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(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R.

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. RANGEL (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.

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

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Temporary Tax Relief Act of 2008”.

6 (b) **REFERENCE.**—Except as otherwise expressly pro-
7 vided, whenever in this Act an amendment or repeal is
8 expressed in terms of an amendment to, or repeal of, a

1 section or other provision, the reference shall be consid-
2 ered to be made to a section or other provision of the In-
3 ternal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

TITLE I—EXTENSION OF TEMPORARY PROVISIONS

Subtitle A—Extensions Primarily Affecting Individuals

- Sec. 101. Deduction for State and local sales taxes.
- Sec. 102. Deduction of qualified tuition and related expenses.
- Sec. 103. Treatment of certain dividends of regulated investment companies.
- Sec. 104. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 105. Deduction for certain expenses of elementary and secondary school teachers.
- Sec. 106. Stock in RIC for purposes of determining estates of nonresidents not citizens.
- Sec. 107. Qualified investment entities.
- Sec. 108. Real property tax standard deduction.

Subtitle B—Extensions Primarily Affecting Businesses

- Sec. 121. Research credit.
- Sec. 122. Indian employment credit.
- Sec. 123. New markets tax credit.
- Sec. 124. Railroad track maintenance.
- Sec. 125. Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property.
- Sec. 126. Seven-year cost recovery period for motorsports racing track facility.
- Sec. 127. Accelerated depreciation for business property on Indian reservation.
- Sec. 128. Expensing of environmental remediation costs.
- Sec. 129. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 130. Modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 131. Qualified zone academy bonds.
- Sec. 132. Tax incentives for investment in the District of Columbia.
- Sec. 133. Economic development credit for American Samoa.
- Sec. 134. Enhanced charitable deduction for contributions of food inventory.
- Sec. 135. Enhanced charitable deduction for contributions of book inventory to public schools.
- Sec. 136. Enhanced deduction for qualified computer contributions.
- Sec. 137. Basis adjustment to stock of S corporations making charitable contributions of property.
- Sec. 138. Work opportunity tax credit for Hurricane Katrina employees.
- Sec. 139. Subpart F exception for active financing income.
- Sec. 140. Look-thru rule for related controlled foreign corporations.

Sec. 141. Expensing for certain qualified film and television productions.

Subtitle C—Other Extensions

Sec. 151. Authority to disclose information related to terrorist activities made permanent.

Sec. 152. Authority for undercover operations made permanent.

Sec. 153. Increase in limit on cover over of rum excise tax to Puerto Rico and the Virgin Islands.

TITLE II—ADDITIONAL TAX RELIEF AND OTHER PROVISIONS

Sec. 201. Refundable child credit.

Sec. 202. Provisions related to film and television productions.

Sec. 203. Exemption from excise tax for certain arrows designed for use by children.

Sec. 204. Modification of penalty on understatement of taxpayer's liability by tax return preparer.

TITLE III—SECURE RURAL SCHOOLS

Sec. 301. Secure rural schools and community self-determination program.

TITLE IV—PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008

Sec. 401. Short title.

Sec. 402. Mental health parity.

TITLE V—REVENUE PROVISIONS

Sec. 501. 0.2 percent FUTA surtax.

Sec. 502. Nonqualified deferred compensation from certain tax indifferent parties.

Sec. 503. Increase and extension of Oil Spill Liability Trust Fund tax.

Sec. 504. Delay in application of worldwide allocation of interest.

Sec. 505. Time for payment of corporate estimated taxes.

1 **TITLE I—EXTENSION OF**
 2 **TEMPORARY PROVISIONS**
 3 **Subtitle A—Extensions Primarily**
 4 **Affecting Individuals**

5 **SEC. 101. DEDUCTION FOR STATE AND LOCAL SALES**
 6 **TAXES.**

7 (a) IN GENERAL.—Subparagraph (I) of section
 8 164(b)(5) is amended by striking “January 1, 2008” and
 9 inserting “January 1, 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2007.

4 **SEC. 102. DEDUCTION OF QUALIFIED TUITION AND RE-**
5 **LATED EXPENSES.**

6 (a) IN GENERAL.—Subsection (e) of section 222 is
7 amended by striking “December 31, 2007” and inserting
8 “December 31, 2009”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2007.

12 (c) TEMPORARY COORDINATION WITH HOPE AND
13 LIFETIME LEARNING CREDIT.—In the case of any tax-
14 payer for any taxable year beginning in 2008 or 2009,
15 no deduction shall be allowed under section 222 of the In-
16 ternal Revenue Code of 1986 if—

17 (1) the taxpayer’s net Federal income tax re-
18 duction which would be attributable to such deduc-
19 tion for such taxable year, is less than

20 (2) the credit which would be allowed to the
21 taxpayer for such taxable year under section 25A of
22 such Code (determined without regard to sections
23 25A(e) and 26 of such Code).

1 **SEC. 103. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
2 **LATED INVESTMENT COMPANIES.**

3 (a) INTEREST-RELATED DIVIDENDS.—Subpara-
4 graph (C) of section 871(k)(1) (defining interest-related
5 dividend) is amended by striking “December 31, 2007”
6 and inserting “December 31, 2009”.

7 (b) SHORT-TERM CAPITAL GAIN DIVIDENDS.—Sub-
8 paragraph (C) of section 871(k)(2) (defining short-term
9 capital gain dividend) is amended by striking “December
10 31, 2007” and inserting “December 31, 2009”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to dividends with respect to taxable
13 years of regulated investment companies beginning after
14 December 31, 2007.

15 **SEC. 104. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
16 **TIREMENT PLANS FOR CHARITABLE PUR-**
17 **POSES.**

18 (a) IN GENERAL.—Subparagraph (F) of section
19 408(d)(8) is amended by striking “December 31, 2007”
20 and inserting “December 31, 2009”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to distributions made in taxable
23 years beginning after December 31, 2007.

1 **SEC. 105. DEDUCTION FOR CERTAIN EXPENSES OF ELE-**
2 **MENTARY AND SECONDARY SCHOOL TEACH-**
3 **ERS.**

4 (a) IN GENERAL.—Subparagraph (D) of section
5 62(a)(2) is amended by striking “or 2007” and inserting
6 “2007, 2008, or 2009”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to taxable years beginning after
9 December 31, 2007.

10 **SEC. 106. STOCK IN RIC FOR PURPOSES OF DETERMINING**
11 **ESTATES OF NONRESIDENTS NOT CITIZENS.**

12 (a) IN GENERAL.—Paragraph (3) of section 2105(d)
13 is amended by striking “December 31, 2007” and insert-
14 ing “December 31, 2009”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to decedents dying after December
17 31, 2007.

18 **SEC. 107. QUALIFIED INVESTMENT ENTITIES.**

19 (a) IN GENERAL.—Clause (ii) of section
20 897(h)(4)(A) is amended by striking “December 31,
21 2007” and inserting “December 31, 2009”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect on January 1, 2008, except
24 that such amendment shall not apply to the application
25 of withholding requirements with respect to any payment
26 made on or before the date of the enactment of this Act.

1 **SEC. 108. REAL PROPERTY TAX STANDARD DEDUCTION.**

2 (a) IN GENERAL.—Subparagraph (C) of section
3 63(c)(1) is amended by inserting “or 2009” after “2008”.

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

7 **Subtitle B—Extensions Primarily**
8 **Affecting Businesses**

9 **SEC. 121. RESEARCH CREDIT.**

10 (a) IN GENERAL.—Subparagraph (B) of section
11 41(h)(1) is amended by striking “December 31, 2007”
12 and inserting “December 31, 2009”.

13 (b) COMPUTATION OF CREDIT FOR TAXABLE YEAR
14 IN WHICH CREDIT TERMINATES.—Paragraph (2) of sec-
15 tion 41(h) is amended to read as follows:

16 “(2) COMPUTATION OF CREDIT FOR TAXABLE
17 YEAR IN WHICH CREDIT TERMINATES.—

18 “(A) IN GENERAL.—In the case of any
19 taxable year with respect to which this section
20 applies to a number of days which is less than
21 the total number of days in such taxable year,
22 the applicable base amount with respect to such
23 taxable year shall be the amount which bears
24 the same ratio to such applicable amount (de-
25 termined without regard to this paragraph) as
26 the number of days in such taxable year to

1 which this section applies bears to the total
2 number of days in such taxable year.

3 “(B) APPLICABLE BASE AMOUNT.—For
4 purposes of subparagraph (A), the term ‘appli-
5 cable base amount’ means, with respect to any
6 taxable year—

7 “(i) except as otherwise provided in
8 this subparagraph, the base amount for
9 the taxable year,

10 “(ii) in the case of a taxable year with
11 respect to which an election under sub-
12 section (c)(4) (relating to election of alter-
13 native incremental credit) is in effect, the
14 average described in subsection (c)(1)(B)
15 for the taxable year, and

16 “(iii) in the case of a taxable year
17 with respect to which an election under
18 subsection (c)(5) (relating to election of al-
19 ternative simplified credit) is in effect, the
20 average qualified research expenses for the
21 3 taxable years preceding the taxable
22 year.”.

23 (c) CONFORMING AMENDMENT.—Subparagraph (D)
24 of section 45C(b)(1) is amended by striking “December
25 31, 2007” and inserting “December 31, 2009”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall apply to amounts paid or incurred after De-
5 cember 31, 2007.

6 (2) COMPUTATION OF CREDIT FOR TAXABLE
7 YEAR IN WHICH CREDIT BEGINS.—The amendment
8 made by subsection (b) shall apply to taxable years
9 beginning after December 31, 2007.

10 **SEC. 122. INDIAN EMPLOYMENT CREDIT.**

11 (a) IN GENERAL.—Subsection (f) of section 45A is
12 amended by striking “December 31, 2007” and inserting
13 “December 31, 2009”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2007.

17 **SEC. 123. NEW MARKETS TAX CREDIT.**

18 Subparagraph (D) of section 45D(f)(1) is amended
19 by striking “and 2008” and inserting “2008, and 2009”.

20 **SEC. 124. RAILROAD TRACK MAINTENANCE.**

21 (a) IN GENERAL.—Subsection (f) of section 45G is
22 amended by striking “January 1, 2008” and inserting
23 “January 1, 2010”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to expenditures paid or incurred
3 during taxable years beginning after December 31, 2007.

4 **SEC. 125. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY**
5 **FOR QUALIFIED LEASEHOLD IMPROVEMENTS**
6 **AND QUALIFIED RESTAURANT PROPERTY.**

7 (a) IN GENERAL.—Clauses (iv) and (v) of section
8 168(e)(3)(E) are each amended by striking “January 1,
9 2008” and inserting “January 1, 2010”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to property placed in service after
12 December 31, 2007.

13 **SEC. 126. SEVEN-YEAR COST RECOVERY PERIOD FOR MO-**
14 **TORSPOUNTS RACING TRACK FACILITY.**

15 (a) IN GENERAL.—Subparagraph (D) of section
16 168(i)(15) is amended by striking “December 31, 2007”
17 and inserting “December 31, 2009”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to property placed in service after
20 December 31, 2007.

21 **SEC. 127. ACCELERATED DEPRECIATION FOR BUSINESS**
22 **PROPERTY ON INDIAN RESERVATION.**

23 (a) IN GENERAL.—Paragraph (8) of section 168(j)
24 is amended by striking “December 31, 2007” and insert-
25 ing “December 31, 2009”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to property placed in service after
3 December 31, 2007.

4 **SEC. 128. EXPENSING OF ENVIRONMENTAL REMEDIATION**
5 **COSTS.**

6 (a) IN GENERAL.—Subsection (h) of section 198 is
7 amended by striking “December 31, 2007” and inserting
8 “December 31, 2009”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to expenditures paid or incurred
11 after December 31, 2007.

12 **SEC. 129. DEDUCTION ALLOWABLE WITH RESPECT TO IN-**
13 **COME ATTRIBUTABLE TO DOMESTIC PRO-**
14 **DUCTION ACTIVITIES IN PUERTO RICO.**

15 (a) IN GENERAL.—Subparagraph (C) of section
16 199(d)(8) is amended—

17 (1) by striking “first 2 taxable years” and in-
18 serting “first 4 taxable years”, and

19 (2) by striking “January 1, 2008” and insert-
20 ing “January 1, 2010”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2007.

1 **SEC. 130. MODIFICATION OF TAX TREATMENT OF CERTAIN**
2 **PAYMENTS TO CONTROLLING EXEMPT ORGA-**
3 **NIZATIONS.**

4 (a) IN GENERAL.—Clause (iv) of section
5 512(b)(13)(E) is amended by striking “December 31,
6 2007” and inserting “December 31, 2009”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to payments received or accrued
9 after December 31, 2007.

10 **SEC. 131. QUALIFIED ZONE ACADEMY BONDS.**

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

14 **“SEC. 54C. QUALIFIED ZONE ACADEMY BONDS.**

15 “(a) QUALIFIED ZONE ACADEMY BONDS.—For pur-
16 poses of this subchapter, the term ‘qualified zone academy
17 bond’ means any bond issued as part of an issue if—

18 “(1) 100 percent of the available project pro-
19 ceeds of such issue are to be used for a qualified
20 purpose with respect to a qualified zone academy es-
21 tablished by an eligible local education agency,

22 “(2) the bond is issued by a State or local gov-
23 ernment within the jurisdiction of which such acad-
24 emy is located, and

25 “(3) the issuer—

1 “(A) designates such bond for purposes of
2 this section,

3 “(B) certifies that it has written assur-
4 ances that the private business contribution re-
5 quirement of subsection (b) will be met with re-
6 spect to such academy, and

7 “(C) certifies that it has the written ap-
8 proval of the eligible local education agency for
9 such bond issuance.

10 “(b) PRIVATE BUSINESS CONTRIBUTION REQUIRE-
11 MENT.—For purposes of subsection (a), the private busi-
12 ness contribution requirement of this subsection is met
13 with respect to any issue if the eligible local education
14 agency that established the qualified zone academy has
15 written commitments from private entities to make quali-
16 fied contributions having a present value (as of the date
17 of issuance of the issue) of not less than 10 percent of
18 the proceeds of the issue.

19 “(c) LIMITATION ON AMOUNT OF BONDS DES-
20 IGNATED.—

21 “(1) NATIONAL LIMITATION.—There is a na-
22 tional zone academy bond limitation for each cal-
23 endar year. Such limitation is \$400,000,000 for
24 2008 and 2009, and, except as provided in para-
25 graph (4), zero thereafter.

1 “(2) ALLOCATION OF LIMITATION.—The na-
2 tional zone academy bond limitation for a calendar
3 year shall be allocated by the Secretary among the
4 States on the basis of their respective populations of
5 individuals below the poverty line (as defined by the
6 Office of Management and Budget). The limitation
7 amount allocated to a State under the preceding
8 sentence shall be allocated by the State education
9 agency to qualified zone academies within such
10 State.

11 “(3) DESIGNATION SUBJECT TO LIMITATION
12 AMOUNT.—The maximum aggregate face amount of
13 bonds issued during any calendar year which may be
14 designated under subsection (a) with respect to any
15 qualified zone academy shall not exceed the limita-
16 tion amount allocated to such academy under para-
17 graph (2) for such calendar year.

18 “(4) CARRYOVER OF UNUSED LIMITATION.—

19 “(A) IN GENERAL.—If for any calendar
20 year—

21 “(i) the limitation amount for any
22 State, exceeds

23 “(ii) the amount of bonds issued dur-
24 ing such year which are designated under

1 subsection (a) with respect to qualified
2 zone academies within such State,
3 the limitation amount for such State for the fol-
4 lowing calendar year shall be increased by the
5 amount of such excess.

6 “(B) LIMITATION ON CARRYOVER.—Any
7 carryforward of a limitation amount may be
8 carried only to the first 2 years following the
9 unused limitation year. For purposes of the pre-
10 ceeding sentence, a limitation amount shall be
11 treated as used on a first-in first-out basis.

12 “(C) COORDINATION WITH SECTION
13 1397E.—Any carryover determined under sec-
14 tion 1397E(e)(4) (relating to carryover of un-
15 used limitation) with respect to any State to
16 calendar year 2008 shall be treated for pur-
17 poses of this section as a carryover with respect
18 to such State for such calendar year under sub-
19 paragraph (A), and the limitation of subpara-
20 graph (B) shall apply to such carryover taking
21 into account the calendar years to which such
22 carryover relates.

23 “(d) DEFINITIONS.—For purposes of this section—

24 “(1) QUALIFIED ZONE ACADEMY.—The term
25 ‘qualified zone academy’ means any public school (or

1 academic program within a public school) which is
2 established by and operated under the supervision of
3 an eligible local education agency to provide edu-
4 cation or training below the postsecondary level if—

5 “(A) such public school or program (as the
6 case may be) is designed in cooperation with
7 business to enhance the academic curriculum,
8 increase graduation and employment rates, and
9 better prepare students for the rigors of college
10 and the increasingly complex workforce,

11 “(B) students in such public school or pro-
12 gram (as the case may be) will be subject to the
13 same academic standards and assessments as
14 other students educated by the eligible local
15 education agency,

16 “(C) the comprehensive education plan of
17 such public school or program is approved by
18 the eligible local education agency, and

19 “(D)(i) such public school is located in an
20 empowerment zone or enterprise community
21 (including any such zone or community des-
22 ignated after the date of the enactment of this
23 section), or

24 “(ii) there is a reasonable expectation (as
25 of the date of issuance of the bonds) that at

1 least 35 percent of the students attending such
2 school or participating in such program (as the
3 case may be) will be eligible for free or reduced-
4 cost lunches under the school lunch program es-
5 tablished under the National School Lunch Act.

6 “(2) ELIGIBLE LOCAL EDUCATION AGENCY.—
7 For purposes of this section, the term ‘eligible local
8 education agency’ means any local educational agen-
9 cy as defined in section 9101 of the Elementary and
10 Secondary Education Act of 1965.

11 “(3) QUALIFIED PURPOSE.—The term ‘quali-
12 fied purpose’ means, with respect to any qualified
13 zone academy—

14 “(A) rehabilitating or repairing the public
15 school facility in which the academy is estab-
16 lished,

17 “(B) providing equipment for use at such
18 academy,

19 “(C) developing course materials for edu-
20 cation to be provided at such academy, and

21 “(D) training teachers and other school
22 personnel in such academy.

23 “(4) QUALIFIED CONTRIBUTIONS.—The term
24 ‘qualified contribution’ means any contribution (of a

1 type and quality acceptable to the eligible local edu-
2 cation agency) of—

3 “(A) equipment for use in the qualified
4 zone academy (including state-of-the-art tech-
5 nology and vocational equipment),

6 “(B) technical assistance in developing
7 curriculum or in training teachers in order to
8 promote appropriate market driven technology
9 in the classroom,

10 “(C) services of employees as volunteer
11 mentors,

12 “(D) internships, field trips, or other edu-
13 cational opportunities outside the academy for
14 students, or

15 “(E) any other property or service speci-
16 fied by the eligible local education agency.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Paragraph (1) of section 54A(d) is amended
19 to read as follows:

20 “(1) QUALIFIED TAX CREDIT BOND.—The term
21 ‘qualified tax credit bond’ means—

22 “(A) a qualified forestry conservation
23 bond, or

24 “(B) a qualified zone academy bond,

1 which is part of an issue that meets the require-
2 ments of paragraphs (2), (3), (4), (5), and (6).”.

3 (2) Subparagraph (C) of section 54A(d)(2) is
4 amended to read as follows:

5 “(C) QUALIFIED PURPOSE.—For purposes
6 of this paragraph, the term ‘qualified purpose’
7 means—

8 “(i) in the case of a qualified forestry
9 conservation bond, a purpose specified in
10 section 54B(e), and

11 “(ii) in the case of a qualified zone
12 academy bond, a purpose specified in sec-
13 tion 54C(a)(1).”.

14 (3) Section 1397E is amended by adding at the
15 end the following new subsection:

16 “(m) TERMINATION.—This section shall not apply to
17 any obligation issued after the date of the enactment of
18 this subsection.”.

19 (4) The table of sections for subpart I of part
20 IV of subchapter A of chapter 1 is amended by add-
21 ing at the end the following new item:

“Sec. 54C. Qualified zone academy bonds.”.

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

1 **SEC. 132. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**
2 **TRICT OF COLUMBIA.**

3 (a) DESIGNATION OF ZONE.—

4 (1) IN GENERAL.—Subsection (f) of section
5 1400 is amended by striking “2007” both places it
6 appears and inserting “2009”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to periods beginning
9 after December 31, 2007.

10 (b) TAX-EXEMPT ECONOMIC DEVELOPMENT
11 BONDS.—

12 (1) IN GENERAL.—Subsection (b) of section
13 1400A is amended by striking “2007” and inserting
14 “2009”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by this subsection shall apply to bonds issued after
17 December 31, 2007.

18 (c) ZERO PERCENT CAPITAL GAINS RATE.—

19 (1) IN GENERAL.—Subsection (b) of section
20 1400B is amended by striking “2008” each place it
21 appears and inserting “2010”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 1400B(e)(2) is amended—

24 (i) by striking “2012” and inserting
25 “2014”, and

1 (ii) by striking “2012” in the heading
2 thereof and inserting “2014”.

3 (B) Section 1400B(g)(2) is amended by
4 striking “2012” and inserting “2014”.

5 (C) Section 1400F(d) is amended by strik-
6 ing “2012” and inserting “2014”.

7 (3) EFFECTIVE DATES.—

8 (A) EXTENSION.—The amendments made
9 by paragraph (1) shall apply to acquisitions
10 after December 31, 2007.

11 (B) CONFORMING AMENDMENTS.—The
12 amendments made by paragraph (2) shall take
13 effect on the date of the enactment of this Act.

14 (d) FIRST-TIME HOMEBUYER CREDIT.—

15 (1) IN GENERAL.—Subsection (i) of section
16 1400C is amended by striking “2008” and inserting
17 “2010”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by this subsection shall apply to property purchased
20 after December 31, 2007.

21 **SEC. 133. ECONOMIC DEVELOPMENT CREDIT FOR AMER-**
22 **ICAN SAMOA.**

23 (a) IN GENERAL.—Subsection (d) of section 119 of
24 division A of the Tax Relief and Health Care Act of 2006
25 is amended—

1 (1) by striking “first two taxable years” and in-
2 serting “first 4 taxable years”, and

3 (2) by striking “January 1, 2008” and insert-
4 ing “January 1, 2010”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to taxable years beginning after
7 December 31, 2007.

8 **SEC. 134. ENHANCED CHARITABLE DEDUCTION FOR CON-**
9 **TRIBUTIONS OF FOOD INVENTORY.**

10 (a) IN GENERAL.—Clause (iv) of section
11 170(e)(3)(C) is amended by striking “December 31,
12 2007” and inserting “December 31, 2009”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to contributions made after De-
15 cember 31, 2007.

16 **SEC. 135. ENHANCED CHARITABLE DEDUCTION FOR CON-**
17 **TRIBUTIONS OF BOOK INVENTORY TO PUB-**
18 **LIC SCHOOLS.**

19 (a) IN GENERAL.—Clause (iv) of section
20 170(e)(3)(D) is amended by striking “December 31,
21 2007” and inserting “December 31, 2009”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to contributions made after De-
24 cember 31, 2007.

1 **SEC. 136. ENHANCED DEDUCTION FOR QUALIFIED COM-**
2 **PUTER CONTRIBUTIONS.**

3 (a) IN GENERAL.—Subparagraph (G) of section
4 170(e)(6) is amended by striking “December 31, 2007”
5 and inserting “December 31, 2009”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to contributions made during tax-
8 able years beginning after December 31, 2007.

9 **SEC. 137. BASIS ADJUSTMENT TO STOCK OF S CORPORA-**
10 **TIONS MAKING CHARITABLE CONTRIBU-**
11 **TIONS OF PROPERTY.**

12 (a) IN GENERAL.—The last sentence of section
13 1367(a)(2) is amended by striking “December 31, 2007”
14 and inserting “December 31, 2009”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to contributions made in taxable
17 years beginning after December 31, 2007.

18 **SEC. 138. WORK OPPORTUNITY TAX CREDIT FOR HURRI-**
19 **CANE KATRINA EMPLOYEES.**

20 (a) IN GENERAL.—Paragraph (1) of section 201(b)
21 of the Katrina Emergency Tax Relief Act of 2005 is
22 amended by striking “2-year” and inserting “4-year”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to individuals hired after August
25 27, 2007.

1 **SEC. 139. SUBPART F EXCEPTION FOR ACTIVE FINANCING**
2 **INCOME.**

3 (a) EXEMPT INSURANCE INCOME.—Paragraph (10)
4 of section 953(e) (relating to application) is amended—

5 (1) by striking “January 1, 2009” and insert-
6 ing “January 1, 2010”, and

7 (2) by striking “December 31, 2008” and in-
8 serting “December 31, 2009”.

9 (b) EXCEPTION TO TREATMENT AS FOREIGN PER-
10 SONAL HOLDING COMPANY INCOME.—Paragraph (9) of
11 section 954(h) (relating to application) is amended by
12 striking “January 1, 2009” and inserting “January 1,
13 2010”.

14 **SEC. 140. LOOK-THRU RULE FOR RELATED CONTROLLED**
15 **FOREIGN CORPORATIONS.**

16 (a) IN GENERAL.—Subparagraph (C) of section
17 954(e)(6) (relating to application) is amended by striking
18 “January 1, 2009” and inserting “January 1, 2010”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years of foreign corpora-
21 tions beginning after December 31, 2008, and to taxable
22 years of United States shareholders with or within which
23 such taxable years of foreign corporations end.

1 **SEC. 141. EXPENSING FOR CERTAIN QUALIFIED FILM AND**
2 **TELEVISION PRODUCTIONS.**

3 (a) IN GENERAL.—Subsection (f) of section 181 is
4 amended by striking “December 31, 2008” and inserting
5 “December 31, 2009”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to productions commencing after
8 December 31, 2008.

9 **Subtitle C—Other Extensions**

10 **SEC. 151. AUTHORITY TO DISCLOSE INFORMATION RE-**
11 **LATED TO TERRORIST ACTIVITIES MADE**
12 **PERMANENT.**

13 (a) IN GENERAL.—Subparagraph (C) of section
14 6103(i)(3) is amended by striking clause (iv).

15 (b) DISCLOSURE ON REQUEST.—Paragraph (7) of
16 section 6103(i) is amended by striking subparagraph (E).

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to disclosures after the date of the
19 enactment of this Act.

20 **SEC. 152. AUTHORITY FOR UNDERCOVER OPERATIONS**
21 **MADE PERMANENT.**

22 (a) IN GENERAL.—Subsection (c) of section 7608 is
23 amended by striking paragraph (6).

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall take effect on January 1, 2008.

1 **SEC. 153. INCREASE IN LIMIT ON COVER OVER OF RUM EX-**
2 **CISE TAX TO PUERTO RICO AND THE VIRGIN**
3 **ISLANDS.**

4 (a) **IN GENERAL.**—Paragraph (1) of section 7652(f)
5 is amended by striking “January 1, 2008” and inserting
6 “January 1, 2010”.

7 (b) **EFFECTIVE DATE.**—The amendment made by
8 this section shall apply to distilled spirits brought into the
9 United States after December 31, 2007.

10 **TITLE II—ADDITIONAL TAX RE-**
11 **LIEF AND OTHER PROVI-**
12 **SIONS**

13 **SEC. 201. REFUNDABLE CHILD CREDIT.**

14 (a) **MODIFICATION OF THRESHOLD AMOUNT.**—
15 Clause (i) of section 24(d)(1)(B) is amended by inserting
16 “(\$8,500 in the case of taxable years beginning in 2009)”
17 after “\$10,000”.

18 (b) **EFFECTIVE DATE.**—The amendment made by
19 subsection (a) shall apply to taxable years beginning after
20 December 31, 2008.

21 **SEC. 202. PROVISIONS RELATED TO FILM AND TELEVISION**
22 **PRODUCTIONS.**

23 (a) **MODIFICATION OF LIMITATION ON EXPENS-**
24 **ING.**—Subparagraph (A) of section 181(a)(2) is amended
25 to read as follows:

1 “(A) IN GENERAL.—Paragraph (1) shall
2 not apply to so much of the aggregate cost of
3 any qualified film or television production as ex-
4 ceeds \$15,000,000.”.

5 (b) MODIFICATIONS TO DEDUCTION FOR DOMESTIC
6 ACTIVITIES.—

7 (1) DETERMINATION OF W-2 WAGES.—Para-
8 graph (2) of section 199(b) is amended by adding at
9 the end the following new subparagraph:

10 “(D) SPECIAL RULE FOR QUALIFIED
11 FILM.—In the case of a qualified film, such
12 term shall include compensation for services
13 performed in the United States by actors, pro-
14 duction personnel, directors, and producers.”.

15 (2) DEFINITION OF QUALIFIED FILM.—Para-
16 graph (6) of section 199(e) is amended by adding at
17 the end the following: “A qualified film shall include
18 any copyrights, trademarks, or other intangibles
19 with respect to such film. The methods and means
20 of distributing a qualified film shall not affect the
21 availability of the deduction under this section.”.

22 (3) PARTNERSHIPS.—Subparagraph (A) of sec-
23 tion 199(d)(1) is amended by striking “and” at the
24 end of clause (ii), by striking the period at the end

1 of clause (iii) and inserting “, and”, and by adding
2 at the end the following new clause:

3 “(iv) in the case of each partner of a
4 partnership, or shareholder of an S cor-
5 poration, who owns (directly or indirectly)
6 at least 20 percent of the capital interests
7 in such partnership or of the stock of such
8 S corporation—

9 “(I) such partner or shareholder
10 shall be treated as having engaged di-
11 rectly in any film produced by such
12 partnership or S corporation, and

13 “(II) such partnership or S cor-
14 poration shall be treated as having en-
15 gaged directly in any film produced by
16 such partner or shareholder.”.

17 (c) CONFORMING AMENDMENT.—Section
18 181(d)(3)(A) is amended by striking “actors” and all that
19 follows and inserting “actors, production personnel, direc-
20 tors, and producers.”.

21 (d) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as otherwise pro-
23 vided in this subsection, the amendments made by
24 this section shall apply to taxable years beginning
25 after December 31, 2007.

1 (2) EXPENSING.—The amendments made by
2 subsection (a) shall apply to qualified film and tele-
3 vision productions commencing after December 31,
4 2007.

5 **SEC. 203. EXEMPTION FROM EXCISE TAX FOR CERTAIN AR-**
6 **ROWS DESIGNED FOR USE BY CHILDREN.**

7 (a) IN GENERAL.—Paragraph (2) of section 4161(b)
8 (relating to arrows) is amended by redesignating subpara-
9 graph (B) as subparagraph (C) and by inserting after sub-
10 paragraph (A) the following new subparagraph:

11 “(B) EXEMPTION FOR CERTAIN ARROW
12 SHAFTS.—Subparagraph (A) shall not apply to
13 any shaft measuring 5/16 of an inch or less in
14 diameter and consisting of either—

15 “(i) all fiberglass and hollow, or

16 “(ii) all natural wood,

17 with no laminations or artificial means of en-
18 hancing the spine of such shaft (whether sold
19 separately or incorporated as part of a finished
20 or unfinished product) of a type used in the
21 manufacture of any arrow which after its as-
22 sembly is not suitable for use with a bow de-
23 scribed in paragraph (1)(A).”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to shafts first sold after the date
3 of enactment of this Act.

4 **SEC. 204. MODIFICATION OF PENALTY ON UNDERSTATE-**
5 **MENT OF TAXPAYER'S LIABILITY BY TAX RE-**
6 **TURN PREPARER.**

7 (a) IN GENERAL.—Subsection (a) of section 6694
8 (relating to understatement due to unreasonable positions)
9 is amended to read as follows:

10 “(a) UNDERSTATEMENT DUE TO UNREASONABLE
11 POSITIONS.—

12 “(1) IN GENERAL.—If a tax return preparer—

13 “(A) prepares any return or claim of re-
14 fund with respect to which any part of an un-
15 derstatement of liability is due to a position de-
16 scribed in paragraph (2), and

17 “(B) knew (or reasonably should have
18 known) of the position,

19 such tax return preparer shall pay a penalty with re-
20 spect to each such return or claim in an amount
21 equal to the greater of \$1,000 or 50 percent of the
22 income derived (or to be derived) by the tax return
23 preparer with respect to the return or claim.

24 “(2) UNREASONABLE POSITION.—

1 “(A) IN GENERAL.—Except as otherwise
2 provided in this paragraph, a position is de-
3 scribed in this paragraph unless there is or was
4 substantial authority for the position.

5 “(B) DISCLOSED POSITIONS.—If the posi-
6 tion was disclosed as provided in section
7 6662(d)(2)(B)(ii)(I) and is not a position to
8 which subparagraph (C) applies, the position is
9 described in this paragraph unless there is a
10 reasonable basis for the position.

11 “(C) REPORTABLE TRANSACTIONS.—If the
12 position is with respect to a reportable trans-
13 action to which section 6662A applies, the posi-
14 tion is described in this paragraph unless it is
15 reasonable to believe that the position would
16 more likely than not be sustained on its merits.

17 “(3) REASONABLE CAUSE EXCEPTION.—No
18 penalty shall be imposed under this subsection if it
19 is shown that there is reasonable cause for the un-
20 derstatement and the tax return preparer acted in
21 good faith.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply—

24 (1) in the case of a position other than a posi-
25 tion described in subparagraph (C) of section

1 6694(a)(2) of the Internal Revenue Code of 1986
2 (as amended by this section), to returns prepared
3 after May 25, 2007, and

4 (2) in the case of a position described in such
5 subparagraph (C), to returns prepared for taxable
6 years beginning after the date of the enactment of
7 this Act.

8 **TITLE III—SECURE RURAL**
9 **SCHOOLS**

10 **SEC. 301. SECURE RURAL SCHOOLS AND COMMUNITY SELF-**
11 **DETERMINATION PROGRAM.**

12 (a) REAUTHORIZATION OF THE SECURE RURAL
13 SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT
14 OF 2000.—The Secure Rural Schools and Community
15 Self-Determination Act of 2000 (16 U.S.C. 500 note; Pub-
16 lic Law 106–393) is amended by striking sections 1
17 through 403 and inserting the following:

18 **“SECTION 1. SHORT TITLE.**

19 “‘This Act may be cited as the ‘Secure Rural Schools
20 and Community Self-Determination Act of 2000’.

21 **“SEC. 2. PURPOSES.**

22 “‘The purposes of this Act are—

23 “(1) to stabilize and transition payments to
24 counties to provide funding for schools and roads
25 that supplements other available funds;

1 “(2) to make additional investments in, and
2 create additional employment opportunities through,
3 projects that—

4 “(A)(i) improve the maintenance of exist-
5 ing infrastructure;

6 “(ii) implement stewardship objectives that
7 enhance forest ecosystems; and

8 “(iii) restore and improve land health and
9 water quality;

10 “(B) enjoy broad-based support; and

11 “(C) have objectives that may include—

12 “(i) road, trail, and infrastructure
13 maintenance or obliteration;

14 “(ii) soil productivity improvement;

15 “(iii) improvements in forest eco-
16 system health;

17 “(iv) watershed restoration and main-
18 tenance;

19 “(v) the restoration, maintenance, and
20 improvement of wildlife and fish habitat;

21 “(vi) the control of noxious and exotic
22 weeds; and

23 “(vii) the reestablishment of native
24 species; and

1 “(3) to improve cooperative relationships
2 among—

3 “(A) the people that use and care for Fed-
4 eral land; and

5 “(B) the agencies that manage the Federal
6 land.

7 **“SEC. 3. DEFINITIONS.**

8 “In this Act:

9 “(1) ADJUSTED SHARE.—The term ‘adjusted
10 share’ means the number equal to the quotient ob-
11 tained by dividing—

12 “(A) the number equal to the quotient ob-
13 tained by dividing—

14 “(i) the base share for the eligible
15 county; by

16 “(ii) the income adjustment for the el-
17 igible county; by

18 “(B) the number equal to the sum of the
19 quotients obtained under subparagraph (A) and
20 paragraph (8)(A) for all eligible counties.

21 “(2) BASE SHARE.—The term ‘base share’
22 means the number equal to the average of—

23 “(A) the quotient obtained by dividing—

1 “(i) the number of acres of Federal
2 land described in paragraph (7)(A) in each
3 eligible county; by

4 “(ii) the total number acres of Fed-
5 eral land in all eligible counties in all eligi-
6 ble States; and

7 “(B) the quotient obtained by dividing—

8 “(i) the amount equal to the average
9 of the 3 highest 25-percent payments and
10 safety net payments made to each eligible
11 State for each eligible county during the
12 eligibility period; by

13 “(ii) the amount equal to the sum of
14 the amounts calculated under clause (i)
15 and paragraph (9)(B)(i) for all eligible
16 counties in all eligible States during the
17 eligibility period.

18 “(3) COUNTY PAYMENT.—The term ‘county
19 payment’ means the payment for an eligible county
20 calculated under section 101(b).

21 “(4) ELIGIBLE COUNTY.—The term ‘eligible
22 county’ means any county that—

23 “(A) contains Federal land (as defined in
24 paragraph (7)); and

1 “(B) elects to receive a share of the State
2 payment or the county payment under section
3 102(b).

4 “(5) ELIGIBILITY PERIOD.—The term ‘eligi-
5 bility period’ means fiscal year 1986 through fiscal
6 year 1999.

7 “(6) ELIGIBLE STATE.—The term ‘eligible
8 State’ means a State or territory of the United
9 States that received a 25-percent payment for 1 or
10 more fiscal years of the eligibility period.

11 “(7) FEDERAL LAND.—The term ‘Federal land’
12 means—

13 “(A) land within the National Forest Sys-
14 tem, as defined in section 11(a) of the Forest
15 and Rangeland Renewable Resources Planning
16 Act of 1974 (16 U.S.C. 1609(a)) exclusive of
17 the National Grasslands and land utilization
18 projects designated as National Grasslands ad-
19 ministered pursuant to the Act of July 22,
20 1937 (7 U.S.C. 1010–1012); and

21 “(B) such portions of the revested Oregon
22 and California Railroad and reconveyed Coos
23 Bay Wagon Road grant land as are or may
24 hereafter come under the jurisdiction of the De-
25 partment of the Interior, which have heretofore

1 or may hereafter be classified as timberlands,
2 and power-site land valuable for timber, that
3 shall be managed, except as provided in the
4 former section 3 of the Act of August 28, 1937
5 (50 Stat. 875; 43 U.S.C. 1181c), for permanent
6 forest production.

7 “(8) 50-PERCENT ADJUSTED SHARE.—The
8 term ‘50-percent adjusted share’ means the number
9 equal to the quotient obtained by dividing—

10 “(A) the number equal to the quotient ob-
11 tained by dividing—

12 “(i) the 50-percent base share for the
13 eligible county; by

14 “(ii) the income adjustment for the el-
15 igible county; by

16 “(B) the number equal to the sum of the
17 quotients obtained under subparagraph (A) and
18 paragraph (1)(A) for all eligible counties.

19 “(9) 50-PERCENT BASE SHARE.—The term ‘50-
20 percent base share’ means the number equal to the
21 average of—

22 “(A) the quotient obtained by dividing—

23 “(i) the number of acres of Federal
24 land described in paragraph (7)(B) in each
25 eligible county; by

1 “(ii) the total number acres of Fed-
2 eral land in all eligible counties in all eligi-
3 ble States; and

4 “(B) the quotient obtained by dividing—

5 “(i) the amount equal to the average
6 of the 3 highest 50-percent payments made
7 to each eligible county during the eligibility
8 period; by

9 “(ii) the amount equal to the sum of
10 the amounts calculated under clause (i)
11 and paragraph (2)(B)(i) for all eligible
12 counties in all eligible States during the
13 eligibility period.

14 “(10) 50-PERCENT PAYMENT.—The term ‘50-
15 percent payment’ means the payment that is the
16 sum of the 50-percent share otherwise paid to a
17 county pursuant to title II of the Act of August 28,
18 1937 (chapter 876; 50 Stat. 875; 43 U.S.C. 1181f),
19 and the payment made to a county pursuant to the
20 Act of May 24, 1939 (chapter 144; 53 Stat. 753; 43
21 U.S.C. 1181f–1 et seq.).

22 “(11) FULL FUNDING AMOUNT.—The term ‘full
23 funding amount’ means \$500,000,000 for fiscal year
24 2008.

1 “(12) INCOME ADJUSTMENT.—The term ‘in-
2 come adjustment’ means the square of the quotient
3 obtained by dividing—

4 “(A) the per capita personal income for
5 each eligible county; by

6 “(B) the median per capita personal in-
7 come of all eligible counties.

8 “(13) PER CAPITA PERSONAL INCOME.—The
9 term ‘per capita personal income’ means the most
10 recent per capita personal income data, as deter-
11 mined by the Bureau of Economic Analysis.

12 “(14) SAFETY NET PAYMENTS.—The term
13 ‘safety net payments’ means the special payment
14 amounts paid to States and counties required by
15 section 13982 or 13983 of the Omnibus Budget
16 Reconciliation Act of 1993 (Public Law 103–66; 16
17 U.S.C. 500 note; 43 U.S.C. 1181f note).

18 “(15) SECRETARY CONCERNED.—The term
19 ‘Secretary concerned’ means—

20 “(A) the Secretary of Agriculture or the
21 designee of the Secretary of Agriculture with
22 respect to the Federal land described in para-
23 graph (7)(A); and

24 “(B) the Secretary of the Interior or the
25 designee of the Secretary of the Interior with

1 respect to the Federal land described in para-
2 graph (7)(B).

3 “(16) STATE PAYMENT.—The term ‘State pay-
4 ment’ means the payment for an eligible State cal-
5 culated under section 101(a).

6 “(17) 25-PERCENT PAYMENT.—The term ‘25-
7 percent payment’ means the payment to States re-
8 quired by the sixth paragraph under the heading of
9 ‘FOREST SERVICE’ in the Act of May 23, 1908
10 (35 Stat. 260; 16 U.S.C. 500), and section 13 of the
11 Act of March 1, 1911 (36 Stat. 963; 16 U.S.C.
12 500).

13 **“TITLE I—SECURE PAYMENTS**
14 **FOR STATES AND COUNTIES**
15 **CONTAINING FEDERAL LAND**

16 **“SEC. 101. SECURE PAYMENTS FOR STATES CONTAINING**
17 **FEDERAL LAND.**

18 “(a) STATE PAYMENT.—For fiscal year 2008, the
19 Secretary of Agriculture shall calculate for each eligible
20 State an amount equal to the sum of the products ob-
21 tained by multiplying—

22 “(1) the adjusted share for each eligible county
23 within the eligible State; by

24 “(2) the full funding amount for the fiscal year.

1 “(b) COUNTY PAYMENT.—For fiscal year 2008, the
2 Secretary of the Interior shall calculate for each eligible
3 county that received a 50-percent payment during the eli-
4 gibility period an amount equal to the product obtained
5 by multiplying—

6 “(1) the 50-percent adjusted share for the eligi-
7 ble county; by

8 “(2) the full funding amount for the fiscal year.

9 **“SEC. 102. PAYMENTS TO STATES AND COUNTIES.**

10 “(a) PAYMENT AMOUNTS.—Except as provided in
11 section 103, the Secretary of the Treasury shall pay to—

12 “(1) a State or territory of the United States
13 an amount equal to the sum of the amounts elected
14 under subsection (b) by each county within the State
15 or territory for—

16 “(A) if the county is eligible for the 25-
17 percent payment, the share of the 25-percent
18 payment; or

19 “(B) the share of the State payment of the
20 eligible county; and

21 “(2) a county an amount equal to the amount
22 elected under subsection (b) by each county for—

23 “(A) if the county is eligible for the 50-
24 percent payment, the 50-percent payment; or

1 “(B) the county payment for the eligible
2 county.

3 “(b) ELECTION TO RECEIVE PAYMENT AMOUNT.—

4 “(1) ELECTION; SUBMISSION OF RESULTS.—

5 “(A) IN GENERAL.—The election to receive
6 a share of the State payment, the county pay-
7 ment, a share of the State payment and the
8 county payment, a share of the 25-percent pay-
9 ment, the 50-percent payment, or a share of the
10 25-percent payment and the 50-percent pay-
11 ment, as applicable, shall be made at the discre-
12 tion of each affected county by August 1, 2008
13 (or as soon thereafter as the Secretary con-
14 cerned determines is practicable) and trans-
15 mitted to the Secretary concerned by the Gov-
16 ernor of each eligible State.

17 “(B) FAILURE TO TRANSMIT.—If an elec-
18 tion for an affected county is not transmitted to
19 the Secretary concerned by the date specified
20 under subparagraph (A), the affected county
21 shall be considered to have elected to receive a
22 share of the State payment, the county pay-
23 ment, or a share of the State payment and the
24 county payment, as applicable.

1 “(2) SOURCE OF PAYMENT AMOUNTS.—The
2 payment to an eligible State or eligible county under
3 this section for a fiscal year shall be derived from—

4 “(A) any amounts that are appropriated to
5 carry out this Act;

6 “(B) any revenues, fees, penalties, or mis-
7 cellaneous receipts, exclusive of deposits to any
8 relevant trust fund, special account, or perma-
9 nent operating funds, received by the Federal
10 Government from activities by the Bureau of
11 Land Management or the Forest Service on the
12 applicable Federal land; and

13 “(C) to the extent of any shortfall, out of
14 any amounts in the Treasury of the United
15 States not otherwise appropriated.

16 “(c) DISTRIBUTION AND EXPENDITURE OF PAY-
17 MENTS.—

18 “(1) DISTRIBUTION METHOD.—A State that re-
19 ceives a payment under subsection (a) for Federal
20 land described in section 3(7)(A) shall distribute the
21 appropriate payment amount among the appropriate
22 counties in the State in accordance with—

23 “(A) the Act of May 23, 1908 (16 U.S.C.
24 500); and

1 “(B) section 13 of the Act of March 1,
2 1911 (36 Stat. 963; 16 U.S.C. 500).

3 “(2) EXPENDITURE PURPOSES.—Subject to
4 subsection (d), payments received by a State under
5 subsection (a) and distributed to counties in accord-
6 ance with paragraph (1) shall be expended as re-
7 quired by the laws referred to in paragraph (1).

8 “(d) EXPENDITURE RULES FOR ELIGIBLE COUN-
9 TIES.—

10 “(1) ALLOCATIONS.—

11 “(A) USE OF PORTION IN SAME MANNER
12 AS 25-PERCENT PAYMENT OR 50-PERCENT PAY-
13 MENT, AS APPLICABLE.—Except as provided in
14 paragraph (3)(B), if an eligible county elects to
15 receive its share of the State payment or the
16 county payment, not less than 80 percent, but
17 not more than 85 percent, of the funds shall be
18 expended in the same manner in which the 25-
19 percent payments or 50-percent payment, as
20 applicable, are required to be expended.

21 “(B) ELECTION AS TO USE OF BAL-
22 ANCE.—Except as provided in subparagraph
23 (C), an eligible county shall elect to do 1 or
24 more of the following with the balance of any

1 funds not expended pursuant to subparagraph
2 (A):

3 “(i) Reserve any portion of the bal-
4 ance for projects in accordance with title
5 II.

6 “(ii) Reserve not more than 7 percent
7 of the total share for the eligible county of
8 the State payment or the county payment
9 for projects in accordance with title III.

10 “(iii) Return the portion of the bal-
11 ance not reserved under clauses (i) and (ii)
12 to the Treasury of the United States.

13 “(C) COUNTIES WITH MODEST DISTRIBUTIONS.—In the case of each eligible county to
14 which more than \$100,000, but less than
15 \$350,000, is distributed for any fiscal year pur-
16 suant to either or both of paragraphs (1)(B)
17 and (2)(B) of subsection (a), the eligible coun-
18 ty, with respect to the balance of any funds not
19 expended pursuant to subparagraph (A) for
20 that fiscal year, shall—

21 “(i) reserve any portion of the balance
22 for—

23 “(I) carrying out projects under
24 title II;
25

1 “(II) carrying out projects under
2 title III; or

3 “(III) a combination of the pur-
4 poses described in subclauses (I) and
5 (II); or

6 “(ii) return the portion of the balance
7 not reserved under clause (i) to the Treas-
8 ury of the United States.

9 “(2) DISTRIBUTION OF FUNDS.—

10 “(A) IN GENERAL.—Funds reserved by an
11 eligible county under subparagraph (B)(i) or
12 (C)(i) of paragraph (1) for carrying out
13 projects under title II shall be deposited in a
14 special account in the Treasury of the United
15 States.

16 “(B) AVAILABILITY.—Amounts deposited
17 under subparagraph (A) shall—

18 “(i) be available for expenditure by
19 the Secretary concerned, without further
20 appropriation; and

21 “(ii) remain available until expended
22 in accordance with title II.

23 “(3) ELECTION.—

24 “(A) NOTIFICATION.—

1 “(i) IN GENERAL.—An eligible county
2 shall notify the Secretary concerned of an
3 election by the eligible county under this
4 subsection not later than September 30,
5 2008 (or as soon thereafter as the Sec-
6 retary concerned determines is prac-
7 ticable).

8 “(ii) FAILURE TO ELECT.—Except as
9 provided in subparagraph (B), if the eligi-
10 ble county fails to make an election by the
11 date specified in clause (i), the eligible
12 county shall—

13 “(I) be considered to have elected
14 to expend 85 percent of the funds in
15 accordance with paragraph (1)(A);
16 and

17 “(II) return the balance to the
18 Treasury of the United States.

19 “(B) COUNTIES WITH MINOR DISTRIBUTI-
20 ONS.—In the case of each eligible county to
21 which less than \$100,000 is distributed for any
22 fiscal year pursuant to either or both of para-
23 graphs (1)(B) and (2)(B) of subsection (a), the
24 eligible county may elect to expend all the funds
25 in the same manner in which the 25-percent

1 payments or 50-percent payments, as applica-
2 ble, are required to be expended.

3 “(e) TIME FOR PAYMENT.—The payments required
4 under this section for a fiscal year shall be made as soon
5 as practicable after the end of that fiscal year.

6 **“SEC. 103. TRANSITION PAYMENTS TO STATES.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) ADJUSTED AMOUNT.—The term ‘adjusted
9 amount’ means, with respect to a covered State for
10 fiscal year 2008, 90 percent of—

11 “(A) the sum of the amounts paid for fis-
12 cal year 2006 under section 102(a)(2) (as in ef-
13 fect on September 29, 2006) for the eligible
14 counties in the covered State that have elected
15 under section 102(b) to receive a share of the
16 State payment for fiscal year 2008; and

17 “(B) the sum of the amounts paid for fis-
18 cal year 2006 under section 103(a)(2) (as in ef-
19 fect on September 29, 2006) for the eligible
20 counties in the State of Oregon that have elect-
21 ed under section 102(b) to receive the county
22 payment for fiscal year 2008.

23 “(2) COVERED STATE.—The term ‘covered
24 State’ means each of the States of California, Lou-

1 isiana, Oregon, Pennsylvania, South Carolina, South
2 Dakota, Texas, and Washington.

3 “(b) TRANSITION PAYMENTS.—For fiscal year 2008,
4 in lieu of the payment amounts that otherwise would have
5 been made under paragraphs (1)(B) and (2)(B) of section
6 102(a), the Secretary of the Treasury shall pay the ad-
7 justed amount to each covered State and the eligible coun-
8 ties within the covered State, as applicable.

9 “(c) DISTRIBUTION OF ADJUSTED AMOUNT.—Ex-
10 cept as provided in subsection (d), it is the intent of Con-
11 gress that the method of distributing the payments under
12 subsection (b) among the counties in the covered States
13 for fiscal year 2008 be in the same proportion that the
14 payments were distributed to the eligible counties in fiscal
15 year 2006.

16 “(d) DISTRIBUTION OF PAYMENTS IN CALI-
17 FORNIA.—The following payments shall be distributed
18 among the eligible counties in the State of California in
19 the same proportion that payments under section
20 102(a)(2) (as in effect on September 29, 2006) were dis-
21 tributed to the eligible counties for fiscal year 2006:

22 “(1) Payments to the State of California under
23 subsection (b).

1 “(2) The shares of the eligible counties of the
2 State payment for California under section 102 for
3 fiscal year 2011.

4 “(e) TREATMENT OF PAYMENTS.—For purposes of
5 this Act, any payment made under subsection (b) shall be
6 considered to be a payment made under section 102(a).

7 **“TITLE II—SPECIAL PROJECTS**
8 **ON FEDERAL LAND**

9 **“SEC. 201. DEFINITIONS.**

10 “In this title:

11 “(1) PARTICIPATING COUNTY.—The term ‘par-
12 ticipating county’ means an eligible county that
13 elects under section 102(d) to expend a portion of
14 the Federal funds received under section 102 in ac-
15 cordance with this title.

16 “(2) PROJECT FUNDS.—The term ‘project
17 funds’ means all funds an eligible county elects
18 under section 102(d) to reserve for expenditure in
19 accordance with this title.

20 “(3) RESOURCE ADVISORY COMMITTEE.—The
21 term ‘resource advisory committee’ means—

22 “(A) an advisory committee established by
23 the Secretary concerned under section 205; or

1 “(B) an advisory committee determined by
2 the Secretary concerned to meet the require-
3 ments of section 205.

4 “(4) RESOURCE MANAGEMENT PLAN.—The
5 term ‘resource management plan’ means—

6 “(A) a land use plan prepared by the Bu-
7 reau of Land Management for units of the Fed-
8 eral land described in section 3(7)(B) pursuant
9 to section 202 of the Federal Land Policy and
10 Management Act of 1976 (43 U.S.C. 1712); or

11 “(B) a land and resource management
12 plan prepared by the Forest Service for units of
13 the National Forest System pursuant to section
14 6 of the Forest and Rangeland Renewable Re-
15 sources Planning Act of 1974 (16 U.S.C.
16 1604).

17 **“SEC. 202. GENERAL LIMITATION ON USE OF PROJECT**
18 **FUNDS.**

19 “(a) LIMITATION.—Project funds shall be expended
20 solely on projects that meet the requirements of this title.

21 “(b) AUTHORIZED USES.—Project funds may be
22 used by the Secretary concerned for the purpose of enter-
23 ing into and implementing cooperative agreements with
24 willing Federal agencies, State and local governments, pri-
25 vate and nonprofit entities, and landowners for protection,

1 restoration, and enhancement of fish and wildlife habitat,
2 and other resource objectives consistent with the purposes
3 of this Act on Federal land and on non-Federal land where
4 projects would benefit the resources on Federal land.

5 **“SEC. 203. SUBMISSION OF PROJECT PROPOSALS.**

6 “(a) SUBMISSION OF PROJECT PROPOSALS TO SEC-
7 RETARY CONCERNED.—

8 “(1) PROJECTS FUNDED USING PROJECT
9 FUNDS.—Not later than September 30 for fiscal
10 year 2008 (or as soon thereafter as the Secretary
11 concerned determines is practicable) each resource
12 advisory committee shall submit to the Secretary
13 concerned a description of any projects that the re-
14 source advisory committee proposes the Secretary
15 undertake using any project funds reserved by eligi-
16 ble counties in the area in which the resource advi-
17 sory committee has geographic jurisdiction.

18 “(2) PROJECTS FUNDED USING OTHER
19 FUNDS.—A resource advisory committee may submit
20 to the Secretary concerned a description of any
21 projects that the committee proposes the Secretary
22 undertake using funds from State or local govern-
23 ments, or from the private sector, other than project
24 funds and funds appropriated and otherwise avail-
25 able to do similar work.

1 “(3) JOINT PROJECTS.—Participating counties
2 or other persons may propose to pool project funds
3 or other funds, described in paragraph (2), and
4 jointly propose a project or group of projects to a re-
5 source advisory committee established under section
6 205.

7 “(b) REQUIRED DESCRIPTION OF PROJECTS.—In
8 submitting proposed projects to the Secretary concerned
9 under subsection (a), a resource advisory committee shall
10 include in the description of each proposed project the fol-
11 lowing information:

12 “(1) The purpose of the project and a descrip-
13 tion of how the project will meet the purposes of this
14 title.

15 “(2) The anticipated duration of the project.

16 “(3) The anticipated cost of the project.

17 “(4) The proposed source of funding for the
18 project, whether project funds or other funds.

19 “(5)(A) Expected outcomes, including how the
20 project will meet or exceed desired ecological condi-
21 tions, maintenance objectives, or stewardship objec-
22 tives.

23 “(B) An estimate of the amount of any timber,
24 forage, and other commodities and other economic

1 activity, including jobs generated, if any, anticipated
2 as part of the project.

3 “(6) A detailed monitoring plan, including
4 funding needs and sources, that—

5 “(A) tracks and identifies the positive or
6 negative impacts of the project, implementation,
7 and provides for validation monitoring; and

8 “(B) includes an assessment of the fol-
9 lowing:

10 “(i) Whether or not the project met or
11 exceeded desired ecological conditions; cre-
12 ated local employment or training opportu-
13 nities, including summer youth jobs pro-
14 grams such as the Youth Conservation
15 Corps where appropriate.

16 “(ii) Whether the project improved
17 the use of, or added value to, any products
18 removed from land consistent with the pur-
19 poses of this title.

20 “(7) An assessment that the project is to be in
21 the public interest.

22 “(c) AUTHORIZED PROJECTS.—Projects proposed
23 under subsection (a) shall be consistent with section 2.

1 **“SEC. 204. EVALUATION AND APPROVAL OF PROJECTS BY**
2 **SECRETARY CONCERNED.**

3 “(a) CONDITIONS FOR APPROVAL OF PROPOSED
4 PROJECT.—The Secretary concerned may make a decision
5 to approve a project submitted by a resource advisory com-
6 mittee under section 203 only if the proposed project satis-
7 fies each of the following conditions:

8 “(1) The project complies with all applicable
9 Federal laws (including regulations).

10 “(2) The project is consistent with the applica-
11 ble resource management plan and with any water-
12 shed or subsequent plan developed pursuant to the
13 resource management plan and approved by the Sec-
14 retary concerned.

15 “(3) The project has been approved by the re-
16 source advisory committee in accordance with sec-
17 tion 205, including the procedures issued under sub-
18 section (e) of that section.

19 “(4) A project description has been submitted
20 by the resource advisory committee to the Secretary
21 concerned in accordance with section 203.

22 “(5) The project will improve the maintenance
23 of existing infrastructure, implement stewardship ob-
24 jectives that enhance forest ecosystems, and restore
25 and improve land health and water quality.

26 “(b) ENVIRONMENTAL REVIEWS.—

1 “(1) REQUEST FOR PAYMENT BY COUNTY.—

2 The Secretary concerned may request the resource
3 advisory committee submitting a proposed project to
4 agree to the use of project funds to pay for any envi-
5 ronmental review, consultation, or compliance with
6 applicable environmental laws required in connection
7 with the project.

8 “(2) CONDUCT OF ENVIRONMENTAL REVIEW.—

9 If a payment is requested under paragraph (1) and
10 the resource advisory committee agrees to the ex-
11 penditure of funds for this purpose, the Secretary
12 concerned shall conduct environmental review, con-
13 sultation, or other compliance responsibilities in ac-
14 cordance with Federal laws (including regulations).

15 “(3) EFFECT OF REFUSAL TO PAY.—

16 “(A) IN GENERAL.—If a resource advisory
17 committee does not agree to the expenditure of
18 funds under paragraph (1), the project shall be
19 deemed withdrawn from further consideration
20 by the Secretary concerned pursuant to this
21 title.

22 “(B) EFFECT OF WITHDRAWAL.—A with-
23 drawal under subparagraph (A) shall be deemed
24 to be a rejection of the project for purposes of
25 section 207(c).

1 “(c) DECISIONS OF SECRETARY CONCERNED.—

2 “(1) REJECTION OF PROJECTS.—

3 “(A) IN GENERAL.—A decision by the Sec-
4 retary concerned to reject a proposed project
5 shall be at the sole discretion of the Secretary
6 concerned.

7 “(B) NO ADMINISTRATIVE APPEAL OR JU-
8 DICIAL REVIEW.—Notwithstanding any other
9 provision of law, a decision by the Secretary
10 concerned to reject a proposed project shall not
11 be subject to administrative appeal or judicial
12 review.

13 “(C) NOTICE OF REJECTION.—Not later
14 than 30 days after the date on which the Sec-
15 retary concerned makes the rejection decision,
16 the Secretary concerned shall notify in writing
17 the resource advisory committee that submitted
18 the proposed project of the rejection and the
19 reasons for rejection.

20 “(2) NOTICE OF PROJECT APPROVAL.—The
21 Secretary concerned shall publish in the Federal
22 Register notice of each project approved under sub-
23 section (a) if the notice would be required had the
24 project originated with the Secretary.

1 “(d) SOURCE AND CONDUCT OF PROJECT.—Once the
2 Secretary concerned accepts a project for review under
3 section 203, the acceptance shall be deemed a Federal ac-
4 tion for all purposes.

5 “(e) IMPLEMENTATION OF APPROVED PROJECTS.—

6 “(1) COOPERATION.—Notwithstanding chapter
7 63 of title 31, United States Code, using project
8 funds the Secretary concerned may enter into con-
9 tracts, grants, and cooperative agreements with
10 States and local governments, private and nonprofit
11 entities, and landowners and other persons to assist
12 the Secretary in carrying out an approved project.

13 “(2) BEST VALUE CONTRACTING.—

14 “(A) IN GENERAL.—For any project in-
15 volving a contract authorized by paragraph (1)
16 the Secretary concerned may elect a source for
17 performance of the contract on a best value
18 basis.

19 “(B) FACTORS.—The Secretary concerned
20 shall determine best value based on such factors
21 as—

22 “(i) the technical demands and com-
23 plexity of the work to be done;

24 “(ii)(I) the ecological objectives of the
25 project; and

1 “(II) the sensitivity of the resources
2 being treated;

3 “(iii) the past experience by the con-
4 tractor with the type of work being done,
5 using the type of equipment proposed for
6 the project, and meeting or exceeding de-
7 sired ecological conditions; and

8 “(iv) the commitment of the con-
9 tractor to hiring highly qualified workers
10 and local residents.

11 “(3) MERCHANTABLE TIMBER CONTRACTING
12 PILOT PROGRAM.—

13 “(A) ESTABLISHMENT.—The Secretary
14 concerned shall establish a pilot program to im-
15 plement a certain percentage of approved
16 projects involving the sale of merchantable tim-
17 ber using separate contracts for—

18 “(i) the harvesting or collection of
19 merchantable timber; and

20 “(ii) the sale of the timber.

21 “(B) ANNUAL PERCENTAGES.—Under the
22 pilot program, the Secretary concerned shall en-
23 sure that, on a nationwide basis, not less than
24 35 percent of all approved projects involving the

1 sale of merchantable timber are implemented
2 using separate contracts.

3 “(C) INCLUSION IN PILOT PROGRAM.—The
4 decision whether to use separate contracts to
5 implement a project involving the sale of mer-
6 chantable timber shall be made by the Sec-
7 retary concerned after the approval of the
8 project under this title.

9 “(D) ASSISTANCE.—

10 “(i) IN GENERAL.—The Secretary
11 concerned may use funds from any appro-
12 priated account available to the Secretary
13 for the Federal land to assist in the ad-
14 ministration of projects conducted under
15 the pilot program.

16 “(ii) MAXIMUM AMOUNT OF ASSIST-
17 ANCE.—The total amount obligated under
18 this subparagraph may not exceed
19 \$1,000,000 for any fiscal year during
20 which the pilot program is in effect.

21 “(E) REVIEW AND REPORT.—

22 “(i) INITIAL REPORT.—Not later than
23 September 30, 2010, the Comptroller Gen-
24 eral shall submit to the Committees on Ag-
25 riculture, Nutrition, and Forestry and En-

1 ergy and Natural Resources of the Senate
2 and the Committees on Agriculture and
3 Natural Resources of the House of Rep-
4 resentatives a report assessing the pilot
5 program.

6 “(ii) ANNUAL REPORT.—The Sec-
7 retary concerned shall submit to the Com-
8 mittees on Agriculture, Nutrition, and For-
9 estry and Energy and Natural Resources
10 of the Senate and the Committees on Agri-
11 culture and Natural Resources of the
12 House of Representatives an annual report
13 describing the results of the pilot program.

14 “(f) REQUIREMENTS FOR PROJECT FUNDS.—The
15 Secretary shall ensure that at least 50 percent of all
16 project funds be used for projects that are primarily dedi-
17 cated—

18 “(1) to road maintenance, decommissioning, or
19 obliteration; or

20 “(2) to restoration of streams and watersheds.

21 **“SEC. 205. RESOURCE ADVISORY COMMITTEES.**

22 “(a) ESTABLISHMENT AND PURPOSE OF RESOURCE
23 ADVISORY COMMITTEES.—

24 “(1) ESTABLISHMENT.—The Secretary con-
25 cerned shall establish and maintain resource advi-

1 sory committees to perform the duties in subsection
2 (b), except as provided in paragraph (4).

3 “(2) PURPOSE.—The purpose of a resource ad-
4 visory committee shall be—

5 “(A) to improve collaborative relationships;
6 and

7 “(B) to provide advice and recommenda-
8 tions to the land management agencies con-
9 sistent with the purposes of this title.

10 “(3) ACCESS TO RESOURCE ADVISORY COMMIT-
11 TEES.—To ensure that each unit of Federal land
12 has access to a resource advisory committee, and
13 that there is sufficient interest in participation on a
14 committee to ensure that membership can be bal-
15 anced in terms of the points of view represented and
16 the functions to be performed, the Secretary con-
17 cerned may, establish resource advisory committees
18 for part of, or 1 or more, units of Federal land.

19 “(4) EXISTING ADVISORY COMMITTEES.—

20 “(A) IN GENERAL.—An advisory com-
21 mittee that meets the requirements of this sec-
22 tion, a resource advisory committee established
23 before September 29, 2006, or an advisory com-
24 mittee determined by the Secretary concerned
25 before September 29, 2006, to meet the re-

1 quirements of this section may be deemed by
2 the Secretary concerned to be a resource advi-
3 sory committee for the purposes of this title.

4 “(B) CHARTER.—A charter for a com-
5 mittee described in subparagraph (A) that was
6 filed on or before September 29, 2006, shall be
7 considered to be filed for purposes of this Act.

8 “(C) BUREAU OF LAND MANAGEMENT AD-
9 VISORY COMMITTEES.—The Secretary of the In-
10 terior may deem a resource advisory committee
11 meeting the requirements of subpart 1784 of
12 part 1780 of title 43, Code of Federal Regula-
13 tions, as a resource advisory committee for the
14 purposes of this title.

15 “(b) DUTIES.—A resource advisory committee
16 shall—

17 “(1) review projects proposed under this title by
18 participating counties and other persons;

19 “(2) propose projects and funding to the Sec-
20 retary concerned under section 203;

21 “(3) provide early and continuous coordination
22 with appropriate land management agency officials
23 in recommending projects consistent with purposes
24 of this Act under this title;

1 “(4) provide frequent opportunities for citizens,
2 organizations, tribes, land management agencies,
3 and other interested parties to participate openly
4 and meaningfully, beginning at the early stages of
5 the project development process under this title;

6 “(5)(A) monitor projects that have been ap-
7 proved under section 204; and

8 “(B) advise the designated Federal official on
9 the progress of the monitoring efforts under sub-
10 paragraph (A); and

11 “(6) make recommendations to the Secretary
12 concerned for any appropriate changes or adjust-
13 ments to the projects being monitored by the re-
14 source advisory committee.

15 “(c) APPOINTMENT BY THE SECRETARY.—

16 “(1) APPOINTMENT AND TERM.—

17 “(A) IN GENERAL.—The Secretary con-
18 cerned, shall appoint the members of resource
19 advisory committees for a term of 4 years be-
20 ginning on the date of appointment.

21 “(B) REAPPOINTMENT.—The Secretary
22 concerned may reappoint members to subse-
23 quent 4-year terms.

24 “(2) BASIC REQUIREMENTS.—The Secretary
25 concerned shall ensure that each resource advisory

1 committee established meets the requirements of
2 subsection (d).

3 “(3) INITIAL APPOINTMENT.—Not later than
4 180 days after the date of the enactment of this Act,
5 the Secretary concerned shall make initial appoint-
6 ments to the resource advisory committees.

7 “(4) VACANCIES.—The Secretary concerned
8 shall make appointments to fill vacancies on any re-
9 source advisory committee as soon as practicable
10 after the vacancy has occurred.

11 “(5) COMPENSATION.—Members of the re-
12 source advisory committees shall not receive any
13 compensation.

14 “(d) COMPOSITION OF ADVISORY COMMITTEE.—

15 “(1) NUMBER.—Each resource advisory com-
16 mittee shall be comprised of 15 members.

17 “(2) COMMUNITY INTERESTS REPRESENTED.—
18 Committee members shall be representative of the
19 interests of the following 3 categories:

20 “(A) 5 persons that—

21 “(i) represent organized labor or non-
22 timber forest product harvester groups;

23 “(ii) represent developed outdoor
24 recreation, off highway vehicle users, or
25 commercial recreation activities;

- 1 “(iii) represent—
- 2 “(I) energy and mineral develop-
- 3 ment interests; or
- 4 “(II) commercial or recreational
- 5 fishing interests;
- 6 “(iv) represent the commercial timber
- 7 industry; or
- 8 “(v) hold Federal grazing or other
- 9 land use permits, or represent nonindus-
- 10 trial private forest land owners, within the
- 11 area for which the committee is organized.
- 12 “(B) 5 persons that represent—
- 13 “(i) nationally recognized environ-
- 14 mental organizations;
- 15 “(ii) regionally or locally recognized
- 16 environmental organizations;
- 17 “(iii) dispersed recreational activities;
- 18 “(iv) archaeological and historical in-
- 19 terests; or
- 20 “(v) nationally or regionally recog-
- 21 nized wild horse and burro interest groups,
- 22 wildlife or hunting organizations, or water-
- 23 shed associations.
- 24 “(C) 5 persons that—

1 “(i) hold State elected office (or a
2 designee);

3 “(ii) hold county or local elected of-
4 fice;

5 “(iii) represent American Indian
6 tribes within or adjacent to the area for
7 which the committee is organized;

8 “(iv) are school officials or teachers;
9 or

10 “(v) represent the affected public at
11 large.

12 “(3) BALANCED REPRESENTATION.—In ap-
13 pointing committee members from the 3 categories
14 in paragraph (2), the Secretary concerned shall pro-
15 vide for balanced and broad representation from
16 within each category.

17 “(4) GEOGRAPHIC DISTRIBUTION.—The mem-
18 bers of a resource advisory committee shall reside
19 within the State in which the committee has juris-
20 diction and, to extent practicable, the Secretary con-
21 cerned shall ensure local representation in each cat-
22 egory in paragraph (2).

23 “(5) CHAIRPERSON.—A majority on each re-
24 source advisory committee shall select the chair-
25 person of the committee.

1 “(e) APPROVAL PROCEDURES.—

2 “(1) IN GENERAL.—Subject to paragraph (3),
3 each resource advisory committee shall establish pro-
4 cedures for proposing projects to the Secretary con-
5 cerned under this title.

6 “(2) QUORUM.—A quorum must be present to
7 constitute an official meeting of the committee.

8 “(3) APPROVAL BY MAJORITY OF MEMBERS.—
9 A project may be proposed by a resource advisory
10 committee to the Secretary concerned under section
11 203(a), if the project has been approved by a major-
12 ity of members of the committee from each of the
13 3 categories in subsection (d)(2).

14 “(f) OTHER COMMITTEE AUTHORITIES AND RE-
15 QUIREMENTS.—

16 “(1) STAFF ASSISTANCE.—A resource advisory
17 committee may submit to the Secretary concerned a
18 request for periodic staff assistance from Federal
19 employees under the jurisdiction of the Secretary.

20 “(2) MEETINGS.—All meetings of a resource
21 advisory committee shall be announced at least 1
22 week in advance in a local newspaper of record and
23 shall be open to the public.

24 “(3) RECORDS.—A resource advisory committee
25 shall maintain records of the meetings of the com-

1 mittee and make the records available for public in-
2 spection.

3 **“SEC. 206. USE OF PROJECT FUNDS.**

4 “(a) AGREEMENT REGARDING SCHEDULE AND COST
5 OF PROJECT.—

6 “(1) AGREEMENT BETWEEN PARTIES.—The
7 Secretary concerned may carry out a project sub-
8 mitted by a resource advisory committee under sec-
9 tion 203(a) using project funds or other funds de-
10 scribed in section 203(a)(2), if, as soon as prac-
11 ticable after the issuance of a decision document for
12 the project and the exhaustion of all administrative
13 appeals and judicial review of the project decision,
14 the Secretary concerned and the resource advisory
15 committee enter into an agreement addressing, at a
16 minimum, the following:

17 “(A) The schedule for completing the
18 project.

19 “(B) The total cost of the project, includ-
20 ing the level of agency overhead to be assessed
21 against the project.

22 “(C) For a multiyear project, the esti-
23 mated cost of the project for each of the fiscal
24 years in which it will be carried out.

1 “(D) The remedies for failure of the Sec-
2 retary concerned to comply with the terms of
3 the agreement consistent with current Federal
4 law.

5 “(2) LIMITED USE OF FEDERAL FUNDS.—The
6 Secretary concerned may decide, at the sole discre-
7 tion of the Secretary concerned, to cover the costs
8 of a portion of an approved project using Federal
9 funds appropriated or otherwise available to the Sec-
10 retary for the same purposes as the project.

11 “(b) TRANSFER OF PROJECT FUNDS.—

12 “(1) INITIAL TRANSFER REQUIRED.—As soon
13 as practicable after the agreement is reached under
14 subsection (a) with regard to a project to be funded
15 in whole or in part using project funds, or other
16 funds described in section 203(a)(2), the Secretary
17 concerned shall transfer to the applicable unit of Na-
18 tional Forest System land or Bureau of Land Man-
19 agement District an amount of project funds equal
20 to—

21 “(A) in the case of a project to be com-
22 pleted in a single fiscal year, the total amount
23 specified in the agreement to be paid using
24 project funds, or other funds described in sec-
25 tion 203(a)(2); or

1 “(B) in the case of a multiyear project, the
2 amount specified in the agreement to be paid
3 using project funds, or other funds described in
4 section 203(a)(2) for the first fiscal year.

5 “(2) CONDITION ON PROJECT COMMENCE-
6 MENT.—The unit of National Forest System land or
7 Bureau of Land Management District concerned,
8 shall not commence a project until the project funds,
9 or other funds described in section 203(a)(2) re-
10 quired to be transferred under paragraph (1) for the
11 project, have been made available by the Secretary
12 concerned.

13 “(3) SUBSEQUENT TRANSFERS FOR MULTIYEAR
14 PROJECTS.—

15 “(A) IN GENERAL.—For the second and
16 subsequent fiscal years of a multiyear project to
17 be funded in whole or in part using project
18 funds, the unit of National Forest System land
19 or Bureau of Land Management District con-
20 cerned shall use the amount of project funds re-
21 quired to continue the project in that fiscal year
22 according to the agreement entered into under
23 subsection (a).

24 “(B) SUSPENSION OF WORK.—The Sec-
25 retary concerned shall suspend work on the

1 project if the project funds required by the
2 agreement in the second and subsequent fiscal
3 years are not available.

4 **“SEC. 207. AVAILABILITY OF PROJECT FUNDS.**

5 “(a) SUBMISSION OF PROPOSED PROJECTS TO OBLI-
6 GATE FUNDS.—By September 30, 2008 (or as soon there-
7 after as the Secretary concerned determines is practicable)
8 a resource advisory committee shall submit to the Sec-
9 retary concerned pursuant to section 203(a)(1) a suffi-
10 cient number of project proposals that, if approved, would
11 result in the obligation of at least the full amount of the
12 project funds reserved by the participating county in the
13 preceding fiscal year.

14 “(b) USE OR TRANSFER OF UNOBLIGATED
15 FUNDS.—Subject to section 208, if a resource advisory
16 committee fails to comply with subsection (a) for a fiscal
17 year, any project funds reserved by the participating coun-
18 ty in the preceding fiscal year and remaining unobligated
19 shall be available for use as part of the project submissions
20 in the next fiscal year.

21 “(c) EFFECT OF REJECTION OF PROJECTS.—Subject
22 to section 208, any project funds reserved by a partici-
23 pating county in the preceding fiscal year that are unobli-
24 gated at the end of a fiscal year because the Secretary
25 concerned has rejected one or more proposed projects shall

1 be available for use as part of the project submissions in
2 the next fiscal year.

3 “(d) EFFECT OF COURT ORDERS.—

4 “(1) IN GENERAL.—If an approved project
5 under this Act is enjoined or prohibited by a Federal
6 court, the Secretary concerned shall return the un-
7 obligated project funds related to the project to the
8 participating county or counties that reserved the
9 funds.

10 “(2) EXPENDITURE OF FUNDS.—The returned
11 funds shall be available for the county to expend in
12 the same manner as the funds reserved by the coun-
13 ty under subparagraph (B) or (C)(i) of section
14 102(d)(1).

15 **“SEC. 208. TERMINATION OF AUTHORITY.**

16 “(a) IN GENERAL.—The authority to initiate projects
17 under this title shall terminate on September 30, 2011.

18 “(b) DEPOSITS IN TREASURY.—Any project funds
19 not obligated by September 30, 2012, shall be deposited
20 in the Treasury of the United States.

21 **“TITLE III—COUNTY FUNDS**

22 **“SEC. 301. DEFINITIONS.**

23 “In this title:

24 “(1) COUNTY FUNDS.—The term ‘county funds’
25 means all funds an eligible county elects under sec-

1 tion 102(d) to reserve for expenditure in accordance
2 with this title.

3 “(2) PARTICIPATING COUNTY.—The term ‘par-
4 ticipating county’ means an eligible county that
5 elects under section 102(d) to expend a portion of
6 the Federal funds received under section 102 in ac-
7 cordance with this title.

8 **“SEC. 302. USE.**

9 “(a) AUTHORIZED USES.—A participating county,
10 including any applicable agencies of the participating
11 county, shall use county funds, in accordance with this
12 title, only—

13 “(1) to carry out activities under the Firewise
14 Communities program to provide to homeowners in
15 fire-sensitive ecosystems education on, and assist-
16 ance with implementing, techniques in home siting,
17 home construction, and home landscaping that can
18 increase the protection of people and property from
19 wildfires;

20 “(2) to reimburse the participating county for
21 search and rescue and other emergency services, in-
22 cluding firefighting, that are—

23 “(A) performed on Federal land after the
24 date on which the use was approved under sub-
25 section (b);

1 “(B) paid for by the participating county;

2 and

3 “(3) to develop community wildfire protection
4 plans in coordination with the appropriate Secretary
5 concerned.

6 “(b) PROPOSALS.—A participating county shall use
7 county funds for a use described in subsection (a) only
8 after a 45-day public comment period, at the beginning
9 of which the participating county shall—

10 “(1) publish in any publications of local record
11 a proposal that describes the proposed use of the
12 county funds; and

13 “(2) submit the proposal to any resource advi-
14 sory committee established under section 205 for the
15 participating county.

16 **“SEC. 303. CERTIFICATION.**

17 “(a) IN GENERAL.—Not later than February 1 of the
18 year after the year in which any county funds were ex-
19 pended by a participating county, the appropriate official
20 of the participating county shall submit to the Secretary
21 concerned a certification that the county funds expended
22 in the applicable year have been used for the uses author-
23 ized under section 302(a), including a description of the
24 amounts expended and the uses for which the amounts
25 were expended.

1 “(b) DEPOSIT OF REVENUES AND OTHER FUNDS.—
2 All revenues generated from projects pursuant to title II,
3 including any interest accrued from the revenues, shall be
4 deposited in the Treasury of the United States.”.

5 (b) FOREST RECEIPT PAYMENTS TO ELIGIBLE
6 STATES AND COUNTIES.—

7 (1) ACT OF MAY 23, 1908.—The sixth paragraph
8 under the heading “FOREST SERVICE” in the Act
9 of May 23, 1908 (16 U.S.C. 500) is amended in the
10 first sentence by striking “twenty-five percentum”
11 and all that follows through “shall be paid” and in-
12 serting the following: “an amount equal to the an-
13 nual average of 25 percent of all amounts received
14 for the applicable fiscal year and each of the pre-
15 ceding 6 fiscal years from each national forest shall
16 be paid”.

17 (2) WEEKS LAW.—Section 13 of the Act of
18 March 1, 1911 (commonly known as the “Weeks
19 Law”) (16 U.S.C. 500) is amended in the first sen-
20 tence by striking “twenty-five percentum” and all
21 that follows through “shall be paid” and inserting
22 the following: “an amount equal to the annual aver-
23 age of 25 percent of all amounts received for the ap-
24 plicable fiscal year and each of the preceding 6 fiscal
25 years from each national forest shall be paid”.

1 (c) PAYMENTS IN LIEU OF TAXES.—

2 (1) IN GENERAL.—Section 6906 of title 31,
3 United States Code, is amended to read as follows:

4 **“§ 6906. Funding**

5 “For each of fiscal years 2008 and 2009—

6 “(1) each county or other eligible unit of local
7 government shall be entitled to payment under this
8 chapter; and

9 “(2) sums shall be made available to the Sec-
10 retary of the Interior for obligation or expenditure in
11 accordance with this chapter.”.

12 (2) CONFORMING AMENDMENT.—The table of
13 sections for chapter 69 of title 31, United States
14 Code, is amended by striking the item relating to
15 section 6906 and inserting the following:

“6906. Funding.”.

16 **TITLE IV—PAUL WELLSTONE**
17 **AND PETE DOMENICI MENTAL**
18 **HEALTH PARITY AND ADDIC-**
19 **TION EQUITY ACT OF 2008**

20 **SEC. 401. SHORT TITLE.**

21 This title may be cited as the “Paul Wellstone and
22 Pete Domenici Mental Health Parity and Addiction Eq-
23 uity Act of 2008”.

1 **SEC. 402. MENTAL HEALTH PARITY.**

2 (a) AMENDMENTS TO ERISA.—Section 712 of the
3 Employee Retirement Income Security Act of 1974 (29
4 U.S.C. 1185a) is amended—

5 (1) in subsection (a), by adding at the end the
6 following:

7 “(3) FINANCIAL REQUIREMENTS AND TREAT-
8 MENT LIMITATIONS.—

9 “(A) IN GENERAL.—In the case of a group
10 health plan (or health insurance coverage of-
11 fered in connection with such a plan) that pro-
12 vides both medical and surgical benefits and
13 mental health or substance use disorder bene-
14 fits, such plan or coverage shall ensure that—

15 “(i) the financial requirements appli-
16 cable to such mental health or substance
17 use disorder benefits are no more restric-
18 tive than the predominant financial re-
19 quirements applied to substantially all
20 medical and surgical benefits covered by
21 the plan (or coverage), and there are no
22 separate cost sharing requirements that
23 are applicable only with respect to mental
24 health or substance use disorder benefits;
25 and

1 “(ii) the treatment limitations applica-
2 ble to such mental health or substance use
3 disorder benefits are no more restrictive
4 than the predominant treatment limita-
5 tions applied to substantially all medical
6 and surgical benefits covered by the plan
7 (or coverage) and there are no separate
8 treatment limitations that are applicable
9 only with respect to mental health or sub-
10 stance use disorder benefits.

11 “(B) DEFINITIONS.—In this paragraph:

12 “(i) FINANCIAL REQUIREMENT.—The
13 term ‘financial requirement’ includes
14 deductibles, copayments, coinsurance, and
15 out-of-pocket expenses, but excludes an ag-
16 gregate lifetime limit and an annual limit
17 subject to paragraphs (1) and (2).

18 “(ii) PREDOMINANT.—A financial re-
19 quirement or treatment limit is considered
20 to be predominant if it is the most com-
21 mon or frequent of such type of limit or
22 requirement.

23 “(iii) TREATMENT LIMITATION.—The
24 term ‘treatment limitation’ includes limits
25 on the frequency of treatment, number of

1 visits, days of coverage, or other similar
2 limits on the scope or duration of treat-
3 ment.

4 “(4) AVAILABILITY OF PLAN INFORMATION.—
5 The criteria for medical necessity determinations
6 made under the plan with respect to mental health
7 or substance use disorder benefits (or the health in-
8 surance coverage offered in connection with the plan
9 with respect to such benefits) shall be made avail-
10 able by the plan administrator (or the health insur-
11 ance issuer offering such coverage) in accordance
12 with regulations to any current or potential partici-
13 pant, beneficiary, or contracting provider upon re-
14 quest. The reason for any denial under the plan (or
15 coverage) of reimbursement or payment for services
16 with respect to mental health or substance use dis-
17 order benefits in the case of any participant or bene-
18 ficiary shall, on request or as otherwise required, be
19 made available by the plan administrator (or the
20 health insurance issuer offering such coverage) to
21 the participant or beneficiary in accordance with
22 regulations.

23 “(5) OUT-OF-NETWORK PROVIDERS.—In the
24 case of a plan or coverage that provides both med-
25 ical and surgical benefits and mental health or sub-

1 stance use disorder benefits, if the plan or coverage
2 provides coverage for medical or surgical benefits
3 provided by out-of-network providers, the plan or
4 coverage shall provide coverage for mental health or
5 substance use disorder benefits provided by out-of-
6 network providers in a manner that is consistent
7 with the requirements of this section.”;

8 (2) in subsection (b), by amending paragraph
9 (2) to read as follows:

10 “(2) in the case of a group health plan (or
11 health insurance coverage offered in connection with
12 such a plan) that provides mental health or sub-
13 stance use disorder benefits, as affecting the terms
14 and conditions of the plan or coverage relating to
15 such benefits under the plan or coverage, except as
16 provided in subsection (a).”;

17 (3) in subsection (c)—

18 (A) in paragraph (1)(B)—

19 (i) by inserting “(or 1 in the case of
20 an employer residing in a State that per-
21 mits small groups to include a single indi-
22 vidual)” after “at least 2” the first place
23 that such appears; and

1 (ii) by striking “and who employs at
2 least 2 employees on the first day of the
3 plan year”; and

4 (B) by striking paragraph (2) and insert-
5 ing the following:

6 “(2) COST EXEMPTION.—

7 “(A) IN GENERAL.—With respect to a
8 group health plan (or health insurance coverage
9 offered in connection with such a plan), if the
10 application of this section to such plan (or cov-
11 erage) results in an increase for the plan year
12 involved of the actual total costs of coverage
13 with respect to medical and surgical benefits
14 and mental health and substance use disorder
15 benefits under the plan (as determined and cer-
16 tified under subparagraph (C)) by an amount
17 that exceeds the applicable percentage described
18 in subparagraph (B) of the actual total plan
19 costs, the provisions of this section shall not
20 apply to such plan (or coverage) during the fol-
21 lowing plan year, and such exemption shall
22 apply to the plan (or coverage) for 1 plan year.
23 An employer may elect to continue to apply
24 mental health and substance use disorder parity
25 pursuant to this section with respect to the

1 group health plan (or coverage) involved regard-
2 less of any increase in total costs.

3 “(B) APPLICABLE PERCENTAGE.—With re-
4 spect to a plan (or coverage), the applicable
5 percentage described in this subparagraph shall
6 be—

7 “(i) 2 percent in the case of the first
8 plan year in which this section is applied;
9 and

10 “(ii) 1 percent in the case of each
11 subsequent plan year.

12 “(C) DETERMINATIONS BY ACTUARIES.—
13 Determinations as to increases in actual costs
14 under a plan (or coverage) for purposes of this
15 section shall be made and certified by a quali-
16 fied and licensed actuary who is a member in
17 good standing of the American Academy of Ac-
18 tuaries. All such determinations shall be in a
19 written report prepared by the actuary. The re-
20 port, and all underlying documentation relied
21 upon by the actuary, shall be maintained by the
22 group health plan or health insurance issuer for
23 a period of 6 years following the notification
24 made under subparagraph (E).

1 “(D) 6-MONTH DETERMINATIONS.—If a
2 group health plan (or a health insurance issuer
3 offering coverage in connection with a group
4 health plan) seeks an exemption under this
5 paragraph, determinations under subparagraph
6 (A) shall be made after such plan (or coverage)
7 has complied with this section for the first 6
8 months of the plan year involved.

9 “(E) NOTIFICATION.—

10 “(i) IN GENERAL.—A group health
11 plan (or a health insurance issuer offering
12 coverage in connection with a group health
13 plan) that, based upon a certification de-
14 scribed under subparagraph (C), qualifies
15 for an exemption under this paragraph,
16 and elects to implement the exemption,
17 shall promptly notify the Secretary, the ap-
18 propriate State agencies, and participants
19 and beneficiaries in the plan of such elec-
20 tion.

21 “(ii) REQUIREMENT.—A notification
22 to the Secretary under clause (i) shall in-
23 clude—

24 “(I) a description of the number
25 of covered lives under the plan (or

1 coverage) involved at the time of the
2 notification, and as applicable, at the
3 time of any prior election of the cost-
4 exemption under this paragraph by
5 such plan (or coverage);

6 “(II) for both the plan year upon
7 which a cost exemption is sought and
8 the year prior, a description of the ac-
9 tual total costs of coverage with re-
10 spect to medical and surgical benefits
11 and mental health and substance use
12 disorder benefits under the plan; and

13 “(III) for both the plan year
14 upon which a cost exemption is sought
15 and the year prior, the actual total
16 costs of coverage with respect to men-
17 tal health and substance use disorder
18 benefits under the plan.

19 “(iii) CONFIDENTIALITY.—A notifica-
20 tion to the Secretary under clause (i) shall
21 be confidential. The Secretary shall make
22 available, upon request and on not more
23 than an annual basis, an anonymous
24 itemization of such notifications, that in-
25 cludes—

1 “(I) a breakdown of States by
2 the size and type of employers submit-
3 ting such notification; and

4 “(II) a summary of the data re-
5 ceived under clause (ii).

6 “(F) AUDITS BY APPROPRIATE AGEN-
7 CIES.—To determine compliance with this para-
8 graph, the Secretary may audit the books and
9 records of a group health plan or health insur-
10 ance issuer relating to an exemption, including
11 any actuarial reports prepared pursuant to sub-
12 paragraph (C), during the 6-year period fol-
13 lowing the notification of such exemption under
14 subparagraph (E). A State agency receiving a
15 notification under subparagraph (E) may also
16 conduct such an audit with respect to an ex-
17 emption covered by such notification.”;

18 (4) in subsection (e), by striking paragraph (4)
19 and inserting the following:

20 “(4) MENTAL HEALTH BENEFITS.—The term
21 ‘mental health benefits’ means benefits with respect
22 to services for mental health conditions, as defined
23 under the terms of the plan and in accordance with
24 applicable Federal and State law.

1 “(5) SUBSTANCE USE DISORDER BENEFITS.—

2 The term ‘substance use disorder benefits’ means
3 benefits with respect to services for substance use
4 disorders, as defined under the terms of the plan
5 and in accordance with applicable Federal and State
6 law.”;

7 (5) by striking subsection (f);

8 (6) by inserting after subsection (e) the fol-
9 lowing:

10 “(f) SECRETARY REPORT.—The Secretary shall, by
11 January 1, 2012, and every two years thereafter, submit
12 to the appropriate committees of Congress a report on
13 compliance of group health plans (and health insurance
14 coverage offered in connection with such plans) with the
15 requirements of this section. Such report shall include the
16 results of any surveys or audits on compliance of group
17 health plans (and health insurance coverage offered in
18 connection with such plans) with such requirements and
19 an analysis of the reasons for any failures to comply.

20 “(g) NOTICE AND ASSISTANCE.—The Secretary, in
21 cooperation with the Secretaries of Health and Human
22 Services and Treasury, as appropriate, shall publish and
23 widely disseminate guidance and information for group
24 health plans, participants and beneficiaries, applicable
25 State and local regulatory bodies, and the National Asso-

1 ciation of Insurance Commissioners concerning the re-
2 quirements of this section and shall provide assistance
3 concerning such requirements and the continued operation
4 of applicable State law. Such guidance and information
5 shall inform participants and beneficiaries of how they
6 may obtain assistance under this section, including, where
7 appropriate, assistance from State consumer and insur-
8 ance agencies.”;

9 (7) by striking “mental health benefits” and in-
10 sserting “mental health and substance use disorder
11 benefits” each place it appears in subsections
12 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
13 and

14 (8) by striking “mental health benefits” and in-
15 sserting “mental health or substance use disorder
16 benefits” each place it appears (other than in any
17 provision amended by the previous paragraph).

18 (b) AMENDMENTS TO PUBLIC HEALTH SERVICE
19 ACT.—Section 2705 of the Public Health Service Act (42
20 U.S.C. 300gg–5) is amended—

21 (1) in subsection (a), by adding at the end the
22 following:

23 “(3) FINANCIAL REQUIREMENTS AND TREAT-
24 MENT LIMITATIONS.—

1 “(A) IN GENERAL.—In the case of a group
2 health plan (or health insurance coverage of-
3 fered in connection with such a plan) that pro-
4 vides both medical and surgical benefits and
5 mental health or substance use disorder bene-
6 fits, such plan or coverage shall ensure that—

7 “(i) the financial requirements appli-
8 cable to such mental health or substance
9 use disorder benefits are no more restric-
10 tive than the predominant financial re-
11 quirements applied to substantially all
12 medical and surgical benefits covered by
13 the plan (or coverage), and there are no
14 separate cost sharing requirements that
15 are applicable only with respect to mental
16 health or substance use disorder benefits;
17 and

18 “(ii) the treatment limitations applica-
19 ble to such mental health or substance use
20 disorder benefits are no more restrictive
21 than the predominant treatment limita-
22 tions applied to substantially all medical
23 and surgical benefits covered by the plan
24 (or coverage) and there are no separate
25 treatment limitations that are applicable

1 only with respect to mental health or sub-
2 stance use disorder benefits.

3 “(B) DEFINITIONS.—In this paragraph:

4 “(i) FINANCIAL REQUIREMENT.—The
5 term ‘financial requirement’ includes
6 deductibles, copayments, coinsurance, and
7 out-of-pocket expenses, but excludes an ag-
8 gregate lifetime limit and an annual limit
9 subject to paragraphs (1) and (2),

10 “(ii) PREDOMINANT.—A financial re-
11 quirement or treatment limit is considered
12 to be predominant if it is the most com-
13 mon or frequent of such type of limit or
14 requirement.

15 “(iii) TREATMENT LIMITATION.—The
16 term ‘treatment limitation’ includes limits
17 on the frequency of treatment, number of
18 visits, days of coverage, or other similar
19 limits on the scope or duration of treat-
20 ment.

21 “(4) AVAILABILITY OF PLAN INFORMATION.—
22 The criteria for medical necessity determinations
23 made under the plan with respect to mental health
24 or substance use disorder benefits (or the health in-
25 surance coverage offered in connection with the plan

1 with respect to such benefits) shall be made avail-
2 able by the plan administrator (or the health insur-
3 ance issuer offering such coverage) in accordance
4 with regulations to any current or potential partici-
5 pant, beneficiary, or contracting provider upon re-
6 quest. The reason for any denial under the plan (or
7 coverage) of reimbursement or payment for services
8 with respect to mental health or substance use dis-
9 order benefits in the case of any participant or bene-
10 ficiary shall, on request or as otherwise required, be
11 made available by the plan administrator (or the
12 health insurance issuer offering such coverage) to
13 the participant or beneficiary in accordance with
14 regulations.

15 “(5) OUT-OF-NETWORK PROVIDERS.—In the
16 case of a plan or coverage that provides both med-
17 ical and surgical benefits and mental health or sub-
18 stance use disorder benefits, if the plan or coverage
19 provides coverage for medical or surgical benefits
20 provided by out-of-network providers, the plan or
21 coverage shall provide coverage for mental health or
22 substance use disorder benefits provided by out-of-
23 network providers in a manner that is consistent
24 with the requirements of this section.”;

1 (2) in subsection (b), by amending paragraph
2 (2) to read as follows:

3 “(2) in the case of a group health plan (or
4 health insurance coverage offered in connection with
5 such a plan) that provides mental health or sub-
6 stance use disorder benefits, as affecting the terms
7 and conditions of the plan or coverage relating to
8 such benefits under the plan or coverage, except as
9 provided in subsection (a).”;

10 (3) in subsection (c)—

11 (A) in paragraph (1), by inserting before
12 the period the following: “(as defined in section
13 2791(e)(4), except that for purposes of this
14 paragraph such term shall include employers
15 with 1 employee in the case of an employer re-
16 siding in a State that permits small groups to
17 include a single individual)”;

18 (B) by striking paragraph (2) and insert-
19 ing the following:

20 “(2) COST EXEMPTION.—

21 “(A) IN GENERAL.—With respect to a
22 group health plan (or health insurance coverage
23 offered in connection with such a plan), if the
24 application of this section to such plan (or cov-
25 erage) results in an increase for the plan year

1 involved of the actual total costs of coverage
2 with respect to medical and surgical benefits
3 and mental health and substance use disorder
4 benefits under the plan (as determined and cer-
5 tified under subparagraph (C)) by an amount
6 that exceeds the applicable percentage described
7 in subparagraph (B) of the actual total plan
8 costs, the provisions of this section shall not
9 apply to such plan (or coverage) during the fol-
10 lowing plan year, and such exemption shall
11 apply to the plan (or coverage) for 1 plan year.
12 An employer may elect to continue to apply
13 mental health and substance use disorder parity
14 pursuant to this section with respect to the
15 group health plan (or coverage) involved regard-
16 less of any increase in total costs.

17 “(B) APPLICABLE PERCENTAGE.—With re-
18 spect to a plan (or coverage), the applicable
19 percentage described in this subparagraph shall
20 be—

21 “(i) 2 percent in the case of the first
22 plan year in which this section is applied;
23 and

24 “(ii) 1 percent in the case of each
25 subsequent plan year.

1 “(C) DETERMINATIONS BY ACTUARIES.—
2 Determinations as to increases in actual costs
3 under a plan (or coverage) for purposes of this
4 section shall be made and certified by a quali-
5 fied and licensed actuary who is a member in
6 good standing of the American Academy of Ac-
7 tuaries. All such determinations shall be in a
8 written report prepared by the actuary. The re-
9 port, and all underlying documentation relied
10 upon by the actuary, shall be maintained by the
11 group health plan or health insurance issuer for
12 a period of 6 years following the notification
13 made under subparagraph (E).

14 “(D) 6-MONTH DETERMINATIONS.—If a
15 group health plan (or a health insurance issuer
16 offering coverage in connection with a group
17 health plan) seeks an exemption under this
18 paragraph, determinations under subparagraph
19 (A) shall be made after such plan (or coverage)
20 has complied with this section for the first 6
21 months of the plan year involved.

22 “(E) NOTIFICATION.—

23 “(i) IN GENERAL.—A group health
24 plan (or a health insurance issuer offering
25 coverage in connection with a group health

1 plan) that, based upon a certification de-
2 scribed under subparagraph (C), qualifies
3 for an exemption under this paragraph,
4 and elects to implement the exemption,
5 shall promptly notify the Secretary, the ap-
6 propriate State agencies, and participants
7 and beneficiaries in the plan of such elec-
8 tion.

9 “(ii) REQUIREMENT.—A notification
10 to the Secretary under clause (i) shall in-
11 clude—

12 “(I) a description of the number
13 of covered lives under the plan (or
14 coverage) involved at the time of the
15 notification, and as applicable, at the
16 time of any prior election of the cost-
17 exemption under this paragraph by
18 such plan (or coverage);

19 “(II) for both the plan year upon
20 which a cost exemption is sought and
21 the year prior, a description of the ac-
22 tual total costs of coverage with re-
23 spect to medical and surgical benefits
24 and mental health and substance use
25 disorder benefits under the plan; and

1 “(III) for both the plan year
2 upon which a cost exemption is sought
3 and the year prior, the actual total
4 costs of coverage with respect to men-
5 tal health and substance use disorder
6 benefits under the plan.

7 “(iii) CONFIDENTIALITY.—A notifica-
8 tion to the Secretary under clause (i) shall
9 be confidential. The Secretary shall make
10 available, upon request and on not more
11 than an annual basis, an anonymous
12 itemization of such notifications, that in-
13 cludes—

14 “(I) a breakdown of States by
15 the size and type of employers submit-
16 ting such notification; and

17 “(II) a summary of the data re-
18 ceived under clause (ii).

19 “(F) AUDITS BY APPROPRIATE AGEN-
20 CIES.—To determine compliance with this para-
21 graph, the Secretary may audit the books and
22 records of a group health plan or health insur-
23 ance issuer relating to an exemption, including
24 any actuarial reports prepared pursuant to sub-
25 paragraph (C), during the 6-year period fol-

1 lowing the notification of such exemption under
2 subparagraph (E). A State agency receiving a
3 notification under subparagraph (E) may also
4 conduct such an audit with respect to an ex-
5 emption covered by such notification.”;

6 (4) in subsection (e), by striking paragraph (4)
7 and inserting the following:

8 “(4) MENTAL HEALTH BENEFITS.—The term
9 ‘mental health benefits’ means benefits with respect
10 to services for mental health conditions, as defined
11 under the terms of the plan and in accordance with
12 applicable Federal and State law.

13 “(5) SUBSTANCE USE DISORDER BENEFITS.—
14 The term ‘substance use disorder benefits’ means
15 benefits with respect to services for substance use
16 disorders, as defined under the terms of the plan
17 and in accordance with applicable Federal and State
18 law.”;

19 (5) by striking subsection (f);

20 (6) by striking “mental health benefits” and in-
21 serting “mental health and substance use disorder
22 benefits” each place it appears in subsections
23 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
24 and

1 (7) by striking “mental health benefits” and in-
2 serting “mental health or substance use disorder
3 benefits” each place it appears (other than in any
4 provision amended by the previous paragraph).

5 (c) AMENDMENTS TO INTERNAL REVENUE CODE.—
6 Section 9812 of the Internal Revenue Code of 1986 is
7 amended—

8 (1) in subsection (a), by adding at the end the
9 following:

10 “(3) FINANCIAL REQUIREMENTS AND TREAT-
11 MENT LIMITATIONS.—

12 “(A) IN GENERAL.—In the case of a group
13 health plan that provides both medical and sur-
14 gical benefits and mental health or substance
15 use disorder benefits, such plan shall ensure
16 that—

17 “(i) the financial requirements appli-
18 cable to such mental health or substance
19 use disorder benefits are no more restric-
20 tive than the predominant financial re-
21 quirements applied to substantially all
22 medical and surgical benefits covered by
23 the plan, and there are no separate cost
24 sharing requirements that are applicable

1 only with respect to mental health or sub-
2 stance use disorder benefits; and

3 “(ii) the treatment limitations applica-
4 ble to such mental health or substance use
5 disorder benefits are no more restrictive
6 than the predominant treatment limita-
7 tions applied to substantially all medical
8 and surgical benefits covered by the plan
9 and there are no separate treatment limi-
10 tations that are applicable only with re-
11 spect to mental health or substance use
12 disorder benefits.

13 “(B) DEFINITIONS.—In this paragraph:

14 “(i) FINANCIAL REQUIREMENT.—The
15 term ‘financial requirement’ includes
16 deductibles, copayments, coinsurance, and
17 out-of-pocket expenses, but excludes an ag-
18 gregate lifetime limit and an annual limit
19 subject to paragraphs (1) and (2),

20 “(ii) PREDOMINANT.—A financial re-
21 quirement or treatment limit is considered
22 to be predominant if it is the most com-
23 mon or frequent of such type of limit or
24 requirement.

1 “(iii) TREATMENT LIMITATION.—The
2 term ‘treatment limitation’ includes limits
3 on the frequency of treatment, number of
4 visits, days of coverage, or other similar
5 limits on the scope or duration of treat-
6 ment.

7 “(4) AVAILABILITY OF PLAN INFORMATION.—
8 The criteria for medical necessity determinations
9 made under the plan with respect to mental health
10 or substance use disorder benefits shall be made
11 available by the plan administrator in accordance
12 with regulations to any current or potential partici-
13 pant, beneficiary, or contracting provider upon re-
14 quest. The reason for any denial under the plan of
15 reimbursement or payment for services with respect
16 to mental health or substance use disorder benefits
17 in the case of any participant or beneficiary shall, on
18 request or as otherwise required, be made available
19 by the plan administrator to the participant or bene-
20 ficiary in accordance with regulations.

21 “(5) OUT-OF-NETWORK PROVIDERS.—In the
22 case of a plan that provides both medical and sur-
23 gical benefits and mental health or substance use
24 disorder benefits, if the plan provides coverage for
25 medical or surgical benefits provided by out-of-net-

1 work providers, the plan shall provide coverage for
2 mental health or substance use disorder benefits pro-
3 vided by out-of-network providers in a manner that
4 is consistent with the requirements of this section.”;

5 (2) in subsection (b), by amending paragraph
6 (2) to read as follows:

7 “(2) in the case of a group health plan that
8 provides mental health or substance use disorder
9 benefits, as affecting the terms and conditions of the
10 plan relating to such benefits under the plan, except
11 as provided in subsection (a).”;

12 (3) in subsection (c)—

13 (A) by amending paragraph (1) to read as
14 follows:

15 “(1) SMALL EMPLOYER EXEMPTION.—

16 “(A) IN GENERAL.—This section shall not
17 apply to any group health plan for any plan
18 year of a small employer.

19 “(B) SMALL EMPLOYER.—For purposes of
20 subparagraph (A), the term ‘small employer’
21 means, with respect to a calendar year and a
22 plan year, an employer who employed an aver-
23 age of at least 2 (or 1 in the case of an em-
24 ployer residing in a State that permits small
25 groups to include a single individual) but not

1 more than 50 employees on business days dur-
2 ing the preceding calendar year. For purposes
3 of the preceding sentence, all persons treated as
4 a single employer under subsection (b), (c),
5 (m), or (o) of section 414 shall be treated as 1
6 employer and rules similar to rules of subpara-
7 graphs (B) and (C) of section 4980D(d)(2)
8 shall apply.”; and

9 (B) by striking paragraph (2) and insert-
10 ing the following:

11 “(2) COST EXEMPTION.—

12 “(A) IN GENERAL.—With respect to a
13 group health plan, if the application of this sec-
14 tion to such plan results in an increase for the
15 plan year involved of the actual total costs of
16 coverage with respect to medical and surgical
17 benefits and mental health and substance use
18 disorder benefits under the plan (as determined
19 and certified under subparagraph (C)) by an
20 amount that exceeds the applicable percentage
21 described in subparagraph (B) of the actual
22 total plan costs, the provisions of this section
23 shall not apply to such plan during the fol-
24 lowing plan year, and such exemption shall
25 apply to the plan for 1 plan year. An employer

1 may elect to continue to apply mental health
2 and substance use disorder parity pursuant to
3 this section with respect to the group health
4 plan involved regardless of any increase in total
5 costs.

6 “(B) APPLICABLE PERCENTAGE.—With re-
7 spect to a plan, the applicable percentage de-
8 scribed in this subparagraph shall be—

9 “(i) 2 percent in the case of the first
10 plan year in which this section is applied;
11 and

12 “(ii) 1 percent in the case of each
13 subsequent plan year.

14 “(C) DETERMINATIONS BY ACTUARIES.—
15 Determinations as to increases in actual costs
16 under a plan for purposes of this section shall
17 be made and certified by a qualified and li-
18 censed actuary who is a member in good stand-
19 ing of the American Academy of Actuaries. All
20 such determinations shall be in a written report
21 prepared by the actuary. The report, and all
22 underlying documentation relied upon by the
23 actuary, shall be maintained by the group
24 health plan for a period of 6 years following the
25 notification made under subparagraph (E).

1 “(D) 6-MONTH DETERMINATIONS.—If a
2 group health plan seeks an exemption under
3 this paragraph, determinations under subpara-
4 graph (A) shall be made after such plan has
5 complied with this section for the first 6
6 months of the plan year involved.

7 “(E) NOTIFICATION.—

8 “(i) IN GENERAL.—A group health
9 plan that, based upon a certification de-
10 scribed under subparagraph (C), qualifies
11 for an exemption under this paragraph,
12 and elects to implement the exemption,
13 shall promptly notify the Secretary, the ap-
14 propriate State agencies, and participants
15 and beneficiaries in the plan of such elec-
16 tion.

17 “(ii) REQUIREMENT.—A notification
18 to the Secretary under clause (i) shall in-
19 clude—

20 “(I) a description of the number
21 of covered lives under the plan in-
22 volved at the time of the notification,
23 and as applicable, at the time of any
24 prior election of the cost-exemption
25 under this paragraph by such plan;

1 “(II) for both the plan year upon
2 which a cost exemption is sought and
3 the year prior, a description of the ac-
4 tual total costs of coverage with re-
5 spect to medical and surgical benefits
6 and mental health and substance use
7 disorder benefits under the plan; and

8 “(III) for both the plan year
9 upon which a cost exemption is sought
10 and the year prior, the actual total
11 costs of coverage with respect to men-
12 tal health and substance use disorder
13 benefits under the plan.

14 “(iii) CONFIDENTIALITY.—A notifica-
15 tion to the Secretary under clause (i) shall
16 be confidential. The Secretary shall make
17 available, upon request and on not more
18 than an annual basis, an anonymous
19 itemization of such notifications, that in-
20 cludes—

21 “(I) a breakdown of States by
22 the size and type of employers submit-
23 ting such notification; and

24 “(II) a summary of the data re-
25 ceived under clause (ii).

1 “(F) AUDITS BY APPROPRIATE AGEN-
2 CIES.—To determine compliance with this para-
3 graph, the Secretary may audit the books and
4 records of a group health plan relating to an
5 exemption, including any actuarial reports pre-
6 pared pursuant to subparagraph (C), during
7 the 6-year period following the notification of
8 such exemption under subparagraph (E). A
9 State agency receiving a notification under sub-
10 paragraph (E) may also conduct such an audit
11 with respect to an exemption covered by such
12 notification.”;

13 (4) in subsection (e), by striking paragraph (4)
14 and inserting the following:

15 “(4) MENTAL HEALTH BENEFITS.—The term
16 ‘mental health benefits’ means benefits with respect
17 to services for mental health conditions, as defined
18 under the terms of the plan and in accordance with
19 applicable Federal and State law.

20 “(5) SUBSTANCE USE DISORDER BENEFITS.—
21 The term ‘substance use disorder benefits’ means
22 benefits with respect to services for substance use
23 disorders, as defined under the terms of the plan
24 and in accordance with applicable Federal and State
25 law.”;

1 (5) by striking subsection (f);

2 (6) by striking “mental health benefits” and in-
3 serting “mental health and substance use disorder
4 benefits” each place it appears in subsections
5 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
6 and

7 (7) by striking “mental health benefits” and in-
8 serting “mental health or substance use disorder
9 benefits” each place it appears (other than in any
10 provision amended by the previous paragraph).

11 (d) REGULATIONS.—Not later than 1 year after the
12 date of enactment of this Act, the Secretaries of Labor,
13 Health and Human Services, and the Treasury shall issue
14 regulations to carry out the amendments made by sub-
15 sections (a), (b), and (c), respectively.

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply with respect to group health
19 plans for plan years beginning after the date that is
20 1 year after the date of enactment of this Act, re-
21 gardless of whether regulations have been issued to
22 carry out such amendments by such effective date,
23 except that the amendments made by subsections
24 (a)(5), (b)(5), and (c)(5), relating to striking of cer-

1 tain sunset provisions, shall take effect on January
2 1, 2009.

3 (2) SPECIAL RULE FOR COLLECTIVE BAR-
4 GAINING AGREEMENTS.—In the case of a group
5 health plan maintained pursuant to one or more col-
6 lective bargaining agreements between employee rep-
7 resentatives and one or more employers ratified be-
8 fore the date of the enactment of this Act, the
9 amendments made by this section shall not apply to
10 plan years beginning before the later of—

11 (A) the date on which the last of the col-
12 lective bargaining agreements relating to the
13 plan terminates (determined without regard to
14 any extension thereof agreed to after the date
15 of the enactment of this Act), or

16 (B) January 1, 2009.

17 For purposes of subparagraph (A), any plan amend-
18 ment made pursuant to a collective bargaining
19 agreement relating to the plan which amends the
20 plan solely to conform to any requirement added by
21 this section shall not be treated as a termination of
22 such collective bargaining agreement.

23 (f) ASSURING COORDINATION.—The Secretary of
24 Health and Human Services, the Secretary of Labor, and
25 the Secretary of the Treasury may ensure, through the

1 execution or revision of an interagency memorandum of
2 understanding among such Secretaries, that—

3 (1) regulations, rulings, and interpretations
4 issued by such Secretaries relating to the same mat-
5 ter over which two or more such Secretaries have re-
6 sponsibility under this section (and the amendments
7 made by this section) are administered so as to have
8 the same effect at all times; and

9 (2) coordination of policies relating to enforcing
10 the same requirements through such Secretaries in
11 order to have a coordinated enforcement strategy
12 that avoids duplication of enforcement efforts and
13 assigns priorities in enforcement.

14 (g) CONFORMING CLERICAL AMENDMENTS.—

15 (1) ERISA HEADING.—

16 (A) IN GENERAL.—The heading of section
17 712 of the Employee Retirement Income Secu-
18 rity Act of 1974 is amended to read as follows:

19 **“SEC. 712. PARITY IN MENTAL HEALTH AND SUBSTANCE**
20 **USE DISORDER BENEFITS.”.**

21 (B) CLERICAL AMENDMENT.—The table of
22 contents in section 1 of such Act is amended by
23 striking the item relating to section 712 and in-
24 serting the following new item:

“Sec. 712. Parity in mental health and substance use disorder benefits.”.

1 (2) PHSA HEADING.—The heading of section
2 2705 of the Public Health Service Act is amended
3 to read as follows:

4 **“SEC. 2705. PARITY IN MENTAL HEALTH AND SUBSTANCE**
5 **USE DISORDER BENEFITS.”.**

6 (3) IRC HEADING.—

7 (A) IN GENERAL.—The heading of section
8 9812 of the Internal Revenue Code of 1986 is
9 amended to read as follows:

10 **“SEC. 9812. PARITY IN MENTAL HEALTH AND SUBSTANCE**
11 **USE DISORDER BENEFITS.”.**

12 (B) CLERICAL AMENDMENT.—The table of
13 sections for subchapter B of chapter 100 of
14 such Code is amended by striking the item re-
15 lating to section 9812 and inserting the fol-
16 lowing new item:

 “Sec. 9812. Parity in mental health and substance use disorder benefits.”.

17 (h) GAO STUDY ON COVERAGE AND EXCLUSION OF
18 MENTAL HEALTH AND SUBSTANCE USE DISORDER DIAG-
19 NOSES.—

20 (1) IN GENERAL.—The Comptroller General of
21 the United States shall conduct a study that ana-
22 lyzes the specific rates, patterns, and trends in cov-
23 erage and exclusion of specific mental health and
24 substance use disorder diagnoses by health plans

1 and health insurance. The study shall include an
2 analysis of—

3 (A) specific coverage rates for all mental
4 health conditions and substance use disorders;

5 (B) which diagnoses are most commonly
6 covered or excluded;

7 (C) whether implementation of this Act
8 has affected trends in coverage or exclusion of
9 such diagnoses; and

10 (D) the impact of covering or excluding
11 specific diagnoses on participants' and enroll-
12 ees' health, their health care coverage, and the
13 costs of delivering health care.

14 (2) REPORTS.—Not later than 3 years after the
15 date of the enactment of this Act, and 2 years after
16 the date of submission the first report under this
17 paragraph, the Comptroller General shall submit to
18 Congress a report on the results of the study con-
19 ducted under paragraph (1).

20 **TITLE V—REVENUE PROVISIONS**

21 **SEC. 501. 0.2 PERCENT FUTA SURTAX.**

22 (a) IN GENERAL.—Section 3301 (relating to rate of
23 tax) is amended—

24 (1) by striking “through 2008” in paragraph

25 (1) and inserting “through 2009”, and

1 (2) by striking “calendar year 2009” in para-
2 graph (2) and inserting “calendar year 2010”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to wages paid after December 31,
5 2008.

6 **SEC. 502. NONQUALIFIED DEFERRED COMPENSATION**
7 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

8 (a) **IN GENERAL.**—Subpart B of part II of sub-
9 chapter E of chapter 1 is amended by inserting after sec-
10 tion 457 the following new section:

11 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**
12 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

13 “(a) **IN GENERAL.**—Any compensation of a service
14 provider which is deferred under a nonqualified deferred
15 compensation plan of a nonqualified entity shall be includ-
16 ible in gross income when there is no substantial risk of
17 forfeiture of the rights to such compensation.

18 “(b) **NONQUALIFIED ENTITY.**—For purposes of this
19 section, the term ‘nonqualified entity’ means—

20 “(1) any foreign corporation unless substan-
21 tially all of its income is—

22 “(A) effectively connected with the conduct
23 of a trade or business in the United States, or

24 “(B) subject to a comprehensive foreign in-
25 come tax, and

1 “(2) any partnership unless substantially all of
2 its income is, directly or indirectly, allocated to—

3 “(A) United States persons (other than
4 persons exempt from tax under this title),

5 “(B) foreign persons with respect to whom
6 such income is subject to a comprehensive for-
7 eign income tax,

8 “(C) foreign persons with respect to
9 whom—

10 “(i) such income is effectively con-
11 nected with the conduct of a trade or busi-
12 ness within the United States, and

13 “(ii) a withholding tax is paid under
14 section 1446 with respect to such income,
15 or

16 “(D) organizations which are exempt from
17 tax under this title if such income is unrelated
18 business taxable income (as defined in section
19 512) with respect to such organization.

20 “(c) DETERMINABILITY OF AMOUNTS OF COMPENSA-
21 TION.—

22 “(1) IN GENERAL.—If the amount of any com-
23 pensation is not determinable at the time that such
24 compensation is otherwise includible in gross income
25 under subsection (a)—

1 “(A) such amount shall be so includible in
2 gross income when determinable, and

3 “(B) the tax imposed under this chapter
4 for the taxable year in which such compensation
5 is includible in gross income shall be increased
6 by the sum of—

7 “(i) the amount of interest determined
8 under paragraph (2), and

9 “(ii) an amount equal to 20 percent of
10 the amount of such compensation.

11 “(2) INTEREST.—For purposes of paragraph
12 (1)(B)(i), the interest determined under this para-
13 graph for any taxable year is the amount of interest
14 at the underpayment rate under section 6621 plus
15 1 percentage point on the underpayments that would
16 have occurred had the deferred compensation been
17 includible in gross income for the taxable year in
18 which first deferred or, if later, the first taxable year
19 in which such deferred compensation is not subject
20 to a substantial risk of forfeiture.

21 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

22 For purposes of this section—

23 “(1) SUBSTANTIAL RISK OF FORFEITURE.—

24 “(A) IN GENERAL.—The rights of a person
25 to compensation shall be treated as subject to

1 a substantial risk of forfeiture only if such per-
2 son's rights to such compensation are condi-
3 tioned upon the future performance of substan-
4 tial services by any individual.

5 “(B) EXCEPTION FOR COMPENSATION
6 BASED ON GAIN RECOGNIZED ON AN INVEST-
7 MENT ASSET.—

8 “(i) IN GENERAL.—To the extent pro-
9 vided in regulations prescribed by the Sec-
10 retary, if compensation of a service pro-
11 vider is determined solely by reference to
12 the amount of gain recognized on the dis-
13 position of an investment asset, such com-
14 pensation shall be treated as subject to a
15 substantial risk of forfeiture until the date
16 of such disposition.

17 “(ii) INVESTMENT ASSET.—For pur-
18 poses of clause (i), the term ‘investment
19 asset’ means any single asset (other than
20 an investment fund or similar entity)—

21 “(I) acquired directly by an in-
22 vestment fund or similar entity,

23 “(II) with respect to which such
24 entity does not (nor does any person
25 related to such entity) participate in

1 the active management of such asset
2 (or if such asset is an interest in an
3 entity, in the active management of
4 the activities of such entity), and

5 “(III) substantially all of any
6 gain on the disposition of which (other
7 than such deferred compensation) is
8 allocated to investors in such entity.

9 “(iii) COORDINATION WITH SPECIAL
10 RULE.—Paragraph (3)(B) shall not apply
11 to any compensation to which clause (i)
12 applies.

13 “(2) COMPREHENSIVE FOREIGN INCOME TAX.—
14 The term ‘comprehensive foreign income tax’ means,
15 with respect to any foreign person, the income tax
16 of a foreign country if—

17 “(A) such person is eligible for the benefits
18 of a comprehensive income tax treaty between
19 such foreign country and the United States, or

20 “(B) such person demonstrates to the sat-
21 isfaction of the Secretary that such foreign
22 country has a comprehensive income tax.

23 “(3) NONQUALIFIED DEFERRED COMPENSA-
24 TION PLAN.—

1 “(A) IN GENERAL.—The term ‘non-
2 qualified deferred compensation plan’ has the
3 meaning given such term under section
4 409A(d), except that such term shall include
5 any plan that provides a right to compensation
6 based on the appreciation in value of a specified
7 number of equity units of the service recipient.

8 “(B) EXCEPTION.—Compensation shall
9 not be treated as deferred for purposes of this
10 section if the service provider receives payment
11 of such compensation not later than 12 months
12 after the end of the taxable year of the service
13 recipient during which the right to the payment
14 of such compensation is no longer subject to a
15 substantial risk of forfeiture.

16 “(4) SERVICE PROVIDER.—The term ‘service
17 provider’ has the meaning given such term in the
18 regulations under section 409A, determined without
19 regard to method of accounting.

20 “(5) EXCEPTION FOR CERTAIN COMPENSATION
21 WITH RESPECT TO EFFECTIVELY CONNECTED IN-
22 COME.—In the case of a foreign corporation with in-
23 come which is taxable under section 882, this section
24 shall not apply to compensation payable by such for-
25 eign corporation which, had such compensation been

1 paid in cash on the date that such compensation
2 ceased to be subject to a substantial risk of for-
3 feiture, would have been deductible by such foreign
4 corporation against such income.

5 “(6) EXCEPTION WITH RESPECT TO EMPLOY-
6 EES OF CERTAIN SUBSIDIARIES.—This section shall
7 not apply to compensation deferred under a non-
8 qualified deferred compensation plan of a non-
9 qualified entity if—

10 “(A) such compensation is payable to an
11 employee of a domestic subsidiary of such enti-
12 ty, and

13 “(B) such compensation is reasonably ex-
14 pected to be deductible by such subsidiary
15 under section 404(a)(5) when such compensa-
16 tion is includible in income by such employee.

17 “(7) APPLICATION OF RULES.—Rules similar to
18 the rules of paragraphs (5) and (6) of section
19 409A(d) shall apply.

20 “(e) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary or appropriate to
22 carry out the purposes of this section, including regula-
23 tions—

1 are attributable to services performed after Decem-
2 ber 31, 2008.

3 (2) APPLICATION TO EXISTING DEFERRALS.—

4 In the case of any amount deferred to which the
5 amendments made by this section do not apply solely
6 by reason of the fact that the amount is attributable
7 to services performed before January 1, 2009, to the
8 extent such amount is not includible in gross income
9 in a taxable year beginning before 2018, such
10 amounts shall be includible in gross income in the
11 later of—

12 (A) the last taxable year beginning before
13 2018, or

14 (B) the taxable year in which there is no
15 substantial risk of forfeiture of the rights to
16 such compensation (determined in the same
17 manner as determined for purposes of section
18 457A of the Internal Revenue Code of 1986, as
19 added by this section).

20 (3) ACCELERATED PAYMENTS.—No later than
21 120 days after the date of the enactment of this Act,
22 the Secretary shall issue guidance providing a lim-
23 ited period of time during which a nonqualified de-
24 ferred compensation arrangement attributable to
25 services performed on or before December 31, 2008,

1 may, without violating the requirements of section
2 409A(a) of the Internal Revenue Code of 1986, be
3 amended to conform the date of distribution to the
4 date the amounts are required to be included in in-
5 come.

6 (4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—
7 If the taxpayer is also a service recipient and main-
8 tains one or more nonqualified deferred compensa-
9 tion arrangements for its service providers under
10 which any amount is attributable to services per-
11 formed on or before December 31, 2008, the guid-
12 ance issued under paragraph (4) shall permit such
13 arrangements to be amended to conform the dates of
14 distribution under such arrangement to the date
15 amounts are required to be included in the income
16 of such taxpayer under this subsection.

17 (5) ACCELERATED PAYMENT NOT TREATED AS
18 MATERIAL MODIFICATION.—Any amendment to a
19 nonqualified deferred compensation arrangement
20 made pursuant to paragraph (4) or (5) shall not be
21 treated as a material modification of the arrange-
22 ment for purposes of section 409A of the Internal
23 Revenue Code of 1986.

24 (6) CERTAIN PREEXISTING ARRANGEMENTS.—
25 If, pursuant to a written binding contract entered

1 into on or before December 31, 2007, any portion of
2 compensation payable under such contract for a pe-
3 riod is determined as a portion of the amount of
4 gain recognized on the disposition during such pe-
5 riod of a specified asset, the amendments made by
6 this section shall not apply to the portion of com-
7 pensation attributable to such disposition notwith-
8 standing the fact that such portion of compensation
9 may be reduced by realized losses or depreciation in
10 the value of other assets during such period or a
11 prior period or be attributable in part to services
12 performed after December 31, 2008, but only if—

13 (A) payment of such portion of compensa-
14 tion is received by the service provider and in-
15 cluded in its gross income no later than the ear-
16 lier of—

17 (i) 12 months after the end of the
18 taxable year of the service recipient during
19 which the disposition of the specified asset
20 occurs, or

21 (ii) the last taxable year of the service
22 provider beginning before January 1,
23 2018; and

1 (B) the specified asset is held by the serv-
2 ice recipient on the date of the enactment of
3 this section.

4 **SEC. 503. INCREASE AND EXTENSION OF OIL SPILL LIABIL-**
5 **ITY TRUST FUND TAX.**

6 (a) INCREASE IN RATE.—

7 (1) INCREASE IN RATE.—Section 4611(c) is
8 amended by adding at the end the following new
9 paragraph:

10 “(3) INCREASE IN OIL SPILL LIABILITY TRUST
11 FUND FINANCING RATE.—For purposes of this sub-
12 section, the Oil Spill Liability Trust Fund financing
13 rate is increased (in addition to any other increase
14 under this subsection) by—

15 “(A) in the case of crude oil received or pe-
16 troleum products entered before October 1,
17 2014, 4 cents a barrel, and

18 “(B) in the case of crude oil received or
19 petroleum products entered after September 30,
20 2014, 5 cents a barrel.”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by this subsection shall apply on and after the first
23 day of the first calendar quarter beginning more
24 than 60 days after the date of the enactment of this
25 Act.

1 (b) EXTENSION.—

2 (1) IN GENERAL.—Section 4611(f) (relating to
3 application of Oil Spill Liability Trust Fund financ-
4 ing rate) is amended by striking paragraphs (2) and
5 (3) and inserting the following new paragraph:

6 “(2) TERMINATION.—The Oil Spill Liability
7 Trust Fund financing rate shall not apply after De-
8 cember 31, 2017.”.

9 (2) CONFORMING AMENDMENT.—Section
10 4611(f)(1) is amended by striking “paragraphs (2)
11 and (3)” and inserting “paragraph (2)”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by this subsection shall take effect on the date of the
14 enactment of this Act.

15 **SEC. 504. DELAY IN APPLICATION OF WORLDWIDE ALLOCA-**
16 **TION OF INTEREST.**

17 (a) IN GENERAL.—Paragraphs (5)(D) and (6) of sec-
18 tion 864(f) are each amended by striking “December 31,
19 2010” and inserting “December 31, 2018”.

20 (b) TRANSITION.—Subsection (f) of section 864 is
21 amended by striking paragraph (7).

22 **SEC. 505. TIME FOR PAYMENT OF CORPORATE ESTIMATED**
23 **TAXES.**

24 The percentage under subparagraph (C) of section
25 401(1) of the Tax Increase Prevention and Reconciliation

- 1 Act of 2005 in effect on the date of the enactment of this
- 2 Act is increased by 49 percentage points.