consistent with subparagraph (D);

"(IV) the income tax rates on capital gains and dividends that apply to individuals with adjusted gross incomes in tax year 2010 greater than \$200,000 for single filers and \$250,000 for joint filers, with these income levels indexed for inflation in each subsequent year consistent with subparagraph (D), and

"(V) the repeal of limitations on personal exemptions and on itemized deductions that apply to individuals with adjusted gross incomes in tax year 2010 greater than \$200,000 for single filers and \$250,000 for joint filers, with these income levels indexed for inflation in each subsequent year consistent with subparagraph (D).

"(D) Indexation.—Indexed amounts under subparagraphs (B) and (C) are assumed to increase in each year by an amount equal to the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year in which the taxable year begins, determined by substituting "calendar year 2010" for "calendar year 1992" in subparagraph (B) of that section.

"(E) CURRENT POLICY DESIGNATION.—The designation required by this paragraph shall be in the form of a provision in the applicable Act stating: "The provisions of this Act are designated by Congress as permanently obviating the need for the current policy adjustment for the item listed in section 253(h)(3)(X) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.", where (X) is (A), (B), or (C) of this paragraph.

"(i) RECESSION SAFETY VALVE.— The purpose of the recession safety valve is to suspend the requirement to reduce debt during a recession and to require moderate debt reduction during the initial recovery stage so as not to choke off the recovery.

"(1) SUSPENSION PERIOD.—The suspension period begins in any month in which the monthly unemployment rate exceeds 5 percent and is at least 0.5 percentage points above its level six months earlier. It continues until the monthly unemployment rate is less than 8.5 percent and less than the unemployment rate in the sixth month prior to the current month, plus an additional three months. If the suspension period would otherwise end before the end of a session of Congress, the suspension period will continue until the end of that session of Congress.

"(2) ACTIONS DURING THE SUSPENSION PERIOD.—

"(A) OMB shall separately notify Congress in writing of the beginning month and the ending month of the suspension period within two weeks of the day when the applicable unemployment rates are published.

"(B) When OMB notifies Congress that a suspension period has begun—

"(i) OMB shall prepare and the President shall issue an order to cancel any sequestration order previously issued by the President pursuant to subsection (e)(3) for the most recently completed session of Congress and to restore any reductions taken under that sequestration order;

"(ii) the Secretary of the Treasury or his designee shall prescribe such regulations or other guidance as may be appropriate to implement cancellation of any sequestration of tax expenditures resulting from any sequestration order issued previously by the President pursuant to subsection (e)(3) for the most recently completed session of Congress; and

"(iii) OMB shall immediately set the budget-year excess debt and the five-year excess debt calculated pursuant to subsection (c) to \$0, and these amounts shall remain at \$0 for the duration of the suspension period.

"(C) AVAILABILITY OF RESTORED FUNDING.—Funding that is restored pursuant to this subsection shall remain available to the extent and in the manner that was specified by the law that provided the funding.

"(D) RESTORATION OF MANDATORY PAYMENTS.—To the extent possible, persons or entities that received reduced payments pursuant to a sequestration order under this section shall receive offsetting payments in the amount of the

reduction in those payments, but those offsetting payments shall not count as income for determining the eligibility of benefit levels for federal programs.

"(3) TRANSITION PERIOD.—To support economic recovery after a recession, any reduction of excess debt otherwise required by this section shall be reduced by one-half during the transition period.

"(A) The transition period begins in the first month after the end of the suspension period and continues for a period of twelve months. If the transition period would otherwise end before the end of a session of Congress, the transition period will continue until the end of that session of Congress.

"(B) When OMB issues its sequestration preview report during a transition period, OMB shall first calculate the budget-year excess debt and the five-year excess debt as described in subsection (c) and then reduce the amounts so calculated by one-half. The reduced amounts become the budget-year excess debt and the five-year excess debt for that fiscal year.

"(4) RETURN TO PATH.—When OMB issues its sequestration preview report after the end of a transition period, OMB shall calculate the budget-year excess debt and the five-year excess debt as described in subsection (c), and the requirement to eliminate the full amount of any such excess debt during the current session of Congress resumes.

"(5) INITIAL MONTH.—The monthly civilian unemployment rate for any month prior to the date of enactment of this Act shall be disregarded for purposes of this subsection.

SEC. 4. EXEMPT PROGRAMS AND ACTIVITIES.

Section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended after " Payments for Foster Care and Permanency (75-1545-0-1-609)." by inserting:

“Reduced Cost Sharing for Individuals Enrolling in Qualified Health Plans (75-0126-0-1-551).

SEC. 5. CONFORMING AMENDMENTS.

(a) Section 251(a)(1) of the Balanced Budget and Emergency Deficit Control Act is amended by striking "Within 15 calendar days after Congress adjourns to end a session" and inserting "On the date specified in section 254(f)(1)".

(b) Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904) is amended—

(1) in the timetable in subsection (a) by striking "15 days" and inserting "14 days (excluding weekends and holidays)";

(2) in subsection (c)(1), by striking "deficit" and inserting "debt";

(3) in subsection (c) by striking paragraph 4 and inserting—

"(4) DEBT SEQUESTRATION PREVIEW REPORTS.—The preview reports shall set forth the following:

"(A) the fixed debt triggers for the current year through the fourth outyear and, when applicable, the above-path debt trigger or the below-path debt trigger;

"(B) the budget-year excess debt and the five-year excess debt under the capped baseline after any reductions required under sections 251 and 251A of this Act and under section 5(b) of the Statutory Pay-As-You-Go Act of 2010 have been made;

"(C) the aggregate amount of reductions required from expenditure accounts and tax expenditures to eliminate excess debt, if any; and

"(D) the sequestration percentages necessary to achieve the required outlay reductions under section 253(f) and the percentage necessary to achieve the required reduction in tax expenditures under section 253(g).";

(4) by striking subsection (f)(3) and inserting—

"(3) FINAL DEBT SEQUESTRATION REPORT.—The final report shall contain all of the information required in the debt sequestration preview report. In addition, the final report shall contain:

"(A) for each expenditure account to be sequestered, estimates of the enacted level of sequestrable budgetary resources in the budget year and resulting outlays; the amount of budgetary resources to be sequestered in the budget year; and the resulting outlay reductions through the fourth outyear;

"(B) for tax expenditures, baseline estimates of tax expenditures that are affected by the sequestration under section 253(g) and the savings in all years from sequestering those tax expenditures.";

(5) in subsection (f)(4)—

(A) by striking "excess deficit" and inserting "excess debt"; and

(B) by striking "sequesterable" and inserting "sequestrable tax expenditures and of sequestrable"; and

(6) in subsection (f)(5) after "is required," by inserting "or if on the dates specified in section 251A(4) OMB determines that a sequestration is required,".

(d) Section 255 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by redesignating the second subsection (j) as subsection (k).

Sectional Analysis

Sec. 1. Short Title.

This section states the short title for this Act is the "Debt Reduction Act of 2011."

Sec. 2. Definitions.

This section amends the section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) by:

(a) revising the table of contents in subsection (a) by changing the listing for section 253 to read "Sec. 253. Enforcing debt reduction."

(b) in subsection (c) by adding "disallowance of tax expenditures" to the definition of the terms "sequester" and "sequestration;"

(c) by adding the following three definition at the end of subsection (c):

Paragraph 22, defining "debt" to mean debt held by the public minus financial assets of the Government plus financial liabilities of the Government, consistent with total asset accounts and total liability accounts reported in Table 6 of the Monthly Treasury Statement;

Paragraph 23, defining "capped baseline" to be calculated pursuant to section 253(i); and

Paragraph 24, defining "monthly unemployment rate" as the Bureau of Labor Statistics published estimate of the monthly civilian unemployment rate, seasonally adjusted.

Sec. 3. Enforcing Debt Reduction.

This section amends BBEDCA by striking section 253, Enforcing Deficit Targets, and replacing it with a new budget control mechanism that focuses on debt reduction. The current section 253 last applied to fiscal year 1995.

Subsection (a), Purpose, states the purpose of this section is to assure that debt is steadily reduced by setting declining annual debt ceilings, which would be enforced by sequestration.

Subsection (b), Debt Triggers, defines three types of debt ceilings that, if exceeded, trigger a budget year sequestration to reduce debt.

Paragraph (1), Fixed Debt Triggers, sets permanent ceilings on debt as a percentage of GDP that decline by 0.2 percentage points per year, starting with OMB's capped baseline estimate of FY 2013 debt when OMB issues its sequestration preview report for fiscal year 2014. OMB would extend the fixed debt triggers by one year when it issues each subsequent sequestration preview report by subtracting 0.2 percentage points from the fixed debt trigger for the previous year.

Paragraph (2), Above-path Debt Triggers, defines a debt trigger for the fourth outyear whenever OMB's capped baseline estimate of debt for the current year is above the fixed debt trigger for that year. The above-path debt trigger equals OMB's capped baseline estimate of debt for the current year as a percentage of GDP minus ten percentage points. OMB would recalculate the above-path debt trigger each year in its preview sequestration report.

Paragraph (3), Below-Path Debt Trigger, defines a debt trigger for the fourth outyear whenever OMB's capped baseline estimate of debt for the current year is below the fixed debt trigger for that year. The below-path debt trigger equals OMB's capped baseline estimate of debt for the current year as a percentage of GDP minus one percentage point. OMB would recalculate the below-path debt trigger each year in its preview sequestration report.

Subsection (c), Preview Report Projection of Excess Debt, requires OMB to determine if there is any excess debt over the five years through the end of the fourth outyear or in the budget year.

Paragraph (1), Five-Year Excess Debt, provides instructions for calculating any excess debt over the five years beginning with the budget year through the fourth outyear.

Subparagraph (A) defines the fourth-outyear target under three conditions:

Under clause (i), if OMB's capped baseline estimate of debt as a percentage of GDP for the current year is less than the fixed debt trigger for that year, the fourth outyear equals the below-path debt trigger.

Under clause (ii) if OMB's capped baseline estimate of debt as a percentage of GDP for the current year is the same amount as the fixed debt trigger for that year, the fourth outyear equals the fixed debt trigger for the fourth outyear.

Under clause (iii) if OMB's capped baseline estimate of debt as a percentage of GDP for the current year is greater than the fixed debt trigger for that year, the fourth outyear equals the higher of the fixed debt trigger for the fourth outyear or the above-path debt trigger.

Subparagraph (B) describes the calculation of five-year excess debt by comparing the baseline estimate of debt as a percentage of GDP to the fourth outyear target and reducing any difference by 10 percent to account for debt service..

Paragraph (2), Budget-Year Excess Debt, defines excess debt for the budget year as the larger of two measures – the backload prevention measure and excess debt above the budget-year ceiling.

Subparagraph (A) states the purpose of the backload prevention measure is to require at least a minimal amount of debt reduction in the budget year, so as to discourage back loading the savings to the end of the five-year budget horizon. The backload prevention measure equals one-tenth of the five-year excess debt calculated pursuant to paragraph (1).

Subparagraph (B) states the purpose of the measure of excess debt above the budget-year ceiling is to require debt as a percentage of GDP to decline from the current year to the budget year. Under this measure, debt is to decline from the current year to the budget year by at least one-fifth of the difference between current-year debt as a percentage of GDP and the fourth outyear target, with the difference further reduced by 0.2 percentage points. If OMB's capped baseline estimate of budget-year debt exceeds this level, the difference less 2 percent to account for debt service is excess debt above the budget-year ceiling.

Subsection (d), Excess Debt Reduction Scorecard, requires OMB to maintain and make publicly available a continuously updated scorecard displaying OMB's estimate of budget-year excess debt and five-year excess debt as calculated in OMB's sequestration preview report, the effect on debt of legislation enacted during the current session of Congress for the current year through the fourth outyear, and any remaining budget-year excess debt and five-year excess debt. OMB's estimates are to use current economic and technical assumptions (those underlying the most recent President's Budget) and are conform to scorekeeping guidelines determined after consultation with the House and Senate Committees on the Budget and CBO.

Subsection (e), End-Of-Session Report and Sequestration Order, requires OMB to issue its final sequestration report and sequestration order within 14 days, excluding weekends and holidays, of the end of the current session of Congress.

Paragraph (1) provides instructions for calculating any remaining budget-year excess debt and five-year excess debt. The calculation begins with OMB's sequestration preview report estimates of budget-year excess debt and five-year excess, subtracts OMB's estimates of the net debt effect (excluding debt service) of legislation enacted during the current session of Congress, subtracts the budget-year impact of funding enacted during that session for emergencies and disaster relief from the budget-year excess debt measure, and subtracts any sequestration required by section 251 (discretionary caps), section 251A (failure of the joint committee bill to enact sufficient savings), and the Statutory Pay-As-You-Go Act of 2010.

Paragraph (2) describes what information must be included in OMB's end-of-session report. The report is to include OMB's calculation of the remaining budget-year excess debt and five-year excess debt, OMB's up-to-date debt reduction scorecard, information about any funding enacted for emergencies or disaster relief, information about any sequestration required, and any other information that would enhance public understanding of OMB's calculations.

Paragraph (3), Sequestration Order, requires OMB to prepare and the President to issue a sequestration order to reduce budget-year debt by the greater of any remaining budget-year excess debt or one-fifth of any remaining five-year excess debt, if the reduction is greater than \$15 billion. If the reduction is less than \$15 billion, it would add to the need to reduce debt in subsequent years. Half of any sequestration is to be obtained from outlays and half from tax expenditures. Half of the reduction in outlays is to come from non-exempt defense (function 050) accounts and half from non-exempt, non-defense accounts (all other non-exempt accounts).

Subsection (f), Outlay Reductions, specifies how a sequestration of outlays is to be applied and follows the general procedures used for a deficit sequestration under Gramm-Rudman-Hollings and for a sequestration under the recently enacted Budget Control Act.

Paragraph (1), Defense, specifies that sequestration is to reduce the non-exempt budgetary resources of each defense account by a uniform percentage necessary to achieve the reduction required in defense outlays. If the President decides to exempt any military personnel from sequestration, the uniform percentage reduction of sequestrable budget resources for all other function 051 accounts is increased to make up the difference.

Paragraph (2), Non-Defense, specifies that the sequestrable budgetary resources of each remaining non-exempt, non-defense account is reduced by a uniform percentage necessary to achieve the required outlay reductions. Sequestration of the Medicare programs specified in section 256(d) and the health programs specified in section 256(e) is limited to 2 percent, and the reduction for all other non-exempt, non-defense accounts is increase to the uniform percentage necessary to achieve the remaining required outlay reductions.

Paragraph (3) , Count Outyear Savings Toward the Budget-Year Sequestration, states that any outlays savings in the first four outyear from the sequestration of budget-year budgetary resources are to be credited toward the reduction required in budget-year outlays.

Paragraph (4), Part-year Appropriations, specifies that the base against which any sequestration is applied for accounts that are funded by a continuing resolution is to be same as specified in section 251(a)(4). Under that paragraph, the sequestration would be deducted from the annualized level of the CR and from the amount provided when the full-year appropriation is enacted.

Subsection(g), Sequestration of Tax Expenditures, describes the procedures to sequestering tax expenditures.

Paragraph (1) requires the tax sequestration to be achieved by limiting itemized deductions, specified above-the-line deductions, and the tax value of certain exclusions from income. The Secretary of the Treasury is to determine a percentage that will reduce these tax expenditures by dollar amount required by subsection (f)(3).

Paragraph (2) says to apply the reductions to the taxable year beginning on January 1 of the budget year for which the sequestration applies.

Paragraph (3) states that the reductions shall apply only to taxpayers with adjusted gross income for the taxable year specified in paragraph (2) in excess of: \$250,000 in the case of married taxpayers filing jointly, \$225,000 in the case of heads of household, \$125,000 in the case of married taxpayers filing separately, and \$200,000 in the case of all other individuals.

Paragraph (4) requires the Secretary of the Treasury or his designee to issue such regulations or guidance as necessary to implement the tax sequestration.

Paragraph (5) credits tax reductions in subsequent years occurring from the budget-year tax sequestration to count towards the reductions for the budget year.

Subsection (h), Capped Baseline Assumptions, defines the baseline for purposes of this section as the baseline estimated pursuant to section 251 with adjustments specified in this subsection.

Paragraph (1), Baseline for Direct Spending and Receipts, provides for adjusting direct spending and receipts to include the effect of any sequestration of direct spending required under the Budget Control Act procedures specified in section 251A.

Paragraph (2), Baseline for Discretionary Accounts, provides for adjusting discretionary budget authority for each account by a uniform percentage so that total discretionary budget authority equals the discretionary spending limits specified in section 251 less any reductions required under the Budget Control Act procedures specified in section 251A. Discretionary outlays are OMB's estimate of the outlays that would flow from those adjusted budget authority levels.

Paragraph (3), Current Policy Adjustments, provides for more realistic projections of tax receipts for the Alternative Minimum Tax (AMT), estate tax relief, and extension of middle-income tax cuts, until legislation is enacted that permanently addresses those issues.

Subparagraph (A) states that for AMT, the capped baseline would assume the lesser of revenue collections under current law or estimated revenue that would be collected if the AMT law were amended by making commensurate adjustments in the exemption amounts for joint and single filers, so that the share of taxpayers with AMT liability or lost credits as a result of AMT does not exceed the share of taxpayers affected by the AMT in tax year 2010.

Subparagraph (B) states that for estate tax relief, the capped baseline would assume the lesser of revenue collections under current law or estimated revenue that would be collected if estate and gift tax law were amended so that tax rates, nominal exemption amounts, and related parameters in effect for tax year 2009 (adjusted for inflation) continued into subsequent years.

Subparagraph (C) states that for middle income tax cuts, the capped baseline would assume the lesser of revenue collections under current law or estimated revenue that would be collected if the provisions of EGTRRA or JGTRRA (or subsequent amendments to those amendments) had been made permanent as they apply to taxpayers with incomes up to \$200,000 for single filers and \$250,000 for joint filers.

Subparagraph (D) provides for the adjustments for estate tax relief and middle income tax cuts to be indexed each year by an amount equal to the cost-of-living-adjustment under section 1(f)(3) of the Internal Revenue Code of 1986.

Subparagraph (E) specifies a statement that must be included in legislation that is intended to permanently resolve these policy issues, at which point, the baseline would reflect current law.

Subsection (i), Recession Safety Valve, provides for suspension of the requirements to reduce debt whenever the economy has slipped into a recession, a transition period during the initial stages of the recovery when only moderate debt reduction is required, and a subsequent period when more aggressive debt reduction is required to get back to the target path.

Paragraph (1), Suspension Period, suspends the requirement to reduce debt and the sequestration procedures when the monthly civilian unemployment rate, seasonally adjusted, exceeds 5.0 percent and has increased by 0.5 percentage points or more over the past 6 months. The suspension period continues until the month in which the unemployment rate is less than 8.5 percent and less than the unemployment rate in the sixth month prior to the current month, plus an additional three months. If the suspension period would end before the end of the current session of Congress, the suspension period would continue through the end of that session.

Paragraph (2), Actions During the Suspension Period, describes various actions to be taken during the suspension period:

- Under subparagraph (A), OMB is to notify Congress in writing of the beginning month and ending month of the suspension period within two weeks of when the applicable unemployment rates are publicly available.
- Under subparagraph (B), OMB is required to prepare and the President to issue an order to cancel any sequestration order in effect as a result of this section, to restore any reductions taken under that sequestration, and to set the budget-year excess debt and the five-year excess debt to \$0. In addition, the Secretary of the Treasury or his designee is required to issue regulations or other guidance to cancel any sequestration of tax expenditures in effect pursuant to a sequestration order issued for the most recent session of Congress.
- Under subparagraph (C), funding that is restored by the cancellation of any sequestration order is available to the extent and in the manner that was provided by the Act that provided the funding.

- Under subparagraph (D), persons or entities who received reduced mandatory payments as a result of any sequestration order that is canceled are to receive offsetting payments in the amount of the reduction of those payments to the extent possible.

Paragraph (3), Transition Period, provides for a 12-month period after the end of the suspension period during which the required debt reduction is reduced by one-half. If the transition period would end before the end of the current session of Congress, then it is extended through the end of that session.

Paragraph (4), Return to Path, states that the requirements to reduce debt and to sequester budget year resources if debt is not sufficiently reduced become fully effective in the first session of Congress after the end of the transition period.

Paragraph (5) specifies the monthly unemployment rate for months prior to the month in which this bill is enacted are to be disregarded for purpose of this section.

Sec. 4. EXEMPT PROGRAMS AND ACTIVITIES.

This section adds the Reduced Cost-sharing for Individuals Enrolling in Qualified Health Plans account (75-0126-0-1-551) to the list in section 255 of accounts that are exempt from sequestration.

Sec. 5. Conforming Amendments.

This section amends other sections of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) to be consistent with the changes proposed by this legislation to section 253.

Subsection (a) amends section 251(a)(1) of BBEDCA to change the timing of any sequestration of discretionary spending in excess of the discretionary caps to occur on the same day as any sequestration order for purposes of the debt trigger and the Statutory Pay-As-You-Go Act of 2010. Since these sequestrations would change the measurement of debt under the debt trigger, it is important to have them occur at the same time.

Subsection (b) makes various conforming changes to section 254 of BBEDCA:

Paragraph (1) revises the date in the timetable in section 254(a) for OMB's final sequestration report and Presidential order to be within 14 days after the end of session (excluding weekends and holidays). This is the date specified by the Statutory Pay-As-You-Go Act. In combination with the changes made in subsection (a) and (b), this puts the sequestrations under sections 251 and 253 of BBEDCA and under the Statutory-Pay-As-You-Go Act on the same timetable.

Paragraph (2) revises section 254(c)(1) by changing "deficit" to "debt" to reflect the revised focus of section 253, as amended by this Act.

Paragraph (3) strikes section 254(c)(4), which describes requirements for deficit sequestration preview reports, and replaces it with requirements for the debt sequestration preview reports.

Paragraph (4) strikes section 254(f)(3), which contains requirements for final Pay-As-You-Go and deficit sequestration reports, and replaces it with reporting requirements for the debt final sequestration reports.

Paragraph (5) amends section 254(f)(4) by replacing a reference to "excess deficit" with "excess debt", corrects the spelling of "sequesterable" and adds a requirement to describe differences between OMB and CBO of tax expenditures that are sequestered.

Paragraph (6) amends section 254(f)(5) to clarify that the requirement to issue a sequestration order implementing all sequestrations required by OMB's calculations applies to sequestrations under section 251A as it does to sequestrations under sections 251 and 253 of BBEDCA and to sequestrations under the Statutory Pay-As-You-Go Act.

Subsection (d) corrects an incorrect enumeration of subsection 255(j) of BBEDCA the second time it appears.

HEALTH SAVINGS

REDUCE MEDICARE COVERAGE OF BAD DEBTS

Legislative Proposal

SEC 1. REDUCING BAD DEBT PAYMENTS TO HOSPITALS AND SKILLED NURSING FACILITIES.

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended—

(1) in subparagraph (T)—

(A) in clause (iii), by striking “and”;

(B) in clause (iv)—

(i) by striking “a subsequent fiscal year” and inserting “fiscal years 2001 through 2012”; and

(ii) by striking the period and inserting a comma; and

(C) by inserting at the end the following new clauses:

“(v) for cost reporting periods beginning during fiscal year 2013, by 45 percent of such amount otherwise allowable,

“(vi) for cost reporting periods beginning during fiscal year 2014, by 60 percent of such amount otherwise allowable, and

“(vii) for cost reporting periods beginning during fiscal year 2015 and during each subsequent fiscal year, by 75 percent of such amount otherwise allowable.”;

(2) in subparagraph (V)—

(A) in the matter preceding clause (i), by striking “with respect to cost reporting periods beginning on or after October 1, 2005” and inserting “and covered skilled nursing services (as described in section 1888(e)(2)(A) furnished by hospital providers of extended care services (as described in section 1883)”;

(B) by striking “and—” and inserting “shall be reduced—”;

(C) by striking clauses (i) and (ii) and inserting the following new subclauses:

“(i) for cost reporting periods beginning during fiscal year 2013, by 45 percent of such amount otherwise allowable,

“(ii) for cost reporting periods beginning during fiscal year 2014, by 60 percent of such amount otherwise allowable, and

“(iii) for cost reporting periods beginning during fiscal year 2015 and during each subsequent fiscal year, by 75 percent of such amount otherwise allowable.”; and

(3) by adding at the end the following new subparagraph:

“(W) In determining such reasonable costs for types of providers of services (as described in subsection (u)), types of suppliers (as defined in subsection (d)) and any other types of entity that receives payment for bad debts under the authority under subparagraph (A), the amount of bad debts otherwise treated as allowable costs which are attributable to the deductibles and coinsurance amounts under this title shall be reduced—

“(i) for cost reporting periods beginning during fiscal year 2013, by 25 percent of such amount otherwise allowable,

“(ii) for cost reporting periods beginning during fiscal year 2014, by 50 percent of such amount otherwise allowable,

“(iii) for cost reporting periods beginning during fiscal year 2015 and during each subsequent fiscal year, by 75 percent of such amount otherwise allowable.”

SEC. 2. UPDATING TREATMENT OF BAD DEBT.—Section 4008(c) of the Omnibus Budget Reconciliation Act of 1987, [as amended by section 8402 of the Technical and Miscellaneous Revenue Act of 1988 and section 6023 of Omnibus Budget Reconciliation Act of 1989] is amended by adding at the end the following new sentence: “Effective for cost reporting periods beginning on or after the date of enactment of the _____ Act of 2011, the provisions of the previous two sentences shall not apply.”

Sectional Analysis

These sections would reduce bad debt payments to 25% for all Medicare providers. **Section 1** would amend Medicare statute to apply the actual reduction within the program, and **Section 2** is a conforming amendment that would exempt Section 1 from a freeze on bad debt reimbursement for hospitals contained in OBRA '87 (as amended).

Current law gives the HHS Secretary the authority to reimburse providers for the uncollected coinsurance and deductibles accrued by Medicare beneficiaries, or “bad debt.” The Secretary has used this authority to issue federal regulations on bad debt for most “reasonable cost” providers and for dialysis facilities. The Secretary has determined that “bad debts arising from covered services paid under a reasonable charge-based methodology or a fee schedule are not reimbursable.” For all other providers (*i.e.*, those paid under a prospective payment system or cost-based reimbursement) – which includes hospitals, Skilled Nursing Facilities (SNFs), Critical Access Hospitals, Rural Health Clinics, End-Stage Renal Disease (ESRD) facilities, Federally Qualified Health Centers, Community Mental Health Clinics, health maintenance organizations (HMOs) reimbursed on a cost basis, competitive medical plans (CMPs), and health care pre-payment plans – the default is 100% reimbursement for bad debt. However, on a number of occasions, Congress has directed the Secretary to lower reimbursement levels for certain providers. In 1997, Congress lowered hospital bad debt payment to 55% over three years (P.L. 105-33); in 2001, it increased hospital bad debt payment to 70% (P.L. 106-554); in 2005, it lowered SNF bad debt payment to 70%, except for those debts caused by full-benefit dual eligibles, which remained at 100% (P.L. 109-171). Congress placed a freeze on bad debt reimbursement policies for hospitals in 1987 (Section 4008(c), P.L. 100-203, as amended by section 8402, P.L. 100-647 and section 6023, P.L. 101-239).

BETTER ALIGN GRADUATE MEDICAL EDUCATION PAYMENTS WITH PATIENT CARE COSTS

Legislative Proposal

SEC. __. REDUCING INDIRECT GRADUATE MEDICAL EDUCATION PAYMENTS.

(a) IN GENERAL.—Section 1886(d)(5)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(1) in subclause (XI), by striking “and”;

(2) in subclause (XII), by striking “On or after October 1, 2007” and inserting “during fiscal years 2007 through 2012” and by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subclause:

“(XIII) on or after October 1, 2012, “c” is equal to 1.22.”.

(b) CONFORMING AMENDMENT RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended by striking “or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003” and inserting “the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or by [section __ (a) of the ____ Act]”.

Sectional Analysis

Under current law, Medicare makes payments to teaching hospitals for the both the direct and indirect costs of medical education. Direct Graduate Medical Education (DGME) payments support the teaching aspects of residency programs (including resident stipends and benefits, supervisory physician salaries, and administrative overhead). These payments are based on a hospital-specific per-resident amount, the number of residents, and Medicare’s share of total inpatient days. Indirect GME (IME) payments support the higher costs of care associated with teaching (e.g. learning by doing, the greater use of emerging technologies). It is based on a formula and adjusts Medicare’s inpatient payments based on a hospital’s “teaching intensity”, as measured by the resident to bed ratio. The current IME adjustment is a 5.5% increase for every 10 percent increase in resident to bed ration. This section would amend the Medicare statute to reduce the IME adjustment to 4.95% beginning in FY 2013.

END ADD-ON PAYMENTS FOR HOSPITALS AND PHYSICIANS IN LOW-POPULATION STATES

Legislative Proposal

SEC. ____ . ELIMINATION OF PROVISION THAT INCREASES MEDICARE REIMBURSEMENT JUST FOR FRONTIER STATES.

(a) INPATIENT HOSPITAL SERVICES.—Section 1886(d)(3)(E)(iii)(I) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)(iii)(I)) is amended by inserting “and before October 1, 2012,” before “the area wage index”.

(b) OUTPATIENT HOSPITAL SERVICES.—Section 1833(t)(19)(A) of the Social Security Act (42 U.S.C. 1395l(t)(19)(A)) is amended by inserting “and before January 1, 2013,” before “the area wage adjustment factor”.

(c) PHYSICIANS’ SERVICES.—Section 1848(e)(1)(I)(i) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(I)(i)) is amended by inserting “and before January 1, 2013,” before “after calculating the practice expense index”.

Sectional Analysis

The Affordable Care Act (ACA) established “frontier” State adjustments which increase Medicare payments in select rural States (currently: MT, WY, ND, SD, and NV). Specifically, beginning October 1, 2010, section 10324 of the ACA established that area wage indexes for hospitals in a Frontier State may not be less than 1.00. Similarly, beginning January 1, 2011, the ACA established that the area wage adjustment for covered services in hospital outpatient departments located in Frontier States may not be less than 1.00 and that the practice expense index for physician services furnished in Frontier States may not be less than 1.00. The ACA mandates that each of these provisions be applied in a non-budget neutral manner. This section would repeal the ACA’s adjustment for frontier States.

**REDUCE CRITICAL ACCESS HOSPITAL (CAH) PAYMENTS FROM 101% OF
REASONABLE COSTS TO 100% OF REASONABLE COSTS**

Legislative Proposal

SEC. __. PAYMENT TO CRITICAL ACCESS HOSPITALS: IMPROVING PAYMENT ACCURACY.

(a) INPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—Section 1814(l) of the Social Security Act (42 U.S.C. 1395f(l)) is amended—

(1) in paragraph (1), by striking “101” percent and inserting “100 percent”; and

(2) in paragraph (4)(B)—

(A) in clause (i), by striking “100.66 percent” and inserting “99.66 percent”;

(B) in clause (ii), by striking “100.33 percent” and inserting “99.33 percent”; and

(C) in clause (iii), by striking “100 percent” and inserting “99 percent”.

(b) OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—Section 1834(g) of the Social Security Act (42 U.S.C. 1395m(g)) is amended in paragraphs (1) and (2)(A) by striking “101 percent” and inserting “100 percent”.

(c) AMBULANCE SERVICES FURNISHED BY A CRITICAL ACCESS HOSPITAL.—Section 1834(l)(8) of the Social Security Act (42 U.S.C. 1395m(1)(8)) is amended by striking “101 percent” and inserting “100 percent”.

(d) SKILLED NURSING FACILITY SERVICES FURNISHED BY A CRITICAL ACCESS HOSPITAL.—Section 1883(a)(3) of the Social Security Act (U.S.C. 1395tt(a)(3)) is amended by striking “101 percent” and inserting “100 percent”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments for services furnished on or after January 1, 2013.

Sectional Analysis

Under current law, a special category of Medicare provider called Critical Access Hospitals (CAHs) receives a more generous payment than do other acute care hospitals. CAHs are reimbursed at 101 percent of reasonable costs rather than through a prospective payment system. CAHs used to be reimbursed at 100 percent of reasonable costs; Congress increased the level to 101 percent in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This section would reverse that change in CY 2013, returning CAH payments to 100% of reasonable costs.

**PROHIBIT CAH DESIGNATION FOR FACILITIES THAT ARE LESS THAN 10
MILES FROM THE NEAREST HOSPITAL**

Legislative Proposal

**SEC. ____ . ENFORCEMENT OF GEOGRAPHIC CLASSIFICATIONS FOR CRITICAL
ACCESS HOSPITALS.**

Section 1820 of the Social Security Act (42 U.S.C. 1395i-4) is amended—

(1) in subsection (c)(2)(B)(i)(II), by inserting “, subject to subsection (e)(3)” before “is certified”;

(2) in subsection (e)—

(A) in paragraph (2), by striking “and” at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting at the end the following new paragraph:

“(3) Effective January 1, 2013, for those hospitals certified by the state under subsection (c)(2)(B)(i)(II) and certified as a critical access hospital by the Secretary under this paragraph, the Secretary shall rescind critical access hospital certification under this subsection if such critical access hospital is located less than a 10-mile drive (by primary or secondary road) from a hospital, or another facility described in subsection (c).”.

Sectional Analysis

The Balanced Budget Act of 1997 created a special category of Medicare provider called a critical access hospital (CAH). To qualify as a CAH, a hospital can have no more than 25 beds, and it has to be at least 15 miles by secondary road and 35 miles by primary road from the nearest hospital. However, up until 2006, States also had the option of waiving these distance requirements for small hospitals the State claimed were “necessary providers.” This section would direct the Secretary to revoke CAH status from those “necessary provider” CAHs that are located less than a 10-mile drive from another hospital.

ADJUST PAYMENT UPDATES FOR CERTAIN POST-ACUTE CARE PROVIDERS

Legislative Proposal

SEC. 1. REVISION OF INPATIENT REHABILITATION FACILITY PERCENTAGE INCREASE FOR 2014 THROUGH 2021.

Section 1886(j)(3) of the Social Security Act (42 U.S.C. 1395ww(j)(3)) is amended—

(1) in subparagraph (C)—

(A) in clause (i), by inserting “and clause (iii)” after “clause (ii)”; and

(B) In subparagraph (C), by inserting at the end the following new clause:

“(iii) Additional adjustment.—For fiscal years 2014 through 2021, after establishing the increase factor for a fiscal year pursuant to clauses (i) and (ii), if such increase factor is greater than 0.0 percent the Secretary shall reduce the increase factor by an additional amount described in subparagraph (E).”; and

(2) by inserting at the end the following new subparagraph:

“(E) ADDITIONAL ADJUSTMENT.— If the increase factor as adjusted by clauses (i) and (ii) of subparagraph (C) is greater than zero, for purposes of subparagraph (C)(iii), the additional adjustment described in this subparagraph is 1.1 percentage point for each of fiscal years 2014 through 2021. If the application of the additional adjustment in subparagraph (C)(iii) would result in an increase factor that is less than 0.0 for a fiscal year, the additional adjustment shall be reduced such that the increase factor after its application is 0.0. If, in any of fiscal years 2014 through 2021, the increase factor as adjusted by clauses (i) and (ii) of subparagraph (C) is less than or equal to zero, the additional adjustment described in subparagraph (C)(iii) for such year is 0.0 percentage point.”.

SEC. 2. REVISION OF LONG TERM CARE HOSPITAL MARKET BASKET UPDATES FOR 2014 THROUGH 2021.

Section 1886(m) of the Social Security Act (42 U.S.C. 1395ww(m)) is amended:

(1) in paragraph (3)(A)—

(A) in clause (i), by striking “and” after the semicolon;

(B) in clause (ii), by striking the period and inserting “; and”; and

(C) by inserting at the end the following new clause:

“(iii) for each of rate years 2014 through 2021, by the additional adjustment described in paragraph (5).”.

(2) in paragraph (3)(B)—

(A) by striking “this paragraph” and inserting “clauses (i) and (ii)”; and

(B) by inserting before the period at the end “, in which case the additional adjustment pursuant to clause (iii) shall not apply”;

(3) by redesignating paragraph (5) as paragraph (7); and

(4) by inserting after paragraph (4) the following new paragraphs:

“(5) ADDITIONAL ADJUSTMENT.—If the annual update as adjusted by clauses (i) and (ii) of paragraph (3)(A) is greater than zero, for purposes of paragraph (3)(A)(iii), the additional adjustment is 1.1 percentage point for each of fiscal years 2014 through 2021. If the application of the additional adjustment in paragraph (3)(A)(iii)

would result in an annual update that is less than 0.0 for a fiscal year, the additional adjustment shall be reduced such that the annual update after its application is 0.0. If, in any of the fiscal years 2014 through 2021, the annual update as adjusted by clauses (i) and (ii) of paragraph (3)(A) is less than or equal to zero, the additional adjustment described in paragraph (3)(A)(iii) for such year is 0.0 percentage point.

“(6) USE OF TERMINOLOGY.—With respect to discharges occurring on or after October 1, 2010, the term ‘rate year’ under this subsection shall mean ‘fiscal year’.”.

SEC. 3. REVISION OF SKILLED NURSING FACILITY MARKET BASKET UPDATES FOR 2014 THROUGH 2021.

Section 1888(e)(5)(B) of the Social Security Act (42 U.S.C. 1395yy(e)(5)(B)) is amended—

(1) in clause (ii), to read as follows:

“(ii) PRODUCTIVITY AND OTHER ADJUSTMENT.— The Secretary shall reduce the percentage determined in clause (i) by the following amounts:

“(I) for fiscal year 2012 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of fiscal years 2014 through 2021, by the other adjustment described in clause (iii).

“Such percentage shall be reduced first by the productivity adjustment in subclause (I). The application of the productivity adjustment described in subclause (I) may result in such percentage being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year. If the application of the productivity adjustment in subclause (I) results in such percentage being 0.0 or less than 0.0 for a fiscal year, the other adjustment described in subclause (II) shall not apply.”; and

(2) by inserting at the end the following new clause:

“(iii) CALCULATING OTHER ADJUSTMENT.—For purposes of clause (ii)(II), the other adjustment is 1.1 percentage point for each of fiscal years 2014 through 2021. The other adjustment shall be applied to the percentage under clause (i) as reduced by the productivity adjustment in clause (ii)(I). If the application of the adjustment in clause (ii)(II) would result in the percentage under clause (i) being less than 0.0 for a fiscal year, the other adjustment shall be reduced such that the final percentage after its application is 0.0.”.

SEC. 4. REVISION OF HOME HEALTH MARKET BASKET UPDATES FOR 2014 THROUGH 2021.

Section 1895(b)(3)(B) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

(1) by amending clause (vi) to read as follows:

“(vi) ADJUSTMENTS.—After determining the home health market basket percentage increase under clause (iii), and after application of clause (v), the Secretary shall reduce such percentage—

“(I) for 2015 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II);

“(II) for each of 2011 and 2012, by 1 percentage point; and

“(III) for each of 2014 through 2021, by the other adjustment described in subparagraph (vii).

“The application of subclauses (I) and (II) may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year. In such case, the other adjustment in subclause (III) shall not apply.”; and

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

“(vii) OTHER ADJUSTMENTS.—For purposes of clause (vi)(III) the other adjustment is 1.1 percentage point for each of 2014 through 2021. If the application of the other adjustment in clause (vi)(III) would result in the home health market basket percentage increase being less than 0.0 for a year, the other adjustment shall be reduced such that the final market basket percentage increase after its application of the other adjustment is 0.0. If, in any of years 2014 through 2021, the home health market basket as adjusted by subclauses (I) and (II) is less than or equal to zero, the other adjustment for such year is 0.0 percentage point”.

Sectional Analysis

Under current law, adjustments are made each year to Medicare payments to post-acute care providers. Each of these legislative changes would apply an additional 1.1 percentage point reduction in 2014-2021 to the annual payment update percentages that occur under current law for certain post-acute care providers. Additionally, while previously enacted payment update adjustments may result in a negative annual payment update percentage, the payment adjustments discussed below should not bring the annual payment updates below zero. Each section contains a provision so that if these updates have already reached zero or become negative, the payment adjustments in this legislation would not apply.

Section 1 would adjust the Medicare Inpatient Rehabilitation Facility market basket update for 2014 through 2021 by 1.1 percentage point.

Section 2 would adjust the Medicare Long-term Care Hospital market basket update for 2014 through 2021 by 1.1 percentage point.

Section 3 would adjust the Medicare Skilled Nursing Facility market basket update for 2014 through 2021 by 1.1 percentage point.

Section 4 would adjust the Medicare Home Health agency market basket update for 2014 through 2021 by 1.1 percentage point.

ADJUST PAYMENTS FOR CERTAIN CONDITIONS TREATED IN IRFs AND SNFs

Legislative Proposal

SEC. __. PAYMENT FOR CERTAIN MEDICAL CONDITIONS TREATED IN INPATIENT REHABILITATION FACILITIES.

Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)) is amended—

(1) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively;

(2) by inserting the following new paragraph after paragraph (6):

“(7) SPECIAL PAYMENT RULE FOR CERTAIN MEDICAL CONDITIONS.—

“(A) IN GENERAL.—Subject to subparagraph (H), in the case of discharges occurring on or after October 1, 2012, in lieu of the payment amount (as determined pursuant to the preceding provisions of this subsection) that would otherwise be applicable under this subsection, the Secretary shall substitute, for payment units with respect to an applicable medical condition (as defined in subparagraph (G)(i)) that is treated in an inpatient rehabilitation facility, the modified standardized payment amount determined under subparagraph (B).

“(B) MODIFIED PAYMENT AMOUNT.—The modified standardized payment amount for an applicable medical condition shall be based on the amount determined under subparagraph (C) for such condition, as adjusted under subparagraphs (D), (E), and (F).

“(C) AMOUNT DETERMINED.—

“(i) IN GENERAL.—The amount determined under this subparagraph for an applicable medical condition shall be based on the sum of the following:

“(I) An amount equal to the average per stay skilled nursing facility payment rate for the applicable medical condition (as determined under clause (ii));

“(II) An amount equal to 25 percent of the difference between the overhead costs (as defined in subparagraph (G)(ii)) component of the average inpatient rehabilitation facility per stay payment amount for the applicable medical condition (as determined under the preceding paragraphs of this subsection) and the overhead costs component of the average per stay skilled nursing facility payment rate for such condition (as determined under clause (ii)); and

“(III) An amount equal to 33 percent of the difference between the patient care costs (as defined in subparagraph (G)(iii)) component of the average inpatient rehabilitation facility per stay payment amount for the applicable medical condition (as determined under the preceding paragraphs of this subsection) and the patient care costs component of the average per stay skilled

nursing facility payment rate for such condition (as determined under clause (ii)).

“(ii) For purposes of clause (i) only, the Secretary shall develop and implement a methodology to convert skilled nursing facility payment rates for applicable medical conditions, as determined under section 1888(e), to average per-stay skilled nursing facility payment rates for each such condition that reflect a recent rebasing or recalculation of such rates based on the most recently available information on skilled nursing facility use and costs.

“(D) ADJUSTMENTS.—The Secretary shall adjust the amount determined under subparagraph (C) for an applicable medical condition using the adjustments to the prospective payment rates for inpatient rehabilitation facilities described in paragraphs (2), (3), (4), and (6).

“(E) UPDATE FOR INFLATION.—Except in the case of a fiscal year for which the Secretary rebases the amounts determined under subparagraph (C) for applicable medical conditions pursuant to subparagraph (F), the Secretary shall annually update the amounts determined under subparagraph (C) for each applicable medical condition by the increase factor for inpatient rehabilitation facilities (as described in paragraph (3)(C)).

“(F) REBASING.—The Secretary shall periodically (but in no case less than once every 5 years) rebase the amounts determined under subparagraph (C) for applicable medical conditions using the methodology described in such subparagraph and the most recent and complete cost report and claims data available. At the same time as such rebasing, for purposes of computing amounts in subparagraph (C), the Secretary shall also rebase the average inpatient rehabilitation facility payment amounts as determined in Section 1886(j).

“(G) DEFINITIONS.—In this paragraph:

“(i) APPLICABLE MEDICAL CONDITION.—The term ‘applicable medical condition’ means—

“(I) unilateral knee replacement;

“(II) unilateral hip replacement;

“(III) unilateral hip fracture; and

“(IV) other conditions as determined by the Secretary.

“(ii) OVERHEAD COSTS.—The term ‘overhead costs’ means those Medicare-allowable costs that are contained in the General Service cost centers of the Medicare cost reports for inpatient rehabilitation facilities and for skilled nursing facilities, respectively, as determined by the Secretary.

“(iii) PATIENT CARE COSTS.—The term ‘patient care costs’ means total Medicare-allowable costs minus overhead costs.

“(H) LIMITATION.—The provisions of this paragraph shall not apply to the payment for an applicable medical condition if such application would result in an increase in the payment amount that would otherwise apply to such condition under this subsection (determined without regard to this paragraph).”; and

(3) in paragraph (9), as so redesignated—

(A) in subparagraph (C), by striking “and” at the end;

(B) in subparagraph (D), by striking the period at the end and inserting “, and”; and

(C) by inserting at the end a new subparagraph as follows:

“(D) modified standardized payment amounts under paragraph (7).”.

Sectional Analysis

This section would adjust Medicare payments for three conditions involving hip and knee replacements, and hip fracture as well as other conditions selected by the Secretary at her discretion. These conditions are commonly treated at both Inpatient Rehabilitation Facilities (IRFs) and Skilled Nursing Facilities (SNFs), but Medicare pays significantly more when treated in IRFs. This section would reduce differences in payment for treatment of the specified conditions to limit inappropriate financial incentives and encourage the provision of care in the most clinically appropriate setting for the beneficiary. IRFs provide intensive inpatient rehabilitation care that may not be needed for patients with relatively uncomplicated conditions whose care needs could reasonably be expected to be met in a SNF.

ENCOURAGE APPROPRIATE USE OF INPATIENT REHABILITATION HOSPITALS

Legislative Proposal

SEC. ____ . REVISING INPATIENT REHABILITATION FACILITY CLASSIFICATION CRITERIA.

(a) IN GENERAL.—Section 5005 of the Deficit Reduction Act of 2005 (Public Law 109-171; 42 U.S.C. 1395ww note), as amended by section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173) is amended in subsection (a)—

(1) by striking “the 60” and inserting “75”; and

(2) by striking “compliance rate that became effective for cost reporting periods beginning on or after July 1, 2006.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for cost reporting periods beginning on or after October 1, 2012.

Sectional Analysis

For a medical facility to be paid by Medicare as an “Inpatient Rehabilitation Facility” (IRF) under current law, at least 60 percent of patient cases the facility admits must have one or more of 13 selected criteria. This standard was changed to 60 percent from 75 percent in the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). This section would reinstitute the 75 percent standard.

ADJUST SNF PAYMENTS TO REDUCE HOSPITAL READMISSIONS

Legislative Proposal

SEC. __. SKILLED NURSING FACILITY READMISSIONS REDUCTION PROGRAM.

Section 1888 of the Social Security Act (42 U.S.C. 1395yy), as amended by this Act, is further amended by inserting at the end the following new subsection:

“(g) SKILLED NURSING FACILITY READMISSIONS REDUCTION PROGRAM.—

“(1) IN GENERAL.—With respect to per diem payments for each day of covered skilled nursing services (as defined in subsection (e)(2)(A)) furnished by a skilled nursing facility occurring during a fiscal year beginning on or after October 1, 2015, in order to account for excess readmissions to a hospital for individuals who received such services from a skilled nursing facility, the Secretary shall adjust payments in an amount equal to the product of—

“(A) the per diem amount (as defined in paragraph (2)); and

“(B) the adjustment factor (described in paragraph (3)(A)) for the skilled nursing facility for the fiscal year.

“(2) PER DIEM AMOUNT DEFINED.—The term ‘per diem amount’ means, with respect to a skilled nursing facility for a fiscal year the unadjusted federal per diem rate that would otherwise be made under subsection (e) if this subsection did not apply.

“(3) ADJUSTMENT FACTOR.—

“(A) IN GENERAL.—For purposes of paragraph (1), the adjustment factor under this paragraph for a skilled nursing facility for a fiscal year is equal to the greater of—

“(i) the ratio described in subparagraph (B) for the skilled nursing facility for the applicable period (as defined in paragraph (5)(C)) for such fiscal year; or

“(ii) the floor adjustment factor specified in subparagraph (C).

(B) RATIO.—The ratio described in this subparagraph for a skilled nursing facility for an applicable period is equal to 1 minus the ratio of—

“(i) the aggregate payments for excess readmissions (as defined in paragraph (4)(A)) to an applicable hospital for the applicable period; and

“(ii) the aggregate payments to the skilled nursing facility for such applicable period.

“(C) FLOOR ADJUSTMENT FACTOR.—For purposes of subparagraph (A), the floor adjustment factor specified in this subparagraph is 0.97.

“(4) AGGREGATE PAYMENTS FOR EXCESS READMISSIONS.—For purposes of this subsection:

“(A) AGGREGATE PAYMENTS FOR EXCESS READMISSIONS.—The term ‘aggregate payments for excess readmissions’ means, for an applicable period, the sum for applicable conditions (as defined in paragraph (5)(A)) of the product for each applicable condition of—

“(i) the inpatient hospital payment (as defined in subparagraph (B)); and

“(ii) the number of admissions for such condition in cases where an individual received services furnished by a skilled nursing facility

during such applicable period and was subsequently admitted to a hospital within a period specified by the Secretary.

“(B) INPATIENT HOSPITAL PAYMENT.—The term ‘inpatient hospital payment’ means payment amount made to a hospital under this title for inpatient hospital services (as defined in section 1861(b)) for such applicable period for an applicable condition.

“(5) DEFINITIONS.—For purposes of this subsection:

“(A) APPLICABLE CONDITION.—The term ‘applicable condition’ means a condition or procedure or a set of conditions and procedures selected by the Secretary that are used in the hospital readmissions program under section 1886(q).

“(B) APPLICABLE PERIOD.—The term ‘applicable period’ means, with respect to a fiscal year, such period as the Secretary shall specify.

“(C) READMISSION.—The term ‘readmission’ means an admission of an individual to an applicable hospital from a skilled nursing facility in cases in which the same individual has previously been discharged from an applicable hospital within a period specified by the Secretary.

“(E) APPLICABLE HOSPITAL.—The term ‘applicable hospital’ means a hospital described in section 1886(q)(5)(C).

“(6) REPORTING SKILLED NURSING FACILITY SPECIFIC INFORMATION.—

“(A) IN GENERAL.—The Secretary shall make information available to the public regarding readmission rates of each skilled nursing facility under the program.

“(B) OPPORTUNITY TO REVIEW AND SUBMIT CORRECTIONS.—The Secretary shall ensure that a skilled nursing facility has the opportunity to review, and submit corrections for, the information used to determine the readmissions rates to be made public with respect to the skilled nursing facility under subparagraph (A) prior to such information being made public.

“(C) WEBSITE.—Such information shall be posted on the Skilled Nursing Facility Compare Internet website in an easily understandable format.

“(7) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the following:

“(A) The determination of the inpatient hospital payment amount.

“(B) The methodology for determining the adjustment factor under paragraph (3), including aggregate payments for excess readmissions under paragraph (4)(A), and aggregate payments to the skilled nursing facility under paragraph (3)(B), and applicable periods and applicable conditions determined under paragraph (5).

“(C) The measures of readmissions as described in paragraph (5)(C).”.

Sectional Analysis

This section would adjust Medicare payments to Skilled Nursing Facilities (SNFs) the SNF prospective payment system (PPS) in a given year to account for hospital costs associated with beneficiaries discharged to a hospital from a Medicare-covered SNF stay for conditions that could have been avoided. The payment adjustment is capped at -3 percent.

**ALIGN MEDICARE DRUG PAYMENT POLICIES WITH MEDICAID POLICIES FOR
LOW-INCOME BENEFICIARIES**

Legislative Proposal

SEC. __. MEDICARE PART D REBATES FOR LOW INCOME BENEFICIARIES.

(a) **REQUIRING DRUG MANUFACTURERS TO PROVIDE DRUG REBATES FOR REBATE ELIGIBLE DRUGS DISPENSED TO LOW-INCOME INDIVIDUALS.**—Section 1860D-2 of the Social Security Act (42 U.S.C. 1395w-102) is amended—

(1) in paragraph (1) of subsection (e), by inserting “and subsection (f)” after “Except as provided in this subsection”; and

(2) by inserting at the end the following new subsection (f):

“(f) **PRESCRIPTION DRUG REBATE AGREEMENT FOR REBATE ELIGIBLE INDIVIDUALS.**—

“(1) **REQUIREMENT.**—

“(A) **IN GENERAL.**—An agreement under this section shall require the manufacturer to provide specified rebates for rebate eligible drugs (as defined in paragraph (6)(C)) provided to rebate eligible individuals (as defined in paragraph (6)(A)).

“(B) **TIMING OF AGREEMENT.**—

“(i) For plan years beginning on or after January 1, 2013—

“(I) for this part, the term ‘covered part D drug’ does not include any drug or biological product that is manufactured by a manufacturer that has not entered into and does not have in effect a rebate agreement described in paragraph (2); and

“(II) a drug or biological product that is manufactured by a manufacturer that does not have in effect a rebate agreement described in paragraph (2) shall not be eligible for payment under part B.

“(ii) For a plan year that begins—

“(I) on January 1, 2013, for an agreement with a manufacturer to be in effect under this section with respect to such plan year, the Secretary must establish an agreement no later than 180 days after the date of enactment of this Act, and the manufacturer must enter into such an agreement not later than 30 days after the date of establishment of such agreement.

“(II) on January 1, 2014 or a subsequent year, a manufacturer must enter into such an agreement, or renew such agreement as applicable, no later than January 30 of the preceding year.

“(C) **AUTHORIZING COVERAGE FOR DRUGS NOT COVERED UNDER AGREEMENTS.**—Paragraph (1)(B)(i) shall not apply to the dispensing of a drug if the Secretary has made a determination that the availability of the drug is essential to the health of beneficiaries under part B or under this part.

“(2) REBATE AGREEMENT.—A rebate agreement under this subsection shall require the manufacturer to provide to the Secretary a rebate for each rebate period (as defined in paragraph (6)(B)) ending after December 31, 2012, in the amount specified in paragraph (3) for any rebate eligible drug of the manufacturer dispensed after December 31, 2012, to any rebate eligible individual for which payment was made under this part for such period, including payments passed through the low-income and reinsurance subsidies under sections 1860D-14 and 1860D-15(b), respectively. Such rebate shall be paid by the manufacturer to the Secretary not later than 30 days after the date of receipt of the information described in section 1860D-12(b)(7), including as such section is applied under section 1857(f)(3), or 30 days after the receipt of information under subparagraph (C) of paragraph (3), as determined by the Secretary. Insofar as not inconsistent with this subsection, the Secretary shall establish terms and conditions of such agreement relating to compliance, penalties, and program evaluations, investigations, and audits that are similar to the terms and conditions for rebate agreements under paragraphs (3) and (4) of section 1927(b).

“(3) REBATE FOR REBATE ELIGIBLE MEDICARE DRUG PLAN ENROLLEES—

“(A) IN GENERAL.—The amount of the rebate specified under this paragraph for a manufacturer for a rebate period, with respect to each dosage form and strength of any rebate eligible drug provided by such manufacturer and dispensed to a rebate eligible individual, shall be equal to the product of—

“(i) the total number of units of such dosage form and strength of the drug so provided and dispensed for which payment was made by a PDP sponsor or an MA organization under this part for the rebate period for a rebate eligible individual, including payments passed through the low-income and reinsurance subsidies under sections 1860D-14 and 1860D-15(b), respectively; and

“(ii) the Medicaid rebate amount (as defined in subparagraph (B)) for such form, strength, and period.”

“(B) MEDICAID REBATE AMOUNT.—For purposes of this paragraph, the term ‘Medicaid rebate amount’ means, with respect to each dosage form and strength of a rebate eligible drug provided by the manufacturer for a rebate period—

“(i) in the case of a rebate eligible drug that is a single source drug or an innovator multiple source drug as defined in section 1927(k), the amount specified in section 1927(c)(1)(A)(ii)(II) plus the amount, if any, specified in section 1927(c)(2)(A)(ii), or, if applicable, the amount specified in section 1927(c)(2)(C), except that clause (iii) of that section shall not apply. Any Medicaid rebate amount shall be subject to section 1927(c)(2)(D), for such form, strength, and period.

“(ii) in the case of any other rebate eligible drug, the amount specified in section 1927(c)(3)(A)(i) for such form, strength, and period.

“(4) LENGTH OF AGREEMENT.—

“(A) Subject to subparagraph (B) and subparagraph (C), the provisions of paragraphs (4)(A), (4)(B), and (4)(C) of section 1927(b) (other than clauses (ii),

(iv), and (v) of subparagraph (B)) shall apply to rebate agreements under this subsection in the same manner as such paragraph applies to a rebate agreement under such section.

“(B) Rebate agreements shall be effective for one calendar year beginning January 1 of each calendar year and ending December 31 of each calendar year.

“(C) A manufacturer may terminate an agreement under this section for any reason. Any such termination shall be effective, with respect to a plan year—

“(i) if the termination occurs before January 30 of a plan year, as of the day after the end of the plan year; and

“(ii) if the termination occurs on or after January 30 of a plan year, as of the day after the end of the succeeding plan year.

“(5) OTHER TERMS AND CONDITIONS.—The Secretary shall establish other terms and conditions of the rebate agreement under this subsection, including terms and conditions related to compliance, that are consistent with this subsection.

“(6) DEFINITIONS.—In this subsection and section 1860D-12(b)(7):

“(A) REBATE ELIGIBLE INDIVIDUAL.—The term ‘rebate eligible individual’ means—

“(i) a subsidy eligible individual (as defined in section 1860D-14(a)(3)(A));

“(ii) a Medicaid beneficiary treated as a subsidy eligible individual under clause (v) of section 1860D-14(a)(3)(B); and

“(iii) a widow or widower who receives a subsidy under section 1860D-14(a)(3)(B)(vi).

“(B) REBATE PERIOD.—The term ‘rebate period’ has the meaning given such term in section 1927(k)(8).

“(C) REBATE ELIGIBLE DRUG.—The term ‘rebate eligible drug’ means, with respect to a rebate eligible beneficiary, a covered part D drug—

“(i)(I) if the PDP sponsor of the prescription drug plan or the MA organization offering the MA-PD plan uses a formulary, that is on the formulary of the prescription drug plan or MA-PD plan in which the applicable beneficiary is enrolled;

“(II) if the PDP sponsor of the prescription drug plan or the MA organization offering the MA-PD plan does not use a formulary, for which benefits are available under the prescription drug plan or MA-PD plan in which the applicable beneficiary is enrolled; or

“(ii) provided through an exception or appeal.

“(D) MANUFACTURER.—The term ‘manufacturer’ means a manufacturer as defined in section 1860D-14A(g)(5).

“(7) IMPLEMENTATION.—The Secretary may implement this subsection by program instruction or otherwise.

(b) REPORTING REQUIREMENT FOR THE DETERMINATION AND PAYMENT OF REBATES BY MANUFACTURERS RELATED TO REBATE FOR REBATE ELIGIBLE INDIVIDUALS.—

(1) Section 1860D-12(b) of the Social Security Act (42 U.S.C. 1395w-112(b)) is amended by adding at the end the following new paragraph:

“(7) REPORTING REQUIREMENT FOR THE DETERMINATION AND PAYMENT OF REBATES BY MANUFACTURERS RELATED TO REBATE FOR REBATE ELIGIBLE INDIVIDUALS.—

“(A) IN GENERAL.—For purposes of the rebate under section 1860D-2(f) for contract years beginning on or after January 1, 2013, each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan shall require that the sponsor comply with subparagraphs (B) and (C).

“(B) REPORT FORM AND CONTENTS.—Not later than a date specified by the Secretary, a PDP sponsor of a prescription drug plan under this part shall report to each manufacturer—

“(i) information (by National Drug Code number) on the total number of units of each dosage, form, and strength of each drug of such manufacturer dispensed to rebate eligible individuals enrolled in any prescription drug plan operated by the PDP sponsor during the rebate period;

“(ii) any additional information that the Secretary determines is necessary to enable the Secretary to determine the amount of the rebate required under this section, for such form, strength, and period.

“Such report shall be in a form consistent with a standard reporting format established by the Secretary.

“(C) SUBMISSION TO SECRETARY.—Each PDP sponsor shall promptly transmit a copy of the information reported under subparagraph (B) to the Secretary for the purpose of audit oversight and evaluation.

“(D) CONFIDENTIALITY OF INFORMATION.—The provisions of subparagraph (D) of section 1927(b)(3), relating to confidentiality of information, shall apply to information reported by PDP sponsors under this paragraph in the same manner that such provisions apply to information disclosed by manufacturers or wholesalers under such section, except—

“(i) that any reference to ‘this section’ in clause (i) of such subparagraph shall be treated as being a reference to this section;

“(ii) the reference to the Director of the Congressional Budget Office in clause (iii) of such subparagraph shall be treated as including a reference to the Medicare Payment Advisory Commission; and

“(iii) clause (iv) of such subparagraph shall not apply.

“(E) OVERSIGHT.—Information reported under this paragraph may be used by the Inspector General of the Department of Health and Human Services for the statutorily authorized purposes of audit, investigation, and evaluations.

“(F) PENALTIES FOR FAILURE TO PROVIDE TIMELY INFORMATION AND PROVISION OF FALSE INFORMATION.—In the case of a PDP sponsor—

“(i) that fails to provide information required under subparagraph (B) on a timely basis, the sponsor is subject to a civil money penalty in the amount of \$10,000 for each day in which such information has not been provided; or

“(ii) that knowingly (as defined in section 1128A(i)) provides false information under such subparagraph, the sponsor is subject to a civil

money penalty in an amount not to exceed \$100,000 for each item of false information.

“Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”

(2) APPLICATION TO MA ORGANIZATIONS.—Section 1857(f)(3) of the Social Security Act (42 U.S.C. 1395w-27(f)(3)) is amended by adding at the end the following new subparagraph (D):

“(D) REPORTING REQUIREMENT RELATED TO REBATE FOR REBATE ELIGIBLE MEDICARE DRUG PLAN ENROLLEES—Section 1860D-12(b)(7).”

(c) DEPOSIT OF REBATES INTO MEDICARE PRESCRIPTION DRUG ACCOUNT.—Section 1860D-16(c) of the Social Security Act (42 U.S.C. 1395w-116(c)) is amended by adding at the end the following new paragraph (6):

“(6) REBATE FOR REBATE ELIGIBLE MEDICARE DRUG PLAN ENROLLEES.—Amounts paid under a rebate agreement under section 1860D-2(f) shall be deposited into the Account.”

(d) REQUIREMENT TO PROVIDE PART D REBATES TO BE COVERED UNDER MEDICAID AND EXCLUSION FROM DETERMINATION OF BEST PRICE AND AVERAGE MANUFACTURER PRICE UNDER MEDICAID.—Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) is amended—

(1) in the first sentence of subsection (a)(1)—

(A) by striking “and must meet the requirements of” and inserting “must meet the requirements of”; and

(B) by inserting “, and must have entered into and have in effect a rebate agreement under section 1860D-2(f)” after “paragraph (6)”; and

(2) in subsection (c)(1)(C)(ii)(I), by inserting “and rebates paid by a manufacturer under section 1860D-2(f)” after “this section”; and

(3) in subsection (k)(1)(B)(i)—

(A) in subclause (IV), by inserting a semicolon at the end;

(B) in subclause (V), by striking the period at the end and inserting “; and”; and

(C) by inserting at the end the following a new subclause:

“(VI) rebates paid by a manufacturer under section 1860D-2(f).”

(e) REQUIREMENT TO PROVIDE PART D REBATES TO BE COVERED UNDER THE VETERANS HEALTH ADMINISTRATION PROGRAMS.—Section 8126(a) of Title 38, United States Code, is amended—

(1) in paragraph (3), by striking “and” after “at the time the drug is procured,”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

“(4) the manufacturer must have entered into and have in effect a rebate agreement under section 1860D-2(f) of the Social Security Act (42 U.S.C. §1395w-102(f));”

(f) REQUIREMENT TO PROHIBIT DUPLICATE DISCOUNTS OR REBATES.—
Section 340B(a)(5)(A) (42 U.S.C. 256b(a)(5)(A)) of the Public Health Service Act is amended—

- (1) by redesignating clause (ii) as clause (iii);
- (2) by inserting after clause (i) the following new clause:

“(ii) SPECIAL RULE.—A drug provided by a covered entity under section 1860D-1 of the Social Security Act to a rebate eligible individual as defined under section 1860D-2(f)(6)(A) of such Act shall not be subject to an agreement under this section.”; and
- (3) in clause (iii) (as so redesignated)—
 - (A) by designating the text following “ESTABLISHMENT OF MECHANISM.—” as a new subclause (I) and indenting appropriately; and
 - (B) by adding at the end the following new subclause:

“(II) The Secretary shall establish a mechanism to ensure that covered entities comply with clause (ii).”.

Sectional Analysis

Under current law, drug manufacturers are required to pay rebates to CMS for drugs provided under the Medicaid program in order for their drugs to be covered under Medicaid and Medicare Part B, but no similar rebate requirement exists for drugs provided under Part D. This section would amend the Medicare statute to require manufacturers to pay Medicaid-comparable rebates comparable for brand-name and generic drugs provided to Part D's low-income subsidy (LIS) beneficiaries (a category that includes Medicare-Medicaid dual eligibles and other qualifying low-income individuals). Drugs manufactured by manufacturers that do not agree to provide rebates would not be covered under Medicare Parts B or Part D, Medicaid, or the Veterans Health Administration. Covered entities under the 340B discount drug program would be required to dispense non-340B drugs to rebate eligible individuals for drugs covered under Medicare Part D.

**RECOVER ERRONEOUS PAYMENTS MADE TO INSURERS PARTICIPATING IN
MEDICARE ADVANTAGE**

Legislative Proposal

SEC. __. STRENGTHENING AUDIT AUTHORITY.

(a) **MEDICARE ADVANTAGE RISK ADJUSTMENT ERRORS.**—Section 1853(a)(3) of the Social Security Act (42 U.S.C. 1395w-23(a)(3)) is amended by adding at the end the following new subparagraph:

“(E) **COLLECTION ON EXTRAPOLATED RISK ADJUSTMENT ERRORS.**—

“(i) **IN GENERAL.**—The Secretary shall conduct contract-level audits of Medicare Advantage enrollees’ risk scores, with a minimum of 30 contracts audited each payment year.

“(I) Under these audits, the Secretary shall review the risk score data, diagnosis codes, and medical record documentation for a randomized, statistically valid sample of contract enrollees.

“(II) Based on this medical record review, the Secretary shall determine for each contract for the applicable payment year a net overpayment amount, if any, based on an extrapolation of audit findings to the contract enrollees represented by the sample as defined in subclause (I).

“(ii) For each contract that the Secretary audits under clause (i), the Secretary shall collect the extrapolated net overpayment for a contract within 18 months after issuance of the final audit findings under such clause. These collections will be in addition to any plan payment adjustments made under paragraph (1)(C)(ii).

“(iii) **EXTRAPOLATION.**—The Secretary shall collect the extrapolated net overpayment for each contract year beginning on or after January 1, 2008.”.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to audits and activities conducted for contract years beginning on or after January 1, 2008.

(2) **COLLECTION OF EXTRAPOLATED NET OVERPAYMENTS.**—The collection of extrapolated net overpayments required under section 1853(a)(3)(E)(iii) shall begin no earlier than January 1, 2013.

Sectional Analysis

CMS conducts risk adjustment data validation (RADV) audits to determine whether or not risk scores submitted by Medicare Advantage (MA) plans used for payment reflect actual beneficiary diagnoses. Historically, CMS has recouped from MA plans only the overpayments from risk score errors found in the audited sample. Effective FY 2012, this section would amend Medicare statute to require that CMS extrapolate the error rate found in the RADV audits to the entire plan

payment for a given year when recouping overpayments, rather than only collecting overpayments associated with the sampled beneficiary risk scores submitted by plans. This proposal would apply for payments that were made starting in 2008 and thereafter.

REDUCE FRAUD, WASTE, AND ABUSE IN MEDICARE

Legislative Proposal

SEC. 1. PERMISSIVE EXCLUSION FROM FEDERAL HEALTH CARE PROGRAMS EXPANDED TO INDIVIDUALS AND ENTITIES AFFILIATED WITH SANCTIONED ENTITIES.

(a) IN GENERAL.—Section 1128(b)(15) of the Social Security Act (42 U.S.C. 1320a-7(b)(15)) is amended—

(1) by striking the paragraph heading and subparagraph (A) and inserting in lieu thereof as follows:

“(15) INDIVIDUALS OR ENTITIES AFFILIATED WITH A SANCTIONED ENTITY.—

“(A) Any of the following:

“(i) Any individual who—

“(I) is a person with an ownership or control interest (as defined in section 1124(a)(3)) in a sanctioned entity or an affiliated entity of such sanctioned entity (or was a person with such an interest at the time of any of the conduct that formed a basis for the conviction or exclusion described in subparagraph (B)); and

“(II) knows or should know (as defined in section 1128A(i)(7)) (or knew or should have known) of such conduct.

“(ii) Any individual who is an officer or managing employee (as defined in section 1126(b)) of a sanctioned entity or affiliated entity of such sanctioned entity (or was such an officer or managing employee at the time of any of the conduct that formed a basis for the conviction or exclusion described in subparagraph (B)).

“(iii) Any affiliated entity of a sanctioned entity.”;

(2) in subparagraph (B), by striking “purposes of subparagraph (A)” and inserting in lieu thereof “purposes of this paragraph”; and

(3) by adding at the end the following new subparagraph (C) as follows:

“(C)(i) For purposes of this paragraph, the term “affiliated entity” means, with respect to a sanctioned entity—

“(I) an entity affiliated with such sanctioned entity; or

“(II) an entity that was so affiliated at the time of any of the conduct that formed the basis for the conviction or exclusion described in subparagraph (B).

“(ii) For purposes of clause (i), an entity shall be treated as affiliated with another entity if—

“(I) one of the entities is a person that has an ownership or control interest (as defined in section 1124(a)(3)) in the other entity (or that had such an interest at the time of any of the conduct that formed a basis for the conviction or exclusion described in subparagraph (B));

“(II) there is a person that has an ownership or control interest (as defined in section 1124(a)(3)) in both entities (or that had such an interest

at the time of any of the conduct that formed a basis for such conviction or exclusion described in subparagraph (B)); or

“(III) there is a person who is an officer or managing employee (as defined in section 1126(b)) of both entities (or was such an officer or managing employee at the time of any of the conduct that formed a basis for such conviction or exclusion described in subparagraph (B)).”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2012.

SEC. 2. LIMITING THE DISCHARGE OF DEBTS IN BANKRUPTCY PROCEEDINGS IN CASES WHERE A HEALTH CARE PROVIDER OR A SUPPLIER ENGAGES IN FRAUDULENT ACTIVITY.

(a) IN GENERAL.—

(1) CIVIL MONETARY PENALTIES.—Section 1128A(c) of the Social Security Act (42 U.S.C. 1320a-7a(c)) is amended by adding at the end the following new paragraph:

“(5) Notwithstanding any other provision of law, amounts imposed under this section are not dischargeable under section 727, 944, 1141, 1228, or 1328 of title 11, United States Code, or any other provision of such title.”

(2) RECOVERY OF OVERPAYMENT TO PROVIDERS OF SERVICES UNDER PART A OF MEDICARE.—Section 1815(d) of the Social Security Act (42 U.S.C. 1395g(d)) is amended—

(A) by inserting “(1)” after “(d)”; and

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

“(2) Notwithstanding any other provision of law, amounts due to the Secretary under this section are not dischargeable under section 727, 944, 1141, 1228, or 1328 of title 11, United States Code, or any other provision of such title if the overpayment was the result of fraudulent activity, as may be defined by the Secretary through program instruction or otherwise.”

(3) RECOVERY OF OVERPAYMENT OF BENEFITS UNDER PART B OF MEDICARE.—Section 1833(j) of the Social Security Act (42 U.S.C. 1395l(j)) is amended—

(A) by inserting “(1)” after “(j)”; and

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

“(2) Notwithstanding any other provision of law, amounts due to the Secretary under this section are not dischargeable under section 727, 944, 1141, 1228, or 1328 of title 11, United States Code, or any other provision of such title if the overpayment was the result of fraudulent activity, as may be defined by the Secretary through program instruction or otherwise.”

(4) COLLECTION OF PAST-DUE OBLIGATIONS ARISING FROM BREACH OF SCHOLARSHIP AND LOAN CONTRACT.—Section 1892(a) of the Social Security Act (42 U.S.C. 1395ccc(a)) is amended by adding at the end the following:

“(5) Notwithstanding any other provision of law, amounts due to the Secretary under this section are not dischargeable under section 727, 944, 1141, 1228, or 1328 of title 11, United States Code, or any other provision of such title.”

(b) EFFECT ON SECRETARY'S AUTHORITIES FOR RECOUPMENT OR RECOVERY OF OVERPAYMENTS.—Nothing in this section or the amendments made by this section shall be deemed to modify or supersede the Secretary's authorities for the recoupment or recovery of any overpayment under the Medicare program under title XVIII of the Social Security Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bankruptcy petitions filed on or after January 1, 2012.

SEC. 3. ILLEGAL DISTRIBUTION OF A MEDICARE, MEDICAID, OR CHIP BENEFICIARY IDENTIFICATION OR BILLING PRIVILEGES.

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a-7b(b)) is amended by adding at the end the following new paragraph:

“(4) Whoever knowingly, intentionally, and with the intent to defraud purchases, sells or distributes, or arranges for the purchase, sale, or distribution of a Medicare, Medicaid, or Children’s Health Insurance Program beneficiary identification number or provider or supplier billing privileges under title XVIII, title XIX, or title XXI (other than a beneficiary (as defined in section 1128A(i)(5)) of a program under any such title) shall be imprisoned for not more than 10 years or fined not more than \$500,000 (\$1,000,000 in the case of a corporation), or both.”.

SEC. 4. PREPAYMENT OR EARLIER REVIEW FOR POWER OPERATED VEHICLES AND POWER-DRIVEN WHEELCHAIRS.

Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

“(22) REQUIREMENT FOR PREPAYMENT OR EARLIER REVIEW FOR POWER OPERATED VEHICLES AND CERTAIN POWER-DRIVEN WHEELCHAIRS.—

“(A) IN GENERAL.—Effective beginning January 1, 2013, the Secretary shall establish procedures to ensure that prepayment or earlier review (which may include prior authorization) is conducted for power operated vehicles and motorized or power wheelchairs (other than a wheelchair described in paragraph (7)(A)(iii)) for which a prescription is written (consistent with paragraph (1)(E)) to determine whether such item is covered under this part.

“(B) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of the procedures established in subparagraph (A).”.

SEC. 5. REQUIREMENT FOR PROCEDURES TO VALIDATE PHYSICIANS' AND PRACTITIONERS' ORDERS FOR CERTAIN HIGH RISK ITEMS AND SERVICES.

Section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

“(p) REQUIREMENT FOR PROCEDURES TO VALIDATE PHYSICIANS' AND PRACTITIONERS' ORDERS FOR CERTAIN HIGH RISK ITEMS AND SERVICES.—

“(1) IN GENERAL.—

“(A) ESTABLISHMENT OF PROCEDURES.—The Secretary shall establish procedures to receive an electronic copy of a written order for an item or service described in paragraph (2) in order for the Secretary to validate that such an item or service was ordered by a physician or practitioner.

“(B) NO PAYMENT WITHOUT SECRETARIAL RECEIPT OF ELECTRONIC COPY OF WRITTEN ORDER.—Beginning January 1, 2014, payment may only be made for such item or service described in paragraph (2) if the Secretary receives an electronic copy of a written order from a physician or practitioner for such item or service in a form, manner and time frame specified by the Secretary.

“(2) ITEMS AND SERVICES DESCRIBED.—For purposes of paragraph (1), an item or service described in this paragraph is an item or service designated by the Secretary for which a physician’s or practitioner’s written order is required under part A or part B and may include (as the Secretary determines appropriate)—

“(A) clinical diagnostic laboratory tests for which payment is made under section 1833(h);

“(B) durable medical equipment described in subsection (a)(13);

“(C) imaging services described in subsection (e)(1)(B)(i) furnished by independent diagnostic testing facilities;

“(D) home health services described in section 1861(m); and

“(E) other items and services under Part A or B determined by the Secretary to be high risk.

“(3) LIMITATIONS ON REVIEW.— There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of the procedures developed pursuant to paragraph (1) or the items or services to which these procedures are applied.”.

SEC. 6. CIVIL MONETARY PENALTIES FOR PROVIDERS AND SUPPLIERS WHO FAIL TO UPDATE ENROLLMENT RECORDS.

(a) IN GENERAL.—Section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)) is amended—

(1) by redesignating the paragraph titled “(8) COMPLIANCE PROGRAMS.— ” as paragraph (9); and

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

“(10) SANCTIONS FOR FAILURE TO UPDATE ENROLLMENT RECORDS.—

“(A) IN GENERAL.—The Secretary may impose a civil money penalty for a failure by a provider of services or supplier to report, within such time frame as the Secretary shall establish, changes to information provided in connection with enrollment or revalidation of billing privileges in accordance with the process established pursuant to this subsection in an amount equal to:

(i) for 2012, \$250; and

(ii) for 2013 and each subsequent year, the amount determined under this clause for the preceding year, adjusted by the percentage change in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with June of the previous year.

“(B) PROCEDURE.—The provisions of section 1128A (other than subsections (a) and (b) of such section) shall apply to a civil money penalty under subsection (a) in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2012.

SEC. 7. INCREASE SCRUTINY OF PROVIDERS USING HIGHER-RISK BANKING ARRANGEMENTS TO RECEIVE MEDICARE PAYMENTS.

(a) IN GENERAL.—Section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)), as amended by section __ (a), is further amended—

(1) by renumbering paragraph (10) as paragraph (11);

(2) in paragraph (1)(A)—

(A) by striking “(5), and the establishment” and inserting “(7), the establishment”; and

(B) by striking the period at the end and inserting “, and the establishment of procedures to ensure that providers and suppliers disclose information about sweep accounts and other specified banking arrangements in accordance with paragraph (10).”; and

(3) by adding the following new paragraph after paragraph (9):

“(10) DISCLOSURE REQUIREMENTS FOR CERTAIN BANKING ARRANGEMENTS.—

“(A) IN GENERAL.—A provider of services or supplier who submits an application for enrollment or revalidation of enrollment in the program under this title, title XIX, or title XXI shall disclose (in a form, manner, and time frame specified by the Secretary) the existence of any sweep accounts or other banking arrangements for receipt of Medicare payments that the Secretary identifies as posing a potential risk of fraud, waste, or abuse, and thereafter shall notify the Secretary of any changes to such account or arrangement and of the establishment of any new such account or arrangement within 30 days of such establishment.

“(B) AUTHORITY TO DENY ENROLLMENT OR RENEWAL OF ENROLLMENT.—If a provider of services or supplier fails to disclose information in accordance with subparagraph (A), the Secretary may deny the application for enrollment or renewal of enrollment or revoke the billing privileges of such provider or supplier, in addition to using other authorities, including the imposition of CMPs, deemed appropriate by the Secretary. Such a denial or revocation shall be subject to appeal in accordance with paragraph (8).”.

(b) TECHNICAL AMENDMENTS.—Section 1866(j)(1)(A) of the Social Security Act (42 U.S.C. 1395cc(j)(1)(A)), as amended by subsection (a) and section __ (a), is further amended—

(1) by striking “paragraph (4)” and inserting “paragraph (5)”; and

(2) by striking “paragraph (6)” and inserting “paragraph (9)”.

SEC. 8. AUTHORIZE THE SECRETARY TO RETAIN A PORTION OF MEDICARE AND MEDICAID RECOVERY AUDIT CONTRACTOR RECOVERIES TO PREVENT IMPROPER PAYMENTS AND FRAUD.

(a) MEDICARE RAC PROGRAM.—Section 1893(h)(1)(C) of the Social Security Act (42 U.S.C. 1395ddd(h)(1)(C)) is amended—

(1) by striking “the Secretary” and inserting “The Secretary—”;

(2) by designating the remaining text as a new clause (i) and indenting accordingly;

(3) in clause (i), as so designated, by striking the period at the end and inserting “; and”;

(4) by adding at the end the following new clause:

“(ii) may retain an additional portion (not to exceed 25 percent) of the amounts recovered which shall be available, in addition to any other funds that may be available for such purpose, to such program management account until expended for purposes of activities to address problems that contribute to improper payments and fraud under this title .”

(b) **MEDICAID RAC PROGRAM.**—Section 1902(a)(42) of the Social Security Act (42 U.S.C. 1396a(a)(42)) is amended—

(1) in subparagraph (A), by striking “and” after the semicolon; and

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

“(C) the Secretary may retain a portion (not to exceed 25 percent of the Federal share of recovered funds) of the amounts recovered pursuant to this program which shall be available, in addition to any other funds that may be available for such purpose, to the program management account of the Centers for Medicare & Medicaid Services until expended for purposes of activities to address problems that contribute to improper payments and fraud under this title; and”

(c) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on January 1, 2012.

SEC. 9. STUDY CONCERNING THE USE OF UNIVERSAL PRODUCT NUMBERS ON CLAIMS FOR PAYMENT UNDER THE MEDICARE PROGRAM.

(a) **STUDY.**—

(1) **IN GENERAL.**—The Secretary shall conduct a study to determine whether a requirement to ensure that claims for payment under the Medicare program for items such as those described in paragraph (3) include a universal product number (UPN) of the item would improve the integrity of such program and not increase expenditures for such items under such program.

(2) **REPORT.**—Not later than January 1, 2013, the Secretary shall submit a report to Congress on the study conducted under paragraph (1) together with recommendations as the Secretary considers appropriate.

(3) **ITEMS DESCRIBED.**—For purposes of paragraph (1), except for a customized item for which payment may be made under the Medicare program, a UPN covered item may include—

(A) a covered item as such term is defined in section 1834(a)(13) of the Social Security Act (42 U.S.C. 1395m(a)(13));

(B) an item described in paragraph (8) or (9) of section 1861(s) of such Act (42 U.S.C. 1395x);

(C) an item described in paragraph (5) of such section 1861(s); or

(D) any other item for which payment is made under this title that the

Secretary determines to be appropriate.

(b) **DEFINITIONS.**—In subsection (a):

(1) **MEDICARE PROGRAM.**—The term “Medicare program” means the program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(3) **UNIVERSAL PRODUCT NUMBER.**—The term “universal product number” means a number that is—

(A) affixed by the manufacturer to each UPN covered item that uniquely identifies the item at each packaging level; and

(B) based on—

(i) commercially acceptable identification standards (as the Secretary determines appropriate); or

(ii) a unique device identifier database developed by the Food and Drug Administration.

Sectional Analysis

The President’s FY2012 Budget set forth a series of proposals to provide additional authority to the Centers for Medicare & Medicaid Services (CMS) to aggressively address program integrity issues. In support of the President’s goals, these proposals aim to prevent fraud and abuse before it occurs, detect it as early as possible when it does occur, and vigorously pursue all penalties and recourse available when fraud is identified.

Section 1 would permit the exclusion of individuals affiliated with entities sanctioned for fraudulent or other prohibited actions from Federal health care programs.

Section 2 would limit the discharge of debt in bankruptcy proceedings where a health care provider or supplier engages in fraudulent activity. This section would prevent perpetrators of health fraud from being able to rid themselves of debts owed to the government through bankruptcy filing.

Section 3 would strengthen penalties for illegal distribution of Medicare, Medicaid, or CHIP beneficiary identification or billing privileges. This proposal would not apply to beneficiaries. This section establishes penalties to help fight fraud rings that purchase, sell or distribute Medicare, Medicaid, or CHIP beneficiary identification numbers or billing privileges.

Preliminary data suggest that the Medicare error rate for power wheelchairs is excessively high. Payment for equipment that does not meet existing rules for Medicare coverage increases costs for the Medicare program and for taxpayers. **Section 4** would, effective FY 2012, require prepayment or earlier review for all claims for power wheelchair such that medical necessity would be confirmed prior to Medicare payment.

Currently, Medicare pays for certain services, but CMS does not receive copies of the orders unless the claims are medically reviewed. Effective CY 2014, **Section 5** would require the electronic submission of an order to Medicare for services under Medicare Part A or B that need to be ordered by a physician, such as laboratory tests, durable medical equipment (DME), Independent Diagnostic Testing Facility (IDTF) imaging and home health services, in order for Medicare to pay for the service. This proposal would allow CMS contractors to easily verify the

service was ordered by a physician and reduce fraud and improper payments to suppliers.

Under current law, providers and suppliers are required to update CMS when factors pertinent to their enrollment or enrollment status change (*e.g.*, address, licensure, adverse legal actions). However, CMS does not have options for enforcing this requirement outside of enrollment revocation. Effective FY 2012, **Section 6** would provide the Secretary permissive authority to impose civil monetary penalties or intermediate sanctions on providers who do not update enrollment records in a timely manner, thereby creating an additional incentive for providers to report information that could have program integrity implications.

Sweep accounts are accounts that automatically transfer funds to separate accounts. Through criminal investigations, CMS has linked sweep accounts to high-risk and fraudulent providers who transfer payments to bank accounts outside of U.S. legal jurisdiction. Effective FY 2012, **Section 7** would 1) require providers to report use of sweep accounts upon enrollment or within 30 days of designating a sweep account for receipt of Medicare payment; 2) flag providers who report sweep accounts for periodic review (under permissive audit authority); and 3) subject providers who fail to report sweep accounts in a timely manner to enrollment revocation.

Under current law, CMS is required to operate a national Medicare Recovery Audit Contractor (RAC) program, as well as to expand the RAC program to Medicaid and to Medicare Parts C and D. CMS, however, does not have explicit authority to retain RAC recoveries to implement corrective actions based on RAC findings. Effective FY 2012, **Section 8** would allow the Secretary to retain a portion of RAC recoveries to implement actions that prevent improper payments and fraud, with such portion being subject to a cap of 25 percent.

Section 9 would require the Secretary to conduct a study on the use of universal product numbers (UPNs) for tracking and program integrity purposes. If the study results are positive, the Secretary would have the permissive authority to conduct a budget neutral pilot study of the use of UPNs.

**DEDICATE PENALTIES FOR FAILURE TO USE ELECTRONIC HEALTH RECORDS
TOWARD DEFICIT REDUCTION**

Legislative Proposal

SEC. __. MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1)(C) of the Social Security Act (42 U.S.C. 1395iii(b)(1)(C)) is amended by striking “and each subsequent fiscal year”.

Sectional Analysis

The American Reinvestment and Recovery Act of 2009 imposes a penalty, beginning in 2015, on Medicare providers that fail to become meaningful users of electronic health records. The penalty is credited to a special account, called the Medicare Improvement Fund, beginning in 2020. This proposal would modify the Medicare statute to ensure these penalties are used for deficit reduction rather than additional spending beginning in 2021.

**UPDATE MEDICARE PAYMENTS TO MORE APPROPRIATELY ACCOUNT FOR
UTILIZATION OF ADVANCED IMAGING**

Legislative Proposal

SEC. ____ . ADJUSTMENT OF EQUIPMENT UTILIZATION RATE FOR ADVANCED IMAGING SERVICES.

(a) IN GENERAL.—Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(1) in subsection (b)(4)(C)—

(A) by inserting “and 2012” after “2011”;

(B) by striking “and subsequent years” after “2011”; and

(C) by inserting before the period at the end the following: “; and with respect to fee schedules established for 2013 and subsequent years, in such methodology, use a 90 percent utilization rate”; and

(2) in subsection (c)(2)(B)(v)(III), by inserting “and 2012 and the utilization rate applicable to 2013 and subsequent years” after “applicable to 2011”.

(b) CMS ANALYSIS.—Section 3135(c) of Public Law 111-148 is amended—

(1) by inserting “and section ____ of the ____ Act” after “this section”; and

(2) by striking “\$3,000,000,000” and inserting “\$4,000,000,000”.

Sectional Analysis

Medicare payments for advanced imaging, such as MRI and CT, depend on the amount of time that providers use the equipment. This section would more appropriately account for the amount of time equipment is used by increasing the utilization rate for expensive diagnostic imaging equipment from 75 percent to 90 percent beginning in 2013. It would also exclude this increase from the budget neutrality adjustment.

PRIOR AUTHORIZATION FOR ADVANCED IMAGING

Legislative Proposal

SEC. __. PRIOR AUTHORIZATION FOR HIGH-COST IMAGING

Section 1848(b)(4) of the Social Security Act (42 U.S.C. 1395w-4) is amended by inserting at the end the following new subparagraph:

“(E) PRIOR AUTHORIZATION OF COVERAGE FOR HIGH COST IMAGING SERVICES.—

“(i) DEVELOPMENT OF LIST OF SERVICES BY SECRETARY.— The Secretary shall develop and periodically update a list of high-cost imaging services for which payment may be made under this part that the Secretary determines appropriate for prior authorization (such as services for which there is unnecessary utilization or high payment error rates).

“(ii) PRIOR AUTHORIZATION OF COVERAGE.—With respect to services described in clause (i), the Secretary shall determine, in advance of furnishing such a service, whether payment for such a service may not be made because such a service is not covered or because of the application of section 1862(a)(1).”.

(b) EFFECTIVE DATE.—The Secretary shall promulgate regulations to implement this section no later than January 1, 2013.

Sectional Analysis

In a June 2008 report, GAO found that adding more up-front payment safeguard mechanisms, such as prior authorization, may help CMS address the rapid growth in Medicare Part B spending on imaging services. This section would require prior authorization for certain high cost imaging services.

INCREASE INCOME-RELATED PREMIUMS UNDER MEDICARE PARTS B AND D

Legislative Proposal

SEC.1. INCREASE IN APPLICABLE PERCENTAGE USED TO CALCULATE BENEFICIARY PART B AND PART D PREMIUMS FOR HIGH-INCOME BENEFICIARIES.

Section 1839(i)(3)(C) of the Social Security Act (42 U.S.C. 1395r(i)(3)(C)) is amended by striking the table in clause (i) and inserting the following new table:

If the modified adjusted gross is:	For calendar years prior to 2017, the applicable percentage is:	For calendar years 2017 and later, the applicable percentage is:
More than \$80,000 but not more than \$100,000	35 percent	40.25 percent
More than \$100,000 but not more than \$150,000	50 percent	57.5 percent
More than \$150,000 but not more than \$200,000	65 percent	74.75 percent
More than \$200,000	80 percent.	90 percent.

SEC.2 TEMPORARY ADJUSTMENT TO THE CALCULATION OF PART B AND PART D PREMIUMS.

Section 1839(i)(6) of the Social Security Act (42 U.S.C. 1395r(i)(6)) is amended in the matter preceding subparagraph (A) by striking “December 31, 2019” and inserting “December 31 of the first year after the year in which at least 25 percent of beneficiaries become subject to a reduction in the premium subsidy determined under this subsection”.

Sectional Analysis

High-income beneficiaries in the Medicare Part B and Part D programs are required to pay separate income-related monthly adjustment amounts (IRMAAs), respectively. The IRMAAs are calculated based on an applicable percentage that varies depending on the beneficiary’s modified adjusted gross income. Starting in CY 2017, **Section 1** would amend the Medicare statute to increase the applicable percentages used to calculate the Part B and Part D IRMAA amounts by 15 percent, while capping the highest applicable percentage at 90 percent, thereby requiring high-income beneficiaries to pay larger IRMAAs and larger portions of the total costs of the Part B and Part D benefits.

Section 2 would amend the Medicare statute to freeze income thresholds for Part B and D income-related premiums until 25 percent of beneficiaries become subject to these premiums. These thresholds are currently frozen at 2010 levels through 2019

MODIFY PART B DEDUCTIBLE FOR NEW BENEFICIARIES

Legislative Proposal

SEC. __. PART B DEDUCTIBLES FOR NEW ENROLLEES.

Section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended by inserting “, and for individuals initially enrolled after 2016 the amount of such deductible shall be calculated as if the deductible in 2017, 2019, and 2021 was increased \$25 in each of these respective years, after the application of the annual percentage increase, and each of these increases remain part of such deductible in all subsequent years after each increase” after “\$1”.

Sectional Analysis

Beneficiaries who are enrolled in Medicare Part B are required to pay an annual deductible. This deductible helps to share responsibility for payment of Medicare services between Medicare and beneficiaries. This section would apply a \$25 increase to the Medicare Part B deductible paid by new enrollees (enrolled in Medicare Part B on or after January 1, 2017) in each of 2017, 2019, and 2021. The additional \$25 amount would grow at the same rate applied to the deductible currently (the annual percentage increase in the monthly actuarial rate ending with the subsequent year).

INTRODUCE HOME HEALTH COPAYMENTS FOR NEW BENEFICIARIES

Legislative Proposal

SEC. ____ . ESTABLISHMENT OF A COPAYMENT FOR HOME HEALTH SERVICES.

(a) REDUCTION.—Section 1895(b) of the Social Security Act (42 U.S.C. 1395fff(b)) is amended—

(1) in paragraph (4)(A), by striking “The payment amount” and inserting “Subject to paragraph (7), the payment amount”; and

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

“(7) COPAYMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), the amount otherwise payable under this section (as determined before the application of this paragraph) with respect to a unit of home health services furnished to an individual shall be reduced by a copayment amount to be collected after the final payment is made, equal to—

“(i) for 2017, \$100; and

“(ii) for each subsequent year, the amount specified under this subparagraph for the previous year multiplied by the annual update as described in section 1895(b)(3)(B).

“(B) ANNOUNCEMENT OF COPAYMENT AMOUNT.—The Secretary shall, not later than 60 days prior to the applicable year, publish the copayment amount and the methodology and assumptions used to arrive at the copayment amount.

“(C) EXCEPTIONS.—Subparagraph (A) shall not apply with respect to a unit of home health services furnished to an individual—

“(i) insofar as the unit of service being furnished to the individual immediately follows a hospital or other inpatient post-acute care stay;

“(ii) if the unit is a unit of home health services to which a low-utilization payment adjustment described in section 484.205 of title 42 of the Code of Federal Regulations (or any successor regulation to such section) applies; or

“(iii) if the individual first becomes entitled to benefits under part A or enrolled in part B before January 1, 2017.

“(D) DEDUCTIBLE.—The amount specified in paragraph (7) shall not reduce a beneficiary’s liability toward meeting the deductible described in Section 1833(b).”

(b) CONFORMING AMENDMENT.—Section 1866(a)(2)(A) of the Social Security Act (42 U.S.C. 1395cc(a)(2)(A)) is amended in the first sentence by striking “or section 1861(y)(3)” and inserting “section 1861(y)(3), or section 1895”.

Sectional Analysis

This section would amend Medicare statute to create a copayment for home health services equaling \$100 in 2017 and indexed to the growth in the average allowed payment for a home health episode, applicable for episodes with five or more visits not preceded by a hospital or

other inpatient post-acute care stay. The copayment would apply to new Medicare beneficiaries beginning in 2017.

**INTRODUCE A PART B PREMIUM SURCHARGE FOR NEW BENEFICIARIES
THAT PURCHASE NEAR FIRST-DOLLAR MEDIGAP COVERAGE**

Legislative Proposal

SEC. 1. PREMIUM SURCHARGE FOR BENEFICIARIES WITH NEAR FIRST-DOLLAR MEDIGAP COVERAGE.

(a) IN GENERAL.—Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(2) by striking “and (i)” and inserting “(i), and (j)”;

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

“(j) REDUCTION IN PREMIUM SUBSIDY BASED ON SUPPLEMENTAL COVERAGE.—

“(1) In the case of an individual initially enrolled under this part after December 31, 2016 who is covered by a near first-dollar Medicare supplemental insurance policy, regardless of whether subsections (b), (f), and (i) apply, the monthly premium subsidy applicable to the premium under this section shall be reduced (and the monthly premium shall be increased) by 15 percent of the monthly actuarial rate for enrollees age 65 and over as determined under subsection (a)(1) for the year.

“(2) For purposes of this section the term “near first-dollar Medicare supplemental insurance policy” means a Medicare supplemental policy as defined in section 1882(g)(1) with benefit packages classified as “C” or “F” or other plans the Secretary may by regulation prescribe.”; and

“(3) in subsection (f) by inserting after “this section).” the following new sentence: “Any increase in the premium that results from a reduction in the individual’s premium subsidy under subsection (j) shall not be counted for purposes of applying this subsection.”.

SEC. 2. MEDIGAP ENROLLMENT REPORTING.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

“(z) REQUIRED SUBMISSION OF INFORMATION—

“(1) REQUIREMENT.— Beginning on January 1, 2017 the issuer of a Medicare supplemental policy as defined in subsection (g)(1) shall:

“(A) obtain upon enrollment identifying information including the Health Insurance Claims Number (HICN) or Social Security Number (SSN) of each individual newly covered by a near first-dollar Medicare supplemental policy as defined in section 1839(j)(2) and maintain a record of coverage by date of such individuals under such a policy; and

“(B) submit the information described in subparagraph (A) to the Secretary in a form and manner (including frequency) specified by the Secretary.

“(2) ENFORCEMENT.—

“(A) IN GENERAL.—An issuer of a Medicare supplemental policy that fails to comply with the requirements under this subsection shall be subject to a civil money penalty of \$100 for each day of noncompliance for each individual

for which the information under this subsection should have been submitted. The provisions of section 1128A (other than subsections (a) and (b) of such section) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under subsection (a) of section 1128A. A civil money penalty under this clause shall be in addition to any other penalties prescribed by law and in addition to any Medicare secondary payer claim under this title with respect to an individual.

“(B) DEPOSIT OF AMOUNTS COLLECTED.—Any amounts collected pursuant to subparagraph (A) shall be deposited in the Federal Hospital Insurance Trust Fund under section 1817.

“(3) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement this paragraph by program instruction or otherwise.

“(4) DEFINITION.— For purposes of this subsection, ‘issuer’ includes insurance companies, and any other entity delivering or issuing for delivery Medicare supplemental policies certified under this section or approved by a State under subsection (b)(1)(H).

Sectional Analysis

To encourage more efficient health care choices, **Section 1** would initiate a Medicare Part B premium surcharge equivalent to about 15 percent of the average Medigap premium (or about 30 percent of the standard Part B premium) for new beneficiaries that purchase Medigap policies with particularly low cost-sharing requirements, starting in 2017. The same increase in the premium amount will apply regardless of the premium hold harmless outlined in section 1839(f), the increased premium outlined in section 1839(i), and the increased premium for late enrollment outlined in 1839(b) and (c). **Section 2** would require Medigap plans to report certain enrollment information to the Secretary and would apply civil monetary penalties for failure to comply with such reporting.

STRENGTHEN IPAB TO REDUCE LONG-TERM DRIVERS OF MEDICARE COST GROWTH

Legislative Proposal

SEC. ____. Addressing the Long-term Drivers of Medicare Cost Growth.— Section 1899A(c)(6)(C)(ii) of the Social Security Act (42 U.S.C. 1395kkk(c)(6)(C)(ii)) is amended by striking “1.0” and inserting in lieu thereof “0.5”.

Sectional Analysis

The Affordable Care Act created the Independent Payment Advisory Board (IPAB) to develop proposals related to the Medicare program to reduce the rate of Medicare cost growth to meet predetermined target growth rates. This section would set a new target for per capita Medicare growth to be GDP per capita plus 0.5 percentage points for any determination year after 2017, instead of its current level of GDP per capita plus 1.0 percentage points.

REDUCE THE MEDICAID PROVIDER TAX THRESHOLD BEGINNING IN 2015

Legislative Proposal

SEC. ____ . PHASE-DOWN OF PROVIDER TAX SAFE HARBOR FROM 6 % TO 3.5 %

Section 1903(w)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1396b(w)(4)(C)(ii)) is amended to read as follows:

“(ii) For purposes of clause (i), a determination of the existence of an indirect guarantee shall be made under paragraph (3)(i) of section 433.68(f) of title 42, Code of Federal Regulations, as in effect on November 1, 2006, except that the following percentages shall be substituted for ‘6 percent’ each place it appears---

“(I) 5.5 percent, for portions of fiscal years beginning on or after January 1, 2008, and before October 1, 2011;

“(II) 4.5 percent, for fiscal year 2015;

“(III) 4.0 percent, for fiscal year 2016; and

“(IV) 3.5 percent, for fiscal year 2017 and each subsequent fiscal year.”.

Sectional Analysis

Some states finance a portion of their Medicaid program by imposing taxes on Medicaid providers, increasing payments to those same providers to offset the tax, and using that additional “spending” to increase their Federal match. Medicaid statute requires provider taxes to be broad based, not exceed 25% of the state share of Medicaid expenditures, and not hold providers harmless. The Medicaid regulations outline a series of tests CMS uses to determine whether providers are held harmless. However, the regulations waive these hold harmless tests when the tax is applied at or below a percentage threshold (currently 5.5% through Sep 2011) of the provider’s revenue, otherwise known as a safe harbor.

This section would amend the Medicaid statute to limit States' ability to use provider taxes for the State share of Medicaid, by phasing down the Medicaid provider tax threshold from the current law level of 6% in FY 2014, to 4.5% in FY 2015, 4% in FY 2016, and 3.5% in FY 2017 and beyond.

**LIMIT MEDICAID REIMBURSEMENT OF DURABLE MEDICAL EQUIPMENT
(DME) BASED ON MEDICARE RATES**

Legislative Proposal

**SEC. __. LIMIT FEDERAL REIMBURSEMENT FOR MEDICAID DME TO
MEDICARE RATES.**

(a) ADDITION OF AUTHORITY.--- Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended--

- (1) in paragraph (25), by striking “or” at the end;
- (2) in paragraph (26), by striking the period at the end and inserting “; or”; and
- (3) by inserting after paragraph (26) the following new paragraph:

“(27)(A) with respect to any amounts expended for items and services described in section 1861(n) in excess of the amount, if any, that would be paid for such items and services under the program under title XVIII (including, as applicable, under a competitive acquisition program under section 1847 in any area of the State), subject to subparagraph (B).

“(B) the provisions of subparagraph (A) shall not apply with respect to State expenditures for medical assistance on behalf of individuals enrolled in managed care arrangements, including---

- (i) a group health plan, pursuant to section 1906;
- (ii) a managed care entity, pursuant to section 1932; or
- (iii) a medicaid managed care organization as defined under section 1903(m)(1)(A).”

(b) EFFECTIVE DATE.---

(1) IN GENERAL.---The amendments made by this section shall be effective with respect to items or services furnished on or after October 1, 2012.

(2) COMPLIANCE TRANSITION PERIOD. c If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under title XIX of the Social Security Act to meet the additional requirements imposed by the amendments made under this section, the plan shall not be regarded as failing to meet the requirements of such title, solely on the basis of its failure to meet these additional requirements, before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of this section. For purposes of the previous sentence, if the State has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

Sectional Analysis

This section would, effective October 1, 2012, limit Medicaid's durable medical equipment (DME) payments to what would have been paid under Medicare if the Medicare payment principles for each category of DME were applied (whether by Medicare fee schedule or competitive bidding rates). This excludes services provided to individuals enrolled in a managed care organization.

**STRENGTHEN THIRD-PARTY LIABILITY FOR MEDICAID BENEFICIARY
CLAIMS**

Legislative Proposal

**SEC. __. PAYMENT FOR PRENATAL AND PREVENTIVE PEDIATRIC CARE AND
IN CASES INVOLVING MEDICAL SUPPORT.**

(a) MODIFICATION OF PAYMENT AUTHORITY.---Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) is amended---

(1) in subparagraph (E)(i), by inserting immediately before the semi-colon the following: ", except that the State may, if the State determines doing so is cost-effective and will not adversely affect access to care, only make such payment if a third party so liable has not made payment within 90 days after the date the provider of such services has initially submitted a claim to such third party for payment for such services"; and

(2) in subparagraph (F)(i), by striking "30 days after such services are furnished" and inserting "90 days after the date the provider of such services has initially submitted a claim to such third party for payment for such services, except that the State may make such payment within 30 days after such date if the State determines doing so is cost-effective and necessary to ensure access to care."

(b) EFFECTIVE DATE.---The amendments made by this section shall be effective October 1, 2012

Sectional Analysis

Medicaid is generally the payer of last resort. This section would enable States to avoid costs for prenatal and preventive pediatric claims when third parties are responsible, by collecting medical child support where health insurance is derived from a non-custodial parent, and recovering Medicaid expenditures from beneficiary liability settlements. This is similar to the 2009 President's Budget proposal. Effective October 1, 2012.

**REBASE MEDICAID DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS IN
2021**

Legislative Proposal

SEC. __. Section 1923(f) of the Social Security Act (42 U.S.C. 1396r-4(f)) is amended---

(1) by redesignating paragraph (8) as paragraph (9);

(2) in paragraph (3)(A) by striking “paragraphs (6) and (7)” and inserting

“paragraphs (6), (7), and (8)”;

(3) by inserting after paragraph (7) the following new paragraph:

“(8) REBASING OF STATE DSH ALLOTMENTS FOR FISCAL YEAR

2021.—For purposes of applying paragraph (3)(A) to determine a State’s DSH allotment for fiscal year 2021, the amount of the State’s DSH allotment for fiscal year 2020, as reduced under paragraph (7), shall be treated as if such reduced amount had been the State’s DSH allotment for fiscal year 2020 absent application of paragraph (7).”.

Sectional Analysis

The Medicaid Disproportionate Share Hospital (DSH) program provides financial support, in addition to regular payments, to hospitals that serve a disproportionate share of low-income or uninsured individuals. States claim Federal matching dollars for DSH payments up to a statutory ceiling. This section would revise Title XIX of the Social Security Act to rebase Medicaid DSH payments in 2021 and thereafter, by reducing the applicable ceiling.

REDUCING FRAUD, WASTE, AND ABUSE IN MEDICAID

Legislative Proposal

SEC. 1. INCREASED PENALTIES ON DRUG MANUFACTURERS FOR FRAUDULENT NONCOMPLIANCE WITH MEDICAID DRUG REBATE AGREEMENTS.

(a) INCREASE IN PENALTY.---Section 1927(b)(3)(C)(ii) of the Social Security Act (42 U.S.C 1396r-8(b)(3)(C)(ii)) is amended by striking “\$100,000” and inserting “\$200,000”.

(b) EFFECTIVE DATE.---The amendment made by subsection (a) shall be effective October 1, 2012.

SEC. 2. REGULAR AUDITING OF DRUG MANUFACTURER COMPLIANCE WITH DRUG REBATE AGREEMENTS.

(a) AUDITING BY OFFICE OF INSPECTOR GENERAL.---Section 1927(b)(3)(A) of the Social Security Act (42 U.S.C 1396r-8(b)(3)(A)) is amended in the first sentence of the matter following clause (iv)---

(1) by striking “is subject to audit” and inserting “shall be audited”; and

(2) by inserting before the period at the end the following: “, on such regular, periodic basis as the Inspector General determines to be cost-effective”.

(b) VERIFICATION BY SECRETARY.---Section 1927(b)(3)(B) of the Social Security Act (42 U.S.C. 1396r-8(b)(3)(B)) is amended in the first sentence—

(1) by striking “may” and inserting “shall”; and

(2) by striking “, when necessary,” and inserting “on such regular, periodic basis as the Secretary determines to be cost-effective.”.

(c) EFFECTIVE DATE.---The amendments made by this section shall be effective October 1, 2012.

SEC. 3. FULL REBATE TO STATES FOR IMPROPERLY REPORTED PRODUCTS UNDER MEDICAID DRUG REBATE PROGRAM.

(a) ADDITION OF AUTHORITY.---Section 1927(c) of the Social Security Act (42 U.S.C. 1396r-8(c)) is amended by inserting after paragraph (3) the following new paragraph:

“(4) REBATE FOR IMPROPERLY REPORTED PRODUCTS.---

“(A) IN GENERAL.---Notwithstanding paragraphs (1)-(3), for products improperly reported to the Secretary under this section, as described in subparagraph (B), the amount of the rebate paid to a State for a rebate period, with respect to each unit of an improperly reported product, shall be equal to the quotient of---

“(i) the total expenditures by the State under the State plan for such improperly reported product for the rebate period; and

“(ii) the total number of units of such improperly reported product for which the State made expenditures under the State plan for the rebate period.

“(B) IMPROPERLY REPORTED PRODUCTS DESCRIBED.---For purposes of subparagraph (A), a product is improperly reported under this section if information is reported to the Secretary under this section with respect to a product which is not a covered outpatient drug as defined in subsection (k).”.

(b) CONFORMING AMENDMENTS.---Section 1927(b) of the Social Security Act (42 U.S.C. 1396r-8(b)) is amended---

(1) in paragraph (1)(A) by inserting “(and for improperly reported products as defined in subsection (c)(4)(B), as applicable)” after “1990”; and

(2) in paragraph (2)(A) by inserting “(and on each improperly reported product as defined in subsection (c)(4)(B), as applicable)” after “1990”.

(c) EFFECTIVE DATE.---The amendments made by this section shall be effective with respect to items or services furnished on or after October 1, 2012.

SEC. 4. TRACK HIGH PRESCRIBERS AND UTILIZERS OF PRESCRIPTION DRUGS UNDER MEDICAID.

(a) ADDITION TO DRUG USE REVIEW REQUIREMENTS.--- Section 1927(g) of the Social Security Act (42 U.S.C. 1396r-8(g)) is amended---

(1) in paragraph (1)(A), by striking “section 1903(i)(10)(B)” and inserting “section 1902(a)(54)”;

(2) in paragraph (2)(B)---

(A) by redesignating the text that follows “periodic examination of claims data and other records in order to” as clause (i) and relocating and indenting it appropriately;

(B) in clause (i), as so redesignated, by striking the period at the end and inserting a semi-colon; and

(C) by inserting after clause (i), as so redesignated, the following:

“(ii) identify patterns of prescribing or use of covered outpatient drugs, such as a high volume of prescribing or high dollar amount of drug claims, that may indicate drug abuse or excessive utilization of certain medications or certain classes of medications; and

“(iii) remediate where possible, such fraud, abuse, gross or excessive utilization, or inappropriate or medically unnecessary care, and take such actions as needed to minimize the occurrence of preventable clinical episodes related to such inappropriate or unnecessary care.”.

(b) EFFECTIVE DATE.---The amendments made by this section shall be effective October 1, 2012.

SEC. 5. LISTING OF DRUGS WITH FDA AS A CONDITION OF MEDICAID COVERAGE.

(a) ADDITION OF LISTING REQUIREMENT.---Section 1927(k)(2)(A)(i) of the Social Security Act (42 U.S.C. 1396r-8(k)(2)(A)(i)) is amended---

(1) by inserting “(I)” before “approved for safety and effectiveness”;

(2) by inserting “and” after “approved under section 505(j) of such Act;”;

(3) by adding at the end the following new subclause:

“(II) for which the manufacturer has demonstrated that the listing information, including where initially submitted in accordance with section 510(j) of the Federal Food, Drug, and Cosmetic Act, has been submitted to the Secretary electronically, in accordance with section 510(p) of such Act.”.

(b) TECHNICAL CORRECTION TO DEFINITION OF COVERED OUTPATIENT DRUG.---Section 1927(k)(2)(A) of the Social Security Act (42 U.S.C. 1396r-8(k)(2)(A)), as amended by subsection (a), is further amended in the matter preceding clause (i) by striking “paragraph (5)” and inserting “paragraph (4)”.

(c) EFFECTIVE DATE.---The amendments made under this section shall be effective with respect to items and services furnished on or after October 1, 2012.

SEC. 6. PROHIBITION AGAINST USING FEDERAL FUNDS AS NON-FEDERAL SHARE OF MEDICAID OR CHIP EXPENDITURES.

(a) MEDICAID.---

(1) DISALLOWANCE OF EXPENDITURES.--Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended--

(A) in paragraph (25), by striking “or” at the end;

(B) in paragraph (26), by striking the period at the end and inserting “; or”;

and

(C) by inserting after paragraph (26) the following new paragraph:

“(27) with respect to any portion of the non-Federal share of expenditures under the State plan (or under any waiver or demonstration under this title) for which the State uses Federal funds, unless the State is expressly authorized by an Act of Congress to use such Federal funds toward the non-Federal share of such expenditures.”.

(2) STATE PLAN REQUIREMENTS.---Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended---

(A) in paragraph (82) by striking “and” at the end;

(B) in paragraph (83) by striking the period at the end and inserting “; and”;

and

(C) by adding after paragraph (83) the following new paragraph:

“(84) provide such information and assurances as the Secretary determines appropriate to demonstrate that the State shall not use Federal funds to pay any part of the non-Federal share of expenditures under the State plan (or under a waiver or demonstration under this title), as prohibited under section 1903(i)(27), unless as described in such section the use of Federal funds for the non-Federal share of such expenditures is expressly permitted by an Act of Congress.”.

(b) CHIP.---Section 2105(c)(4) of the Social Security Act (42 U.S.C. 1397ee(c)(4)) is amended to read as follows:

“(4) USE OF NON-FEDERAL FUNDS FOR STATE MATCHING REQUIREMENT.---Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of, nor credited toward, non-Federal contributions required under subsection (a), unless expressly permitted by an Act of Congress.”.

(c) EFFECTIVE DATE.---The amendments made by this section shall be effective with respect to items or services furnished on or after October 1, 2012.

Sectional Analysis

This legislation would amend several sections in the Medicaid statute to improve program integrity and reduce fraud, waste, and abuse, each effective October 1, 2012.

Drug manufacturers must have agreements with the Federal government in place for application of rebates in order to receive Medicaid coverage of their drugs. **Section 1** would increase penalties on drug manufacturers for fraudulent noncompliance with these drug rebate agreements. **Section 2** would have HHS, as cost-effective, regularly audit manufacturer compliance with requirements of the agreements.

Federal law requires manufacturers to report a list of their “covered outpatient drugs” (as defined in statute) to HHS to receive Medicaid drug coverage. Sometimes, manufacturers report ineligible items such as syringes or non-medicated dressings. **Section 3** would require manufacturers that report ineligible items for Medicaid drug coverage to fully repay States for any reimbursement of such items by directing manufacturers to pay a rebate equal to the amount the State paid.

Section 4 would require States to monitor high prescribing activity by physicians and high drug utilization activity by beneficiaries and to remediate identified claims.

Section 5 would condition Medicaid drug coverage on manufacturer compliance with FDA law mandating drugs be listed with that agency.

To receive Federal reimbursement under Medicaid and the Children’s Health Insurance Program (CHIP), States are required to pay a portion of program costs. **Section 6** would prohibit States from using other Federal funds as the State share of Medicaid or CHIP, unless authorized by statute for that specific use.

**STREAMLINE AND COORDINATE FEDERAL GOVERNMENT OVERSIGHT OF
STATE MEDICAID PROGRAMS AND EXPAND STATE FLEXIBILITY**

Legislative Proposal

SEC. 1. MEDICAID AND CHIP ERROR RATE MEASUREMENT; CONSOLIDATION OF MEDICAID ELIGIBILITY QUALITY CONTROL AND PAYMENT ERROR RATE MEASUREMENT PROGRAMS.—

(a) **IN GENERAL.**—The Secretary shall promulgate regulations to consolidate the Medicaid Eligibility Quality Control (“MEQC”) and Payment Error Rate Measurement (“PERM”) programs described in subsection (d) to establish a single review program (“consolidated PERM program”), subject to subsection (b).

(b) **REQUIREMENTS FOR NEW FINAL RULE.**—The final regulations promulgated under subsection (a) to establish the consolidated PERM program shall—

(1) integrate the functions and requirements of the MEQC and PERM programs;

and

(2) provide that the consolidated PERM program requirements address eligibility and enrollment processes under sections 1902(e)(14) and 1943 of the Social Security Act (42 U.S.C. 1396a(e)(14) and 1396w-3), as added by the Patient Protection and Affordable Care Act.

(c) **WAIVER AUTHORITY.**—The Secretary may waive, or modify through regulation, any requirements under section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) that the Secretary deems necessary to establish the consolidated PERM program under this section.

(d) **PROGRAMS DESCRIBED.**— For purposes of this section—

(1) The Medicaid Eligibility Quality Control program is the program of Medicaid eligibility review requirements under section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) and subpart P of part 431 of title 42, Code of Federal Regulations (or any successor regulation).

(2) The Payment Error Rate Measurement program is the program of requirements under subpart Q of part 431 of title 42, Code of Federal Regulations (or any successor regulation).

SEC. 2. STATE FLEXIBILITY IN PROVIDING BENCHMARK BENEFIT PACKAGES TO OPTIONAL CATEGORICALLY NEEDY GROUP.

Section 1937(a)(1)(B) of the Social Security Act (42 U.S.C. 1396u-7(a)(1)(B)) is amended to read as follows:

“(B) The State may only exercise the option under subparagraph (A) for an individual eligible under---

“(i) subclause (VIII) of section 1902(a)(10)(A)(i);

“(ii) an eligibility category that had been established under the State plan on or before February 8, 2006; or

“(iii) subclause (XX) of section 1902(a)(10)(A)(ii).”.

Sectional Analysis

Under current law, HHS has multiple requirements to measure error rates under Medicaid.

Section 1 would consolidate redundant error rate measurement programs to create a streamlined audit program with meaningful outcomes, while maintaining the Federal and State's government ability to identify and address improper payments.

Under current law, States may design "benchmark" benefit packages off of certain statutorily-designated plans for certain Medicaid beneficiaries. **Section 2** would amend the Medicaid statute to give States the flexibility to require benchmark benefit plan coverage for non-elderly, non-disabled adults with incomes over 133 percent of the Federal poverty level.

**AMEND MAGI FOR HEALTH INSURANCE ASSISTANCE PROGRAMS TO
INCLUDE TOTAL SOCIAL SECURITY BENEFITS**

Legislative Proposal

SEC. ____. [INCLUSION OF 100 PERCENT OF SOCIAL SECURITY AND TIER I
RAILROAD RETIREMENT BENEFITS IN INCOME FOR PURPOSES
OF ELIGIBILITY FOR THE REFUNDABLE CREDIT FOR COVERAGE
UNDER A QUALIFIED HEALTH PLAN AND FOR MEDICAID.]

(a) IN GENERAL.—Section 36B(d)(2)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 36B(d)(2)(B)) is amended—

- (1) in clause (i), by striking “and” after the comma;
- (2) in clause (ii), by striking the period at the end and inserting “, and”; and
- (3) by adding at the end the following:

“(iii) an amount equal to the portion of the taxpayer’s social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

Sectional Analysis

The Affordable Care Act created a new income measure – modified adjusted gross income (MAGI) – to determine financial eligibility for premium assistance tax credits, cost-sharing reductions, and Medicaid and CHIP for certain populations. Under ACA MAGI, only the taxable portion of Social Security benefits is included when determining if an individual is eligible for assistance. This section would modify section 36B(d)(2)(B) of the Internal Revenue Code to include the non-taxable portion of Social Security benefits in the definition of the ACA MAGI for purposes of eligibility determinations.

**PROHIBIT PAY FOR DELAY AGREEMENTS TO INCREASE AVAILABILITY OF
GENERAL DRUGS**

Legislative Proposal

A bill to prohibit brand name drug and biological product companies from compensating generic drug and biosimilar or interchangeable biological product companies to delay the entry of a generic drug or biosimilar or interchangeable biological product into the market.

SEC. 1. UNLAWFUL COMPENSATION FOR DELAY.

(a) In General- The Federal Trade Commission Act (15 U.S.C. 44 et seq.) is amended by—

(1) redesignating section 28 as section 29; and

(2) inserting before section 29, as redesignated, the following:

SEC. 28. PRESERVING ACCESS TO AFFORDABLE GENERICS.

(a) In General-

(1) ENFORCEMENT PROCEEDING- The Federal Trade Commission may initiate a proceeding to enforce the provisions of this section against the parties to any agreement resolving or settling, on a final or interim basis, a patent infringement claim, in connection with the sale of a drug or biological product.

(2) PRESUMPTION-

(A) IN GENERAL- Subject to subparagraph (B), in such a proceeding, an agreement shall be presumed to have anticompetitive effects and be unlawful if--

(i) an ANDA or a biosimilar or interchangeable biological product application filer receives anything of value; and

(ii) the ANDA or a biosimilar or interchangeable biological product application filer agrees to limit or forego research, development, manufacturing, marketing, or sales of the ANDA or a biosimilar or interchangeable biological product for any period of time.

(B) EXCEPTION- The presumption in subparagraph (A) shall not apply if the parties to such agreement demonstrate by clear and convincing evidence that the procompetitive benefits of the agreement outweigh the anticompetitive effects of the agreement.

(b) Competitive Factors- In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall consider--

(1) the length of time remaining until the end of the life of the relevant patent, compared with the agreed upon entry date for the ANDA or a biosimilar or interchangeable biological product;

(2) the value to consumers of the competition from (A) the ANDA product allowed under the agreement and (B) subsequent ANDA products, if the approval of these products can occur only upon the expiration of the 180-day exclusivity period, if any, as defined in section 505(j)(5)(iv)(II)(aa) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(iv)(II)(aa)), of the ANDA filer of the ANDA product allowed under the agreement;

(3) the value to consumers of the competition from (A) the biosimilar or interchangeable biological product allowed under the agreement and (B) subsequent biosimilar or interchangeable biological products, if the approval of these products can

occur only upon the expiration of the exclusivity period, if any, as defined in section 351(k)(6) of the Public Health Service Act.

`(4) the form and amount of consideration received by the ANDA or a biosimilar or interchangeable biological filer in the agreement resolving or settling the patent infringement claim;

`(5) the revenue the ANDA or biosimilar or interchangeable biological product application filer would have received by winning the patent litigation;

`(6) the reduction in the NDA or BLA holder's revenues if it had lost the patent litigation;

`(7) the time period between the date of the agreement conveying value to the ANDA or the biosimilar or interchangeable biological product application filer and the date of the settlement of the patent infringement claim; and

`(8) any other factor that the fact finder, in its discretion, deems relevant to its determination of competitive effects under this subsection.

`(c) Limitations- In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall not presume--

`(1) that entry would not have occurred until the expiration of the relevant patent or statutory exclusivity; or

`(2) that the agreement's provision for entry of the ANDA or biosimilar or interchangeable biological product prior to the expiration of the relevant patent or statutory exclusivity means that the agreement is pro-competitive, although such evidence may be relevant to the fact finder's determination under this section.

`(d) Exclusions- Nothing in this section shall prohibit a resolution or settlement of a patent infringement claim in which the consideration granted by the NDA or BLA holder to the ANDA or the biosimilar or interchangeable biological product application filer as part of the resolution or settlement includes only one or more of the following:

`(1) The right to market the ANDA or biosimilar or interchangeable biological product in the United States prior to the expiration of--

`(A) any patent that is the basis for the patent infringement claim; or

`(B) any patent right or other statutory exclusivity that would prevent the marketing of such drug.

`(2) A payment for reasonable litigation expenses not to exceed \$7,500,000.

`(3) A covenant not to sue on any claim that the ANDA or biosimilar or interchangeable biological product infringes a United States patent.

`(e) Regulations and Enforcement-

`(1) REGULATIONS- The Federal Trade Commission may issue, in accordance with section 553 of title 5, United States Code, regulations implementing and interpreting this section. These regulations may exempt certain types of agreements described in subsection (a) if the Commission determines such agreements will further market competition and benefit consumers. Judicial review of any such regulation shall be in the United States District Court for the District of Columbia pursuant to section 706 of title 5, United States Code.

`(2) ENFORCEMENT- A violation of this section shall be treated as a violation of section 5.

`(3) JUDICIAL REVIEW- Any person, partnership or corporation that is subject to a final order of the Commission, issued in an administrative adjudicative proceeding

under the authority of subsection (a)(1), may, within 30 days of the issuance of such order, petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the ultimate parent entity, as defined at 16 CFR 801.1(a)(3), of the NDA or BLA holder is incorporated as of the date that the NDA or BLA is filed with the Secretary of Health and Human Services , or the United States Court of Appeals for the circuit in which the ultimate parent entity of the ANDA or biosimilar or interchangeable biological product application filer is incorporated as of the date that the ANDA or biosimilar or interchangeable biological product application is filed with the Secretary of Health and Human Services . In such a review proceeding, the findings of the Commission as to the facts, if supported by evidence, shall be conclusive.

`(f) Antitrust Laws- Nothing in this section shall be construed to modify, impair or supersede the applicability of the antitrust laws as defined in subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)) and of section 5 of this Act to the extent that section 5 applies to unfair methods of competition. Nothing in this section shall modify, impair, limit or supersede the right of an ANDA or biosimilar or interchangeable biological product application filer to assert claims or counterclaims against any person, under the antitrust laws or other laws relating to unfair competition.

`(g) Penalties-

`(1) FORFEITURE- Each person, partnership or corporation that violates or assists in the violation of this section shall forfeit and pay to the United States a civil penalty sufficient to deter violations of this section, but in no event greater than 3 times the value received by the party that is reasonably attributable to a violation of this section. If no such value has been received by the NDA or BLA holder, the penalty to the NDA or BLA holder shall be sufficient to deter violations, but in no event greater than 3 times the value given to the ANDA or biosimilar or interchangeable biological product application filer reasonably attributable to the violation of this section. Such penalty shall accrue to the United States and may be recovered in a civil action brought by the Federal Trade Commission, in its own name by any of its attorneys designated by it for such purpose, in a district court of the United States against any person, partnership or corporation that violates this section. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate.

`(2) CEASE AND DESIST-

`(A) IN GENERAL- If the Commission has issued a cease and desist order with respect to a person, partnership or corporation in an administrative adjudicative proceeding under the authority of subsection (a)(1), an action brought pursuant to paragraph (1) may be commenced against such person, partnership or corporation at any time before the expiration of one year after such order becomes final pursuant to section 5(g).

`(B) EXCEPTION- In an action under subparagraph (A), the findings of the Commission as to the material facts in the administrative adjudicative proceeding with respect to such person's, partnership's or corporation's violation of this section shall be conclusive unless--

`(i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive; or

(ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.

(3) CIVIL PENALTY- In determining the amount of the civil penalty described in this section, the court shall take into account--

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, any effect on the ability to continue doing business, profits earned by the NDA or BLA holder, compensation received by the ANDA or biosimilar or interchangeable biological product application filer, and the amount of commerce affected; and

(C) other matters that justice requires.

(4) REMEDIES IN ADDITION- Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy provided by Federal law. Nothing in this paragraph shall be construed to affect any authority of the Commission under any other provision of law.

(h) Definitions- In this section:

(1) AGREEMENT- The term 'agreement' means anything that would constitute an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of this Act.

(2) AGREEMENT RESOLVING OR SETTLING A PATENT INFRINGEMENT CLAIM- The term 'agreement resolving or settling a patent infringement claim' includes any agreement that is entered into within 30 days of the resolution or the settlement of the claim, or any other agreement that is contingent upon, provides a contingent condition for, or is otherwise related to the resolution or settlement of the claim.

(3) ANDA- The term 'ANDA' means an abbreviated new drug application, as that term is used in section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(4) ANDA FILER- The term 'ANDA filer' means a party that owns an ANDA filed with the Secretary of Health and Human Services .

(5) ANDA PRODUCT- The term 'ANDA product' means the product to be manufactured under the ANDA that is the subject of the patent infringement claim.

(6)(A) -- The term 'BLA' means a biologics license application as that term is used in section 351 of the Public Health Service Act (42 U.S.C. 262).

(B) BLA HOLDER.--- The term 'BLA holder' means--

(i) the party that owns a licensed BLA;

(ii) a party owning or controlling enforcement of the patent asserted against the biosimilar or interchangeable biological product application filer; or

(iii) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any of the entities described in this subparagraph (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensors, successors, and assigns of each of the entities.

(7) BIOLOGICAL PRODUCT – The term 'biological product' means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative,

allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative or arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings, as defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i)).

‘(8) BIOSIMILAR BIOLOGICAL PRODUCT APPLICATION – The term ‘biosimilar biological product application’ means an application as that term is used in section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)).

‘(9) BIOSIMILAR BIOLOGICAL PRODUCT APPLICATION FILER – The term ‘biosimilar biological product application filer’ means a party that owns a biosimilar biological product application filed with the Secretary of Health and Human Services.

‘(10) BIOSIMILAR BIOLOGICAL PRODUCT – The term ‘biosimilar biological product’ means the product to be manufactured under the biosimilar biological product application that is the subject of the patent infringement claim.

‘(11) DRUG PRODUCT- The term ‘drug product’ means a finished dosage form (e.g., tablet, capsule, or solution) that contains a drug substance, generally, but not necessarily, in association with 1 or more other ingredients, as defined in section 314.3(b) of title 21, Code of Federal Regulations (or any successor regulation).

‘(12) INTERCHANGEABLE BIOLOGICAL PRODUCT APPLICATION - The term ‘interchangeable biological product application’ means an application as that term is used in section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)).

‘(13) INTERCHANGEABLE BIOLOGICAL PRODUCT APPLICATION FILER- The term ‘interchangeable biological product application filer’ means a party that owns a interchangeable biological product application filed with the Secretary of Health and Human Services.

‘(14) INTERCHANGEABLE BIOLOGICAL PRODUCT--The term ‘interchangeable biological product’ means the product to be manufactured under the interchangeable biological product application that is the subject of the patent infringement claim.

‘(15) NDA- The term ‘NDA’ means a new drug application, as that term is used in section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

‘(16) NDA HOLDER- The term ‘NDA holder’ means--

‘(A) the party that owns an approved NDA;

‘(B) a party owning or controlling enforcement of the patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the ‘FDA Orange Book’) in connection with the NDA;

‘(C) a party owning or controlling enforcement of other patents in connection with the NDA; or

‘(D) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any of the entities described in subparagraphs (A) and (B) (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensors, successors, and assigns of each of the entities.

‘(17) PATENT INFRINGEMENT- The term ‘patent infringement’ means infringement of any patent or of any filed patent application, extension, reissue, renewal,

division, continuation, continuation in part, reexamination, patent term restoration, patents of addition and extensions thereof.

`(18) PATENT INFRINGEMENT CLAIM- The term `patent infringement claim' means any allegation made to an ANDA filer or biosimilar or interchangeable biological product application filer, whether or not included in a complaint filed with a court of law, that its ANDA or ANDA product or biosimilar or interchangeable biological product application or biosimilar or interchangeable biological product may infringe any patent held by, or exclusively licensed to, the NDA holder of the drug product or BLA holder of the biological product.

`(19) STATUTORY EXCLUSIVITY- The term `statutory exclusivity' means those prohibitions on filing or the approval of ANDAs or biosimilar or interchangeable biological product applications under clauses (ii) through (iv) of section 505(j)(5)(F) (5- and 3-year exclusivity), section 527 (orphan drug exclusivity), and section 505A (pediatric exclusivity) of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act (42 U.S.C. 262)'.

(b) Effective Date- Section 28 of the Federal Trade Commission Act, as added by this section, shall apply to all agreements described in section 28(a)(1) of that Act entered into after November 15, 2009. Section 28(g) of the Federal Trade Commission Act, as added by this section, shall apply to agreements entered into on or after the date of enactment of this Act.

SEC. 2. NOTICE AND CERTIFICATION OF AGREEMENTS.

(a) Notice of All Agreements- Section 1112(c)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (21 U.S.C. 355 note) is amended by--

(1) striking `the Commission the' and inserting the following: `the Commission--`
` (1) the';

(2) striking the period and inserting `; and'; and

(3) inserting at the end the following:

`(2) any other agreement the parties enter into within 30 days of entering into an agreement covered by subsection (a) or (b).'

(b) Certification of Agreements- Section 1112 of such Act is amended by adding at the end the following:

`(d) Certification- The Chief Executive Officer or the company official responsible for negotiating any agreement required to be filed under subsection (a), (b), or (c) shall execute and file with the Assistant Attorney General and the Commission a certification as follows: `I declare that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of subtitle B of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement referenced in this certification: (1) represent the complete, final, and exclusive agreement between the parties; (2) include any ancillary agreements that are contingent upon, provide a contingent condition for, or are otherwise related to, the referenced agreement; and (3) include written descriptions of any oral agreements, representations, commitments, or promises between the parties that are responsive to subsection (a) or (b) of such section 1112 and have not been reduced to writing.'.

SEC. 3. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 505(j)(5)(D)(i)(V) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(5)(D)(i)(V)) is amended by inserting `section 28 of the Federal Trade Commission Act or' after `that the agreement has violated'.

SEC. 4. COMMISSION LITIGATION AUTHORITY.

Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended--
(1) in subparagraph (D), by striking `or' after the semicolon;
(2) in subparagraph (E), by inserting `or' after the semicolon; and
(3) inserting after subparagraph (E) the following:
` (F) under section 28; '.

SEC. 5. STATUTE OF LIMITATIONS.

The Commission shall commence any enforcement proceeding described in section 28 of the Federal Trade Commission Act, as added by section 3, except for an action described in section 28(g)(2) of the Federal Trade Commission Act, not later than 3 years after the date on which the parties to the agreement file the Notice of Agreement as provided by sections 1112(c)(2) and (d) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (21 U.S.C. 355 note).

SEC. 6. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such Act or amendments to any person or circumstance shall not be affected thereby.

Sectional Analysis

Section 1. Unlawful compensation for delay

Subsection (a). This subsection creates a new section 28 of the FTC Act, as follows--Sec. 28(a) provides that the Federal Trade Commission may bring a legal action to enforce this section with regard to any agreement in settlement of a patent infringement lawsuit in which a generic drug manufacturer receives anything of value from a brand name drug manufacturer, and the generic drug manufacturer agrees to limit or forego research, development, marketing, manufacturing or sales of the generic drug. Under this section, such agreements are presumed to be unlawful. This presumption can be overcome if the parties to such an agreement demonstrate by clear and convincing evidence that the procompetitive benefits of the agreement outweigh the anticompetitive effects of the agreement.

Sec. 28(b) lists factors the fact-finder must consider in making this determination.

Sec. 28(c) directs the fact-finder to avoid making certain presumptions.

Sec. 28(d) exempts certain categories of agreements from the presumption of illegality.

Sec. 28(e) gives the FTC rulemaking authority to implement and interpret section 28 and to exempt certain types of agreements if the FTC determines that such agreements will promote competition and benefit consumers. Any such rulemakings may be appealed to the U.S. District Court for the District of Columbia. Further, it provides that a violation of this section shall be treated as a violation of section 5 of the FTC Act. The section also provides that any order of the FTC under this section may be appealed only to the U.S. Court of Appeals to the D.C. Circuit or the Circuit Court of Appeals where the ultimate parent entity of either the brand name or generic drug company is incorporated.

Sec. 28(f) states that nothing in the section supersedes or modifies the antitrust laws relating to unfair methods of competition.

Sec. 28(g) provides for civil penalties for violations of this section sufficient to deter violations, but in no event greater than 3 times the value received by the party that is reasonably attributable to violations of the Act. If no such value has been received by the brand name drug company, the civil penalty shall be not greater than three times the value given to the generic drug company reasonably attributable to violations of the Act. This subsection also lists factors the court is to consider in assessing the civil penalty under this section.

Sec. 28(h) provides definitions.

Subsection (b). This subsection provides that section 28 of the FTC Act applies to all agreements entered into after November 15, 2009. However, the civil penalty provision Sec. 28(g) does not apply to agreements entered into before the date of enactment of this Act.

Section 2. Notice and certification of agreements

This section requires settling parties to supplement their filing to the FTC under the Medicare Prescription Drug Improvement and Modernization Act of 2003, 21 U.S.C. Sec. 355 (note), with any other agreement they enter into within 30 days of entering into that agreement. It also requires the Chief Executive Officer or senior executive responsible for a patent settlement agreement to certify that the filing is true, complete, and accurate.

Section 3. Forfeiture of 180-day exclusivity period

Under this section, generic drug companies violating the new section 28 of the FTC Act forfeit their right to a 180-day period of exclusivity of marketing of their generic drug.

Section 4. Commission litigation authority

This section allows the FTC to litigate cases and appeals under the new section 28 of the FTC Act under its own name, without a requirement that it first give the Attorney General the right to prosecute such an action.

Section 5. Statute of limitations

This section requires the FTC to bring any action to enforce section 28 of the FTC Act within three years of being notified of the agreement under the Medicare Prescription Drug Improvement and Modernization Act of 2003.

Section 6. Severability

This section provides if any provision of this Act is found unconstitutional, the remainder of the Act will be unaffected.

REDUCE THE EXCLUSIVITY PERIOD FOR GENERIC BIOLOGICS

Legislative Proposal

SEC. 1. REDUCED EXCLUSIVITY PERIOD FOR REFERENCE BIOSIMILARS; PROHIBITION OF EVERGREENING.

(a) REDUCTION IN EXCLUSIVITY PERIOD FOR REFERENCE BIOSIMILAR PRODUCTS.---Section 351(k)(7)(A) of the Public Health Service Act (42 U.S.C. 262(k)(7)(A)) is amended by striking “12” and inserting “7”.

(b) PROHIBITION OF EVERGREENING.--- Section 351(k)(7)(C)(ii)(II) of the Public Health Service Act (42 U.S.C. 262(k)(7)(C)(ii)(II)) is amended—

(1) by striking “that does not result in a change in safety, purity, or potency”; and

(2) by inserting “that does not result in a clinically significant improvement in safety, purity, or potency”.

(c) EFFECTIVE DATE.---The amendments made by this section shall be effective October 1, 2011.

SEC. 2. MEDICARE PAYMENT FOR MULTIPLE SOURCE BIOLOGICAL PRODUCTS; AUTHORITY TO INCLUDE BIOSIMILAR AND REFERENCE BIOLOGICS IN SAME PART B BILLING CODE.

(a) CALCULATION OF AVERAGE SALES PRICE FOR MULTIPLE SOURCE BIOLOGIC PRODUCTS.---Section 1847A(b) of the Social Security Act (42 U.S.C. 1395w-3a(b)) is amended—

(1) by amending paragraph (1)(C) to read as follows:

“(C) in the case of a multiple source biological product (as defined in subsection (c)(6)(H)), 106 percent of the amount determined under paragraph (8).”; and

(2) by amending paragraph (8) to read as follows:

“(8) MULTIPLE SOURCE BIOLOGICAL PRODUCTS.—

“(A) IN GENERAL.---The amount specified in this paragraph for all biological products included within the same billing and payment code is the average sales price as determined using the methodology applied under paragraph (6) for all National Drug Codes assigned to such products in the same manner as such paragraph is applied to drugs described in such paragraph.

(B) PAYMENT CODING.--- A reference biological product and its biosimilar biological product(s) shall be included in the same billing and payment code.”

(b) APPLICABLE DEFINITIONS.--- Section 1847A(c)(6) of the Social Security Act (42 U.S.C. 1395w-3a(c)(6)) is amended—

(1) by amending subparagraphs (H) and (I) to read as follows:

“(H) MULTIPLE SOURCE BIOLOGICAL PRODUCT.—The term ‘multiple source biological product’ means, for a calendar quarter, a biological product for which there is at least one reference biological product or one biosimilar biological product, as defined in subparagraph (I).

“(I) For purposes of subparagraph (H)---

“(i) the term ‘biosimilar biological product’ means a biological product approved under an abbreviated application for a license of a biological product that relies in part on data or information in an application for another biological product licensed under section 351 of the Public Health Service Act; and

“(ii) The term ‘reference biological product’ means the biological product licensed under such section 351 that is referred to in the application described in clause (i) of the biosimilar biological product.’”.

(2) in subparagraph (D)(i) , by inserting “, other than a multiple source biological product” before the semi-colon at the end.

(c) EFFECTIVE DATE.---The amendments made by subsections (a) and (b) shall apply to payments for multiple source biological products beginning with the first day of the second calendar quarter that follows enactment of this section.”.

Sectional Analysis

To encourage medical innovation, manufacturers are afforded periods of exclusivity for new brand-name products such as drugs and biologic medications before others can introduce generic versions. Under current law, the exclusivity period for biologics is 12 years. **Section 1** would, beginning in FY 2012, provide brand biologics seven years of exclusivity and prohibit additional periods of exclusivity for brand biologics due to changes in product formulations. **Section 2** would, for the purposes of Medicare reimbursement, include generic biologics in the same Medicare Part B billing code as the brand-name biologics.

REQUIREMENT TO CONTRACT SEPARATELY FOR PHARMACY BENEFIT MANAGEMENT SERVICES

Legislative Proposal

SEC. XX.—REQUIREMENT TO CONTRACT SEPARATELY FOR PHARMACY BENEFIT MANAGEMENT SERVICES

Section 8902(a) of title 5, United States Code, is amended by inserting “(and shall contract with or approve, to provide pharmacy benefit management services, one or more vendors, companies or organizations, which may include such qualified carriers)” after “8903a of this title”.

Sectional Analysis

This section would streamline Federal Employee Health Benefit (FEHB) pharmacy benefit contracting. The Administration is committed to the efficient administration of the FEHB program in order to get the best deal for Federal employees and their families, as well as for taxpayers. The FEHB program pays \$40 billion per year for health coverage, and drugs represent about 30 percent of claims expenditures. Under current law, health plans participating in the FEHB program contract with pharmacy benefits managers who negotiate prices with drug manufacturers and pharmacies on behalf of their enrollees. This fragmented purchasing strategy does not take full advantage of the combined purchasing power of the nearly eight million enrollees in the FEHB program. Under the Administration proposal, the Office of Personnel Management would contract directly for pharmacy benefit management services on behalf of all FEHB enrollees and their dependents. This will allow the FEHB program to more efficiently leverage its purchasing power to obtain a better deal for enrollees and taxpayers. This proposal is projected to save \$1.6 billion over 10 years.

PRIORITIZES PREVENTION AND PUBLIC HEALTH FUND INVESTMENTS

Legislative Proposal

SEC. ____. [ADJUSTMENT TO PREVENTION AND PUBLIC HEALTH FUND.]

Section 4002(b) of the Patient Protection and Affordable Care Act (42 U.S.C. 300u-11) is amended—

(1) in paragraph (4)—

(A) by striking "fiscal year 2013" and inserting "each of fiscal years 2013 through 2015"; and

(B) by inserting "and" after the semicolon;

(2) in paragraph (5), by striking "2014, \$1,500,000,000; and" and inserting "2016, and each fiscal year thereafter, \$1,500,000,000."; and

(3) by striking paragraph (6).

Sectional Analysis

The Affordable Care Act created a new **Prevention and Public Health Fund, totaling \$15 billion over 10 years**, to assist state and community efforts to prevent illness and promote health. This section would freeze appropriations for the Prevention Fund at \$1.25 billion for FYs 2013-2015 and \$1.5 billion each year thereafter, resulting in savings of \$4 billion in Budget Authority (\$3.5 billion in outlays) from FY 2012-2021.

ACCELERATE THE ISSUANCE OF STATE INNOVATION WAIVERS

Legislative Proposal

SEC. ____ . EARLIER START FOR STATE HEALTH CARE COVERAGE INNOVATION WAIVERS.

Section 1332(a)(1) of the Patient Protection and Affordable Care Act (42 U.S.C. 18052(a)(1)) is amended, in the matter preceding subparagraph (A), by striking “January 1, 2017” and inserting “January 1, 2014”.

Sectional Analysis

The Affordable Care Act empowered States to develop their own innovative strategies to ensure their residents have access to high quality, affordable health insurance. This section would make these "State Innovation Waivers" available starting in 2014, three years earlier than under current law.

ADMINISTRATIVE COSTS FOR IMPLEMENTATION

Legislative Proposal

SEC. ____ . ADMINISTRATIVE FUNDING.

There is hereby appropriated for the "Department of Health and Human Services, Office of the Secretary, General Departmental Management", \$400,000,000, to remain available until expended, which may be transferred to other appropriation accounts within the Department of Health and Human Services to carry out the Secretary's responsibilities.

Sectional Analysis

This section would appropriate administrative funds to HHS.

TAX REFORM

The President is committed to reducing the deficit through a balanced approach—one that restrains spending across the budget, including in the tax code; asks the wealthiest among us to contribute to deficit reduction; and lays the foundation for future growth. That is why the President is calling on the Congress to undertake comprehensive tax reform and has proposed five principles for reform. Tax reform should: (1) lower tax rates; (2) cut inefficient and unfair tax breaks, (3) cut the deficit by \$1.5 trillion over the next decade; (4) increase job creation and growth in the United States; and (5) observe the “Buffett Rule”—that no household making over \$1 million annually should pay a smaller share of its income in taxes than middle-class families pay.

To begin the national conversation about tax reform, the President is offering a detailed set of specific tax loophole closers and measures to broaden the tax base. These are detailed below. Together with the expiration of the high-income tax cuts, these would be more than sufficient to hit the \$1.5 trillion target for tax reform and cut inefficient expenditures as well as move the tax system closer to observing the Buffett Rule. Tax reform should draw on items proposed here, together with the elimination of additional inefficient tax breaks, to finance the reduction of marginal rates and comport with the Buffett Rule. If the Joint Committee is unable to undertake comprehensive tax reform, the President believes these measures, along with permanent extension of the middle class 2001 and 2003 tax cuts, should be enacted on a standalone basis. Although this would fall short of the President’s five principles for reform, it would move the tax system closer to several of them.

**REPEAL LAST-IN, FIRST-OUT (LIFO) METHOD OF
ACCOUNTING FOR INVENTORIES**

Legislative Proposal

SEC. ____ REPEAL OF LAST-IN, FIRST-OUT METHOD OF INVENTORY.

(a) IN GENERAL.—Subpart D of part II of subchapter E of chapter 1 is amended by striking sections 472 (relating to last-in, first-out inventories), 473 (relating to qualified liquidations of LIFO inventories), and 474 (relating to simplified dollar-value LIFO method for certain small businesses).

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 312(n) is amended by striking paragraph (4) and by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively.

(B) Section 312(n)(7), as redesignated by subparagraph (A), is amended—

(i) by striking “paragraphs (4) and (6)” in subparagraph (A) and inserting “paragraph (5)”, and

(ii) by striking “paragraph (5)” in subparagraph (B) and inserting “paragraph (4)”.

(C) Section 56(g)(4)(D) is amended by striking clause (iii) and by redesignating clause (iv) as clause (iii).

(2) Section 1363 is amended by striking subsection (d).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year beginning on or after January 1, 2013—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) if the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 is positive, such amount shall be taken into account over a period of 10 years beginning with such first taxable year.

Sectional Analysis

Under the LIFO method of accounting for inventories, the cost of the items of inventory that are sold is equal to the cost of the items of inventory that were most recently purchased or produced. For many businesses like oil and gas companies where the price of goods in inventory rises over time, the LIFO approach allows firms to artificially lower their tax liability. The President's proposal would repeal the use of the LIFO accounting method for Federal tax purposes, effective for taxable years beginning on or after January 1, 2013. Assuming inventory costs rise over time, taxpayers required to change from the LIFO method under the proposal generally would experience reduced cost of goods sold deductions and a corresponding increase in their annual taxable income as older, cheaper inventory is taken into account in computing taxable income. Taxpayers required to change from the LIFO method also would be required to report their beginning-of-year inventory at its first-in, first-out (FIFO) value in the year of change, causing a one-time increase in taxable income that would be recognized ratably over 10 years.

**REPEAL LOWER-OF-COST-OR-MARKET (LCM)
INVENTORY ACCOUNTING METHOD**

Legislative Proposal

SEC. ____ REPEAL OF LOWER OF COST OR MARKET METHOD OF INVENTORY.

(a) IN GENERAL.—Section 471 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) INVENTORIES TAKEN INTO ACCOUNT AT COST.—

(1) IN GENERAL.—A method of determining inventories shall not be treated as clearly reflecting income unless such method provides that inventories shall be taken into account at cost.

(2) WASH SALES OF INVENTORY.—The Secretary may provide rules to prevent abuse of the purposes of this subsection, including rules that would prevent a reduction in the cost of inventory in the case of certain wash sales.’’.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year beginning on or after January 1, 2013—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) if the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 is positive, such amount shall be taken into account over a period of 4 years beginning with such first taxable year.

Sectional Analysis

The President’s plan would prohibit the use of the lower-of-cost-or-market and subnormal goods methods of inventory accounting, which currently allow certain taxpayers to take cost-of-goods-sold deductions on certain merchandise before the merchandise is sold. These methods represent a one-way mark-to-market system where certain taxpayers can write down inventory to obtain an added deduction but are never required to recognize income on an increase in its value. Any

resulting income inclusion would be recognized over a four-year period. The proposed prohibition would be effective for the first taxable year on or after January 1, 2013, and any resulting income inclusion would be recognized over a four-year period.

ELIMINATE COAL PREFERENCES

Legislative Proposal

SEC. ____ . REPEAL OF DEDUCTION FOR EXPLORATION AND DEVELOPMENT COSTS IN CASE OF HARD MINERAL FOSSIL FUELS.

(a) Development Expenditures.—Section 616 of the Internal Revenue Code of 1986 (relating to development expenditures) is amended by redesignating subsection (e) and subsection (f) and inserting after subsection (d) the following new subsection:

“(e) Exclusion for Hard Mineral Fossil Fuels.—This section shall not apply to expenditures incurred on or after January 1, 2013, with respect to oil shale not described in section 613(b)(5), coal, or lignite.”

(b) Mining Exploration Expenditures.—Section 617 of the Internal Revenue Code of 1986 (relating to deduction and recapture of certain mining exploration expenditures) is amended by redesignating subsection (i) as subsection (j) and inserting after subsection (h) the following new subsection:

“(i) Exclusion for Hard Mineral Fossil Fuels.—This section shall not apply to expenditures incurred on or after January 1, 2013, with respect to oil shale not described in section 613(b)(5), coal, or lignite.”

(c) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred on or after January 1, 2013.

SEC. ____ . REPEAL OF CAPITAL GAINS TREATMENT FOR COAL.

(a) In General.—Subsection (c) of section 631 (relating to gain or loss in the case of timber, coal, or domestic iron ore) is amended—

- (1) by striking out “coal (including lignite), or”
- (2) by striking out “coal or” each place it appears, and
- (3) by striking out “or coal” each place it appears.

(b) Conforming Amendments.—

- (1) The heading for section 631(c) is amended by striking out “coal or”.
- (2) The heading for section 631 is amended by striking out “, coal,”.
- (3) Section 272 of the Internal Revenue Code of 1986 (relating to disposal of coal or iron ore) is amended by striking out “coal or” each place it appears.
- (4) The heading for section 272 is amended by striking out “coal or”.

(c) Clerical Amendments.--

(1) The item relating to section 631 in the table of sections for part III of subchapter I of chapter 1 of the Internal Revenue Code of 1986 is amended to read as follows:

“Sec. 631. Gain or loss in the case of timber or domestic iron ore.”

(2) The item relating to section 272 in the table of sections for part IX of subchapter B of chapter I of the Internal Revenue Code of 1986 is amended to read as follows:

“Sec. 272. Disposal of domestic iron ore.”

(d) Effective Date.—The amendments made by this section shall apply with respect to amounts realized on or after January 1, 2013.

SEC. ____ . REPEAL OF PERCENTAGE DEPLETION FOR COAL.

(a) In General.—Section 613A of the Internal Revenue Code of 1986 (relating to limitation on percentage depletion in the case of oil and gas wells), as amended by section 433 of this Act, is amended to read as follows:

“SECTION 613A. PERCENTAGE DEPLETION NOT ALLOWED IN CASE OF OIL AND GAS WELLS OR HARD MINERAL FOSSIL FUELS.

“The allowance for depletion under section 611 with respect to any oil and gas well, oil shale not described in section 613(b)(5), coal, or lignite shall be computed without regard to section 613.”

(b) Clerical Amendment.—The table of sections for part I of subchapter I of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 613 the following:

“Sec. 613A. Percentage depletion not allowed in case of oil and gas wells or hard mineral fossil fuels.”

(c) Effective Date.—The amendment made by this section shall apply to taxable years beginning on or after January 1, 2013.

SEC. ____ . SECTION 199 DEDUCTION NOT ALLOWED WITH RESPECT TO HARD MINERAL FOSSIL FUELS OR PRIMARY PRODUCTS THEREOF.

(a) In General.—Subparagraph (B) of section 199(c)(4) of the Internal Revenue Code of 1986 (relating to income attributable to domestic production activities), as amended by section 434 of this Act, is amended--

(1) by striking “or” at the end of clause (iii),

(2) by striking the period at the end of clause (iv) and inserting in lieu thereof “, or”, and

(3) by adding at the end thereof the following new clause:

“(v) the production, refining, processing, transportation, or distribution of oil shale not described in section 613(b)(5), coal, or lignite, or any primary product (within the meaning of subsection (d)(9)) thereof.”

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

Sectional Analysis

The following tax preferences available for coal activities are proposed to be repealed beginning in 2013: (1) expensing of exploration and development costs; (2) percentage depletion for hard mineral fossil fuels; (3) capital gains treatment for coal royalties; and (4) the ability to claim the domestic manufacturing deduction against income derived from the production of coal and other hard mineral fossil fuels. This proposal would generally apply to taxable years beginning on or after January 1, 2013.

MODIFY RULES THAT APPLY TO SALES OF LIFE INSURANCE CONTRACTS

Legislative Proposal

SEC. ____. CERTAIN DEATH BENEFITS.

(a) **MODIFICATION TO EXCLUSION FROM GROSS INCOME WHERE A CONTRACT IS TRANSFERRED FOR VALUABLE CONSIDERATION.**—Subsection (a) of section 101 is amended by redesignating paragraph (1) as paragraph (a), striking paragraph (2), and by inserting after paragraph (a) the following new paragraph (b):

“(b) **TRANSFER FOR VALUABLE CONSIDERATION.**—

“(1) **IN GENERAL.**--In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (a) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee.

The term “other amounts” includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4). The term “transfer” includes a conveyance to an entity that is disregarded as an entity separate from its owner.

“(2) **LIMITATION.**—

(A) **IN GENERAL.**—Paragraph (1) shall not apply in the case of a transfer if--

(i) such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(ii) such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

(B) **EXCEPTIONS.**—Subparagraph (A) shall not apply if—

(i) substantially all of a transferee’s assets consists or will consist of life insurance contracts on the lives of one or more persons with an interest in the transferee, or

(ii) a person acquires an interest in any entity with a purpose of avoiding the application of paragraph (1).

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or assignments of interests in life insurance policies and payments of death benefits in taxable years beginning on or after January 1, 2013.

SEC. ____ . Returns relating to certain life insurance contracts acquired for valuable consideration.

(a) IN GENERAL.—Part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end of section 6050 a new paragraph.

“SEC. 6050X. Returns relating to certain life insurance contracts acquired for valuable consideration.

“(a) ACQUISITIONS OF LIFE INSURANCE CONTRACTS FOR VALUABLE CONSIDERATION.—

(1) BUYERS.—Except as provided in regulations prescribed by the Secretary, any person or entity that acquires, in exchange for valuable consideration, a life insurance contract (or any interest therein) with a death benefit equal to or exceeding \$500,000 shall make a return (at such time and in such form as the Secretary may prescribe) showing—

- (A) the name, address, and TIN of each of the buyer and seller,
- (B) the purchase price, or other acquisition cost, and
- (C) the name of the issuer of the policy and the policy number.

(2) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE FURNISHED.—Every person or entity required to make a return under subsection (a)(1) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

- (A) the name and address of the person or entity required to make such return, and
- (B) the information required to be shown on the return with respect to such person.

“(b) PAYMENTS BY INSURANCE COMPANIES WITH RESPECT TO LIFE INSURANCE CONTRACTS ACQUIRED FOR VALUABLE CONSIDERATION.---

(1) INSURANCE COMPANIES.—Except as provided in regulations prescribed by the Secretary, an insurance company, upon the payment of any policy benefits to a buyer described in paragraph (a)(1), shall make a return (at such time and in such form as the Secretary may prescribe) showing—

- (A) the nature or type of benefit
- (B) the gross amount of the benefit payment,

(C) the name, address, and TIN of the buyer, and

(D) an estimate of the buyer's adjusted basis in the contract.

(2) STATEMENTS TO BE FURNISHED TO BUYER.—Every person or entity required to make a return under subsection (b)(1) shall furnish to the buyer a written statement showing—

(A) the name and address of the person or entity required to make such return, and

(B) the information required to be shown on the return with respect to the buyer.

(c) EFFECTIVE DATE.—The amendments made by this subsection apply to sales or assignments of interests in life insurance policies and payments of death benefits in taxable years beginning on or after January 1, 2013.

Sectional Analysis

When the buyer of a life insurance contract receives death benefits under the contract, the buyer is taxed on the excess of those benefits over the sum of amounts paid for the contract and other amounts it subsequently pays, unless an exception to a “transfer- for-value rule” applies. Information reporting may not always be required in circumstances involving the purchase of a life insurance contract. In response to the growth in the number and size of life settlement transactions, the proposal would expand information reporting on the sale of life insurance contracts and the payment of death benefits on contracts that were sold, and would modify the “transfer-for-value” exceptions to prevent purchasers of policies from avoiding tax on death benefits that are received. The proposal would apply to sales or assignment of interests in life insurance policies and payments of death benefits for taxable years beginning on or after January 1, 2013.

**MODIFY DIVIDENDS-RECEIVED DEDUCTION (DRD) FOR
LIFE INSURANCE COMPANY SEPARATE ACCOUNTS**

Legislative Proposal

SEC. ____ . MODIFY PRORATION RULES FOR LIFE INSURANCE COMPANY GENERAL AND SEPARATE ACCOUNTS.

(a) DEFINITION OF COMPANY'S SHARE AND POLICYHOLDER'S SHARE.—Section 812 is amended by striking the text and replacing it with the following:

“SEC. 812. DEFINITION OF COMPANY'S SHARE AND POLICYHOLDERS' SHARE.

“(a) POLICYHOLDERS' SHARE.—For purposes of section 807, the term “policyholders' share” means, with respect to any taxable year—

(1) General account.—With respect to income generated by assets not held in segregated asset accounts, the percentage set forth in section 832(b)(5)(B).

(2) Segregated asset accounts.—With respect to income generated by assets held in a segregated asset account, an amount which bears the same ratio (but not to exceed 100 percent) to such income as—

(A) the mean of the opening and closing balances for the items described in subsection (c) of section 807 that are based on the assets held in the segregated asset account, bears to

(B) the mean of the opening and closing values of total assets held in the segregated asset account.

“(b) COMPANY'S SHARE.—For purposes of section 805(a)(4), the term “company's share” means, with respect to any taxable year and with respect to any account, the excess of 100 percent over the percentage determined under paragraph (a).

“(c) NO DOUBLE COUNTING.—Under regulations, proper adjustments shall be made in the application of this section to prevent an item from being counted more than once.”

(b) ADJUSTMENT TO DIVIDENDS RECEIVED DEDUCTION.—Section 805(a)(4)(A) is amended by striking clauses (i) and (ii), and replacing them with the following:

“(i) for 100 percent dividends received, and dividends received with respect to assets held in segregated accounts (after application of section 246(c)(5)), and

(ii) for the company's share of the dividends (other than 100 percent dividends) received with respect to assets not held in segregated asset accounts.”

(c) DEDUCTION NOT ALLOWED FOR CERTAIN DIVIDENDS RECEIVED.—Subsection (c) of section 246 is amended by adding the following new paragraph:

“(5) SPECIAL RULES FOR DIVIDENDS RECEIVED BY LIFE INSURANCE COMPANIES.—In the case of dividends (other than a 100 percent dividend defined in section 805(a)(4)(C)) received by life insurance companies with respect to assets held in a segregated asset account, no deduction shall be allowed under section 243, 244, or 245, in respect of the policyholders’ share (determined for the segregated account under section 812(a)(2)) of any dividend on any share of stock.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

Sectional Analysis

Under current law, a life insurance company is required to “prorate” its net investment income between a company’s share and the policyholders’ share. The result of this proration is used to limit the funding of tax-deductible reserve increases with tax-preferred income, such as certain corporate dividends and tax-exempt interest. The complexity of this regime has generated significant controversy between life insurance companies and the IRS. In some cases, the existing regime produces a company’s share that exceeds the company’s actual economic interest in the underlying income. The proposal would replace this regime with one that is much simpler. Under the proposal, the general account DRD, tax-exempt interest, and increases in certain policy cash values would be subject to the same flat proration percentage that applies to non-life companies (15 percent under current law); the DRD with regard to separate account dividends would be based on the proportion of reserves to total assets of the account. This proposal applies to taxable years beginning on or after January 1, 2013.

**EXPAND PRO RATA INTEREST EXPENSE DISALLOWANCE FOR
CORPORATE-OWED LIFE INSURANCE**

Legislative Proposal

SEC. ____ EXPAND PRO RATA INTEREST EXPENSE DISALLOWANCE FOR CORPORATE-OWNED LIFE INSURANCE.

(a) IN GENERAL.—Subsection (f)(4)(A) of section 264 is amended by striking “OFFICERS, DIRECTORS, AND EMPLOYEES” from paragraph (A) and striking subparagraph (4)(ii), to read as follows:

“(A) POLICIES AND CONTRACTS COVERING 20-PERCENT OWNERS.— Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if such policy or contract covers only 1 individual and if such individual is (at the time first covered by the policy or contract) a 20-percent owner of such entity. A policy or contract covering a 20-percent owner of such entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of such owner and such owner’s spouse.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to policies and contracts issued on or after January 1, 2013.

Sectional Analysis

The interest deductions of a business other than an insurance company are reduced to the extent the interest is allocable to un-borrowed policy cash values on life insurance and annuity contracts. The purpose of this pro rata disallowance is to prevent the deduction of interest expense that is allocable to inside buildup that is either tax-deferred or not taxed at all. A similar disallowance applies with regard to reserve deductions of an insurance company. A current-law exception to this rule applies to contracts covering the lives of officers, directors, employees and 20-percent owners. Under the proposal, the exception for officers, directors and employees would be repealed unless those individuals are also 20-percent owners of the business that is the owner or beneficiary of the contracts. Thus, purchases of life insurance by small businesses and other taxpayers that depend heavily on the services of a 20-percent owner would be unaffected, but the funding of deductible interest expenses with tax-exempt or tax-deferred inside buildup would be curtailed. The proposal would apply to contracts issued on or after January 1, 2013, in taxable years ending after that date.

DEFER DEDUCTION OF INTEREST EXPENSE RELATED TO DEFERRED INCOME

Legislative Proposal

SEC. ____ DEFER DEDUCTION OF INTEREST EXPENSE RELATED TO DEFERRED INCOME

(a) IN GENERAL.— Section 163 of the Internal Revenue Code of 1986 (relating to deductions for interest expense) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) DEFERRAL OF DEDUCTION FOR INTEREST EXPENSE RELATED TO DEFERRED INCOME.—

“(1) GENERAL RULE.—In the case of any taxpayer, the amount of foreign-related interest expense allowed as a deduction under this chapter for any taxable year shall not exceed an amount that bears the same ratio to the sum of the foreign-related interest expense for such year and the deferred foreign-related interest expense as the current inclusion ratio.

“(2) TREATMENT OF DEFERRED DEDUCTIONS.—If, for any taxable year—

“(A) the amount that bears the same ratio to the sum of the foreign-related interest expense for such year and the deferred foreign-related interest expense as the current inclusion ratio exceeds

“(B) the foreign-related interest expense for such year,

there shall be allowed as a deduction for such year an amount equal to the lesser of such excess and the deferred foreign-related interest expense.

“(3) DEFINITIONS AND SPECIAL RULE.—For purposes of this subsection—

“(A) FOREIGN-RELATED INTEREST EXPENSE.—The term ‘foreign-related interest expense’ means, for any taxable year, an amount of interest expense for such taxable year allocated and apportioned under sections 861 and 864(e) to income from sources outside the United States which bears the same proportion to such interest expense as the value of all stock held by the taxpayer in all section 902 corporations (as defined in section 909(d)(5)) with respect to which the taxpayer meets the ownership requirements of subsection (a) or (b) of section 902 bears to the value of all assets of the taxpayer which generate gross income from sources outside the United States.

“(B) DEFERRED FOREIGN-RELATED INTEREST EXPENSE.—The term ‘deferred foreign-related interest expense’ means the excess, if any, of the

aggregate foreign-related interest expense for all prior taxable, over the aggregate amount allowed as a deduction under paragraphs (1) and (2) for all prior taxable years.

“(C) VALUE OF ASSETS.—Except as otherwise provided by the Secretary, for purposes of paragraph (3)(A)(i), the value of any asset shall be the amount with respect to such asset used as determined for purposes of allocating and apportioning interest expense under sections 861 and 864(e).

“(D) CURRENT INCLUSION RATIO.— The term ‘current inclusion ratio’ means, with respect to any domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to one or more section 902 corporations for any taxable year, the ratio (expressed as a percentage) of—

“(i) the sum of all dividends received by the domestic corporation from a section 902 corporation during the taxable year plus amounts includible in gross income under section 951(a) from such section 902 corporation, in each case computed without regard to section 78, divided by

“(ii) the aggregate amount of post-1986 undistributed earnings for the taxable year.

“(E) AGGREGATE AMOUNT OF POST-1986 UNDISTRIBUTED EARNINGS.—The term ‘aggregate amount of post-1986 undistributed earnings’ means, with respect to any domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to one or more section 902 corporations, the domestic corporation’s pro rata share of the post-1986 undistributed earnings (as defined in section 902(c)(1)) of all such section 902 corporations.

“(F) FOREIGN CURRENCY CONVERSION.—For purposes of determining the current inclusion ratio, and except as otherwise provided by the Secretary, the aggregate amount of post-1986 undistributed earnings for the taxable year shall be determined by translating each section 902 corporation’s post-1986 undistributed earnings into dollars using the average exchange rate for such year.

“(4) TREATMENT OF AFFILIATED GROUPS.—The current inclusion ratio of each member of an affiliated group (as defined in section 864(e)(5)(A)) shall be determined as if all members of such group were a single corporation.

“(5) APPLICATION TO SEPARATE CATEGORIES OF INCOME.—This subsection shall be applied separately with respect to the categories of income specified in section 904(d)(1).

“(6) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance providing—

“(A) for the proper application of this subsection with respect to changes in ownership of a section 902 corporation,

“(B) that certain corporations that otherwise would not be members of the affiliated group will be treated as members of the affiliated group for purposes of this subsection,

“(C) for the proper application of this subsection with respect to the taxpayer’s share of a deficit in earnings and profits of a section 902 corporation,

“(D) for appropriate adjustments to the determination of the value of stock in any section 902 corporation for purposes of this subsection or to the foreign-related interest expense to account for income that is subject to tax under section 882(a)(1), and

“(E) for the proper application of this subsection with respect to interest expense that is directly allocable to income with respect to certain assets.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

Sectional Analysis

The ability to deduct expenses from overseas investments while deferring U.S. tax on the income from the investment may cause U.S. businesses to shift their investments and jobs overseas, harming our domestic economy. This section matches the timing of interest expense deductions and recognition of associated income by deferring a portion of the deduction of interest expense properly allocable and apportioned to foreign-source income to the extent the U.S. taxation of such income is deferred. The deduction for interest expense allocated and apportioned to stock of foreign subsidiaries held by the taxpayer is limited to an amount proportionate to the taxpayer’s pro rata share of income from such subsidiaries that is currently subject to U.S. tax. Deferred interest expense from prior years would be deductible in a subsequent taxable year to the extent that the amount of interest expense allocated and apportioned to stock of foreign subsidiaries in current year is less than the annual limitation for that year. This section applies to taxable years beginning on or after January 1, 2013.

DETERMINE THE FOREIGN TAX CREDIT ON A POOLING BASIS

Legislative Proposal

SEC. ____ DETERMINE THE FOREIGN TAX CREDIT ON A POOLING BASIS

(a) IN GENERAL.— Subpart A of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by adding the following new section after section 909:

“Section 910. AMOUNT OF DEEMED PAID FOREIGN TAXES COMPUTED ON OVERALL BASIS.—

“(a) GENERAL RULE.— The amount of the post-1986 foreign income taxes (as defined in section 902(c)(2)) deemed paid under section 902 or 960 that is allowed as a credit under section 901 for the taxable year shall not exceed the amount which bears the same ratio to the sum of the aggregate amount of post-1986 foreign income taxes for that taxable year and the suspended post-1986 foreign income taxes as the current inclusion ratio.

“(b) SUSPENSION OF CREDIT UNTIL REPATRIATION OF DEFERRED FOREIGN EARNINGS.—

“(1) Except as otherwise provided by the Secretary, any portion of the aggregate amount of post-1986 foreign income taxes for any taxable year not allowed as a credit by reason of subsection (a) (“suspended post-1986 foreign income taxes”) shall be allowed as a credit under section 901 as provided in this subsection.

“(2) To the extent the amount of the post-1986 foreign income taxes deemed paid under section 902 or 960 for a taxable year is less than the limitation computed under subsection (a), a portion of the suspended post-1986 foreign income taxes described in paragraph (b)(1) that has not been allowed as a credit under this paragraph (b)(2) in a prior taxable year shall be allowed as a credit under section 901 in the current taxable year.

“(3) For purposes of sections 904(c) and 6511(d)(3)(A), any foreign income tax allowed as a credit by reason of paragraph (b)(2) shall be treated as a foreign income tax deemed paid by a domestic corporation in the year in which such tax is allowed as a credit by reason of paragraph (b)(2).

“(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

“(1) CURRENT INCLUSION RATIO.—The term ‘current inclusion ratio’ means, with respect to any domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to one or more

section 902 corporations (as defined in section 909(d)(5)) for any taxable year, the ratio (expressed as a percentage) of—

(i) the sum of all dividends received by the domestic corporation from a section 902 corporation during the taxable year plus amounts includible in gross income under section 951(a) from such section 902 corporation, in each case computed without regard to section 78, divided by

(ii) the aggregate amount of post-1986 undistributed earnings for the taxable year.

“(2) AGGREGATE AMOUNT OF POST-1986 UNDISTRIBUTED EARNINGS.—The term ‘aggregate amount of post-1986 undistributed earnings’ means, with respect to any domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to one or more section 902 corporations, the domestic corporation’s pro rata share of the post-1986 undistributed earnings (as defined in section 902(c)(1)) of all such section 902 corporations.

“(3) AGGREGATE AMOUNT OF POST-1986 FOREIGN INCOME TAXES.—The term ‘aggregate amount of post-1986 foreign income taxes’ means, with respect to any domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to one or more section 902 corporations, the domestic corporation’s pro rata share of the post-1986 foreign income taxes (as defined in section 902(c)(2)) of all such section 902 corporations.

“(4) FOREIGN INCOME TAX.—The term ‘foreign income taxes’ has the meaning given such term by section 902(c)(4).

“(5) FOREIGN CURRENCY CONVERSION.—For purposes of determining the current inclusion ratio, and except as otherwise provided by the Secretary, the aggregate amount of post-1986 undistributed earnings for the taxable year shall be determined by translating each section 902 corporation’s post-1986 undistributed earnings into dollars using the average exchange rate for such year.

“(e) SEPARATE APPLICATION OF SECTION WITH RESPECT TO CATEGORIES OF INCOME.—This section shall be applied separately with respect to the categories of income specified in section 904(d)(1).

“(f) REGULATIONS. – The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provides for the proper application of this section with respect to—

“(1) the treatment of certain corporations that otherwise would not be members of the affiliated group as members of the affiliated group for purposes of this section,

“(2) a taxpayer’s share of a deficit in earnings and profits of a section 902 corporation,

“(3) changes in ownership of a section 902 corporation, and

“(4) the treatment of amounts taken into account under section 960.”.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by adding the following new item after section 909:

“Section 910. Amount of deemed paid foreign taxes computed on overall basis.”.

(c) REVISION OF DEFINITION OF QUALIFIED GROUP OF FOREIGN CORPORATIONS.—Section 902 of the Internal Revenue Code of 1986 is amended—

(1) by striking subparagraph (b)(2)(B)(iii);

(2) by adding “and” at the end of subparagraph (b)(2)(B)(i);

(3) by striking “, and” at the end of subparagraph (b)(2)(B)(ii) and adding “.” In its place; and

(4) by striking “Except for purposes of determining the amount of the post-1986 foreign income taxes of a sixth tier foreign corporation referred to in subsection (b)(2),” in subparagraph (c)(4)(B).

(d) EFFECTIVE DATE.— The amendments made by this section shall apply to foreign income taxes paid or accrued in taxable years beginning on or after January 1, 2013.

Sectional Analysis

Under the proposal, a taxpayer would be required to determine foreign tax credits from the receipt of a dividend from a foreign subsidiary on a consolidated basis for all its foreign subsidiaries. Foreign tax credits from the receipt of a dividend from a foreign subsidiary would be based on the consolidated earnings and profits and foreign taxes of all the taxpayer’s foreign subsidiaries. This proposal applies to foreign income taxes paid or accrued in taxable years beginning on or after January 1, 2013.

**EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO
LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME**

Legislative Proposal

SEC. ____ EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME.

(a) IN GENERAL.—Subsection (a) of section 954 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (3) the following new paragraph:

“(4) the foreign base company excess intangible income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and”.

(b) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—Section 954 of such Code is amended by inserting after subsection (e) the following new subsection:

“(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—For purposes of subsection (a)(4) and this subsection:

“(1) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME DEFINED.—

“(A) IN GENERAL.—The term ‘foreign base company excess intangible income’ means, with respect to any covered intangible, the excess of—

“(i) the sum of—

“(I) gross income from the sale, lease, license, or other disposition of property in which such covered intangible is used directly or indirectly, and

“(II) gross income from the provision of services related to such covered intangible or in connection with property in which such covered intangible is used directly or indirectly, over

“(ii) 150 percent of the costs properly allocated and apportioned to the gross income taken into account under clause (i) other than expenses for interest and taxes and any expenses which are not directly allocable to such gross income.

“(B) SAME COUNTRY INCOME NOT TAKEN INTO ACCOUNT.—If—

“(i) the sale, lease, license, or other disposition of the property referred to in subparagraph (A)(i)(I) is for use, consumption, or disposition in the country under the laws of which the controlled foreign corporation is created or organized, or

“(ii) the services referred to in subparagraph (A)(i)(II) are performed in such country,

“the gross income from such sale, lease, license, or other disposition, or provision of services, shall not be taken into account under subparagraph (A)(i).

“(C) SPECIAL RULE FOR RESEARCH AND DEVELOPMENT EXPENSES.—Research and development costs for any taxable year shall be treated for purposes of subparagraph (A) as properly allocable to gross income derived from a covered intangible if such costs are properly allocable to the line of business in which such gross income is earned.

“(2) EXCEPTION BASED ON EFFECTIVE FOREIGN INCOME TAX RATE.—

“(A) IN GENERAL.—Foreign base company excess intangible income shall not include the applicable percentage of any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country in excess of 10 percent.

“(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term ‘applicable percentage’ means the ratio (expressed as a percentage), not greater than 100 percent, of—

“(i) the number of percentage points by which the effective rate of income tax referred to in subparagraph (A) exceeds 10 percentage points, over

“(ii) 5 percentage points.

“(C) TREATMENT OF LOSSES IN DETERMINING EFFECTIVE RATE OF FOREIGN INCOME TAX.—For purposes of determining the effective rate of income tax imposed by any foreign country—

“(i) such effective rate shall be determined without regard to any losses carried to the relevant taxable year, and

“(ii) to the extent the income with respect to such intangible reduces losses in the relevant taxable year, such effective rate shall be treated as being the effective rate which would have been imposed on such income without regard to such losses.

“(3) COVERED INTANGIBLE.—The term ‘covered intangible’ means, with respect to any controlled foreign corporation, any intangible property (as defined in section 936(h)(3)(B))—

“(A) which is sold, leased, licensed, or otherwise transferred (directly or indirectly) to such controlled foreign corporation from a United States related person, or

“(B) with respect to which such controlled foreign corporation and one or more related persons has (directly or indirectly) entered into any shared risk or development agreement (including any cost sharing agreement).

“(4) RELATED PERSON.—The term ‘related person’ has the meaning given such term in subsection (d)(3).”.

(c) **SEPARATE CATEGORY FOR FOREIGN TAX CREDIT LIMITATION PURPOSES.**—Subsection (d) of section 904 of such Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) **SEPARATE APPLICATION TO FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.**— Subsections (a), (b), and (c) of this section and sections 902 and 960 shall be applied separately with respect to income which is taken into account under section 954(a)(4) as foreign base company excess intangible income.

(d) **CONFORMING AMENDMENTS.**—

(1) Paragraph (4) of section 954(b) of such Code is amended by inserting “foreign base company excess intangible income described in subsection (a)(4) or” before “foreign base company oil-related income” in the last sentence thereof.

(2) Subsection (b) of section 954 of such Code is amended by adding at the end the following new paragraph:

“(7) **FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME NOT TREATED AS ANOTHER KIND OF BASE COMPANY INCOME.**—Income of a corporation which is foreign base company excess intangible income shall not be considered foreign base company income of such corporation under paragraph (2), (3), or (5) of subsection (a).”.

(e) **EFFECTIVE DATE.**— The amendments made by this section shall apply to income from transactions connected with or benefiting from covered intangibles in taxable years beginning on or after January 1, 2013.

Sectional Analysis

The IRS has broad authority to allocate income among commonly controlled businesses under section 482 of the Internal Revenue Code. Notwithstanding the transfer pricing rules, there is evidence of income shifting offshore, including through transfers of intangible rights to subsidiaries that bear little or no foreign income tax. The proposal combats such income shifting, by providing that if a an intangible is transferred from the United States to a related controlled

foreign corporation, then certain excess income from transactions connected with or benefitting from the intangible would be treated as subpart F income if the income is subject to a low foreign effective tax rate. This subpart F income would be a separate category of income for purposes of determining the taxpayer's foreign tax credit limitation under section 904. The proposal would apply to income from transactions connected with or benefitting from such transferred intangibles in taxable years beginning on or after January 1, 2013.

VALUATION AND DEFINITION OF INTANGIBLE PROPERTY

Legislative Proposal

SEC. ____. VALUATION AND DEFINITION OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Paragraph (3)(B) of section 936(h) of the Internal Revenue Code of 1986 is amended by redesignating paragraph (vi) as paragraph (vii), redesignating paragraph (v) as paragraph (vi), and by inserting after paragraph (iv) the following new paragraph:

“(v) workforce in place, goodwill, or going concern value.”.

(b) VALUATION OF INTANGIBLE PROPERTY UNDER SECTION 482.—Section 482 of such Code is amended by inserting after the last sentence thereof the following new sentence:

“In determining the true taxable income of a controlled taxpayer, the Commissioner may

(i) aggregate transfers of intangible property (within the meaning of section 936(h)(3)(B)) where that achieves a more reliable result, and

(ii) take into consideration the prices or profits that such controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction undertaken.”.

(c) VALUATION OF INTANGIBLE PROPERTY UNDER SECTION 367.— Section 367(d) of such Code is amended by inserting after the last sentence thereof the following new sentence:

“In determining such amounts, the Commissioner may

(i) aggregate transfers of intangible property (within the meaning of section 936(h)(3)(B)) where that achieves a more reliable result, and

(ii) take into consideration the prices or profits that such United States person could have realized by choosing a realistic alternative to such transfer.”.

(d) EFFECTIVE DATE. – The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

Sectional Analysis

This section clarifies the definition of intangible property, so that the value attributable to goodwill, going concern value, and workforce-in-place in outbound transfers to related parties

requires compensation. It also clarifies that transfers of intangible properties between related parties should be valued in the aggregate, when that most reliably reflects the enhanced value that may arise from their interrelationship, and that the value of such transfers should be determined by taking into consideration any alternative transactions that were realistically available. These clarifications would help to prevent inappropriate shifting of income outside the United States. This section would be effective for taxable years beginning on or after January 1, 2013.

LIMIT EARNINGS STRIPPING BY EXPATRIATED ENTITIES

Legislative Proposal

SEC. ____ LIMIT EARNINGS STRIPPING BY SPECIFIED EXPATRIATED ENTITIES

(a) IN GENERAL.—Section 163(j) of the Internal Revenue Code of 1986 (relating to the limitation of the deductibility of interest on certain indebtedness) is amended by redesignating paragraph (9) as paragraph (10), and inserting new paragraph (9) after paragraph (8):

“(9) SPECIAL RULES FOR INTEREST PAID OR ACCRUED BY A SPECIFIED EXPATRIATED ENTITY.— In the case of disqualified interest paid or accrued by a specified expatriated entity, for purposes of applying this subsection —

“(A) Paragraph (1)(B) shall not apply for purposes of applying this subsection to any amount disallowed under paragraph (1)(A), and any amount disallowed under paragraph (1)(A) for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year and in the 2nd through 10th succeeding taxable years, in that order, but only to the extent not previously taken into account under this subparagraph. The amount of such carryforward taken into account for any such succeeding taxable year shall not exceed the amount of the excess limitation for such succeeding taxable year as determined under paragraph (2)(B)(iii);

“(B) Paragraph (2)(A) shall be applied without the application of clause (ii);

“(C) Clause (ii) of paragraph (2)(B) shall not apply; and

“(D) Paragraph (2)(B) shall be applied by substituting ‘25 percent’ for ‘50 percent’ each place it appears.”.

(b) DEFINITION OF A SPECIFIED EXPATRIATED ENTITY.— Section 163(j)(of the Internal Revenue Code of 1986 (relating to the limitation of the deductibility of interest on certain indebtedness) is amended by inserting the following new subparagraph (F) at the end of paragraph (6):

“(F) SPECIFIED EXPATRIATED ENTITY.— The term ‘specified expatriated entity’ means any person, including any successor person—

“(i) that is an expatriated entity within the meaning of section 7874(a)(2)(A)(i), or

“(ii) except as otherwise provided in regulations, that would be treated as an expatriated entity if section 7874(a)(2)(B) was applied by substituting ‘July 10, 1989’ for ‘March 4, 2003’ and section 7874(a)(2)(A) was applied without the application of section 7874(a)(3).”.

(c) REGULATIONS.— Section 163(j) of the Internal Revenue Code of 1986 (relating to the limitation of the deductibility of interest on certain indebtedness) is amended by inserting the following new subparagraph (E) at the end of paragraph (10):

“(E) Regulations providing for the application of this subsection to interest paid or accrued by surrogate foreign corporations (within the meaning of section 7874(a)(2)(B)) and successor persons.”.

(d) EFFECTIVE DATE.— The amendments made by this section shall apply to disqualified interest paid or accrued in taxable years beginning on or after January 1, 2013.

Sectional Analysis

Under the proposal, the current rules that limit the deductibility of interest paid to related persons subject to low or no U.S. tax on that interest received would be amended to prevent expatriated entities from using foreign related-party debt and certain guaranteed debt to reduce inappropriately the U.S. tax on income earned from their U.S. operations. This proposal applies to disqualified interest paid or accrued in taxable years beginning on or after January 1, 2013.

REINSTATE SUPERFUND TAXES

Legislative Proposal

SEC. ____ REINSTATEMENT OF SUPERFUND EXCISE TAXES.

(a) In General.—Paragraph (1) of section 4611(e) of the Internal Revenue Code of 1986 (relating to Hazardous Substance Superfund Financing rate) is amended to read as follows:

“(1) In general.—Except as provided in paragraphs (2) and (3), the Hazardous Substance Superfund financing rate under this section shall apply—

“(A) after December 31, 1986, and before January 1, 1996, and
(B) on and after January 1, 2013, and before January 1, 2022.”

(b) Effective Date.—The amendments made by this section shall take effect on January 1, 2013.

SEC. ____ REINSTATEMENT OF ENVIRONMENTAL INCOME TAX.

(a) In General.—Paragraph (1) of section 59A (relating to environmental tax) is amended to read as follows:

“(1) In general.—The tax imposed by this section shall apply to taxable years—
(1) beginning after December 31, 1986, and before January 1, 1996, and
(2) beginning on January 1, 2013, and before January 1, 2022”

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 2013.

Sectional Analysis

The President is proposing to reinstate the taxes that were deposited in the Hazardous Substance Superfund prior to their expiration on December 31, 1995. These taxes, which contributed to financing the cleanup of the nation’s highest risk hazardous waste sites, are proposed to be reinstated for periods (excise taxes) or tax years (income tax) beginning in 2013, with expiration for periods and tax years after 2021. The proposed taxes include the following: (1) an excise tax of 9.7-cents-per-barrel on crude oil and imported petroleum products; (2) an excise tax on hazardous chemicals listed in 26 U.S.C. § 4661 at rates that vary from 22 cents to \$4.87 per ton; (3) an excise tax on imported substances that use listed hazardous chemicals as a feedstock (in an amount equivalent to the tax that would have been imposed on domestic production of the chemicals); and (4) a corporate environmental income tax imposed at a rate of 0.12 percent on the amount by which the modified AMT income of a corporation exceeds \$2 million. This proposal would apply to taxable years beginning on or after January 1, 2013.

MAKE UNEMPLOYMENT INSURANCE SURTAX PERMANENT

Legislative Proposal

SEC. ____ PERCENT FUTA SURTAX.

(a) IN GENERAL.—Section 3301 of the Internal Revenue Code of 1986 (relating to rate of tax) is amended—

- (1) by striking “equal to—” in the flush language and inserting “equal to 6.2 percent in the case of calendar years 1988 and each calendar year thereafter”.
- (2) by striking paragraphs (1) and (2).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid on or after June 30, 2011.

Sectional Analysis

The net Federal UI tax on employers dropped from 0.8 percent to 0.6 percent with respect to wages paid after June 30, 2011. The President’s plan would extend the net 0.8 percent rate permanently.

INCREASE CERTAINTY WITH RESPECT TO WORKER CLASSIFICATION

Legislative Proposal

SEC. ____. AUTHORITY TO ISSUE GUIDANCE CLARIFYING EMPLOYMENT STATUS FOR PURPOSES OF EMPLOYMENT TAXES.

- (a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:
“SEC. 3511. AUTHORITY TO ISSUE GUIDANCE CLARIFYING EMPLOYMENT STATUS.

“(a) IN GENERAL.— The Secretary shall issue such regulations or other guidance as the Secretary determines to be necessary or appropriate to clarify the proper employment status of individuals for purposes of any tax imposed by this subtitle.

“(b) PROHIBITION ON RETROACTIVE ASSESSMENTS. —

“(1) IN GENERAL.—If—

“(A) for purposes of any tax imposed by this subtitle, the taxpayer did not treat an individual as an employee for any period before the classification date with respect to such individual, and

“(B) in the case of periods after December 31, 1978, and before such reclassification date, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer’s treatment of such individual as not being an employee,

then, for purposes of applying such taxes for periods before such reclassification date with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

“(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer’s treatment of such individual for such period was in reasonable reliance on any of the following:

“(A) Judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer.

“(B) A past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for purposes of any tax imposed by this subtitle) of the individuals holding positions substantially similar to the position held by such individual.

“(C) Long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

(3) CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.—Paragraph (1) shall not apply with respect to the treatment of any individual (hereafter in this paragraph referred to as the reclassified individual) for

purposes of any tax imposed by this subtitle for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of any tax imposed by this subtitle for any period beginning after December 31, 1977, and ending before the reclassification date with respect to such reclassified individual.

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

“(1) RECLASSIFICATION DATE.—

“(A) IN GENERAL.— The term ‘reclassification date’ means, with respect to any individual, the earlier of—

“(i) the first day of the first calendar quarter beginning more than 180 days after the date of an employee classification determination with respect to such individual, or

“(ii) the effective date of the first applicable final regulation issued by the Secretary under subsection (a) with respect to such individual (or, if later, the first day of the first calendar quarter beginning more than 180 days after such regulation is issued).

“(B) EMPLOYEE CLASSIFICATION DETERMINATION.—The term ‘employee classification determination’ means, with respect to any individual, a determination by the Secretary, in connection with an audit of the taxpayer which is described in section 7436 and which commences after the date which is 1 year after the date of the enactment of this section, that a class of individuals holding positions with such taxpayer which are substantially similar to the position held by such individual are employees.

“(C) FIRST APPLICABLE FINAL REGULATION.—The term ‘first applicable final regulation’ means, with respect to any individual, the first final regulation (or other guidance of general applicability) which sets forth the factors for determining the employment status of a class of individuals holding positions substantially similar to the position held by such individual.

“(2) EMPLOYMENT STATUS.—The term ‘employment status’ means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

“(d) CONTINUATION OF CERTAIN SPECIAL RULES.—

“(1) EXCEPTION FOR CERTAIN SKILLED WORKERS.—Subsection (b) shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

“(2) NOTICE OF AVAILABILITY OF SECTION.— An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

“(3) RULES RELATING TO STATUTORY STANDARDS.—For purposes of subsection (b)(2)—

“(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for

purposes of any tax imposed by this subtitle whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

“(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

“(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

“(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

“(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

“(4) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that subsection (b) only applies where the individual involved is otherwise an employee of the taxpayer.

“(5) BURDEN OF PROOF.—

“(A) IN GENERAL.—If—

“(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of subsection (b), and

“(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary,

then the burden of proof with respect to such treatment shall be on the Secretary.

“(B) EXCEPTION FOR OTHER REASONABLE BASIS.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of subsection (b), subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (b)(2).

“(6) PRESERVATION OF PRIOR PERIOD SAFE HARBOR.—If—

“(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (b) for any prior period, and

“(B) such individual is treated by the taxpayer as an employee for purposes of the taxes imposed by this subtitle for any subsequent period, then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

“(7) SUBSTANTIALLY SIMILAR POSITION.—For purposes of subsection (b) and this subsection, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

“(8) TREATMENT OF TEST ROOM SUPERVISORS AND PROCTORS WHO ASSIST IN THE ADMINISTRATION OF COLLEGE ENTRANCE AND PLACEMENT EXAMS. —

“(A) IN GENERAL.—In the case of an individual described in subparagraph (B) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, subsection (b) shall be

applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to paragraph (3) thereof.

“(B) APPLICABILITY.—An individual is described in this subparagraph if the individual—

“(i) is providing the services described in subsection (b) to an organization described in section 501(c) and exempt from tax under section 501(a), and

“(ii) is not otherwise treated as an employee of such organization for purposes of this subtitle.

“(9) TREATMENT OF SECURITIES BROKER DEALERS.—In determining for purposes of this title whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d)), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

“(e) STATEMENTS TO INDEPENDENT CONTRACTORS.—

“(1) IN GENERAL.—Each person who contracts for the services of an independent contractor on a regular and ongoing basis, within the scope of such person’s trade or business, shall provide a written statement to such independent contractor notifying such independent contractor of the Federal tax obligations of an independent contractor, the labor and employment law protections that do not apply to independent contractors, and the right of such independent contractor to seek a status determination from the Internal Revenue Service.

“(2) INDEPENDENT CONTRACTOR.—For purposes of this subsection, the term ‘independent contractor’ means any individual who is not treated as an employee by the person receiving the services referred to in paragraph (1).

“(3) TIMING OF STATEMENT.—Except as otherwise provided by the Secretary, the statement required under paragraph (1) shall be provided within a reasonable period of entering into the contract referred to in paragraph (1).

“(4) DEVELOPMENT OF MODEL STATEMENT.— The Secretary shall develop model materials for providing the statement required under paragraph (1).”.

(b) REDUCED PENALTY NOT APPLICABLE IN CASES OF NONCOMPLIANCE WITH GUIDANCE WITHOUT REASONABLE BASIS.—Subsection (c) of section 3509 of such Code is amended—

(1) by striking “if such liability” and inserting “if—
“(1) such liability”, and

(2) by striking the period at the end and inserting “, or

“(2) such liability relates to an individual who is treated as an employee under regulations or other guidance issued by the Secretary under section 3511(a) and the taxpayer lacks a reasonable basis for treating the individual as other than an employee.

In the case of a taxpayer which has received a final written determination from the Internal Revenue Service holding that the individual referred to in paragraph (2) (or another individual who holds a position with the taxpayer substantially similar to the position held by such individual) is an employee, such taxpayer shall be treated for purposes of paragraph (2) as lacking a reasonable basis for treating such individual as other than an employee with respect to

periods beginning on and after the first day of the first calendar quarter beginning more than 180 days after the date of such written determination unless the taxpayer establishes by clear and convincing evidence that the taxpayer has a reasonable basis for such treatment.”.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6724(d) of such Code is amended by striking “or” at the end of subparagraph (GG), by striking the period at the end of subparagraph (HH) and inserting “, or”, and by inserting after subparagraph (HH) the following new subparagraph:

“(II) section 3511(e) (relating to statements to independent contractors).”.

(2) Paragraph (2) of section 7436(a) of such Code is amended by striking “subsection (a) of section 530 of the Revenue Act of 1978” and inserting “section 3511(b)”.

(3) The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

“Sec. 3511. Authority to issue guidance clarifying employment status.”.

(d) TERMINATION OF SECTION 530 OF THE REVENUE ACT OF 1978.—The Revenue Act of 1978 is amended by striking section 530.

(e) REPORTS ON WORKER MISCLASSIFICATION.—Beginning with the first fiscal year beginning after the date the first regulation or other guidance is issued for public comment under section 3511(a) of the Internal Revenue Code of 1986 (as added by this section):

(1) A report each fiscal year on worker classification which shall include the total number of examinations of employers initiated because of suspected worker classification issues, the total number of examinations that included determinations on worker classification issues, the amount of additional tax liabilities associated with worker classification enforcement actions, the number of workers reclassified as a result of these actions, the number of requests for Determination of Worker Status (Form SS-8), and technical guidance on how to understand the data provided in the report.

(2) A report each fiscal year in which new statistically valid data is compiled and interpreted on worker classification, prepared on the basis of information gathered during an Employment Tax Study conducted by the National Research Program (NRP) of the Internal Revenue Service. Such report shall provide statistical estimates of the number of employers misclassifying workers, the number of workers misclassified, the industries involved, data interpretations and conclusions, and a description of the impact of improper worker classification on the employment tax gap.

(f) EFFECTIVE DATES.—

(1) DELAYED EFFECTIVE DATE OF REGULATIONS AND GUIDANCE.—Except as provided in paragraph (2), any regulation or other guidance issued under section 3511(a) of the Internal Revenue Code of 1986, as added by this section, shall in no event apply to services rendered before later of the date which is 1 year after the date of the enactment of this Act or January 1, 2013.

(2) TREATMENT OF SECURITIES BROKER DEALERS.—Paragraph (9) of section 3511(d) of the Internal Revenue Code of 1986, as added by this section, shall apply to services performed after December 31, 1997.

(3) AUTHORITY TO ISSUE REGULATIONS AND GUIDANCE IMMEDIATELY.—So much of the amendment made by subsection (d) as relates to subsection (b) of section 530 of the Revenue Act of 1978 shall take effect on the date of the enactment of this Act.

(4) DELAYED TERMINATION OF REMAINDER OF SECTION 530 OF THE REVENUE ACT OF 1978.—Except as provided in paragraph (3), the amendments made by subsections (c)(1) and (d) shall apply to services rendered on or after the date which is 1 year after the date of the enactment of this Act.

Sectional Analysis

Under current law, worker classification as an employee or as a self-employed person (independent contractor) is generally based on a common-law test for determining whether an employment relationship exists. However, as an exception to this general rule, a special provision was enacted in 1978 that was designed to temporarily limit the ability of the IRS to require reclassification of employees who had been misclassified as independent contractors while Congress considered how to address possible confusion as to proper classification and hardships for smaller employers if workers they had classified as independent contractors were later classified as employees with retroactive effect. Under this special provision, a service recipient is permitted to treat a worker who may actually be an employee as an independent contractor for Federal employment tax purposes so long as the service recipient meets certain conditions and, in such cases, the IRS is prohibited from reclassifying the workers as employees, even prospectively. The special provision also prohibits the IRS from issuing new guidance of general applicability about the proper classification of workers, leaving in place guidance that does not reflect developments in the workplace over the past 33 years.

This section of the bill would permit the IRS to issue generally applicable guidance about the proper classification of workers and, after applicable guidance is issued or an employer is notified of an error on audit, allow the IRS to require prospective (but not retroactive) reclassification of workers who are currently misclassified and whose reclassification is prohibited under the existing special provision. Penalties would be waived or substantially reduced for service recipients if, among other things, the service recipient had consistently filed all required information returns reporting all payments to all misclassified workers and the service recipient agreed to prospective reclassification of misclassified workers. It is anticipated that after enactment, new enforcement activity would focus mainly on obtaining the proper worker classification prospectively, since in many cases the proper classification of workers may not be clear. The proposal would be effective upon enactment, but the ability to require prospective reclassification for those covered by the special provision would not be effective before the first calendar year beginning at least one year after the date of enactment and, in no event, earlier than with respect to services rendered on or after January 1, 2013.