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110TH CONGRESS
2D SESSION

H. R. 6110

To provide for the reform of health care, the Social Security system, the tax code for individuals and business, and the budget process.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2008

Mr. RYAN of Wisconsin introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, Education and Labor, Rules, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for the reform of health care, the Social Security system, the tax code for individuals and business, and the budget process.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Roadmap for America's Future Act of 2008''.

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.

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Subtitle B—Health Plan Choice; Small Business Health Fairness

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Sec. 168. Financing of activities.
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TITLE II—MEDICAID AND SCHIP REFORM

Sec. 201. Medicaid reform.
Sec. 202. SCHIP Reform.

TITLE III—MEDICARE REFORM

Subtitle A—New Medicare Program

Sec. 301. Benefit changes.
Sec. 302. Increase in Medicare eligibility age.
Sec. 303. Unified Medicare Trust Fund.

Subtitle B—Changes in Current Medicare Program

Sec. 311. Income-related reduction in part D premium subsidy.
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TITLE IV—SOCIAL SECURITY REFORM

Sec. 401. Short title and table of contents of title.
Sec. 402. Establishment of Personal Social Security Savings Program.
Sec. 403. Monthly insurance benefits for participating individuals.
Sec. 404. Tax treatment of accounts.
Sec. 405. Self-Liquidating Social Security Transition Fund.
Sec. 406. Budgetary treatment of social security.
Sec. 407. Accounting for the Old-Age, Survivors, and Disability Insurance Program and the Personal Social Security Savings Program.
Sec. 408. Progressive indexing of benefits for old-age, wife's, and husband's insurance benefits.
Sec. 409. Enhancements to part A benefits.
Sec. 410. Adjustments to schedule for increases in normal retirement age.

TITLE V—SIMPLIFIED INCOME TAX

Sec. 501. Short title.
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Sec. 504. Exclusion for capital gains, dividends, and interest.
Sec. 505. Repeal of estate and gift taxes.

TITLE VI—BUSINESS CONSUMPTION TAX

Sec. 601. Short title.
Sec. 602. Repeal of corporate income tax; new tax paid by corporations and other businesses.
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TITLE VII—BUDGET ENFORCEMENT

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Sec. 703. Preview spending reduction order.
Sec. 704. Final spending reduction order.
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SEC. 2. FINDINGS AND PURPOSE.

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

(1) The social insurance strategies of the past century, which sprang from the New Deal, expanded in the Great Society, and continue to dominate the terms of public debate, are headed toward collapse.

(2) Although Americans remain committed to the missions of these initiatives, the goals can no longer be met on models created nearly 80 years ago—with large, centralized institutions, especially government, serving as sole providers for an increasingly dependent population.

(3) The failure of this approach will not occur immediately, it will unfold over the next several decades, becoming more intractable with each succeeding year; but it is inevitable, and policies in place right now, today, are leading inexorably toward it.

(4) Among the inescapable signs are the following: an unsustainable path of Government spending; levels of projected debt that threaten to bankrupt the country; trillions of dollars of unfunded liabilities in the Government's major benefit pro-

grams; and the erosion of Americans' security and confidence in health care and retirement.

(5) These conditions pose significant potential burdens not only for the Government, but for the United States economy as well, threatening its ability to continue raising standards of living, and its leadership in an increasingly international marketplace.

(6) A comprehensive plan is needed, and this legislation aims to energize the productive capacities of Americans to generate sustained economic growth.

(b) PURPOSE.—The purpose of this Act is as follows:

(1) HEALTH CARE REFORM.—To provide access to health care coverage to 47 million uninsured Americans by establishing a new tax credit; to reform health insurance markets, high-risk pools, and electronic health records; and to create a new agency to promote the dissemination of industry-defined health care price and quality data.

(2) MEDICAID AND SCHIP REFORM.—To improve health care coverage for those who need it most by establishing a new option for States' Medicaid and SCHIP programs.

(3) MEDICARE REFORM.—To ensure the Medicare benefit continues to provide health care coverage for seniors by establishing a new methodology to make the program solvent and fiscally sustainable.

(4) SOCIAL SECURITY REFORM.—To reform social security to ensure retirement security for future generations and to make it solvent for the foreseeable future; to address inequities in the system and provide millions of Americans with the opportunity to build a retirement nest egg that they can pass on to their heirs.

(5) INDIVIDUAL INCOME TAX REFORM.—To offer taxpayers a choice in paying their Federal income taxes; to allow individuals to choose between the current tax code or a highly simplified tax system with virtually no deductions or credits (apart from an individual health care credit), two low tax rates and a generous standard deduction and personal exemption; to fully repeal the alternative minimum tax (AMT), eliminate the tax on interest, capital gains and dividends in order to promote saving; and to repeal the estate tax.

(6) BUSINESS TAX REFORM.—To eliminate the United States. corporate income tax and establishes

a border-adjustable business consumption tax in its place; to provide a new method of business taxation that will level the playing field for United States businesses to compete with foreign businesses and will promote sustained economic growth, investment and job creation in America.

(7) BUDGET PROCESS.—To keep total spending of the Government under control, a limit on total outlays as a percentage of the gross domestic produce is established; and enforced by automatic spending controls if it is exceeded.

TITLE I—HEALTH CARE REFORM

Subtitle A—Tax Changes

SEC. 101. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. QUALIFIED HEALTH INSURANCE CREDIT.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the sum of the monthly limitations determined under subsection (b)

for the taxpayer and the taxpayer's spouse and dependents.

"(b) MONTHLY LIMITATION.—

"(1) IN GENERAL.—The monthly limitation for each month during the taxable year for an eligible individual is 1/12th of—

"(A) the applicable adult amount, in the case that the eligible individual is the taxpayer or the taxpayer's spouse,

"(B) the applicable adult amount, in the case that the eligible individual is an adult dependent, and

"(C) the applicable child amount, in the case that the eligible individual is a child dependent.

"(2) LIMITATION ON AGGREGATE AMOUNT.—Notwithstanding paragraph (1), the aggregate monthly limitations for the taxpayer and the taxpayer's spouse and dependents for any month shall not exceed 1/12th of the applicable aggregate amount.

"(3) NO CREDIT FOR INELIGIBLE MONTHS.—With respect to any individual, the monthly limitation shall be zero for any month for which such individual is not an eligible individual.

''(c) APPLICABLE AMOUNTS.—For purposes of this section—

''(1) APPLICABLE ADULT AMOUNT.—The term 'applicable adult amount' means $2,500.

''(2) APPLICABLE CHILD AMOUNT.—The term 'applicable child amount' means $1,000.

''(3) APPLICABLE AGGREGATE AMOUNT.—The term 'applicable aggregate amount' means $5,000.

''(d) ELIGIBLE INDIVIDUAL.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible individual' means, with respect to any month, an individual who—

''(A) is the taxpayer, the taxpayer's spouse, or the taxpayer's dependent, and

''(B) is covered under qualified health insurance as of the 1st day of such month.

''(2) COVERAGE UNDER MEDICARE, MEDICAID, SCHIP, MILITARY COVERAGE.—The term 'eligible individual' shall not include any individual for a month if, as of the first day of such month, such individual is—

''(A) entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title, and the indi-

vidual is not a participant or beneficiary in a group health plan or large group health plan that is a primary plan (as defined in section 1862(b)(2)(A) of such Act),

''(B) in the case of a State that has not made the election described in section 1939(a)(1)(B) of the Social Security Act, enrolled in the program under title XIX of such Act (other than under section 1928 of such Act), or

''(C) entitled to benefits under chapter 55 of title 10, United States Code.

''(3) IDENTIFICATION REQUIREMENTS.—The term 'eligible individual' shall not include any individual for any month unless the policy number associated with the qualified refund eligible health insurance and the TIN of each eligible individual covered under such health insurance for such month are included on the return of tax for the taxable year in which such month occurs.

''(4) PRISONERS.—The term 'eligible individual' shall not include any individual for a month if, as of the first day of such month, such individual is imprisoned under Federal, State, or local authority.

''(5) ALIENS.—The term 'eligible individual' shall not include any alien individual for a month if, as of the first day of such month, such individual is not a lawful permanent resident of the United States.

''(e) QUALIFIED HEALTH INSURANCE.—For purposes of this section, the term 'qualified health insurance' means any insurance constituting medical care which (as determined under regulations prescribed by the Secretary) provides coverage for inpatient and outpatient care, emergency benefits, and physician care. Such term does not include any insurance substantially all of the coverage of which is coverage described in section 223(c)(1)(B).

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof). An individual who is a child to whom section 152(e) applies shall be treated as a dependent of the custodial parent for a coverage month unless the custodial and noncustodial parent agree otherwise.

''(2) ADULT.—The term 'adult' means an individual who is not a child.

''(3) CHILD.—The term 'child' means a qualifying child (as defined in section 152(c)).

''(g) SPECIAL RULES.—

''(1) COORDINATION WITH MEDICAL DEDUCTION, ETC.—Any amount paid by a taxpayer for insurance to which subsection (a) applies shall not be taken into account in computing the amount allowable to the taxpayer as a credit under section 35 or as a deduction under section 213(a).

''(2) MEDICAL AND HEALTH SAVINGS ACCOUNTS.—The credit allowed under subsection (a) for any taxable year shall be reduced by the aggregate amount distributed from Archer MSAs (as defined in section 220(d)) and health savings accounts (as defined in section 223(d)) which are excludable from gross income for such taxable years by reason of being used to pay premiums for coverage of an eligible individual (as defined in section 25E(e)) under qualified health insurance (as defined in section 25E(f)) for any month.

''(3) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a tax-

able year beginning in the calendar year in which such individual's taxable year begins.

''(4) MARRIED COUPLES MUST FILE JOINT RETURN.—

''(A) IN GENERAL.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

''(B) MARITAL STATUS; CERTAIN MARRIED INDIVIDUALS LIVING APART.—Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this paragraph.

''(5) VERIFICATION OF COVERAGE, ETC.—No credit shall be allowed under this section with respect to any individual unless such individual's coverage (and such related information as the Secretary may require) is verified in such manner as the Secretary may prescribe.

''(6) INSURANCE WHICH COVERS OTHER INDIVIDUALS; TREATMENT OF PAYMENTS.—Rules similar to the rules of paragraphs (7) and (8) of section 35(g) shall apply for purposes of this section.

''(h) COORDINATION WITH ADVANCE PAYMENTS.—

''(1) REDUCTION IN CREDIT FOR ADVANCE PAYMENTS.—With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527A for months beginning in such taxable year.

''(2) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If the aggregate amount paid on behalf of the taxpayer under section 7527A for months beginning in the taxable year exceeds the sum of the monthly limitations determined under subsection (b) for the taxpayer and the taxpayer's spouse and dependents for such months, then the tax imposed by this chapter for such taxable year shall be increased by the sum of—

''(A) such excess, plus

''(B) interest on such excess determined at the underpayment rate established under section 6621 for the period from the date of the payment under section 7527A to the date such excess is paid.

For purposes of subparagraph (B), an equal part of the aggregate amount of the excess shall be deemed

to be attributable to payments made under section 7527A on the first day of each month beginning in such taxable year, unless the taxpayer establishes the date on which each such payment giving rise to such excess occurred, in which case subparagraph (B) shall be applied with respect to each date so established.

''(i) ANNUAL INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2009, each of the dollar amounts contained in subsection (c) shall be annually increased by the annual inflation adjustment determined under subparagraph (B) section 1809(c)(2) of the Social Security Act for such calendar year. Any adjustment under the preceding sentence shall be rounded in the manner described in subparagraph (A) of such section.''.

(b) ADVANCE PAYMENT OF CREDIT.—Chapter 77 (relating to miscellaneous provisions) of such Code is amended by inserting after section 7527 the following new section:

''SEC. 7527A. ADVANCE PAYMENT OF QUALIFIED HEALTH INSURANCE CREDIT.

''(a) IN GENERAL.—The Secretary shall establish a program for making payments on behalf of individuals to

providers of qualified health insurance (as defined in section 36(f)) for such individuals.

''(b) LIMITATION.—The Secretary may make payments under subsection (a) only to the extent that the Secretary determines that the amount of such payments made on behalf of any taxpayer for any month does not exceed the sum of the monthly limitations determined under section 36 for the taxpayer and taxpayer's spouse and dependents for such month.''.

(c) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by inserting after section 6050V the following new section:

''SEC. 6050W. RETURNS RELATING TO QUALIFIED HEALTH INSURANCE CREDIT.

''(a) REQUIREMENT OF REPORTING.—Every person who is entitled to receive payments for any month of any calendar year under section 7527A (relating to advance payment of qualified health insurance credit) with respect to any individual shall, at such time as the Secretary may prescribe, make the return described in subsection (b) with respect to each such individual.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains, with respect to each individual referred to in subsection (a)—

''(A) the name, address, and TIN of each such individual,

''(B) the months for which amounts payments under section 7527A were received,

''(C) the amount of each such payment,

''(D) the type of insurance coverage provide by such person with respect to such individual and the policy number associated with such coverage,

''(E) the name, address, and TIN of the spouse and each dependent covered under such coverage, and

''(F) such other information as the Secretary may prescribe.

''(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name

is required to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

''(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(d) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) of such Code is amended by redesignating clauses (xv) through (xxi) as clauses (xvi) through (xxii), respectively, and by inserting after clause (xiv) the following new clause:

''(xv) section 6050W (relating to returns relating to qualified health insurance credit),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking the period at the end of subparagraph (CC) and inserting '', or'' and by inserting after subparagraph (CC) the following new subparagraph:

''(DD) section 6050W (relating to returns relating to qualified health insurance credit).''.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting ''or 36'' after ''section 35''.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting after the item relating to section 35 the following new item:

''Sec. 36. Qualified health insurance credit.''.

(3) The table of sections for chapter 77 of such Code is amended by inserting after the item relating to section 7527 the following new item:

''Sec. 7527A. Advance payment of qualified health insurance credit.''.

(4) The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by adding at the end the following new item:

''Sec. 6050W. Returns relating to qualified health insurance credit.''.

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

SEC. 102. CHANGES TO EXISTING TAX PREFERENCES FOR MEDICAL COVERAGE, ETC., FOR INDIVIDUALS ELIGIBLE FOR QUALIFIED HEALTH INSURANCE CREDIT.

(a) EXCLUSION FOR CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND HEALTH PLANS.—

(1) IN GENERAL.—Section 106 of the Internal Revenue Code of 1986 (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

''(f) NO EXCLUSION FOR INDIVIDUALS ELIGIBLE FOR QUALIFIED HEALTH INSURANCE CREDIT.—Subsection (a) shall not apply with respect to any employer-provided coverage under an accident or health plan for any individual for any month unless such individual is described in paragraph (2) or (5) of section 36(e) for such month. The amount includible in gross income by reason

of this subsection shall be determined under rules similar to the rules of section 4980B(f)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 106(b)(1) of such Code is amended—

(i) by inserting ''gross income does not include'' before ''amounts contributed'', and

(ii) by striking ''shall be treated as employer-provided coverage for medical expenses under an accident or health plan''.

(B) Section 106(d)(1) of such Code is amended—

(i) by inserting ''gross income does not include'' before ''amounts contributed'', and

(ii) by striking ''shall be treated as employer-provided coverage for medical expenses under an accident or health plan''.

(b) AMOUNTS RECEIVED UNDER ACCIDENT AND HEALTH PLANS.—

(1) IN GENERAL.—Section 105 of such Code (relating to amounts received under accident and health plans) is amended by adding at the end the following new subsection:

''(f) NO EXCLUSION FOR INDIVIDUALS ELIGIBLE FOR QUALIFIED HEALTH INSURANCE CREDIT.—Subsection (b) shall not apply with respect to any employer-provided coverage under an accident or health plan for any individual for any month unless such individual is described in paragraph (2) or (5) of section 36(e) for such month.''.

(c) SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Subsection (l) of section 162 of such Code (relating to special rules for health insurance costs of self-employed individuals) is amended by adding at the end the following new paragraph:

''(6) NO DEDUCTION TO INDIVIDUALS ELIGIBLE FOR QUALIFIED HEALTH INSURANCE.—Paragraph (1) shall not apply for any individual for any month unless such individual is described in paragraph (2) or (5) of section 36(e) for such month.''.

(d) EARNED INCOME CREDIT UNAFFECTED BY REPEALED EXCLUSIONS.—Subparagraph (B) of section 32(c)(2) of such Code is amended by redesignating clauses (v) and (vi) as clauses (vi) and (vii), respectively, and by inserting after clause (iv) the following new clause:

''(v) the earned income of an individual shall be computed without regard to sections 105(f) and 106(f),''.

(e) MODIFICATION OF DEDUCTION FOR MEDICAL EXPENSES.—Subsection (d) of section 213 of such Code is amended by adding at the end the following new paragraph:

''(12) PREMIUMS FOR QUALIFIED HEALTH INSURANCE.—The term 'medical care' does not include any amount paid as a premium for coverage of an eligible individual (as defined in section 36(e)) under qualified health insurance (as defined in section 36(f)) for any month.''.

(f) REPORTING REQUIREMENT.—Subsection (a) of section 6051 of such Code is amended by striking ''and'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting ''and'', and by inserting after paragraph (13) the following new paragraph:

''(14) the total amount of employer-provided coverage under an accident or health plan which is includible in gross income by reason of sections 105(f) and 106(f).''.

(g) RETIRED PUBLIC SAFETY OFFICERS.—Section 402(l)(4)(D) of such Code is amended by adding at the

end the following: ''Such term shall not include any premium for coverage by an accident or health insurance plan for any month unless such individual is described in paragraph (2) or (5) of section 36(e) for such month.''.

(h) EMPLOYER DEDUCTION AS TRADE OR BUSINESS EXPENSE UNAFFECTED.—For the allowance of a deduction for amounts paid or incurred by an employer for employee health benefits, see section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses).

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

Subtitle B—Health Plan Choice; Small Business Health Fairness

SEC. 111. COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended by adding at the end the following new part:

''PART D—COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE

''SEC. 2795. DEFINITIONS.

''In this part:

''(1) PRIMARY STATE.—The term 'primary State' means, with respect to individual health insurance coverage offered by a health insurance issuer, the State designated by the issuer as the State whose covered laws shall govern the health insurance issuer in the sale of such coverage under this part. An issuer, with respect to a particular policy, may only designate one such State as its primary State with respect to all such coverage it offers. Such an issuer may not change the designated primary State with respect to individual health insurance coverage once the policy is issued, except that such a change may be made upon renewal of the policy. With respect to such designated State, the issuer is deemed to be doing business in that State.

''(2) SECONDARY STATE.—The term 'secondary State' means, with respect to individual health insurance coverage offered by a health insurance issuer, any State that is not the primary State. In the case of a health insurance issuer that is selling a policy in, or to a resident of, a secondary State, the issuer is deemed to be doing business in that secondary State.

''(3) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning given such

term in section 2791(b)(2), except that such an issuer must be licensed in the primary State and be qualified to sell individual health insurance coverage in that State.

''(4) INDIVIDUAL HEALTH INSURANCE COVERAGE.—The term 'individual health insurance coverage' means health insurance coverage offered in the individual market, as defined in section 2791(e)(1).

''(5) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of this title for the State with respect to the issuer.

''(6) HAZARDOUS FINANCIAL CONDITION.—The term 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a health insurance issuer is unlikely to be able—

''(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

''(B) to pay other obligations in the normal course of business.

''(7) COVERED LAWS.—

''(A) IN GENERAL.—The term 'covered laws' means the laws, rules, regulations, agreements, and orders governing the insurance business pertaining to—

''(i) individual health insurance coverage issued by a health insurance issuer;

''(ii) the offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage to an individual;

''(iii) the provision to an individual in relation to individual health insurance coverage of health care and insurance related services;

''(iv) the provision to an individual in relation to individual health insurance coverage of management, operations, and investment activities of a health insurance issuer; and

''(v) the provision to an individual in relation to individual health insurance coverage of loss control and claims administration for a health insurance issuer with

respect to liability for which the issuer provides insurance.

''(B) EXCEPTION.—Such term does not include any law, rule, regulation, agreement, or order governing the use of care or cost management techniques, including any requirement related to provider contracting, network access or adequacy, health care data collection, or quality assurance.

''(8) STATE.—The term 'State' means the 50 States and includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

''(9) UNFAIR CLAIMS SETTLEMENT PRACTICES.—The term 'unfair claims settlement practices' means only the following practices:

''(A) Knowingly misrepresenting to claimants and insured individuals relevant facts or policy provisions relating to coverage at issue.

''(B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under policies.

''(C) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under policies.

"(D) Failing to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear.

"(E) Refusing to pay claims without conducting a reasonable investigation.

"(F) Failing to affirm or deny coverage of claims within a reasonable period of time after having completed an investigation related to those claims.

"(G) A pattern or practice of compelling insured individuals or their beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

"(H) A pattern or practice of attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured individual or his or her beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application.

"(I) Attempting to settle or settling claims on the basis of an application that was materi-

ally altered without notice to, or knowledge or consent of, the insured.

''(J) Failing to provide forms necessary to present claims within 15 calendar days of a requests with reasonable explanations regarding their use.

''(K) Attempting to cancel a policy in less time than that prescribed in the policy or by the law of the primary State.

''(10) FRAUD AND ABUSE.—The term 'fraud and abuse' means an act or omission committed by a person who, knowingly and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

''(A) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:

''(i) An application for the issuance or renewal of an insurance policy or reinsurance contract.

''(ii) The rating of an insurance policy or reinsurance contract.

''(iii) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract.

''(iv) Premiums paid on an insurance policy or reinsurance contract.

''(v) Payments made in accordance with the terms of an insurance policy or reinsurance contract.

''(vi) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction.

''(vii) The financial condition of an insurer or reinsurer.

''(viii) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of a State by an insurer or reinsurer.

''(ix) The issuance of written evidence of insurance.

''(x) The reinstatement of an insurance policy.

''(B) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer reinsurer or other person engaged in the busi-

ness of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.

''(C) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.

''(D) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this paragraph.

''SEC. 2796. APPLICATION OF LAW.

''(a) IN GENERAL.—The covered laws of the primary State shall apply to individual health insurance coverage offered by a health insurance issuer in the primary State and in any secondary State, but only if the coverage and issuer comply with the conditions of this section with respect to the offering of coverage in any secondary State.

''(b) EXEMPTIONS FROM COVERED LAWS IN A SECONDARY STATE.—Except as provided in this section, a health insurance issuer with respect to its offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage in any secondary State is exempt from any covered laws of the

secondary State (and any rules, regulations, agreements, or orders sought or issued by such State under or related to such covered laws) to the extent that such laws would—

''(1) make unlawful, or regulate, directly or indirectly, the operation of the health insurance issuer operating in the secondary State, except that any secondary State may require such an issuer—

''(A) to pay, on a nondiscriminatory basis, applicable premium and other taxes (including high risk pool assessments) which are levied on insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

''(B) to register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

''(C) to submit to an examination of its financial condition by the State insurance commissioner in any State in which the issuer is doing business to determine the issuer's financial condition, if—

''(i) the State insurance commissioner of the primary State has not done an examination within the period recommended

by the National Association of Insurance Commissioners; and

''(ii) any such examination is conducted in accordance with the examiners' handbook of the National Association of Insurance Commissioners and is coordinated to avoid unjustified duplication and unjustified repetition;

''(D) to comply with a lawful order issued—

''(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (C); or

''(ii) in a voluntary dissolution proceeding;

''(E) to comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the issuer is in hazardous financial condition;

''(F) to participate, on a nondiscriminatory basis, in any insurance insolvency guaranty association or similar association to which a

health insurance issuer in the State is required to belong;

''(G) to comply with any State law regarding fraud and abuse (as defined in section 2795(10)), except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

''(H) to comply with any State law regarding unfair claims settlement practices (as defined in section 2795(9)); or

''(I) to comply with the applicable requirements for independent review under section 2798 with respect to coverage offered in the State;

''(2) require any individual health insurance coverage issued by the issuer to be countersigned by an insurance agent or broker residing in that Secondary State; or

''(3) otherwise discriminate against the issuer issuing insurance in both the primary State and in any secondary State.

''(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A health insurance issuer shall provide the following notice, in 12-point bold type, in any insurance coverage offered

in a secondary State under this part by such a health insurance issuer and at renewal of the policy, with the 5 blank spaces therein being appropriately filled with the name of the health insurance issuer, the name of primary State, the name of the secondary State, the name of the secondary State, and the name of the secondary State, respectively, for the coverage concerned:

‘‘‘**Notice**

‘‘‘**This policy is issued by _____ and is governed by the laws and regulations of the State of _____, and it has met all the laws of that State as determined by that State's Department of Insurance. This policy may be less expensive than others because it is not subject to all of the insurance laws and regulations of the State of _____, including coverage of some services or benefits mandated by the law of the State of _____. Additionally, this policy is not subject to all of the consumer protection laws or restrictions on rate changes of the State of _____. As with all insurance products, before purchasing this policy, you should carefully review the policy and determine what health care services the policy covers and what bene-**

fits it provides, including any exclusions, limitations, or conditions for such services or benefits.'.

''(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS AND PREMIUM INCREASES.—

''(1) IN GENERAL.—For purposes of this section, a health insurance issuer that provides individual health insurance coverage to an individual under this part in a primary or secondary State may not upon renewal—

''(A) move or reclassify the individual insured under the health insurance coverage from the class such individual is in at the time of issue of the contract based on the health-status related factors of the individual; or

''(B) increase the premiums assessed the individual for such coverage based on a health status-related factor or change of a health status-related factor or the past or prospective claim experience of the insured individual.

''(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a health insurance issuer—

"(A) from terminating or discontinuing coverage or a class of coverage in accordance with subsections (b) and (c) of section 2742;

"(B) from raising premium rates for all policy holders within a class based on claims experience;

"(C) from changing premiums or offering discounted premiums to individuals who engage in wellness activities at intervals prescribed by the issuer, if such premium changes or incentives—

"(i) are disclosed to the consumer in the insurance contract;

"(ii) are based on specific wellness activities that are not applicable to all individuals; and

"(iii) are not obtainable by all individuals to whom coverage is offered;

"(D) from reinstating lapsed coverage; or

"(E) from retroactively adjusting the rates charged an insured individual if the initial rates were set based on material misrepresentation by the individual at the time of issue.

"(e) PRIOR OFFERING OF POLICY IN PRIMARY STATE.—A health insurance issuer may not offer for sale

individual health insurance coverage in a secondary State unless that coverage is currently offered for sale in the primary State.

''(f) LICENSING OF AGENTS OR BROKERS FOR HEALTH INSURANCE ISSUERS.—Any State may require that a person acting, or offering to act, as an agent or broker for a health insurance issuer with respect to the offering of individual health insurance coverage obtain a license from that State, with commissions or other compensation subject to the provisions of the laws of that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

''(g) DOCUMENTS FOR SUBMISSION TO STATE INSURANCE COMMISSIONER.—Each health insurance issuer issuing individual health insurance coverage in both primary and secondary States shall submit—

''(1) to the insurance commissioner of each State in which it intends to offer such coverage, before it may offer individual health insurance coverage in such State—

''(A) a copy of the plan of operation or feasibility study or any similar statement of the policy being offered and its coverage (which

shall include the name of its primary State and its principal place of business);

"(B) written notice of any change in its designation of its primary State; and

"(C) written notice from the issuer of the issuer's compliance with all the laws of the primary State; and

"(2) to the insurance commissioner of each secondary State in which it offers individual health insurance coverage, a copy of the issuer's quarterly financial statement submitted to the primary State, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries; or

"(B) a qualified loss reserve specialist.

"(h) POWER OF COURTS TO ENJOIN CONDUCT.—Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible for such insurance; or

''(2) the solicitation or sale of individual health insurance coverage that violates the requirements of the law of a secondary State which are described in subparagraphs (A) through (H) of section 2796(b)(1).

''(i) POWER OF SECONDARY STATES TO TAKE ADMINISTRATIVE ACTION.—Nothing in this section shall be construed to affect the authority of any State to enjoin conduct in violation of that State's laws described in section 2796(b)(1).

''(j) STATE POWERS TO ENFORCE STATE LAWS.—

''(1) IN GENERAL.—Subject to the provisions of subsection (b)(1)(G) (relating to injunctions) and paragraph (2), nothing in this section shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a health insurance issuer is not exempt under subsection (b).

''(2) COURTS OF COMPETENT JURISDICTION.—If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (h), such injunction must be obtained from a Federal or State court of competent jurisdiction.

''(k) STATES' AUTHORITY TO SUE.—Nothing in this section shall affect the authority of any State to bring action in any Federal or State court.

''(l) GENERALLY APPLICABLE LAWS.—Nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

''(m) GUARANTEED AVAILABILITY OF COVERAGE TO HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a health insurance issuer is offering coverage in a primary State that does not accommodate residents of secondary States or does not provide a working mechanism for residents of a secondary State, and the issuer is offering coverage under this part in such secondary State which has not adopted a qualified high risk pool as its acceptable alternative mechanism (as defined in section 2744(c)(2)), the issuer shall, with respect to any individual health insurance coverage offered in a secondary State under this part, comply with the guaranteed availability requirements for eligible individuals in section 2741.

''SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR BEFORE ISSUER MAY SELL INTO SECONDARY STATES.

''A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary

State if the State insurance commissioner does not use a risk-based capital formula for the determination of capital and surplus requirements for all health insurance issuers.

"SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCEDURES.

''(a) RIGHT TO EXTERNAL APPEAL.—A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary State under the provisions of this title unless—

''(1) both the secondary State and the primary State have legislation or regulations in place establishing an independent review process for individuals who are covered by individual health insurance coverage, or

''(2) in any case in which the requirements of subparagraph (A) are not met with respect to the either of such States, the issuer provides an independent review mechanism substantially identical (as determined by the applicable State authority of such State) to that prescribed in the 'Health Carrier External Review Model Act' of the National Association of Insurance Commissioners for all individuals who purchase insurance coverage under the terms of this part, except that, under such mechanism, the review

is conducted by an independent medical reviewer, or a panel of such reviewers, with respect to whom the requirements of subsection (b) are met.

''(b) QUALIFICATIONS OF INDEPENDENT MEDICAL REVIEWERS.—In the case of any independent review mechanism referred to in subsection (a)(2)—

''(1) IN GENERAL.—In referring a denial of a claim to an independent medical reviewer, or to any panel of such reviewers, to conduct independent medical review, the issuer shall ensure that—

''(A) each independent medical reviewer meets the qualifications described in paragraphs (2) and (3);

''(B) with respect to each review, each reviewer meets the requirements of paragraph (4) and the reviewer, or at least 1 reviewer on the panel, meets the requirements described in paragraph (5); and

''(C) compensation provided by the issuer to each reviewer is consistent with paragraph (6).

''(2) LICENSURE AND EXPERTISE.—Each independent medical reviewer shall be a physician (allopathic or osteopathic) or health care professional who—

''(A) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

''(B) typically treats the condition, makes the diagnosis, or provides the type of treatment under review.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Subject to subparagraph (B), each independent medical reviewer in a case shall—

''(i) not be a related party (as defined in paragraph (7));

''(ii) not have a material familial, financial, or professional relationship with such a party; and

''(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

''(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

''(i) prohibit an individual, solely on the basis of affiliation with the issuer, from serving as an independent medical reviewer if—

"(I) a non-affiliated individual is not reasonably available;

"(II) the affiliated individual is not involved in the provision of items or services in the case under review;

"(III) the fact of such an affiliation is disclosed to the issuer and the enrollee (or authorized representative) and neither party objects; and

"(IV) the affiliated individual is not an employee of the issuer and does not provide services exclusively or primarily to or on behalf of the issuer;

"(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as an independent medical reviewer merely on the basis of such affiliation if the affiliation is disclosed to the issuer and the enrollee (or authorized representative), and neither party objects; or

"(iii) prohibit receipt of compensation by an independent medical reviewer from an entity if the compensation is provided consistent with paragraph (6).

''(4) PRACTICING HEALTH CARE PROFESSIONAL IN SAME FIELD.—

''(A) IN GENERAL.—In a case involving treatment, or the provision of items or services—

''(i) by a physician, a reviewer shall be a practicing physician (allopathic or osteopathic) of the same or similar specialty, as a physician who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, typically treats the condition, makes the diagnosis, or provides the type of treatment under review; or

''(ii) by a non-physician health care professional, the reviewer, or at least 1 member of the review panel, shall be a practicing non-physician health care professional of the same or similar specialty as the non-physician health care professional who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, typically treats the condition, makes the diag-

nosis, or provides the type of treatment under review.

''(B) PRACTICING DEFINED.—For purposes of this paragraph, the term 'practicing' means, with respect to an individual who is a physician or other health care professional, that the individual provides health care services to individual patients on average at least 2 days per week.

''(5) PEDIATRIC EXPERTISE.—In the case of an external review relating to a child, a reviewer shall have expertise under paragraph (2) in pediatrics.

''(6) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by the issuer to an independent medical reviewer in connection with a review under this section shall—

''(A) not exceed a reasonable level; and

''(B) not be contingent on the decision rendered by the reviewer.

''(7) RELATED PARTY DEFINED.—For purposes of this section, the term 'related party' means, with respect to a denial of a claim under a coverage relating to an enrollee, any of the following:

''(A) The issuer involved, or any fiduciary, officer, director, or employee of the issuer.

''(B) The enrollee (or authorized representative).

''(C) The health care professional that provides the items or services involved in the denial.

''(D) The institution at which the items or services (or treatment) involved in the denial are provided.

''(E) The manufacturer of any drug or other item that is included in the items or services involved in the denial.

''(F) Any other party determined under any regulations to have a substantial interest in the denial involved.

''(8) DEFINITIONS.—For purposes of this subsection:

''(A) ENROLLEE.—The term 'enrollee' means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

''(B) HEALTH CARE PROFESSIONAL.—The term 'health care professional' means an individual who is licensed, accredited, or certified under State law to provide specified health care

services and who is operating within the scope of such licensure, accreditation, or certification.

"SEC. 2799. ENFORCEMENT.

"(a) IN GENERAL.—Subject to subsection (b), with respect to specific individual health insurance coverage the primary State for such coverage has sole jurisdiction to enforce the primary State's covered laws in the primary State and any secondary State.

"(b) SECONDARY STATE'S AUTHORITY.—Nothing in subsection (a) shall be construed to affect the authority of a secondary State to enforce its laws as set forth in the exception specified in section 2796(b)(1).

"(c) COURT INTERPRETATION.—In reviewing action initiated by the applicable secondary State authority, the court of competent jurisdiction shall apply the covered laws of the primary State.

"(d) NOTICE OF COMPLIANCE FAILURE.—In the case of individual health insurance coverage offered in a secondary State that fails to comply with the covered laws of the primary State, the applicable State authority of the secondary State may notify the applicable State authority of the primary State.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individual health insurance

coverage offered, issued, or sold after the date that is one year after the date of the enactment of this Act.

(c) GAO ONGOING STUDY AND REPORTS.—

(1) STUDY.—The Comptroller General of the United States shall conduct an ongoing study concerning the effect of the amendment made by subsection (a) on—

(A) the number of uninsured and under-insured;

(B) the availability and cost of health insurance policies for individuals with pre-existing medical conditions;

(C) the availability and cost of health insurance policies generally;

(D) the elimination or reduction of different types of benefits under health insurance policies offered in different States; and

(E) cases of fraud or abuse relating to health insurance coverage offered under such amendment and the resolution of such cases.

(2) ANNUAL REPORTS.—The Comptroller General shall submit to Congress an annual report, after the end of each of the 5 years following the effective date of the amendment made by subsection (a), on the ongoing study conducted under paragraph (1).

(d) SEVERABILITY.—If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any other person or circumstance shall not be affected.

SEC. 112. SMALL BUSINESS HEALTH FAIRNESS.

(a) RULES GOVERNING ASSOCIATION HEALTH PLANS.—

(1) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

"PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

"SEC. 801. ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'association health plan' means a group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade associa-

tion, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3)

shall be deemed to be a sponsor described in this subsection.

"SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH PLANS.

"(a) IN GENERAL.—The applicable authority shall prescribe by regulation a procedure under which, subject to subsection (b), the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part.

"(b) STANDARDS.—Under the procedure prescribed pursuant to subsection (a), in the case of an association health plan that provides at least one benefit option which does not consist of health insurance coverage, the applicable authority shall certify such plan as meeting the requirements of this part only if the applicable authority is satisfied that the applicable requirements of this part are met (or, upon the date on which the plan is to commence operations, will be met) with respect to the plan.

"(c) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—An association health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(d) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of association health plans under this part.

''(e) CLASS CERTIFICATION FOR FULLY INSURED PLANS.—The applicable authority shall establish a class certification procedure for association health plans under which all benefits consist of health insurance coverage. Under such procedure, the applicable authority shall provide for the granting of certification under this part to the plans in each class of such association health plans upon appropriate filing under such procedure in connection with plans in such class and payment of the prescribed fee under section 807(a).

''(f) CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—An association health plan which offers one or more benefit options which do not consist of health insurance coverage may be certified under this part only if such plan consists of any of the following:

''(1) a plan which offered such coverage on the date of the enactment of this part,

''(2) a plan under which the sponsor does not restrict membership to one or more trades and businesses or industries and whose eligible participating

employers represent a broad cross-section of trades and businesses or industries, or

''(3) a plan whose eligible participating employers represent one or more trades or businesses, or one or more industries, consisting of any of the following: agriculture; equipment and automobile dealerships; barbering and cosmetology; certified public accounting practices; child care; construction; dance, theatrical and orchestra productions; disinfecting and pest control; financial services; fishing; food service establishments; hospitals; labor organizations; logging; manufacturing (metals); mining; medical and dental practices; medical laboratories; professional consulting services; sanitary services; transportation (local and freight); warehousing; wholesaling/distributing; or any other trade or business or industry which has been indicated as having average or above-average risk or health claims experience by reason of State rate filings, denials of coverage, proposed premium rate levels, or other means demonstrated by such plan in accordance with regulations.

"SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to an association health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to an association health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a trust agreement, by a board of trustees which has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

"(ii) LIMITATION.—

"(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

"(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they

do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to an association health plan which is in existence on the date of the enactment of this part.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

''(c) TREATMENT OF FRANCHISE NETWORKS.—In the case of a group health plan which is established and maintained by a franchiser for a franchise network consisting of its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

"SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor,

''(B) the sponsor, or

''(C) an affiliated member of the sponsor with respect to which the requirements of subsection (b) are met,

except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the beneficiaries of individuals described in subparagraph (A).

''(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of this part, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

''(1) the affiliated member was an affiliated member on the date of certification under this part; or

''(2) during the 12-month period preceding the date of the offering of such coverage, the affiliated member has not maintained or contributed to a group health plan with respect to any of its employees who would otherwise be eligible to participate in such association health plan.

''(c) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(d) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to an association health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(A) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A));

''(B) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)); and

''(C) incorporates the requirements of section 806.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) The contribution rates for any participating small employer do not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and do not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) Nothing in this title or any other provision of law shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from—

"(i) setting contribution rates based on the claims experience of the plan; or

"(ii) varying contribution rates for small employers in a State to the extent that such rates could vary using the same methodology employed in such State for regulating premium rates in the small group market with respect to health insurance coverage offered in connection with bona fide associations (within the meaning of section 2791(d)(3) of the Public Health Service Act),

subject to the requirements of section 702(b) relating to contribution rates.

"(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If any benefit option under the plan does not consist of health insurance coverage, the plan has as of the beginning of the plan year not fewer than 1,000 participants and beneficiaries.

"(4) MARKETING REQUIREMENTS.—

"(A) IN GENERAL.—If a benefit option which consists of health insurance coverage is offered under the plan, State-licensed insurance agents shall be used to distribute to small em-

ployers coverage which does not consist of health insurance coverage in a manner comparable to the manner in which such agents are used to distribute health insurance coverage.

''(B) STATE-LICENSED INSURANCE AGENTS.—For purposes of subparagraph (A), the term 'State-licensed insurance agents' means one or more agents who are licensed in a State and are subject to the laws of such State relating to licensure, qualification, testing, examination, and continuing education of persons authorized to offer, sell, or solicit health insurance coverage in such State.

''(5) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF ASSOCIATION HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Subject to section 514(d), nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from exercising its sole discretion

in selecting the specific items and services consisting of medical care to be included as benefits under such plan or coverage, except (subject to section 514) in the case of (1) any law to the extent that it is not preempted under section 731(a)(1) with respect to matters governed by section 711, 712, or 713, or (2) any law of the State with which filing and approval of a policy type offered by the plan was initially obtained to the extent that such law prohibits an exclusion of a specific disease from such coverage.

"SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS FOR SOLVENCY FOR PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if—

''(1) the benefits under the plan consist solely of health insurance coverage; or

''(2) if the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

''(A) establishes and maintains reserves with respect to such additional benefit options, in amounts recommended by the qualified actuary, consisting of—

''(i) a reserve sufficient for unearned contributions;

''(ii) a reserve sufficient for benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;

''(iii) a reserve sufficient for any other obligations of the plan; and

''(iv) a reserve sufficient for a margin of error and other fluctuations, taking into account the specific circumstances of the plan; and

''(B) establishes and maintains aggregate and specific excess/stop loss insurance and solvency indemnification, with respect to such additional benefit options for which risk of loss has not yet been transferred, as follows:

''(i) The plan shall secure aggregate excess/stop loss insurance for the plan with an attachment point which is not greater than 125 percent of expected gross annual claims. The applicable authority may by regulation provide for upward adjustments

in the amount of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(ii) The plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan's qualified actuary. The applicable authority may by regulation provide for adjustments in the amount of such insurance in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(iii) The plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination.

Any person issuing to a plan insurance described in clause (i), (ii), or (iii) of subparagraph (B) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable author-

ity pursuant to clause (i) or (ii) of subparagraph (B) may allow for such adjustments in the required levels of excess/stop loss insurance as the qualified actuary may recommend, taking into account the specific circumstances of the plan.

''(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains surplus in an amount at least equal to—

''(1) $500,000, or

''(2) such greater amount (but not greater than $2,000,000) as may be set forth in regulations prescribed by the applicable authority, considering the level of aggregate and specific excess/stop loss insurance provided with respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of assets available to assure that such liabilities are met.

''(c) ADDITIONAL REQUIREMENTS.—In the case of any association health plan described in subsection (a)(2), the applicable authority may provide such additional requirements relating to reserves, excess/stop loss insurance, and indemnification insurance as the applicable authority

considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of such plans.

''(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSURANCE.—The applicable authority may provide for adjustments to the levels of reserves otherwise required under subsections (a) and (b) with respect to any plan or class of plans to take into account excess/stop loss insurance provided with respect to such plan or plans.

''(e) ALTERNATIVE MEANS OF COMPLIANCE.—The applicable authority may permit an association health plan described in subsection (a)(2) to substitute, for all or part of the requirements of this section (except subsection (a)(2)(B)(iii)), such security, guarantee, hold-harmless arrangement, or other financial arrangement as the applicable authority determines to be adequate to enable the plan to fully meet all its financial obligations on a timely basis and is otherwise no less protective of the interests of participants and beneficiaries than the requirements for which it is substituted. The applicable authority may take into account, for purposes of this subsection, evidence provided by the plan or sponsor which demonstrates an assumption of liability with respect to the plan. Such evidence may be in the form of a contract of indemnification, lien, bonding, insurance, letter of credit, recourse under

applicable terms of the plan in the form of assessments of participating employers, security, or other financial arrangement.

"(f) MEASURES TO ENSURE CONTINUED PAYMENT OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

"(1) PAYMENTS BY CERTAIN PLANS TO ASSOCIATION HEALTH PLAN FUND.—

"(A) IN GENERAL.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund under this subparagraph when they are due. Such payments shall consist of annual payments in the amount of $5,000, and, in addition to such annual payments, such supplemental payments as the Secretary may determine to be necessary under paragraph (2). Payments under this paragraph are payable to the Fund at the time determined by the Secretary. Initial payments are due in advance of certification under this part. Payments shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure.

"(B) PENALTIES FOR FAILURE TO MAKE PAYMENTS.—If any payment is not made by a plan when it is due, a late payment charge of not more than 100 percent of the payment which was not timely paid shall be payable by the plan to the Fund.

"(C) CONTINUED DUTY OF THE SECRETARY.—The Secretary shall not cease to carry out the provisions of paragraph (2) on account of the failure of a plan to pay any payment when due.

"(2) PAYMENTS BY SECRETARY TO CONTINUE EXCESS/STOP LOSS INSURANCE COVERAGE AND INDEMNIFICATION INSURANCE COVERAGE FOR CERTAIN PLANS.—In any case in which the applicable authority determines that there is, or that there is reason to believe that there will be: (A) a failure to take necessary corrective actions under section 809(a) with respect to an association health plan described in subsection (a)(2); or (B) a termination of such a plan under section 809(b) or 810(b)(8) (and, if the applicable authority is not the Secretary, certifies such determination to the Secretary), the Secretary shall determine the amounts necessary to make payments to an insurer (designated by the

Secretary) to maintain in force excess/stop loss insurance coverage or indemnification insurance coverage for such plan, if the Secretary determines that there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

''(3) ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—There is established on the books of the Treasury a fund to be known as the 'Association Health Plan Fund'. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to paragraph (1)(A), penalties received pursuant to paragraph (1)(B); and earnings on investments of amounts of the Fund under subparagraph (B).

''(B) INVESTMENT.—Whenever the Secretary determines that the moneys of the fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary determines advisable by the Sec-

retary of the Treasury in obligations issued or guaranteed by the United States.

''(g) EXCESS/STOP LOSS INSURANCE.—For purposes of this section—

''(1) AGGREGATE EXCESS/STOP LOSS INSURANCE.—The term 'aggregate excess/stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to aggregate claims under the plan in excess of an amount or amounts specified in such contract;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(2) SPECIFIC EXCESS/STOP LOSS INSURANCE.—The term 'specific excess/stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for pay-

ment to the plan with respect to claims under the plan in connection with a covered individual in excess of an amount or amounts specified in such contract in connection with such covered individual;

"(B) which is guaranteed renewable; and

"(C) which allows for payment of premiums by any third party on behalf of the insured plan.

"(h) INDEMNIFICATION INSURANCE.—For purposes of this section, the term 'indemnification insurance' means, in connection with an association health plan, a contract—

"(1) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan which the plan is unable to satisfy by reason of a termination pursuant to section 809(b) (relating to mandatory termination);

"(2) which is guaranteed renewable and noncancellable for any reason (except as the applicable authority may prescribe by regulation); and

"(3) which allows for payment of premiums by any third party on behalf of the insured plan.

''(i) RESERVES.—For purposes of this section, the term 'reserves' means, in connection with an association health plan, plan assets which meet the fiduciary standards under part 4 and such additional requirements regarding liquidity as the applicable authority may prescribe by regulation.

''(j) SOLVENCY STANDARDS WORKING GROUP.—

''(1) IN GENERAL.—Within 90 days after the date of the enactment of this part, the applicable authority shall establish a Solvency Standards Working Group. In prescribing the initial regulations under this section, the applicable authority shall take into account the recommendations of such Working Group.

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 15 members appointed by the applicable authority. The applicable authority shall include among persons invited to membership on the Working Group at least one of each of the following:

''(A) a representative of the National Association of Insurance Commissioners;

''(B) a representative of the American Academy of Actuaries;

''(C) a representative of the State governments, or their interests;

''(D) a representative of existing self-insured arrangements, or their interests;

''(E) a representative of associations of the type referred to in section 801(b)(1), or their interests; and

''(F) a representative of multiemployer plans that are group health plans, or their interests.

''SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall

be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the

plan and contract administrators and other service providers.

''(6) FUNDING REPORT.—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

''(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe.

''(B) ADEQUACY OF CONTRIBUTION RATES.—A statement of actuarial opinion, signed by a qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the

expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate the extent to which the rates are inadequate and the changes needed to ensure adequacy.

''(C) CURRENT AND PROJECTED VALUE OF ASSETS AND LIABILITIES.—A statement of actuarial opinion signed by a qualified actuary, which sets forth the current value of the assets and liabilities accumulated under the plan and a projection of the assets, liabilities, income, and expenses of the plan for the 12-month period referred to in subparagraph (B). The income statement shall identify separately the plan's administrative expenses and claims.

''(D) COSTS OF COVERAGE TO BE CHARGED AND OTHER EXPENSES.—A statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with the operation of the plan.

''(E) OTHER INFORMATION.—Any other information as may be determined by the applicable authority, by regulation, as necessary to carry out the purposes of this part.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to an association health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which at least 25 percent of the participants and beneficiaries under the plan are located. For purposes of this subsection, an individual shall be considered to be located in the State in which a known address of such individual is located or in which such individual is employed.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any association health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''(e) REPORTING REQUIREMENTS FOR CERTAIN ASSOCIATION HEALTH PLANS.—An association health plan certified under this part which provides benefit options in addition to health insurance coverage for such plan year shall meet the requirements of section 103 by filing an

annual report under such section which shall include information described in subsection (b)(6) with respect to the plan year and, notwithstanding section 104(a)(1)(A), shall be filed with the applicable authority not later than 90 days after the close of the plan year (or on such later date as may be prescribed by the applicable authority). The applicable authority may require by regulation such interim reports as it considers appropriate.

''(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The board of trustees of each association health plan which provides benefits options in addition to health insurance coverage and which is applying for certification under this part or is certified under this part shall engage, on behalf of all participants and beneficiaries, a qualified actuary who shall be responsible for the preparation of the materials comprising information necessary to be submitted by a qualified actuary under this part. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

''(1) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

''(2) represent such actuary's best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made with respect to, and shall be made a part of, the annual report.

"SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

"SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMINATION.

"(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—An association health plan which is certified under this part and which provides benefits other than health insurance coverage shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet such requirements, or the applicable authority makes such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and such actuary shall, not later than the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority (in such form and manner as the applicable authority may prescribe by regulation) of such recommendations of the actuary for corrective action, together with a description of the actions (if any) that the board has taken or plans to take in response to such recommendations. The board

shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may specify to the board, regarding corrective action taken by the board until the requirements of section 806 are met.

''(b) MANDATORY TERMINATION.—In any case in which—

''(1) the applicable authority has been notified under subsection (a) (or by an issuer of excess/stop loss insurance or indemnity insurance pursuant to section 806(a)) of a failure of an association health plan which is or has been certified under this part and is described in section 806(a)(2) to meet the requirements of section 806 and has not been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

''(2) the applicable authority determines that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806,

the board of trustees of the plan shall, at the direction of the applicable authority, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfying any claims referred to in section 806(a)(2)(B)(iii) and recov-

ering for the plan any liability under subsection (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure that the affairs of the plan will be, to the maximum extent possible, wound up in a manner which will result in timely provision of all benefits for which the plan is obligated.

"SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLANS.—Whenever the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 806(a)(2) will be unable to provide benefits when due or is otherwise in a financially hazardous condition, as shall be defined by the Secretary by regulation, the Secretary shall, upon notice to the plan, apply to the appropriate United States district court for appointment of the Secretary as trustee to administer the plan for the duration of the insolvency. The plan may appear as a party and other interested persons may intervene in the proceedings at the discretion of the court. The court shall appoint such Secretary trustee if the court determines that the trusteeship is necessary to protect the interests of the participants and beneficiaries or providers of medical care or to

avoid any unreasonable deterioration of the financial condition of the plan. The trusteeship of such Secretary shall continue until the conditions described in the first sentence of this subsection are remedied or the plan is terminated.

''(b) POWERS AS TRUSTEE.—The Secretary, upon appointment as trustee under subsection (a), shall have the power—

''(1) to do any act authorized by the plan, this title, or other applicable provisions of law to be done by the plan administrator or any trustee of the plan;

''(2) to require the transfer of all (or any part) of the assets and records of the plan to the Secretary as trustee;

''(3) to invest any assets of the plan which the Secretary holds in accordance with the provisions of the plan, regulations prescribed by the Secretary, and applicable provisions of law;

''(4) to require the sponsor, the plan administrator, any participating employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the Secretary as trustee may reasonably need in order to administer the plan;

''(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

''(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

''(7) to issue, publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

''(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

''(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

''(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

''(c) NOTICE OF APPOINTMENT.—As soon as practicable after the Secretary's appointment as trustee, the Secretary shall give notice of such appointment to—

''(1) the sponsor and plan administrator;

''(2) each participant;

''(3) each participating employer; and

''(4) if applicable, each employee organization which, for purposes of collective bargaining, represents plan participants.

''(d) ADDITIONAL DUTIES.—Except to the extent inconsistent with the provisions of this title, or as may be otherwise ordered by the court, the Secretary, upon appointment as trustee under this section, shall be subject to the same duties as those of a trustee under section 704 of title 11, United States Code, and shall have the duties of a fiduciary for purposes of this title.

''(e) OTHER PROCEEDINGS.—An application by the Secretary under this subsection may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

''(f) JURISDICTION OF COURT.—

''(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court to which the application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

''(2) VENUE.—An action under this section may be brought in the judicial district where the

sponsor or the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

''(g) PERSONNEL.—In accordance with regulations which shall be prescribed by the Secretary, the Secretary shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel as may be necessary in connection with the Secretary's service as trustee under this section.

''SEC. 811. STATE ASSESSMENT AUTHORITY.

''(a) IN GENERAL.—Notwithstanding section 514, a State may impose by law a contribution tax on an association health plan described in section 806(a)(2), if the plan commenced operations in such State after the date of the enactment of this part.

''(b) CONTRIBUTION TAX.—For purposes of this section, the term 'contribution tax' imposed by a State on an association health plan means any tax imposed by such State if—

''(1) such tax is computed by applying a rate to the amount of premiums or contributions, with respect to individuals covered under the plan who are residents of such State, which are received by the

plan from participating employers located in such State or from such individuals;

''(2) the rate of such tax does not exceed the rate of any tax imposed by such State on premiums or contributions received by insurers or health maintenance organizations for health insurance coverage offered in such State in connection with a group health plan;

''(3) such tax is otherwise nondiscriminatory; and

''(4) the amount of any such tax assessed on the plan is reduced by the amount of any tax or assessment otherwise imposed by the State on premiums, contributions, or both received by insurers or health maintenance organizations for health insurance coverage, aggregate excess/stop loss insurance (as defined in section 806(g)(1)), specific excess/stop loss insurance (as defined in section 806(g)(2)), other insurance related to the provision of medical care under the plan, or any combination thereof provided by such insurers or health maintenance organizations in such State in connection with such plan.

''SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(2) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1).

''(4) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(5) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary, except that, in connection with any exercise of the Secretary's authority regarding which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(6) HEALTH STATUS-RELATED FACTOR.—The term 'health status-related factor' has the meaning provided in section 733(d)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance

coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with an association health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual

who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(9) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(10) QUALIFIED ACTUARY.—The term 'qualified actuary' means an individual who is a member of the American Academy of Actuaries.

''(11) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor,

''(B) in the case of a sponsor with members which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor, or

"(C) in the case of an association health plan in existence on the date of the enactment of this part, a person eligible to be a member of the sponsor or one of its member associations.

"(12) LARGE EMPLOYER.—The term 'large employer' means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

"(13) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

"(b) RULES OF CONSTRUCTION.—

"(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

"(A) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

"(B) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

"(2) PLANS, FUNDS, AND PROGRAMS TREATED AS EMPLOYEE WELFARE BENEFIT PLANS.—In the case of any plan, fund, or program which was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder and which demonstrates to the Secretary that all requirements for certification under this part would be met with respect to such plan, fund, or program if such plan, fund, or program were a group health plan, such plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such demonstration.".

(2) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(A) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.''.

(B) Section 514 of such Act (29 U.S.C. 1144) is amended—

(i) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(ii) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(iii) by redesignating subsection (d) as subsection (e); and

(iv) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude, or have the effect of precluding, a health insurance issuer from offering health insurance coverage in connection with an association health plan which is certified under part 8.

''(2) Except as provided in paragraphs (4) and (5) of subsection (b) of this section—

''(A) In any case in which health insurance coverage of any policy type is offered under an association health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may preclude a health insurance issuer from offering health insurance coverage of the same policy type to other employers operating in the State which are eligible for coverage under such association health plan, whether or not such other employers are participating employers in such plan.

''(B) In any case in which health insurance coverage of any policy type is offered in a State under

an association health plan certified under part 8 and the filing, with the applicable State authority (as defined in section 812(a)(9)), of the policy form in connection with such policy type is approved by such State authority, the provisions of this title shall supersede any and all laws of any other State in which health insurance coverage of such type is offered, insofar as they may preclude, upon the filing in the same form and manner of such policy form with the applicable State authority in such other State, the approval of the filing in such other State.

''(3) Nothing in subsection (b)(6)(E) or the preceding provisions of this subsection shall be construed, with respect to health insurance issuers or health insurance coverage, to supersede or impair the law of any State—

''(A) providing solvency standards or similar standards regarding the adequacy of insurer capital, surplus, reserves, or contributions, or

''(B) relating to prompt payment of claims.

''(4) For additional provisions relating to association health plans, see subsections (a)(2)(B) and (b) of section 805.

''(5) For purposes of this subsection, the term 'association health plan' has the meaning provided in section 801(a), and the terms 'health insurance coverage', 'par-

ticipating employer', and 'health insurance issuer' have the meanings provided such terms in section 812, respectively.''.

(C) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended—

(i) in clause (i)(II), by striking ''and'' at the end;

(ii) in clause (ii), by inserting ''and which does not provide medical care (within the meaning of section 733(a)(2)),'' after ''arrangement,'', and by striking ''title.'' and inserting ''title, and''; and

(iii) by adding at the end the following new clause:

''(iii) subject to subparagraph (E), in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement and which provides medical care (within the meaning of section 733(a)(2)), any law of any State which regulates insurance may apply.''.

(D) Section 514(e) of such Act (as redesignated by subparagraph (B)(iii)) is amended—

(i) by striking ''Nothing'' and inserting ''(1) Except as provided in paragraph (2), nothing''; and

(ii) by adding at the end the following new paragraph:

''(2) Nothing in any other provision of law enacted on or after the date of the enactment of part 8 shall be construed to alter, amend, modify, invalidate, impair, or supersede any provision of this title, except by specific cross-reference to the affected section.''.

(3) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of an association health plan under part 8.''.

(4) DISCLOSURE OF SOLVENCY PROTECTIONS RELATED TO SELF-INSURED AND FULLY INSURED OPTIONS UNDER ASSOCIATION HEALTH PLANS.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding at the end the following: ''An association health plan shall include in its summary plan description, in connection with each benefit option, a description of the form of solvency or guarantee fund protection secured pursuant to this Act or applicable State law, if any.''.

(5) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(6) REPORT TO THE CONGRESS REGARDING CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—Not later than January 1, 2012, the Secretary of Labor shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate the effect association health plans have had, if any, on reducing the number of uninsured individuals.

(7) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

"PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

"801. Association health plans.
"802. Certification of association health plans.
"803. Requirements relating to sponsors and boards of trustees.
"804. Participation and coverage requirements.
"805. Other requirements relating to plan documents, contribution rates, and benefit options.
"806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.
"807. Requirements for application and related requirements.
"808. Notice requirements for voluntary termination.
"809. Corrective actions and mandatory termination.
"810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.
"811. State assessment authority.
"812. Definitions and rules of construction.".

(b) CLARIFICATION OF TREATMENT OF SINGLE EMPLOYER ARRANGEMENTS.—Section 3(40)(B) of the Em-

ployee Retirement Income Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—

(1) in clause (i), by inserting after ''control group,'' the following: ''except that, in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), two or more trades or businesses, whether or not incorporated, shall be deemed a single employer for any plan year of such plan, or any fiscal year of such other arrangement, if such trades or businesses are within the same control group during such year or at any time during the preceding 1-year period,'';

(2) in clause (iii), by striking ''(iii) the determination'' and inserting the following:

''(iii)(I) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles consistent and coextensive with the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under sec-

tion 4001(b), except that, for purposes of this paragraph, an interest of greater than 25 percent may not be required as the minimum interest necessary for common control, or

''(II) in any other case, the determination'';

(3) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(4) by inserting after clause (iii) the following new clause:

''(iv) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), in determining, after the application of clause (i), whether benefits are provided to employees of two or more employers, the arrangement shall be treated as having only one participating employer if, after the application of clause (i), the number of individuals who are employees and former employees of any one participating employer and who are covered under the arrangement is greater than 75 percent of the aggregate number of all individuals who are employees or former employees of participating employers and who are covered under the arrangement,''.

(c) ENFORCEMENT PROVISIONS RELATING TO ASSOCIATION HEALTH PLANS.—

(1) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(A) by inserting ''(a)'' after ''Sec. 501.''; and

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

''(b) Any person who willfully falsely represents, to any employee, any employee's beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

''(1) being an association health plan which has been certified under part 8;

''(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which are reached pursuant to labor-management negotiations

under similar provisions of State public employee relations laws; or

''(3) being a plan or arrangement described in section 3(40)(A)(i),

shall, upon conviction, be imprisoned not more than 5 years, be fined under title 18, United States Code, or both.''.

(2) CEASE ACTIVITIES ORDERS.—Section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) ASSOCIATION HEALTH PLAN CEASE AND DESIST ORDERS.—

''(1) IN GENERAL.—Subject to paragraph (2), upon application by the Secretary showing the operation, promotion, or marketing of an association health plan (or similar arrangement providing benefits consisting of medical care (as defined in section 733(a)(2))) that—

''(A) is not certified under part 8, is subject under section 514(b)(6) to the insurance laws of any State in which the plan or arrangement offers or provides benefits, and is not licensed, registered, or otherwise approved under the insurance laws of such State; or

"(B) is an association health plan certified under part 8 and is not operating in accordance with the requirements under part 8 for such certification,

a district court of the United States shall enter an order requiring that the plan or arrangement cease activities.

"(2) EXCEPTION.—Paragraph (1) shall not apply in the case of an association health plan or other arrangement if the plan or arrangement shows that—

"(A) all benefits under it referred to in paragraph (1) consist of health insurance coverage; and

"(B) with respect to each State in which the plan or arrangement offers or provides benefits, the plan or arrangement is operating in accordance with applicable State laws that are not superseded under section 514.

"(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.".

(3) RESPONSIBILITY FOR CLAIMS PROCEDURE.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a) IN GENERAL.—'' before ''In accordance'', and by adding at the end the following new subsection:

''(b) ASSOCIATION HEALTH PLANS.—The terms of each association health plan which is or has been certified under part 8 shall require the board of trustees or the named fiduciary (as applicable) to ensure that the requirements of this section are met in connection with claims filed under the plan.''.

(d) COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.—Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO ASSOCIATION HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to an association health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

"(B) the Secretary's authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

"(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

"(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

"(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.".

(e) EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act. The Secretary of Labor

shall first issue all regulations necessary to carry out such amendments within 1 year after the date of the enactment of this Act.

(2) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(A) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 812(a)(5) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(i) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(ii) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(iii) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of directors which—

(I) is elected by the participating employers, with each employer having one vote; and

(II) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(iv) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(v) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it oper-

ates in such State on the date of certification.

The provisions of this subparagraph shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subparagraph are not met with respect to such arrangement.

(B) DEFINITIONS.—For purposes of this paragraph, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 812 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''association health plan'' shall be deemed a reference to an arrangement referred to in this paragraph.

Subtitle C—Health Care Services Commission

PART 1—ESTABLISHMENT AND GENERAL DUTIES

SEC. 121. ESTABLISHMENT.

(a) IN GENERAL.—There is hereby established a Health Care Services Commission (in this subtitle referred to as the ''Commission'') to be composed of five commissioners (in this subtitle referred to as the ''Commis-

sioners'') to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this subtitle shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this Act.

(b) PURPOSE.—The purpose of the Commission is to enhance the quality, appropriateness, and effectiveness of

health care services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

(c) APPOINTMENT OF CHAIRMAN.—The President shall, from among the Commissioners appointed under subsection (a), designate an individual to serve as the Chairman of the Commission.

SEC. 122. GENERAL AUTHORITIES AND DUTIES.

(a) IN GENERAL.—In carrying out section 121(b), the Commissioners shall conduct and support research, demonstration projects, evaluations, training, guideline development, and the dissemination of information, on health care services and on systems for the delivery of such services, including activities with respect to—

(1) the effectiveness, efficiency, and quality of health care services;

(2) subject to subsection (d), the outcomes of health care services and procedures;

(3) clinical practice, including primary care and practice-oriented research;

(4) health care technologies, facilities, and equipment;

(5) health care costs, productivity, and market forces;

(6) health promotion and disease prevention;

(7) health statistics and epidemiology; and

(8) medical liability.

(b) REQUIREMENTS WITH RESPECT TO RURAL AREAS AND UNDERSERVED POPULATIONS.—In carrying out subsection (a), the Commissioners shall undertake and support research, demonstration projects, and evaluations with respect to—

(1) the delivery of health care services in rural areas (including frontier areas); and

(2) the health of low-income groups, minority groups, and the elderly.

SEC. 123. DISSEMINATION.

(a) IN GENERAL.—The Commissioners shall—

(1) promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this subtitle and the guidelines, standards, and review criteria developed under this subtitle;

(2) promptly make available to the public data developed in such research, demonstration projects, and evaluations; and

(3) as appropriate, provide technical assistance to State and local government and health agencies and conduct liaison activities to such agencies to foster dissemination.

(b) PROHIBITION AGAINST RESTRICTIONS.—Except as provided in subsection (c), the Commissioners may not restrict the publication or dissemination of data from, or the results of, projects conducted or supported under this subtitle.

(c) LIMITATION ON USE OF CERTAIN INFORMATION.—No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this subtitle may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under

regulations of the Secretary) to its publication or release in other form.

(d) CERTAIN INTERAGENCY AGREEMENT.—The Commissioners and the Director of the National Library of Medicine shall enter into an agreement providing for the implementation of subsection (a)(1).

PART 2—FORUM FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE

SEC. 131. ESTABLISHMENT OF OFFICE.

There is established within the Commission an office to be known as the Office of the Forum for Quality and Effectiveness in Health Care. The office shall be headed by a director (referred to in this subtitle as the ''Director''), who shall be appointed by the Commissioners.

SEC. 132. MEMBERSHIP.

(a) IN GENERAL.—The Office of the Forum for Quality and Effectiveness in Health Care shall be composed of 15 individuals nominated by private sector health care organizations and appointed by the Commission and shall include representation from at least the following:

(1) Health insurance industry.

(2) Health care provider groups.

(3) Non-profit organizations.

(4) Rural health organizations.

(b) TERMS.—

(1) IN GENERAL.—Except as provided in subparagraph (B), members of the Office of the Forum for Quality and Effectiveness in Health Care shall serve for a term of 5 years.

(2) STAGGERED ROTATION.—Of the members first appointed to the Office of the Forum for Quality and Effectiveness in Health Care, the Commission shall appoint 5 members to serve for a term of 2 years, 5 members to serve for a term of 3 years, and 5 members to serve for a term of 4 years.

(c) TREATMENT OF OTHER EMPLOYMENT.—Each member of the Office of the Forum for Quality and Effectiveness in Health Care shall serve the Office independently from any other position of employment.

SEC. 133. DUTIES.

(a) ESTABLISHMENT OF FORUM PROGRAM.—The Commissioners, acting through the Director, shall establish a program to be known as the Forum for Quality and Effectiveness in Health Care. For the purpose of promoting transparency in price, quality, appropriateness, and effectiveness of health care, the Director, using the process set forth in section 134, shall arrange for the development and periodic review and updating of standards of quality, performance measures, and medical review criteria through which health care providers and other appro-

priate entities may assess or review the provision of health care and assure the quality of such care.

(b) CERTAIN REQUIREMENTS.—Guidelines, standards, performance measures, and review criteria under subsection (a) shall—

(1) be based on the best available research and professional judgment regarding the effectiveness and appropriateness of health care services and procedures; and

(2) be presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, and medical review organizations and in formats appropriate for use by consumers of health care.

(c) AUTHORITY FOR CONTRACTS.—In carrying out this part, the Director may enter into contracts with public or nonprofit private entities.

(d) PUBLIC DISCLOSURE OF RECOMMENDATIONS.—For each fiscal year beginning with 2010, the Director shall make publicly available the following:

(1) quarterly reports for public comment that include proposed recommendations for guidelines, standards, performance measures, and review criteria under subsection (a) and any updates to such

guidelines, standards, performance measures, and review criteria; and

(2) after consideration of such comments, a final report that contains final recommendations for such guidelines, standards, performance measures, review criteria, and updates.

(e) DATE CERTAIN FOR INITIAL GUIDELINES AND STANDARDS.—The Commissioners, by not later than January 1, 2012, shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria under subsection (a).

SEC. 134. ADOPTION AND ENFORCEMENT OF GUIDELINES AND STANDARDS.

(a) ADOPTION OF RECOMMENDATIONS OF FORUM FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE.—For each fiscal year, the Commissioners shall adopt the recommendations made for such year in the final report under subsection (d)(2) of section 133 for guidelines, standards, performance measures, and review criteria described in subsection (a) of such section.

(b) ENFORCEMENT AUTHORITY.—The Commissioners , in consultation with the Secretary of Health and Human Services, have the authority to make recommendations to the Secretary to enforce compliance of health care providers with the guidelines, standards, performance

measures, and review criteria adopted under subsection (a). Such recommendations may include the following, with respect to a health care provider who is not in compliance with such guidelines, standards, measures, and criteria:

(1) Exclusion from participation in Federal health care programs (as defined in section 1128B(f) of the Social Security Act).

(2) Imposition of a civil money penalty on such provider.

SEC. 135. ADDITIONAL REQUIREMENTS.

(a) PROGRAM AGENDA.—The Commissioners shall provide for an agenda for the development of the guidelines, standards, performance measures, and review criteria described in section 133(a), including with respect to the standards, performance measures, and review criteria, identifying specific aspects of health care for which the standards, performance measures, and review criteria are to be developed and those that are to be given priority in the development of the standards, performance measures, and review criteria.

PART 3—GENERAL PROVISIONS

SEC. 141. CERTAIN ADMINISTRATIVE AUTHORITIES.

The Commissioners, in carrying out this subtitle, may accept voluntary and uncompensated services.

SEC. 142. FUNDING.

For the purpose of carrying out this subtitle, there are authorized to be appropriated such sums as may be necessary for fiscal years 2010 through 2014.

SEC. 143. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''Commissioners'' means the Commissioners of the Health Care Services Commission.

(2) The term ''Commission'' means the Health Care Services Commission.

(3) The term ''Director'' means the Director of the Office of the Forum for Quality and Effectiveness in Health Care.

(4) The term ''Secretary'' means the Secretary of Health and Human Services.

PART 4—TERMINATIONS AND TRANSITION

SEC. 151. TERMINATION OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY.

As of the date of the enactment of this Act, the Agency for Healthcare Research and Quality is terminated, and title IX of the Public Health Service Act is repealed.

SEC. 152. TRANSITION.

All orders, grants, contracts, privileges, and other determinations or actions of the Agency for Healthcare Research and Quality that are effective as of the date before the date of the enactment of this Act, shall be transferred

to the Secretary and shall continue in effect according to their terms unless changed pursuant to law.

PART 5—INDEPENDENT HEALTH RECORD TRUST

SEC. 161. SHORT TITLE OF PART.

This part may be cited as the ''Independent Health Record Trust Act of 2008''.

SEC. 162. PURPOSE.

It is the purpose of this part ct to provide for the establishment of a nationwide health information technology network that—

(1) improves health care quality, reduces medical errors, increases the efficiency of care, and advances the delivery of appropriate, evidence-based health care services;

(2) promotes wellness, disease prevention, and the management of chronic illnesses by increasing the availability and transparency of information related to the health care needs of an individual;

(3) ensures that appropriate information necessary to make medical decisions is available in a usable form at the time and in the location that the medical service involved is provided;

(4) produces greater value for health care expenditures by reducing health care costs that result

from inefficiency, medical errors, inappropriate care, and incomplete information;

(5) promotes a more effective marketplace, greater competition, greater systems analysis, increased choice, enhanced quality, and improved outcomes in health care services;

(6) improves the coordination of information and the provision of such services through an effective infrastructure for the secure and authorized exchange and use of health information; and

(7) ensures that the health information privacy, security, and confidentiality of individually identifiable health information is protected.

SEC. 163. DEFINITIONS.

In this part:

(1) ACCESS.—The term ''access'' means, with respect to an electronic health record, entering information into such account as well as retrieving information from such account.

(2) ACCOUNT.—The term ''account'' means an electronic health record of an individual contained in an independent health record trust.

(3) AFFIRMATIVE CONSENT.—The term ''affirmative consent'' means, with respect to an electronic health record of an individual contained in an

IHRT, express consent given by the individual for the use of such record in response to a clear and conspicuous request for such consent or at the individual's own initiative.

(4) AUTHORIZED EHR DATA USER.—The term ''authorized EHR data user'' means, with respect to an electronic health record of an IHRT participant contained as part of an IHRT, any entity (other than the participant) authorized (in the form of affirmative consent) by the participant to access the electronic health record.

(5) CONFIDENTIALITY.—The term ''confidentiality'' means, with respect to individually identifiable health information of an individual, the obligation of those who receive such information to respect the health information privacy of the individual.

(6) ELECTRONIC HEALTH RECORD.—The term ''electronic health record'' means a longitudinal collection of information concerning a single individual, including medical records and personal health information, that is stored electronically.

(7) HEALTH INFORMATION PRIVACY.—The term ''health information privacy'' means, with respect to individually identifiable health information of an individual, the right of such individual to con-

trol the acquisition, uses, or disclosures of such information.

(8) HEALTH PLAN.—The term ''health plan'' means a group health plan (as defined in section 2208(1) of the Public Health Service Act (42 U.S.C. 300bb–8(1))) as well as a plan that offers health insurance coverage in the individual market.

(9) HIPAA PRIVACY REGULATIONS.—The term ''HIPAA privacy regulations'' means the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(10) INDEPENDENT HEALTH RECORD TRUST; IHRT.—The terms ''independent health record trust'' and ''IHRT'' mean a legal arrangement under the administration of an IHRT operator that meets the requirements of this part with respect to electronic health records of individuals participating in the trust or IHRT.

(11) IHRT OPERATOR.—The term ''IHRT operator'' means, with respect to an IHRT, the organization that is responsible for the administration and operation of the IHRT in accordance with this part.

(12) IHRT PARTICIPANT.—The term ''IHRT participant'' means, with respect to an IHRT, an in-

dividual who has a participation agreement in effect with respect to the maintenance of the individual's electronic health record by the IHRT.

(13) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term ''individually identifiable health information'' has the meaning given such term in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)).

(14) SECURITY.—The term ''security'' means, with respect to individually identifiable health information of an individual, the physical, technological, or administrative safeguards or tools used to protect such information from unwarranted access or disclosure.

SEC. 164. ESTABLISHMENT, CERTIFICATION, AND MEMBERSHIP OF INDEPENDENT HEALTH RECORD TRUSTS.

(a) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act, the Federal Trade Commission, in consultation with the National Committee on Vital and Health Statistics, shall prescribe standards for the establishment, certification, operation, and interoperability of IHRTs to carry out the purposes described in section 162 in accordance with the provisions of this part.

(b) CERTIFICATION.—

(1) CERTIFICATION BY FTC.—The Federal Trade Commission shall provide for the certification of IHRTs. No IHRT may be certified unless the IHRT is determined to meet the standards for certification established under subsection (a).

(2) DECERTIFICATION.—The Federal Trade Commission shall establish a process for the revocation of certification of an IHRT under this section in the case that the IHRT violates the standards established under subsection (a).

(c) MEMBERSHIP.—

(1) IN GENERAL.—To be eligible to be a participant in an IHRT, an individual shall—

(A) submit to the IHRT information as required by the IHRT to establish an electronic health record with the IHRT; and

(B) enter into a privacy protection agreement described in section 166(b)(1) with the IHRT.

The process to determine eligibility of an individual under this subsection shall allow for the establishment by such individual of an electronic health record as expeditiously as possible if such individual is determined so eligible.

(2) NO LIMITATION ON MEMBERSHIP.—Nothing in this subsection shall be construed to permit an IHRT to restrict membership, including on the basis of health condition.

SEC. 165. DUTIES OF IHRT TO IHRT PARTICIPANTS.

(a) FIDUCIARY DUTY OF IHRT; PENALTIES FOR VIOLATIONS OF FIDUCIARY DUTY.—

(1) FIDUCIARY DUTY.—With respect to the electronic health record of an IHRT participant maintained by an IHRT, the IHRT shall have a fiduciary duty to act for the benefit and in the interests of such participant and of the IHRT as a whole. Such duty shall include obtaining the affirmative consent of such participant prior to the release of information in such participant's electronic health record in accordance with the requirements of this part.

(2) PENALTIES.—If the IHRT knowingly or recklessly breaches the fiduciary duty described in paragraph (1), the IHRT shall be subject to the following penalties:

(A) Loss of certification of the IHRT.

(B) A fine that is not in excess of $50,000.

(C) A term of imprisonment for the individuals involved of not more than 5 years.

(b) ELECTRONIC HEALTH RECORD DEEMED TO BE HELD IN TRUST BY IHRT.—With respect to an individual, an electronic health record maintained by an IHRT shall be deemed to be held in trust by the IHRT for the benefit of the individual and the IHRT shall have no legal or equitable interest in such electronic health record.

SEC. 166. AVAILABILITY AND USE OF INFORMATION FROM RECORDS IN IHRT CONSISTENT WITH PRIVACY PROTECTIONS AND AGREEMENTS.

(a) PROTECTED ELECTRONIC HEALTH RECORDS USE AND ACCESS.—

(1) GENERAL RIGHTS REGARDING USES OF INFORMATION.—

(A) IN GENERAL.—With respect to the electronic health record of an IHRT participant maintained by an IHRT, subject to paragraph (2)(C), primary uses and secondary uses (described in subparagraphs (B) and (C), respectively) of information within such record (other than by such participant) shall be permitted only upon the authorization of such use, prior to such use, by such participant.

(B) PRIMARY USES.—For purposes of subparagraph (A) and with respect to an electronic health record of an individual, a primary use is

a use for purposes of the individual's self-care or care by health care professionals.

(C) SECONDARY USES.—For purposes of subparagraph (B) and with respect to an electronic health record of an individual, a secondary use is any use not described in subparagraph (B) and includes a use for purposes of public health research or other related activities. Additional authorization is required for a secondary use extending beyond the original purpose of the secondary use authorized by the IHRT participant involved. Nothing in this paragraph shall be construed as requiring authorization for every secondary use that is within the authorized original purpose.

(2) RULES FOR PRIMARY USE OF RECORDS FOR HEALTH CARE PURPOSES.—With respect to the electronic health record of an IHRT participant (or specified parts of such electronic health record) maintained by an IHRT standards for access to such record shall provide for the following:

(A) ACCESS BY IHRT PARTICIPANTS TO THEIR ELECTRONIC HEALTH RECORDS.—

(i) OWNERSHIP.—The participant maintains ownership over the entire elec-

tronic health record (and all portions of such record) and shall have the right to electronically access and review the contents of the entire record (and any portion of such record) at any time, in accordance with this subparagraph.

(ii) ADDITION OF PERSONAL INFORMATION.—The participant may add personal health information to the health record of that participant, except that such participant shall not alter information that is entered into the electronic health record by any authorized EHR data user. Such participant shall have the right to propose an amendment to information that is entered by an authorized EHR data user pursuant to standards prescribed by the Federal Trade Commission for purposes of amending such information.

(iii) IDENTIFICATION OF INFORMATION ENTERED BY PARTICIPANT.—Any additions or amendments made by the participant to the health record shall be identified and disclosed within such record as being made by such participant.

(B) ACCESS BY ENTITIES OTHER THAN IHRT PARTICIPANT.—

(i) AUTHORIZED ACCESS ONLY.—Except as provided under subparagraph (C) and paragraph (4), access to the electronic health record (or any portion of the record)—

(I) may be made only by authorized EHR data users and only to such portions of the record as specified by the participant; and

(II) may be limited by the participant for purposes of entering information into such record, retrieving information from such record, or both.

(ii) IDENTIFICATION OF ENTITY THAT ENTERS INFORMATION.—Any information that is added by an authorized EHR data user to the health record shall be identified and disclosed within such record as being made by such user.

(iii) SATISFACTION OF HIPAA PRIVACY REGULATIONS.—In the case of a record of a covered entity (as defined for purposes of HIPAA privacy regulations), with respect

to an individual, if such individual is an IHRT participant with an independent health record trust and such covered entity is an authorized EHR data user, the requirement under the HIPAA privacy regulations for such entity to provide the record to the participant shall be deemed met if such entity, without charge to the IHRT or the participant—

(I) forwards to the trust an appropriately formatted electronic copy of the record (and updates to such records) for inclusion in the electronic health record of the participant maintained by the trust;

(II) enters such record into the electronic health record of the participant so maintained; or

(III) otherwise makes such record available for electronic access by the IHRT or the individual in a manner that permits such record to be included in the account of the individual contained in the IHRT.

(iv) NOTIFICATION OF SENSITIVE INFORMATION.—Any information, with respect to the participant, that is sensitive information, as specified by the Federal Trade Commission, shall not be forwarded or entered by an authorized EHR data user into the electronic health record of the participant maintained by the trust unless the user certifies that the participant has been notified of such information.

(C) DEEMED AUTHORIZATION FOR ACCESS FOR EMERGENCY HEALTH CARE.—

(i) FINDINGS.—Congress finds that—

(I) given the size and nature of visits to emergency departments in the United States, readily available health information could make the difference between life and death; and

(II) because of the case mix and volume of patients treated, emergency departments are well positioned to provide information for public health surveillance, community risk assessment, research, education, training, quality improvement, and other uses.

(ii) USE OF INFORMATION.—With respect to the electronic health record of an IHRT participant (or specified parts of such electronic health record) maintained by an IHRT, the participant shall be deemed as providing authorization (in the form of affirmative consent) for health care providers to access, in connection with providing emergency care services to the participant, a limited, authenticated information set concerning the participant for emergency response purposes, unless the participant specifies that such information set (or any portion of such information set) may not be so accessed. Such limited information set may include information—

(I) patient identification data, as determined appropriate by the participant;

(II) provider identification that includes the use of unique provider identifiers;

(III) payment information;

(IV) information related to the individual's vitals, allergies, and medication history;

(V) information related to existing chronic problems and active clinical conditions of the participant; and

(VI) information concerning physical examinations, procedures, results, and diagnosis data.

(3) RULES FOR SECONDARY USES OF RECORDS FOR RESEARCH AND OTHER PURPOSES.—

(A) IN GENERAL.—With respect to the electronic health record of an IHRT participant (or specified parts of such electronic health record) maintained by an IHRT, the IHRT may sell such record (or specified parts of such record) only if—

(i) the transfer is authorized by the participant pursuant to an agreement between the participant and the IHRT and is in accordance with the privacy protection agreement described in subsection (b)(1) entered into between such participant and such IHRT;

(ii) such agreement includes parameters with respect to the disclosure of information involved and a process for the authorization of the further disclosure of information in such record;

(iii) the information involved is to be used for research or other activities only as provided for in the agreement;

(iv) the recipient of the information provides assurances that the information will not be further transferred or reused in violation of such agreement; and

(v) the transfer otherwise meets the requirements and standards prescribed by the Federal Trade Commission.

(B) TREATMENT OF PUBLIC HEALTH REPORTING.—Nothing in this paragraph shall be construed as prohibiting or limiting the use of health care information of an individual, including an individual who is an IHRT participant, for public health reporting (or other research) purposes prior to the inclusion of such information in an electronic health record maintained by an IHRT.

(4) LAW ENFORCEMENT CLARIFICATION.—Nothing in this part shall prevent an IHRT from disclosing information contained in an electronic health record maintained by the IHRT when required for purposes of a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant to such a statute.

(5) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require a health care provider that does not utilize electronic methods or appropriate levels of health information technology on the date of the enactment of this Act to adopt such electronic methods or technology as a requirement for participation or compliance under this part.

(b) PRIVACY PROTECTION AGREEMENT; TREATMENT OF STATE PRIVACY AND SECURITY LAWS.—

(1) PRIVACY PROTECTION AGREEMENT.—A privacy protection agreement described in this subsection is an agreement, with respect to an electronic health record of an IHRT participant to be maintained by an independent health record trust, between the participant and the trust—

(A) that is consistent with the standards described in subsection (a)(2);

(B) under which the participant specifies the portions of the record that may be accessed, under what circumstances such portions may be accessed, any authorizations for indicated authorized EHR data users to access information contained in the record, and the purposes for which the information (or portions of the information) in the record may be used;

(C) which provides a process for the authorization of the transfer of information contained in the record to a third party, including for the sale of such information for purposes of research, by an authorized EHR data user and reuse of such information by such third party, including a provision requiring that such transfer and reuse is not in violation of any privacy or transfer restrictions placed by the participant on the independent health record of such participant; and

(D) under which the trust provides assurances that the trust will not transfer, disclose, or provide access to the record (or any portion of the record) in violation of the parameters es-

tablished in the agreement or to any person or entity who has not agreed to use and transfer such record (or portion of such record) in accordance with such agreement.

(2) TREATMENT OF STATE LAWS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), the provisions of a privacy protection agreement entered into between an IHRT and an IHRT participant shall preempt any provision of State law (or any State regulation) relating to the privacy and confidentiality of individually identifiable health information or to the security of such health information.

(B) EXCEPTION FOR PRIVILEGED INFORMATION.—The provisions of a privacy protection agreement shall not preempt any provision of State law (or any State regulation) that recognizes privileged communications between physicians, health care practitioners, and patients of such physicians or health care practitioners, respectively.

(C) STATE DEFINED.—For purposes of this section, the term ''State'' has the meaning given such term when used in title XI of the

Social Security Act, as provided under section 1101(a) of such Act (42 U.S.C. 1301(a)).

SEC. 167. VOLUNTARY NATURE OF TRUST PARTICIPATION AND INFORMATION SHARING.

(a) IN GENERAL.—Participation in an independent health record trust, or authorizing access to information from such a trust, is voluntary. No employer, health insurance issuer, group health plan, health care provider, or other person may require, as a condition of employment, issuance of a health insurance policy, coverage under a group health plan, the provision of health care services, payment for such services, or otherwise, that an individual participate in, or authorize access to information from, an independent health record trust.

(b) ENFORCEMENT.—The penalties provided for in subsection (a) of section 1177 of the Social Security Act (42 U.S.C. 1320d–6) shall apply to a violation of subsection (a) in the same manner as such penalties apply to a person in violation of subsection (a) of such section.

SEC. 168. FINANCING OF ACTIVITIES.

(a) IN GENERAL.—Except as provided in subsection (b), an IHRT may generate revenue to pay for the operations of the IHRT through—

(1) charging IHRT participants account fees for use of the trust;

(2) charging authorized EHR data users for accessing electronic health records maintained in the trust;

(3) the sale of information contained in the trust (as provided for in section 166(a)(3)(A)); and

(4) any other activity determined appropriate by the Federal Trade Commission.

(b) PROHIBITION AGAINST ACCESS FEES FOR HEALTH CARE PROVIDERS.—For purposes of providing incentives to health care providers to access information maintained in an IHRT, as authorized by the IHRT participants involved, the IHRT may not charge a fee for services specified by the IHRT. Such services shall include the transmittal of information from a health care provider to be included in an independent electronic health record maintained by the IHRT (or permitting such provider to input such information into the record), including the transmission of or access to information described in section 166(a)(2)(C)(ii) by appropriate emergency responders.

(c) REQUIRED DISCLOSURES.—The sources and amounts of revenue derived under subsection (a) for the operations of an IHRT shall be fully disclosed to each IHRT participant of such IHRT and to the public.

(d) TREATMENT OF INCOME.—For purposes of the Internal Revenue Code of 1986, any revenue described in subsection (a) shall not be included in gross income of any IHRT, IHRT participant, or authorized EHR data user.

SEC. 169. REGULATORY OVERSIGHT.

(a) IN GENERAL.—In carrying out this part, the Federal Trade Commission shall promulgate regulations for independent health record trusts.

(b) ESTABLISHMENT OF INTERAGENCY STEERING COMMITTEE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall establish an Interagency Steering Committee in accordance with this subsection.

(2) CHAIRPERSON.—The Secretary of Health and Human Services shall serve as the chairperson of the Interagency Steering Committee.

(3) MEMBERSHIP.—The members of the Interagency Steering Committee shall consist of the Attorney General, the Chairperson of the Federal Trade Commission, the Chairperson for the National Committee for Vital and Health Statistics, a representative of the Federal Reserve, and other Federal officials determined appropriate by the Secretary of Health and Human Services.

(4) DUTIES.—The Interagency Steering Committee shall coordinate the implementation of this part, including the implementation of policies described in subsection (d) based upon the recommendations provided under such subsection, and regulations promulgated under this part.

(c) FEDERAL ADVISORY COMMITTEE.—

(1) IN GENERAL.—The National Committee for Vital and Health Statistics shall serve as an advisory committee for the IHRTs. The membership of such advisory committee shall include a representative from the Federal Trade Commission and the chairperson of the Interagency Steering Committee. Not less than 60 percent of such membership shall consist of representatives of nongovernment entities, at least one of whom shall be a representative from an organization representing health care consumers.

(2) DUTIES.—The National Committee for Vital and Health Statistics shall issue periodic reports and review policies concerning IHRTs based on each of the following factors:

(A) Privacy and security policies.

(B) Economic progress.

(C) Interoperability standards.

(d) POLICIES RECOMMENDED BY FEDERAL TRADE COMMISSION.—The Federal Trade Commission, in consultation with the National Committee for Vital and Health Statistics, shall recommend policies to—

(1) provide assistance to encourage the growth of independent health record trusts;

(2) track economic progress as it pertains to operators of independent health records trusts and individuals receiving nontaxable income with respect to accounts;

(3) conduct public education activities regarding the creation and usage of the independent health records trusts;

(4) establish standards for the interoperability of health information technology to ensure that information contained in such record may be shared between the trust involved, the participant, and authorized EHR data users, including for the standardized collection and transmission of individual health records (or portions of such records) to authorized EHR data users through a common interface and for the portability of such records among independent health record trusts; and

(5) carry out any other activities determined appropriate by the Federal Trade Commission.

(e) REGULATIONS PROMULGATED BY FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall promulgate regulations based on, at a minimum, the following factors:

(1) Requiring that an IHRT participant, who has an electronic health record that is maintained by an IHRT, be notified of a security breech with respect to such record, and any corrective action taken on behalf of the participant.

(2) Requiring that information sent to, or received from, an IHRT that has been designated as high-risk should be authenticated through the use of methods such as the periodic changing of passwords, the use of biometrics, the use of tokens or other technology as determined appropriate by the council.

(3) Requiring a delay in releasing sensitive health care test results and other similar information to patients directly in order to give physicians time to contact the patient.

(4) Recommendations for entities operating IHRTs, including requiring analysis of the potential risk of health transaction security breeches based on set criteria.

(5) The conduct of audits of IHRTs to ensure that they are in compliance with the requirements and standards established under this part.

(6) Disclosure to IHRT participants of the means by which such trusts are financed, including revenue from the sale of patient data.

(7) Prevention of certification of an entity seeking independent heath record trust certification based on—

(A) the potential for conflicts between the interests of such entity and the security of the health information involved; and

(B) the involvement of the entity in any activity that is contrary to the best interests of a patient.

(8) Prevention of the use of revenue sources that are contrary to a patient's interests.

(9) Public disclosure of audits in a manner similar to financial audits required for publicly traded stock companies.

(10) Requiring notification to a participating entity that the information contained in such record may not be representative of the complete or accurate electronic health record of such account holder.

(f) COMPLIANCE REPORT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Commission shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, a report on compliance by and progress of independent health record trusts with this part. Such report shall describe the following:

(1) The number of complaints submitted about independent health record trusts, which shall be divided by complaints related to security breaches, and complaints not related to security breaches, and may include other categories as the Interagency Steering Committee established under subsection (b) determines appropriate.

(2) The number of enforcement actions undertaken by the Commission against independent health record trusts in response to complaints under paragraph (1), which shall be divided by enforcement actions related to security breaches and enforcement actions not related to security breaches and may include other categories as the Interagency Steering

Committee established under subsection (b) determines appropriate.

(3) The economic progress of the individual owner or institution operator as achieved through independent health record trust usage and existing barriers to such usage.

(4) The progress in security auditing as provided for by the Interagency Steering Committee council under subsection (b).

(5) The other core responsibilities of the Commission as described in subsection (a).

(g) INTERAGENCY MEMORANDUM OF UNDERSTANDING.—The Interagency Steering Committee shall ensure, through the execution of an interagency memorandum of understanding, that—

(1) regulations, rulings, and interpretations issued by Federal officials relating to the same matter over which 2 or more such officials have responsibility under this part are administered so as to have the same effect at all times; and

(2) the memorandum provides for the coordination of policies related to enforcing the same requirements through such officials in order to have coordinated enforcement strategy that avoids duplication

of enforcement efforts and assigns priorities in enforcement.

TITLE II—MEDICAID AND SCHIP REFORM

SEC. 201. MEDICAID REFORM.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended—

(1) by redesignating section 1939 as section 1940; and

(2) by inserting after section 1938 the following new section:

''REVISION OF MEDICAID PROGRAM

''SEC. 1939. (a) ELECTION OF BLOCK GRANT OR IMPLEMENTATION OF REFUNDABLE TAX CREDIT FOR MEDICAID POPULATION FOR ACUTE CARE SERVICES AND MAINTENANCE OF EFFORT SPENDING.—

''(1) IN GENERAL.—Each State shall elect—

''(A) to receive block grant funding under subsection (b); or

''(B) to have Medicaid-eligible individuals eligible to receive refundable tax credits under section 36 of the Internal Revenue Code of 1986 and to provide for maintenance of effort described in subsection (c).

If a State fails to make such an election, the State shall be treated as making the election described in subparagraph (A).

''(2) LIMITATIONS ON ELECTION.—If a State makes the election described in paragraph (1)(B), the State may not change such election. A State that makes the election described in paragraph (1)(A) may change such election with notice to the Secretary.

''(3) EFFECTIVE DATE; IMPLEMENTATION.—This subsection shall first take effect as of January 1, 2010. For items and services furnished on or after such date, no payment shall be made under section 1903 to any State.

''(b) BLOCK GRANT PAYMENT FOR ACUTE CARE SERVICES.—

''(1) IN GENERAL.—The block grant payment amount under this subsection for a State—

''(A) for 2010 is equal to the total Federal payments under this title and title XXI to the State for calendar quarters in 2009 (other than payments for medical assistance for long-term care services, as defined for purposes of subsection (e))), increased by the inflation adjust-

ment factor for the year (described in paragraph (2)); or

"(B) for a subsequent year is, subject to subsection (d), equal to the block grant payment amount under this subsection for the State for the previous year increased by the inflation adjustment factor for the year (described in paragraph (2)) and a population growth factor (described in paragraph (3)).

"(2) INFLATION ADJUSTMENT FACTOR.—The inflation adjustment factor in this paragraph for a year is equal to the average of the projected annual rate of increase in the consumer price index for urban consumers (all items; U.S. city average) and the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year.

"(3) POPULATION GROWTH FACTOR.—The Secretary shall determine and apply a population growth factor based on the percentage increase in the population included in the computation of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary, but adjusted among the States so as to reflect differences

in relative population growth rates among such States.

''(4) LIMITATION.—Payment under this subsection shall only be available to States for costs of health care and related administrative costs.

''(5) NO REQUIREMENT FOR STATE MATCHING PAYMENT.—Nothing in this subsection shall be construed as requiring a State to make any matching payments as a condition of receiving payment under this subsection.

''(6) PERIODICITY OF PAYMENTS.—The Secretary shall provide for making payments under this subsection on a quarterly or other appropriate basis.

''(c) MAINTENANCE OF EFFORT (MOE) REQUIREMENT.—

''(1) IN GENERAL.—The maintenance of effort requirement under this subsection for a State for a year is to provide for payment in the MOE amount specified in paragraph (2) for the year for purposes described in, and in accordance with, paragraph (3).

''(2) MOE AMOUNT.—The MOE amount specified in this paragraph for a State—

''(A) for 2010 is equal to the amount of expenditures of the State under this title and title XXI for calendar quarters in 2008, not

taking into account Federal payments made to the State under the respective title and not taking into account such payments that are attributable to medical assistance for long-term care services (as defined for purposes of subsection (e)), increased by the inflation adjustment factor described in subsection (b)(2) for 2009 and further increased by such factor for 2010; or

''(B) for a subsequent year is equal to the MOE amount specified in this paragraph for the State for the previous year increased by the inflation adjustment factor described in subsection (b)(2) for such subsequent year.

''(3) APPLICATION TOWARD SPENDING.—Payments by a State shall be used for the following purposes, with priority given to such purposes in the following order:

''(A) To develop an auto-enrollment program for previously eligible Medicaid recipients.

''(B) To assist individuals in low-income families (as defined by the State) and high-cost individuals and families (for those for whom insurance is unavailable or very expensive because of their health status) to purchase qualifying health insurance. Eligible expenses shall include

direct assistance with premiums and cost-sharing.

''(C) For purposes of funding qualified high risk pools (as defined in section 2744(c)(2) of the Public Health Service Act).

''(D) For establishment and funding of reinsurance mechanisms.

''(E) For establishment and maintenance of networks designed to improve consumer information, transparency in price and quality data, and reduction in transaction costs associated with enrolling individuals in health insurance coverage.

''(d) PHASE-OUT OF DSH PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the amount of DSH allotment otherwise provided under section 1923(f) for each State for a fiscal year shall be reduced—

''(A) by 25 percent for fiscal year 2010;

''(B) by 50 percent for fiscal year 2011;

''(C) by 75 percent for fiscal year 2012; and

''(D) entirely for fiscal year 2013 and each succeeding fiscal year.

''(2) ADJUSTMENT IN BLOCK GRANT.—The amount of any block grant for a State under subsection (b) for a fiscal year shall be adjusted to reflect the amount of reductions in DSH allotment under paragraph (1) for the State and the fiscal year.

''(e) BLOCK GRANT FOR LONG-TERM CARE SERVICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, instead of any payment under this title to a State for long-term care services (as defined by the Secretary), the Secretary shall pay to a State the long-term care block grant amount specified in paragraph (2).

''(2) LONG-TERM CARE BLOCK GRANT AMOUNT.—The long-term block grant payment amount under this paragraph for a State—

''(A) for 2010 is equal to the total Federal payments under this title to the State for calendar quarters in 2009 for long-term care services, as defined for purposes of paragraph (1), increased by the inflation adjustment factor for the year (described in subsection (b)(2))); or

''(B) for a subsequent year is equal to the long-term care block grant payment amount

under this paragraph for the State for the previous year increased by such inflation adjustment factor for the year.

''(3) APPLICATION OF PROVISIONS.—The provisions of paragraphs (3), (4), and (5) of subsection (b) shall apply to payments under this subsection.

''(4) EFFECTIVE DATE; IMPLEMENTATION.—This subsection shall first take effect as of January 1, 2010. For long-term care items and services furnished on or after such date, no payment shall be made under section 1903 to any State.''.

SEC. 202. SCHIP REFORM.

(a) IN GENERAL.—Effective for items and services furnished on or after January 1, 2010, title XXI of the Social Security Act is repealed.

(b) CONSTRUCTION.—Subsection (a) shall not affect payment for items and services furnished before such date.

TITLE III—MEDICARE REFORM

Subtitle A—New Medicare Program

SEC. 301. BENEFIT CHANGES.

Title XVIII of the Social Security Act is amended by inserting after section 1808 the following new section:

''PROGRAM FOR NEW MEDICARE BENEFICIARIES BEGINNING IN 2019

''SEC. 1809. (a) APPLICATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law (including sections 226 and 226A), the provisions of this section shall apply to individuals (other than individuals entitled to benefits only because of the application of section 1881(d)) who first become entitled to benefits under part A, or whose coverage period under part B begins, on or after January 1, 2019.

''(2) NO IMPACT ON FICA/SECA TAX REVENUES.—Nothing in this section shall be construed as affecting revenues through the payment of hospital insurance taxes under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

''(3) NO IMPACT ON OTHER BENEFICIARIES.—

''(A) IN GENERAL.—This section shall not apply to individuals not described in paragraph (1).

''(B) NO IMPACT ON COMPUTATION OF MEDICARE PREMIUMS FOR OLDER MEDICARE BENEFICIARIES.—Premiums under parts A, B, and D shall be computed for individuals not described in paragraph (1) based on the average costs that the Secretary estimates would have been applicable if this section did not apply.

''(b) ALTERNATIVE BENEFITS.—

''(1) IN GENERAL.—An individual described in subsection (a)(1) is only entitled to benefits under this title in accordance with this section. In the case of such an individual who has qualified health insurance coverage, the individual is entitled under this section—

''(A) to an income-related payment under subsection (c); and

''(B) in the case of a low-income individual (as defined in paragraph (3) of subsection (d)), to a contribution to a medical savings account of the individual in the amount specified in such subsection.

''(2) ALTERNATIVE PREMIUM OBLIGATIONS.—An individual described in subsection (a)(1)—

''(A) is not responsible for payment of any premium otherwise applicable under part B or D; but

''(B) is responsible for payment of the premium for qualified health insurance coverage referred to in paragraph (1) and may apply the income-related payment under subsection (c) toward such premium.

''(3) QUALIFIED HEALTH INSURANCE COVERAGE DEFINED.—In this subsection, the term

'qualified health insurance coverage' means health benefits coverage, whether under a group health plan, health insurance coverage or otherwise, but does not include coverage under a health plan if substantially all of its coverage is coverage described in section 223(c)(1)(B) of the Internal Revenue Code of 1986.

''(c) INCOME-RELATED PAYMENT.—

''(1) IN GENERAL.—The amount of the income-related payment under this subsection for an individual for a year is equal to—

''(A) the annual amount specified for the year in paragraph (2);

''(B) subject to reduction under paragraph (3) (relating to higher income individuals);

''(C) further subject to adjustment under paragraph (4); and

''(D) subject to pro-ration under paragraph (5).

''(2) ANNUAL AMOUNT.—

''(A) IN GENERAL.—The annual amount specified in this paragraph—

''(i) for 2009 is $9,500; and

''(ii) for any subsequent year is the annual amount specified in this paragraph

for the preceding year increased by the annual inflation adjustment described in subparagraph (B) for such subsequent year.

Any amount computed under clause (ii) that is not a multiple of $12 shall be rounded to the nearest multiple of $12.

''(B) ANNUAL INFLATION ADJUSTMENT.—The annual inflation adjustment under this subparagraph for a year is equal to the average of—

''(i) the annual rate of increase in the consumer price index for urban consumers (all items; U.S. city average) for the year, as projected by the Secretary in consultation with the Bureau of Labor Statistics before the beginning of the year; and

''(ii) the annual rate of increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for the year, as projected by the Secretary in consultation with the Bureau of Labor Statistics before the beginning of the year.

''(3) REDUCTION FOR HIGHER-INCOME INDIVIDUALS.—

"(A) IN GENERAL.—In the case of an individual whose modified adjusted gross income exceeds the threshold amount specified in paragraph (2) of section 1839(i), as adjusted under paragraph (5) of such section, the annual amount under paragraph (2) shall be reduced by the adjustment percentage specified in subparagraph (B).

"(B) ADJUSTMENT PERCENTAGE.—In the case of an individual for whom the applicable percentage specified in section 1839(i)(3)(C)—

"(i) is less than 80 percent, the adjustment percentage under this subparagraph shall be 50 percent; or

"(ii) is equal to 80 percent, the adjustment percentage under this subparagraph shall be 70 percent.

"(C) APPLICATION OF CERTAIN PROVISIONS.—The provisions of paragraphs (4) through (6) of section 1839(i) shall apply under this paragraph in the same manner as they apply for purposes of such section.

"(4) RISK, GEOGRAPHIC AREA, AND OTHER ADJUSTMENTS.—

"(A) RISK ADJUSTMENT.—The payment amount under this subsection for an individual shall be adjusted, using a methodology specified by the Secretary, in a manner that takes into account the relative risk factors (such as those described in section 1853(a)(1)(C)(i)) associated with such individual. Such adjustment shall be made in such a manner as not to change the total amount of payments made under this subsection as a result of such adjustment.

"(B) PARTIAL GEOGRAPHIC AREA ADJUSTMENT.—Such payment amount for an individual also shall be adjusted, using a methodology specified by the Secretary, in a manner that takes into account the relative differences in area health care costs for the area in which the individual resides compared to other areas. Such adjustment shall be made in such a manner as not to change the total amount of payments made under this subsection as a result of such adjustment. The Secretary shall provide for a decrease over time in the adjustment made under this subparagraph.

''(C) CERTAIN PART A BUY-IN INDIVIDUALS.—Such payment amount for an individual who is not eligible for benefits under part A pursuant to section 226 or 226A shall be adjusted by such proportion or amount as the Secretary determines appropriate to take into account premiums that would otherwise be payable under section 1818 or 1818A for benefits under part A.

''(5) PRO-RATIO FOR PARTIAL YEAR OF ELIGIBILITY.—In the case of an individual whose entitlement under this section is for less than an entire year, the payment amount under this subsection shall be pro-rated to reflect the portion of the year included in such entitlement.

''(6) PAYMENT ON PERIODIC BASIS.—The Secretary shall provide for the payment under this subsection on an appropriate monthly or other periodic basis.

''(d) CONTRIBUTION TO A MEDICAL SAVINGS ACCOUNT (MSA) FOR LOW-INCOME INDIVIDUALS.—

''(1) IN GENERAL.—The amount of the contribution under subsection (b)(1)(B) to a medical savings account of a low-income individual is equal—

"(A) in the case of an individual described in clause (i) or (ii) of paragraph (4)(A), to the full MSA contribution amount (as defined in paragraph (2)); or

"(B) in the case of any other individual, to 75 percent of the full MSA contribution amount.

"(2) FULL MSA CONTRIBUTION AMOUNT.—For purposes of this subsection, the term 'full MSA contribution amount' means, for a year for an individual, an amount to be equivalent to the full amount of the average deductible of a high-deductible health plan (as defined in section 223(c)(2) of the Internal Revenue Code of 1986) as determined by the Secretary.

"(3) NO MEDICAID COVERAGE FOR MEDICARE-COVERED SERVICES.—

"(A) IN GENERAL.—In the case of an individual who is eligible to be provided a contribution to a medical savings account under this subsection, the individual is not entitled to any payment under a State plan under title XIX with respect to any benefits relating to items and services for which coverage is provided under this title.

"(B) CONSTRUCTION.—Subparagraph (A) shall not affect the continued provision of medical assistance under title XIX for items and services, such as dental, vision, or long-term care facility services, for which benefits are not provided under this title regardless of medical necessity.

"(4) PERIODIC PAYMENT.—The Secretary shall provide for the contribution into medical savings accounts of amounts under this subsection on an appropriate monthly or other periodic basis.

"(5) LOW-INCOME INDIVIDUAL DEFINED.—

"(A) IN GENERAL.—For purposes of this section, the term 'low-income individual' means an individual described in subsection (a)(1)—

"(i) who meets the requirement of section 1936(c)(6)(A)(ii) (relating to a full-benefit dual eligible individual);

"(ii) whose income (as determined under section 1612 for purposes of the supplemental security income program, except as provided in subparagraph (B)) does not exceed 100 percent of the official income poverty line (referred to in section

1905(p)(1)) applicable to a family of the size involved; or

"(iii) whose income (as so determined) exceeds 100 percent, but does not exceed 150 percent, of such official income poverty line applicable to a family of the size involved.

"(B) APPLICATION OF SPECIAL RULE REGARDING APPLICATION OF SOCIAL SECURITY INCREASES.—The provisions of subparagraph (D) of section 1905(p)(2) shall apply to determinations of income under subparagraph (A) in the same manner they apply under such section.

"(C) DETERMINATION PROCESS.—The Secretary shall specify a process for the determination of whether individuals are low-income individuals.".

SEC. 302. INCREASE IN MEDICARE ELIGIBILITY AGE.

Section 226 of the Social Security Act (42 U.S.C. 426) is amended by adding at the end the following new subsection:

"(k) INCREASING MEDICARE QUALIFYING AGE.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any reference in this section or title XVIII (or title XIX insofar as it refers to title

XVIII) to 'age 65' shall be deemed a reference to the medicare qualifying age specified in paragraph (2).

''(2) MEDICARE QUALIFYING AGE SPECIFIED.—The medicare qualifying age specified in this paragraph is determined as follows:

''(A) In the case of an individual who attains 65 years of age before January 1, 2019, the medicare qualifying age is 65 years of age.

''(B) In the case of an individual who attains 65 years of age in a year after 2018 and before 2027, the medicare qualifying age is the medicare qualifying age specified in this paragraph for the previous year increased by 2 months.

''(C) In the case of an individual who attains 65 years of age—

''(i) in the 2-year period beginning on January 1, 2027, the medicare qualifying age is 67 years and 1 month; or

''(ii) in a subsequent 2-year period beginning before 2087, the medicare qualifying age is the medicare qualifying age specified in this paragraph for the previous 2-year period (or, in the case of the first

2-year period, specified for 2026) increased by 1 month.

''(D) In the case of an individual who attains 65 years of age on or after January 1, 2086, the medicare qualifying age is the medicare qualifying age specified in this paragraph is 69 years and 6 months.''.

SEC. 303. UNIFIED MEDICARE TRUST FUND.

(a) IN GENERAL.—The Federal Hospital Insurance Trust Fund (established under section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of such Act) are hereby consolidated into a unified Medicare trust fund. Such trust fund shall have separate accounts for parts A, B, and D of such title and shall be administered by the same board of trustees that administers the current Trust Funds.

(b) CONSTRUCTION.—Nothing in this section shall be construed as affecting the actual transfer of funds or computations of amounts of premiums under any part of the Medicare program.

(c) SOLVENCY.—The Medicare trustee shall establish a measure of program solvency for the Medicare program of total outlays as a measure of gross domestic product.

Subtitle B—Changes in Current Medicare Program

SEC. 311. INCOME-RELATED REDUCTION IN PART D PREMIUM SUBSIDY.

(a) INCOME-RELATED REDUCTION IN PART D PREMIUM SUBSIDY.—

(1) IN GENERAL.—Section 1860D–13(a) of the Social Security Act (42 U.S.C. 1395w–113(a)) is amended by adding at the end the following new paragraph:

''(7) REDUCTION IN PREMIUM SUBSIDY BASED ON INCOME.—

''(A) IN GENERAL.—In the case of an individual whose modified adjusted gross income exceeds the threshold amount applicable under paragraph (2) of section 1839(i) (including application of paragraph (5) of such section) for the calendar year, the monthly amount of the premium subsidy applicable to the premium under this section for a month after December 2009 shall be reduced (and the monthly beneficiary premium shall be increased) by the monthly adjustment amount specified in subparagraph (B).

"(B) MONTHLY ADJUSTMENT AMOUNT.—The monthly adjustment amount specified in this subparagraph for an individual for a month in a year is equal to the product of—

"(i) the quotient obtained by dividing—

"(I) the applicable percentage determined under paragraph (3)(C) of section 1839(i) (including application of paragraph (5) of such section) for the individual for the calendar year reduced by 25.5 percent; by

"(II) 25.5 percent; and

"(ii) the base beneficiary premium (as computed under paragraph (2)).

"(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'modified adjusted gross income' has the meaning given such term in subparagraph (A) of section 1839(i)(4), determined for the taxable year applicable under subparagraphs (B) and (C) of such section.

"(D) DETERMINATION BY COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall make any determination

necessary to carry out the income-related reduction in premium subsidy under this paragraph.

''(E) PROCEDURES TO ASSURE CORRECT INCOME-RELATED REDUCTION IN PREMIUM SUBSIDY.—

''(i) DISCLOSURE OF BASE BENEFICIARY PREMIUM.—Not later than September 15 of each year beginning with 2009, the Secretary shall disclose to the Commissioner of Social Security the amount of the base beneficiary premium (as computed under paragraph (2)) for the purpose of carrying out the income-related reduction in premium subsidy under this paragraph with respect to the following year.

''(ii) ADDITIONAL DISCLOSURE.—Not later than October 15 of each year beginning with 2009, the Secretary shall disclose to the Commissioner of Social Security the following information for the purpose of carrying out the income-related reduction in premium subsidy under this paragraph with respect to the following year:

''(I) The modified adjusted gross income threshold applicable under paragraph (2) of section 1839(i) (including application of paragraph (5) of such section).

''(II) The applicable percentage determined under paragraph (3)(C) of section 1839(i) (including application of paragraph (5) of such section).

''(III) The monthly adjustment amount specified in subparagraph (B).

''(IV) Any other information the Commissioner of Social Security determines necessary to carry out the income-related reduction in premium subsidy under this paragraph.

''(F) RULE OF CONSTRUCTION.—The formula used to determine the monthly adjustment amount specified under subparagraph (B) shall only be used for the purpose of determining such monthly adjustment amount under such subparagraph.''.

(2) COLLECTION OF MONTHLY ADJUSTMENT AMOUNT.—Section 1860D–13(c) of the Social Security Act (42 U.S.C. 1395w–113(c)) is amended—

(A) in paragraph (1), by striking ''(2) and (3)'' and inserting ''(2), (3), and (4)''; and

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

''(4) COLLECTION OF MONTHLY ADJUSTMENT AMOUNT.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection or section 1854(d)(2), subject to subparagraph (B), the amount of the income-related reduction in premium subsidy for an individual for a month (as determined under subsection (a)(7)) shall be paid through withholding from benefit payments in the manner provided under section 1840.

''(B) AGREEMENTS.—In the case where the monthly benefit payments of an individual that are withheld under subparagraph (A) are insufficient to pay the amount described in such subparagraph, the Commissioner of Social Security shall enter into agreements with the Secretary, the Director of the Office of Personnel

Management, and the Railroad Retirement Board as necessary in order to allow other agencies to collect the amount described in subparagraph (A) that was not withheld under such subparagraph.''.

(b) CONFORMING AMENDMENTS.—

(1) MEDICARE.—Part D of title XVIII of the Social Security Act (42 U.S.C. 1395w–101 et seq.) is amended—

(A) in section 1860D–13(a)(1)—

(i) by redesignating subparagraph (F) as subparagraph (G);

(ii) in subparagraph (G), as redesignated by clause (i), by striking ''(D) and (E)'' and inserting ''(D), (E), and (F)''; and

(iii) by inserting after subparagraph (E) the following new subparagraph:

''(F) INCREASE BASED ON INCOME.—The monthly beneficiary premium shall be increased pursuant to paragraph (7).''; and

(B) in section 1860D–15(a)(1)(B), by striking ''paragraph (1)(B)'' and inserting ''paragraphs (1)(B) and (1)(F)''.

(2) INTERNAL REVENUE CODE.—Section 6103(l)(20) of the Internal Revenue Code of 1986 (relating to disclosure of return information to carry out Medicare part B premium subsidy adjustment) is amended—

(A) in the heading, by striking ''PART B PREMIUM SUBSIDY ADJUSTMENT'' and inserting ''PARTS B AND D PREMIUM SUBSIDY ADJUSTMENTS'';

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting ''or 1860D–13(a)(7)'' after ''1839(i)''; and

(ii) in clause (vii), by inserting after ''subsection (i) of such section'' the following: ''or under section 1860D–13(a)(7) of such Act''; and

(C) in subparagraph (B)—

(i) by inserting ''or such section 1860D–13(a)(7)'' before the period at the end;

(ii) as amended by clause (i), by inserting ''or for the purpose of resolving tax payer appeals with respect to any such pre-

mium adjustment'' before the period at the end; and

(iii) by adding at the end the following new sentence: ''Officers, employees, and contractors of the Social Security Administration may disclose such return information to officers, employees, and contractors of the Department of Health and Human Services, the Office of Personnel Management, the Railroad Retirement Board, the Department of Justice, and the courts of the United States to the extent necessary to carry out the purposes described in the preceding sentence.''; and

(D) by adding at the end the following new subparagraph:

''(C) TIMING OF DISCLOSURE.—Return information shall be disclosed to officers, employees, and contractors of the Social Security Administration under subparagraph (A) not later than the date that is 90 days prior to the date on which the taxpayer first becomes entitled to benefits under part A of title XVIII of the Social Security Act or eligible to enroll for benefits under part B of such title.''.

SEC. 312. REDUCTION IN HOSPITAL MARKETBASKET INCREASES.

Notwithstanding any other provision of law:

(1) OUTPATIENT HOSPITAL SERVICES.—For 2010 and each succeeding year, the OPD fee schedule increase factor otherwise computed under section 1833(t)(3)(C)(iv) of the Social Security Act (42 U.S.C. 1395l(t)(3)(C)(iv)) shall be reduced by .4 percentage points.

(2) INPATIENT HOSPITAL SERVICES.—For fiscal year 2010 and each succeeding fiscal year, the applicable percentage increase otherwise computed under clauses (i) and (ii) of section 1886(b)(3)(B) of such Act (42 U.S.C. 1395ww(b)(3)(B)) shall be reduced by .4 percentage points.

SEC. 313. ELIMINATION OF INDEXING OF INCOME THRESHOLDS FOR PART B INCOME-RELATED PREMIUMS.

(a) IN GENERAL.—Section 1839(i) of the Social Security Act (42 U.S.C. 1395r(i)) is amended by striking paragraph (5).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to premiums for years beginning with 2010.

TITLE IV—SOCIAL SECURITY REFORM

SEC. 401. SHORT TITLE AND TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE OF TITLE.—This title may be cited as the ''Social Security Personal Savings Guarantee and Prosperity Act of 2008''.

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

TITLE IV—SOCIAL SECURITY REFORM

Sec. 401. Short title and table of contents of title.
Sec. 402. Establishment of Personal Social Security Savings Program.

''PART B—PERSONAL SOCIAL SECURITY SAVINGS PROGRAM

''Sec. 251. Definitions.
''Sec. 252. Social Security Personal Savings Fund.
''Sec. 253. Participation in Program.
''Sec. 254. Personal social security savings accounts.
''Sec. 255. Tier I Investment Fund.
''Sec. 256. Tier II Investment Fund.
''Sec. 257. Tier III Investment Options.
''Sec. 258. Personal social security savings annuity and other distributions.
''Sec. 259. Guarantee of promised benefits.
''Sec. 260. Personal Social Security Savings Board.
''Sec. 261. Executive Director.
Sec. 403. Monthly insurance benefits for participating individuals.
Sec. 404. Tax treatment of accounts.
Sec. 405. Self-Liquidating Social Security Transition Fund.
Sec. 406. Budgetary treatment of social security.
Sec. 407. Accounting for the Old-Age, Survivors, and Disability Insurance Program and the Personal Social Security Savings Program.
Sec. 408. Progressive indexing of benefits for old-age, wife's, and husband's insurance benefits.
Sec. 409. Enhancements to part A benefits.
Sec. 410. Adjustments to schedule for increases in normal retirement age.

SEC. 402. ESTABLISHMENT OF PERSONAL SOCIAL SECURITY SAVINGS PROGRAM.

(a) IN GENERAL.—Title II of the Social Security Act is amended—

(1) by inserting before section 201 the following:

"PART A—INSURANCE BENEFITS";

and

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

"PART B—PERSONAL SOCIAL SECURITY SAVINGS PROGRAM

"SEC. 251. DEFINITIONS.

''For purposes of this part—

''(1) PARTICIPATING INDIVIDUAL.—The term 'participating individual' has the meaning provided in section 253(a).

''(2) BOARD.—The term 'Board' means the Personal Social Security Savings Board established under section 260.

''(3) EXECUTIVE DIRECTOR.—The term 'Executive Director' means the Executive Director appointed under section 261.

''(4) PERSONAL SOCIAL SECURITY SAVINGS ACCOUNT.—The term 'personal social security savings account' means an account established under section 254(a).

''(5) PERSONAL SOCIAL SECURITY SAVINGS ANNUITY.—The term 'personal social security savings annuity' means an annuity approved by the Board under section 258(b)(3).

''(6) SAVINGS FUND.—The term 'Savings Fund' means the Social Security Personal Savings Fund established under section 252.

''(7) TIER I INVESTMENT FUND.—The term 'Tier I Investment Fund' means the trust fund created under section 255.

''(8) TIER II INVESTMENT FUND.—The term 'Tier II Investment Fund' means the trust fund created under section 256.

''(9) TIER III INVESTMENT OPTION.—The term 'Tier III Investment Option' means an investment option which is—

''(A) offered by an eligible entity certified by the Board under section 257(b); and

''(B) approved by the Board under section 257(c).

"SEC. 252. SOCIAL SECURITY PERSONAL SAVINGS FUND.

''(a) ESTABLISHMENT OF SAVINGS FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to

be known as the 'Social Security Personal Savings Fund'.

''(2) AMOUNTS IN FUND.—The Savings Fund shall consist of—

''(A) all amounts transferred to or deposited into the Savings Fund under subsection (b), increased by the total net earnings from investments of sums in the Savings Fund attributable to such transferred or deposited amounts, and reduced by the total net losses from investments of such sums, and

''(B) the reserves held in the Annuity Reserves Account established under section 258(b)(3), increased by the total net earnings from investments of such reserves, and reduced by the total net losses from investments of such reserves.

''(3) TRUSTEES.—The Board shall serve as trustees of the Savings Fund.

''(4) BUDGET AUTHORITY; APPROPRIATION.—This part constitutes budget authority in advance of appropriations Acts and represents the obligation of the Board to provide for the payment of amounts provided under this part. The amounts held in the

Savings Fund are appropriated and shall remain available without fiscal year limitation.

''(b) DEPOSITS INTO FUND.—

''(1) IN GENERAL.—During each calendar year, the Secretary of the Treasury shall deposit into the Savings Fund, from amounts held in the Federal Old-Age and Survivors Insurance Trust Fund, a total amount equal, in the aggregate, to 100 percent of the redirected social security contribution for such calendar year of each individual who is a participating individual for such calendar year.

''(2) TRANSFERS BASED ON ESTIMATES.—

''(A) IN GENERAL.—The amounts deposited pursuant to paragraph (1) shall be transferred in at least weekly payments from the Federal Old-Age and Survivors Insurance Trust Fund to the Savings Fund.

''(B) DETERMINATION OF AMOUNTS.—The amounts transferred under subparagraph (A) shall be determined on the basis of estimates, made by the Commissioner of Social Security and certified to the Secretary of the Treasury, of the wages paid to, and self-employment income derived by, participating individuals. Proper adjustments shall be made in amounts

subsequently transferred to the extent prior estimates were in excess of or were less than actual amounts transferred.

''(3) REDIRECTED SOCIAL SECURITY CONTRIBUTIONS.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'redirected social security contributions' means, with respect to an individual for a calendar year, the sum of—

''(i) the product derived by multiplying—

''(I) the sum of the total wages paid to, and self-employment income derived by, such individual during such calendar year, to the extent such total wages and self-employment income do not exceed the base amount for such calendar year; by

''(II) the applicable base percentage for the calendar year; and

''(ii) the product derived by multiplying—

''(I) the sum of the total wages paid to, and self-employment income derived by, such individual during

such calendar year, to the extent such total wages and self-employment income exceed the base amount (taking into account the limits imposed by the contribution and benefit base under section 230); by

"(II) the applicable supplemental percentage for the calendar year.

"(B) BASE AMOUNT.—For purposes of subparagraph (A)—

"(i) INITIAL BASE AMOUNT.—The base amount for calendar year 2011 is $10,000.

"(ii) ADJUSTMENTS TO BASE AMOUNT.—The base amount for any calendar year after 2011 is the product derived by multiplying $10,000 by a fraction—

"(I) the numerator of which is the national average wage index (as defined in section 209(k)) for the first of the 2 preceding calendar years; and

"(II) the denominator of which is the national average wage index (as so defined) for 2009.

"(C) APPLICABLE BASE PERCENTAGE.—For purposes of subparagraph (A), the applicable base percentage for a calendar year is—

"(i) for calendar years after 2010 and before 2021, 2 percent;

"(ii) for calendar years after 2020 and before 2031, 4 percent;

"(iii) for calendar years after 2030 and before 2041, 6 percent; and

"(iv) for calendar years after 2040, 8 percent.

"(D) APPLICABLE SUPPLEMENTAL PERCENTAGE.—For purposes of subparagraph (A), the applicable supplemental percentage for a calendar year is—

"(i) for calendar years after 2010 and before 2021, 1 percent;

"(ii) for calendar years after 2020 and before 2031, 2 percent;

"(iii) for calendar years after 2030 and before 2041, 3 percent; and

"(iv) for calendar years after 2040, 4 percent.

''(c) AVAILABILITY.—The sums in the Savings Fund are appropriated and shall remain available without fiscal year limitation—

''(1) to invest funds in the Tier I Investment Fund of the Savings Fund and the Tier II Investment Fund of the Savings Fund under sections 255 and 256, respectively;

''(2) to transfer into Tier III Investment Options under section 257;

''(3) to make distributions in accordance with section 258; and

''(4) to pay the administrative expenses of the Board in accordance with subsection (e).

''(d) LIMITATIONS ON USE OF FUNDS.—

''(1) IN GENERAL.—Sums in the Savings Fund credited to a participating individual's personal social security savings account may not be used for, or diverted to, purposes other than for the exclusive benefit of the participating individual or the participating individual's beneficiaries under this part.

''(2) ASSIGNMENTS.—Sums in the Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process.

''(e) PAYMENT OF ADMINISTRATIVE EXPENSES.—Administrative expenses incurred to carry out this part shall be paid out of net earnings in the Savings Fund in conjunction with the allocation of investment earnings and losses under section 254(c).

''(f) LIMITATION.—The sums in the Savings Fund shall not be appropriated for any purpose other than the purposes specified in this part and may not be used for any other purpose.

''SEC. 253. PARTICIPATION IN PROGRAM.

''(a) PARTICIPATING INDIVIDUAL.—For purposes of this part, the term 'participating individual' means any individual—

''(1)(A) who receives wages in any calendar year after December 31, 2010, on which there is imposed a tax under section 3101(a) of the Internal Revenue Code of 1986, or

''(B) who derives self-employment income for a taxable year beginning after December 31, 2010, on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986,

''(2) who is born on or after January 1, 1954, and

''(3) who has not filed an election to renounce such individual's status as a participating individual

under subsection (b) or has filed such an election and has subsequently filed an election to reinstate such individual's status as a participating individual under subsection (c).

"(b) RENUNCIATION OF PARTICIPATION.—

"(1) IN GENERAL.—An individual—

"(A) who has not attained retirement age (as defined in section 216(l)(1)), and

"(B) with respect to whom no distribution has been made from amounts credited to the individual's personal social security savings account for the purchase of a personal social security savings annuity,

may elect, in such form and manner as shall be prescribed in regulations of the Board, to renounce such individual's status as a 'participating individual' for purposes of this part. Upon completion of the procedures provided for under paragraph (2), any such individual who has made such an election shall not be treated as a participating individual under this part, effective as if such individual had never been a participating individual. The Board shall provide for immediate notification of such election to the Commissioner of Social Security, the Secretary of the Treasury, and the Executive Director.

''(2) PROCEDURE.—The Board shall prescribe by regulation procedures governing the termination of an individual's status as 'participating individual' pursuant to an election under this subsection. Such procedures shall include—

''(A) prompt closing of the individual's personal social security savings account established under section 254,

''(B) revocation of any benefit credit certificate assigned to the individual's personal social security savings account under section 255, and

''(C) prompt transfer to the Federal Old-Age and Survivors Insurance Trust Fund as general receipts of any amount held in the Tier II Investment Fund of the Savings Fund or under a Tier III Investment Option pursuant to section 256 or 257 and credited to such individual's personal social security savings account.

''(c) REINSTATEMENT OF PARTICIPATION.—

''(1) IN GENERAL.—Any individual who has filed an election under subsection (b) to renounce such individual's status as a 'participating individual' under this part may elect, in such form and manner as shall be prescribed in regulations of the

Board, to reinstate such status. Such regulations shall provide for regular, periodic opportunities for the filing of such an election. The Board shall provide for immediate notification to the Commissioner of Social Security, the Secretary of the Treasury, and the Executive Director of such election.

''(2) EFFECTIVENESS OF REINSTATEMENT.—An election under this subsection shall be effective with respect to wages earned, and self-employment income derived, on the earliest date on which the Board determines is practicable to make such election effective following the date of the filing of the election. The individual filing the election shall be treated as becoming a participating individual under this part on the effective date of the election as if such individual first met the requirements of subsection (a) on such date.

''(3) IRREVOCABILITY.—An election under this subsection shall be irrevocable.

''SEC. 254. PERSONAL SOCIAL SECURITY SAVINGS ACCOUNTS.

''(a) ESTABLISHMENT OF PUBLICLY ADMINISTERED SYSTEM OF PERSONAL SECURITY SAVINGS ACCOUNTS.—As soon as practicable after the later of January 1, 2011, or the date on which an individual becomes a participating

individual under this part, the Executive Director shall establish a personal social security savings account for such individual. Such account shall be the means by which amounts held in the Tier I Investment Fund and the Tier II Investment Fund of the Savings Fund under sections 255 and 256 and amounts held under Tier III Investment Options under section 257 are credited to such individual, under procedures which shall be established by the Board by regulation. Each account of a participating individual shall be identified to such participating individual by means of the participating individual's social security account number.

''(b) ACCOUNT BALANCE.—The balance in a participating individual's account at any time is the sum of—

''(1) the balance in the Tier I Investment Fund of the Savings Fund credited to such participating individual prior to transfer of the credited amount to the Tier II Investment Fund of the Savings Fund; plus

''(2) the excess of—

''(A) all deposits in the Tier II Investment Fund of the Savings Fund credited to such participating individual's personal social security savings account, subject to such increases and reductions as may result from allocations made

to and reductions made in the account pursuant to subsection (c)(1); over

"(B) amounts paid out of the Tier II Investment Fund in connection with amounts credited to such participating individual's personal social security savings account; plus

"(3) the excess of—

"(A) the deposits in the Tier III Investment Options credited to such participating individual's personal social security savings account, subject to such increases and reductions as may result from amounts credited to, and reductions made in, the account pursuant to subsection (c)(2); over

"(B) amounts paid out of the Tier III Investment Options of such participating individual.

The calculation made under paragraph (3) shall be made separately for each Tier III Investment Option of the participating individual. The Board shall also hold for the participating individual any benefit credit certificate assigned to the participating individual's personal social security savings account under section 255.

"(c) ALLOCATION OF EARNINGS AND LOSSES.—Pursuant to regulations which shall be prescribed by the

Board, the Executive Director shall allocate to each personal social security savings account an amount equal to the net earnings and net losses from each investment of sums—

''(1) in the Tier I Investment Fund and the Tier II Investment Fund which are attributable to sums credited to such account reduced by an appropriate share of the administrative expenses paid out of the net earnings, as determined by the Executive Director; and

''(2) in the Tier III Investment Options which are attributable to sums credited to such account reduced by the administrative expenses paid out of the net earnings.

''SEC. 255. TIER I INVESTMENT FUND.

''(a) ESTABLISHMENT OF TIER I INVESTMENT FUND.—

''(1) IN GENERAL.—The Savings Fund shall include a separate fund to be known as the 'Tier I Investment Fund'.

''(2) AMOUNTS IN FUND.—The Tier I Investment Fund consists of all amounts derived from payments into the Fund under section 252(b) and remaining after investment of such amounts under

subsection (b), including additional amounts derived as income from such investments.

''(3) USE OF FUNDS.—The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

''(A) to be held for investment on behalf of participating individuals under subsection (b),

''(B) to pay the administrative expenses related to the Fund, and

''(C) to make transfers from the Fund under subsection (c)(2).

''(b) INVESTMENT OF FUND BALANCE.—For purposes of investment of the Tier I Investment Fund, the Board shall contract with appropriate professional asset managers, recordkeepers, and custodians selected for investment of amounts held in the Fund, so as to provide for investment of the balance of the Fund, in a manner providing broad diversification in accordance with regulations of the Board, in—

''(1) insurance contracts,

''(2) certificates of deposit, or

''(3) other instruments or obligations selected by such asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time.

''(c) SEPARATE CREDITING TO PERSONAL SOCIAL SECURITY SAVINGS ACCOUNTS AND TRANSFERS TO THE TIER II INVESTMENT FUND OR TO TIER III INVESTMENT OPTIONS.—

''(1) CREDITING TO ACCOUNTS.—

''(A) IN GENERAL.—Subject to this paragraph, the Board shall provide for prompt, separate crediting, as soon as practicable, of the amounts deposited in the Tier I Investment Fund to the personal social security savings account of each participating individual with respect to the redirected social security contributions (as defined in section 252(b)(3)) of such participating individual. The Board shall include in such crediting, with respect to each such individual, any increases or decreases in such amounts so as to reflect the net returns and losses from investment of the balance of the Fund prior to such crediting. For purposes of determining such increases and decreases for each calendar year, the amounts deposited into the Fund in connection with such individual

during such calendar year shall be deemed to have been deposited on June 30 of such year.

''(B) TREATMENT OF MARRIED PARTICIPATING INDIVIDUALS.—If the participating individual is married as of the end of the calendar year in which the amounts to be credited were deposited in the Tier I Investment Fund and the spouse is also a participating individual, the personal social security savings account of the participating individual and the personal social security savings account of his or her spouse shall each be credited with 50 percent of such amounts.

''(2) TRANSFERS FROM THE TIER I INVESTMENT FUND.—In accordance with elections filed with the Board by a participating individual, any amount credited to the personal social security savings account of such participating individual under paragraph (1) shall be promptly transferred to the Tier II Investment Fund of the Savings Fund for investment in accordance with section 256 and, to the extent available under section 257, to Tier III Investment Options in accordance with section 257.

''(d) TREATMENT OF AMOUNTS HELD IN TIER I INVESTMENT FUND.—Subject to this part—

''(1) until amounts deposited into the Tier I Investment Fund during any calendar year are credited to personal social security savings accounts, such amounts shall be treated as the unallocated property of all participating individuals with respect to whom amounts were deposited in the Fund during such year, jointly held in trust for such participating individuals in the Savings Fund, and

''(2) amounts deposited into the Fund which are credited to the personal social security savings account of a participating individual shall be treated as property of the participating individual, held in trust for such participating individual in the Savings Fund.

''SEC. 256. TIER II INVESTMENT FUND.

''(a) ESTABLISHMENT OF TIER II INVESTMENT FUND.—

''(1) IN GENERAL.—The Savings Fund shall include a separate fund to be known as the 'Tier II Investment Fund'.

''(2) AMOUNTS IN FUND.—The Tier II Investment Fund consists of all amounts derived from payments into the Fund under section 255(c)(2) and remaining after investment of such amounts under

subsection (b), including additional amounts derived as income from such investments.

''(3) USE OF FUNDS.—The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

''(A) to be held for investment under subsection (b),

''(B) to pay the administrative expenses related to the Fund, and

''(C) to make transfers to Tier III Investment Options under section 257 or to make payments under section 258.

''(b) PAYMENTS INTO TIER II INVESTMENT FUND.—

''(1) IN GENERAL.—Upon the crediting under section 252 to the personal social security savings account of a participating individual of any amount held in the Tier I Investment Fund for any calendar year, the Board shall transfer from the Tier I Investment Fund into the Tier II Investment Fund any amount so credited to such participating individual's account which is not transferred to a Tier III Investment Option pursuant to an election under section 257(a).

''(2) ONGOING SEPARATE CREDITING.—Subject to this paragraph, the Board shall provide for ongo-

ing separate crediting to each participating individual's personal social security savings account of the amounts deposited in the Tier II Investment Fund with respect to such participating individual, together with any increases or decreases therein so as to reflect the net returns and losses from investment thereof while held in the Fund.

''(c) INVESTMENT ACCOUNTS.—

''(1) IN GENERAL.—For purposes of investment of the Tier II Investment Fund, the Board shall divide the Fund into 6 investment accounts. The Board shall contract with appropriate investment managers, recordkeepers, and custodians selected for investment of amounts held in each investment account. Such accounts shall consist of—

''(A) a Lifecycle Investment Account,

''(B) a Government Securities Investment Account,

''(C) a Fixed Income Investment Account,

''(D) a Common Stock Index Investment Account,

''(E) a Small Capitalization Stock Index Investment Account, and

''(F) an International Stock Index Investment Account.

''(2) ELECTION OF INVESTMENT OPTIONS.—

''(A) DEFAULT INVESTMENT ACCOUNT.—Except as provided in an election in effect under subparagraph (B), amounts held in the Tier II Investment Fund shall be credited to the Lifecycle Investment Account.

''(B) ELECTION OF TRANSFERS BETWEEN INVESTMENT ACCOUNTS.—In any case in which a participating individual who has an amount in such individual's personal social security savings account credited to any of the investment accounts in the Tier II Investment Fund files with the Secretary of the Treasury a written election under this subparagraph, not more frequently than annually and in accordance with regulations of the Board, the Secretary of the Treasury shall transfer the full amount so credited in such investment account from such investment account to any one of the other investment accounts in the Tier II Investment Fund (whichever is designated in such election).

''(d) LIFECYLE INVESTMENT ACCOUNT.—

''(1) IN GENERAL.—The investment manager, recordkeeper, and custodian selected for investment of amounts held in the Lifecyle Investment Account

shall invest such amounts under regulations which shall be prescribed by the Board in a mix of equities and fixed income instruments so as to ensure, to the maximum extent practicable, that, of the total balance in the Fund credited to such account and available for investment (after allowing for administrative expenses), the percentage invested in fixed income instruments by individuals in designated cohorts, ranging in age up to those of at least retirement age, will increase in a linear progression from 0 percent to 100 percent as the cohort approaches retirement age.

''(2) INVESTMENT IN EQUITIES.—In accordance with regulations which shall be prescribed by the Board, the Board shall establish standards which must be met by equities selected for investment in the Lifecycle Investment Account. In conformity with such standards, the Board shall select, for purposes of such investment, indices which are comprised of equities the aggregate market value of which is, in each case, a reasonably broad representation of companies whose shares are traded on the equity markets. Amounts invested in equities under an investment option shall be held in a portfolio de-

signed to replicate the performance of one or more of such indices.

''(3) INVESTMENT IN FIXED INCOME INSTRUMENTS.—In accordance with regulations which shall be prescribed by the Board, the Board shall establish standards which must be met by fixed income instruments selected for investment in the Lifecycle Investment Account. Such standards shall take into account the competing considerations of risk and return. Amounts invested in fixed income instruments in an investment option shall be held in a portfolio which shall consist of a diverse range of fixed income instruments, taking into full account the opposing considerations of risk and maximization of return.

''(e) GOVERNMENT SECURITIES INVESTMENT ACCOUNT.—

''(1) IN GENERAL.—Amounts in the Government Securities Investment Account shall be invested in securities of the United States Government as provided in this subsection

''(2) ISSUANCE OF SPECIAL OBLIGATIONS.—The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Tier II Investment Fund for purposes of investment of amounts in the Gov-

ernment Securities Investment Account. Such obligations shall have maturities fixed with due regard to the needs of the Fund as determined by the Board, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month. Any average market yield computed under this paragraph which is not a multiple of one-eighth of 1 percent shall be rounded to the nearest multiple of one-eighth of 1 percent.

''(f) FIXED INCOME INVESTMENT ACCOUNT.—Amounts in the Fixed Income Investment Account shall be invested in instruments or obligations which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time, consisting of instruments or obligations in one or more of the following categories:

''(1) insurance contracts;

''(2) certificates of deposit; or

''(3) other instruments or obligations selected by qualified professional asset managers.

''(g) COMMON STOCK INDEX INVESTMENT ACCOUNT.—

''(1) PORTFOLIO DESIGN.—Amounts held in the Common Stock Investment Account shall be invested in a portfolio of common stock designed to replicate the performance of the index selected under paragraph (2). The portfolio shall be designed such that, to the extent practicable, the percentage of the balance in the Common Stock Index Investment Account that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

''(2) SELECTION OF INDEX.—The Board shall select, for purposes of investment of amounts held in the Common Stock Investment Account, an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

''(h) SMALL CAPITALIZATION STOCK INDEX INVESTMENT ACCOUNT.—

''(1) PORTFOLIO DESIGN.—Amounts held in the Small Capitalization Stock Index Investment Account shall be invested in a portfolio of common stock designed to replicate the performance of the index selected under paragraph (2). The portfolio shall be designed such that, to the extent practicable, the percentage of the balance in the Small Capitalization Stock Index Investment Account that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

''(2) SELECTION OF INDEX.—The Board shall select, for purposes of investment of amounts held in the Small Capitalization Stock Index Investment Account, an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Account.

''(i) INTERNATIONAL STOCK INDEX INVESTMENT ACCOUNT.—

''(1) PORTFOLIO DESIGN.—Amounts held in the International Stock Index Investment Account shall be invested in a portfolio of stock designed to replicate the performance of the index selected under paragraph (2). The portfolio shall be designed such that, to the extent practicable, the percentage of the balance in the International Stock Index Investment Account that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

''(2) SELECTION OF INDEX.—The Board shall select, for purposes of investment of amounts held in the International Stock Index Investment Account, an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

''(j) ADDITIONAL INVESTMENT OPTIONS.—The Board may from time to time, as determined by regulation as appropriate to further the purposes of this section, shall—

''(1) establish investment accounts in the Tier II Investment Fund meeting the requirements of this section in addition to those established by this section, and

''(2) terminate investment accounts in the Tier II Investment Fund established pursuant to paragraph (1).

''(k) DISCLOSURE OF ADMINISTRATIVE COSTS.—The Board shall provide to each participating individual an annual disclosure of the rate of administrative costs chargeable with respect to investment in each investment account in the Tier II Investment Fund. Such disclosure shall be written in a manner calculated to be understood by the average participating individual.

''(l) TREATMENT OF AMOUNTS HELD IN TIER II INVESTMENT FUND.—Subject to this part, amounts deposited into, and held and accounted for in, the Tier II Investment Fund with respect to any participating individual shall continue to be treated as property of such participating individual, held in trust for such participating individual in the Fund.

''SEC. 257. TIER III INVESTMENT OPTIONS.

''(a) ELECTION OF TIER III INVESTMENT OPTIONS.—

''(1) IN GENERAL.—A participating individual may elect to direct transfers from amounts in the Savings Fund credited to the personal social security savings account of such individual into 1 or more Tier III Investment Options in accordance with paragraph (2).

''(2) COMMENCEMENT OF TIER III INVESTMENT OPTIONS UPON ATTAINMENT OF ELECTION THRESHOLD.—In any case in which, as of the end of any calendar year, the total balance in the Savings Fund credited to a participating individual's personal social security savings account exceeds for the first time the election threshold, the Board shall, by regulation, provide for an opportunity for such participating individual to make, at any time thereafter, such individual's first election of one or more of the Tier III Investment Options for investment of an amount in the Savings Fund credited to such account. Such election may be in lieu of or in addition to investment in the options available with respect to the Tier II Investment Fund of the Savings Fund.

''(3) ALLOCATION OF FUNDS.—In the case of an election under paragraph (1), funds credited to the personal social security savings account of the participating individual and elected for transfer to

one or more Tier III Investment Options shall be transferred to the Tier III Investment Options so elected for such calendar year, in percentages specified in the election by the participating individual for each applicable portfolio.

''(4) ELECTION THRESHOLD.—

''(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this subsection the term 'election threshold' means an amount equal to $25,000.

''(B) ADJUSTMENTS.—The Board shall adjust annually (effective for annual reporting months occurring after December 2011) the dollar amount set forth in subparagraph (A) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A), except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.

''(5) SUBSEQUENT INVESTMENT OF AMOUNTS HELD IN TIER III INVESTMENT OPTIONS.—Any amounts held in one or more Tier III Investment Options may be—

"(A) transferred at any time to one or more other Tier III Investment Options, subject to applicable regulations of the Board and the terms governing the affected Tier III Investment Options, and

"(B) transferred, not more frequently than annually, to the Tier II Investment Fund, for deposit in the applicable investment account then selected by the participating individual under section 256.

"(b) CERTIFICATION OF ELIGIBLE ENTITIES.—

"(1) IN GENERAL.—The Board shall certify eligible entities to offer Tier III Investment Options under this part.

"(2) APPLICATION.—Any eligible entity that desires to be certified by the Board to offer a Tier III Investment Option shall submit an application to the Board at such time, in such manner, and containing such information as the Board may require.

"(3) REQUIREMENTS FOR APPROVAL.—The Board shall not certify an eligible entity unless such eligible entity agrees to the following requirements:

"(A) SEPARATE ACCOUNTING.—Each eligible entity shall, with respect to each Tier III

Investment Option offered by such eligible entity to participating individuals—

"(i) establish separate accounts for the contributions of each participating individual, and any earnings properly allocable to the contributions, and

"(ii) maintain separate recordkeeping with respect to each account.

"(B) TREATMENT OF AMOUNTS HELD IN FUND.—Amounts deposited into, and held and accounted for in, a Tier III Investment Option with respect to any participating individual shall be treated as property of such participating individual, held in trust for such participating individual.

"(C) TRUST REQUIREMENTS.—Amounts held and accounted for with respect to a participating individual shall be held in a trust created or organized in the United States for the exclusive benefit of such individual or his beneficiaries.

"(D) EXEMPTION FROM THIRD PARTY CLAIMS.—Each Tier III Investment Option shall be exempt from any and all third party claims against the eligible entity.

''(E) DISCLOSURE OF ADMINISTRATIVE COSTS.—Each eligible entity offering a Tier III Investment Option under this section shall provide to each participating individual an annual disclosure of the rate of administrative costs chargeable with respect to investment in such Option. Such disclosure shall be written in a manner calculated to be understood by the average participating individual. The Board shall provide for coordination of disclosures with respect to Tier III Investment Options under this subparagraph so as to assist participating individuals in comparing alternative Options based on administrative costs.

''(F) REPORTING TO THE EXECUTIVE DIRECTOR AND THE BOARD.—Each eligible entity shall provide reports to the Executive Director and the Board at such time, in such manner, and containing such information as the Board may require.

''(4) ELIGIBLE ENTITY DEFINED.—For purposes of this section, the term 'eligible entity' means any investment company (as defined in section 3 of the Investment Company Act of 1940) or other per-

son that the Board determines appropriate to offer Tier III Investment Options under this part.

''(c) APPROVAL OF TIER III INVESTMENT OPTIONS.—

''(1) IN GENERAL.—No funds may be transferred into a Tier III Investment Option unless the Board has approved an application submitted under paragraph (2) with respect to the option.

''(2) APPLICATION.—With respect to each Tier III Investment Option that an eligible entity certified under subsection (b)(1) seeks to offer, such entity shall submit an application to the Board at such time, in such manner, and containing such information as the Board may require.

''(3) QUALIFICATIONS FOR APPROVAL.—The Board may not approve an application submitted under paragraph (2) in connection with a Tier III Investment Option unless the following requirements are met:

''(A) OPTION MUST BE OFFERED BY CERTIFIED ELIGIBLE ENTITY.—The Tier III Investment Option is offered by an eligible entity certified under subsection (b).

''(B) OPTION MUST MEET QUALITY FACTORS.—

"(i) IN GENERAL.—The Tier III Investment Option meets qualifications which shall be prescribed by the Board relating to the quality factors described in clause (ii).

"(ii) QUALITY FACTORS.—The quality factors described in this clause are—

"(I) the safety and soundness of the Tier III Investment Option's proposed investment policy;

"(II) the experience and record of performance of the proposed investment option, if any;

"(III) the experience and record of performance of the entity issuing or offering such option; and

"(IV) such other factors as the Board may determine appropriate.

"(d) CONSIDERATIONS FOR CERTIFICATION AND APPROVAL.—In determining whether to certify an eligible entity under subsection (b) or to approve a Tier III Investment Option under subsection (c), the Board shall—

"(1) act in the best interests of the participating individuals;

''(2) base its determination solely on considerations of balancing safety and soundness of the Tier III Investment Option with the maximization of returns of such option; and

''(3) not base any determination related to the entity or option on political or other extraneous considerations.

''(e) SPONSORSHIP OF TIER III INVESTMENT OPTIONS BY MEMBERSHIP AND LABOR ORGANIZATIONS.—

''(1) IN GENERAL.—A membership or labor organization (as defined by the Board) may sponsor Tier III Investment Options under contracts with eligible entities certified under subsection (b) who shall administer the investment option if such investment option is approved by the Board under subsection (c).

''(2) LIMITATION TO MEMBERSHIP.—A membership or labor organization (as so defined) may limit to the members of such organization participation in a Tier III Investment Option sponsored by such organization.

''(f) DISTRIBUTIONS IN CASE OF DEATH.—Upon the death of a participating individual, the amount of any assets held under a Tier III Investment Option credited to the personal social security savings account of such indi-

vidual shall be distributed in accordance with section 258(e).

"SEC. 258. PERSONAL SOCIAL SECURITY SAVINGS ANNUITY AND OTHER DISTRIBUTIONS.

"(a) DATE OF INITIAL DISTRIBUTION.—Except as provided in subsection (e), distributions may be made to a participating individual from amounts credited to the personal social security savings account of such individual only on or after the earliest of—

"(1) the date the participating individual attains retirement age (as defined in section 216(l)(1)) or, if elected by the individual, early retirement age (as defined in section 216(l)(2)); or

"(2) the date on which the amount credited to the participating individual's personal social security savings account is sufficient to purchase a personal social security savings annuity with a monthly benefit that is at least equal to the minimum annuity payment amount (as defined in subsection (b)(4)(C)(iii)).

"(b) PERSONAL SOCIAL SECURITY SAVINGS ANNUITIES.—

"(1) NOTICE OF AVAILABLE ANNUITIES.—Not later than the date determined under subsection (a),

the Board shall notify each participating individual of—

''(A) the most recent listing of personal social security savings annuities offered by the Annuity Issuance Authority under paragraph (2); and

''(B) the entitlement of the participating individual to purchase such an annuity.

''(2) ANNUITY ISSUANCE AUTHORITY.—There is established in the office of the Board an agency which shall be known as the 'Annuity Issuance Authority'. The Authority shall provide, in accordance with regulations of the Board, for the issuance of personal social security savings annuities for purchase from the Authority under this section and to otherwise administer the issuance of such annuities in accordance with such regulations.

''(3) ANNUITY RESERVES ACCOUNT.—There is established in the Savings Fund an Annuity Reserves Account. The Account shall consist of all amounts received by the Authority from the purchase of personal social security savings annuities under this section (plus such amounts as may be transferred to the Account under paragraph (5)(B)), increased by the total net earnings from investments

of such reserves under subparagraph (A) of paragraph (5) and reduced by the total net losses from investments of such reserves under such subparagraph.

''(4) PURCHASE OF ANNUITIES.—

''(A) SELECTION OF ANNUITY.—On a date elected by the participating individual, but no earlier than the date determined under subsection (a), a participating individual may purchase a personal social security savings annuity selected from among the annuities offered by the Authority under paragraph (2).

''(B) TRANSFER OF ASSETS.—Upon the selection of an annuity by a participating individual under subparagraph (A), the Board shall provide for the transfer of assets, credited to the personal social security savings account of the participating individual and held in the Tier II Investment Fund or under 1 or more Tier III Investment Options (or any combination thereof), in a total amount sufficient to purchase the annuity selected by the participating individual from annuities offered by the Authority.

"(C) MINIMUM ANNUITY PAYMENT AMOUNT.—

"(i) IN GENERAL.—Subject to subparagraph (D), if, at the time a personal social security savings annuity is purchased under subparagraph (A), the assets credited to the personal social security savings account of the participating individual are sufficient to purchase a personal social security savings annuity offered by the Authority under paragraph (2) with a monthly annuity payment that is at least equal to the minimum annuity payment amount, the amount of the monthly annuity payment provided by such annuity may not be less then the minimum annuity payment amount.

"(ii) CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit a participating individual from using personal social security savings account assets to purchase a personal social security savings annuity offered by the Authority under paragraph (2) which provides for a monthly payment in excess of the

minimum amount required under clause (i).

"(iii) MINIMUM ANNUITY PAYMENT AMOUNT DEFINED.—For purposes of this part, the term 'minimum annuity payment amount' means, as of any date, an amount equal to the monthly equivalent of 150 percent of the poverty line for an individual (as in effect on such date), determined under the poverty guidelines of the Department of Health and Human Services issued under sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"(D) PURCHASE OF ANNUITIES IN THE EVENT OF INSUFFICIENT ASSETS.—If a participating individual desires, or is required under subsection (f), to purchase a personal social security savings annuity under subsection (b) on or after the date determined under subsection (a)(1) and the assets of the personal social security savings account of such individual are insufficient to purchase a personal social security savings annuity that provides for a monthly payment that is at least equal to the minimum

annuity payment amount (as defined in paragraph (4)(C)(iii)), the participating individual shall purchase a personal social security savings annuity with a monthly payment equal to the maximum amount that the participating individual's personal social security savings account can fund, as determined in accordance with regulations which shall be prescribed by the Authority, and that otherwise meets the requirements of this subsection (including the cost-of-living protection requirement of subsection (c)(1)(C)), and the Authority shall provide for appropriate certification to the Secretary of the Treasury with respect to the participating individual's eligibility for guarantee payments under section 259.

''(5) MAINTENANCE OF RESERVES FOR PAYMENT OF ANNUITIES.—

''(A) INVESTMENT OF RESERVES.—For purposes of investment of reserves held in the Annuity Reserves Account, the Authority shall contract with appropriate investment managers, recordkeepers, and custodians selected by the Authority for investment of such reserves. Such reserves shall be invested under regulations

which shall be prescribed by the Authority so as to ensure, to the maximum extent practicable, that, of the total balance of the reserves (after payment of administrative expenses to such managers, recordkeepers, and custodians)—

"(i) 65 percent is invested in equities in the same manner and under the same standards as are provided in section 256(c)(4), and

"(ii) 35 percent is invested in fixed income instruments in the same manner and under the same standards as are provided in section 256(c)(5).

"(B) PROVISION FOR FULL PAYMENT OF ANNUITIES.—Payment of personal social security savings annuities in accordance with the terms of such annuities shall be made, irrespective of the sufficiency of reserves in the Annuity Reserves Fund attributable to funds obtained from the purchase of such annuities. In the event of any impending insufficiency in the Annuity Reserves Account for the next fiscal year, the Authority shall certify to the Secretary of the Treasury the amount of such insufficiency, and the Secretary of the Treasury shall transfer

from the Federal Old-Age and Survivors Insurance Trust Fund to the Annuity Reserves Account the amount of the insufficiency, as so certified, in such installments, made prior to or during such fiscal year, as are necessary to eliminate in advance such insufficiency.

''(c) PERSONAL SOCIAL SECURITY SAVINGS ANNUITY.—

''(1) IN GENERAL.—For purposes of this part, the term 'personal social security savings annuity' means an annuity that meets the following requirements:

''(A) The annuity starting date (as defined in section 72(c)(4) of the Internal Revenue Code of 1986) commences on the first day of the month beginning after the date of the purchase of the annuity.

''(B) The terms of the annuity provide—

''(i) for a monthly payment to the participating individual during the life of the participating individual equal to at least the minimum annuity payment amount (as defined in subsection (b)(4)(C)(iii)), or

"(ii) in the case of an annuity purchased under subparagraph (D) of subsection (b)(4), the maximum monthly payment determined under regulations prescribed under such subparagraph.

"(C) The terms of the annuity include procedures providing for adjustments in the amount of the monthly payments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A). Nothing in this subparagraph shall be construed to preclude the terms governing such an annuity from providing for adjustments in the amount of monthly payments resulting in a payment for any month greater than the payment for that month that would result from adjustments required under the preceding sentence (b)(4)(D).

"(D) The terms of the annuity include such other terms and conditions as the Board requires for the protection of the annuitant.

"(2) EXEMPTION FROM THIRD PARTY CLAIMS.—Each personal social security savings an-

nuity shall be exempt from any and all third party claims against the issuer.

''(d) RIGHT TO USE EXCESS PERSONAL SOCIAL SECURITY SAVINGS ACCOUNT ASSETS.—To the extent assets credited to a participating individual's personal social security savings account remain after the purchase of an annuity under subsection (b), the remaining assets shall be payable to the participating individual at such time, in such manner, and in such amounts as the participating individual may specify, subject to subsection (f).

''(e) DISTRIBUTIONS IN CASE OF DEATH.—If the participating individual dies before all amounts which are held in the Tier I Investment Fund or the Tier II Investment Fund of the Savings Fund or held under a Tier III Investment Option and which are credited to the personal social security savings account of the individual are otherwise distributed in accordance with this section, such amounts shall be distributed, under regulations which shall be prescribed by the Board—

''(1) in any case in which one or more beneficiaries have been designated in advance, to such beneficiaries in accordance with such designation as provided in such regulations, and

''(2) in the case of any amount not distributed as described in paragraph (1), to such individual's estate.

''(f) DATE OF FINAL DISTRIBUTION.—All amounts credited to the personal social security savings account of an individual shall be distributed, by means of the purchase of annuities or otherwise in a manner consistent with the requirements of this section, not later than 5 years after the date the individual attains retirement age (as defined in section 216(l)). The Board shall provide by regulation for means of distribution necessary to ensure compliance with the requirements of this subsection.

''SEC. 259. GUARANTEE OF PROMISED BENEFITS.

''(a) IN GENERAL.—If, for any month ending after the date on which a participating individual attains retirement age (as defined in section 216(l)(1)), the monthly payment under a participating individual's personal social security savings annuity is less than the minimum annuity payment amount (as defined in section 258(b)(4)(C)(iii)), adjusted as provided in section 258(c)(1)(C), the Annuity Issuance Authority shall so certify to the Secretary of the Treasury and, upon receipt of such certification, such Secretary shall provide to the participating individual, from amounts in the Federal Old-Age and Survivors Insurance Trust Fund, a guaranty payment for such month to sup-

plement the personal social security savings annuity and to guarantee full payment of such individual's monthly promised benefits.

''(b) GUARANTY PAYMENT.—For purposes of subsection (a), a participating individual's guaranty payment for any month is equal to the excess of—

''(1) the minimum annuity payment amount (as defined in section 258(b)(4)(C)(iii)), adjusted as provided in section 258(c)(1)(C); over

''(2) the payment for such month of the personal social security savings annuity purchased by the participating individual.

''(c) PROTECTION OF PART A NORMAL RETIREMENT BENEFIT LEVELS.—

''(1) IN GENERAL.—In any case in which, for any month ending after the date on which a participating individual attains retirement age (as defined in section 216(l)(1))—

''(A) such individual's assumed total normal retirement part A benefit for such month, exceeds

''(B) the monthly payment payable for such month under such individual's personal social security savings annuity,

the Secretary of the Treasury shall pay to such individual for such month, from amounts in the Federal Old-Age and Survivors Insurance Trust Fund, an additional amount (if any) equal to the excess of the amount described in subparagraph (A) over the amount described in subparagraph (B).

''(2) DEFINITION.—For purposes of this subsection, the term 'assumed total normal retirement part A benefit' means, in connection with a participating individual, the total amount of monthly insurance benefits under section 202 based on such individual's wages and self-employment income (adjusted by taking into account adjustments under section 215(i)) that would have been payable if—

''(A) section 202(z) did not apply, and

''(B) such individual applied for old-age insurance benefits under section 202(a) during the month in which such individual attains retirement age (as defined in section 216(l)(1)).

''SEC. 260. PERSONAL SOCIAL SECURITY SAVINGS BOARD.

''(a) ESTABLISHMENT.—There is established in the executive branch of the Government a Personal Social Security Savings Board.

''(b) COMPOSITION.—The Board shall be composed of—

''(1) 3 members appointed by the President, of whom 1 shall be designated by the President as Chairman; and

''(2) 2 members appointed by the President, of whom—

''(A) 1 shall be appointed by the President after taking into consideration the recommendation made by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

''(B) 1 shall be appointed by the President after taking into consideration the recommendation made by the majority leader of the Senate in consultation with the minority leader of the Senate.

''(c) ADVICE AND CONSENT.—Appointments under subsection (b) shall be made by and with the advice and consent of the Senate.

''(d) MEMBERSHIP REQUIREMENTS.—Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

''(e) LENGTH OF APPOINTMENTS.—

''(1) TERMS.—A member of the Board shall be appointed for a term of 4 years, except that of the members first appointed under subsection (b)—

''(A) the Chairman shall be appointed for a term of 4 years;

''(B) the members appointed under subsection (b)(2) shall be appointed for terms of 3 years; and

''(C) the remaining members shall be appointed for terms of 2 years.

''(2) VACANCIES.—

''(A) IN GENERAL.—A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

''(B) COMPLETION OF TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

''(3) EXPIRATION.—The term of any member shall not expire before the date on which the member's successor takes office.

''(f) DUTIES.—The Board shall—

''(1) administer the program established under this part;

''(2) establish policies for the investment and management of the Savings Fund, including the Tier I Investment Fund and the Tier II Investment Fund, and amounts held under Tier III Investment Options, including policies applicable to the asset managers, recordkeepers, and custodians with responsibility for managing the investment of amounts credited to personal social security investment accounts, and for the management and operation of personal social security savings annuities, which shall provide for—

''(A) prudent investments suitable for accumulating funds for payment of retirement income;

''(B) sound management practices; and

''(C) low administrative costs;

''(3) review the performance of investments made for the Tier I Investment Fund and the Tier II Investment Fund;

''(4) review the performance of investments made under Tier III Investment Options;

''(5) review the management and operation of personal social security savings annuities;

''(6) review and approve the budget of the Board; and

''(7) comply with the fiduciary requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (relating to fiduciary responsibility) in connection with any exercise of discretion in connection with the assets of the Savings Fund.

''(g) ADMINISTRATIVE PROVISIONS.—

''(1) IN GENERAL.—The Board may—

''(A) adopt, alter, and use a seal;

''(B) except as provided in paragraph (4), direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this part and the policies of the Board in accordance with delegations under this part;

''(C) upon the concurring votes of 4 members, remove the Executive Director from office for good cause shown;

''(D) provide to the Executive Director such resources as are necessary to carry out the duties of the Executive Director; and

"(E) take such other actions as may be necessary to carry out the functions of the Board.

"(2) MEETINGS.—The Board shall meet—

"(A) not less than once during each month; and

"(B) at additional times at the call of the Chairman.

"(3) EXERCISE OF POWERS.—

"(A) IN GENERAL.—Except as provided in paragraph (1)(C), the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board. Three members of the Board shall constitute a quorum for the transaction of business.

"(B) VACANCIES.—A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

"(4) LIMITATIONS ON INVESTMENTS.—The Board may not direct any person to invest or to cause to be invested any sums in the Tier II Investment Fund or any personal social security investment account in a specific asset or to dispose of or

cause to be disposed of any specific asset of such Fund or any such account.

''(h) COMPENSATION.—

''(1) IN GENERAL.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which such member is engaged in performing a function of the Board.

''(2) EXPENSES.—A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of title 5, United States Code, while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

''(3) SOURCE OF FUNDS.—Payments authorized under this subsection shall be paid from the Tier I Investment Fund or the Tier II Investment Fund, as determined appropriate by the Board.

''(i) DISCHARGE OF RESPONSIBILITIES.—The members of the Board shall discharge their responsibilities solely in the interest of the participating individuals and their beneficiaries under this part.

''(j) ANNUAL INDEPENDENT AUDIT.—The Board shall annually engage an independent qualified public accountant to audit the activities of the Board.

''(k) SUBMISSION OF BUDGET TO CONGRESS.—The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to Congress under section 1105 of title 31, United States Code.

''(l) SUBMISSION OF LEGISLATIVE RECOMMENDATIONS.—The Board may submit to the President, and, at the same time, shall submit to each House of Congress, any legislative recommendations of the Board relating to any of its functions under this part or any other provision of law.

''SEC. 261. EXECUTIVE DIRECTOR.

''(a) APPOINTMENT OF EXECUTIVE DIRECTOR.—The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

''(b) DUTIES.—The Executive Director shall, as determined appropriate by the Board—

''(1) carry out the policies established by the Board;

''(2) invest and manage the Tier I Investment Fund and the Tier II Investment Fund in accordance with the investment policies and other policies established by the Board;

''(3) administer the provisions of this part relating to the Tier I Investment Fund and the Tier II Investment Fund; and

''(4) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this part relating to the Tier I Investment Fund and the Tier II Investment Fund.

''(c) ADMINISTRATIVE AUTHORITY.—The Executive Director may, within the scope of the duties of the Executive Director as determined by the Board—

''(1) appoint such personnel as may be necessary to carry out the provisions of this part relating to the Tier I Investment Fund and the Tier II Investment Fund;

''(2) subject to approval by the Board, procure the services of experts and consultants under section 3109 of title 5, United States Code;

''(3) secure directly from an Executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the provisions of this part and the policies of the Board relating to the Tier I Investment Fund and the Tier II Investment Fund;

''(4) make such payments out of sums in the Tier I Investment Fund and the Tier II Investment Fund as the Executive Director determines, in accordance with regulations of the Board, are necessary to carry out the provisions of this part and the policies of the Board;

''(5) pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (1), (2), and (6) from the Tier I Investment Fund or the Tier II Investment Fund, in accordance with regulations of the Board;

''(6) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, authorized by section 5703 of title 5, United States Code, including per diem as authorized by section 5702 of such title;

''(7) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the

Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

''(8) take such other actions as are appropriate to carry out the functions of the Executive Director.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to wages paid after December 31, 2010, for pay periods ending after such date and self-employment income for taxable years beginning after such date.

SEC. 403. MONTHLY INSURANCE BENEFITS FOR PARTICIPATING INDIVIDUALS.

Section 202 of the Social Security Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

''Benefits for Participants Under Part B

''(z)(1) Notwithstanding the preceding provisions of this section—

''(A) a participating individual under the Personal Social Security Savings Program under part B

shall not be entitled to old-age insurance benefits under subsection (a); and

''(B) except as provided in paragraph (2), no individual shall be entitled to benefits under this section on the basis of the wages and self-employment income of such a participating individual.

''(2) In the case of any such participating individual who dies before such individual purchases a personal social security savings annuity under section 258, paragraph (1)(B) shall not apply with respect to child's insurance benefits under subsection (d), widow's insurance benefits under subsection (e), widower's insurance benefits under subsection (f), mother's and father's insurance benefits under subsection (g), and parent's insurance benefits under subsection (h).''.

SEC. 404. TAX TREATMENT OF ACCOUNTS.

(a) IN GENERAL.—

(1) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end the following new part:

''PART IX—PERSONAL SOCIAL SECURITY SAVINGS PROGRAM

''Sec. 530A. Personal social security savings program.

"SEC. 530A. PERSONAL SOCIAL SECURITY SAVINGS PROGRAM.

"(a) GENERAL RULE.—The Social Security Personal Savings Fund and each Tier III Investment Option are exempt from taxation under this subtitle. Notwithstanding the preceding sentence, sums in a personal social security savings account which are attributable to a Tier III Option shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(b) DISTRIBUTIONS.—

"(1) IN GENERAL.—Any qualified distribution from—

"(A) amounts credited to a personal social security savings account from the Social Security Personal Savings Fund or attributable to a Tier III Investment Option, or

"(B) a personal social security savings annuity,

shall not be included in the gross income of the distributee.

"(2) QUALIFIED DISTRIBUTION.—For purposes of paragraph (1), the term 'qualified distribution' means a distribution which meets the requirements of section 258 of the Social Security Act and which

is not a guaranty payment (as defined by section 259 of such Act).

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

''(1) PERSONAL SOCIAL SECURITY SAVINGS ACCOUNT.—The term 'personal social security savings account' means an account established under section 254(a) of the Social Security Act.

''(2) PERSONAL SOCIAL SECURITY SAVINGS ANNUITY.—The term 'personal social security savings annuity' means an annuity approved by the Personal Social Security Savings Board under section 258(b)(3) of the Social Security Act.

''(3) SOCIAL SECURITY PERSONAL SAVINGS FUND.—The term 'Social Security Personal Savings Fund' means the Savings Fund established under section 252 of the Social Security Act.

''(4) TIER III INVESTMENT OPTION.—The term 'Tier III Investment Option' has the meaning given such term by section 251(9) of the Social Security Act.

''(d) ESTATE TAX TREATMENT.—No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in the Tier I Investment Fund or the Tier II Investment Fund of the Savings Fund or held under a Tier III Investment Option

and which is credited to the personal social security savings account of the individual.''.

(2) CONFORMING AMENDMENT.—Section 86(d)(1)(A) of such Code is amended by inserting ''part A of'' after ''under''.

(3) CLERICAL AMENDMENT.—The table of parts for subchapter F of chapter 1 of such Code is amended by adding after the item relating to part VIII the following new item:

''PART IX. PERSONAL SOCIAL SECURITY SAVINGS PROGRAM.''.

(b) GUARANTY PAYMENTS.—Paragraph (1) of section 86(d) of the Internal Revenue Act of 1986, as amended by subsection (a)(2), is amended by striking ''or'' at the end of subparagraph (A), by striking the period and inserting '', or'' at the end of subparagraph (B), and by adding at the end the following new subparagraph:

''(C) a guaranty payment under section 259(a), and a payment of an additional amount under section 259(c), of the Social Security Act.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 405. SELF-LIQUIDATING SOCIAL SECURITY TRANSITION FUND.

Part B of title II of the Social Security Act (as added by section 101 of this Act) is amended by adding at the end the following new section:

"SEC. 262. SELF-LIQUIDATING SOCIAL SECURITY TRANSITION FUND.

''(a) ESTABLISHMENT.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the Self-Liquidating Social Security Transition Fund (in this section referred to as the 'Transition Fund').

''(b) BOARD OF TRUSTEES.—

''(1) ESTABLISHMENT.—With respect to the Transition Fund, there is hereby created a body to be known as the Board of Trustees of the Transition Fund (in this section referred to as the 'Board of Trustees') composed of the Commissioner of Social Security, the Secretary of the Treasury, and the members of the Personal Social Security Savings Board.

''(2) DUTIES.—The Board of Trustees shall—

''(A) provide for the issuance of obligations by the Transition Fund pursuant to subsection (c),

''(B) provide for the receipt and management of amounts paid into the Transition Fund pursuant to subsection (d),

''(C) use all funds paid into the Transition Fund to redeem obligations issued under subsection (c) as soon as practicable,

''(D) report to Congress not later than the first day of April of each year on the operation and status of the Transition Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years, and

''(E) review the general policies followed in managing the Transition Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Transition Fund is to be managed.

''(3) MEETINGS.—The Board of Trustees shall meet not less frequently than once each calendar year.

''(c) ISSUANCE OF TRANSITION FUND BONDS.—

''(1) ISSUANCE.—

''(A) IN GENERAL.—The purposes for which obligations of the United States may be

issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of public-debt obligations by the Transition Fund.

''(B) REQUIRED ISSUANCE.—Beginning on January 1, 2011, whenever any obligation held in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund is repaid from the general fund of the Treasury to either of such Trust Funds, the Transition Fund shall issue an obligation under this subsection in an amount equal to the amount of interest and principal so repaid.

''(C) TRANSFER OF PROCEEDS TO GENERAL FUND OF THE TREASURY.—Proceeds from the issuance of any obligation issued under this section shall be transferred to the general fund of the Treasury.

''(D) ACCOUNTING.—The debt owed on any obligation issued under this section shall be considered to be debt of the Transition Fund and shall be accounted for in such manner.

''(2) MATURITIES AND INTEREST RATE.—Such obligations issued by the Transition Fund for purchase by the public shall have maturities fixed with

due regard for the needs of the Transition Fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month, except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield.

''(3) REPAYMENT OF OBLIGATIONS.—Obligations issued under this subsection may be redeemed only by funds in the Transition Fund.

''(d) DEPOSIT OF OASDI TRUST FUND SURPLUS.—

''(1) IN GENERAL.—There are appropriated to the Transition Fund for the fiscal year beginning in 2032, and for each fiscal year thereafter, out of any moneys in the Federal Old-Age and Survivors Insurance Trust Fund, amounts equivalent to the OASDI trust fund surplus (as defined in paragraph (2)) for the preceding fiscal year.

''(2) TRANSFERS BASED ON ESTIMATES.—The amounts appropriated by paragraph (1) shall be transferred from time to time from the Federal Old-Age and Survivors Insurance Trust Fund to the Transition Fund, such amounts to be determined on the basis of estimates by the Commissioner of Social Security. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than such surplus.

''(3) OASDI TRUST FUND SURPLUS DEFINED.—In this section, the term 'OASDI trust fund surplus' for a fiscal year means the dollar amount by which the Federal Old-Age and Survivors Insurance Trust Fund could be reduced as of the end of such fiscal year so as to result in an OASDI trust fund ratio (as defined in section 201(p)(4)) for such fiscal year equal to 125 percent.

''(4) RULE OF CONSTRUCTION.—This section shall not be construed to require redemption of obligations of the Trust Fund for the purpose of making transfers to the Transition Fund under this section or for any other purpose other than to provide for payment of benefits under part A of title II of the Social Security Act.

''(e) REDEMPTION OF OBLIGATIONS UPON DEPOSIT OF FUNDS.—Obligations issued under subsection (c) may be redeemed only by funds in the Transition Fund. The Board of Trustees shall provide for the redemption of such obligations as soon as possible with funds deposited into the Transition Fund pursuant to subsection (d).

''(f) SUNSET.—On the first date as of which all of the obligations issued under subsection (c) have been redeemed, any balance remaining in the Transition Fund as of such date shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, the terms of the Board of Trustees shall end, the Transition Fund shall cease to exist, and this section shall be repealed.''.

SEC. 406. BUDGETARY TREATMENT OF SOCIAL SECURITY.

(a) IN GENERAL.—Section 710 of the Social Security Act (42 U.S.C. 911) is amended to read as follows:

''BUDGETARY TREATMENT OF SOCIAL SECURITY

''SEC. 710.

''Notwithstanding any other provision of law and except as provided in subsection (b), the receipts and disbursements shall be treated in the same manner as section 13301 of the Budget Enforcement Act of 1990.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2010.

SEC. 407. ACCOUNTING FOR THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM AND THE PERSONAL SOCIAL SECURITY SAVINGS PROGRAM.

Title VII of the Social Security Act is amended by inserting after section 705 (42 U.S.C. 906) the following new section:

''ACCOUNTING FOR THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM AND THE PERSONAL SOCIAL SECURITY SAVINGS PROGRAM

''Social Security Lockbox Budget

''SEC. 706. (a) At the time of the transmittal to the Congress by the President of the budget of the United States Government, the President shall transmit to each House of the Congress a separate report (to be known as the 'Social Security Lockbox Budget') detailing the performance during the preceding fiscal year of each of the accounts established under subsection (b). Such report shall set forth, as determined as of the end of the year—

''(1) the amount of the balance of each account,

''(2) the amount of the total charges and the amount of the total credits to each account for the year, and

''(3) the amount of the total for the year of each category of charges and credits itemized in subsection (b).

''Establishment of Accounts

''(b) For purposes of accounting for certain receipts and disbursement of the Treasury of the United States in connection with the Old-Age, Survivors, and Disability Insurance Program under part A of title II of the Social Security Act and the Personal Security Savings Program under part B of such title, the Secretary of the Treasury shall establish and maintain a Social Security Part A Account, a Social Security Part B Account, and a Self-Liquidating Social Security Transition Fund Account.

''Credits and Charges to the Social Security Part A Account

''(c)(1) For each fiscal year, the Social Security Part A Account shall be credited with the sum of—

''(A) all receipts during the year by the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under section 201 (including amounts received as interest on notes and obligations purchased by the Trust Funds under section 201(d) of such Act, and excluding amounts received in redemption of such notes and obligations and amounts received by either such Trust Fund as transfers from the other such Trust Fund), and

''(B) all receipts during the year by the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under section 121(e) of the Social Security Amendments of 1983 (relating to appropriation of amounts equivalent to taxes on social security benefits) (42 U.S.C. 401 note).

''(2) For each fiscal year, the Social Security Part A Account shall be charged with the sum of—

''(A) all benefits paid during the year from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under part A of title II of the Social Security Act,

''(B) all redirected social security contributions transferred during the year to the Social Security Personal Savings Fund under section 252(b),

''(C) all other expenditures during the year from the Trust Funds under part A of title II (excluding amounts expended as transfers by either such Trust Fund to the other such Trust Fund and amounts paid for the purchase of notes and obligations under section 201(d)), and

''(D) all transfers from the Federal Old-Age and Survivors Insurance Trust Fund to the Self-Liq-

uidating Social Security Transition Fund under section 262(d).

''Charges and Credits to the Social Security Part B Account

''(d)(1) For each fiscal year, the Social Security Part B Account shall be credited with—

''(A) all redirected social security contributions transferred during the year to the Personal Social Security Savings Fund under section 252(b) of the Social Security Act, and

''(B) any net increase in the Tier I Investment Fund attributable to investment for the fiscal year, any net increase in the Tier II Investment Fund attributable to investment for the fiscal year, and the total amount of any net increases in Tier III Investment Options attributable to investment for the fiscal year.

''(2) For each fiscal year, the Social Security Part B Account shall be charged with—

''(A) all administrative costs incurred for the fiscal year with respect to the Tier I Investment Fund, the Tier II Investment Fund, and the Tier III Investment Options,

''(B) any net decrease in the Tier I Investment Fund attributable to investment for the fiscal year,

any net decrease in the Tier II Investment Fund attributable to investment for the fiscal year, and the total amount of any net decreases in Tier III Investment Options attributable to investment for the fiscal year, and

''(C) annuity payments made during the year under section 258 from the Annuity Reserve Account in the Savings Fund.

''Charges and Credits to the Self-Liquidating Social Security Transition Fund Account

''(e)(1) For each fiscal year, the Self-Liquidating Social Security Transition Account shall be credited with—

''(A) all transfers to the Transition Fund from the Federal Old-Age and Survivors Insurance Trust Fund under section 262(b), and

''(B) all amounts expended during the fiscal year from the Trust Funds in the redemption under section 262(e) of obligations issued by the Transition fund under section 262(c).

''(2) For each fiscal year, the Self-Liquidating Social Security Transition Fund Account shall be charged with the total amount of obligations issued during the fiscal year by the Transition Fund under section 262(c)''.

SEC. 408. PROGRESSIVE INDEXING OF BENEFITS FOR OLD-AGE, WIFE'S, AND HUSBAND'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 215(a) of the Social Security Act (42 U.S.C. 415(a)) is amended—

(1) by striking ''The'' in paragraph (1)(A) and inserting ''In the case of any benefit other than an applicable benefit to which paragraph (2) applies, the'', and

(2) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2)(A) In the case of an applicable benefit with respect to any individual who initially becomes eligible for old-age insurance benefits or who dies (before becoming eligible for such benefits) in calendar year 2016 or later, the primary insurance amount of the individual shall be equal to the sum of—

''(i) 90 percent of the individual's average indexed monthly earning (determined under subsection (b)) to the extent that such earnings do not exceed the amount established for purposes of paragraph (1)(A)(i) by paragraph (1)(B);

''(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such

earnings exceed the amount established for purposes of paragraph (1)(A)(i) by paragraph (1)(B) but do not exceed the amount established for purposes of this clause by subparagraph (B);

''(iii) 32 percent (reduced as provided in subparagraph (C)) of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii) but do not exceed the amount established for purposes of paragraph (1)(A)(ii) by paragraph (1)(B); and

''(iv) 15 percent (reduced as provided in subparagraph (C)) of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of paragraph (1)(A)(ii) by paragraph (1)(B).

''(B)(i) For purposes of subparagraph (A)(ii), the amount established under this subparagraph for calendar year 2016 shall be the level of average indexed monthly earnings determined by the Chief Actuary of the Social Security Administration under clause (ii) as being at the 30th percentile for the period of calendar years 2005 through 2007.

''(ii) For purposes of clause (i), the average indexed monthly earnings for the period of calendar years 2005 through 2007 shall be determined by—

''(I) determining the average indexed monthly earnings for each individual who initially became eligible for old-age insurance benefits or who died (before becoming eligible for such benefits) during such period, except that in determining such average indexed monthly earnings under subsection (b), subsection (b)(3)(A)(ii)(I) shall be applied by substituting calendar year 2002 for the second calendar year described in such subsection; and

''(II) multiplying the amount determined for each individual under subclause (I) by the quotient obtained by dividing the national average wage index (as defined in section 209(k)(1)) for the calendar year 2014 by such index for the calendar year 2002.

''(iii) For purposes of subparagraph (A)(ii), the amount established under this subparagraph for any calendar year after 2016 shall be equal to the product of the amount in effect under clause (i) with respect to calendar year 2016 and the quotient obtained by dividing—

''(I) the national average wage index (as defined in section 209(k)(1)) for the second calendar

year preceding the calendar year for which the determination is being made, by

''(II) the national average wage index (as so defined) for 2014.

''(iv) The amount established under this subparagraph for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

''(C)(i) Except as provided in clause (ii), in the case of any calendar year after 2015, each of the percentages to which this subparagraph applies by reason of clauses (iii) or (iv) of subparagraph (A) shall be a percentage equal to such percentage multiplied by the quotient obtained by dividing—

''(I) the difference of the maximum CPI-indexed benefit amount for such year over the amount determined under this paragraph for an individual whose average indexed monthly earnings are equal to the amount established for purposes of subparagraph (A)(ii) for such year, by

''(II) the difference of the maximum wage-indexed benefit amount for such year over the amount determined under this paragraph for an individual whose average indexed monthly earnings are equal

to the amount established for purposes of subparagraph (A)(ii) for such year.

''(ii)(I) In the case of any calendar year which is a positive balance year, clause (i) shall not apply and each of the percentages to which this subparagraph applies by reason of clause (iii) or (iv) of subparagraph (B) shall be a percentage equal to the percentage determined under this subparagraph for the preceding year (determined after the application of this subparagraph).

''(II) In the case of any calendar year after a positive balance year which is not a positive balance year, this subparagraph shall be applied by substituting 'the second calendar year preceding the most recent positive balance year' for '2013' each place it appears in clause (iv).

''(iii) For purposes of clause (i), the maximum wage-indexed benefit amount for any calendar year shall be equal to the amount determined under this paragraph (determined without regard to any reduction under this subparagraph) for an individual with wages paid in and self-employment income credited to each computation base year in an amount equal to the contribution and benefit base for each calendar year.

''(iv) For purposes of clause (i), the maximum CPI-indexed benefit amount for any calendar year shall be an

amount equal to the amount determined under clause (iii) for such year multiplied by a fraction—

"(I) the numerator of which is the ratio (rounded to the nearest one-thousandth of 1 percent) of the Consumer Price Index for the second preceding year to such index for 2013; and

"(II) the denominator of which is the ratio (rounded to the nearest one-thousandth of 1 percent) of the national wage index (as defined in section 209(k)(1)) for the second year preceding such year to such index for 2013.

"(v)(I) For purposes of this subparagraph, a positive balance year is a calendar year following any calendar year after 2080 for which the Chief Actuary of the Social Security Administration certifies to the Secretary of the Treasury and the Congress that the combined balance ratio of the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund is not less than 100 percent for such year.

"(II) For purposes of subclause (I), the combined balance ratio of the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund for any calendar year is the ratio of the combined balance of such Trust Funds as of the last day of such calendar year (reduced by any transfer made pursuant to section

201(o) in such calendar year) to the amount estimated by the Commissioner of Social Security under section 201(l)(3)(B)(iii)(II) to be paid from such Trust Funds during the calendar year following such calendar year for all purposes authorized by section 201 (determined as if such following calendar year were a positive balance year).

''(D) For purposes of this paragraph, rules similar to the rules of subparagraphs (C) and (D) of paragraph (1) shall apply.

''(E) For purposes of this paragraph, the term 'applicable benefit' means any benefit under section 202 other than—

''(i) a child's insurance benefit under section 202(d) with respect to a child of an individual who has died;

''(ii) a widow's insurance benefit under section 202(e) with respect to a widow who has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in section 202(e)(4);

''(iii) a widower's insurance benefit under section 202(f) with respect to a widower who has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in section 202(f)(4); and

''(iv) a mother's and father's insurance benefit under section 202(g).''.

(b) TREATMENT OF DISABLED BENEFICIARIES.—Section 215(a) of such Act (as amended by subsection (a)) is amended further by adding at the end the following new paragraph:

''(9)(A) Notwithstanding the preceding provisions of this subsection, in the case of an individual who has or has had a period of disability and who initially becomes eligible for old-age insurance benefits or who dies (before becoming eligible for such benefits) in any calendar year in or after 2016, the primary insurance amount of such individual shall be the sum of—

''(i) the amount determined under subparagraph (B); and

''(ii) the product derived by multiplying—

''(I) the excess of the amount determined under subparagraph (C) over the amount determined under subparagraph (B), by

''(II) the adjustment factor for such individual determined under subparagraph (D).

''(B) The amount determined under this subparagraph is the amount of such individual's primary insurance amount as determined under this section without regard to this paragraph.

''(C) The amount determined under this subparagraph is the amount of such individual's primary insurance amount as determined under this section as in effect with respect to individuals becoming eligible for old-age or disability insurance benefits under section 202(a) on the date of the enactment of the Social Security Personal Savings Guarantee and Prosperity Act of 2008.

''(D) The adjustment factor determined under this subparagraph for any individual is the ratio (not greater than 1) of—

''(i) the total number of months during which such individual is under a disability (as defined in section 223(d)) during the period beginning on the date the individual attains age 22 and ending on the first day of such individual's first month of eligibility for old-age insurance benefits under section 202(a) (or, if earlier, the month of such individual's death), to

''(ii) the number of months during the period beginning on the date the individual attains age 22 and ending on the first day of such individual's first month of eligibility for old-age insurance benefits under section 202(a) (or, if earlier, the month of such individual's death).''.

(c) CONFORMING AMENDMENTS.—

(1) Subsections (e)(2)(B)(i)(I) and (f)(2)(B)(i)(I) of section 202 of the Social Security Act are each amended by inserting ''or section 215(a)(2)(B)(iii)'' after ''section 215(a)(1)(B)(i) and (ii)''.

(2) Section 203(a)(10) of such Act is amended—

(A) in subparagraph (A)(i), by striking ''215(a)(2)(B)(i)'' and inserting ''215(a)(3)(B)(i)'';

(B) in subparagraph (A)(ii), by striking ''215(a)(2)(C)'' and inserting ''215(a)(3)(C)''; and

(C) in subparagraph (B)(ii), by striking ''215(a)(2)'' and inserting ''215(a)(3)''.

(3) Section 209(k)(1) of such Act is amended by inserting ''215(a)(2)(B), 215(a)(2)(C),'' after ''215(a)(1)(D),''.

(4) Section 215(a) of such Act is amended—

(A) in paragraph (4)(A), as redesignated by paragraph (2), by striking ''paragraph (4)'' and inserting ''paragraph (5)'';

(B) in paragraph (4)(B), as redesignated by paragraph (2), by striking ''paragraph (2)(A)'' and inserting ''paragraph (3)(A)'';

(C) in paragraph (5), as redesignated by paragraph (2), by striking ''paragraph (3)(A)'' and inserting ''paragraph (4)(A)'';

(D) in paragraph (6)(A), as redesignated by paragraph (2), by striking ''paragraph (4)(B)'' and inserting ''paragraph (5)(B)''; and

(E) in paragraph (8)(B)(ii)(I), as redesignated by paragraph (2), by striking ''paragraph (3)(B)'' and inserting ''paragraph (4)(B)''.

(5) Section 215(d)(3) of such Act is amended—

(A) by striking ''paragraph (4)(B)(ii)'' and inserting ''paragraph (5)(B)(ii)''; and

(B) by striking ''subsection (a)(7)(C)'' and inserting ''subsection (a)(8)(C)''.

(6) Subsection 215(f) of such Act is amended—

(A) in paragraph (2)(B), by striking ''subsection (a)(4)(B)'' and inserting ''subsection (a)(5)(B)'';

(B) in paragraph (7), by striking ''subsection (a)(4)(B)'' and inserting ''subsection (a)(5)(B)'', and by striking ''subsection (a)(6)'' and inserting ''subsection (a)(7)'';

(C) in paragraph (9)(A)—

(i) by striking ''subsection (a)(7)(A)'' and inserting ''subsection (a)(8)(A)''; and

(ii) by striking ''subsection (a)(7)(C)'' and inserting ''subsection (a)(8)(C)''; and

(D) in paragraph (9)(B), by striking ''subsection (a)(7)'' each place it appears and inserting ''subsection (a)(8)''.

SEC. 409. ENHANCEMENTS TO PART A BENEFITS.

(a) CPI INDEXING IN PART A BENEFIT FORMULA.—Section 215(a)(1)(B) of the Social Security Act (42 U.S.C. 415(a)(1)(B)) is amended—

(1) by redesignating clause (iii) as clause (iv);

(2) in clause (ii), by inserting ''and before 2016'' after ''1979'';

(3) in clause (iv) (as so redesignated), by inserting ''or (iii)'' after ''clause (ii)''; and

(4) by inserting after clause (ii) the following new clause:

''(iii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 2015, each of the amounts so established shall be equal to the product of the corresponding amount established with respect to the calendar year 2015 under clause (ii) of this subparagraph and the quotient obtained by dividing—

''(I) the Consumer Price Index for the second calendar year preceding the calendar year for which the determination is made, by

''(II) the Consumer Price Index for 2013.

For purposes of this clause, the term 'Consumer Price Index' for a calendar year means the arithmetical mean of the Consumer Price Index (within the meaning of such term as used in subsection (i)) for the 12 months in such calendar year.''.

(b) ENHANCED PART A BENEFIT LEVELS FOR LOW EARNERS.—Section 215(a) of such Act (as amended by section 408) is amended by adding at the end the following new paragraph:

''(10)(A) In the case of any individual who initially becomes eligible for old-age or disability insurance benefits, or who dies (before becoming eligible for such benefits), in any calendar year after 2015 and whose average indexed monthly earnings is less than twice the 35-year low earner AIME for such calendar year, each primary insurance amount otherwise determined under paragraph (1) or (2) shall be the product of—

''(i) such primary insurance amount as so determined, and

''(ii) the applicable adjustment factor for such individual.

''(B) For purposes of this paragraph, the applicable adjustment factor for an individual is 100 percent plus the product of—

''(i) the applicable percentage for the calendar year,

''(ii) the applicable AIME factor, and

''(iii) the applicable coverage factor.

''(C) For purposes of subparagraph (B)(i), the applicable percentage for a calendar year is the percentage set forth in connection with such calendar year in the following table:

''If the calendar year is:	**The percentage is:**
2016	4.04
2017	8.08
2018	12.12
2019	16.16
2020	20.20
2021	24.24
2022	28.28
2023	32.32
2024	36.36
2025 or thereafter	40.40.

''(D) For purposes of subparagraph (B)(ii)—

''(i) in any case in which an individual's average indexed monthly earnings is less than or equal to the 30-year low earner AIME for the calendar year referred to in subparagraph (A), the applicable AIME factor in connection with the individual for the calendar year is 1,

''(ii) in any case in which an individual's AIME is greater than the 30-year low earner AIME for the

calendar year referred to in subparagraph (A) and less than twice the 35-year low earner AIME for the calendar year, the applicable AIME factor in connection with the individual for the calendar year is the quotient derived by dividing—

''(I) the excess of twice the 35-year low earner AIME for the calendar year over the individual's average indexed monthly earnings, by

''(II) the excess of twice the 35-year low earner AIME for the calendar year over the 30-year low earner AIME for the calendar year, and

''(iii) in any case in which an individual's average indexed monthly earnings is greater than or equal to twice the 35-year low earner AIME for the calendar year referred to in subparagraph (A), the applicable AIME factor in connection with an individual for the calendar year is 0.

''(E) For purposes of subparagraph (B)(iii)—

''(i) in any case in which the number of an individual's quarters of coverage earned prior to the date on which the individual became eligible or died as described in subparagraph (A) is less than or equal to twice the number of elapsed years with re-

spect to the individual, the applicable coverage factor in connection with the individual is 0,

''(ii) in any case in which the number of an individual's quarters of coverage earned prior to the date on which the individual became eligible or died as described in subparagraph (A) is greater than twice the number of elapsed years with respect to the individual and less than three times the number of elapsed years with respect to the individual, the applicable coverage factor in connection with the individual is 1 plus the quotient derived by dividing—

''(I) the excess of the number of the individual's quarters of coverage over 3 times the number of elapsed years with respect to the individual, by

''(II) the number of elapsed years with respect to the individual, and

''(iii) in any case in which the number of an individual's quarters of coverage earned prior to the date on which the individual became eligible or died as described in subparagraph (A) is greater than or equal to 3 times the number of elapsed years with respect to the individual, the applicable coverage factor in connection with the individual is 1.

''(F) For purposes of this paragraph—

''(i) The term '30-year low earner AIME' for a calendar year means the amount which would be the average indexed monthly earnings of an individual—

''(I) whose benefit computation years are the preceding 30 calendar years, and

''(II) whose primary insurance amount is based solely on wages earned during such calendar years for 40 hours per week at an hourly rate equivalent to the minimum wage required under section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) at the time such wages were earned.

''(ii) The term '35-year low earner AIME' for a calendar year means the amount which would be the average indexed monthly earnings of an individual—

''(I) whose benefit computation years are the preceding 35 calendar years, and

''(II) whose primary insurance amount is based solely on wages earned during such calendar years for 40 hours per week at an hourly rate equivalent to the minimum wage required under section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) at the time such wages were earned

''(iii) The term 'number of elapsed years' has the meaning provided in subsection (b)(2)(B)(iii).''.

SEC. 410. ADJUSTMENTS TO SCHEDULE FOR INCREASES IN NORMAL RETIREMENT AGE.

(a) COMPLETION OF PHASE-IN OF NORMAL RETIREMENT AGE TO AGE 67 BY 2021.—Section 216(l) of the Social Security Act (42 U.S.C. 416(l)) is amended—

(1) in paragraph (1)(C), by striking ''2017'' and inserting ''2016'';

(2) in paragraph (1)(D), by striking ''2016'' and inserting ''2015'', and by striking ''2022'' and inserting ''2021'';

(3) in paragraph (1)(E), by striking ''2021'' and inserting ''2020''; and

(4) in paragraph (3)(B), by striking ''2017'' and inserting ''2016'', by striking ''2021'' and inserting ''2020'', and by striking ''2017'' and inserting ''2016''.

(b) ADJUSTMENTS TO NORMAL RETIREMENT AGE AFTER 2021.—Section 216(l) of such Act (as amended by subsection (a)) is amended further—

(1) in paragraph (1)(E), by inserting ''and before January 1, 2022,'' after ''2020,'' and by striking ''age.'' and inserting ''age; and'' ;

(2) in paragraph (1), by adding after subparagraph (E) the following new subparagraph:

''(F) with respect to an individual who attains early retirement age after December 31, 2121, 67 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age.''; and

(3) in paragraph (3), by adding at the end the following new subparagraph:

''(C) The Commissioner of Social Security shall determine (using reasonable actuarial assumptions) and publish on or before November 1 of each calendar year after 2020 the number of months (rounded, if not a multiple of one month, to the next lower multiple of one month) by which the life expectancy as of October 1 of such calendar year of an individual attaining early retirement age on such October 1 exceeds the life expectancy as of October 1, 2020, of an individual attaining early retirement age on October 1, 2020. With respect to an individual who attains early retirement age in the calendar year following any calendar year in which a determination is made under this subparagraph, the age increase factor shall be the number of months

determined under this subparagraph as of October 1 of such calendar year in which such determination is made.''.

TITLE V—SIMPLIFIED INCOME TAX

SEC. 501. SHORT TITLE.

This title may be cited as the ''Taxpayer Choice Act of 2008''.

SEC. 502. REPEAL OF ALTERNATIVE MINIMUM TAX FOR NONCORPORATE TAXPAYERS.

(a) IN GENERAL.—Section 55(a) of the Internal Revenue Code of 1986 (relating to alternative minimum tax imposed) is amended by adding at the end the following new flush sentence:

''In the case of a taxpayer other than a corporation, no tax shall be imposed by this section for any taxable year beginning after December 31, 2008, and the tentative minimum tax of any taxpayer other than a corporation for any such taxable year shall be zero for purposes of this title.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 26(c) of such Code is amended by striking ''the term 'tentative minimum tax' means the amount determined under section 55(b)(1)'' and inserting ''the tentative minimum tax is zero.''.

(2) Section 911(f)(2) of such Code is amended to read as follows:

''(2) the tentative minimum tax under section 55 for the taxable year shall be zero.''.

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

SEC. 503. SIMPLIFIED INCOME TAX SYSTEM.

(a) IN GENERAL.—Part I of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to tax on individuals) is amended by redesignating section 5 as section 6 and by inserting after section 4 the following new section:

''SEC. 5. SIMPLIFIED INCOME TAX SYSTEM.

''(a) ELECTION.—

''(1) IN GENERAL.—A taxpayer other than a corporation may elect in accordance with this subsection to be subject to the tax imposed by this section in lieu of the tax imposed by section 1 for a taxable year and all subsequent taxable years.

''(2) EFFECT OF ELECTION.—For purposes of this title, if an election is in effect under paragraph (1) for any taxable year, the tax imposed by this section shall be treated as the tax imposed by section 1 for the taxable year and, except as provided by

sections 31 and 36, no amount shall be allowed as a credit against such tax for the taxable year.

"(3) ELECTION.—

"(A) IN GENERAL.—

"(i) IN GENERAL.—Except as provided in clause (ii) of this subparagraph and clauses (ii) and (iii) of subparagraph (B), the election under paragraph (1) may only be made with respect to any taxable year beginning before January 1, 2018, on a timely filed return for the first taxable year for which the election applies.

"(ii) NEW TAXPAYERS.—In the case of an individual with no tax liability under this title before January 1, 2018, the election under paragraph (1) may only be made for the first taxable year beginning after December 31, 2017, for which such individual has tax liability under this title.

"(B) EFFECT OF ELECTION.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the election under paragraph (1), once made, shall be irrevocable.

"(ii) ONE-TIME REVOCATION OF ELECTION.—A taxpayer may revoke an election under paragraph (1) for a taxable year and all subsequent taxable years. The preceding sentence shall not apply if the taxpayer has made a revocation under such sentence for any prior taxable year.

"(iii) FILING STATUS CHANGES DUE TO MAJOR LIFE EVENTS.—In the case of any major life event described in clause (iv), a taxpayer may make an election under paragraph (1) or revoke such an election under clause (ii). Any such election or revocation shall apply for the taxable year for which made and all subsequent taxable years until the taxpayer makes an election under the preceding sentence for any subsequent (and all succeeding) taxable year.

"(iv) MAJOR LIFE EVENT.—For purposes of clause (iii), a major life event described in this clause is marriage, divorce, and death.

"(b) TAX IMPOSED.—

"(1) MARRIED INDIVIDUALS AND SURVIVING SPOUSES.—In the case of a taxpayer for whom an election under subsection (a) is in effect and who is a married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013 or a surviving spouse (as defined in section 2(a)), there is hereby imposed on the alternative taxable income of such individual a tax determined in accordance with the following table:

"If taxable income is:	**The tax is:**
Not over $100,000	10% of alternative taxable income.
Over $100,000	$10,000, plus 25% of the excess over $100,000.

"(2) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES).—In the case of a taxpayer for whom an election under subsection (a) is in effect and who is not described in paragraph (1), there is hereby imposed on the alternative taxable income of such individual a tax determined in accordance with the following table:

"If taxable income is:	**The tax is:**
Not over $50,000	10% of alternative taxable income.
Over $50,000	$5,000, plus 25% of the excess over $50,000.

"(c) ALTERNATIVE TAXABLE INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'alternative taxable income' means—

"(A) gross income,

"(B) the amount excluded from income under section 139C for capital gains, dividends, and interest, minus

"(C) the sum of—

"(i) the personal exemption,

"(ii) the dependent allowance, plus

"(iii) the alternative standard deduction.

"(2) PERSONAL EXEMPTION.—The personal exemption is—

"(A) 200 percent of the dollar amount in effect under subparagraph (B) in the case of—

"(i) a joint return, or

"(ii) a surviving spouse (as defined in section 2(a)), and

"(B) $3,500 in the case of an individual—

"(i) who is not married and is not a surviving spouse, or

"(ii) who is a married individual filing a separate return.

"(3) DEPENDENT ALLOWANCE.—The dependent allowance is $3,500 for each dependent (as defined in section 152).

"(4) ALTERNATIVE STANDARD DEDUCTION.—The alternative standard deduction means—

"(A) $25,000 in the case of—

"(i) a joint return, or

"(ii) a surviving spouse (as defined in section 2(a)), and

"(B) $12,500 in the case of an individual—

"(i) who is not married and is not a surviving spouse, or

"(ii) who is a married individual filing a separate return.

"(d) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2008, each of the dollar amounts for the rate brackets in subsection (b) and each of the dollar amounts in subsection (d)(2)(B), (d)(3), and (d)(4) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2007' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of $100, such

amount shall be rounded to the nearest multiple of $100.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 5 and inserting after the item relating to section 4 the following:

''Sec. 5. Simplified income tax System.
''Sec. 6. Cross references relating to tax on individuals.''.

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

SEC. 504. EXCLUSION FOR CAPITAL GAINS, DIVIDENDS, AND INTEREST.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by inserting after section 139B the following new section:

''SEC. 139C. CAPITAL GAINS, DIVIDENDS, AND INTEREST.

''(a) EXCLUSION.—Gross income does not include amounts received by an individual as net capital gains, qualified dividends, and interest.

''(b) QUALIFIED DIVIDENDS.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified dividends' means dividends received during the taxable year from—

''(A) domestic corporations, and

''(B) qualified foreign corporations.

''(2) QUALIFIED FOREIGN CORPORATIONS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualified foreign corporation' means any foreign corporation if—

''(i) such corporation is incorporated in a possession of the United States, or

''(ii) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

''(B) DIVIDENDS ON STOCK READILY TRADABLE ON UNITED STATES SECURITIES MARKET.—A foreign corporation not otherwise treated as a qualified foreign corporation under subparagraph (A) shall be so treated with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

''(C) EXCLUSION OF DIVIDENDS OF CERTAIN FOREIGN CORPORATIONS.—Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297).

''(3) SPECIAL RULE.—If a taxpayer to whom this section applies receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059(c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

''(c) INTEREST.—For purposes of this section, the term 'interest' means—

''(1) interest on deposits with a bank (as defined in section 581),

''(2) amounts (whether or not designated as interest) paid, in respect to deposits, investment certificates, or withdrawable or repurchasable shares, by—

''(A) a mutual savings bank, cooperative bank, domestic building and loan association,

industrial loan association or bank, or credit union, or

"(B) any other savings or thrift institution, which is chartered and supervised under Federal or State law,

the deposits or accounts in which are insured under Federal or State law or which are protected and guaranteed under State law,

"(3) interest on—

"(A) evidences of indebtedness (including bonds, debentures, notes, and certificates) issued by a domestic corporation in registered form, and

"(B) to the extent provided in regulations prescribed by the Secretary, other evidences of indebtedness issued by a domestic corporation of a type offered by corporations to the public,

"(4) interest on obligations of the United States, a State, or a political subdivision of a State (not excluded from gross income of the taxpayer under any other provision of law), and

"(5) interest attributable to participation shares in a trust established and maintained by a corporation established pursuant to Federal law.

''(d) CERTAIN NONRESIDENT ALIENS INELIGIBLE FOR EXCLUSION.—In the case of a nonresident alien individual, subsection (a) shall apply only—

''(1) in determining the tax imposed for the taxable year pursuant to section 871(b)(1) and only in respect to dividends and interest which are effectively connected with the conduct of a trade or business within the United States, or

''(2) in determining the tax imposed for the taxable year pursuant to section 877(b).''.

(b) CONFORMING AMENDMENT.—Section 1 of such Code is amended by striking subsection (h).

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

''Sec. 139C. Capital gains, dividends, and interest.''.

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

SEC. 505. REPEAL OF ESTATE AND GIFT TAXES.

(a) IN GENERAL.—Subtitle B of the Internal Revenue Code of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to the estates of decedents dying, and gifts made, and generation-skipping transfers after December 31, 2008.

TITLE VI—BUSINESS CONSUMPTION TAX

SEC. 601. SHORT TITLE.

This title may be cited as the ''Competitive American Business Tax''.

SEC. 602. REPEAL OF CORPORATE INCOME TAX; NEW TAX PAID BY CORPORATIONS AND OTHER BUSINESSES.

(a) IN GENERAL.—Subtitle A of the Internal Revenue Code of 1986 is amended by inserting after chapter 6 the following new chapter:

''CHAPTER 7—BUSINESS CONSUMPTION TAX

''SUBCHAPTER A. IMPOSITION OF TAX.

''SUBCHAPTER B. BASIC RULES FOR BUSINESS CONSUMPTION TAX.

''SUBCHAPTER C. CAPITAL CONTRIBUTIONS, MERGERS, ACQUISITIONS, AND DISTRIBUTIONS.

''SUBCHAPTER D. ACCOUNTING METHOD RULES.

''SUBCHAPTER E. LAND AND RENTAL PROPERTY.

''SUBCHAPTER F. INSURANCE AND FINANCIAL PRODUCTS.

''SUBCHAPTER G. FINANCIAL INTERMEDIATION AND FINANCIAL INSTITUTIONS.

''SUBCHAPTER H. TAX-EXEMPT ORGANIZATIONS.

''SUBCHAPTER I. COOPERATIVES.

''SUBCHAPTER J. SOURCING RULES.

''SUBCHAPTER K. IMPORT TAX.

''SUBCHAPTER L. TRANSITION RULES.

''SUBCHAPTER M. RULES FOR ADMINISTRATION, CONSOLIDATED RETURNS.

''SUBCHAPTER N. DEFINITIONS AND RULES OF APPLICATION.

"Subchapter A—Imposition of Tax

"Sec. 1601. Imposition of tax.
"Sec. 1602. Taxable amount.
"Sec. 1603. Zero rating for exports and interest.
"Sec. 1604. Governmental entities.
"Sec. 1605. Exempt organizations.
"Sec. 1606. Credit against tax.

"SEC. 1601. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) AMOUNT OF TAX.—Except as otherwise provided in this chapter, the amount of the tax shall be 8.5 percent of the taxable amount.

"(c) TAXABLE TRANSACTION.—For purposes of this chapter, the term 'taxable transaction' means—

"(1) the sale of property in the United States,

"(2) the performance of services in the United States, and

"(3) the importing of property into the United States,

by a taxable person in a business transaction.

"(d) BUSINESS TRANSACTION.—

"(1) GENERAL RULE.—For purposes of this chapter, the term 'business transaction' means a transaction engaged in by—

"(A) a corporation, or

"(B) any person (other than a corporation) in connection with a business.

''(2) SALES AND LEASES OF REAL PROPERTY; IMPORTS.—For purposes of this chapter—

''(A) IN GENERAL.—The term 'business transaction' includes—

''(i) any sale or leasing of real property, and

''(ii) any importing of property,

whether or not such transaction is described in paragraph (1).

''(B) CERTAIN IMPORTED ARTICLES.—Notwithstanding subparagraph (A)(ii), the importing of an article which is free of duty under part 2 of schedule 8 of the Tariff Schedules of the United States shall not be treated as a business transaction unless such transaction is described in paragraph (1).

''(e) TAXABLE PERSON.—

''(1) GENERAL RULE.—Except as otherwise provided in this chapter, for purposes of this chapter, the term 'taxable person' means a person who engages in a business or in a business transaction.

''(2) TREATMENT OF EMPLOYEES, ETC.—For purposes of this chapter, an employee shall not be treated as a taxable person with respect to activities engaged in as an employee.

''(f) TRANSACTIONS IN THE UNITED STATES.—

''(1) SALES OF PROPERTY.—For purposes of this chapter—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the sale of property shall be treated as occurring where delivery takes place.

''(B) REAL PROPERTY.—The sale of real property shall be treated as occurring where the real property is located.

''(2) PERFORMANCE OF SERVICE.—For purposes of this chapter—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, a service shall be treated as occurring where it is performed.

''(B) SERVICES PERFORMED INSIDE AND OUTSIDE THE UNITED STATES.—If a service is performed both inside and outside the United States, such service shall be treated as performed—

''(i) inside the United States, if 50 percent or more of such service is performed inside the United States, and

''(ii) outside the United States, if less than 50 percent of such service is performed inside the United States.

''(g) RULES RELATING TO OTHER TERMS USED IN SUBSECTION (c).—

''(1) EXCHANGES TREATED AS SALES.—For purposes of this chapter—

''(A) an exchange of property for property or services shall be treated as a sale of property, and

''(B) an exchange of services for property or services shall be treated as the performance of services.

''(2) CERTAIN TRANSFERS TO EMPLOYEES TREATED AS SALES.—For purposes of this chapter, the transfer of property to an employee as compensation (other than a transfer of a type for which no amount is includible in the gross income of employees for purposes of chapter 1) shall be treated as the sale of property.

''(3) PERFORMANCE OF SERVICES.—For purposes of this chapter—

''(A) CERTAIN ACTIVITIES TREATED AS PERFORMANCE OF SERVICES.—Activities treated as included in the performance of services shall include (but shall not be limited to)—

''(i) permitting the use of property,

''(ii) the granting of a right to the performance of services or to reimbursement (including the granting of warranties, insurance, and similar items), and

''(iii) the making of a covenant not to compete (or similar agreement to refrain from doing something).

''(B) EMPLOYERS AND EMPLOYEES.—

''(i) SERVICES FOR EMPLOYER.—An employee's services for the employee's employer shall not be treated as the performance of services.

''(ii) SERVICES FOR EMPLOYEE.—An employer's services for the employer's employee shall not be treated as the performance of services unless such services are of a type which constitute gross income to the employee for purposes of chapter 1.

''(C) PERFORMANCE OF SERVICES TREATED AS SALE OF SERVICES.—The performance of services shall be treated as the sale of services.

''SEC. 1602. TAXABLE AMOUNT.

''(a) AMOUNT CHARGED CUSTOMER.—For purposes of this chapter, the taxable amount for any transaction for which money is the only consideration shall be the

price charged the purchaser of the property or services by the seller thereof—

''(1) including all invoiced charges for transportation, and other items payable to the seller with respect to this transaction, but

''(2) excluding the tax imposed by section 1601 with respect to this transaction and excluding any State and local sales and use taxes with respect to this transaction.

''(b) EXCHANGES.—For purposes of this chapter, the taxable amount in any exchange of property or services shall be the fair market value of the property or services transferred by the person liable for the tax (determined as if such person had sold the property or services to the other party to the exchange).

''(c) IMPORTS.—For purposes of this chapter, the taxable amount in the case of any import shall be—

''(1) the customs value plus customs duties and any other duties which may be imposed, or

''(2) if there is no such customs value, the fair market value (determined as if the importer had sold the property).

''SEC. 1603. ZERO RATING FOR EXPORTS AND INTEREST.

''The rate of the tax imposed by section 1601 shall be zero with respect to the following:

''(1) EXPORTS.—Exports of property.

''(2) INTEREST.—Interest.

''SEC. 1604. GOVERNMENTAL ENTITIES.

''(a) ZERO RATING FOR SALES TO GOVERNMENTAL ENTITIES AND EDUCATIONAL ACTIVITIES OF GOVERNMENTAL ENTITIES.—The rate of the tax imposed by section 1601 shall be zero with respect to the following:

''(1) SALES TO GOVERNMENTAL ENTITIES.—Any sale of property or services to a governmental entity.

''(2) EDUCATIONAL ACTIVITIES.—The providing by a governmental entity of property and services in connection with the education of students.

''(b) SALES, ETC., BY GOVERNMENTAL ENTITIES TAXABLE ONLY WHERE SEPARATE CHARGE IS MADE.—For purposes of this chapter, the sale of property and the performance of services by a governmental entity shall be a taxable transaction if (and only if) a separate charge of fee is made therefor.

''(c) GOVERNMENTAL ENTITY DEFINED.—For purposes of this chapter, the term 'governmental entity' means the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of any of the foregoing.

"SEC. 1605. EXEMPT ORGANIZATIONS.

"(a) ZERO RATING FOR SECTION 501(c)(3) ORGANIZATIONS; CREDIT ALLOWED FOR ALL PURCHASES.—

"(1) ZERO RATING.—The rate of the tax imposed by section 1601 shall be zero with respect to any taxable transaction engaged in by a section 501(c)(3) organization other than as part of an unrelated business.

"(2) CREDIT ALLOWED FOR ALL PURCHASES.—For purposes of this chapter, a section 501(c)(3) organization shall be treated as engaged in a business with respect to all of its activities.

"(b) TAXABLE TRANSACTIONS IN CASE OF OTHER EXEMPT ORGANIZATIONS.—For purposes of this chapter, the sale of property and the performance of services by any exempt organization other than a section 501(c)(3) organization shall be a taxable transaction if (and only if) a charge or fee is made for such services.

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

"(1) SECTION 501(c)(3) ORGANIZATIONS.—The term 'section 501(c)(3) organization' means an organization described in section 501(c)(3) which is exempt from tax under section 501(a).

"(2) OTHER EXEMPT ORGANIZATION.—The term 'other exempt organization' means any organi-

zation (other than a section 501(c)(3) organization) which is exempt from tax under chapter 1.

"SEC. 1606. CREDIT AGAINST TAX.

"(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 1601 the aggregate amount of tax imposed by section 1601 which has been paid by sellers to the taxpayer of property and services which the taxpayer uses in the business to which the transaction relates.

"(b) EXEMPT TRANSACTIONS, ETC.—If—

"(1) property or services are used partly in the business and partly for other purposes, or

"(2) property or services are used partly for taxable transactions and partly for other transactions,

the credit shall be allowable only with respect to the property and services used for taxable transactions in the business. No credit shall be allowable for any transaction occurring when the taxpayer was a nontaxable person.

"(c) EXCESS CREDIT TREATED AS OVERPAYMENT.—

"(1) IN GENERAL.—If for any taxable period the aggregate amount of the credits allowable by subsection (a) exceeds the aggregate amount of the tax imposed by section 1601 for such period, such

excess shall be treated as an overpayment of the tax imposed by section 1601.

''(2) TIME WHEN OVERPAYMENT ARISES.—Any overpayment under paragraph (1) for any taxable period shall be treated as arising on the later of—

''(A) the due date for the return for such period, or

''(B) the date on which the return is filed.

''Subchapter B—Basic Rules for Business Consumption Tax

''Sec. 1611. Gross profits.
''Sec. 1612. Taxable receipts.
''Sec. 1613. Deductible amounts.
''Sec. 1614. Cost of business purchases.
''Sec. 1615. Business entity and business activity.
''Sec. 1616. Loss carryover deduction.

''SEC. 1611. GROSS PROFITS.

'' 'Gross profits' means for a taxable transaction of a business entity the amount by which—

''(1) the taxable receipts of the business entity with respect to the taxable transaction, exceed

''(2) the deductible amounts for the business entity with respect to the taxable transactions.

''SEC. 1612. TAXABLE RECEIPTS.

''(a) IN GENERAL.—'Taxable receipts' means all receipts from the sale of property, use of property, and performance of services in the United States.

''(b) GAMES OF CHANCE.—Amounts received for playing games of chance by business entities engaging in the activity of providing such games shall be treated as receipts from the sale of property or services.

''(c) IN-KIND RECEIPTS.—The taxable receipts attributable to the receipt of property, use of property or services in whole or partial exchange for property, use of property or services equal the fair market value of the services or property received.

''(d) TAXES.—Taxable receipts do not include any excise tax, sales tax, custom duty, or other separately stated levy imposed by a Federal, State, or local government received by a business entity in connection with the sale of property or services or the use of property.

''(e) FINANCIAL RECEIPTS.—Except as provided in subchapter G (relating to financial intermediation and financial institutions), taxable receipts do not include financial receipts (as defined by regulations by the Secretary).

''SEC. 1613. DEDUCTIBLE AMOUNTS.

'' 'Deductible amounts' for a business entity in a taxable transaction include—

''(1) the cost of business purchases with respect to the taxable transaction (as determined under section 1614),

''(2) such entity's loss carryover deduction (as determined under section 1616) , and

''(3) the transition basis deduction (as determined under section 1711).

''SEC. 1614. COST OF BUSINESS PURCHASES.

''(a) BUSINESS PURCHASES.—

''(1) IN GENERAL.—'Business purchases' means the acquisition of—

''(A) property,

''(B) the use of property, or

''(C) services

in the United States for use in a business activity.

''(2) EXAMPLES.—Business purchases include (without limitation) the—

''(A) purchase or rental of real property,

''(B) purchase or rental of capital equipment,

''(C) purchase of supplies and inventory,

''(D) purchase of services from independent contractors,

''(E) purchase of financial intermediation services (as determined in accordance with section 1661),

''(F) imports for use in a business activity, and

''(G) premiums for the cost of health insurance policies for which the service provider, members of his family, or persons designated by him or members of his family are the beneficiaries.

''(3) EXCLUSIONS.—Business purchases do not include—

''(A) payments for use of money or capital, such as interest or dividends (except to the extent that a portion so paid is a fee for financial intermediation services),

''(B) premiums for life insurance,

''(C) the acquisition of savings assets or other financial instruments.

''(D) property acquired outside the United States (but such property shall be taken into account as an import if imported),

''(E) services performed outside the United States (unless treated as imported into the United States),

''(F) compensation expenses for an individual (other than amounts paid to an individual in his capacity as a business entity), or

''(G) taxes (except as provided in subsection (b)(2) relating to product taxes).

''(4) COMPENSATION EXPENSES.—'Compensation expenses' means—

''(A) wages, salaries or other cash payable for services,

''(B) any taxes imposed on the recipient that are withheld by the business entity,

''(C) the cost of property purchased to provide employees with compensation (other than property incidental to the provision of fringe benefits that are excluded from income under the individual tax),

''(D) the cost of fringe benefits which are includible in an employee's, partner's, or proprietor's income under section 5 (or are excluded solely because they constitute employee savings), including (without limitation)—

''(i) contributions to retirement and severance benefit plans,

''(ii) premiums for the cost of life, accident, disability and other insurance policies for which the service provider, members of his family, or persons designated by him or members of his family are the beneficiaries,

''(iii) rental of parking spaces or parking fees (unless the parking space is used for a vehicle that is regularly used in a business activity);

''(iv) employer paid educational benefits;

''(v) employer paid housing (other than housing provided for the convenience of the employer); and

''(vi) employer paid meals (other than meals provided for the convenience of the employer).

''(b) COST OF BUSINESS PURCHASES.—

''(1) IN GENERAL.—The 'cost of a business purchase' is the amount paid or to be paid for the business purchase.

''(2) TAXES.—

''(A) IN GENERAL.—The 'cost of business purchases' includes any product taxes paid with respect to the property or services purchased.

''(B) PRODUCT TAX.—'Product tax' means any excise tax, sales or use tax, custom duty, or other separately stated levy imposed by a Federal, State, or local government on the production, severance or consumption of property or

on the provision of services, whether or not separately stated, and including any such taxes that are technically imposed on the seller of property or services.

''(C) TAXES NOT PRODUCT TAXES.—Product taxes do not include—

''(i) the import tax,

''(ii) state and local property taxes,

''(iii) franchise or income taxes,

''(iv) payroll taxes and self-employment taxes, or

''(v) the business tax.

''(3) IMPORTS.—In the case of an import by a business entity, the cost of the import is the import price for purposes of the import tax. The import tax is not part of the cost of the import.

''(c) PROPERTY AND SERVICES ACQUIRED FOR PROPERTY.—If a business entity receives property or services from a business entity in whole or partial exchange for property or services, the property or services acquired shall be treated as if they were purchased for an amount equal to the fair market value of the services or property received. For purposes of this section, property includes stock and other equity interests in business other than

stock or an equity interest in the business entity acquiring the property or services.

''(d) GAMBLING PAYMENTS.—In the case of a business involving gambling, lotteries, or other games of chance, business purchases include amounts paid to winners.

''(e) SAVINGS ASSETS.—'Savings assets' means stocks, bonds, securities, certificates of deposits, investments in partnerships and limited liability companies, shares of mutual funds, life insurance policies, annuities, and other similar savings or investment assets.

"SEC. 1615. BUSINESS ENTITY AND BUSINESS ACTIVITY.

''(a) BUSINESS ENTITY.—For purposes of the business tax, 'business entity' means any corporation, unincorporated association, partnership, limited liability company, proprietorship, independent contractor, individual, or any other person engaging in business activity in the United States. An individual shall be considered a business entity only with respect to the individual's business activities.

''(b) BUSINESS ACTIVITY.—'Business activity' means the sale of property or services, the leasing of property, the development of property or services for subsequent sale or use in producing property or services for subsequent sale. 'Business activity' does not include casual or occasional sales of property used by an individual (other

than in a business activity), such as the sale by an individual of a vehicle used by the individual.

''(c) EXCEPTION FOR CERTAIN EMPLOYEES.—

''(1) IN GENERAL.—'Business activity' does not include—

''(A) the performance of services by an employee for an employer that is a business entity with respect to the activity in which the employee is engaged, or

''(B) the performance of regular domestic household services (including babysitting, housecleaning, and lawn cutting) by an employee of an employer that is an individual or family.

''(2) EMPLOYEE DEFINED.—For purposes of this subsection, 'employee' includes an individual partner who provides services to a partnership or an individual member who provides services to a limited liability company, or a proprietor with respect to compensation for services from his proprietorship.

"SEC. 1616. LOSS CARRYOVER DEDUCTION.

''(a) DEDUCTION.—The 'loss carryover deduction' for a taxable period is the lesser of—

''(1) the business entity's gross profits for the taxable period (determined without the loss carryover deduction), or

''(2) the amount of the loss carryover to the taxable period.

''(b) LOSS CARRYOVER.—

''(1) GENERAL RULE.—A loss for any taxable period shall be a loss carryover to the succeeding taxable period.

''(2) LOSS CARRYOVERS TO A TAXABLE PERIOD.—The loss carryover to a taxable period is the sum of the loss carryovers from all prior taxable periods beginning on or after January 1 of the year following the year in which this chapter is enacted.

''(3) REDUCTION OF LOSS CARRYOVERS AS A RESULT OF THE DEDUCTION.—A business entity's loss carryovers shall be reduced each year by the amount of the loss carryover deduction for the year. Loss carryovers shall be reduced in the order that they arose.

''(c) LOSS FOR TAXABLE PERIOD.—A business entity's loss (if any) for the taxable period equals the excess (if any) of—

''(1) the sum of—

''(A) the cost of business purchases for the taxable period, and

''(B) the transition basis adjustment for the taxable period, over

''(2) taxable receipts for the taxable period.

''(d) SPECIAL RULES.—

''(1) CONSOLIDATED RETURNS.—In the case of a consolidated return, the loss for a taxable period shall be determined on a consolidated group basis. In the case of a deconsolidation, the loss carryovers from the consolidated group shall be allocated in accordance with rules to be prescribed by the Secretary.

''(2) LOSS CARRYOVERS OF ACQUIRED BUSINESS ENTITY.—Any loss arising in the case of the acquisition of a business entity shall be allowed as prescribed by the Secretary.

''(e) INTEREST.—Interest shall be allowed on each loss carried forward under this section at a rate determined by the Secretary of the Treasury.

''Subchapter C—Capital Contributions, Mergers, Acquisitions, and Distributions

''Sec. 1621. Contributions to a business entity.
''Sec. 1622. Distributions of property.
''Sec. 1623. Asset acquisitions.
''Sec. 1624. Mergers and stock acquisitions.
''Sec. 1625. Spin-offs, split-offs, etc.
''Sec. 1626. Allocation of certain tax attributes.

"SEC. 1621. CONTRIBUTIONS TO A BUSINESS ENTITY.

''(a) BY BUSINESS ENTITY.—

''(1) CASH.—If a business entity contributes cash to a business entity of which it is or becomes a partial or full owner, the amount contributed is not a deductible amount to the contributor or a taxable receipt to the recipient.

''(2) PROPERTY OR SERVICES.—If a business entity contributes property or services to a business entity of which it is or becomes a partial or full owner, the transaction will not result in taxable receipts to the contributor or a deduction for a business purchase for the recipient and will not constitute a sale resulting in taxable receipts to the contributor.

''(b) BY INDIVIDUAL.—

''(1) CASH.—If an individual contributes cash to a business entity, the cash received is not a taxable receipt.

''(2) NEW PROPERTY.—If an individual contributes to a business entity property that the individual purchased for the business entity but which was not used by any person after its purchase, the property shall be considered purchased by such business entity from the person from which the individual purchased the property.

''(3) PERSONAL USE PROPERTY.—

''(A) IN GENERAL.—If an individual contributes personal use property to a business entity in which the individual has an ownership interest or for which the individual receives an ownership interest, the business entity shall not be permitted to deduct the value of the property received as a business expense. The business entity will have a tax basis in the contributed property equal to the contributor's basis.

''(B) PERSONAL USE PROPERTY.—'Personal use property' means any property used by an individual at any time other than in a business activity.

''(4) SERVICES.—If an individual contributes services to a business entity in which the individual has an ownership interest or receives an ownership interest, the business entity shall not be permitted to deduct the value of the services received (or the value of the equity interest provided to the services provider).

"SEC. 1622. DISTRIBUTIONS OF PROPERTY.

''(a) DISTRIBUTIONS OTHER THAN TO CONTROLLING BUSINESS.—If a business entity distributes all or a portion of its assets to its owners (other than a controlling

business entity), the business entity will be treated as if it sold the assets to its owners at fair market value. The fair market value will be determined by the distributing corporation and those determinations, unless unreasonable, will be binding on the recipients.

''(b) DISTRIBUTIONS TO A CONTROLLING BUSINESS.—If a business entity distributes all or a portion of its assets to a controlling business, the controlling business will assume the distributing entity's tax attributes with respect to the assets and neither entity will have taxable receipts or a deduction as a result of the transaction.

''(c) DISTRIBUTION OF PERSONAL USE PROPERTY.—If personal use property is distributed to the individual who contributed the personal use property to a business entity, the fair market value of the property for purposes of paragraph (a) shall equal the basis of the property plus any enhancement in value of the property attributable to business purchases with respect to the property.

''(d) CONTROLLING BUSINESS ENTITY.—A business entity is a 'controlling business entity' with respect to another business entity if it owns directly or indirectly more than 50 percent of the profits or capital interest in the other business entity.

''(e) APPLICATION OF THIS SECTION.—This section applies to both liquidating and nonliquidating distribu-

tions. Property shall be treated as distributed if the property is used for a nonbusiness purpose for more than an insubstantial period of time during a taxable period.

"SEC. 1623. ASSET ACQUISITIONS.

"(a) IN GENERAL.—If a business entity transfers some or all of its assets, the consideration received for such assets shall be allocated among the assets transferred in the same manner as was required by section 1060. If the transferee and transferor agree in writing on the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferor and transferee unless the Secretary determines that such allocation (or fair market value) is not appropriate.

"(b) TAX CONSEQUENCES.—The tax consequences of an asset acquisition shall be determined in accordance with the rules of this chapter and shall be dependent upon allocations made under subsection (a). In general, consideration allocable to savings assets, such as stock in another business entity, would not be included in taxable receipts of the transferor and would not be a business purchase of the purchaser, but consideration allocable to the sale of tangible property and intangible property (other than savings assets) will constitute taxable receipts of the seller and a business purchase of the purchaser.

''(c) ELECTION TO TREAT ASSET ACQUISITION AS A STOCK ACQUISITION.—In the case of the sale of substantially all of the assets of a business entity or substantially all of the assets of a line of business or a separately standing business of a business entity, the transferee and transferor can jointly elect to treat the acquisition as if it were an acquisition of the stock of a business entity holding the assets so transferred. In such case, the rules of section 1624 shall apply.

''(d) AUTHORITY TO REQUIRE ALLOCATION AGREEMENT AND NOTICE TO THE SECRETARY.—If the Secretary determines that certain types of asset acquisitions have significant possibilities of tax avoidance, the Secretary may require—

''(1) parties to such types of acquisitions to enter into agreements allocating consideration,

''(2) parties to acquisitions involving certain kinds of assets to enter into agreements allocating part of the consideration to those assets, or

''(3) parties to certain acquisitions to report information to the Secretary.

''(e) ASSET ACQUISITION RULES DO NOT APPLY IF CONSIDERATION INCLUDES EQUITY IN PURCHASER.—

''(1) IN GENERAL.—If a business entity issues its own equity or equity in a subsidiary or other con-

trolled entity as part of the consideration for the transfer of assets to it, the transaction shall not be treated as an asset acquisition and the rules of section 1624 shall apply.

''(2) EQUITY.—For purposes of this subsection, equity means—

''(A) stock, in the case of a corporation,

''(B) partnership or similar interest, in the case of a partnership or limited liability company, and

''(C) an ownership interest or interest in profits in the case of any other business entity.

''SEC. 1624. MERGERS AND STOCK ACQUISITIONS.

''(a) MERGERS.—A merger of one business entity into another or two businesses entities into a third business entity or any other similar transaction shall have no direct consequences under the business tax. The surviving entity shall assume the tax attributes of the merged corporations, including any loss carryovers and credit carryovers.

''(b) STOCK ACQUISITION.—The acquisition of all or substantially all of the ownership interest in one business entity either for cash or in exchange for ownership in the acquiring entity or an entity controlled by the acquired

entity shall have no direct consequences under the business tax.

"SEC. 1625. SPIN-OFFS, SPLIT-OFFS, ETC.

"A spin-off, split-off or split-up of a business entity shall have no direct tax consequences under the business tax.

"SEC. 1626. ALLOCATION OF CERTAIN TAX ATTRIBUTES.

"The Secretary shall prescribe rules for allocation of loss carryovers in cases of substantial shifts of assets from one business entity to another business entity. Under such rules, a portion of a business entity's carryovers may be deemed transferred when assets are transferred.

"Subchapter D—Accounting Method Rules

"Sec. 1631. General accounting rules.
"Sec. 1632. Use of the cash method of accounting.
"Sec. 1633. Long-term contracts.
"Sec. 1634. Post-sale price adjustments and refunds.
"Sec. 1635. Bad debts.
"Sec. 1636. Transition rules.

"SEC. 1631. GENERAL ACCOUNTING RULES.

"(a) IN GENERAL.—Except as provided in section 1632, a business entity shall use an accrual method of accounting for purposes of determining the timing of recognition of taxable receipts and deduction of business purchases. All business purchases shall be deducted when incurred (in the case of a business entity using the accrual method of accounting) or when paid (in case of a business entity using the cash method of accounting) without re-

gard to whether the business purchases are for or relate to—

''(1) inventory,

''(2) assets with a useful life of more than one year, or

''(3) property that will be used to produce other property.

''(b) ECONOMIC PERFORMANCE.—For purposes of determining whether an amount has been incurred, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

''(c) CONSISTENT ACCOUNTING METHODS.—Except as otherwise expressly provided in this chapter, a business entity shall secure the consent of the Secretary before changing the method of accounting by which it determines gross profits. This provision shall not apply to changes required by the adoption of the business tax.

''SEC. 1632. USE OF THE CASH METHOD OF ACCOUNTING.

''(a) IN GENERAL.—A business entity that was permitted to use and used the cash method of accounting under the Internal Revenue Code of 1986 shall be permitted to continue to use the cash method of accounting.

''(b) NEW BUSINESS ENTITIES.—A new business entity shall be permitted to use the cash method of account-

ing if permitted to under regulations prescribed by the Secretary.

''(c) CHANGE OR EXPANSION OF BUSINESS.—Subsection (a) shall cease to apply to a business entity that changes or expands its business such that under regulations prescribed by the Secretary it is no longer eligible to use the cash method of accounting.

''(d) REGULATIONS.—

''(1) USE OF CASH METHOD.—The Secretary shall prescribe regulations defining which business entities may use the cash method of accounting. In general, those regulations shall be consistent with the rules under sections 447 and 448, except that all corporations shall be treated as C corporations were treated under those sections. The regulations shall not require a business entity described in subsection (a) to convert to the accrual method prior to January 1, 2008.

''(2) CHANGE IN ACCOUNTING METHOD.—The Secretary shall prescribe regulations to prevent double counting of taxable receipts and deductible expenses in the case of a change in accounting method.

''SEC. 1633. LONG-TERM CONTRACTS.

''(a) IN GENERAL.—In the case of a long-term contract—

''(1) CONTRACTOR EXPENSES.—The contractor shall be entitled to deduct its business purchases when paid or incurred.

''(2) CONTRACTOR RECEIPTS.—The contractor shall recognize taxable receipts—

''(A) in the case of a project in which the acquirer has no ownership interest in the project until delivery—

''(i) upon delivery of the project, in the case of an accrual basis contractor, or

''(ii) upon the later of delivery of the project or the receipt of payment, in the case of cash-basis contractor.

''(B) in the case of a project in which the acquirer obtains an ownership interest as the project is constructed—

''(i) when the contractor has the right to payments, in the case of an accrual basis contractor, or

''(ii) upon the later of when the contractor receives the cash or has the right to payments, in the case of a cash basis contractor.

''(3) ACQUIRER EXPENSES.—The acquirer that is a business entity shall be entitled to deduct its costs of the business purchase—

''(A) in the case of a cash-basis acquirer, at such time as a cash basis contractor would be required to treat the amounts paid as taxable receipts, or

''(B) in the case of an accrual-basis acquirer, at such time as an accrual basis contractor would be required to treat the amounts paid or due as taxable receipts.

''(b) RIGHT TO PAYMENTS.—

''(1) IN GENERAL.—A contractor shall be treated as having a right to payments with respect to a project at any time to the extent that the contractor would not be required to return payments received (or would be entitled to collect payments not yet received) if the project were terminated at such time by the contractor.

''(2) CONTRACTUAL PROVISIONS.—If a long-term contract includes a procedure for paying the contractor as work is completed (for example, by reason of a draw down from a trust account), the contractual provisions shall generally govern when a contractor has a right to payment.

''(3) PERCENTAGE COMPLETION METHOD OF ACCOUNTING.—If a long-term contract does not include a mechanism for paying the contractor as work is completed, the percentage-of-completion method of accounting shall be used to determine the timing of taxable receipts of the contractor and business purchases of the acquirer.

''(c) LONG-TERM CONTRACT.—

''(1) IN GENERAL.—'Long-term contract' means—

''(A) any contract that covers service or production through parts of two different calendar years if the contract includes a formal deposit and draw-down mechanism, and

''(B) any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable period of the contractor in which such contract is entered into.

''(2) EXCEPTION.—A contract for the manufacture of property shall not be treated as a long-term contract unless such contract involves the manufacture of—

''(A) any unique item of a type which is not normally included in the finished goods inventory of the taxpayer, or

''(B) any item which normally requires more than 12 calendar months to complete.

''(d) CONSISTENCY.—The Secretary may require business entities to file statements containing such information with respect to long-term contracts as the Secretary may prescribe to ensure consistency in reporting.

''(e) FOREIGN CONTRACTS.—This section shall not be construed to permit a deduction for a business purchase for the cost of property produced outside the United States pursuant to a long-term contract at any time prior to the import of such property into the United States.

''SEC. 1634. POST-SALE PRICE ADJUSTMENTS AND REFUNDS.

''(a) RECEIPT OF PRICE ADJUSTMENT.—In the case of a post-sale price adjustment attributable to a business purchase which was taken into account in computing gross profits for a prior taxable transaction, the amount of such adjustment shall be treated as a reduction or increase, as the case may be, in the cost of business purchases for the taxable period in which the adjustment is made or incurred.

''(b) ISSUANCE OF PRICE ADJUSTMENT.—In the case of a post-sale price adjustment attributable to a sale the receipts from which were taken into account in determining taxable receipts for a prior taxable transaction, the amount of such adjustment shall be treated as a reduction or increase, as the case may be, in taxable receipts for the taxable period in which the adjustment is made or incurred.

''(c) POST-SALE PRICE ADJUSTMENT.—'Post-sale price adjustment' means a refund, rebate, or other price allowance attributable to a sale of property or services or an upward adjustment in price that was not previously taken into account under the business entity's method of accounting.

"SEC. 1635. BAD DEBTS.

''(a) SELLER.—If an amount owed to an accrual basis business entity for property or services sold—

''(1) was taken into account as a taxable receipt in a prior taxable period, and

''(2) becomes wholly or partially uncollectible during the taxable period, then the seller shall treat the amount as a reduction in taxable receipts for the taxable period in which it becomes wholly or partially uncollectible.

''(b) NOTICE REQUIREMENT.—No reduction shall be allowed under subsection (a) unless the seller notifies the purchaser of the amount which the seller has treated as wholly or partially uncollectible.

''(c) SUBSEQUENT COLLECTION.—If an amount which was treated as uncollectible under subsection (a) is subsequently collected, it shall be treated as a taxable receipt when collected.

''(d) PURCHASER.—If a purchaser receives notice under subsection (b) from a seller and the purchaser has treated the amount labeled uncollectible as a business purchase in a prior taxable period, then the purchaser shall treat such amount as a reduction in the cost of business purchases in the taxable period to which the notice relates. If the purchaser subsequently repays such amount, the repayment shall constitute the cost of a business purchase.

''SEC. 1636. TRANSITION RULES.

''(a) NO DOUBLE DEDUCTIONS.—A business entity shall not be entitled to treat as a 'cost of business purchase' any amount that the business entity deducted in computing taxable income under the income tax in effect prior the effective date of the business tax.

''(b) NO DOUBLE INCLUSION.—A business entity shall not be required to include in taxable receipts any receipt that the business entity took into account in com-

puting taxable income under the income tax in effect prior to the effect date of the business tax.

''(c) NO LOSS OF DEDUCTION.—An expense which—

''(1) a business entity would have been able to deduct as a cost of a business purchase in an accounting period before the effective date of the business tax if the business tax had been in effect in such period, and

''(2) the business entity would have been able to deduct as an expense in computing taxable income in a period after the business tax is effective if the income tax had continued in effect, shall be treated as a cost of a business purchase incurred or paid at the time that it would have been paid or incurred under the income tax if the income tax had continued in effect. This subsection shall not apply to any amount which is to be taken into account under subchapter N (relating to amortization of transition basis, inventory costs, and safe harbor leases), any amounts which would have been deducted under the income tax through loss carryover deductions, or any deductions deferred by the uniform capitalization rules under section 263A.

''(d) ALL TAXABLE RECEIPTS TAXED.—A receipt which—

''(1) a business entity would have been required to treat as a taxable receipt in an accounting period before the effective date of the business tax if the business tax had been in effect in such period, and

''(2) the business entity would have been required to include in gross income in a period after the business tax is effective if the income tax had continued in effect

shall be treated as a taxable receipt at the time that it would have been included in income if the income tax had continued in effect.

''Subchapter E—Land and Rental Property

''Sec. 1641. No deduction for land purchased for nonbusiness use.
''Sec. 1642. Taxable receipts for land held for nonbusiness use.
''Sec. 1643. Certain rental property.

''SEC. 1641. NO DEDUCTION FOR LAND PURCHASED FOR NONBUSINESS USE.

''(a) IN GENERAL.—The acquisition of unimproved land shall not constitute a business purchase if the unimproved land is not acquired to be used in a business activity or if the land is acquired for—

''(1) speculation,

''(2) development (including subdivision), or

''(3) temporary leasing or other use not commensurate with the value of the land,

''(4) indefinite future use in a business activity, or

''(5) use in compensating employees.

''(b) FUTURE USE IN BUSINESS ACTIVITY.—Unimproved land will not be considered held for 'indefinite future use in a business activity' if promptly upon acquisition, the purchaser or the lessee begins construction of improvements on the land (other than improvements, such as paving or sewage lines, intended for indefinite future development) that will be used in a business activity. Such improvement must be commensurate with the value of the land.

''(c) UNIMPROVED LAND.—'Unimproved land' means—

''(1) land with no buildings on it,

''(2) land with improvements if the value of the improvements is relatively small in comparison to the value of the land and it is anticipated that the improvements will be demolished and not used,

''(3) land in excess of the amount reasonably needed for the buildings located on it.

''(d) CONVERSION TO BUSINESS USE.—If the acquisition of land is not treated as a business purchase by reason of subsection (a) and the land is subsequently used in a manner for which it could have been treated as a business purchase, the cost of the land will be treated as a business purchase when the improvements on the land

are placed in service (or in the case of construction for sale, substantially completed and advertised for sale).

"SEC. 1642. TAXABLE RECEIPTS FROM SALE OF LAND HELD FOR NONBUSINESS USE.

"(a) TAX BASIS.—A business entity shall have a tax basis in land equal to the cost of the land if such cost is not deductible by reason of section 1641(a) and the land has not been converted to business use for purposes of section 1641(d).

"(b) TAXABLE RECEIPTS OF A LAND SALE.—The taxable receipts from the sale of land (or portion thereof) in which a business entity has a tax basis by reason of subsection (a) shall be the amount by which the proceeds exceed the basis of such land (or portion thereof).

"SEC. 1643. CERTAIN RENTAL PROPERTY.

"(a) IN GENERAL.—Except as provided in subsection (b), the activity of rental of real estate is a business activity to which the business tax applies.

"(b) RENTAL PROPERTY BECOMES NONRENTAL PROPERTY.—If property which is considered rental property for purposes of subsection (a) in one taxable period ceases to be rental property in the following taxable period, the property (and any associated debt) shall be treated as distributed by the business entity to its owners. Section 1622(a) shall apply to such distribution.

"Subchapter F—Insurance and Financial Products

"Sec. 1651. General rules.
"Sec. 1652. Fees for financial intermediation services.

"SEC. 1651. GENERAL RULES.

"(a) TAXABLE RECEIPTS.—Except in the case of a financial intermediation business, taxable receipts do not include financial receipts (as defined in section 1662).

"(b) BUSINESS PURCHASES.—Except in the case of a financial intermediation business, business purchases do not include the cost of financial instruments or payments for use of money or capital, other than fees for financial intermediation services.

"SEC. 1652. FEES FOR FINANCIAL INTERMEDIATION SERVICES.

"(a) BUSINESS PURCHASE.—Business purchases include explicit fees and implicit fees for financial intermediation services (except to the extent that such fees are for services treated as performed outside the United States and not imported into the United States or for services treated as exported.).

"(b) FINANCIAL INTERMEDIATION SERVICES.—Except as provided in subchapter G, the term 'financial intermediation service' shall be determined in accordance with regulations promulgated by the Secretary.

"Subchapter G—Financial Intermediation and Financial Institutions

"Sec. 1661. Activities constituting a financial intermediation business.
"Sec. 1662. General rule for taxation.
"Sec. 1663. Special rule for banks.
"Sec. 1664. Insurance companies.
"Sec. 1665. Financial pass-through entities.

"SEC. 1661. ACTIVITIES CONSTITUTING A FINANCIAL INTERMEDIATION BUSINESS.

"(a) FINANCIAL INTERMEDIATION BUSINESS.—The providing of financial intermediation services shall be considered a business activity. The gross profit of a business entity providing financial intermediation services shall be determined by taking into account the rules of this subchapter.

"(b) SEPARATE BUSINESS ACTIVITY.—The provision of financial intermediation services for unrelated persons shall be considered a separate business activity and a business shall be considered a separate entity with respect to such activity. An entity engaging in such business is referred to in this chapter as a 'financial intermediation business'.

"(c) DEFINITIONS.—

"(1) FINANCIAL INTERMEDIATION SERVICES.—'Financial intermediation services' include—

"(A) lending services,

"(B) insurance services,

''(C) market-making and dealer services, and

''(D) any other service provided as business activity in which a person acts as an intermediary in—

''(i) the transfer of property, services, or financial assets, liabilities, risks or instruments (or income or expense derived therefrom) between two or more persons, or

''(ii) the pooling of economic risk among other persons

and derives all or a portion of such person's gross receipts from streams of income or expense, discounts, or other financial flows associated with the matter with respect to which such person is acting as an intermediary.

''(2) LENDING SERVICES.—'Lending services' means the regular making of loans and providing credit to, or taking deposits from customers, but does not include an installment or delayed payment arrangement provided by a seller of property or services under which additional charges or fees are imposed by the seller for the late payment.

''(3) MARKET-MAKING OR DEALER SERVICES.—'Market-making or dealer services' means services provided by a person who—

''(A) regularly purchases financial instruments from or sells financial instruments to customers in the ordinary course of a trade or business,

''(B) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in financial instruments with customers in the ordinary course of a trade or business.

"SEC. 1662. GENERAL RULE FOR TAXATION.

''(a) IN GENERAL.—In the case of a financial intermediation business, gross profits shall be computed by—

''(1) substituting financial receipts for taxable receipts, and

''(2) including financial expenses as business purchases.

''(b) DEFINITIONS.—

''(1) FINANCIAL RECEIPTS.—'Financial receipts' means all receipts other than amounts received as contributions to capital.

''(2) FINANCIAL EXPENSES.—'Financial expenses' include—

"(A) payments for principal and interest that is properly allocable to the provision of financial intermediation services,

"(B) the cost of and payments under financial instruments (other than financial instruments in the person subject to the tax imposed under this chapter and any person related to such person),

"(C) claims and cash surrender values paid in connection with insurance or reinsurance services, and

"(D) amounts paid for reinsurance.

"(3) FINANCIAL INSTRUMENT.—'Financial instrument' means any—

"(A) share of stock in a corporation,

"(B) equity ownership in any widely held or publicly traded partnership, trust, or other business entity,

"(C) note, bond, debenture, or other evidence of indebtedness,

"(D) interest rate, currency, or equity notional principal contract,

"(E) evidence or interest in, or a derivative financial instrument in, any financial instrument described in subparagraph (A), (B), (C),

or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a financial instrument or currency, and

''(F) a position which—

''(i) is not a financial instrument described in subparagraph (A), (B), (C), (D) or (E),

''(ii) is a hedge with respect to such a financial instrument, and

''(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into.

''(c) INTERNATIONAL MATTERS.—For purposes of this section in the case of a financial intermediation business with activity in and outside the United States—

''(1) INCLUSION REGARDLESS OF SOURCE.—

''(A) Financial receipts shall be determined without regard to whether they are received for property or service provided in or outside the United States, except that financial receipts do not include amounts that—

''(i) are not taxable receipts (as determined without regard to this section), but

''(ii) would have been taxable receipts (as determined without regard to this section) if they had been received for services or property in the United States.

''(B) Financial expenses shall be determined without regard to whether they are received for property or services acquired in or outside the United States.

''(2) ALLOCATION.—Under regulations prescribed by the Secretary, gross profits (as determined without regard to this paragraph) shall be reduced by the amount of financial intermediation gross profit attributable to financial intermediation activity provided outside the United States.

''(3) GROSS PROFIT ATTRIBUTABLE TO FINANCIAL INTERMEDIATION ACTIVITY.—'Gross profits attributable to financial intermediation activity' means the excess of—

''(A) gross profits as determined under this section (but without regard to paragraph (2)), over

''(B) gross profits as determined without regard to this subchapter.

"SEC. 1663. SPECIAL RULES FOR BANKS.

"(a) IN GENERAL.—In the case of a bank, gross profits shall be determined in accordance with section 1662, except that—

"(1) FINANCIAL RECEIPTS.—Financial receipts shall include only—

"(A) taxable receipts (as determined without regard to this subchapter),

"(B) interest on loans made or acquired by the bank,

"(C) gain on the sale of loans,

"(D) discount points received, and

"(E) any explicit fees for financial or fiduciary services not included in subparagraphs (A) through (E).

"(2) FINANCIAL EXPENSES.—Financial expenses shall include only—

"(A) interest paid to depositors and on other funds borrowed by the bank, and

"(B) reasonable additions to reserves for bad debts.

"(3) FORECLOSURE PROPERTY.—Gross profits shall properly take into account proceeds from the operation or sale of foreclosure property.

"(b) BANK.—

''(1) IN GENERAL.—'Bank' means a bank or trust company incorporated and doing business under the laws of the United States, the District of Columbia, or any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those exercised by national banks under the authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions or credit unions. Such term includes domestic building and loan associations and credit unions.

''(2) OTHER ACTIVITIES.—If a bank is engaged in significant amounts of activities other than those described in paragraph (1), the bank shall be considered as a separate business entity with respect to such other activity.

''SEC. 1664. INSURANCE COMPANIES.

''(a) IN GENERAL.—In the case of companies providing insurance services, gross profits shall be determined in accordance with section 1662, except—

''(1) subsection (c) of section 1662 (relating to international operations) shall not apply, and

''(2) the rules of subchapter J (sourcing rules) shall apply to determine financial receipts and financial expenses.

''(b) RESULT INCONSISTENT WITH STATUTORY INTENT.—If an insurance company determines that the application of subsection (a) produces results inconsistent with the territorial approach of the business tax, it may apply to the Secretary for permission to apply section 1662(c) in lieu of subsection (a).

''SEC. 1665. FINANCIAL PASS-THROUGH ENTITIES.

''(a) IN GENERAL.—In the case of a financial pass-thru entity, gross profits shall be determined in accordance with section 1662, except—

''(1) financial receipts shall include contributions to capital,

''(2) financial expenses shall include—

''(A) distributions to persons holding interests in the pass-thru entity,

''(B) investments in related entities (including wholly owned entities) engaging in real estate investment.

''(b) PASS-THRU ENTITY.—'Pass-thru entity' means a business entity that is intended to serve as a conduit. The Secretary shall prescribe regulations defining pass-thru entity.

"Subchapter H—Tax-Exempt Organizations

"Sec. 1671. Exemption for governmental entities.
"Sec. 1672. Tax-exempt organizations.
"Sec. 1673. Tax on unrelated business activity.
"Sec. 1674. Unrelated business activity.

"SEC. 1671. EXEMPTION FOR GOVERNMENTAL ENTITIES.

"(a) STATES.—Except as provided in section 1672, a state, political subdivision thereof and the District of Columbia shall be exempt from taxation under this chapter on any gross profits derived from the exercise of any essential governmental function.

"(b) POSSESSIONS.—The government of any possession of the United States shall be exempt from taxation under this chapter on any gross profits earned by the possession.

"SEC. 1672. TAX-EXEMPT ORGANIZATIONS.

"(a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) or (d) of section 501 and exempt from tax under section 501(a) shall be exempt from taxation under this chapter.

"(b) TAX ON UNRELATED BUSINESS ACTIVITY.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in sections 1675 and 1676, but shall be considered a tax-exempt organization for purposes of any law that refers to tax-exempt organizations.

"SEC. 1673. TAX ON UNRELATED BUSINESS ACTIVITY.

"(a) IN GENERAL.—Each organization described in subsection (b) shall be subject to the Business Consumption Tax under section 1601 on its gross profits from its unrelated business activity.

"(b) ORGANIZATIONS SUBJECT TO TAX.—This section shall apply to—

"(1) organizations exempt from the business tax under section 1672, other than instrumentalities of the United States, and

"(2) colleges and universities which are instrumentalities of any government and corporations owned by one or more such colleges or universities.

"SEC. 1674. UNRELATED BUSINESS ACTIVITY.

"(a) IN GENERAL.—'Unrelated business activity' means any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, except that such term does not include any trade or business—

"(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

''(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 1673(b), by the organization primarily for the convenience of its members, students, patients, officers, or employees, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

''(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

''(b) ADVERTISING, ETC., ACTIVITIES.—For purposes of this section, 'trade or business' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall

be excluded from such classification merely because it does not result in profit.

''(c) TRADE OR BUSINESS.—

''(1) CERTAIN BUSINESS ACTIVITIES.—An activity shall not be considered a 'trade or business' solely because the activity is a business activity (such as certain passive rental activity) that would be subject to the business tax if conducted by a business entity other than a tax-exempt organization.

''(2) REGULATIONS.—The Secretary shall prescribe regulations defining a 'trade or business.' Such regulations shall be consistent with the provisions under sections 511 through 513, except to the extent such provisions are inconsistent with other principles of the business tax.

''(3) TRADE SHOWS.—The conduct of trade shows and conventions shall not be excluded from the definition of trade or business.

"Subchapter I—Cooperatives

''Sec. 1681. Patronage dividends of cooperatives.

"SEC. 1681. PATRONAGE DIVIDENDS OF COOPERATIVES.

''(a) PATRONAGE DIVIDENDS PAID BY SUPPLY COOPERATIVES.—A qualified patronage dividend paid by a supply cooperative to a patron shall be treated as if it is

a refund of a portion of the amounts paid by the patron for goods, services, or use of capital.

''(b) PATRONAGE DIVIDENDS PAID BY MARKETING COOPERATIVES.—A qualified patronage dividend paid to a patron by a marketing cooperative shall be treated as an upward price adjustment in the amount received by the patron for its goods marketed by the cooperative.

''(c) DIVIDEND TREATMENT.—Only the portion of a patronage dividend that is not a qualified patronage dividend shall be treated as a dividend under this chapter.

''(d) REGULATIONS.—The Secretary shall prescribe regulations for the application of this section. The regulations shall generally be consistent with subchapter T of chapter 1 except to the extent that such rules are inconsistent with provisions of this chapter.

''Subchapter J—Sourcing Rules

''Sec. 1691. Exports of property or services.
''Sec. 1692. Imports of property or services.
''Sec. 1693. Import or export of services.
''Sec. 1694. International transportation services.
''Sec. 1695. International communications.
''Sec. 1696. Insurance.
''Sec. 1697. Banking services.

''SEC. 1691. EXPORTS OF PROPERTY OR SERVICES.

''(a) GENERAL RULE.—Taxable receipts do not include amounts received by the exporter thereof for property or services exported from the United States for use or consumption outside the United States.

''(b) EXPORT THROUGH NONBUSINESS ENTITY.—For purposes of subsection (a), if property or services are sold to a governmental entity or a tax-exempt organization for export and are exported other than in an activity of such entity which is subject to the business tax, then the seller of such property or services is deemed to be the exporter thereof.

"SEC. 1692. IMPORTS OF PROPERTY OR SERVICES.

''(a) IN GENERAL.—The import of property or services for consumption in the United States shall constitute a business purchase if such property or service is to be used in a business activity in the United States. Property being held for sale or retail by a business entity that is in the business of selling goods shall be considered held for 'use in a business activity'.

''(b) AMOUNT OF BUSINESS PURCHASE.—

''(1) IN GENERAL.—The cost of business purchases with respect to the import of property or services for use or consumption in the United States is the customs value, price or other amount used for purposes of determining the import tax under section 1701 or section 1702.

''(2) IMPORT TAX.—The cost of business purchases does not include any import tax paid. No deduction shall be allowed with respect to property or

service imported by a business entity unless the import tax is paid with respect to such import.

"SEC. 1693. IMPORT OR EXPORT OF SERVICES.

"(a) IN GENERAL.—Except as otherwise provided in this subchapter or in rules prescribed under subchapter G (relating to financial intermediation business), services shall not be treated as imported or exported from the location in which they are performed.

"(b) IMPORT OF SERVICES.—A business entity shall be treated as importing a service if—

"(1) the entire benefit of the service will be realized in the United States, and

"(2) the benefit will be realized in connection with the United States business activities of the business entity.

"(c) EXPORT OF SERVICES.—A business will be treated as exporting a service if—

"(1) the entire benefit of the service will be realized outside of the United States, and

"(2) the benefit will be realized solely in connection with the activities of the purchaser occurring outside the United States.

"(d) SERVICES ACQUIRED FROM SERVICE PROVIDER THAT PROVIDES SERVICES IN AND OUTSIDE THE UNITED STATES.—

''(1) IN GENERAL.—If a business entity acquires services from a service provider that provides services both in and outside the United States and the service provider shows on the invoice where the services are provided—

''(A) the business entity shall treat the services as provided where stated on the invoice, and

''(B) the service provider shall treat as taxable receipts any services listed as provided in the United States.

''(2) NO INVOICE.—If a business entity acquires services from a service provider that provides services both in and outside the United States and the service provider does not show on an invoice where such services are provided—

''(A) the business entity shall treat the services as if provided in the location to which payment is sent, and

''(B) the service provider shall treat as taxable receipts any payments received in the United States.

''SEC. 1694. INTERNATIONAL TRANSPORTATION SERVICES.

''(a) TRANSPORTATION OF PROPERTY.—

''(1) TAXABLE RECEIPTS.—

''(A) EXPORTS.—Taxable receipts do not include receipts from the transportation of property exported from the United States.

''(B) IMPORTS.—Taxable receipts include receipts from transportation of property imported into the United States only if such costs are not taken into account in determining the import tax.

''(C) PRESUMPTIONS.—The Secretary shall prescribe regulations describing situations in which a transporter of property must presume that no import tax has been paid on the cost of its services.

''(2) BUSINESS PURCHASES.—

''(A) EXPORTS.—Business purchases do not include amounts paid or incurred for the cost of transportation of property exported from the United States.

''(B) IMPORTS.—Amounts paid or incurred for transportation of goods imported into the United States, shall constitute a cost of business purchase only to the extent that they are taken into account in determining the customs value for purposes of section 1701(a) (relating to the import tax).

''(b) TRANSPORTATION OF PASSENGERS.—

''(1) TAXABLE RECEIPTS.—Taxable receipts—

''(A) include receipts from the transportation of passengers from the United States to a destination outside the United States, but

''(B) do not include receipts from the transportation of passengers from outside the United States to a destination in the United States.

''(2) BUSINESS PURCHASES.—Business purchases—

''(A) include amounts paid or incurred in a business activity for the transportation of passengers from the United States to a destination outside the United States, but

''(B) do not include amounts paid or incurred for transportation of passengers from outside the United States to a destination in the United States.

''(3) SIMPLIFYING RULES.—The Secretary may provide rules that simplify this subsection, including rules under which—

''(A) half of receipts attributable to transportation to or from the United States are treated as taxable receipts,

''(B) half of the cost for business trips to and from the United States are treated as business purchases, and

''(C) all transportation expenses of a business entity that has no regular business outside the United States are treated as business purchases.

''SEC. 1695. INTERNATIONAL COMMUNICATIONS.

''(a) IN GENERAL.—For purposes of section 1692, communications services shall be treated as provided at the point of origin of the communications and shall not be treated as imported or exported.

''(b) COMMUNICATIONS SERVICES.—Communications services include—

''(1) telephone communications services,

''(2) courier services (except in the case of transportation of property that is imported or exported),

''(3) satellite transmission services,

''(4) telegraph services,

''(5) facsimile transmission services, and

''(6) other similar services.

''SEC. 1696. INSURANCE.

''(a) IN GENERAL.—Insurance services will be treated as provided at the location of the insurance company

providing the services. Except as the Secretary may prescribe by regulations, insurance companies will be treated as providing services at the location to which insurance payments are made.

''(b) INSURED RISKS IN THE UNITED STATES.—If insurance services are provided outside the United States and the insured risk is located in the United States—

''(1) the insurance service shall be treated as imported,

''(2) the insurance premiums shall be subject to the import tax, and

''(3) payments of insurance benefits shall not be treated as imported.

''(c) INSURED RISK OUTSIDE THE UNITED STATES.—If insurance services are provided inside the United States and the insured risk is located outside the United States—

''(1) insurance services shall be treated as exported,

''(2) payments of insurance benefits shall be treated as payments for services outside the United States, and shall not be deducted as business purchases.

''(d) INSURANCE SERVICES.—Insurance services means the provision of insurance and services related to

insurance other than insurance that is treated as a savings asset.

"SEC. 1697. BANKING SERVICES.

"The Secretary shall prescribe regulations on the location of banking services and the extent to which such services are to be treated as imported or exported.

"Subchapter K—Import Tax

"Sec. 1701. Imposition of tax on property.
"Sec. 1702. Imposition of tax on import of services.
"Sec. 1703. General rules for the import tax.

"SEC. 1701. IMPOSITION OF TAX ON PROPERTY.

"(a) GENERAL RULE.—There is hereby imposed a tax equal to 8.5 percent of the customs value of all property entered into the United States for consumption, use or warehousing.

"(b) LIABILITY FOR TAX.—The tax imposed on the import of property by subsection (a) shall be paid by the person entering the property into the United States for consumption, use or warehousing. Such tax shall be due and payable at the time of import.

"(c) IMPORTS OF PREVIOUSLY EXPORTED PROPERTY.—In the case of any article that is classified under a heading or subheading of subchapter I or II of chapter 98 of the Tariff Schedules of the United States, the tax under this section shall be imposed only on that portion of the customs value of such article that is dutiable under such heading or subheading.

''(d) IMPORTS FOR PERSONAL CONSUMPTION.—The import tax imposed by this section shall not apply to any article entered into the United States duty free under subchapters I through VII of chapter 98 of the Tariff Schedules of the United States.

''SEC. 1702. IMPOSITION OF TAX ON IMPORT OF SERVICES.

''(a) GENERAL RULE.—There is hereby imposed a tax equal to 8.5 percent of the cost of all services treated as imported into the United States during the taxable period of the service recipient.

''(b) LIABILITY FOR THE TAX.—The tax on the import of services imposed by subsection (a) shall be paid by the person who receives the imported services. The tax shall be payable as if it were an addition to the business tax imposed by section 1601.

''(c) IMPORTED SERVICES.—For purposes of this section, services shall be treated as imported if they are treated as imported under section 1693 (general rules on import of services) or section 1696 (related to insurance).

''SEC. 1703. GENERAL RULES FOR THE IMPORT TAX.

'' 'Import tax' means the tax imposed by section 1701 on the import of property and the tax imposed by section 1702 on the import of services.

''Subchapter L—Transition Rules

''Sec. 1711. Amortization of transition basis.

"SEC. 1711. AMORTIZATION OF TRANSITION BASIS.

"(a) TRANSITION BASIS DEDUCTION.—The 'transition basis deduction' for a taxable period is the sum of the amortization allowance determined under this section for the taxable period.

"(b) TREATMENT OF INTEREST FLOWS.—Interest flows between non-financial businesses shall be treated as under current law, phased out over 5 years.

"(c) AMORTIZATION RULES.—The amortization allowance to all property placed in service before the effective date of this section shall be the lesser of—

"(1) the amortization period under current law remaining on such date, or

"(2) a 5-year ratable period beginning on such date.

"Subchapter M—Rules for Administration, Consolidated Returns

"Sec. 1721. Returns, due dates, etc.
"Sec. 1722. Consolidated returns.
"Sec. 1723. Seller liable for tax.
"Sec. 1724. Tax invoices.
"Sec. 1725. Time for filing return and claiming credit; deposits of tax.
"Sec. 1726. Secretary to be notified of certain events.
"Sec. 1727. Regulations.

"SEC. 1721. RETURNS, DUE DATES, ETC.

"(a) IN GENERAL.—Until subtitle F is amended to reflect the adoption of this chapter, the rules of subtitle F relating to C corporations shall apply to business entities with respect to—

''(1) returns and records;

''(2) time and place for paying tax;

''(3) assessment of taxes;

''(4) collections and liens;

''(5) abatements, credits, and refunds;

''(6) interest on underpayments and overpayments;

''(7) additions to tax and penalties;

''(8) closing agreements and compromises;

''(9) crimes;

''(10) judicial proceedings;

''(11) discovery of liability and enforcement; and

''(12) estimated taxes.

''(b) INDIVIDUALS ENGAGING IN BUSINESS ACTIVITIES.—Under rules prescribed by the Secretary, individuals engaging in business activities on their own or with their spouses shall be permitted to file their business tax returns with their individual tax returns and shall be subject to estimated tax rules for individual income tax returns.

''SEC. 1722. CONSOLIDATED RETURNS.

''(a) IN GENERAL.—Business entities may file consolidated returns of business tax if they would have been permitted to file consolidated returns under section 1501

and such section were applied by treating each business entity as a corporation and its owners or partners as shareholders.

''(b) FINANCIAL INSTITUTIONS.—Financial intermediation businesses may be included in consolidated returns, but each financial intermediation business must compute its gross profits separately.

''(c) INTERCOMPANY TRANSACTIONS.—In computing the gross profits of a consolidated group, intercompany transactions can be taken into account, or at the election of the filer, be disregarded (except in the case of transactions with financial intermediation businesses).

''SEC. 1723. SELLER LIABLE FOR TAX.

''The person selling the property or services shall be liable for the tax imposed by section 1601.

''SEC. 1724. TAX INVOICES.

''(a) SELLER MUST GIVE PURCHASER TAX INVOICE.—Any taxable person engaging in a taxable transaction shall give the purchaser a tax invoice with respect to such transaction if the seller has reason to believe that the purchaser is a taxable person.

''(b) CONTENT OF INVOICE.—The tax invoice required by subsection (a) with respect to any transaction shall set forth—

''(1) the name and identification number of the seller,

''(2) the name of the purchaser,

''(3) the amount of the tax imposed by section 1601, and

''(4) such other information as may be prescribed by regulations.

''(c) NO CREDIT WITHOUT INVOICE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a purchaser may claim a credit with respect to a transaction only if the purchaser—

''(A) has received from the seller and has in the purchaser's possession a tax invoice which meets the requirements of subsection (b), and

''(B) is named as the purchaser in such invoice.

''(2) EMPLOYEES OR OTHER AGENTS NAMED IN INVOICES.—To the extent provided in regulations, the naming of an employee or other agent of the purchaser shall be treated as the naming of the purchaser.

''(3) WAIVER OF INVOICE REQUIREMENT IN CERTAIN CASES.—To the extent provided in regulations, paragraph (1) shall not apply—

"(A) where the purchaser without fault on the purchaser's part fails to receive or fails to have in the purchaser's possession a tax invoice,

"(B) to a taxable transaction (or category of transactions) where—

"(i) the amount involved is de minimis, or

"(ii) the information required by subsection (b) can be reliably established by sampling or by another method and can be adequately documented.

"(d) TIME FOR FURNISHING INVOICE.—Any invoice required to be furnished by subsection (a) with respect to any transaction shall be furnished not later than 15 business days after the tax point for such transaction.

"SEC. 1725. TIME FOR FILING RETURN AND CLAIMING CREDIT; DEPOSITS OF TAX.

"(a) FILING RETURN.—Before the first day of the second calendar month beginning after the close of each taxable period, each taxable person shall file a return of the tax imposed by section 1601 on taxable transactions having a tax point within such taxable period.

"(b) CREDIT ALLOWED FOR TAXABLE PERIOD IN WHICH PURCHASER RECEIVES INVOICE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a credit allowable by section 1606 with respect to a transaction may be allowed only for the first taxable period by the close of which the taxpayer—

''(A) has paid or accrued amounts properly allocable to the tax imposed by section 1601 with respect to such transaction, and

''(B) has a tax invoice (or equivalent) with respect to such transaction.

''(2) USE FOR LATER PERIOD.—Under regulations, a credit allowable by section 1606 may be allowed for a period after the period set forth in paragraph (1).

''(c) TAXABLE PERIOD.—For purposes of this chapter—

''(1) IN GENERAL.—The term 'taxable period' means a calendar quarter.

''(2) EXCEPTION.—

''(A) ELECTION OF 1-MONTH PERIOD.—If the taxpayer so elects, the term 'taxable period' means a calendar month.

''(B) OTHER PERIODS.—To the extent provided in regulations, the term 'taxable period'

includes a period, other than a calendar quarter or month, selected by the taxpayer.

''(d) TAX POINT.—For purposes of this chapter—

''(1) CHAPTER 1 RULES WITH RESPECT TO SELLER GOVERN.—Except as provided in paragraph (2), the tax point for any sale of property or services is the earlier of—

''(A) the time (or times) when any income from the sale should be treated by the seller as received or accrued (or any loss should be taken into account by the seller) for purposes of chapter 1, or

''(B) the time (or times) when the seller receives payment for the sale.

''(2) IMPORTS.—In the case of the importing of property, the tax point is when the property is entered, or withdrawn from warehouse, for consumption in the United States.

''(e) MONTHLY DEPOSITS REQUIRED.—To the extent provided in regulations, monthly deposits may be required of the estimated liability for any taxable period for the tax imposed by section 1601.

"SEC. 1726. SECRETARY TO BE NOTIFIED OF CERTAIN EVENTS.

''To the extent provided in regulations, each person engaged in a business shall notify the Secretary (at such time or times as may be prescribed by such regulations) of any change in the form in which a business is conducted or any other change which might affect the liability for the tax imposed by section 1601 or the amount of such tax or any credit against such tax, or otherwise affect the administration of such tax in the case of such person.

"SEC. 1727. REGULATIONS.

''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this chapter.

"Subchapter N—Definitions and Rules of Application

''Sec. 1731. Definitions.
''Sec. 1732. Rules of application.

"SEC. 1731. DEFINITIONS.

''If a term that is used but not defined in this chapter or in section 7701 is defined in chapter 1, the definition in chapter 1 shall apply except if manifestly incompatible with the intent of the provision in which the term is used.

"SEC. 1732. RULES OF APPLICATION.

"(a) DEFINITIONS.—Any definition included in this chapter shall apply for all purposes of this chapter unless—

"(1) such definition is limited to the purposes of a particular chapter, section, or subsection, or

"(2) the definition clearly would not be applicable in a particular context.

"(b) INTERPRETATIONS CONSISTENT WITH INTERNAL REVENUE CODE OF 1986.—Terms not defined in this chapter, chapter 1 or section 7701, but defined elsewhere in this title, shall be interpreted in a manner consistent with this title, except to the extent such interpretation would be inconsistent with the principles and purposes of this chapter.".

(b) The amendments made by this section shall be effective on January 1, 2009, except to the extent otherwise specifically provided in the text of such amendments.

SEC. 603. REPEAL OF CHAPTER 6.

Chapter 6 of the Code (relating to consolidated returns) is repealed as of January 1, 2008.

SEC. 604. REVISIONS TO THE CODE.

Not later than January 1, 2009, the Secretary shall submit to Congress proposed changes in the Internal Revenue Code of 1986 that—

(1) revise subtitles C through J of such Code to fully reflect the amendments to subtitle A of such Code made by this title and the repeal of subtitle B of such Code,

(2) include statutory definitions or rules in cases where the Secretary concludes that the definitions or rules cannot or should not be addressed by regulation,

(3) revise chapter 2 of such Code (relating to the self-employment tax) to conform to changes made by this title, and

(4) revise chapter 3 of such Code (relating to withholding on nonresident aliens and foreign corporations) to reflect changes made by this title.

SEC. 605. APPLICATION OF SUBTITLE F.

Until such time as subtitle F of the Internal Revenue Code of 1986 is amended to reflect the amendments made by this title, the provisions of such subtitle F shall be treated as generally applying to chapter 7 of subtitle A of such Code—

(1) without regard to specific cross references,

(2) without regard to provisions relating to partnerships, and

(3) as if the business tax under such chapter 7 were the corporate income tax and all business enti-

ties were corporations (except for purposes of collection, in which case the owners of noncorporate entities shall be obligated for taxes owned by the entities to the same extent as they would if the entity owed the tax prior to the amendment of the Code).

SEC. 606. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall be effective on and after January 1, 2009, with respect to tax years beginning on such date.

(b) SPECIAL RULES FOR BUSINESSES WITH 52–53 WEEK YEAR.—If a business uses a 52–53 week taxable period the amendments made by this title shall apply to the business with respect to its tax year beginning in the last week in December except with respect to any transactions occurring during 2008 that were structured to take advantage of the application of this title to such business at a time when this title did not apply to other businesses or to individuals.

TITLE VII—BUDGET ENFORCEMENT

SEC. 701. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the ''Budget Control Act of 2008''.

(b) TABLE OF CONTENTS.—

Sec. 701. Short title; table of contents; definitions.
Sec. 702. Long-term projections.
Sec. 703. Preview spending reduction order.
Sec. 704. Final spending reduction order.
Sec. 705. Eliminating excess spending amounts.
Sec. 706. Special procedures.
Sec. 707. Suspension in the event of war or low growth.
Sec. 708. Alternate spending reduction legislation in the House of Representatives.
Sec. 709. Alternate spending reduction legislation in the Senate.
Sec. 710. General provisions.
Sec. 711. Effective date.

(c) DEFINITIONS.—As used in this part:

(1) The terms ''budget authority'' and ''outlays'' have the meanings given to such terms in section 3 of the Congressional Budget Act of 1974.

(2) The term ''budgetary resources'' means new budget authority, budget authority, unobligated balances, direct spending authority, and obligation limitations.

(3) The term ''spending reduction'' refers to the cancellation of budgetary resources provided by discretionary appropriations or direct spending.

(4) The term ''discretionary appropriations'' means budgetary resources provided in appropriation Acts.

(5) The term ''direct spending'' means budget resources provided in law other than appropriation Acts;

(6) The term ''gross domestic product'', with respect to any fiscal year, means the gross national

product during such fiscal year consistent with Department of Commerce definitions.

(7) The term ''account'' means an item for which appropriations are made in any appropriation Act and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the President's budget.

(8) The term ''budget year'' means, with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.

(9) The term ''current year'' means, with respect to a budget year, the fiscal year that immediately precedes that budget year.

(10) The term ''OMB'' means the Director of the Office of Management and Budget.

(11) The term ''CBO'' means the Director of the Congressional Budget Office.

(12) The term ''baseline'' means the baseline estimates OMB or CBO, as applicable, annually submits to Congress consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(13) The term ''guideline period'' means the period of fiscal years as set forth in section 702(f).

(14) The term ''excess spending amount'' means the amount of outlays a projected spending amount exceeds the guideline spending amount for a fiscal year within the guideline period.

(15) The term ''projected spending amount'' means the amount of total outlays of the Federal Government for a fiscal year within the guideline period and as calculated in section 702(c).

(16) The term ''guideline spending amount'' means the amount of total outlays of the Federal Government for a fiscal year as a percentage of the gross domestic product for such fiscal year within the guideline period.

(17) The term ''preview order'' means a preview spending reduction order as defined in section 703.

(18) The term ''final order'' means a final spending reduction order as defined in section 704.

SEC. 702. LONG-TERM PROJECTIONS.

(a) OMB LONG-TERM ECONOMIC GROWTH AND BUDGET PROJECTIONS.—For each fiscal year within the guideline period, OMB shall prepare a report that sets forth the amount of total spending of the Government in

outlays, within the budget as submitted by the President anually under section 1105(a) of title 31, United States Code.

(b) CBO LONG-TERM ECONOMIC GROWTH AND BUDGET PROJECTIONS.—By February 1 of each calendar year, for each fiscal year within the guideline period, CBO shall prepare a report that sets forth the amount of total spending of the Government in outlays, and the amount of spending of each program within the budget as CBO prepares its annual baseline and its reestimate of the President's budget.

(c) INCLUSION IN THE FINAL SPENDING REDUCTION.—Each report prepared pursuant to subsections (a) and (b) shall be included in the preview spending reduction and final spending reduction, as applicable, set forth in sections 703 and 704.

SEC. 703. PREVIEW SPENDING REDUCTION ORDER.

(a) ISSUANCE.—Not later than 15 calendar days after the date Congress adjourns to end a session of Congress, every fiscal year other than which a final order is issued, OMB shall issue a preview spending reduction order.

(b) CONTENTS.—A preview order shall be subject to the same requirements as that set forth for a final spending reduction in section 704.

(c) AVAILABILITY.—A preview order required to be issued by this section shall be submitted by OMB to the House of Representatives and the Senate on the day it is issued.

(d) EFFECT.—A preview order shall not cause a spending reduction.

SEC. 704. FINAL SPENDING REDUCTION ORDER.

(a) ISSUANCE.—Not later than 15 calendar days after the date Congress adjourns to end a session of Congress, every fifth fiscal year following the fiscal year in which this Act is enacted, OMB shall issue a final spending reduction order to eliminate an excess spending amount (if any) as calculated under subsection (b).

(b) CONTENT OF A FINAL SPENDING CONTROL ORDER.—In addition to any other information required under this title to be included in any final spending control order, this order shall contain, for the budget year, for each account to be subject to a spending reduction, estimates of the baseline level of budgetary resources and resulting outlays and the amount of budgetary resources to be subject to a spending reduction and resulting outlay reductions. The order shall also contain estimates of the effects on outlays of the spending reduction in each outyear for direct spending programs.

(c) AVAILABILITY.—A final order required to be issued by this section shall be submitted by OMB to the House of Representatives, the Senate, and the President on the day it is issued.

(d) SPENDING CONTROL BUFFER.—If there is an excess spending amount in only one fiscal year or in one period of two successive fiscal years during the guideline period, and such amount or amounts exceed the guideline spending amount by .1 percent of GDP or less, then the final spending reduction shall be issued, but shall not take effect.

(e) PRESIDENTIAL ORDER.—On the date specified in subsection (a), if in its final spending reduction OMB calculates there exists an impermissible excess spending amount, the President shall issue an order fully implementing without change all spending reductions required by the OMB calculations set forth in that report. This order shall be effective on the first day of the fiscal year following the fiscal year in which the order is issued.

SEC. 705. ELIMINATING EXCESS SPENDING AMOUNTS.

(a) ENFORCING A SPENDING REDUCTION FOR DISCRETIONARY SPENDING.—

(1) ELIMINATING A DISCRETIONARY SPENDING EXCESS.—OMB shall include in its final order a requirement that each discretionary account shall be

reduced by an amount of budget authority calculated by multiplying the baseline level of budgetary resources in that account at that time by the uniform percentage necessary to reduce outlays sufficient to eliminate an excess spending amount.

(2) PART-YEAR APPROPRIATIONS.—If, on the date a final spending reduction is issued, there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar spending reduction calculated for that account under paragraph (1) shall be subtracted from—

(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation.

(b) ELIMINATING A DIRECT SPENDING EXCESS.—OMB shall include in its final order a requirement that each direct spending account shall be reduced by an amount of budget authority calculated by multiplying the baseline level of budgetary resources in that account at that time by the uniform percentage necessary to reduce outlays sufficient to eliminate an excess spending amount.

(c) UNIFORM PERCENTAGE.—The percentage required to produce a spending reduction, as ordered by a final order, shall be calculated by OMB by adding all budgetary resources of the Government, and reducing that amount by an amount sufficient to reduce the total amount of outlays of the Government to equal, or lower, a level of outlays than the amount set forth in the guideline period.

SEC. 706. SPECIAL PROCEDURES.

(a) SOCIAL SECURITY BENEFITS.—Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, shall be exempt from a spending reduction required by a final order if—

(1) the Social Security Trustees issue, in the fiscal year such order is issued, a statement that the old-age, survivors, and disability Trust Funds have achieved or will achieve solvency under current law within the guideline period beginning in the year following the year the final order is issued;

(2) it would require an amount that exceeds such amount as the Trustees determine are required to achieve solvency in that period, as determined by the Social Security Trustees; and

(3) it would require a spending reduction of an amount greater than 1 percent of budgetary resources in any fiscal year within the guideline period.

(b) NET INTEREST.—A spending reduction shall not cause any effect on payments for net interest (as set forth in function 900).

(c) OBLIGATED BALANCES.—Obligated balances of budget authority carried over from prior fiscal years shall be exempt from a spending reduction under any order issued under this title.

(d) APPLICATION TO FAST GROWING PROGRAMS.—Any program whose growth in the budget year is less than the rate of inflation as determined by OMB, shall be exempt from a spending reduction issued under this title.

(e) LIMITATION ON SPENDING REDUCTIONS.—No program shall be subject to a spending reduction of more than 1 percent of its budgetary resources.

(f) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS.—All spending reductions with respect to a fiscal year shall be made so as to ensure that outlays for each program, project, activity, or account involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate

of reduction in any such item exceeding the rate specified in the order.

(g) EFFECT OF A FINAL ORDER.—Upon the issue of a final order, a spending reduction shall be ordered for all nonexempt spending accounts. The spending reduction shall be effective as follows:

(1) Budgetary resources subject to a spending reduction to any discretionary account shall be permanently cancelled.

(2) The same percentage spending reduction shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(3) Administrative regulations implementing a spending reduction shall be made within 120 days of the issue of a final order.

(4) Budgetary resources subject to a spending reduction in revolving, trust, and special fund accounts and offsetting collections subject to a spending reduction in appropriation accounts shall not be available for obligation during the fiscal year in

which the spending reduction is issued, and shall be available in subsequent years only to the extent as provided by law.

SEC. 707. SUSPENSION IN THE EVENT OF WAR OR LOW GROWTH.

(a) PROCEDURES IN THE EVENT OF A LOW GROWTH REPORT.—

(1) LOW GROWTH REPORT.—Whenever OMB or CBO issues a low-growth report under section 710(a), the majority leader of the House of Representatives and the majority leader of the Senate shall introduce a joint resolution suspending the relevant provisions of this title, titles III and IV of the Congressional Budget Act of 1974, and section 1103 of title 31, United States Code.

(2) FORM OF JOINT RESOLUTION.—

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: ''That the Congress declares that the conditions specified in section 711(a) of the Budget Control Act of 2008 are met, and the implementation of the Congressional Budget and Impoundment Control Act of 1974, chapter 11 of title 31, United

States Code, and the Budget Control Act of 2008 is hereby suspended.''.

(B) The title of the joint resolution shall be ''A joint resolution suspending certain provisions of law pursuant to section 711(a) of the Budget Control Act of 2008.''

(3) A joint resolution introduced pursuant to paragraph (1), an amendment thereto, or a conference report thereon, shall only be passed if it receives not less than three-fifths vote of approval of the total number of Members of the House of Representatives and the Senate.

(b) SUSPENSION OF SPENDING REDUCTION PROCEDURES.—Upon the enactment of a declaration of war or a joint resolution described in subsection (a)—

(1) the subsequent issuance of any final spending reduction is precluded;

(2) titles III and IV of the Congressional Budget Act of 1974 are suspended; and

(3) section 1103 of title 31, United States Code, is suspended.

(c) RESTORATION OF SPENDING CONTROL PROCEDURES.—

(1) In the event of a suspension of spending control procedures due to a declaration of war, then,

effective with the fifth fiscal year that begins in the session after the state of war is concluded, the provisions of subsection (b) triggered by that declaration of war are no longer effective.

(2) In the event of a suspension of spending control procedures due to the enactment of a joint resolution described in subsection (a), then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of subsection (b) triggered by that resolution are no longer effective.

SEC. 708. ALTERNATE SPENDING REDUCTION LEGISLATION IN THE HOUSE OF REPRESENTATIVES.

(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after the Director of OMB issues a final order for a fiscal year, but before the end of the session of Congress in session on the date of the issuance of such order, the majority leader of the House of Representatives may introduce a joint resolution which contains provisions directing the President to modify the most recent final order issued pursuant to this title, or provide an alternative to eliminate the spending excess for such fiscal year or years. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no

other joint resolution introduced pursuant to this section shall be subject to the procedures set forth in this section.

(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

(1) Any committee of the House of Representatives to which an alternative spending compliance measure is referred shall report it to the House without amendment not later than the seventh legislative day after the date of its introduction. If a committee fails to report the bill within that period or the House has adopted a concurrent resolution providing for adjournment sine die at the end of a Congress, it shall be in order to move that the House discharge the committee from further consideration of the bill. Such a motion shall be in order only at a time designated by the Speaker in the legislative schedule within two legislative days after the day on which the proponent announces his intention to offer the motion. Such a motion shall not be in order after a committee has reported a spending compliance measure with respect to that special message or after the House has disposed of a motion to discharge with respect to that special message. The previous question shall be considered as ordered on the motion to its adoption without intervening mo-

tion except twenty minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the spending compliance measure bill in accordance with paragraph (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) After a spending compliance measure is reported or a committee has been discharged from further consideration, or the House has adopted a concurrent resolution providing for adjournment sine die at the end of a Congress, it shall be in order to move to proceed to consider the spending compliance measure in the House. Such a motion shall be in order only at a time designated by the Speaker in the legislative schedule within two legislative days after the day on which the proponent announces his intention to offer the motion. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to that special message. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) The spending compliance measure shall be considered as read. All points of order against an approval bill and against its consideration are waived. The previous question shall be considered as ordered on an approval bill to its passage without intervening motion except five hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the bill. A motion to reconsider the vote on passage of the bill shall not be in order.

(4) A spending compliance measure received from the Senate shall not be referred to committee.

(c) VOTING.—The vote on final passage of a joint resolution or conference report thereon referred to in paragraph (1) shall require approval of not less than three-fifths of the Members of the House of Representatives.

SEC. 709. ALTERNATE SPENDING REDUCTION LEGISLATION IN THE SENATE.

(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after OMB issues a final order for a fiscal year, but before the end of the session of Congress in session on the date of the issuance of such order, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent final order provide an alternative

to eliminate the spending excess for such fiscal year or years. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

(1) REFERRAL TO COMMITTEE.—A joint resolution introduced in the Senate under subsection (a) shall not be referred to a committee of the Senate and shall be placed on the calendar pending disposition of such joint resolution in accordance with this subsection.

(2) CONSIDERATION IN THE SENATE.—On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Sat-

urdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

(3) DEBATE IN THE SENATE.—

(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order, and a motion to recommit the joint resolution is not in order.

(C)(i) No amendment that is not germane to the provisions of the joint resolution shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

(ii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(4) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint res-

olution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under paragraph (3), the vote on final passage of the joint resolution shall occur.

(5) APPEALS.—Appeals from the decisions of the Chair shall be decided without debate.

(6) CONFERENCE REPORTS.—In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(7) RESOLUTION FROM OTHER HOUSE.—If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

(B) With respect to a joint resolution introduced under subsection (a) in the Senate—

(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

(8) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced pursuant to this section after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with

regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

(9) The vote on final passage of a joint resolution or conference report thereon referred to in paragraph (1) shall require approval of not less than three-fifths of the Members of the Senate.

SEC. 710. GENERAL PROVISIONS.

(a) LOW GROWTH REPORT.—OMB and CBO shall notify the Congress if—

(1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the 4 quarters following such notification, OMB or CBO has determined that real economic growth is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or

(2) the most recent of the Department of Commerce's advance preliminary or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently

reported quarter and the immediately preceding quarter is less than one percent.

(b) ECONOMIC AND TECHNICAL ASSUMPTIONS.—For all purposes of this title, OMB shall use the same economic and technical assumptions as used in the most recent budget submitted under section 1105(a) of title 31, United States Code.

(c) SOCIAL SECURITY TRUSTEE REPORT.—The Trustees of the Social Security Administration shall annually issue a report consistent with section 708(c) and OMB shall include such report in a final order and a preview order.

(d) CONGRESSIONAL SPENDING LIMIT.—(1) The Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end of title III the following new section:

"SEC. 316 AGGREGATE SPENDING LIMITS.

''It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause an excess spending amount, as defined in section 701(c)(16) of the Budget Control Act of 2008.''.

(2) The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act

of 1974 is amended by inserting after the item relating to section 315 the following new item:

''Sec. 316. Aggregate spending limits.''.

(e) CONGRESSIONAL REVENUE LIMITS.—(1) The Congressional Budget Act of 1974 (as amended by subsection (d)) is further amended by adding at the end of title III the following new section:

''SEC. 317. TAX RATE LIMITS.

''It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause aggregate Federal revenue levels, in any fiscal year, to exceed the percentage of revenue relative to the Gross Domestic Product set forth in subsection (b) unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.''.

(2) The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 316 the following new item:

''Sec. 317. Tax rate limits.''.

(f) FISCAL YEARS OF THE GUIDELINE PERIOD.—The fiscal years within the 75-year period referred to as a guideline period in this title shall be as follows:

(1) Fiscal year 2009: 19.9 percent.

(2) Fiscal year 2010: 19.8 percent.

(3) Fiscal year 2011: 20.0 percent.

(4) Fiscal year 2012: 20.1 percent.

(5) Fiscal year 2013: 20.2 percent.

(6) Fiscal year 2014: 20.1 percent.

(7) Fiscal year 2015: 20.1 percent.

(8) Fiscal year 2016: 20.2 percent.

(9) Fiscal year 2017: 20.3 percent.

(10) Fiscal year 2018: 20.4 percent.

(11) Fiscal year 2019: 20.5 percent.

(12) Fiscal year 2020: 20.7 percent.

(13) Fiscal year 2021: 21.5 percent.

(14) Fiscal year 2022: 21.7 percent.

(15) Fiscal year 2023: 22.0 percent.

(16) Fiscal year 2024: 22.3 percent.

(17) Fiscal year 2025: 22.5 percent.

(18) Fiscal year 2026: 22.3 percent.

(19) Fiscal year 2027: 22.6 percent.

(20) Fiscal year 2028: 22.9 percent.

(21) Fiscal year 2029: 23.1 percent.

(22) Fiscal year 2030: 23.2 percent.

(23) Fiscal year 2031: 23.9 percent.

(24) Fiscal year 2032: 23.9 percent.

(25) Fiscal year 2033: 23.9 percent.

(26) Fiscal year 2034: 23.9 percent.

(27) Fiscal year 2035: 24.0 percent.

(28) Fiscal year 2036: 24.2 percent.

(29) Fiscal year 2037: 24.2 percent.

(30) Fiscal year 2038: 24.3 percent.

(31) Fiscal year 2039: 24.1 percent.

(32) Fiscal year 2040: 24.1 percent.

(33) Fiscal year 2041: 24.7 percent.

(34) Fiscal year 2042: 24.5 percent.

(35) Fiscal year 2043: 24.5 percent.

(36) Fiscal year 2044: 24.4 percent.

(37) Fiscal year 2045: 24.3 percent.

(38) Fiscal year 2046: 24.2 percent.

(39) Fiscal year 2047: 24.2 percent.

(40) Fiscal year 2048: 24.0 percent.

(41) Fiscal year 2049: 24.0 percent.

(42) Fiscal year 2050: 24.0 percent.

(43) Fiscal year 2051: 23.8 percent.

(44) Fiscal year 2052: 23.6 percent.

(45) Fiscal year 2053: 23.4 percent.

(46) Fiscal year 2054: 23.3 percent.

(47) Fiscal year 2055: 23.2 percent.

(48) Fiscal year 2056: 23.0 percent.

(49) Fiscal year 2057: 22.9 percent.

(50) Fiscal year 2058: 22.7 percent.

(51) Fiscal year 2059: 22.7 percent.

(52) Fiscal year 2060: 22.4 percent.

(53) Fiscal year 2061: 22.2 percent.

(54) Fiscal year 2062: 22.0 percent.

(55) Fiscal year 2063: 21.8 percent.

(56) Fiscal year 2064: 21.7 percent.

(57) Fiscal year 2065: 21.5 percent.

(58) Fiscal year 2066: 21.2 percent.

(59) Fiscal year 2067: 20.8 percent.

(60) Fiscal year 2068: 20.5 percent.

(61) Fiscal year 2069: 20.1 percent.

(62) Fiscal year 2070: 19.9 percent.

(63) Fiscal year 2071: 19.7 percent.

(64) Fiscal year 2072: 19.6 percent.

(65) Fiscal year 2073: 19.4 percent.

(66) Fiscal year 2074: 19.2 percent.

(67) Fiscal year 2075: 18.9 percent.

(68) Fiscal year 2076: 18.5 percent.

(69) Fiscal year 2077: 18.0 percent.

(70) Fiscal year 2078: 17.5 percent.

(71) Fiscal year 2079: 17.3 percent.

(72) Fiscal year 2080: 16.9 percent.

(73) Fiscal year 2081: 16.5 percent.

(74) Fiscal year 2082: 16.0 percent.

(75) Fiscal year 2083: 16.0 percent.

SEC. 711. EFFECTIVE DATE.

This title shall apply to fiscal year 2009 and subsequent fiscal years.

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