

# THE SMALL BUSINESS JOBS ACT OF 2010

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TOOLS, TIPS, AND TACTICS

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**Robert S. Keebler**, CPA, MST, AEP (Distinguished)

**Michelle Ward**, JD

**Peter Melcher**, MBA, JD, LLM (Tax)

*Keebler & Associates, LLP*

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# The Small Business Jobs Act of 2010

## Tools, Tips, and Tactics

*By Robert S. Keebler, Peter Melcher, and Michelle Ward*

*Based on an article by Matthew G. Lamoreaux and Alistair M. Nevius*

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The Small Business Jobs and Credit Act of 2010 (SBJA), signed by President Obama on September 27, 2010, offers a variety of small business tax breaks, expands loan programs through the Small Business Administration (SBA), strengthens small business preference programs for federal government projects, provides incentives for exporters, and includes a number of revenue raisers.

### SMALL BUSINESS LOANS

The SBJA creates a Small Business Lending Fund to address the ongoing effects of the financial crisis on small businesses by allowing the Treasury Department to make capital investments in eligible financial institutions to increase credit available for small businesses. Independent community banks may participate in a new \$30 billion lending fund on the condition they make loans to small businesses and meet other requirements. Financial institutions (bank and savings and loan holding companies, depository institutions, and community development loan funds) with \$10 billion or less in total assets may apply for capital investments of up to 3 percent of risk-weighted assets.

Other small business lending provisions in the act include the following:

- *Online information center.* The SBJA directs the SBA to create an online lending platform that lists all lenders that make SBA-guaranteed loans and provides interest rates for each lender.
- *Nonprofit lenders pilot.* The SBJA also creates an intermediary lending pilot program to allow certain private, nonprofit entities that seek or have been awarded SBA loans to make loans to small businesses. The pilot program will allow \$20 million in loans each year from 2011 to 2013 to not more than 20 eligible entities. Eligible nonprofit organizations may apply for up to \$1 million for the purpose of lending up to \$200,000 to eligible small businesses.
- *Increased maximums for Microloan Program.* The SBJA increases the Microloan Program maximum loan amount to \$50,000, from \$35,000. It raises total outstanding loan commitment limits to \$4.5 million, from \$1.5 million, and the total gross loan amount to \$5 million, from \$2 million. Increased government guarantees and outstanding loan commitments are effective until

January 1, 2011, when the percentage guarantees will revert to the original percentages, and the total outstanding loan commitment will reduce to \$3.75 million.

- *Increased participation limit for section 7(a) business loans.* It also increases the limit on the government's participation in section 7(a) small business loans to 90 percent, from 75 percent, or 85 percent for all section 7(a) loans, regardless of loan amount.
- *Raises loan maximums for plant acquisition, construction, conversion, and expansion.* The new maximums under the SBA's 504 Program are tiered in relation to the borrower's plans to use the capital to support federal government priority goals and projects, mostly in the energy and manufacturing sectors. For nonpriority goals and projects, the maximum is increased to \$5 million, from \$1.5 million, for each small business concern; to \$5 million, from \$2 million, for each small business concern if the loan proceeds will be directed toward certain public policy goals; to \$5.5 million, from \$4 million, for each project of a small manufacturer; to \$5.5 million, from \$4 million, for each project that reduces the borrower's energy consumption by at least 10 percent; and to \$5.5 million, from \$4 million, for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production.
- *Reduced fees for American Recovery and Reinvestment Act of 2009 SBA loan guarantees.* The reduced fees for SBA loan guarantees enacted by the American Recovery and Reinvestment Act of 2009 are extended to December 31, 2010 (from September 30).
- *Low-interest refinancing for Local Development Business Loan Program.* Up to \$7.5 billion in low-interest refinancing is available under the SBA's Local Development Business Loan Program. Up to \$7.5 billion annually is available for loan refinancing for 2 years after enactment for qualifying loans. Qualifying conditions include meeting job creation and retention goals and providing collateral valued at least 125 percent of the amount financed.
- *Retail floor plan refinancing.* Creates a floor plan refinancing program under which the SBA can guarantee open-ended extensions of credit to small businesses if the loan is used to purchase certain eligible retail goods for resale.
- *Express loan enhancement.* The maximum amount of express loans under section 7(a) of the Small Business Act is increased to \$1 million, from \$350,000, for 1 year from the date of enactment.

## SMALL BUSINESS FEDERAL CONTRACTING

Federal agencies are called on to solicit bids from small businesses, and federal contracting requirements are amended to encourage small businesses to bid for federal contracts.

The SBJA also establishes a Small Businesses Teaming Pilot Program, which will promote federal contracting opportunities for joint ventures and small businesses. The program is scheduled to run for five years.

Federal agencies are required to solicit bids from any responsible source, including small business concerns, teams, and joint ventures, for multiple award contracts above the substantial bundling threshold of the agency. The SBJA also revises the federal contracting and reporting requirements. Electronic annual certifications of small business size and status are required for ongoing eligibility as a small

business contractor. Small business classification criteria must be reviewed by the SBA at least once every five years.

The SBJA requires the Comptroller General to study strategic mentoring alliances between large and small businesses as a way of getting small businesses access to federal contracts. The study will examine potential competition between mentor and protégé, systems to assure substantive benefit to the protégé, and agency processes to administer or monitor such programs. The study must be completed within 180 days of the bill's enactment.

## **SMALL BUSINESS EXPORTS**

The SBJA contains measures designed to encourage small businesses to become exporters or increase their export activities. The SBA will create a pilot three-year trade and export promotion program that will make grants to states to carry out export programs that assist eligible small businesses.

A number of changes are made within the SBA's Office of International Trade to increase the number of small businesses that export and the volume of small business exports.

## **OTHER SMALL BUSINESS PROGRAMS**

The SBJA creates federal grants for small business development centers to provide technical assistance to small businesses seeking capital and credit and other opportunities. It also mandates regulatory relief for small businesses.

A seven-year small business credit initiative is established to allocate federal funds (up to \$1.5 billion) to participating states.

## **SMALL BUSINESS TAX RELIEF**

Many provisions are targeted to assist small business operations through additional tax deductions and tax credits or exclusions. The SBJA would exclude from taxes certain capital gains on sales of small-business stock and accelerate business tax write-offs for purchases of new equipment and other expenses.

## **INTERNAL REVENUE CODE SECTION 179 EXPENSING AND BONUS DEPRECIATION**

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The SBJA increases the maximum amount a taxpayer may expense under Internal Revenue Code (IRC) Section 179 to \$500,000 and increases the phaseout threshold amount to \$2 million for tax years beginning in 2010 and 2011. The first-year 50 percent bonus depreciation available under IRC Section 168(k) is extended for 1 year to apply to property acquired and placed in service in 2010 (or 2011 for certain long-lived and transportation property). The SBJA also allows taxpayers using the percentage-of-completion method to take into account the cost of qualified property as if bonus depreciation had not been enacted.

### PLANNING POINTERS

Several planning points need to be noted here. First, the increased IRC Section 179 amounts apply to property placed in service at any time during 2010 and not just to the portion of the year following enactment. Thus, taxpayers should make sure that they don't overlook property placed in service earlier in the year, which will provide them with an unexpected benefit.

Second, the definition of IRC Section 179 property has been expanded. Although it previously included only tangible personal property, following enactment of the SBJA, IRC Section 179 expensing also extends to qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property. For example, it should now apply to improvements to the reception area of a law or an accounting firm. A maximum deduction of \$250,000 is permitted for real property, but the overall deduction for personal and real property is limited to \$500,000.

Third, after 2011, the maximum deduction reverts from \$500,000 to its pre-2008 level of \$25,000, with the phaseout beginning at \$225,000 instead of \$2,000,000. Taxpayers planning to acquire relatively large amounts of IRC Section 179 assets over the next 2 years should accelerate 2011 expenses into 2010 and 2012 expenses into 2011. Acceleration may be particularly important for taxpayers expensing real property improvements. Deductible amounts in excess of the \$250,000 maximum can only be carried forward to 2011, and no carryover is permitted for qualifying property placed in service in 2011.

Unlike most of the provisions in the SBJA, the bonus depreciation extension will help large businesses more than small businesses. As a general rule, small businesses would be better off using IRC Section 179 expensing than bonus depreciation, but they need to run the numbers to be sure, particularly if they have little taxable income for the year. This is because bonus depreciation can create a net operating loss that the business can carry back but IRC Section 179 expensing cannot.

Taxpayers should consider accelerating 2011 purchases that qualify for bonus depreciation into 2010 to take advantage of the time value of money for the tax benefit. Like IRC Section 179 expensing, bonus depreciation applies to all of 2010 and not just to the portion of the year following enactment. They may also wish to determine the amount of bonus depreciation they can claim on assets purchased earlier in the year to reduce fourth quarter estimated payments.

## **QUALIFIED SMALL BUSINESS STOCK**

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The SBJA amends IRC Section 1202 to increase the exclusion from gross income of gain from the sale or exchange of qualified small business stock (QSBS) from 50 percent to 100 percent, and the minimum tax preference does not apply. This provision applies to eligible stock acquired after the date of enactment and before January 1, 2011.



#### PLANNING POINTERS

Under prior law, noncorporate taxpayers could exclude 75 percent of the gain from the sale of QSBS acquired between February 18, 2009, and December 31, 2010, and 50 percent on QSBS acquired after 2010. This made the effective tax rates for stock acquired before the end of 2010 7 percent for the regular tax and 12.88 percent for the alternative minimum tax (AMT). For assets acquired on or after January 1, 2011, the effective rates were 14 percent and 14.98 percent, respectively. Notwithstanding the low tax rates, the QSBS provision did not attract as many new businesses as Congress hoped, largely because to take advantage of the provision, a company had to be a C corporation during substantially all of the taxpayer's holding period.

With both the regular and AMT rates now set at zero, more taxpayers may now find QSBS desirable. The most favorable type of business to acquire would be one that produces a substantial return on investment within the requisite five-year holding period. The business could then be sold without any gain recognition, and the taxpayer would not be burdened with unfavorable C corporation taxation for a long period of time.

Taxpayers wishing to take advantage of the 100 percent tax exclusion will have to act quickly because it applies only to stock acquired from September 27, 2010, to December 31, 2010. Stock purchased after that date will receive only a 50 percent exclusion.

## **BUSINESS CREDITS**

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The carryback period for eligible small business credits under IRC Section 38 is extended from one to five years. The SBJA also allows taxpayers to use eligible small business credits to offset both regular and AMT liability. Both provisions are effective for credits determined in tax years beginning after 2009.

#### PLANNING POINTERS

Numerous general business credits exist under IRC Section 38, including the Work Opportunity Tax Credit, the Low Income Housing Tax Credit, the Research and Development Tax Credit, and the Employer-Provided Child Care Credit. Under previous law, the credits could be carried back only one year, and they applied only to the regular tax.

This carryback provision was specifically designed for small businesses, applying only to firms with average annual gross receipts of \$50 million or less over the past 3 years. Credits for a partnership or S corporation are not eligible small business credits for a partner or shareholder, unless the partner or shareholder also meets the gross receipts test for the tax year the credits are treated as current year business credits.

The rationale for extending the carryback period is, presumably, that because of the poor economy, many companies have had little taxable income the last couple of years and would have little use for a current credit. Three, four, or five years ago, however, their situation may have been very different.

## **BUILT-IN GAINS TAX**

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For tax years beginning in 2011, the SBJA provides that for purposes of computing the IRC Section 1374 built-in gains tax, the recognition period is the five-year period beginning with the first day of the first tax year for which the corporation was an S corporation.

### PLANNING POINTERS

Following the repeal of the *General Utilities* doctrine in 1986, corporate income is taxed twice: once at the corporate level and again at the shareholder level. Realizing that shareholders could easily avoid the second level of tax by transferring appreciated assets to an S corporation, Congress enacted the IRC Section 1374 built-in gains tax as a backstop. This tax applies to S corporations that were formerly C corporations and held assets with fair market value greater than basis at the time of the conversion or later acquired assets from a C corporation in certain nonrecognition transactions. As originally enacted, IRC Section 1374 required that if such a corporation sold or made a liquidating distribution of a built-in gain asset within 10 years after the date of the S conversion, a corporate level tax was imposed on the built-in gain at the highest corporate tax rate (currently 35%). The recognition period was shortened to 7 years for 2010 before the current reduction to 5 years for 2011.

The shortened recognition period will help two kinds of S corporation owners. First, it will enable those with unwanted built-in gain assets to sell the assets earlier and free up money for expansion or hiring additional employees. Because gain must also be recognized on an asset sale of a corporation or a liquidating distribution, owners wishing to sell the S corporation may be able to do so sooner. Suppose, for example, that a C corporation with large built-in gains converted to an S corporation in 2006. If the recognition period had not been shortened, the shareholders would have had to wait until 2013 to sell, but now, they could sell in 2011.

The projected cost of shortening the recovery period is only \$70 million dollars. This suggests that the main effect of the built-in gains was not to raise revenue but simply to delay asset sales. Most S corporations with built-in gains were evidently waiting until the end of the recognition period to sell assets. Finally, this provision may encourage more C corporations with substantial built-in gains to convert to S corporations because they can now eliminate the tax liability in a shorter period of time following the conversion.

## **SELF-EMPLOYED INDIVIDUALS' HEALTH INSURANCE**

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The SBJA allows self-employed individuals who deduct the cost of health insurance for themselves and their spouses, dependents, and children under 27 years old as of the end of the tax year to take the deduction into account in calculating net earnings from self-employment for purposes of Self-Employment Contributions Act taxes. This provision applies to the taxpayer's tax years beginning after 2009.

## **START-UP EXPENSES**

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The SBJA increases the IRC Section 195 deduction for trade or business start-up expenses from \$5,000 to \$10,000 for tax years beginning in 2010 and 2011. The start of the limitation on the deduction is increased from \$50,000 to \$60,000. So, for 2010 and 2011, the amount of the deduction is the lesser of (a) the amount of the start-up expenses or (b) \$10,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed \$60,000.

#### PLANNING POINTERS

In the absence of the special rule for start-up expenses, these amounts would be deductible over a 180-month period. If business start-up expenses are less than \$10,000, the full amount can be deducted in the first year. For a small business, this may cover most or all of the start-up costs. If expenses exceed \$10,000, however, the excess is deducted ratably over a 180-day period, beginning with the month in which the active trade or business begins. Note that it is possible to deduct both the \$10,000 amount and a ratable portion of the remainder in the first year.

**Example:** T, a calendar-year individual, begins an active trade or business in November 2010 and has \$55,000 of start-up expenses. T can deduct \$10,000 plus the ratable portion of the remaining \$45,000 of expenditures attributable to the last 2 months of 2010. This gives him a total deduction in 2010 of \$10,500:  $\$10,000 + ((\$45,000/180) \times 2 \text{ months})$ . The remaining \$44,500 is deducted ratably over the next 178 months at \$250 per month.

## REPORTABLE AND LISTED TRANSACTIONS

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The SBJA limits the IRC Section 6707A penalty for failure to disclose a reportable transaction (that is, a transaction determined by the IRS to have a potential for tax avoidance or evasion) to 75 percent of the decrease in tax resulting from the transaction. The maximum annual penalty allowed for failure to disclose a reportable transaction will be \$10,000 in the case of a natural person and \$50,000 for all other persons. For listed transactions, the maximum penalty will be \$100,000 in the case of a natural person and \$200,000 for all other persons. The minimum penalty is \$5,000 for natural persons and \$10,000 for all other persons.

The SBJA also requires the IRS to report to Congress by December 31, 2010, and then annually, on penalties assessed for certain tax shelters and reportable transactions [under IRC Sections 6662A, 6700(a), 6707, 6707A and 6708]. The penalty under section 6707A has been criticized because the penalty amounts often exceed the tax benefit of the targeted transactions. Since last July, the IRS has been working under a self-imposed moratorium on collection enforcement of the IRC Section 6707A penalty to give Congress time to amend the penalty amounts. The AICPA has recommended that the IRS be allowed to abate the IRC Section 6707A penalty in cases in which the taxpayer has acted reasonably and in good faith. The AICPA also believes that judicial review should be allowed in cases in which the IRS has assessed a penalty under IRC Section 6707A. The SBJA does not adopt either of these recommendations.

#### PLANNING POINTERS

Reportable transactions include (a) listed transactions, (b) confidential transactions, (c) transactions with contractual protection, (d) transactions with large losses, (e) transactions of interest, and (f) transactions with a brief holding period.

Prior to the change, there was no proportionality between the amount of the penalty for failure to disclose a reportable transaction and the potential tax benefit from the transaction. The penalty regime was particularly unfair for S corporation shareholders or partners with relatively small interests in the business who played no role in deciding to use the transaction in question.

To illustrate the change in penalty amounts, suppose that an individual enters into a reportable transaction that could save \$10,000 of income tax and failed to report it. Under the old rules, the penalty would have been \$50,000, but under the new rules, the penalty would be the greater of (a) \$5,000 or (b) \$7,500:  $0.75 \times \$10,000$ .

The Joint Committee on Taxation (JCT) report indicates that the reduced penalty amounts apply to all penalties assessed after December 31, 2006. Thus, taxpayers who paid an IRC Section 6707A penalty after that date should consider filing a refund claim. To avoid penalties going forward, taxpayers should keep a list of transactions of interest and listed transactions. These can be found in Notice 2009-55 and 2009-59, respectively. The lists are constantly being updated, so taxpayers should also check the IRS website from time to time.

## CELL PHONES

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The SBJA removes cell phones from the definition of listed property. Thus, the heightened substantiation requirements and special depreciation rules that apply to listed property under IRC Section 280A will no longer apply to cell phones. However, the JCT notes that this change “does not affect Treasury’s authority to determine the appropriate characterization of cell phones as a working condition fringe benefit under section 132(d) or that the personal use of such devices that are provided primarily for business purposes may constitute a de minimis fringe benefit, the value of which is so small as to make accounting for it administratively impracticable, under section 132(e).”

#### PLANNING POINTERS

Under the old law, taxpayers were technically required to label every incoming and outgoing phone call as business or personal, creating an unworkable situation. The SBJA eliminates this onerous requirement, and there are indications that the IRS may take relief one step further. Earlier this year, the IRS Commissioner urged Congress to treat an employee’s personal use of an employer-provided cell phone as a de minimis fringe benefit. The statement from the JCT report previously quoted seems to follow up on the IRS Commissioner’s suggestion. Thus, we may see the IRS adopt a blanket rule providing that cell phones issued primarily for business use would automatically qualify as a de minimis fringe benefit.

## REVENUE RAISERS

### 457 PLAN ROTH CONTRIBUTIONS

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The SBJA allows participants in government 457 plans to treat elective deferrals as Roth contributions, effective for tax years beginning after 2010.

#### PLANNING POINTERS

Participants in 401(k) and 403(b) plans already had the ability to designate their elective deferrals as Roth contributions. The new law also permits 457 plans that allow Roth contributions to convert pretax plan assets to Roth assets by making an in-plan rollover.

### ROLLOVERS TO ROTH ACCOUNTS

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The SBJA also allows rollovers from elective deferral plans to Roth-designated accounts. If a 401(k), 403(b), or 457(b) plan has a qualified, designated Roth contribution program, a distribution to an employee (or a surviving spouse) from an account under the plan that is not a designated Roth account is permitted to be rolled over into a designated Roth account under the plan for the individual. This provision is effective for distributions made after the date of enactment.

### PLANNING POINTERS

The new provision raises an interesting question. Assuming that a Roth conversion would be beneficial, are taxpayers better off using the new in-plan rollover option and keeping the assets inside the qualified plan or converting to a Roth IRA?

The advantage of the Roth-designated account is that the money stays inside the plan and continues to have Employee Retirement Income Security Act of 1974 protection. This may be very important for high risk professionals, such as doctors and lawyers.

On the other hand, taxpayers who use the new option will lose two of the most important advantages of Roth IRAs. First, no recharacterizations are permitted if the account assets perform poorly. This could be disastrous. To illustrate, assume that a taxpayer has \$1 million in a 401(k) and converts the full balance to a Roth 401(k). During the next several months, the value of the assets drops to \$600,000. The taxpayer has until the following October 15 to unwind the conversion. On the other hand, if the taxpayer rolls the \$1 million in a Roth-designated account inside the 401(k) plan, no recharacterization is possible, and the taxpayer will end up paying tax on \$400,000 of value that no longer exists. Second, although required minimum distributions must be paid from a Roth-designated account, no such requirement exists with a Roth IRA. Thus, the Roth IRA is a much better estate planning vehicle for wealthy taxpayers who don't need the IRA to provide income. This suggests that although high-risk professionals might consider Roth-designated accounts, other taxpayers would be better off converting to a Roth IRA.

Note, however, that it may be possible for professionals in high-risk occupations to get the best of both worlds. One strategy would be for them to convert to a Roth-designated account at age 60 to provide added asset protection during the last years of practice and the early years of retirement when malpractice exposure might continue. This would have little downside because no required distributions would be required, and the risk of the assets dropping sharply in value could be minimized by using only relatively safe assets. Then, at age 70, there could be a conversion to a Roth IRA to avoid required minimum distributions.

A participant who elects an in-plan Roth conversion can choose between recognizing all the income in 2010 or spreading it evenly between 2010 and 2011. Which is the better option in any given case will depend on the facts and circumstances, and taxpayers will simply have to run the numbers to make the right choice. By paying the full amount in 2010, a taxpayer may be able to take advantage of a lower marginal rate structure but will lose tax deferral and the ability to spread the payments between two tax years, possibly preventing income from extending into a higher tax bracket.

Amending plans before the end of 2010 to give employees the option of spreading income over two years or taking advantage of lower 2010 tax rates may create practical problems for employers. They will have to create systems to track plan amounts and establish guidelines for issues, such as how often conversions can be made and what assets can be converted. The legislative history of the SBJA states, however, that Congress intends for the IRS to provide employers with a sufficient period of time to make the necessary changes to their plans.

## ANNUITIZATION

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The SBJA permits a portion of an annuity, an endowment, or a life insurance contract to be annuitized while the balance is not annuitized, provided that the annuitization period is for 10 years or more or the lives of one or more individuals.

#### PLANNING POINTERS

This provision is designed to permit taxpayers to access a portion of a nonqualified deferred annuity without highly unfavorable tax consequences. To illustrate, suppose that a taxpayer has a deferred annuity with a current balance of \$100,000 and that the total amount of premiums paid was \$70,000. The taxpayer needs additional cash flow but wants to keep the bulk of the value in the annuity to grow in a tax-deferred environment. She converts \$40,000 into a fixed, periodic income stream and leaves the remaining \$60,000 inside the annuity.

Prior to the SBJA, the tax treatment of partial annuitizations was a no-rule area; taxpayers were concerned, and there was concern that the IRS would take the position that the partial annuity payments were subject to the income-first rule under which all payments would be fully taxable until the full amount of gain had been recognized. Returning to the fact pattern previously outlined, this would mean that all annuity payments would be fully taxable until the full \$30,000 gain had been recognized. After that, all payments would be tax free. Under the new provision, there would instead be a pro rata split of each annuity payment between taxable gain and tax-free return of basis. Thus, under the preceding example, 30 percent of each payment would be taxable, and the remaining 70 percent would be tax free.

## REPORTING RENTAL INCOME

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The SBJA makes recipients of rental income from real estate generally subject to the same information reporting requirements as taxpayers engaged in a trade or business. In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and service provider. This provision will apply to payments made after December 31, 2010.

#### PLANNING POINTERS

The SBJA provides exceptions for individuals temporarily renting their principal residence (including members of the military), taxpayers with minimal income, and those for whom the reporting would create a hardship. The details of the last two exemptions will be developed by the IRS in regulations. To facilitate enforcement, the penalties for not filing the required Form 1099s will be increased.

## INFORMATION RETURNS

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The SBJA also increases the penalties for failure to file a correct information return. The first-tier penalty increases from \$15 to \$30, and the calendar-year maximum increases from \$75,000 to \$250,000. The second-tier penalty increases from \$30 to \$60, and the calendar-year maximum increases from \$150,000 to \$500,000. The third-tier penalty increases from \$50 to \$100, and the calendar-year maximum increases from \$250,000 to \$1.5 million. For small business filers, the calendar-year maximum increases from \$25,000 to \$75,000 for the first-tier penalty; from \$50,000 to \$200,000 for the second-tier penalty; and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard increases from \$100 to \$250.



PLANNING POINTERS

The new penalties might be expected to increase IRS scrutiny of information returns. Although the per return amounts are still low, many businesses file so many information returns that the penalties could add up to very substantial amounts, warranting increased attention to the forms.

## FEDERAL CONTRACTOR LEVIES

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The SBJA allows the IRS to issue levies prior to a collections due process hearing with respect to federal tax liabilities of federal contractors identified under the Federal Payment Levy Program, effective for levies issued after the date of enactment.

PLANNING POINTERS

Effective September 27, 2010, the SBJA gives the IRS authority to levy on certain payments to federal contractors without giving 30 days notice and an opportunity to request a hearing during the 30-day period. The taxpayer will still have an opportunity to request a hearing within a reasonable time after the levy.

## CELLULOSIC BIOFUELS

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The SBJA excludes so-called crude tall oil from the definition of cellulosic biofuel for purposes of the IRC Section 40 tax credit for alcohol used as fuel. *Crude tall oil* is a by-product of the paper-making industry. Earlier this year, the Health Care and Education Reconciliation Act of 2010 removed another paper by-product—black liquor—from the definition of cellulosic biofuel.

PLANNING POINTERS

The SBJA also excludes other cellulosic biofuels with acid numbers greater than 25. The reason is that the more acidic the fuel becomes when it begins to break down, the greater the engine corrosion and fuel system deposits. Taxpayers will need check on what fuels still qualify.

## INCOME FROM GUARANTEES

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The SBJA overrides the Tax Court's recent decision in *Container Corp. v. Comm'r*, 134 TC no. 5 (2010), by amending the IRC Sections 861 and 862 source rules to address income from guarantees issued after the date of enactment. Under new IRC Section 861(a)(9), income from sources within the United States includes amounts received, whether directly or indirectly, (a) from a noncorporate resident or domestic corporation for the provision of a guarantee of indebtedness of the person or (b) from any foreign person for the provision of a guarantee of any indebtedness of the person, if such amount is connected with income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.



#### PLANNING POINTERS

The question presented to the Tax Court in *Container Corp. v. Comm'r* was whether a guarantee fee received by a Mexican corporation from its U.S. subsidiary was U.S. source income subject to withholding. Although the IRC provides specific rules for sourcing most items of income, it has no rule for guarantee fees. Thus, the Tax Court had to determine what item of income for which the IRC did provide a sourcing rule was most analogous to a guarantee fee.

The most likely possibilities were (a) interest, which is sourced according to the residence of the payor and services, and (b) services, which are sourced where the services are created or provided. If the fee was treated as interest, it would be U.S. source income because it was paid by the U.S. subsidiary. If it was treated as a service, it would be sourced in Mexico because it was the Mexican parent's promise to pay that produced the service (the guarantee). The Tax Court held that the fee was in the nature of a service, making it foreign source income. The SBJA legislatively reverses this result by creating new IRC Section 861(a)(9), treating guarantee fees as interest and sourcing them to the country where received by the guaranteed party.

## CORPORATE ESTIMATED TAXES

The SBJA increases the required corporate estimated tax payments factor for corporations with assets of at least \$1 billion for payments due in July, August, or September 2015.

#### PLANNING POINTERS

The factor is increased from 123.25 percent of the estimated tax payment otherwise due to 159.25 percent. The increase represents only a timing difference because there will be a corresponding decrease in the next quarterly payment.

## LINKS AND RESOURCES

- [Summary of the Small Business Jobs Act](#)
- [Bill Summary on THOMAS](#)
- [Text of Legislation H.R. 5297](#)
- [Summary of Modifications and Additions Made to Substitute Amendment](#)
- [Legislative Text of the Small Business Jobs Act](#)
- [JCT Estimated Revenue Effects of Title II of the Substitute Amendment](#)
- [The Small Business Jobs Act: Helping Get Americans Back to Work](#)
- [The Small Business Jobs Act: Encouraging Investment](#)
- [The Small Business Jobs Act: Promoting Entrepreneurship](#)
- [President Obama Signs the SBJA](#)
- [White House Statement](#)

- [\*Journal of Accountancy\* article](#)
- [JCT Technical Explanation of the Tax Provisions](#)
- [White House Statement on Signing](#)
- [The United States Senate Committee on Finance](#)
- [OpenCongress](#)
- [THOMAS](#)
- [President Obama Signs Small Business Jobs Act—Learn What’s In It](#)
- [Small Business Administration](#)
- [The United States Senate Committee on Finance: Legislation](#)
- [Baucus Hails Passage of Small Business Job Creation Bill](#)
- [Baucus Floor Statement Regarding the Small Business Jobs Bill](#)

# Appendix A: Text of the Small Business Jobs and Credit Act Of 2010

HEN10816

S.L.C.

2

AMENDMENT NO.

Calendar No.

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.**

## **H. R. 5297**

To create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT In the Nature of a Substitute intended to be proposed by Mr. REID (for himself, Mr. BAUCUS, and Ms. LANDRIEU)

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Jobs  
5 Act of 2010”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

## TITLE I—SMALL BUSINESSES

Sec. 1001. Definitions.

## Subtitle A—Small Business Access to Credit

Sec. 1101. Short title.

## PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

- Sec. 1111. Section 7(a) business loans.
- Sec. 1112. Maximum loan amounts under 504 program.
- Sec. 1113. Maximum loan limits under microloan program.
- Sec. 1114. Loan guarantee enhancement extensions.
- Sec. 1115. New Markets Venture Capital company investment limitations.
- Sec. 1116. Alternative size standards.
- Sec. 1117. Sale of 7(a) loans in secondary market.
- Sec. 1118. Online lending platform.
- Sec. 1119. SBA Secondary Market Guarantee Authority.

## PART II—SMALL BUSINESS ACCESS TO CAPITAL

Sec. 1122. Low-interest refinancing under the local development business loan program.

## PART III—OTHER MATTERS

- Sec. 1131. Small business intermediary lending pilot program.
- Sec. 1132. Public policy goals.
- Sec. 1133. Floor plan pilot program extension.
- Sec. 1134. Guarantees for bonds and notes issued for community or economic development purposes.
- Sec. 1135. Temporary express loan enhancement.
- Sec. 1136. Prohibition on using TARP funds or tax increases.

## Subtitle B—Small Business Trade and Exporting

- Sec. 1201. Short title.
- Sec. 1202. Definitions.
- Sec. 1203. Office of International Trade.
- Sec. 1204. Duties of the Office of International Trade.
- Sec. 1205. Export assistance centers.
- Sec. 1206. International trade finance programs.
- Sec. 1207. State Trade and Export Promotion Grant Program.
- Sec. 1208. Rural export promotion.
- Sec. 1209. International trade cooperation by small business development centers.

## Subtitle C—Small Business Contracting

## PART I—CONTRACT BUNDLING

- Sec. 1311. Small Business Act.
- Sec. 1312. Leadership and oversight.
- Sec. 1313. Consolidation of contract requirements.
- Sec. 1314. Small business teams pilot program.

## PART II—SUBCONTRACTING INTEGRITY

- Sec. 1321. Subcontracting misrepresentations.
- Sec. 1322. Small business subcontracting improvements.

#### PART III—ACQUISITION PROCESS

- Sec. 1331. Reservation of prime contract awards for small businesses.
- Sec. 1332. Micro-purchase guidelines.
- Sec. 1333. Agency accountability.
- Sec. 1334. Payment of subcontractors.
- Sec. 1335. Repeal of Small Business Competitiveness Demonstration Program.

#### PART IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

- Sec. 1341. Policy and presumptions.
- Sec. 1342. Annual certification.
- Sec. 1343. Training for contracting and enforcement personnel.
- Sec. 1344. Updated size standards.
- Sec. 1345. Study and report on the mentor-protégé program.
- Sec. 1346. Contracting goals reports.
- Sec. 1347. Small business contracting parity.

##### Subtitle D—Small Business Management and Counseling Assistance

- Sec. 1401. Matching requirements under small business programs.
- Sec. 1402. Grants for SBDCs.

##### Subtitle E—Disaster Loan Improvement

- Sec. 1501. Aquaculture business disaster assistance.

##### Subtitle F—Small Business Regulatory Relief

- Sec. 1601. Requirements providing for more detailed analyses.
- Sec. 1602. Office of advocacy.

##### Subtitle G—Appropriations Provisions

- Sec. 1701. Salaries and expenses.
- Sec. 1702. Business loans program account.
- Sec. 1703. Community Development Financial Institutions Fund program account.
- Sec. 1704. Small business loan guarantee enhancement extensions.

#### TITLE II—TAX PROVISIONS

- Sec. 2001. Short title.

##### Subtitle A—Small Business Relief

#### PART I—PROVIDING ACCESS TO CAPITAL

- Sec. 2011. Temporary exclusion of 100 percent of gain on certain small business stock.
- Sec. 2012. General business credits of eligible small businesses for 2010 carried back 5 years.
- Sec. 2013. General business credits of eligible small businesses in 2010 not subject to alternative minimum tax.
- Sec. 2014. Temporary reduction in recognition period for built-in gains tax.

## PART II—ENCOURAGING INVESTMENT

- Sec. 2021. Increased expensing limitations for 2010 and 2011; certain real property treated as section 179 property.
- Sec. 2022. Additional first-year depreciation for 50 percent of the basis of certain qualified property.
- Sec. 2023. Special rule for long-term contract accounting.

## PART III—PROMOTING ENTREPRENEURSHIP

- Sec. 2031. Increase in amount allowed as deduction for start-up expenditures in 2010.
- Sec. 2032. Authorization of appropriations for the United States Trade Representative to develop market access opportunities for United States small- and medium-sized businesses and to enforce trade agreements.

## PART IV—PROMOTING SMALL BUSINESS FAIRNESS

- Sec. 2041. Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits.
- Sec. 2042. Deduction for health insurance costs in computing self-employment taxes in 2010.
- Sec. 2043. Removal of cellular telephones and similar telecommunications equipment from listed property.

## Subtitle B—Revenue Provisions

## PART I—REDUCING THE TAX GAP

- Sec. 2101. Information reporting for rental property expense payments.
- Sec. 2102. Increase in information return penalties.
- Sec. 2103. Report on tax shelter penalties and certain other enforcement actions.
- Sec. 2104. Application of continuous levy to tax liabilities of certain Federal contractors.

## PART II—PROMOTING RETIREMENT PREPARATION

- Sec. 2111. Participants in government section 457 plans allowed to treat elective deferrals as Roth contributions.
- Sec. 2112. Rollovers from elective deferral plans to designated Roth accounts.
- Sec. 2113. Special rules for annuities received from only a portion of a contract.

## PART III—CLOSING UNINTENDED LOOPHOLES

- Sec. 2121. Crude tall oil ineligible for cellulosic biofuel producer credit.
- Sec. 2122. Source rules for income on guarantees.

## PART IV—TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

- Sec. 2131. Time for payment of corporate estimated taxes.

## TITLE III—STATE SMALL BUSINESS CREDIT INITIATIVE

- Sec. 3001. Short title.
- Sec. 3002. Definitions.
- Sec. 3003. Federal funds allocated to States.

- Sec. 3004. Approving States for participation.
- Sec. 3005. Approving State capital access programs.
- Sec. 3006. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers. Sec. 3007. Reports.
- Sec. 3008. Remedies for State program termination or failures.
- Sec. 3009. Implementation and administration.
- Sec. 3010. Regulations.
- Sec. 3011. Oversight and audits.

#### TITLE IV—ADDITIONAL SMALL BUSINESS PROVISIONS

##### Subtitle A—Small Business Lending Fund

- Sec. 4101. Purpose.
- Sec. 4102. Definitions.
- Sec. 4103. Small business lending fund.
- Sec. 4104. Additional authorities of the Secretary.
- Sec. 4105. Considerations.
- Sec. 4106. Reports.
- Sec. 4107. Oversight and audits.
- Sec. 4108. Credit reform; funding.
- Sec. 4109. Termination and continuation of authorities.
- Sec. 4110. Preservation of authority.
- Sec. 4111. Assurances.
- Sec. 4112. Study and report with respect to women-owned, veteran-owned, and minority-owned businesses.
- Sec. 4113. Sense of congress.

##### Subtitle B—Other Provisions

#### PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES

- Sec. 4221. Short title.
- Sec. 4222. Global business development and promotion activities of the Department of Commerce.
- Sec. 4223. Additional funding to improve access to global markets for rural businesses.
- Sec. 4224. Additional funding for the ExporTech program.
- Sec. 4225. Additional funding for the market development cooperator program of the department of commerce.
- Sec. 4226. Hollings Manufacturing Partnership Program; Technology Innovation Program.
- Sec. 4227. Sense of the Senate concerning Federal collaboration with States on export promotion issues.
- Sec. 4228. Report on tariff and nontariff barriers.

#### PART II—MEDICARE FRAUD

- Sec. 4241. Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the Medicare fee-for-service program.

#### TITLE V—BUDGETARY PROVISIONS

- Sec. 5001. Determination of budgetary effects.

# 1 **TITLE I—SMALL BUSINESSES**

## 2 **SEC. 1001. DEFINITIONS.**

3 In this title—

4 (1) the terms “Administration” and “Adminis-  
5 trator” mean the Small Business Administration  
6 and the Administrator thereof, respectively; and

7 (2) the term “small business concern” has the  
8 meaning given that term under section 3 of the  
9 Small Business Act (15 U.S.C. 632).

## 10 **Subtitle A—Small Business Access** 11 **to Credit**

### 12 **SEC. 1101. SHORT TITLE.**

13 This subtitle may be cited as the “Small Business  
14 Job Creation and Access to Capital Act of 2010”.

## 15 **PART I—NEXT STEPS FOR MAIN STREET CREDIT**

### 16 **AVAILABILITY**

#### 17 **SEC. 1111. SECTION 7(a) BUSINESS LOANS.**

18 (a) **AMENDMENT.**—Section 7(a) of the Small Busi-  
19 ness Act (15 U.S.C. 636(a)) is amended—

20 (1) in paragraph (2)(A)—

21 (A) in clause (i), by striking “75 percent”  
22 and inserting “90 percent”; and

23 (B) in clause (ii), by striking “85 percent”  
24 and inserting “90 percent”; and



1           (2) in paragraph (3) (A), by striking  
2           “\$1,500,000 (or if the gross loan amount would ex-  
3           ceed \$2,000,000” and inserting “\$4,500,000 (or if  
4           the gross loan amount would exceed \$5,000,000”.

5           (b) PROSPECTIVE REPEAL.—Effective January 1,  
6 2011, section 7(a) of the Small Business Act (15 U.S.C.  
7 636(a)) is amended—

8           (1) in paragraph (2)(A)—

9                   (A) in clause (i), by striking “90 percent”  
10                   and inserting “75 percent”; and

11                   (B) in clause (ii), by striking “90 percent”  
12                   and inserting “85 percent”; and

13           (2) in paragraph (3) (A), by striking  
14           “\$4,500,000” and inserting “\$3,750,000”.

15 **SEC. 1112. MAXIMUM LOAN AMOUNTS UNDER 504 PRO-**  
16 **GRAM.**

17           Section 502(2)(A) of the Small Business Investment  
18 Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

19           (1) in clause (i), by striking “\$1,500,000” and  
20           inserting “\$5,000,000”;

21           (2) in clause (ii), by striking “\$2,000,000” and  
22           inserting “\$5,000,000”;

23           (3) in clause (iii), by striking “\$4,000,000” and  
24           inserting “\$5,500,000”;

1 (4) in clause (iv), by striking “\$4,000,000” and  
2 inserting “\$5,500,000”; and

3 (5) in clause (v), by striking “\$4,000,000” and  
4 inserting “\$5,500,000”.

5 **SEC. 1113. MAXIMUM LOAN LIMITS UNDER MICROLOAN**  
6 **PROGRAM.**

7 Section 7(m) of the Small Business Act (15 U.S.C.  
8 636(m)) is amended—

9 (1) in paragraph (1) (B) (iii), by striking  
10 “\$35,000” and inserting “\$50,000”;

11 (2) in paragraph (3)—

12 (A) in subparagraph (C), by striking  
13 “\$3,500,000” and inserting “\$5,000,000”; and

14 (B) in subparagraph (E), by striking  
15 “\$35,000” each place that term appears and  
16 inserting “\$50,000”; and

17 (3) in paragraph (1 1)(B), by striking  
18 “\$35,000” and inserting “\$50,000”.

19 **SEC. 1114. LOAN GUARANTEE ENHANCEMENT EXTENSIONS.**

20 (a) **FEES.**—Section 501 of the American Recovery  
21 and Reinvestment Act of 2009 (Public Law 111–5; 123  
22 Stat. 151) is amended by striking “September 30, 2010”  
23 each place that term appears and inserting “December 31,  
24 2010”.

1           (b) LOAN GUARANTEES.—Section 502(f) of division  
2 A of the American Recovery and Reinvestment Act of  
3 2009 (Public Law 111–5; 123 Stat. 153) is amended by  
4 striking “May 31, 2010” and inserting “December 31,  
5 2010”.

6 **SEC. 1115. NEW MARKETS VENTURE CAPITAL COMPANY IN-**  
7 **VESTMENT LIMITATIONS.**

8           Section 355 of the Small Business Investment Act  
9 of 1958 (15 U.S.C. 689d) is amended by adding at the  
10 end the following:

11           “(e) INVESTMENT LIMITATIONS.—

12                   “(1) DEFINITION.—In this subsection, the term  
13           ‘covered New Markets Venture Capital company’  
14           means a New Markets Venture Capital company—

15                           “(A) granted final approval by the Admin-  
16                   istrator under section 354(e) on or after March  
17                   1, 2002; and

18                           “(B) that has obtained a financing from  
19                   the Administrator.

20                   “(2) LIMITATION.—Except to the extent ap-  
21           proved by the Administrator, a covered New Markets  
22           Venture Capital company may not acquire or issue  
23           commitments for securities under this title for any  
24           single enterprise in an aggregate amount equal to  
25           more than 10 percent of the sum of—

1                   “(A) the regulatory capital of the covered  
2                   New Markets Venture Capital company; and

3                   “(B) the total amount of leverage pro-  
4                   jected in the participation agreement of the cov-  
5                   ered New Markets Venture Capital.”.

6 **SEC. 1116. ALTERNATIVE SIZE STANDARDS.**

7                   Section 3(a) of the Small Business Act (15 U.S.C.  
8 632(a)) is amended by adding at the end the following:

9                   “(5) ALTERNATIVE SIZE STANDARD.—

10                   “(A) IN GENERAL.—The Administrator shall  
11                   establish an alternative size standard for applicants  
12                   for business loans under section 7(a) and applicants  
13                   for development company loans under title V of the  
14                   Small Business Investment Act of 1958 (15 U.S.C.  
15                   695 et seq.), that uses maximum tangible net worth  
16                   and average net income as an alternative to the use  
17                   of industry standards.

18                   “(B) INTERIM RULE.—Until the date on which  
19                   the alternative size standard established under sub-  
20                   paragraph (A) is in effect, an applicant for a busi-  
21                   ness loan under section 7(a) or an applicant for a  
22                   development company loan under title V of the  
23                   Small Business Investment Act of 1958 may be eli-  
24                   gible for such a loan if—

1                   “(i) the maximum tangible net worth of  
2                   the applicant is not more than \$15,000,000;  
3                   and  
4                   “(ii) the average net income after Federal  
5                   income taxes (excluding any carry-over losses)  
6                   of the applicant for the 2 full fiscal years before  
7                   the date of the application is not more than  
8                   \$5,000,000.”.

9 **SEC. 1117. SALE OF 7(a) LOANS IN SECONDARY MARKET.**

10           Section 5(g) of the Small Business Act (15 U.S.C.  
11 63 4(g)) is amended by adding at the end the following:

12           “(6) If the amount of the guaranteed portion of any  
13 loan under section 7(a) is more than \$500,000, the Ad-  
14 ministrator shall, upon request of a pool assembler, divide  
15 the loan guarantee into increments of \$500,000 and 1 in-  
16 crement of any remaining amount less than \$500,000, in  
17 order to permit the maximum amount of any loan in a  
18 pool to be not more than \$500,000. Only 1 increment of  
19 any loan guarantee divided under this paragraph may be  
20 included in the same pool. Increments of loan guarantees  
21 to different borrowers that are divided under this para-  
22 graph may be included in the same pool.”.

1 **SEC. 1118. ONLINE LENDING PLATFORM.**

2 It is the sense of Congress that the Administrator  
3 of the Small Business Administration should establish a  
4 website that—

5 (1) lists each lender that makes loans guaran-  
6 teed by the Small Business Administration and pro-  
7 vides information about the loan rates of each such  
8 lender; and

9 (2) allows prospective borrowers to compare  
10 rates on loans guaranteed by the Small Business  
11 Administration.

12 **SEC. 1119. SBA SECONDARY MARKET GUARANTEE AUTHOR-**  
13 **ITY.**

14 Section 503(f) of division A of the American Recovery  
15 and Reinvestment Act of 2009 (Public Law 111–5; 123  
16 Stat. 155) is amended by striking “on the date 2 years  
17 after the date of enactment of this section” and inserting  
18 “2 years after the date of the first sale of a pool of first  
19 lien position 504 loans guaranteed under this section to  
20 a third-party investor”.

1 **PART II—SMALL BUSINESS ACCESS TO CAPITAL**  
2 **SEC. 1122. LOW-INTEREST REFINANCING UNDER THE**  
3 **LOCAL DEVELOPMENT BUSINESS LOAN PRO-**  
4 **GRAM.**

5 (a) REFINANCING.—Section 502(7) of the Small  
6 Business Investment Act of 1958 (15 U.S.C. 696(7)) is  
7 amended by adding at the end the following:

8 “(C) REFINANCING NOT INVOLVING EX-  
9 PANSIONS.—

10 “(i) DEFINITIONS.—In this subpara-  
11 graph—

12 “(I) the term ‘borrower’ means a  
13 small business concern that submits  
14 an application to a development com-  
15 pany for financing under this sub-  
16 paragraph;

17 “(II) the term ‘eligible fixed  
18 asset’ means tangible property relat-  
19 ing to which the Administrator may  
20 provide financing under this section;  
21 and

22 “(III) the term ‘qualified debt’  
23 means indebtedness—

24 “(aa) that—

25 “(AA) was incurred not  
26 less than 2 years before the

1 date of the application for  
2 assistance under this sub-  
3 paragraph;

4 “(BB) is a commercial  
5 loan;

6 “(CC) is not subject to  
7 a guarantee by a Federal  
8 agency;

9 “(DD) the proceeds of  
10 which were used to acquire  
11 an eligible fixed asset;

12 “(EE) was incurred for  
13 the benefit of the small busi-  
14 ness concern; and

15 “(FF) is collateralized  
16 by eligible fixed assets; and

17 “(bb) for which the borrower  
18 has been current on all payments  
19 for not less than 1 year before  
20 the date of the application.

21 “(ii) AUTHORITY.—A project that  
22 does not involve the expansion of a small  
23 business concern may include the refi-  
24 nancing of qualified debt if—



1                   “(I) the amount of the financing  
2 is not more than 90 percent of the  
3 value of the collateral for the financ-  
4 ing, except that, if the appraised value  
5 of the eligible fixed assets serving as  
6 collateral for the financing is less than  
7 the amount equal to 125 percent of  
8 the amount of the financing, the bor-  
9 rower may provide additional cash or  
10 other collateral to eliminate any defi-  
11 ciency;

12                   “(II) the borrower has been in  
13 operation for all of the 2-year period  
14 ending on the date of the loan; and

15                   “(III) for a financing for which  
16 the Administrator determines there  
17 will be an additional cost attributable  
18 to the refinancing of the qualified  
19 debt, the borrower agrees to pay a fee  
20 in an amount equal to the anticipated  
21 additional cost.

22                   “(iii) FINANCING FOR BUSINESS EX-  
23 PENSES.—

24                   “(I) FINANCING FOR BUSINESS  
25 EXPENSES.—The Administrator may

1 provide financing to a borrower that  
2 receives financing that includes a refi-  
3 nancing of qualified debt under clause  
4 (ii), in addition to the refinancing  
5 under clause (ii), to be used solely for  
6 the payment of business expenses.

7 “(II) APPLICATION FOR FINANC-  
8 ING.—An application for financing  
9 under subclause (I) shall include—

10 “(aa) a specific description  
11 of the expenses for which the ad-  
12 ditional financing is requested;  
13 and

14 “(bb) an itemization of the  
15 amount of each expense.

16 “(III) CONDITION ON ADDI-  
17 TIONAL FINANCING.—A borrower may  
18 not use any part of the financing  
19 under this clause for non-business  
20 purposes.

21 “(iv) LOANS BASED ON JOBS.—

22 “(I) JOB CREATION AND RETEN-  
23 TION GOALS.—

24 “(aa) IN GENERAL.—The  
25 Administrator may provide fi-

1 financing under this subparagraph  
2 for a borrower that meets the job  
3 creation goals under subsection  
4 (d) or (e) of section 501.

5 “(bb) ALTERNATE JOB RE-  
6 TENTION GOAL.—The Adminis-  
7 trator may provide financing  
8 under this subparagraph to a  
9 borrower that does not meet the  
10 goals described in item (aa) in an  
11 amount that is not more than the  
12 product obtained by multiplying  
13 the number of employees of the  
14 borrower by \$65,000.

15 “(II) NUMBER OF EMPLOYEES.—  
16 For purposes of subclause (I), the  
17 number of employees of a borrower is  
18 equal to the sum of—

19 “(aa) the number of full-  
20 time employees of the borrower  
21 on the date on which the bor-  
22 rower applies for a loan under  
23 this subparagraph; and

24 “(bb) the product obtained  
25 by multiplying—

1                   “(AA) the number of  
2                   part-time employees of the  
3                   borrower on the date on  
4                   which the borrower applies  
5                   for a loan under this sub-  
6                   paragraph; by

7                   “(BB) the quotient ob-  
8                   tained by dividing the aver-  
9                   age number of hours each  
10                  part time employee of the  
11                  borrower works each week  
12                  by 40.

13                  “(v)       NONDELEGATION.—Notwith-  
14                  standing section 508(e), the Administrator  
15                  may not permit a premier certified lender  
16                  to approve or disapprove an application for  
17                  assistance under this subparagraph.

18                  “(vi)       TOTAL AMOUNT OF LOANS.—  
19                  The Administrator may provide not more  
20                  than a total of \$7,500,000,000 of financ-  
21                  ing under this subparagraph for each fiscal  
22                  year.”.

23                  (b) PROSPECTIVE REPEAL.—Effective 2 years after  
24                  the date of enactment of this Act, section 502(7) of the

1 Small Business Investment Act of 1958 (15 U.S.C.  
2 696(7)) is amended by striking subparagraph (C).

3 (c) TECHNICAL CORRECTION.—Section 502(2) (A) (i)  
4 of the Small Business Investment Act of 1958 (15 U.S.C.  
5 696(2) (A) (i)) is amended by striking “subparagraph (B)  
6 or (C)” and inserting “clause (ii), (iii), (iv), or (v)”.

7 **PART III—OTHER MATTERS**

8 **SEC. 1131. SMALL BUSINESS INTERMEDIARY LENDING**  
9 **PILOT PROGRAM.**

10 (a) IN GENERAL.—Section 7 of the Small Business  
11 Act (15 U.S.C. 636) is amended by striking subsection  
12 (l) and inserting the following:

13 “(1) SMALL BUSINESS INTERMEDIARY LENDING  
14 PILOT PROGRAM.—

15 “(1) DEFINITIONS.—In this subsection—

16 “(A) the term ‘eligible intermediary’—

17 “(i) means a private, nonprofit entity  
18 that—

19 “(I) seeks or has been awarded a  
20 loan from the Administrator to make  
21 loans to small business concerns  
22 under this subsection; and

23 “(II) has not less than 1 year of  
24 experience making loans to startup,

1 newly established, or growing small  
2 business concerns; and

3 “(ii) includes—

4 “(I) a private, nonprofit commu-  
5 nity development corporation;

6 “(II) a consortium of private,  
7 nonprofit organizations or nonprofit  
8 community development corporations;  
9 and

10 “(III) an agency of or nonprofit  
11 entity established by a Native Amer-  
12 ican Tribal Government; and

13 “(B) the term ‘Program’ means the small  
14 business intermediary lending pilot program es-  
15 tablished under paragraph (2).

16 “(2) ESTABLISHMENT.—There is established a  
17 3-year small business intermediary lending pilot pro-  
18 gram, under which the Administrator may make di-  
19 rect loans to eligible intermediaries, for the purpose  
20 of making loans to startup, newly established, and  
21 growing small business concerns.

22 “(3) PURPOSES.—The purposes of the Program  
23 are—

24 “(A) to assist small business concerns in  
25 areas suffering from a lack of credit due to

1 poor economic conditions or changes in the fi-  
2 nancial market; and

3 “(B) to establish a loan program under  
4 which the Administrator may provide loans to  
5 eligible intermediaries to enable the eligible  
6 intermediaries to provide loans to startup,  
7 newly established, and growing small business  
8 concerns for working capital, real estate, or the  
9 acquisition of materials, supplies, or equipment.

10 “(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

11 “(A) APPLICATION.—Each eligible inter-  
12 mediary desiring a loan under this subsection  
13 shall submit an application to the Adminis-  
14 trator that describes—

15 “(i) the type of small business con-  
16 cerns to be assisted;

17 “(ii) the size and range of loans to be  
18 made;

19 “(iii) the interest rate and terms of  
20 loans to be made;

21 “(iv) the geographic area to be served  
22 and the economic, poverty, and unemploy-  
23 ment characteristics of the area;

1                   “(v) the status of small business con-  
2                   cerns in the area to be served and an anal-  
3                   ysis of the availability of credit; and

4                   “(vi) the qualifications of the appli-  
5                   cant to carry out this subsection.

6                   “(B) LOAN LIMITS.—No loan may be  
7                   made to an eligible intermediary under this sub-  
8                   section if the total amount outstanding and  
9                   committed to the eligible intermediary by the  
10                  Administrator would, as a result of such loan,  
11                  exceed \$1,000,000 during the participation of  
12                  the eligible intermediary in the Program.

13                  “(C) LOAN DURATION.—Loans made by  
14                  the Administrator under this subsection shall be  
15                  for a term of 20 years.

16                  “(D) APPLICABLE INTEREST RATES.—  
17                  Loans made by the Administrator to an eligible  
18                  intermediary under the Program shall bear an  
19                  annual interest rate equal to 1.00 percent.

20                  “(E) FEES; COLLATERAL.—The Adminis-  
21                  trator may not charge any fees or require col-  
22                  lateral with respect to any loan made to an eli-  
23                  gible intermediary under this subsection.

24                  “(F) DELAYED PAYMENTS.—The Adminis-  
25                  trator shall not require the repayment of prin-



1            cial or interest on a loan made to an eligible  
2            intermediary under the Program during the 2-  
3            year period beginning on the date of the initial  
4            disbursement of funds under that loan.

5            “(G) MAXIMUM PARTICIPANTS AND  
6            AMOUNTS.—During each of fiscal years 2011,  
7            2012, and 2013, the Administrator may make  
8            loans under the Program—

9                    “(i) to not more than 20 eligible inter-  
10                    mediaries; and

11                    “(ii) in a total amount of not more  
12                    than \$20,000,000.

13            “(5) LOANS TO SMALL BUSINESS CONCERNS.—

14                    “(A) IN GENERAL.—The Administrator,  
15            through an eligible intermediary, shall make  
16            loans to startup, newly established, and growing  
17            small business concerns for working capital,  
18            real estate, and the acquisition of materials,  
19            supplies, furniture, fixtures, and equipment.

20                    “(B) MAXIMUM LOAN.—An eligible inter-  
21            mediary may not make a loan under this sub-  
22            section of more than \$200,000 to any 1 small  
23            business concern.

24                    “(C) APPLICABLE INTEREST RATES.—A  
25            loan made by an eligible intermediary to a small

1           business concern under this subsection, may  
2           have a fixed or a variable interest rate, and  
3           shall bear an interest rate specified by the eligi-  
4           ble intermediary in the application of the eligi-  
5           ble intermediary for a loan under this sub-  
6           section.

7                   “(D) REVIEW RESTRICTIONS.—The Ad-  
8           ministrator may not review individual loans  
9           made by an eligible intermediary to a small  
10          business concern before approval of the loan by  
11          the eligible intermediary.

12                   “(6) TERMINATION.—The authority of the Ad-  
13          ministrator to make loans under the Program shall  
14          terminate 3 years after the date of enactment of the  
15          Small Business Job Creation and Access to Capital  
16          Act of 2010.”.

17           (b) RULEMAKING AUTHORITY.—Not later than 180  
18          days after the date of enactment of this Act, the Adminis-  
19          trator shall issue regulations to carry out section 7(1) of  
20          the Small Business Act, as amended by subsection (a).

21           (c) AVAILABILITY OF FUNDS.—Any amounts pro-  
22          vided to the Administrator for the purposes of carrying  
23          out section 7(1) of the Small Business Act, as amended  
24          by subsection (a), shall remain available until expended.

1 **SEC. 1132. PUBLIC POLICY GOALS.**

2 Section 501 (d) (3) of the Small Business Investment  
3 Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

4 (1) in subparagraph (J), by striking “or” at the  
5 end;

6 (2) in subparagraph (K), by striking the period  
7 at the end and inserting “, or”; and

8 (3) by adding at the end the following:

9 “(L) reduction of rates of unemployment  
10 in labor surplus areas, as such areas are deter-  
11 mined by the Secretary of Labor.”.

12 **SEC. 1133. FLOOR PLAN PILOT PROGRAM EXTENSION.**

13 (a) **IN GENERAL.**—Section 7(a) of the Small Busi-  
14 ness Act (15 U.S.C. 636(a)) is amended—

15 (1) by redesignating paragraph (32), relating to  
16 increased veteran participation, as added by section  
17 208 of the Military Reservist and Veteran Small  
18 Business Reauthorization and Opportunity Act of  
19 2008 (Public Law 110–186; 122 Stat. 631), as  
20 paragraph (33); and

21 (2) by adding at the end the following:

22 “(34) **FLOOR PLAN FINANCING PROGRAM.**—

23 “(A) **DEFINITION.**—In this paragraph, the  
24 term ‘eligible retail good’—

25 “(i) means a good for which a title  
26 may be obtained under State law; and

1                   “(ii) includes an automobile, rec-  
2                   reational vehicle, boat, and manufactured  
3                   home.

4                   “(B) PROGRAM.—The Administrator may  
5                   guarantee the timely payment of an open-end  
6                   extension of credit to a small business concern,  
7                   the proceeds of which may be used for the pur-  
8                   chase of eligible retail goods for resale.

9                   “(C) AMOUNT.—An open-end extension of  
10                  credit guaranteed under this paragraph shall be  
11                  in an amount not less than \$500,000 and not  
12                  more than \$5,000,000.

13                  “(D) TERM.—An open-end extension of  
14                  credit guaranteed under this paragraph shall  
15                  have a term of not more than 5 years.

16                  “(E) GUARANTEE PERCENTAGE.—The Ad-  
17                  ministrators may guarantee—

18                         “(i) not less than 60 percent of an  
19                         open-end extension of credit under this  
20                         paragraph; and

21                         “(ii) not more than 75 percent of an  
22                         open-end extension of credit under this  
23                         paragraph.

24                  “(F) ADVANCE RATE.—The lender for an  
25                  open-end extension of credit guaranteed under

1           this paragraph may allow the borrower to draw  
2           funds on the line of credit in an amount equal  
3           to not more than 100 percent of the value of  
4           the eligible retail goods to be purchased.”.

5           (b) SUNSET.—Effective September 30, 2013, section  
6 7(a) of the Small Business Act (15 U.S.C. 636(a)) is  
7 amended—

8           (1) by striking paragraph (34); and

9           (2) by redesignating paragraph (35), as added  
10          by section 1206 of this Act, as paragraph (34).

11 **SEC. 1134. GUARANTEES FOR BONDS AND NOTES ISSUED**  
12                                   **FOR COMMUNITY OR ECONOMIC DEVELOP-**  
13                                   **MENT PURPOSES.**

14          The Riegle Community Development and Regulatory  
15 Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is  
16 amended by inserting after section 114 (12 U.S.C. 4713)  
17 the following:

18 **“SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED**  
19                                   **FOR COMMUNITY OR ECONOMIC DEVELOP-**  
20                                   **MENT PURPOSES.**

21          “(a) DEFINITIONS.—In this section, the following  
22 definitions shall apply:

23                   “(1) ELIGIBLE COMMUNITY DEVELOPMENT FI-  
24                   NANCIAL INSTITUTION.—The term ‘eligible commu-  
25                   nity development financial institution’ means a com-

1 community development financial institution (as de-  
2 scribed in section 1805.201 of title 12, Code of Fed-  
3 eral Regulations, or any successor thereto) certified  
4 by the Secretary that has applied to a qualified  
5 issuer for, or been granted by a qualified issuer, a  
6 loan under the Program.

7 “(2) ELIGIBLE COMMUNITY OR ECONOMIC DE-  
8 VELOPMENT PURPOSE.—The term ‘eligible commu-  
9 nity or economic development purpose’—

10 “(A) means any purpose described in sec-  
11 tion 108(b); and

12 “(B) includes the provision of community  
13 or economic development in low-income or un-  
14 derserved rural areas.

15 “(3) GUARANTEE.—The term ‘guarantee’  
16 means a written agreement between the Secretary  
17 and a qualified issuer (or trustee), pursuant to  
18 which the Secretary ensures repayment of the  
19 verifiable losses of principal, interest, and call pre-  
20 mium, if any, on notes or bonds issued by a qualified  
21 issuer to finance or refinance loans to eligible com-  
22 munity development financial institutions.

23 “(4) LOAN.—The term ‘loan’ means any credit  
24 instrument that is extended under the Program for

1 any eligible community or economic development  
2 purpose.

3 “(5) MASTER SERVICER.—

4 “(A) IN GENERAL.—The term ‘master  
5 servicer’ means any entity approved by the Sec-  
6 retary in accordance with subparagraph (B) to  
7 oversee the activities of servicers, as provided in  
8 subsection (f)(4).

9 “(B) APPROVAL CRITERIA FOR MASTER  
10 SERVICERS.—The Secretary shall approve or  
11 deny any application to become a master  
12 servicer under the Program not later than 90  
13 days after the date on which all required infor-  
14 mation is submitted to the Secretary, based on  
15 the capacity and experience of the applicant  
16 in—

17 “(i) loan administration, servicing,  
18 and loan monitoring;

19 “(ii) managing regional or national  
20 loan intake, processing, or servicing oper-  
21 ational systems and infrastructure;

22 “(iii) managing regional or national  
23 originator communication systems and in-  
24 frastructure;

1                   “(iv) developing and implementing  
2                   training and other risk management strat-  
3                   egies on a regional or national basis; and  
4                   “(v) compliance monitoring, investor  
5                   relations, and reporting.

6                   “(6) PROGRAM.—The term ‘Program’ means  
7                   the guarantee Program for bonds and notes issued  
8                   for eligible community or economic development pur-  
9                   poses established under this section.

10                  “(7) PROGRAM ADMINISTRATOR.—The term  
11                  ‘Program administrator’ means an entity designated  
12                  by the issuer to perform administrative duties, as  
13                  provided in subsection (f) (2).

14                  “(8) QUALIFIED ISSUER.—

15                         “(A) IN GENERAL.—The term ‘qualified  
16                         issuer’ means a community development finan-  
17                         cial institution (or any entity designated to  
18                         issue notes or bonds on behalf of such commu-  
19                         nity development financial institution) that  
20                         meets the qualification requirements of this  
21                         paragraph.

22                         “(B) APPROVAL CRITERIA FOR QUALIFIED  
23                         ISSUERS.—

24                                 “(i) IN GENERAL.—The Secretary  
25                                 shall approve a qualified issuer for a guar-



1           antee under the Program in accordance  
2           with the requirements of this paragraph,  
3           and such additional requirements as the  
4           Secretary may establish, by regulation.

5                   “(ii) TERMS AND QUALIFICATIONS.—

6           A qualified issuer shall—

7                   “(I) have appropriate expertise,  
8                   capacity, and experience, or otherwise  
9                   be qualified to make loans for eligible  
10                  community or economic development  
11                  purposes;

12                   “(II) provide to the Secretary—

13                           “(aa) an acceptable state-  
14                           ment of the proposed sources and  
15                           uses of the funds; and

16                           “(bb) a capital distribution  
17                           plan that meets the requirements  
18                           of subsection (c)(1); and

19                   “(III) certify to the Secretary  
20                  that the bonds or notes to be guaran-  
21                  teed are to be used for eligible com-  
22                  munity or economic development pur-  
23                  poses.

24                   “(C) DEPARTMENT OPINION; TIMING.—

1                   “(i) DEPARTMENT OPINION.—Not  
2                   later than 30 days after the date of a re-  
3                   quest by a qualified issuer for approval of  
4                   a guarantee under the Program, the Sec-  
5                   retary shall provide an opinion regarding  
6                   compliance by the issuer with the require-  
7                   ments of the Program under this section.

8                   “(ii) TIMING.—The Secretary shall  
9                   approve or deny a guarantee under this  
10                  section after consideration of the opinion  
11                  provided to the Secretary under clause (i),  
12                  and in no case later than 90 days after re-  
13                  ceipt of all required information by the  
14                  Secretary with respect to a request for  
15                  such guarantee.

16                  “(9) SECRETARY.—The term ‘Secretary’ means  
17                  the Secretary of the Treasury.

18                  “(10) SERVICER.—The term ‘servicer’ means  
19                  an entity designated by the issuer to perform various  
20                  servicing duties, as provided in subsection (f)(3).

21                  “(b) GUARANTEES AUTHORIZED.—The Secretary  
22                  shall guarantee payments on bonds or notes issued by any  
23                  qualified issuer, if the proceeds of the bonds or notes are  
24                  used in accordance with this section to make loans to eligi-  
25                  ble community development financial institutions—

1 “(1) for eligible community or economic devel-  
2 opment purposes; or

3 “(2) to refinance loans or notes issued for such  
4 purposes.

5 “(c) GENERAL PROGRAM REQUIREMENTS.—

6 “(1) IN GENERAL.—A capital distribution plan  
7 meets the requirements of this subsection, if not less  
8 than 90 percent of the principal amount of guaran-  
9 teed bonds or notes (other than costs of issuance  
10 fees) are used to make loans for any eligible commu-  
11 nity or economic development purpose, measured an-  
12 nually, beginning at the end of the 1-year period be-  
13 ginning on the issuance date of such guaranteed  
14 bonds or notes.

15 “(2) RELENDING ACCOUNT.—Not more than 10  
16 percent of the principal amount of guaranteed bonds  
17 or notes, multiplied by an amount equal to the out-  
18 standing principal balance of issued notes or bonds,  
19 minus the risk-share pool amount under subsection  
20 (d), may be held in a relending account and may be  
21 made available for new eligible community or eco-  
22 nomic development purposes.

23 “(3) LIMITATIONS ON UNPAID PRINCIPAL BAL-  
24 ANCES.—The proceeds of guaranteed bonds or notes  
25 under the Program may not be used to pay fees

1 (other than costs of issuance fees), and shall be held  
2 in—

3 “(A) community or economic development  
4 loans;

5 “(B) a relending account, to the extent au-  
6 thORIZED under paragraph (2); or

7 “(C) a risk-share pool established under  
8 subsection (d).

9 “(4) REPAYMENT.—If a qualified issuer fails to  
10 meet the requirements of paragraph (1) by the end  
11 of the 90-day period beginning at the end of the an-  
12 nual measurement period, repayment shall be made  
13 on that portion of bonds or notes necessary to bring  
14 the bonds or notes that remain outstanding after  
15 such repayment into compliance with the 90 percent  
16 requirement of paragraph (1).

17 “(5) PROHIBITED USES.—The Secretary shall,  
18 by regulation—

19 “(A) prohibit, as appropriate, certain uses  
20 of amounts from the guarantee of a bond or  
21 note under the Program, including the use of  
22 such funds for political activities, lobbying, out-  
23 reach, counseling services, or travel expenses;  
24 and

1                   “(B) provide that the guarantee of a bond  
2                   or note under the Program may not be used for  
3                   salaries or other administrative costs of—

4                   “(i) the qualified issuer; or

5                   “(ii) any recipient of amounts from  
6                   the guarantee of a bond or note.

7                   “(d) RISK-SHARE POOL.—Each qualified issuer  
8 shall, during the term of a guarantee provided under the  
9 Program, establish a risk-share pool, capitalized by con-  
10 tributions from eligible community development financial  
11 institution participants an amount equal to 3 percent of  
12 the guaranteed amount outstanding on the subject notes  
13 and bonds.

14                   “(e) GUARANTEES.—

15                   “(1) IN GENERAL.—A guarantee issued under  
16 the Program shall—

17                   “(A) be for the full amount of a bond or  
18 note, including the amount of principal, inter-  
19 est, and call premiums;

20                   “(B) be fully assignable and transferable  
21 to the capital market, on terms and conditions  
22 that are consistent with comparable Govern-  
23 ment-guaranteed bonds, and satisfactory to the  
24 Secretary;

1                   “(C) represent the full faith and credit of  
2                   the United States; and

3                   “(D) not exceed 30 years.

4                   “(2) LIMITATIONS.—

5                   “(A) ANNUAL NUMBER OF GUARAN-  
6                   TEES.—The Secretary shall issue not more than  
7                   10 guarantees in any calendar year under the  
8                   Program.

9                   “(B) GUARANTEE AMOUNT.—The Sec-  
10                  retary may not guarantee any amount under  
11                  the Program equal to less than \$100,000,000,  
12                  but the total of all such guarantees in any fiscal  
13                  year may not exceed \$1,000,000,000.

14                  “(f) SERVICING OF TRANSACTIONS.—

15                  “(1) IN GENERAL.—To maximize efficiencies  
16                  and minimize cost and interest rates, loans made  
17                  under this section may be serviced by qualified Pro-  
18                  gram administrators, bond servicers, and a master  
19                  servicer.

20                  “(2) DUTIES OF PROGRAM ADMINISTRATOR.—  
21                  The duties of a Program administrator shall in-  
22                  clude—

23                  “(A) approving and qualifying eligible com-  
24                  munity development financial institution appli-  
25                  cations for participation in the Program;

1                   “(B) compliance monitoring;

2                   “(C) bond packaging in connection with  
3 the Program; and

4                   “(D) all other duties and related services  
5 that are customarily expected of a Program ad-  
6 ministrator.

7                   “(3) DUTIES OF SERVICER.—The duties of a  
8 servicer shall include—

9                   “(A) billing and collecting loan payments;

10                   “(B) initiating collection activities on past-  
11 due loans;

12                   “(C) transferring loan payments to the  
13 master servicing accounts;

14                   “(D) loan administration and servicing;

15                   “(E) systematic and timely reporting of  
16 loan performance through remittance and serv-  
17 icing reports;

18                   “(F) proper measurement of annual out-  
19 standing loan requirements; and

20                   “(G) all other duties and related services  
21 that are customarily expected of servicers.

22                   “(4) DUTIES OF MASTER SERVICER.—The du-  
23 ties of a master servicer shall include—

1           “(A) tracking the movement of funds be-  
2           tween the accounts of the master servicer and  
3           any other servicer;

4           “(B) ensuring orderly receipt of the  
5           monthly remittance and servicing reports of the  
6           servicer;

7           “(C) monitoring the collection comments  
8           and foreclosure actions;

9           “(D) aggregating the reporting and dis-  
10          tribution of funds to trustees and investors;

11          “(E) removing and replacing a servicer, as  
12          necessary;

13          “(F) loan administration and servicing;

14          “(G) systematic and timely reporting of  
15          loan performance compiled from all bond  
16          servicers’ reports;

17          “(H) proper distribution of funds to inves-  
18          tors; and

19          “(I) all other duties and related services  
20          that are customarily expected of a master  
21          servicer.

22          “(g) FEES.—

23                 “(1) IN GENERAL.—A qualified issuer that re-  
24                 ceives a guarantee issued under this section on a  
25                 bond or note shall pay a fee to the Secretary, in an



1 amount equal to 10 basis points of the amount of  
2 the unpaid principal of the bond or note guaranteed.

3 “(2) PAYMENT.—A qualified issuer shall pay  
4 the fee required under this subsection on an annual  
5 basis.

6 “(3) USE OF FEES.—Fees collected by the Sec-  
7 retary under this subsection shall be used to reim-  
8 burse the Department of the Treasury for any ad-  
9 ministrative costs incurred by the Department in im-  
10 plementing the Program established under this sec-  
11 tion.

12 “(h) AUTHORIZATION OF APPROPRIATIONS.—

13 “(1) IN GENERAL.—There are authorized to be  
14 appropriated to the Secretary, such sums as are nec-  
15 essary to carry out this section.

16 “(2) USE OF FEES.—To the extent that the  
17 amount of funds appropriated for a fiscal year under  
18 paragraph (1) are not sufficient to carry out this  
19 section, the Secretary may use the fees collected  
20 under subsection (g) for the cost of providing guar-  
21 antees of bonds and notes under this section.

22 “(i) INVESTMENT IN GUARANTEED BONDS INELI-  
23 GIBLE FOR COMMUNITY REINVESTMENT ACT PUR-  
24 POSES.—Notwithstanding any other provision of law, any  
25 investment by a financial institution in bonds or notes

1 guaranteed under the Program shall not be taken into ac-  
2 count in assessing the record of such institution for pur-  
3 poses of the Community Reinvestment Act of 1977 (12  
4 U.S.C. 2901).

5 “(j) ADMINISTRATION.—

6 “(1) REGULATIONS.—Not later than 1 year  
7 after the date of enactment of this section, the Sec-  
8 retary shall promulgate regulations to carry out this  
9 section.

10 “(2) IMPLEMENTATION.—Not later than 2  
11 years after the date of enactment of this section, the  
12 Secretary shall implement this section.

13 “(k) TERMINATION.—This section is repealed, and  
14 the authority provided under this section shall terminate,  
15 on September 30, 2014.”.

16 **SEC. 1135. TEMPORARY EXPRESS LOAN ENHANCEMENT.**

17 (a) IN GENERAL.—Section 7(a)(31)(D) of the Small  
18 Business Act (15 U.S.C. 636(a)(31)(D)) is amended by  
19 striking “\$350,000” and inserting “\$1,000,000”.

20 (b) PROSPECTIVE REPEAL.—Effective 1 year after  
21 the date of enactment of this Act, section 7(a)(31)(D) of  
22 the Small Business Act (15 U.S.C. 636(a)(31)(D)) is  
23 amended by striking “\$1,000,000” and inserting  
24 “\$350,000”.

1 **SEC. 1136. PROHIBITION ON USING TARP FUNDS OR TAX IN-**  
2 **CREASES.**

3 (a) **IN GENERAL.**—Except as provided in subsection  
4 (b), nothing in section 1111, 1112, 1113, 1114, 1115,  
5 1116, 1117, 1118, 1122, or 1131, or an amendment made  
6 by such sections, shall be construed to limit the ability  
7 of Congress to appropriate funds.

8 (b) **TARP FUNDS AND TAX INCREASES.**—

9 (1) **IN GENERAL.**—Any covered amounts may  
10 not be used to carry out section 1111, 1112, 1113,  
11 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or  
12 an amendment made by such sections.

13 (2) **DEFINITION.**—In this subsection, the term  
14 “covered amounts” means—

15 (A) the amounts made available to the Sec-  
16 retary of the Treasury under title I of the  
17 Emergency Economic Stabilization Act of 2008  
18 S.C. 5201 et seq.) to purchase (under section  
19 101) or guarantee (under section 102) assets  
20 under that Act; and

21 (B) any revenue increase attributable to  
22 any amendment to the Internal Revenue Code  
23 of 1986 made during the period beginning on  
24 the date of enactment of this Act and ending on  
25 December 31, 2010.

1 **Subtitle B—Small Business Trade**  
2 **and Exporting**

3 **SEC. 1201. SHORT TITLE.**

4 This subtitle may be cited as the “Small Business  
5 Export Enhancement and International Trade Act of  
6 2010”.

7 **SEC. 1202. DEFINITIONS.**

8 (a) **DEFINITIONS.**—In this subtitle—

9 (1) the term “Associate Administrator” means  
10 the Associate Administrator for International Trade  
11 appointed under section 22(a)(2) of the Small Busi-  
12 ness Act, as amended by this subtitle;

13 (2) the term “Export Assistance Center” means  
14 a one-stop shop referred to in section 2301(b)(8) of  
15 the Omnibus Trade and Competitiveness Act of  
16 1988 (15 U.S.C. 4721(b)(8)); and

17 (3) the term “rural small business concern”  
18 means a small business concern located in a rural  
19 area, as that term is defined in section 1393(a)(2)  
20 of the Internal Revenue Code of 1986.

21 (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

22 (1) **DEFINITIONS.**—Section 3 of the Small  
23 Business Act (15 U.S.C. 632) is amended by adding  
24 at the end the following:

1       “(t) SMALL BUSINESS DEVELOPMENT CENTER.—In  
2 this Act, the term ‘small business development center’  
3 means a small business development center described in  
4 section 21.

5       “(u) REGION OF THE ADMINISTRATION.—In this  
6 Act, the term ‘region of the Administration’ means the  
7 geographic area served by a regional office of the Adminis-  
8 tration established under section 4(a).”.

9           (2) CONFORMING AMENDMENT.—Section  
10 4(b) (3) (B) (x) of the Small Business Act (15 U.S.C.  
11 633(b)(3)(B)(x)) is amended by striking “Adminis-  
12 tration district and region” and inserting “district  
13 and region of the Administration”.

14 **SEC. 1203. OFFICE OF INTERNATIONAL TRADE.**

15       (a) ESTABLISHMENT.—Section 22 of the Small Busi-  
16 ness Act (15 U.S.C. 649) is amended—

17           (1) by striking “SEC. 22. (a) There” and in-  
18 serting the following:

19 **“SEC. 22. OFFICE OF INTERNATIONAL TRADE.**

20       “(a) ESTABLISHMENT.—

21           “(1) OFFICE.—There”; and

22           (2) in subsection (a)—

23               (A) in paragraph (1), as so designated, by  
24 striking the period and inserting “for the pri-  
25 mary purposes of increasing—

1                   “(A) the number of small business con-  
2                   cerns that export; and

3                   “(B) the volume of exports by small busi-  
4                   ness concerns.”; and

5                   (B) by adding at the end the following:

6                   “(2) ASSOCIATE ADMINISTRATOR.—The head of  
7                   the Office shall be the Associate Administrator for  
8                   International Trade, who shall be responsible to the  
9                   Administrator.”.

10                  (b) AUTHORITY FOR ADDITIONAL ASSOCIATE AD-  
11                  MINISTRATOR.—Section 4(b)(1) of the Small Business Act  
12                  (15 U.S.C. 633(b)(1)) is amended—

13                   (1) in the fifth sentence, by striking “five Asso-  
14                   ciate Administrators” and inserting “Associate Ad-  
15                   ministrators”; and

16                   (2) by adding at the end the following: “One  
17                   such Associate Administrator shall be the Associate  
18                   Administrator for International Trade, who shall be  
19                   the head of the Office of International Trade estab-  
20                   lished under section 22.”.

21                  (c) DISCHARGE OF INTERNATIONAL TRADE RESPON-  
22                  SIBILITIES OF ADMINISTRATION.—Section 22 of the Small  
23                  Business Act (15 U.S.C. 649) is amended by adding at  
24                  the end the following:

1       “(h) DISCHARGE OF INTERNATIONAL TRADE RE-  
2       SPONSIBILITIES OF ADMINISTRATION.—The Adminis-  
3       trator shall ensure that—

4               “(1) the responsibilities of the Administration  
5       regarding international trade are carried out by the  
6       Associate Administrator;

7               “(2) the Associate Administrator has sufficient  
8       resources to carry out such responsibilities; and

9               “(3) the Associate Administrator has direct su-  
10       pervision and control over—

11               “(A) the staff of the Office; and

12               “(B) any employee of the Administration  
13       whose principal duty station is an Export As-  
14       sistance Center, or any successor entity.”.

15       (d) ROLE OF ASSOCIATE ADMINISTRATOR IN CAR-  
16       RYING OUT INTERNATIONAL TRADE POLICY.—Section  
17       2(b) (1) of the Small Business Act (15 U.S.C. 631(b) (1))  
18       is amended in the matter preceding subparagraph (A)—

19               (1) by inserting “the Administrator of” before  
20       “the Small Business Administration”; and

21               (2) by inserting “through the Associate Admin-  
22       istrator for International Trade, and” before “in co-  
23       operation with”.

24       (e) IMPLEMENTATION DATE.—Not later than 90  
25       days after the date of enactment of this Act, the Adminis-

1 trator of the Small Business Administration shall appoint  
2 an Associate Administrator for International Trade under  
3 section 22(a) of the Small Business Act (15 U.S.C.  
4 649(a)), as added by this section.

5 **SEC. 1204. DUTIES OF THE OFFICE OF INTERNATIONAL**  
6 **TRADE.**

7 (a) AMENDMENTS TO SECTION 22.—Section 22 of  
8 the Small Business Act (15 U.S.C. 649) is amended—

9 (1) by striking subsection (b) and inserting the  
10 following:

11 “(b) TRADE DISTRIBUTION NETWORK.—The Asso-  
12 ciate Administrator, working in close cooperation with the  
13 Secretary of Commerce, the United States Trade Rep-  
14 resentative, the Secretary of Agriculture, the Secretary of  
15 State, the President of the Export-Import Bank of the  
16 United States, the President of the Overseas Private In-  
17 vestment Corporation, Director of the United States  
18 Trade and Development Agency, and other relevant Fed-  
19 eral agencies, small business development centers engaged  
20 in export promotion efforts, Export Assistance Centers,  
21 regional and district offices of the Administration, the  
22 small business community, and relevant State and local  
23 export promotion programs, shall—

24 “(1) maintain a distribution network, using re-  
25 gional and district offices of the Administration, the



1 small business development center network, net-  
2 works of women’s business centers, the Service  
3 Corps of Retired Executives authorized by section  
4 8(b) (1), and Export Assistance Centers, for pro-  
5 grams relating to—

6 “(A) trade promotion;

7 “(B) trade finance;

8 “(C) trade adjustment assistance;

9 “(D) trade remedy assistance; and

10 “(E) trade data collection;

11 “(2) aggressively market the programs de-  
12 scribed in paragraph (1) and disseminate informa-  
13 tion, including computerized marketing data, to  
14 small business concerns on exporting trends, market-  
15 specific growth, industry trends, and international  
16 prospects for exports;

17 “(3) promote export assistance programs  
18 through the district and regional offices of the Ad-  
19 ministration, the small business development center  
20 network, Export Assistance Centers, the network of  
21 women’s business centers, chapters of the Service  
22 Corps of Retired Executives, State and local export  
23 promotion programs, and partners in the private  
24 sector; and

1           “(4) give preference in hiring or approving the  
2 transfer of any employee into the Office or to a posi-  
3 tion described in subsection (c)(9) to otherwise  
4 qualified applicants who are fluent in a language in  
5 addition to English, to—

6                   “(A) accompany small business concerns  
7 on foreign trade missions; and

8                   “(B) translate documents, interpret con-  
9 versations, and facilitate multilingual trans-  
10 actions, including by providing referral lists for  
11 translation services, if required.”;

12           (2) in subsection (c)—

13                   (A) by striking “(c) The Office” and in-  
14 serting the following:

15           “(c) PROMOTION OF SALES OPPORTUNITIES.—The  
16 Associate Administrator”;

17                   (B) by redesignating paragraphs (1)  
18 through (8) as paragraphs (2) through (9), re-  
19 spectively;

20                   (C) by inserting before paragraph (2), as  
21 so redesignated, the following:

22                   “(1) establish annual goals for the Office relat-  
23 ing to—

1                   “(A) enhancing the exporting capability of  
2                   small business concerns and small manufactur-  
3                   ers;

4                   “(B) facilitating technology transfers;

5                   “(C) enhancing programs and services to  
6                   assist small business concerns and small manu-  
7                   facturers to compete effectively and efficiently  
8                   in foreign markets;

9                   “(D) increasing the ability of small busi-  
10                  ness concerns to access capital; and

11                  “(E) disseminating information concerning  
12                  Federal, State, and private programs and initia-  
13                  tives;”;

14                  (D) in paragraph (2), as so redesignated,  
15                  by striking “mechanism for” and all that fol-  
16                  lows through “(D) assisting” and inserting the  
17                  following: “mechanism for—

18                  “(A) identifying subsectors of the small  
19                  business community with strong export poten-  
20                  tial;

21                  “(B) identifying areas of demand in for-  
22                  eign markets;

23                  “(C) prescreening foreign buyers for com-  
24                  mercial and credit purposes; and

25                  “(D) assisting”;

1           (E) in paragraph (3), as so redesignated,  
2           by striking “assist small businesses in the for-  
3           mation and utilization of” and inserting “assist  
4           small business concerns in forming and using”;  
5           (F) in paragraph (4), as so redesignated—  
6           (i) by striking “local” and inserting  
7           “district”;  
8           (ii) by striking “existing”;  
9           (iii) by striking “Small Business De-  
10          velopment Center network” and inserting  
11          “small business development center net-  
12          work”; and  
13          (iv) by striking “Small Business De-  
14          velopment Center Program” and inserting  
15          “small business development center pro-  
16          gram”;  
17          (G) in paragraph (5), as so redesignated—  
18          (i) in subparagraph (A), by striking  
19          “Gross State Produce” and inserting  
20          “Gross State Product”;  
21          (ii) in subparagraph (B), by striking  
22          “SIC” each place it appears and inserting  
23          “North American Industry Classification  
24          System”; and

1 (iii) in subparagraph (C), by striking  
2 “small businesses” and inserting “small  
3 business concerns”;

4 (H) in paragraph (6), as so redesignated,  
5 by striking the period at the end and inserting  
6 a semicolon;

7 (I) in paragraph (7), as so redesignated—  
8 (i) in the matter preceding subpara-  
9 graph (A)—

10 (I) by inserting “concerns” after  
11 “small business”; and

12 (II) by striking “current” and in-  
13 sserting “up to date”;

14 (ii) in subparagraph (A), by striking  
15 “Administration’s regional offices” and in-  
16 sserting “regional and district offices of the  
17 Administration”;

18 (iii) in subparagraph (B) by striking  
19 “current”;

20 (iv) in subparagraph (C), by striking  
21 “current”; and

22 (v) by striking “small businesses”  
23 each place that term appears and inserting  
24 “small business concerns”;

1 (J) in paragraph (8), as so redesignated,  
2 by striking and at the end;

3 (K) in paragraph (9), as so redesignated—  
4 (i) in the matter preceding subpara-  
5 graph (A)—

6 (I) by striking “full-time export  
7 development specialists to each Ad-  
8 ministration regional office and as-  
9 signing”; and

10 (II) by striking “person in each  
11 district office. Such specialists” and  
12 inserting “individual in each district  
13 office and providing each Administra-  
14 tion regional office with a full-time ex-  
15 port development specialist, who”;

16 (ii) in subparagraph (B)—

17 (I) by striking “current”; and

18 (II) by striking “with” and in-  
19 sserting “in”;

20 (iii) in subparagraph (D)—

21 (I) by striking “Administration  
22 personnel involved in granting” and  
23 inserting “personnel of the Adminis-  
24 tration involved in making”; and

25 (II) by striking “and” at the end;

- 1 (iv) in subparagraph (E)—
- 2 (I) by striking “small businesses’
- 3 needs” and inserting “the needs of
- 4 small business concerns”; and
- 5 (II) by striking the period at the
- 6 end and inserting a semicolon;
- 7 (v) by adding at the end the following:
- 8 “(F) participate, jointly with employees of
- 9 the Office, in an annual training program that
- 10 focuses on current small business needs for ex-
- 11 porting; and
- 12 “(G) develop and conduct training pro-
- 13 grams for exporters and lenders, in cooperation
- 14 with the Export Assistance Centers, the De-
- 15 partment of Commerce, the Department of Ag-
- 16 riculture, small business development centers,
- 17 women’s business centers, the Export-Import
- 18 Bank of the United States, the Overseas Pri-
- 19 vate Investment Corporation, and other relevant
- 20 Federal agencies;”; and
- 21 (vi) by striking “small businesses”
- 22 each place that term appears and inserting
- 23 “small business concerns”; and
- 24 (L) by adding at the end the following:

1           “(10) make available on the website of the Ad-  
2           ministration the name and contact information of  
3           each individual described in paragraph (9);

4           “(11) carry out a nationwide marketing effort  
5           using technology, online resources, training, and  
6           other strategies to promote exporting as a business  
7           development opportunity for small business con-  
8           cerns;

9           “(12) disseminate information to the small  
10          business community through regional and district of-  
11         fices of the Administration, the small business devel-  
12         opment center network, Export Assistance Centers,  
13         the network of women’s business centers, chapters of  
14         the Service Corps of Retired Executives authorized  
15         by section 8(b)(1), State and local export promotion  
16         programs, and partners in the private sector regard-  
17         ing exporting trends, market-specific growth, indus-  
18         try trends, and prospects for exporting; and

19          “(13) establish and carry out training programs  
20         for the staff of the regional and district offices of  
21         the Administration and resource partners of the Ad-  
22         ministration on export promotion and providing as-  
23         sistance relating to exports.”;

24                 (3) in subsection (d)—



1           (A) by redesignating paragraphs (1)  
2           through (5) as clauses (i) through (v), respec-  
3           tively, and adjusting the margins accordingly;

4           (B) by striking “(d) The Office” and in-  
5           serting the following:

6           “(d) EXPORT FINANCING PROGRAMS.—

7           “(1) IN GENERAL.—The Associate Adminis-  
8           trator”; and

9           (C) by striking “To accomplish this goal,  
10           the Office shall work” and inserting the fol-  
11           lowing:

12           “(2) TRADE FINANCE SPECIALIST.—To accom-  
13           plish the goal established under paragraph (1), the  
14           Associate Administrator shall—

15           “(A) designate at least 1 individual within  
16           the Administration as a trade finance specialist  
17           to oversee international loan programs and as-  
18           sist Administration employees with trade fi-  
19           nance issues; and

20           “(B) work”;

21           (4) in subsection (e), by striking “(e) The Of-  
22           fice” and inserting the following:

23           “(e) TRADE REMEDIES.—The Associate Adminis-  
24           trator”;

1           (5) by amending subsection (f) to read as fol-  
2           lows:

3           “(f) REPORTING REQUIREMENT.—The Associate Ad-  
4           ministrators shall submit an annual report to the Com-  
5           mittee on Small Business and Entrepreneurship of the  
6           Senate and the Committee on Small Business of the  
7           House of Representatives that contains—

8           “(1) a description of the progress of the Office  
9           in implementing the requirements of this section;

10           “(2) a detailed account of the results of export  
11           growth activities of the Administration, including the  
12           activities of each district and regional office of the  
13           Administration, based on the performance measures  
14           described in subsection (i);

15           “(3) an estimate of the total number of jobs  
16           created or retained as a result of export assistance  
17           provided by the Administration and resource part-  
18           ners of the Administration;

19           “(4) for any travel by the staff of the Office,  
20           the destination of such travel and the benefits to the  
21           Administration and to small business concerns re-  
22           sulting from such travel; and

23           “(5) a description of the participation by the  
24           Office in trade negotiations.”;

1           (6) in subsection (g), by striking “(g) The Of-  
2           fice” and inserting the following:

3           “(g) STUDIES.—The Associate Administrator”; and

4           (7) by adding after subsection (h), as added by  
5           section 1203 of this subtitle, the following:

6           “(i) EXPORT AND TRADE COUNSELING.—

7           “(1) DEFINITION.—In this subsection—

8           “(A) the term ‘lead small business develop-  
9           ment center’ means a small business develop-  
10          ment center that has received a grant from the  
11          Administration; and

12          “(B) the term ‘lead women’s business cen-  
13          ter’ means a women’s business center that has  
14          received a grant from the Administration.

15          “(2) CERTIFICATION PROGRAM.—The Adminis-  
16          trator shall establish an export and trade counseling  
17          certification program to certify employees of lead  
18          small business development centers and lead wom-  
19          en’s business centers in providing export assistance  
20          to small business concerns.

21          “(3) NUMBER OF CERTIFIED EMPLOYEES.—  
22          The Administrator shall ensure that the number of  
23          employees of each lead small business development  
24          center who are certified in providing export assist-  
25          ance is not less than the lesser of—

1                   “(A) 5; or

2                   “(B) 10 percent of the total number of em-  
3                   ployees of the lead small business development  
4                   center.

5                   “(4) REIMBURSEMENT FOR CERTIFICATION.—

6                   “(A) IN GENERAL.—Subject to the avail-  
7                   ability of appropriations, the Administrator  
8                   shall reimburse a lead small business develop-  
9                   ment center or a lead women’s business center  
10                  for costs relating to the certification of an em-  
11                  ployee of the lead small business center or lead  
12                  women’s business center in providing export as-  
13                  sistance under the program established under  
14                  paragraph (2).

15                  “(B) LIMITATION.—The total amount re-  
16                  imbursed by the Administrator under subpara-  
17                  graph (A) may not exceed \$350,000 in any fis-  
18                  cal year.

19                  “(j) PERFORMANCE MEASURES.—

20                  “(1) IN GENERAL.—The Associate Adminis-  
21                  trator shall develop performance measures for the  
22                  Administration to support export growth goals for  
23                  the activities of the Office under this section that in-  
24                  clude—

1                   “(A) the number of small business con-  
2                   cerns that—

3                   “(i) receive assistance from the Ad-  
4                   ministration;

5                   “(ii) had not exported goods or serv-  
6                   ices before receiving the assistance de-  
7                   scribed in clause (i); and

8                   “(iii) export goods or services;

9                   “(B) the number of small business con-  
10                  cerns receiving assistance from the Administra-  
11                  tion that export goods or services to a market  
12                  outside the United States into which the small  
13                  business concern did not export before receiving  
14                  the assistance;

15                  “(C) export revenues by small business  
16                  concerns assisted by programs of the Adminis-  
17                  tration;

18                  “(D) the number of small business con-  
19                  cerns referred to an Export Assistance Center  
20                  or a small business development center by the  
21                  staff of the Office;

22                  “(E) the number of small business con-  
23                  cerns referred to the Administration by an Ex-  
24                  port Assistance Center or a small business de-  
25                  velopment center; and

1           “(F) the number of small business con-  
2           cerns referred to the Department of Commerce,  
3           the Department of Agriculture, the Department  
4           of State, the Export-Import Bank of the United  
5           States, the Overseas Private Investment Cor-  
6           poration, or the United States Trade and De-  
7           velopment Agency by the staff of the Office, an  
8           Export Assistance Center, or a small business  
9           development center.

10           “(2) JOINT PERFORMANCE MEASURES.—The  
11           Associate Administrator shall develop joint perform-  
12           ance measures for the district offices of the Adminis-  
13           tration and the Export Assistance Centers that in-  
14           clude the number of export loans made under—

15                   “(A) section 7(a)(16);

16                   “(B) the Export Working Capital Program  
17                   established under section 7(a)(14);

18                   “(C) the Preferred Lenders Program, as  
19                   defined in section 7(a)(2)(C)(ii); and

20                   “(D) the export express program estab-  
21                   lished under section 7(a)(34).

22           “(3) CONSISTENCY OF TRACKING.—The Asso-  
23           ciate Administrator, in coordination with the depart-  
24           ments and agencies that are represented on the  
25           Trade Promotion Coordinating Committee estab-

1 lished under section 2312 of the Export Enhance-  
2 ment Act of 1988 (15 U.S.C. 4727) and the small  
3 business development center network, shall develop a  
4 system to track exports by small business concerns,  
5 including information relating to the performance  
6 measures developed under paragraph (1), that is  
7 consistent with systems used by the departments  
8 and agencies and the network.”.

9 (b) REPORT.—Not later than 60 days after the date  
10 of enactment of this Act, the Administrator shall submit  
11 a report to the Committee on Small Business and Entre-  
12 preneurship of the Senate and the Committee on Small  
13 Business of the House of Representatives on any travel  
14 by the staff of the Office of International Trade of the  
15 Administration, during the period beginning on October  
16 1, 2004, and ending on the date of enactment of the Act,  
17 including the destination of such travel and the benefits  
18 to the Administration and to small business concerns re-  
19 sulting from such travel.

20 **SEC. 1205. EXPORT ASSISTANCE CENTERS.**

21 (a) EXPORT ASSISTANCE CENTERS.—Section 22 of  
22 the Small Business Act (15 U.S.C. 649), as amended by  
23 this subtitle, is amended by adding at the end the fol-  
24 lowing:

25 “(k) EXPORT ASSISTANCE CENTERS.—

1           “(1) EXPORT FINANCE SPECIALISTS.—  
2           “(A) MINIMUM NUMBER OF EXPORT FI-  
3           NANCE SPECIALISTS.—On and after the date  
4           that is 90 days after the date of enactment of  
5           this subsection, the Administrator, in coordina-  
6           tion with the Secretary of Commerce, shall en-  
7           sure that the number of export finance special-  
8           ists is not less than the number of such employ-  
9           ees so assigned on January 1, 2003.

10           “(B) EXPORT FINANCE SPECIALISTS AS-  
11           SIGNED TO EACH REGION OF THE ADMINISTRA-  
12           TION.—On and after the date that is 2 years  
13           after the date of enactment of this subsection,  
14           the Administrator, in coordination with the Sec-  
15           retary of Commerce, shall ensure that there are  
16           not fewer than 3 export finance specialists in  
17           each region of the Administration.

18           “(2) PLACEMENT OF EXPORT FINANCE SPE-  
19           CIALISTS.—

20           “(A) PRIORITY.—The Administrator shall  
21           give priority, to the maximum extent prac-  
22           ticable, to placing employees of the Administra-  
23           tion at any Export Assistance Center that—



1                   “(i) had an Administration employee  
2                   assigned to the Export Assistance Center  
3                   before January 2003; and

4                   “(ii) has not had an Administration  
5                   employee assigned to the Export Assist-  
6                   ance Center during the period beginning  
7                   January 2003, and ending on the date of  
8                   enactment of this subsection, either  
9                   through retirement or reassignment.

10                  “(B) NEEDS OF EXPORTERS.—The Ad-  
11                  ministrators shall, to the maximum extent prac-  
12                  ticable, strategically assign Administration em-  
13                  ployees to Export Assistance Centers, based on  
14                  the needs of exporters.

15                  “(C) RULE OF CONSTRUCTION.—Nothing  
16                  in this subsection may be construed to require  
17                  the Administrator to reassign or remove an ex-  
18                  port finance specialist who is assigned to an  
19                  Export Assistance Center on the date of enact-  
20                  ment of this subsection.

21                  “(3) GOALS.—The Associate Administrator  
22                  shall work with the Department of Commerce, the  
23                  Export-Import Bank of the United States, and the  
24                  Overseas Private Investment Corporation to estab-

1       lish shared annual goals for the Export Assistance  
2       Centers.

3       “(4) OVERSIGHT.—The Associate Adminis-  
4       trator shall designate an individual within the Ad-  
5       ministration to oversee all activities conducted by  
6       Administration employees assigned to Export Assist-  
7       ance Centers.

8       “(1) DEFINITIONS.—In this section—

9               “(1) the term ‘Associate Administrator’ means  
10              the Associate Administrator for International Trade  
11              described in subsection (a)(2);

12             “(2) the term ‘Export Assistance Center’ means  
13              a one-stop shop for United States exporters estab-  
14              lished by the United States and Foreign Commercial  
15              Service of the Department of Commerce pursuant to  
16              section 2301(b)(8) of the Omnibus Trade and Com-  
17              petitiveness Act of 1988 (15 U.S.C. 4721(b)(8));

18             “(3) the term ‘export finance specialist’ means  
19              a full-time equivalent employee of the Office as-  
20              signed to an Export Assistance Center to carry out  
21              the duties described in subsection (e); and

22             “(4) the term ‘Office’ means the Office of  
23              International Trade established under subsection  
24              (a)(1).”.

1           (b) STUDY AND REPORT ON FILLING GAPS IN HIGH-  
2 AND-LOW-EXPORT VOLUME AREAS.—

3           (1) STUDY AND REPORT.—Not later than 6  
4 months after the date of enactment of this Act, and  
5 every 2 years thereafter, the Administrator shall—

6                   (A) conduct a study of—

7                           (i) the volume of exports for each  
8 State;

9                           (ii) the availability of export finance  
10 specialists in each State;

11                          (iii) the number of exporters in each  
12 State that are small business concerns;

13                          (iv) the percentage of exporters in  
14 each State that are small business con-  
15 cerns;

16                          (v) the change, if any, in the number  
17 of exporters that are small business con-  
18 cerns in each State—

19                                   (I) for the first study conducted  
20 under this subparagraph, during the  
21 10-year period ending on the date of  
22 enactment of this Act; and

23                                   (II) for each subsequent study,  
24 during the 10-year period ending on  
25 the date the study is commenced;

1 (vi) the total value of the exports in  
2 each State by small business concerns;

3 (vii) the percentage of the total vol-  
4 ume of exports in each State that is attrib-  
5 utable to small business concerns; and

6 (viii) the change, if any, in the per-  
7 centage of the total volume of exports in  
8 each State that is attributable to small  
9 business concerns—

10 (I) for the first study conducted  
11 under this subparagraph, during the  
12 10-year period ending on the date of  
13 enactment of this Act; and

14 (II) for each subsequent study,  
15 during the 10-year period ending on  
16 the date the study is commenced; and

17 (B) submit to the Committee on Small  
18 Business and Entrepreneurship of the Senate  
19 and the Committee on Small Business of the  
20 House of Representatives a report containing—

21 (i) the results of the study under sub-  
22 paragraph (A);

23 (ii) to the extent practicable, a rec-  
24 ommendation regarding how to eliminate  
25 gaps between the supply of and demand

1 for export finance specialists in the 15  
2 States that have the greatest volume of ex-  
3 ports, based upon the most recent data  
4 available from the Department of Com-  
5 merce;

6 (iii) to the extent practicable, a rec-  
7 ommendation regarding how to eliminate  
8 gaps between the supply of and demand  
9 for export finance specialists in the 15  
10 States that have the lowest volume of ex-  
11 ports, based upon the most recent data  
12 available from the Department of Com-  
13 merce; and

14 (iv) such additional information as the  
15 Administrator determines is appropriate.

16 (2) DEFINITION.—In this subsection, the term  
17 “export finance specialist” has the meaning given  
18 that term in section 22(l) of the Small Business Act,  
19 as added by this title.

20 **SEC. 1206. INTERNATIONAL TRADE FINANCE PROGRAMS.**

21 (a) LOAN LIMITS.—

22 (1) TOTAL AMOUNT OUTSTANDING.—Section  
23 7(a)(3)(B) of the Small Business Act (15 U.S.C.  
24 636(a)(3)(B)) is amended by striking “\$1,750,000,  
25 of which not more than \$1,250,000” and inserting

1 “\$4,500,000 (or if the gross loan amount would ex-  
2 ceed \$5,000,000), of which not more than  
3 \$4,000,000”.

4 (2) PARTICIPATION.—Section 7(a)(2) of the  
5 Small Business Act (15 U.S.C. 636(a)(2)) is amend-  
6 ed—

7 (A) in subparagraph (A), in the matter  
8 preceding clause (i), by striking “subparagraph  
9 (B)” and inserting “subparagraphs (B), (D),  
10 and (E)”;

11 (B) in subparagraph (D), by striking  
12 “Notwithstanding subparagraph (A), in” and  
13 inserting “In”; and

14 (C) by adding at the end the following:

15 “(E) PARTICIPATION IN INTERNATIONAL  
16 TRADE LOAN.—In an agreement to participate  
17 in a loan on a deferred basis under paragraph  
18 (16), the participation by the Administration  
19 may not exceed 90 percent.”.

20 (b) WORKING CAPITAL.—Section 7(a)(16)(A) of the  
21 Small Business Act (15 U.S.C. 636(a)(16)(A)) is amend-  
22 ed—

23 (1) in the matter preceding clause (i), by strik-  
24 ing “in—” and inserting “—”;

25 (2) in clause (i)—

1 (A) by inserting “in” after “(i)”; and

2 (B) by striking “or” at the end;

3 (3) in clause (ii)—

4 (A) by inserting “in” after “(ii)”; and

5 (B) by striking the period at the end and

6 inserting “, including any debt that qualifies for

7 refinancing under any other provision of this

8 subsection; or”; and

9 (4) by adding at the end the following:

10 “(iii) by providing working capital.”.

11 (c) COLLATERAL.—Section 7(a)(16)(B) of the Small

12 Business Act (15 U.S.C. 636(a)(16)(B)) is amended—

13 (1) by striking “Each loan” and inserting the

14 following:

15 “(i) IN GENERAL.—Except as pro-

16 vided in clause (ii), each loan”; and

17 (2) by adding at the end the following:

18 “(ii) EXCEPTION.—A loan under this

19 paragraph may be secured by a second lien

20 position on the property or equipment fi-

21 nanced by the loan or on other assets of

22 the small business concern, if the Adminis-

23 trator determines the lien provides ade-

24 quate assurance of the payment of the

25 loan.”.

1 (d) EXPORT WORKING CAPITAL PROGRAM.—Section  
2 7(a) of the Small Business Act (15 U.S.C. 636(a)) is  
3 amended—

4 (1) in paragraph (2)(D), by striking “not ex-  
5 ceed” and inserting “be”; and

6 (2) in paragraph (14)—

7 (A) by striking “(A) The Administration”  
8 and inserting the following: “EXPORT WORKING  
9 CAPITAL PROGRAM.—

10 “(A) IN GENERAL.—The Administrator”;

11 (B) by striking “(B) When considering”  
12 and inserting the following:

13 “(C) CONSIDERATIONS.—When consid-  
14 ering”;

15 (C) by striking “(C) The Administration”  
16 and inserting the following:

17 “(D) MARKETING.—The Administrator”;  
18 and

19 (D) by inserting after subparagraph (A)  
20 the following:

21 “(B) TERMS.—

22 “(i) LOAN AMOUNT.—The Adminis-  
23 trator may not guarantee a loan under this  
24 paragraph of more than \$5,000,000.

25 “(ii) FEES.—



1                   “(I) IN GENERAL.—For a loan  
2                   under this paragraph, the Adminis-  
3                   trator shall collect the fee assessed  
4                   under paragraph (23) not more fre-  
5                   quently than once each year.

6                   “(II) UNTAPPED CREDIT.—The  
7                   Administrator may not assess a fee on  
8                   capital that is not accessed by the  
9                   small business concern.”.

10           (e) PARTICIPATION IN PREFERRED LENDERS PRO-  
11 GRAM.—Section 7(a)(2)(C) of the Small Business Act (15  
12 U.S.C. 636(a)(2)(C)) is amended—

13                   (1) by redesignating clause (ii) as clause (iii);

14           and

15                   (2) by inserting after clause (i) the following:

16                   “(ii) EXPORT-IMPORT BANK LEND-  
17                   ERS.—Any lender that is participating in  
18                   the Delegated Authority Lender Program  
19                   of the Export-Import Bank of the United  
20                   States (or any successor to the Program)  
21                   shall be eligible to participate in the Pre-  
22                   ferred Lenders Program.”.

23           (f) EXPORT EXPRESS PROGRAM.—Section 7(a) of the  
24 Small Business Act (15 U.S.C. 636(a)) is amended by  
25 adding at the end the following:

1           “(35) EXPORT EXPRESS PROGRAM.—  
2           “(A) DEFINITIONS.—In this paragraph—  
3           “(i) the term ‘export development ac-  
4           tivity’ includes—  
5           “(I) obtaining a standby letter of  
6           credit when required as a bid bond,  
7           performance bond, or advance pay-  
8           ment guarantee;  
9           “(II) participation in a trade  
10          show that takes place outside the  
11          United States;  
12          “(III) translation of product bro-  
13          chures or catalogues for use in mar-  
14          kets outside the United States;  
15          “(IV) obtaining a general line of  
16          credit for export purposes;  
17          “(V) performing a service con-  
18          tract from buyers located outside the  
19          United States;  
20          “(VI) obtaining transaction-spe-  
21          cific financing associated with com-  
22          pleting export orders;  
23          “(VII) purchasing real estate or  
24          equipment to be used in the produc-  
25          tion of goods or services for export;

1                   “(VIII) providing term loans or  
2                   other financing to enable a small busi-  
3                   ness concern, including an export  
4                   trading company and an export man-  
5                   agement company, to develop a mar-  
6                   ket outside the United States; and

7                   “(IX) acquiring, constructing,  
8                   renovating, modernizing, improving,  
9                   or expanding a production facility or  
10                  equipment to be used in the United  
11                  States in the production of goods or  
12                  services for export; and

13                  “(ii) the term ‘express loan’ means a  
14                  loan in which a lender uses to the max-  
15                  imum extent practicable the loan analyses,  
16                  procedures, and documentation of the lend-  
17                  er to provide expedited processing of the  
18                  loan application.

19                  “(B) AUTHORITY.—The Administrator  
20                  may guarantee the timely payment of an ex-  
21                  press loan to a small business concern made for  
22                  an export development activity.

23                  “(C) LEVEL OF PARTICIPATION.—

24                  “(i) MAXIMUM AMOUNT.—The max-  
25                  imum amount of an express loan guaran-

1                   teed under this paragraph shall be  
2                   \$500,000.

3                   “(ii) PERCENTAGE.—For an express  
4                   loan guaranteed under this paragraph, the  
5                   Administrator shall guarantee—

6                   “(I) 90 percent of a loan that is  
7                   not more than \$350,000; and

8                   “(II) 75 percent of a loan that is  
9                   more than \$350,000 and not more  
10                  than \$500,000.”.

11               (g) ANNUAL LISTING OF EXPORT FINANCE LEND-  
12               ERS.—Section 7(a)(16) of the Small Business Act (15  
13               U.S.C. 636(a)(16)) is amended by adding at the end the  
14               following:

15                   “(F) LIST OF EXPORT FINANCE LEND-  
16               ERS.—

17                   “(i) PUBLICATION OF LIST RE-  
18                   QUIRED.—The Administrator shall publish  
19                   an annual list of the banks and partici-  
20                   pating lending institutions that, during the  
21                   1-year period ending on the date of publi-  
22                   cation of the list, have made loans guaran-  
23                   teed by the Administration under—

24                   “(I) this paragraph;

25                   “(II) paragraph (14); or

1 “(III) paragraph (34).

2 “(ii) AVAILABILITY OF LIST.—The  
3 Administrator shall—

4 “(I) post the list published under  
5 clause (i) on the website of the Ad-  
6 ministration; and

7 “(II) make the list published  
8 under clause (i) available, upon re-  
9 quest, at each district office of the  
10 Administration.”.

11 (h) APPLICABILITY.—The amendments made by sub-  
12 sections (a) through (f) shall apply with respect to any  
13 loan made after the date of enactment of this Act.

14 **SEC. 1207. STATE TRADE AND EXPORT PROMOTION GRANT**  
15 **PROGRAM.**

16 (a) DEFINITIONS.—In this section—

17 (1) the term “eligible small business concern”  
18 means a small business concern that—

19 (A) has been in business for not less than  
20 the 1-year period ending on the date on which  
21 assistance is provided using a grant under this  
22 section;

23 (B) is operating profitably, based on oper-  
24 ations in the United States;

1 (C) has demonstrated understanding of the  
2 costs associated with exporting and doing busi-  
3 ness with foreign purchasers, including the  
4 costs of freight forwarding, customs brokers,  
5 packing and shipping, as determined by the As-  
6 sociate Administrator; and

7 (D) has in effect a strategic plan for ex-  
8 porting;

9 (2) the term “program” means the State Trade  
10 and Export Promotion Grant Program established  
11 under subsection (b);

12 (3) the term “small business concern owned  
13 and controlled by women” has the meaning given  
14 that term in section 3 of the Small Business Act (15  
15 U.S.C. 632);

16 (4) the term “socially and economically dis-  
17 advantaged small business concern” has the mean-  
18 ing given that term in section 8(a)(4)(A) of the  
19 Small Business Act (15 U.S.C. 6537(a)(4)(A)); and

20 (5) the term “State” means each of the several  
21 States, the District of Columbia, the Commonwealth  
22 of Puerto Rico, the Virgin Islands, Guam, and  
23 American Samoa.

24 (b) ESTABLISHMENT OF PROGRAM.—The Associate  
25 Administrator shall establish a 3-year trade and export

1 promotion pilot program to be known as the State Trade  
2 and Export Promotion Grant Program, to make grants  
3 to States to carry out export programs that assist eligible  
4 small business concerns in—

5 (1) participation in a foreign trade mission;

6 (2) a foreign market sales trip;

7 (3) a subscription to services provided by the  
8 Department of Commerce;

9 (4) the payment of website translation fees;

10 (5) the design of international marketing  
11 media;

12 (6) a trade show exhibition;

13 (7) participation in training workshops; or

14 (8) any other export initiative determined ap-  
15 propriate by the Associate Administrator.

16 (c) GRANTS.—

17 (1) JOINT REVIEW.—In carrying out the pro-  
18 gram, the Associate Administrator may make a  
19 grant to a State to increase the number of eligible  
20 small business concerns in the State that export or  
21 to increase the value of the exports by eligible small  
22 business concerns in the State.

23 (2) CONSIDERATIONS.—In making grants  
24 under this section, the Associate Administrator may

1 give priority to an application by a State that pro-  
2 poses a program that—

3 (A) focuses on eligible small business con-  
4 cerns as part of an export promotion program;

5 (B) demonstrates success in promoting ex-  
6 ports by—

7 (i) socially and economically disadvan-  
8 tagged small business concerns;

9 (ii) small business concerns owned or  
10 controlled by women; and

11 (iii) rural small business concerns;

12 (C) promotes exports from a State that is  
13 not 1 of the 10 States with the highest percent-  
14 age of exporters that are small business con-  
15 cerns, based upon the latest data available from  
16 the Department of Commerce; and

17 (D) promotes new-to-market export oppor-  
18 tunities to the People’s Republic of China for  
19 eligible small business concerns in the United  
20 States.

21 (3) LIMITATIONS.—

22 (A) SINGLE APPLICATION.—A State may  
23 not submit more than 1 application for a grant  
24 under the program in any 1 fiscal year.



1                   (B) PROPORTION OF AMOUNTS.—The total  
2                   value of grants under the program made during  
3                   a fiscal year to the 10 States with the highest  
4                   number of exporters that are small business  
5                   concerns, based upon the latest data available  
6                   from the Department of Commerce, shall be not  
7                   more than 40 percent of the amounts appro-  
8                   priated for the program for that fiscal year.

9                   (4) APPLICATION.—A State desiring a grant  
10                  under the program shall submit an application at  
11                  such time, in such manner, and accompanied by  
12                  such information as the Associate Administrator  
13                  may establish.

14                  (d) COMPETITIVE BASIS.—The Associate Adminis-  
15                  trator shall award grants under the program on a competi-  
16                  tive basis.

17                  (e) FEDERAL SHARE.—The Federal share of the cost  
18                  of an export program carried out using a grant under the  
19                  program shall be—

20                   (1) for a State that has a high export volume,  
21                   as determined by the Associate Administrator, not  
22                   more than 65 percent; and

23                   (2) for a State that does not have a high export  
24                   volume, as determined by the Associate Adminis-  
25                   trator, not more than 75 percent.

1 (f) NON-FEDERAL SHARE.—The non-Federal share  
2 of the cost of an export program carried using a grant  
3 under the program shall be comprised of not less than 50  
4 percent cash and not more than 50 percent of indirect  
5 costs and in-kind contributions, except that no such costs  
6 or contributions may be derived from funds from any  
7 other Federal program.

8 (g) REPORTS.—

9 (1) INITIAL REPORT.—Not later than 120 days  
10 after the date of enactment of this Act, the Asso-  
11 ciate Administrator shall submit to the Committee  
12 on Small Business and Entrepreneurship of the Sen-  
13 ate and the Committee on Small Business of the  
14 House of Representatives a report, which shall in-  
15 clude—

16 (A) a description of the structure of and  
17 procedures for the program;

18 (B) a management plan for the program;  
19 and

20 (C) a description of the merit-based review  
21 process to be used in the program.

22 (2) ANNUAL REPORTS.—The Associate Admin-  
23 istrator shall submit an annual report to the Com-  
24 mittee on Small Business and Entrepreneurship of  
25 the Senate and the Committee on Small Business of

1 the House of Representatives regarding the pro-  
2 gram, which shall include—

3 (A) the number and amount of grants  
4 made under the program during the preceding  
5 year;

6 (B) a list of the States receiving a grant  
7 under the program during the preceding year,  
8 including the activities being performed with  
9 grant; and

10 (C) the effect of each grant on exports by  
11 eligible small business concerns in the State re-  
12 ceiving the grant.

13 (h) REVIEWS BY INSPECTOR GENERAL.—

14 (1) IN GENERAL.—The Inspector General of  
15 the Administration shall conduct a review of—

16 (A) the extent to which recipients of grants  
17 under the program are measuring the perform-  
18 ance of the activities being conducted and the  
19 results of the measurements; and

20 (B) the overall management and effective-  
21 ness of the program.

22 (2) REPORT.—Not later than September 30,  
23 2012, the Inspector General of the Administration  
24 shall submit to the Committee on Small Business  
25 and Entrepreneurship of the Senate and the Com-

1       mittee on Small Business of the House of Rep-  
2       resentatives a report regarding the review conducted  
3       under paragraph (1).

4       (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
5       authorized to be appropriated to carry out the program  
6       \$30,000,000 for each of fiscal years 2011, 2012, and  
7       2013.

8       (j) TERMINATION.—The authority to carry out the  
9       program shall terminate 3 years after the date on which  
10      the Associate Administrator establishes the program.

11 **SEC. 1208. RURAL EXPORT PROMOTION.**

12      Not later than 6 months after the date of enactment  
13      of this Act, the Administrator, in consultation with the  
14      Secretary of Agriculture and the Secretary of Commerce,  
15      shall submit to the Committee on Small Business and En-  
16      trepreneurship of the Senate and the Committee on Small  
17      Business of the House of Representatives a report that  
18      contains—

19           (1) a description of each program of the Ad-  
20      ministration that promotes exports by rural small  
21      business concerns, including—

22                   (A) the number of rural small business  
23                   concerns served by the program;

24                   (B) the change, if any, in the number of  
25                   rural small business concerns as a result of par-

1 participation in the program during the 10-year  
2 period ending on the date of enactment of this  
3 Act;

4 (C) the volume of exports by rural small  
5 business concerns that participate in the pro-  
6 gram; and

7 (D) the change, if any, in the volume of  
8 exports by rural small businesses that partici-  
9 pate in the program during the 10-year period  
10 ending on the date of enactment of this Act;

11 (2) a description of the coordination between  
12 programs of the Administration and other Federal  
13 programs that promote exports by rural small busi-  
14 ness concerns;

15 (3) recommendations, if any, for improving the  
16 coordination described in paragraph (2);

17 (4) a description of any plan by the Administra-  
18 tion to market the international trade financing pro-  
19 grams of the Administration through lenders that—

20 (A) serve rural small business concerns;

21 and

22 (B) are associated with financing programs  
23 of the Department of Agriculture;

24 (5) recommendations, if any, for improving co-  
25 ordination between the counseling programs and ex-

1 port financing programs of the Administration, in  
2 order to increase the volume of exports by rural  
3 small business concerns; and

4 (6) any additional information the Adminis-  
5 trator determines is necessary.

6 **SEC. 1209. INTERNATIONAL TRADE COOPERATION BY**  
7 **SMALL BUSINESS DEVELOPMENT CENTERS.**

8 Section 21(a) of the Small Business Act (15 U.S.C.  
9 648(a)) is amended—

10 (1) by striking “(2) The Small Business Devel-  
11 opment Centers” and inserting the following:

12 “(2) COOPERATION TO PROVIDE INTER-  
13 NATIONAL TRADE SERVICES.—

14 “(A) INFORMATION AND SERVICES.—The  
15 small business development centers”; and

16 (2) in paragraph (2)—

17 (A) in subparagraph (A), as so designated,  
18 by inserting “(including State trade agencies),”  
19 after “local agencies”; and

20 (B) by adding at the end the following:

21 “(B) COOPERATION WITH STATE TRADE  
22 AGENCIES AND EXPORT ASSISTANCE CEN-  
23 TERS.—A small business development center  
24 that counsels a small business concern on issues  
25 relating to international trade shall—

1                   “(i) consult with State trade agencies  
2                   and Export Assistance Centers to provide  
3                   appropriate services to the small business  
4                   concern; and

5                   “(ii) as necessary, refer the small  
6                   business concern to a State trade agency  
7                   or an Export Assistance Center for further  
8                   counseling or assistance.

9                   “(C) DEFINITION.—In this paragraph, the  
10                  term ‘Export Assistance Center’ has the same  
11                  meaning as in section 22.”.

## 12                   **Subtitle C—Small Business**

### 13                   **Contracting**

#### 14                   **PART I—CONTRACT BUNDLING**

##### 15                   **SEC. 1311. SMALL BUSINESS ACT.**

16                  Section 3 of the Small Business Act (15 U.S.C. 632),  
17 as amended by section 1202, is amended by adding at the  
18 end the following:

19                  “(v) MULTIPLE AWARD CONTRACT.—In this Act, the  
20 term ‘multiple award contract’ means—

21                  “(1) a multiple award task order contract or  
22                  delivery order contract that is entered into under the  
23                  authority of sections 303H through 303K of the  
24                  Federal Property and Administrative Services Act of  
25                  1949 (41 U.S.C. 253h through 253k); and

1           “(2) any other indefinite delivery, indefinite  
2           quantity contract that is entered into by the head of  
3           a Federal agency with 2 or more sources pursuant  
4           to the same solicitation.”.

5 **SEC. 1312. LEADERSHIP AND OVERSIGHT.**

6           (a) **IN GENERAL.**—Section 15 of the Small Business  
7 Act (15 U.S.C. 644) is amended by adding at the end the  
8 following:

9           “(q) **BUNDLING ACCOUNTABILITY MEASURES.**—

10           “(1) **TEAMING REQUIREMENTS.**—Each Federal  
11           agency shall include in each solicitation for any mul-  
12           tiple award contract above the substantial bundling  
13           threshold of the Federal agency a provision soliciting  
14           bids from any responsible source, including respon-  
15           sible small business concerns and teams or joint ven-  
16           tures of small business concerns.

17           “(2) **POLICIES ON REDUCTION OF CONTRACT**  
18           **BUNDLING.**—

19           “(A) **IN GENERAL.**—Not later than 1 year  
20           after the date of enactment of this subsection,  
21           the Federal Acquisition Regulatory Council es-  
22           tablished under section 25(a) of the Office of  
23           Federal Procurement Policy Act (41 U.S.C.  
24           4219(a)) shall amend the Federal Acquisition



1 Regulation issued under section 25 of such Act  
2 to—

3 “(i) establish a Government-wide pol-  
4 icy regarding contract bundling, including  
5 regarding the solicitation of teaming and  
6 joint ventures under paragraph (1); and

7 “(ii) require that the policy estab-  
8 lished under clause (i) be published on the  
9 website of each Federal agency.

10 “(B) RATIONALE FOR CONTRACT BUN-  
11 DLING.—Not later than 30 days after the date  
12 on which the head of a Federal agency submits  
13 data certifications to the Administrator for  
14 Federal Procurement Policy, the head of the  
15 Federal agency shall publish on the website of  
16 the Federal agency a list and rationale for any  
17 bundled contract for which the Federal agency  
18 solicited bids or that was awarded by the Fed-  
19 eral agency.

20 “(3) REPORTING.—Not later than 90 days after  
21 the date of enactment of this subsection, and every  
22 3 years thereafter, the Administrator shall submit to  
23 the Committee on Small Business and Entrepre-  
24 neurship of the Senate and the Committee on Small  
25 Business of the House of Representatives a report

1 regarding procurement center representatives and  
2 commercial market representatives, which shall—

3 “(A) identify each area for which the Ad-  
4 ministration has assigned a procurement center  
5 representative or a commercial market rep-  
6 resentative;

7 “(B) explain why the Administration se-  
8 lected the areas identified under subparagraph  
9 (A); and

10 “(C) describe the activities performed by  
11 procurement center representatives and com-  
12 mercial market representatives.”.

13 (b) TECHNICAL CORRECTION.—Section 15(g) of the  
14 Small Business Act (15 U.S.C. 644(g)) is amended by  
15 striking “Administrator of the Office of Federal Procure-  
16 ment Policy” each place it appears and inserting “Admin-  
17 istrator for Federal Procurement Policy”.

18 (c) REPORT.—

19 (1) IN GENERAL.—Not later than 180 days  
20 after the date of enactment of this Act, the Comp-  
21 troller General of the United States shall submit to  
22 Congress a report regarding the procurement center  
23 representative program of the Administration.

24 (2) CONTENTS.—The report submitted under  
25 paragraph (1) shall—

1           (A) address ways to improve the effective-  
2           ness of the procurement center representative  
3           program in helping small business concerns ob-  
4           tain Federal contracts;

5           (B) evaluate the effectiveness of procure-  
6           ment center representatives and commercial  
7           marketing representatives; and

8           (C) include recommendations, if any, on  
9           how to improve the procurement center rep-  
10          resentative program.

11          (d) ELECTRONIC PROCUREMENT CENTER REP-  
12          RESENTATIVE.—

13           (1) IN GENERAL.—Not later than 1 year after  
14           the date of enactment of this Act, the Administrator  
15           shall implement a 3-year pilot electronic procure-  
16           ment center representative program.

17           (2) REPORT.—Not later than 30 days after the  
18           pilot program under paragraph (1) ends, the Comp-  
19           troller General of the United States shall submit to  
20           the Committee on Small Business and Entrepre-  
21           neurship of the Senate and the Committee on Small  
22           Business of the House of Representatives a report  
23           regarding the pilot program.

1 **SEC. 1313. CONSOLIDATION OF CONTRACT REQUIREMENTS.**

2 (a) **IN GENERAL.**—The Small Business Act (15  
3 U.S.C. 631 et seq.) is amended—

4 (1) by redesignating section 44 as section 45;  
5 and

6 (2) by inserting after section 43 the following:

7 **“SEC. 44. CONSOLIDATION OF CONTRACT REQUIREMENTS.**

8 **“(a) DEFINITIONS.**—In this section—

9 “(1) the term ‘Chief Acquisition Officer’ means  
10 the employee of a Federal agency designated as the  
11 Chief Acquisition Officer for the Federal agency  
12 under section 16(a) of the Office of Federal Pro-  
13 curement Policy Act (41 U.S.C. 414(a));

14 “(2) the term ‘consolidation of contract require-  
15 ments’, with respect to contract requirements of a  
16 Federal agency, means a use of a solicitation to ob-  
17 tain offers for a single contract or a multiple award  
18 contract to satisfy 2 or more requirements of the  
19 Federal agency for goods or services that have been  
20 provided to or performed for the Federal agency  
21 under 2 or more separate contracts lower in cost  
22 than the total cost of the contract for which the of-  
23 fers are solicited; and

24 “(3) the term ‘senior procurement executive’  
25 means an official designated under section 16(c) of  
26 the Office of Federal Procurement Policy Act (41

1 U.S.C. 41 4(c)) as the senior procurement executive  
2 for a Federal agency.

3 “(b) POLICY.—The head of each Federal agency shall  
4 ensure that the decisions made by the Federal agency re-  
5 garding consolidation of contract requirements of the Fed-  
6 eral agency are made with a view to providing small busi-  
7 ness concerns with appropriate opportunities to partici-  
8 pate as prime contractors and subcontractors in the pro-  
9 curements of the Federal agency.

10 “(c) LIMITATION ON USE OF ACQUISITION STRATE-  
11 GIES INVOLVING CONSOLIDATION.—

12 “(1) IN GENERAL.—Subject to paragraph (4),  
13 the head of a Federal agency may not carry out an  
14 acquisition strategy that includes a consolidation of  
15 contract requirements of the Federal agency with a  
16 total value of more than \$2,000,000, unless the sen-  
17 ior procurement executive or Chief Acquisition Offi-  
18 cer for the Federal agency, before carrying out the  
19 acquisition strategy—

20 “(A) conducts market research;

21 “(B) identifies any alternative contracting  
22 approaches that would involve a lesser degree of  
23 consolidation of contract requirements;

1           “(C) makes a written determination that  
2           the consolidation of contract requirements is  
3           necessary and justified;

4           “(D) identifies any negative impact by the  
5           acquisition strategy on contracting with small  
6           business concerns; and

7           “(E) certifies to the head of the Federal  
8           agency that steps will be taken to include small  
9           business concerns in the acquisition strategy.

10          “(2) DETERMINATION THAT CONSOLIDATION IS  
11          NECESSARY AND JUSTIFIED.—

12                 “(A) IN GENERAL.—A senior procurement  
13                 executive or Chief Acquisition Officer may de-  
14                 termine that an acquisition strategy involving a  
15                 consolidation of contract requirements is nec-  
16                 essary and justified for the purposes of para-  
17                 graph (1) (C) if the benefits of the acquisition  
18                 strategy substantially exceed the benefits of  
19                 each of the possible alternative contracting ap-  
20                 proaches identified under paragraph (1)(B).

21                 “(B) SAVINGS IN ADMINISTRATIVE OR  
22                 PERSONNEL COSTS.—For purposes of subpara-  
23                 graph (A), savings in administrative or per-  
24                 sonnel costs alone do not constitute a sufficient  
25                 justification for a consolidation of contract re-

1            requirements in a procurement unless the ex-  
2            pected total amount of the cost savings, as de-  
3            termined by the senior procurement executive  
4            or Chief Acquisition Officer, is expected to be  
5            substantial in relation to the total cost of the  
6            procurement.

7            “(3) BENEFITS TO BE CONSIDERED.—The ben-  
8            efits considered for the purposes of paragraphs (1)  
9            and (2) may include cost and, regardless of whether  
10           quantifiable in dollar amounts—

11                    “(A) quality;

12                    “(B) acquisition cycle;

13                    “(C) terms and conditions; and

14                    “(D) any other benefit.

15            “(4) DEPARTMENT OF DEFENSE.—

16                    “(A) IN GENERAL.—The Department of  
17            Defense and each military department shall  
18            comply with this section until after the date de-  
19            scribed in subparagraph (C).

20                    “(B) RULE.—After the date described in  
21            subparagraph (C), contracting by the Depart-  
22            ment of Defense or a military department shall  
23            be conducted in accordance with section 2382  
24            of title 10, United States Code.

1                   “(C) DATE.—The date described in this  
2                   subparagraph is the date on which the Adminis-  
3                   trator determines the Department of Defense or  
4                   a military department is in compliance with the  
5                   Government-wide contracting goals under sec-  
6                   tion 15.”.

7                   (b) TECHNICAL AND CONFORMING AMENDMENT.—  
8                   Section 2382(b)(1) of title 10, United States Code, is  
9                   amended by striking “An official” and inserting “Subject  
10                  to section 44(c)(4), an official”.

11 **SEC. 1314. SMALL BUSINESS TEAMS PILOT PROGRAM.**

12                  (a) DEFINITIONS.—In this section—

13                   (1) the term “Pilot Program” means the Small  
14                  Business Teaming Pilot Program established under  
15                  subsection (b); and

16                   (2) the term “eligible organization” means a  
17                  well-established national organization for small busi-  
18                  ness concerns with the capacity to provide assistance  
19                  to small business concerns (which may be provided  
20                  with the assistance of the Administrator) relating  
21                  to—

22                           (A) customer relations and outreach;

23                           (B) team relations and outreach; and

24                           (C) performance measurement and quality  
25                  assurance.



1       (b) ESTABLISHMENT.—The Administrator shall es-  
2       tablish a Small Business Teaming Pilot Program for  
3       teaming and joint ventures involving small business con-  
4       cerns.

5       (c) GRANTS.—Under the Pilot Program, the Admin-  
6       istrator may make grants to eligible organizations to pro-  
7       vide assistance and guidance to teams of small business  
8       concerns seeking to compete for larger procurement con-  
9       tracts.

10       (d) CONTRACTING OPPORTUNITIES.—The Adminis-  
11       trator shall work with eligible organizations receiving a  
12       grant under the Pilot Program to recommend appropriate  
13       contracting opportunities for teams or joint ventures of  
14       small business concerns.

15       (e) REPORT.—Not later than 1 year before the date  
16       on which the authority to carry out the Pilot Program ter-  
17       minates under subsection (f), the Administrator shall sub-  
18       mit to the Committee on Small Business and Entrepre-  
19       neurship of the Senate and the Committee on Small Busi-  
20       ness of the House of Representatives a report on the effec-  
21       tiveness of the Pilot Program.

22       (f) TERMINATION.—The authority to carry out the  
23       Pilot Program shall terminate 5 years after the date of  
24       enactment of this Act.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated for grants under sub-  
3 section (c) \$5,000,000 for each of fiscal years 2010  
4 through 2015.

5 **PART II—SUBCONTRACTING INTEGRITY**

6 **SEC. 1321. SUBCONTRACTING MISREPRESENTATIONS.**

7 Not later than 1 year after the date of enactment  
8 of this Act, the Administrator, in consultation with the  
9 Administrator for Federal Procurement Policy, shall pro-  
10 mulgate regulations relating to, and the Federal Acquisi-  
11 tion Regulatory Council established under section 2 5(a)  
12 of the Office of Federal Procurement Policy Act (41  
13 U.S.C. 421(a)) shall amend the Federal Acquisition Regu-  
14 lation issued under section 25 of such Act to establish a  
15 policy on, subcontracting compliance relating to small  
16 business concerns, including assignment of compliance re-  
17 sponsibilities between contracting offices, small business  
18 offices, and program offices and periodic oversight and re-  
19 view activities.

20 **SEC. 1322. SMALL BUSINESS SUBCONTRACTING IMPROVE-**  
21 **MENTS.**

22 Section 8(d)(6) of the Small Business Act (15 U.S.C.  
23 637(d)(6)) is amended—

24 (1) in subparagraph (E), by striking “and” at  
25 the end;

1           (2) in subparagraph (F), by striking the period  
2           at the end and inserting “; and”; and

3           (3) by adding at the end, the following:

4                   “(G) a representation that the offeror or  
5           bidder will—

6                           “(i) make a good faith effort to ac-  
7                           quire articles, equipment, supplies, serv-  
8                           ices, or materials, or obtain the perform-  
9                           ance of construction work from the small  
10                          business concerns used in preparing and  
11                          submitting to the contracting agency the  
12                          bid or proposal, in the same amount and  
13                          quality used in preparing and submitting  
14                          the bid or proposal; and

15                           “(ii) provide to the contracting officer  
16                          a written explanation if the offeror or bid-  
17                          der fails to acquire articles, equipment,  
18                          supplies, services, or materials or obtain  
19                          the performance of construction work as  
20                          described in clause (i).”.

1                   **PART III—ACQUISITION PROCESS**

2           **SEC. 1331. RESERVATION OF PRIME CONTRACT AWARDS**

3                   **FOR SMALL BUSINESSES.**

4           Section 15 of the Small Business Act (15 U.S.C.  
5 644), as amended by this Act, is amended by adding at  
6 the end the following:

7           “(r) **MULTIPLE AWARD CONTRACTS.**—Not later than  
8 1 year after the date of enactment of this subsection, the  
9 Administrator for Federal Procurement Policy and the  
10 Administrator, in consultation with the Administrator of  
11 General Services, shall, by regulation, establish guidance  
12 under which Federal agencies may, at their discretion—

13                   “(1) set aside part or parts of a multiple award  
14 contract for small business concerns, including the  
15 subcategories of small business concerns identified in  
16 subsection (g)(2);

17                   “(2) notwithstanding the fair opportunity re-  
18 quirements under section 2304c(b) of title 10,  
19 United States Code, and section 303J(b) of the Fed-  
20 eral Property and Administrative Services Act of  
21 1949 (41 U.S.C. 253j(b)), set aside orders placed  
22 against multiple award contracts for small business  
23 concerns, including the subcategories of small busi-  
24 ness concerns identified in subsection (g)(2); and

25                   “(3) reserve 1 or more contract awards for  
26 small business concerns under full and open multiple

1 award procurements, including the subcategories of  
2 small business concerns identified in subsection  
3 (g)(2).”.

4 **SEC. 1332. MICRO-PURCHASE GUIDELINES.**

5 Not later than 1 year after the date of enactment  
6 of this Act, the Director of the Office of Management and  
7 Budget, in coordination with the Administrator of General  
8 Services, shall issue guidelines regarding the analysis of  
9 purchase card expenditures to identify opportunities for  
10 achieving and accurately measuring fair participation of  
11 small business concerns in purchases in an amount not  
12 in excess of the micro-purchase threshold, as defined in  
13 section 32 of the Office of Federal Procurement Policy  
14 Act (41 U.S.C. 428) (in this section referred to as “micro-  
15 purchases”), consistent with the national policy on small  
16 business participation in Federal procurements set forth  
17 in sections 2(a) and 15(g) of the Small Business Act (15  
18 U.S.C. 631 (a) and 644(g)), and dissemination of best  
19 practices for participation of small business concerns in  
20 micro-purchases.

21 **SEC. 1333. AGENCY ACCOUNTABILITY.**

22 Section 15(g)(2) of the Small Business Act (15  
23 U.S.C. 644(g)(2)) is amended—

24 (1) by inserting “(A)” after “(2)”;

1           (2) by striking “Goals established” and insert-  
2           ing the following:

3           “(B) Goals established”;

4           (3) by striking “Whenever” and inserting the  
5           following:

6           “(C) Whenever”;

7           (4) by striking “For the purpose of” and insert-  
8           ing the following:

9           “(D) For the purpose of”;

10          (5) by striking “The head of each Federal  
11          agency, in attempting to attain such participation”  
12          and inserting the following:

13          “(E) The head of each Federal agency, in attempting  
14          to attain the participation described in subparagraph  
15          (D)”.

16          (6) in subparagraph (E), as so designated—

17                 (A) by striking “(A) contracts” and insert-  
18                 ing “(i) contracts”; and

19                 (B) by striking “(B) contracts” and insert-  
20                 ing “(ii) contracts”; and

21          (7) by adding at the end the following:

22          “(F)(i) Each procurement employee or program man-  
23          ager described in clause (ii) shall communicate to the sub-  
24          ordinates of the procurement employee or program man-  
25          ager the importance of achieving small business goals.

1       “(ii) A procurement employee or program manager  
2 described in this clause is a senior procurement executive,  
3 senior program manager, or Director of Small and Dis-  
4 advantaged Business Utilization of a Federal agency hav-  
5 ing contracting authority.”.

6 **SEC. 1334. PAYMENT OF SUBCONTRACTORS.**

7       Section 8(d) of the Small Business Act (15 U.S.C.  
8 637(d)) is amended by adding at the end the following:

9       “(12) PAYMENT OF SUBCONTRACTORS.—

10       “(A) DEFINITION.—In this paragraph, the term  
11 ‘covered contract’ means a contract relating to which  
12 a prime contractor is required to develop a subcon-  
13 tracting plan under paragraph (4) or (5).

14       “(B) NOTICE.—

15       “(i) IN GENERAL.—A prime contractor for  
16 a covered contract shall notify in writing the  
17 contracting officer for the covered contract if  
18 the prime contractor pays a reduced price to a  
19 subcontractor for goods and services upon com-  
20 pletion of the responsibilities of the subcon-  
21 tractor or the payment to a subcontractor is  
22 more than 90 days past due for goods or serv-  
23 ices provided for the covered contract for which  
24 the Federal agency has paid the prime con-  
25 tractor.

1                   “(ii) CONTENTS.—A prime contractor shall  
2                   include the reason for the reduction in a pay-  
3                   ment to or failure to pay a subcontractor in any  
4                   notice made under clause (i).

5                   “(C) PERFORMANCE.—A contracting officer for  
6                   a covered contract shall consider the unjustified fail-  
7                   ure by a prime contractor to make a full or timely  
8                   payment to a subcontractor in evaluating the per-  
9                   formance of the prime contractor.

10                  “(D) CONTROL OF FUNDS.—If the contracting  
11                  officer for a covered contract determines that a  
12                  prime contractor has a history of unjustified, un-  
13                  timely payments to contractors, the contracting offi-  
14                  cer shall record the identity of the contractor in ac-  
15                  cordance with the regulations promulgated under  
16                  subparagraph (E).

17                  “(E) REGULATIONS.—Not later than 1 year  
18                  after the date of enactment of this paragraph, the  
19                  Federal Acquisition Regulatory Council established  
20                  under section 25(a) of the Office of Federal Pro-  
21                  curement Policy Act (41 U.S.C. 42 1(a)) shall amend  
22                  the Federal Acquisition Regulation issued under sec-  
23                  tion 25 of such Act to—

24                               “(i) describe the circumstances under  
25                               which a contractor may be determined to have



1 a history of unjustified, untimely payments to  
2 subcontractors;

3 “(ii) establish a process for contracting of-  
4 ficers to record the identity of a contractor de-  
5 scribed in clause (i); and

6 “(iii) require the identity of a contractor  
7 described in clause (i) to be incorporated in,  
8 and made publicly available through, the Fed-  
9 eral Awardee Performance and Integrity Infor-  
10 mation System, or any successor thereto.”.

11 **SEC. 1335. REPEAL OF SMALL BUSINESS COMPETITIVENESS**

12 **DEMONSTRATION PROGRAM.**

13 (a) **IN GENERAL.**—The Business Opportunity Devel-  
14 opment Reform Act of 1988 (Public Law 100–656) is  
15 amended by striking title VII (15 U.S.C. 644 note).

16 (b) **EFFECTIVE DATE AND APPLICABILITY.**—The  
17 amendment made by this section—

18 (1) shall take effect on the date of enactment  
19 of this Act; and

20 (2) apply to the first full fiscal year after the  
21 date of enactment of this Act.

1 **PART IV—SMALL BUSINESS SIZE AND STATUS**

2 **INTEGRITY**

3 **SEC. 1341. POLICY AND PRESUMPTIONS.**

4 Section 3 of the Small Business Act (15 U.S.C. 632),  
5 as amended by section 1311, is amended by adding at the  
6 end the following:

7 “(w) PRESUMPTION.—

8 “(1) IN GENERAL.—In every contract, sub-  
9 contract, cooperative agreement, cooperative re-  
10 search and development agreement, or grant which  
11 is set aside, reserved, or otherwise classified as in-  
12 tended for award to small business concerns, there  
13 shall be a presumption of loss to the United States  
14 based on the total amount expended on the contract,  
15 subcontract, cooperative agreement, cooperative re-  
16 search and development agreement, or grant when-  
17 ever it is established that a business concern other  
18 than a small business concern willfully sought and  
19 received the award by misrepresentation.

20 “(2) DEEMED CERTIFICATIONS.—The following  
21 actions shall be deemed affirmative, willful, and in-  
22 tentional certifications of small business size and  
23 status:

24 “(A) Submission of a bid or proposal for a  
25 Federal grant, contract, subcontract, coopera-  
26 tive agreement, or cooperative research and de-

1           velopment agreement reserved, set aside, or oth-  
2           erwise classified as intended for award to small  
3           business concerns.

4                   “(B) Submission of a bid or proposal for  
5 a Federal grant, contract, subcontract, coopera-  
6           tive agreement, or cooperative research and de-  
7           velopment agreement which in any way encour-  
8           ages a Federal agency to classify the bid or pro-  
9           posal, if awarded, as an award to a small busi-  
10          ness concern.

11                   “(C) Registration on any Federal elec-  
12          tronic database for the purpose of being consid-  
13          ered for award of a Federal grant, contract,  
14          subcontract, cooperative agreement, or coopera-  
15          tive research agreement, as a small business  
16          concern.

17                   “(3) CERTIFICATION BY SIGNATURE OF RE-  
18          SPONSIBLE OFFICIAL.—

19                   “(A) IN GENERAL.—Each solicitation, bid,  
20          or application for a Federal contract, sub-  
21          contract, or grant shall contain a certification  
22          concerning the small business size and status of  
23          a business concern seeking the Federal con-  
24          tract, subcontract, or grant.

1                   “(B) CONTENT OF CERTIFICATIONS.—A  
2                   certification that a business concern qualifies as  
3                   a small business concern of the exact size and  
4                   status claimed by the business concern for pur-  
5                   poses of bidding on a Federal contract or sub-  
6                   contract, or applying for a Federal grant, shall  
7                   contain the signature of an authorized official  
8                   on the same page on which the certification is  
9                   contained.

10                   “(4) REGULATIONS.—The Administrator shall  
11                   promulgate regulations to provide adequate protec-  
12                   tions to individuals and business concerns from li-  
13                   ability under this subsection in cases of uninten-  
14                   tional errors, technical malfunctions, and other simi-  
15                   lar situations.”.

16 **SEC. 1342. ANNUAL CERTIFICATION.**

17                   Section 3 of the Small Business Act (15 U.S.C. 632),  
18 as amended by section 1341, is amended by adding at the  
19 end the following:

20                   “(x) ANNUAL CERTIFICATION.—

21                   “(1) IN GENERAL.—Each business certified as  
22                   a small business concern under this Act shall annu-  
23                   ally certify its small business size and, if appro-  
24                   priate, its small business status, by means of a con-  
25                   firming entry on the Online Representations and

1 Certifications Application database of the Adminis-  
2 tration, or any successor thereto.

3 “(2) REGULATIONS.—Not later than 1 year  
4 after the date of enactment of this subsection, the  
5 Administrator, in consultation with the Inspector  
6 General and the Chief Counsel for Advocacy of the  
7 Administration, shall promulgate regulations to en-  
8 sure that—

9 “(A) no business concern continues to be  
10 certified as a small business concern on the On-  
11 line Representations and Certifications Applica-  
12 tion database of the Administration, or any suc-  
13 cessor thereto, without fulfilling the require-  
14 ments for annual certification under this sub-  
15 section; and

16 “(B) the requirements of this subsection  
17 are implemented in a manner presenting the  
18 least possible regulatory burden on small busi-  
19 ness concerns.”.

20 **SEC. 1343. TRAINING FOR CONTRACTING AND ENFORCE-**  
21 **MENT PERSONNEL.**

22 (a) IN GENERAL.—Not later than 1 year after the  
23 date of enactment of this Act, the Federal Acquisition In-  
24 stitute, in consultation with the Administrator for Federal  
25 Procurement Policy, the Defense Acquisition University,

1 and the Administrator, shall develop courses for acqui-  
2 tion personnel concerning proper classification of business  
3 concerns and small business size and status for purposes  
4 of Federal contracts, subcontracts, grants, cooperative  
5 agreements, and cooperative research and development  
6 agreements.

7 (b) POLICY ON PROSECUTIONS OF SMALL BUSINESS  
8 SIZE AND STATUS FRAUD.—Section 3 of the Small Busi-  
9 ness Act (15 U.S.C. 632), as amended by section 1342,  
10 is amended by adding at the end the following:

11 “(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS  
12 SIZE AND STATUS FRAUD.—Not later than 1 year after  
13 the date of enactment of this subsection, the Adminis-  
14 trator, in consultation with the Attorney General, shall  
15 issue a Government-wide policy on prosecution of small  
16 business size and status fraud, which shall direct Federal  
17 agencies to appropriately publicize the policy.”.

18 **SEC. 1344. UPDATED SIZE STANDARDS.**

19 (a) ROLLING REVIEW.—

20 (1) IN GENERAL.—The Administrator shall—

21 (A) during the 18-month period beginning  
22 on the date of enactment of this Act, and dur-  
23 ing every 18-month period thereafter, conduct a  
24 detailed review of not less than  $\frac{1}{3}$  of the size  
25 standards for small business concerns estab-

1 lished under section 3(a)(2) of the Small Busi-  
2 ness Act (15 U.S.C. 632(a)(2)), which shall in-  
3 clude holding not less than 2 public forums lo-  
4 cated in different geographic regions of the  
5 United States;

6 (B) after completing each review under  
7 subparagraph (A) make appropriate adjust-  
8 ments to the size standards established under  
9 section 3(a)(2) of the Small Business Act to re-  
10 flect market conditions;

11 (C) make publicly available—

12 (i) information regarding the factors  
13 evaluated as part of each review conducted  
14 under subparagraph (A); and

15 (ii) information regarding the criteria  
16 used for any revised size standards pro-  
17 mulgated under subparagraph (B); and

18 (D) not later than 30 days after the date  
19 on which the Administrator completes each re-  
20 view under subparagraph (A), submit to the  
21 Committee on Small Business and Entrepre-  
22 neurship of the Senate and the Committee on  
23 Small Business of the House of Representatives  
24 and make publicly available a report regarding  
25 the review, including why the Administrator—

1 (i) used the factors and criteria de-  
2 scribed in subparagraph (C); and

3 (ii) adjusted or did not adjust each  
4 size standard that was reviewed under the  
5 review.

6 (2) COMPLETE REVIEW OF SIZE STANDARDS.—

7 The Administrator shall ensure that each size stand-  
8 ard for small business concerns established under  
9 section 3(a) (2) of the Small Business Act (15 U.S.C.  
10 632(a)(2)) is reviewed under paragraph (1) not less  
11 frequently than once every 5 years.

12 (b) RULES.—Not later than 1 year after the date of  
13 enactment of this Act, the Administrator shall promulgate  
14 rules for conducting the reviews required under subsection  
15 (a).

16 **SEC. 1345. STUDY AND REPORT ON THE MENTOR-PROTEGE**  
17 **PROGRAM.**

18 (a) IN GENERAL.—The Comptroller General of the  
19 United States shall conduct a study of the mentor-protege  
20 program of the Administration for small business concerns  
21 participating in programs under section 8(a) of the Small  
22 Business Act (15 U.S.C. 637(a)), and other relationships  
23 and strategic alliances pairing a larger business and a  
24 small business concern partner to gain access to Federal  
25 Government contracts, to determine whether the programs



1 and relationships are effectively supporting the goal of in-  
2 creasing the participation of small business concerns in  
3 Government contracting.

4 (b) MATTERS TO BE STUDIED.—The study con-  
5 ducted under this section shall include—

6 (1) a review of a broad cross-section of indus-  
7 tries; and

8 (2) an evaluation of—

9 (A) how each Federal agency carrying out  
10 a program described in subsection (a) admin-  
11 isters and monitors the program;

12 (B) whether there are systems in place to  
13 ensure that the mentor-protege relationship, or  
14 similar affiliation, promotes real gain to the  
15 protege, and is not just a mechanism to enable  
16 participants that would not otherwise qualify  
17 under section 8(a) of the Small Business Act  
18 (15 U.S.C. 637(a)) to receive contracts under  
19 that section; and

20 (C) the degree to which protege businesses  
21 become able to compete for Federal contracts  
22 without the assistance of a mentor.

23 (c) REPORT TO CONGRESS.—Not later than 180 days  
24 after the date of enactment of this Act, the Comptroller  
25 General shall submit to the Committee on Small Business

1 and Entrepreneurship of the Senate and the Committee  
2 on Small Business of the House of Representatives a re-  
3 port on the results of the study conducted under this sec-  
4 tion.

5 **SEC. 1346. CONTRACTING GOALS REPORTS.**

6 Section 15(h)(2) of the Small Business Act (15  
7 U.S.C. 644(h)(2)) is amended by striking “submit them”  
8 and all that follows through “the following:” and inserting  
9 “submit to the President and the Committee on Small  
10 Business and Entrepreneurship of the Senate and the  
11 Committee on Small Business of the House of Representa-  
12 tives the compilation and analysis, which shall include the  
13 following:”.

14 **SEC. 1347. SMALL BUSINESS CONTRACTING PARITY.**

15 (a) **DEFINITIONS.**—In this section—

16 (1) the terms “Administration” and “Adminis-  
17 trator” mean the Small Business Administration  
18 and the Administrator thereof, respectively; and

19 (2) the terms “HUBZone small business con-  
20 cern”, “small business concern”, “small business  
21 concern owned and controlled by service-disabled  
22 veterans”, and “small business concern owned and  
23 controlled by women” have the same meanings as in  
24 section 3 of the Small Business Act (15 U.S.C.  
25 632).

1 (b) CONTRACTING IMPROVEMENTS.—

2 (1) CONTRACTING OPPORTUNITIES.—Section  
3 31(b) (2) (B) of the Small Business Act (15 U.S.C.  
4 657a(b)(2)(B)) is amended by striking “shall” and  
5 inserting “may”.

6 (2) CONTRACTING GOALS.—Section 15(g)(1) of  
7 the Small Business Act (15 U.S.C. 644(g)(1)) is  
8 amended in the fourth sentence by inserting “and  
9 subcontract” after “not less than 3 percent of the  
10 total value of all prime contract”.

11 (3) MENTOR-PROTEGE PROGRAMS.—The Ad-  
12 ministrator may establish mentor-protege programs  
13 for small business concerns owned and controlled by  
14 service-disabled veterans, small business concerns  
15 owned and controlled by women, and HUBZone  
16 small business concerns modeled on the mentor-pro-  
17 tege program of the Administration for small busi-  
18 ness concerns participating in programs under sec-  
19 tion 8(a) of the Small Business Act (15 U.S.C.  
20 637(a)).

21 (c) SMALL BUSINESS CONTRACTING PROGRAMS PAR-  
22 ITY.—Section 31(b)(2) of the Small Business Act (15  
23 U.S.C. 657a(b)(2)) is amended—

1 (1) in the matter preceding subparagraph (A),  
 2 by striking “Notwithstanding any other provision of  
 3 law—”;

4 (2) in subparagraph (A)—

5 (A) in the matter preceding clause (i), by  
 6 striking “a contracting” and inserting “SOLE  
 7 SOURCE CONTRACTS.—A contracting”; and

8 (B) in clause (iii), by striking the semi-  
 9 colon at the end and inserting a period;

10 (3) in subparagraph (B)—

11 (A) by striking “a contract opportunity  
 12 shall” and inserting “RESTRICTED COMPETI-  
 13 TION.—A contract opportunity may”; and

14 (B) by striking “; and” and inserting a pe-  
 15 riod; and

16 (4) in subparagraph (C), by striking “not later”  
 17 and inserting “APPEALS.—Not later”.

18 **Subtitle D—Small Business Man-**  
 19 **agement and Counseling Assist-**  
 20 **ance**

21 **SEC. 1401. MATCHING REQUIREMENTS UNDER SMALL BUSI-**  
 22 **NESS PROGRAMS.**

23 (a) **MICROLOAN PROGRAM.**—Section 7(m) of the  
 24 Small Business Act (15 U.S.C. 636(m)) is amended—

25 (1) in paragraph (3)(B)—

1 (A) by striking “As a condition” and in-  
2 serting the following:

3 “(i) IN GENERAL.—Subject to clause  
4 (ii), as a condition”;

5 (B) by striking “the Administration” and  
6 inserting “the Administrator”; and

7 (C) by adding at the end the following:

8 “(ii) WAIVER OF NON-FEDERAL  
9 SHARE.—

10 “(I) IN GENERAL.—Upon request  
11 by an intermediary, and in accordance  
12 with this clause, the Administrator  
13 may waive, in whole or in part, the re-  
14 quirement to obtain non-Federal  
15 funds under clause (i) for a fiscal  
16 year. The Administrator may waive  
17 the requirement to obtain non-Federal  
18 funds under this clause for successive  
19 fiscal years.

20 “(II) CONSIDERATIONS.—In de-  
21 termining whether to waive the re-  
22 quirement to obtain non-Federal  
23 funds under this clause, the Adminis-  
24 trator shall consider—

1 “(aa) the economic condi-  
2 tions affecting the intermediary;  
3 “(bb) the impact a waiver  
4 under this clause would have on  
5 the credibility of the microloan  
6 program under this subsection;  
7 “(cc) the demonstrated abil-  
8 ity of the intermediary to raise  
9 non-Federal funds; and  
10 “(dd) the performance of  
11 the intermediary.  
12 “(III) LIMITATIONS.—  
13 “(aa) IN GENERAL.—The  
14 Administrator may not waive the  
15 requirement to obtain non-Fed-  
16 eral funds under this clause if  
17 granting the waiver would under-  
18 mine the credibility of the  
19 microloan program under this  
20 subsection.  
21 “(bb) SUNSET.—The Ad-  
22 ministrator may not waive the re-  
23 quirement to obtain non-Federal  
24 funds under this clause for fiscal

1 year 2013 or any fiscal year  
2 thereafter.”; and

3 (2) in paragraph (4)(B)—

4 (A) by striking “As a condition” and all  
5 that follows through “the Administration shall  
6 require” and inserting the following:

7 “(i) IN GENERAL.—Subject to clause  
8 (ii), as a condition of a grant made under  
9 subparagraph (A), the Administrator shall  
10 require”; and

11 (B) by adding at the end the following:

12 “(ii) WAIVER OF NON-FEDERAL  
13 SHARE.—

14 “(I) IN GENERAL.—Upon request  
15 by an intermediary, and in accordance  
16 with this clause, the Administrator  
17 may waive, in whole or in part, the re-  
18 quirement to obtain non-Federal  
19 funds under clause (i) for a fiscal  
20 year. The Administrator may waive  
21 the requirement to obtain non-Federal  
22 funds under this clause for successive  
23 fiscal years.

24 “(II) CONSIDERATIONS.—In de-  
25 termining whether to waive the re-

1                   requirement to obtain non-Federal  
2                   funds under this clause, the Adminis-  
3                   trator shall consider—

4                               “(aa) the economic condi-  
5                               tions affecting the intermediary;

6                               “(bb) the impact a waiver  
7                               under this clause would have on  
8                               the credibility of the microloan  
9                               program under this subsection;

10                              “(cc) the demonstrated abil-  
11                              ity of the intermediary to raise  
12                              non-Federal funds; and

13                              “(dd) the performance of  
14                              the intermediary.

15                              “(III) LIMITATIONS.—

16                                       “(aa) IN GENERAL.—The  
17                                       Administrator may not waive the  
18                                       requirement to obtain non-Fed-  
19                                       eral funds under this clause if  
20                                       granting the waiver would under-  
21                                       mine the credibility of the  
22                                       microloan program under this  
23                                       subsection.

24                                       “(bb) SUNSET.—The Ad-  
25                                       ministrators may not waive the re-



1                                   requirement to obtain non-Federal  
2                                   funds under this clause for fiscal  
3                                   year 2013 or any fiscal year  
4                                   thereafter.”.

5           (b) WOMEN’S BUSINESS CENTER PROGRAM.—Sec-  
6           tion 29(c) of the Small Business Act (15 U.S.C. 656(c))  
7 is amended—

8                           (1) in paragraph (1), by striking “As a condi-  
9                           tion” and inserting “Subject to paragraph (5), as a  
10                           condition”; and

11                           (2) by adding at the end the following:

12                           “(5) WAIVER OF NON-FEDERAL SHARE RELAT-  
13                           ING TO TECHNICAL ASSISTANCE AND COUN-  
14                           SELING.—

15                           “(A) IN GENERAL.—Upon request by a re-  
16                           cipient organization, and in accordance with  
17                           this paragraph, the Administrator may waive,  
18                           in whole or in part, the requirement to obtain  
19                           non-Federal funds under this subsection for the  
20                           technical assistance and counseling activities of  
21                           the recipient organization carried out using fi-  
22                           nancial assistance under this section for a fiscal  
23                           year. The Administrator may waive the require-  
24                           ment to obtain non-Federal funds under this  
25                           paragraph for successive fiscal years.

1           “(B) CONSIDERATIONS.—In determining  
2           whether to waive the requirement to obtain  
3           non-Federal funds under this paragraph, the  
4           Administrator shall consider—

5                   “(i) the economic conditions affecting  
6                   the recipient organization;

7                   “(ii) the impact a waiver under this  
8                   clause would have on the credibility of the  
9                   women’s business center program under  
10                  this section;

11                  “(iii) the demonstrated ability of the  
12                  recipient organization to raise non-Federal  
13                  funds; and

14                  “(iv) the performance of the recipient  
15                  organization.

16           “(C) LIMITATIONS.—

17                   “(i) IN GENERAL.—The Administrator  
18                   may not waive the requirement to obtain  
19                   non-Federal funds under this paragraph if  
20                   granting the waiver would undermine the  
21                   credibility of the women’s business center  
22                   program under this section.

23                   “(ii) SUNSET.—The Administrator  
24                   may not waive the requirement to obtain  
25                   non-Federal funds under this paragraph

1                   for fiscal year 2013 or any fiscal year  
2                   thereafter.”.

3           (c) PROSPECTIVE REPEALS.—Effective October 1,  
4 2012, the Small Business Act (15 U.S.C. 631 et seq.) is  
5 amended—

6           (1) in section 7(m) (15 U.S.C. 636(m))—

7                   (A) in paragraph (3)(B)—

8                           (i) by striking “INTERMEDIARY CON-  
9                           TRIBUTION.—” and all that follows  
10                           through “Subject to clause (ii), as” and in-  
11                           serting “INTERMEDIARY CONTRIBUTION.—  
12                           As”; and

13                           (ii) by striking clause (ii); and

14                   (B) in paragraph (4)(B)—

15                           (i) by striking “CONTRIBUTION.—”  
16                           and all that follows through “Subject to  
17                           clause (ii), as” and inserting “CONTRIBU-

18                           TION.—As”; and

19                           (ii) by striking clause (ii); and

20           (2) in section 29(c) (15 U.S.C. 656(c))—

21                           (A) in paragraph (1), by striking “Subject  
22                           to paragraph (5), as” and inserting “As”; and

23                           (B) by striking paragraph (5).

1 **SEC. 1402. GRANTS FOR SBDCS.**

2 (a) IN GENERAL.—The Administrator may make  
3 grants to small business development centers under sec-  
4 tion 21 of the Small Business Act (15 U.S.C. 648) to pro-  
5 vide targeted technical assistance to small business con-  
6 cerns seeking access to capital or credit, Federal procure-  
7 ment opportunities, energy efficiency audits to reduce en-  
8 ergy bills, opportunities to export products or provide serv-  
9 ices to foreign customers, adopting, making innovations  
10 in, and using broadband technologies, or other assistance.

11 (b) ALLOCATION.—

12 (1) IN GENERAL.—Subject to paragraph (2),  
13 and notwithstanding the requirements of section  
14 21(a) (4) (C) (iii) of the Small Business Act (15  
15 U.S.C. 648(a)(4)(C)(iii)), the amount appropriated  
16 to carry out this section shall be allocated under the  
17 formula under section 21(a)(4)(C)(i) of that Act.

18 (2) MINIMUM FUNDING.—The amount made  
19 available under this section to each State shall be  
20 not less than \$325,000.

21 (3) TYPES OF USES.—Of the total amount of  
22 the grants awarded by the Administrator under this  
23 section—

24 (A) not less than 80 percent shall be used  
25 for counseling of small business concerns; and

1 (B) not more than 20 percent may be used  
2 for classes or seminars.

3 (c) NO NON-FEDERAL SHARE REQUIRED.—Notwith-  
4 standing section 21(a)(4)(A) of the Small Business Act  
5 (15 U.S.C. 648(a)(4)(A)), the recipient of a grant made  
6 under this section shall not be required to provide non-  
7 Federal matching funds.

8 (d) DISTRIBUTION.—Not later than 30 days after the  
9 date on which amounts are appropriated to carry out this  
10 section, the Administrator shall disburse the total amount  
11 appropriated.

12 (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
13 authorized to be appropriated to the Administrator  
14 \$50,000,000 to carry out this section.

15 **Subtitle E—Disaster Loan**  
16 **Improvement**

17 **SEC. 1501. AQUACULTURE BUSINESS DISASTER ASSIST-**  
18 **ANCE.**

19 Section 3 of the Small Business Act (15 U.S.C. 632),  
20 as amended by section 1343, is amended by adding at the  
21 end the following:

22 “(z) AQUACULTURE BUSINESS DISASTER ASSIST-  
23 ANCE.—Subject to section 18(a) and notwithstanding sec-  
24 tion 18(b)(1), the Administrator may provide disaster as-

1 sistance under section 7(b)(2) to aquaculture enterprises  
2 that are small businesses.”.

3           **Subtitle F—Small Business**  
4           **Regulatory Relief**

5 **SEC. 1601. REQUIREMENTS PROVIDING FOR MORE DE-**  
6           **TAILED ANALYSES.**

7           Section 604(a) of title 5, United States Code, is  
8 amended—

9           (1) in paragraph (1), by striking “succinct”;

10           (2) in paragraph (2), by striking “summary”

11           each place it appears and inserting “statement”;

12           (3) by redesignating paragraphs (3), (4), and

13           (5) as paragraphs (4), (5), and (6), respectively; and

14           (4) by inserting after paragraph (2) the fol-  
15           lowing:

16           “(3) the response of the agency to any com-  
17           ments filed by the Chief Counsel for Advocacy of the  
18           Small Business Administration in response to the  
19           proposed rule, and a detailed statement of any  
20           change made to the proposed rule in the final rule  
21           as a result of the comments;”.

22 **SEC. 1602. OFFICE OF ADVOCACY.**

23           (a) **IN GENERAL.**—Section 203 of Public Law 94-  
24 305 (15 U.S.C. 634c) is amended—

1 (1) in paragraph (4), by striking “and” at the  
2 end;

3 (2) in paragraph (5), by striking the period and  
4 inserting “; and”; and

5 (3) by adding at the end the following:

6 “(6) carry out the responsibilities of the Office  
7 of Advocacy under chapter 6 of title 5, United  
8 States Code.”.

9 (b) BUDGETARY LINE ITEM AND AUTHORIZATION OF  
10 APPROPRIATIONS.—Title II of Public Law 94–3 05 (15  
11 U.S.C. 634a et seq.) is amended by striking section 207  
12 and inserting the following:

13 **“SEC. 207. BUDGETARY LINE ITEM AND AUTHORIZATION OF**  
14 **APPROPRIATIONS.**

15 “(a) APPROPRIATION REQUESTS.—Each budget of  
16 the United States Government submitted by the President  
17 under section 1105 of title 31, United States Code, shall  
18 include a separate statement of the amount of appropria-  
19 tions requested for the Office of Advocacy of the Small  
20 Business Administration, which shall be designated in a  
21 separate account in the General Fund of the Treasury.

22 “(b) ADMINISTRATIVE OPERATIONS.—The Adminis-  
23 trator of the Small Business Administration shall provide  
24 the Office of Advocacy with appropriate and adequate of-  
25 fice space at central and field office locations, together

1 with such equipment, operating budget, and communica-  
2 tions facilities and services as may be necessary, and shall  
3 provide necessary maintenance services for such offices  
4 and the equipment and facilities located in such offices.

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated such sums as are nec-  
7 essary to carry out this title. Any amount appropriated  
8 under this subsection shall remain available, without fiscal  
9 year limitation, until expended.”.

10 **Subtitle G—Appropriations**  
11 **Provisions**

12 **SEC. 1701. SALARIES AND EXPENSES.**

13 (a) APPROPRIATION.—There is appropriated, out of  
14 any money in the Treasury not otherwise appropriated,  
15 for the fiscal year ending September 30, 2010,  
16 \$150,000,000, to remain available until September 30,  
17 2012, for an additional amount for the appropriations ac-  
18 count appropriated under the heading “SALARIES AND EX-  
19 PENSES” under the heading “SMALL BUSINESS ADMINIS-  
20 TRATION”, of which—

21 (1) \$50,000,000 is for grants to small business  
22 development centers authorized under section 1402;

23 (2) \$1,000,000 is for the costs of administering  
24 grants authorized under section 1402;



1       (3) \$30,000,000 is for grants to States for fis-  
2       cal year 2011 to carry out export programs that as-  
3       sist small business concerns authorized under section  
4       1207;

5       (4) \$30,000,000 is for grants to States for fis-  
6       cal year 2012 to carry out export programs that as-  
7       sist small business concerns authorized under section  
8       1207;

9       (5) \$2,500,000 is for the costs of administering  
10       grants authorized under section 1207;

11       (6) \$5,000,000 is for grants for fiscal year  
12       2011 under the Small Business Teaming Pilot Pro-  
13       gram under section 1314; and

14       (7) \$5,000,000 is for grants for fiscal year  
15       2012 under the Small Business Teaming Pilot Pro-  
16       gram under section 1314.

17       (b) REPORT.—Not later than 60 days after the date  
18       of enactment of this Act, the Administrator shall submit  
19       to the Committee on Appropriations of the Senate and the  
20       Committee on Appropriations of the House of Representa-  
21       tives a detailed expenditure plan for using the funds pro-  
22       vided under subsection (a).

23       **SEC. 1702. BUSINESS LOANS PROGRAM ACCOUNT.**

24       (a) IN GENERAL.—There is appropriated, out of any  
25       money in the Treasury not otherwise appropriated, for the

1 fiscal year ending September 30, 2010, for an additional  
2 amount for the appropriations account appropriated under  
3 the heading “BUSINESS LOANS PROGRAM ACCOUNT” under  
4 the heading “SMALL BUSINESS ADMINISTRATION”—

5           (1) \$8,000,000, to remain available until Sep-  
6           tember 30, 2012, for fiscal year 2011 for the cost  
7           of direct loans authorized under section 7(1) of the  
8           Small Business Act, as added by section 1131 of  
9           this title, including the cost of modifying the loans;

10           (2) \$8,000,000, to remain available until Sep-  
11           tember 30, 2012, for fiscal year 2012 for the cost  
12           of direct loans authorized under section 7(1) of the  
13           Small Business Act, as added by section 1131 of  
14           this title, including the cost of modifying the loans;

15           (3) \$6,500,000, to remain available until Sep-  
16           tember 30, 2012, for administrative expenses to  
17           carry out the direct loan program authorized under  
18           section 7(1) of the Small Business Act, as added by  
19           section 1131 of this title, which may be transferred  
20           to and merged with the appropriations account ap-  
21           propriated under the heading “SALARIES AND EX-  
22           PENSES” under the heading “SMALL BUSINESS AD-  
23           MINISTRATION”; and

24           (4) \$15,000,000, to remain available until Sep-  
25           tember 30, 2011, for the cost of guaranteed loans as

1 authorized under section 7(a) of the Small Business  
2 Act, including the cost of modifying the loans.

3 (b) DEFINITION.—In this section, the term “cost”  
4 has the meaning given that term in section 502 of the  
5 Congressional Budget Act of 1974.

6 **SEC. 1703. COMMUNITY DEVELOPMENT FINANCIAL INSTI-**  
7 **TUTIONS FUND PROGRAM ACCOUNT.**

8 There is appropriated, out of any money in the Treas-  
9 ury not otherwise appropriated, for the fiscal year ending  
10 September 30, 2010, for an additional amount for the ap-  
11 propriations account appropriated under the heading  
12 “COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS  
13 FUND PROGRAM ACCOUNT” under the heading “DE-  
14 PARTMENT OF THE TREASURY”, \$13,500,000, to  
15 remain available until September 30, 2012, for the costs  
16 of administering guarantees for bonds and notes as au-  
17 thorized under section 11 4A of the Riegle Community De-  
18 velopment and Regulatory Improvement Act of 1994, as  
19 added by section 1134 of this Act.

20 **SEC. 1704. SMALL BUSINESS LOAN GUARANTEE ENHANCE-**  
21 **MENT EXTENSIONS.**

22 (a) EXTENSION OF PROGRAMS.—

23 (1) IN GENERAL.—There is appropriated, out  
24 of any funds in the Treasury not otherwise appro-  
25 priated, for an additional amount for “Small Busi-

1       ness Administration—Business Loans Program Ac-  
2       count”, \$505,000,000, to remain available through  
3       December 31, 2010, for the cost of—

4               (A) fee reductions and eliminations under  
5               section 501 of division A of the American Re-  
6               covery and Reinvestment Act of 2009 (Public  
7               Law 111–5; 123 Stat. 151), as amended by this  
8               Act; and

9               (B) loan guarantees under section 502 of  
10              division A of the American Recovery and Rein-  
11              vestment Act of 2009 (Public Law 111–5; 123  
12              Stat. 152), as amended by this Act.

13             (2) COST.—For purposes of this subsection, the  
14             term “cost” has the same meaning as in section 502  
15             of the Congressional Budget Act of 1974 (2 U.S.C.  
16             661a).

17             (b) ADMINISTRATIVE EXPENSES.—There is appro-  
18             priated for an additional amount, out of any funds in the  
19             Treasury not otherwise appropriated, for administrative  
20             expenses to carry out sections 501 and 502 of division A  
21             of the American Recovery and Reinvestment Act of 2009  
22             (Public Law 111–5), \$5,000,000, to remain available until  
23             expended, which may be transferred and merged with the  
24             appropriation for “Small Business Administration—Sala-  
25             ries and Expenses”.

# 1 **TITLE II—TAX PROVISIONS**

## 2 **SEC. 2001. SHORT TITLE.**

3       This title may be cited as the “Creating Small Busi-  
4 ness Jobs Act of 2010”.

## 5 **Subtitle A—Small Business Relief**

### 6 **PART I—PROVIDING ACCESS TO CAPITAL**

#### 7 **SEC. 2011. TEMPORARY EXCLUSION OF 100 PERCENT OF** 8 **GAIN ON CERTAIN SMALL BUSINESS STOCK.**

9       (a) **IN GENERAL.**—Subsection (a) of section 1202 of  
10 the Internal Revenue Code of 1986 is amended by adding  
11 at the end the following new paragraph:

12           “(4) **100 PERCENT EXCLUSION FOR STOCK AC-**  
13 **QUIRED DURING CERTAIN PERIODS IN 2010.**—In the  
14 case of qualified small business stock acquired after  
15 the date of the enactment of the Creating Small  
16 Business Jobs Act of 2010 and before January 1,  
17 2011—

18           “(A) paragraph (1) shall be applied by  
19 substituting ‘100 percent’ for ‘50 percent’,

20           “(B) paragraph (2) shall not apply, and

21           “(C) paragraph (7) of section 57(a) shall  
22 not apply.”.

23       (b) **CONFORMING AMENDMENT.**—Paragraph (3) of  
24 section 1202(a) of the Internal Revenue Code of 1986 is  
25 amended—

1           (1) by inserting “CERTAIN PERIODS IN” before  
2           “2010” in the heading, and

3           (2) by striking “before January 1, 2011” and  
4           inserting “on or before the date of the enactment of  
5           the Creating Small Business Jobs Act of 2010”.

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

9           **SEC. 2012. GENERAL BUSINESS CREDITS OF ELIGIBLE**  
10                           **SMALL BUSINESSES FOR 2010 CARRIED BACK**  
11                           **5 YEARS.**

12           (a) IN GENERAL.—Section 39(a) of the Internal Rev-  
13           enue Code of 1986 is amended by adding at the end the  
14           following new paragraph:

15                           “(4) 5-YEAR CARRYBACK FOR ELIGIBLE SMALL  
16           BUSINESS CREDITS.—

17                           “(A) IN GENERAL.—Notwithstanding sub-  
18           section (d), in the case of eligible small business  
19           credits determined in the first taxable year of  
20           the taxpayer beginning in 2010—

21   “(i) paragraph (1) shall be applied by  
22   substituting ‘each of the 5 taxable years’  
23   for ‘the taxable year’ in subparagraph (A)  
24   thereof, and

25   “(ii) paragraph (2) shall be applied—

1                   “(I) by substituting ‘25 taxable  
2                   years’ for ‘21 taxable years’ in sub-  
3                   paragraph (A) thereof, and

4                   “(II) by substituting ‘24 taxable  
5                   years’ for ‘20 taxable years’ in sub-  
6                   paragraph (B) thereof.

7                   “(B) ELIGIBLE SMALL BUSINESS CRED-  
8                   ITS.—For purposes of this subsection, the term  
9                   ‘eligible small business credits’ has the meaning  
10                  given such term by section 38(c)(5)(B).”.

11               (b)           CONFORMING            AMENDMENT.—Section  
12 39(a)(3)(A) of the Internal Revenue Code of 1986 is  
13 amended by inserting “or the eligible small business cred-  
14 its” after “credit”).

15               (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to credits determined in taxable  
17 years beginning after December 31, 2009.

18 **SEC. 2013. GENERAL BUSINESS CREDITS OF ELIGIBLE**  
19                   **SMALL BUSINESSES IN 2010 NOT SUBJECT TO**  
20                   **ALTERNATIVE MINIMUM TAX.**

21               (a) IN GENERAL.—Section 38(c) of the Internal Rev-  
22 enue Code of 1986 is amended by redesignating paragraph  
23 (5) as paragraph (6) and by inserting after paragraph (4)  
24 the following new paragraph:

1           “(5) SPECIAL RULES FOR ELIGIBLE SMALL  
2 BUSINESS CREDITS IN 2010.—

3           “(A) IN GENERAL.—In the case of eligible  
4 small business credits determined in taxable  
5 years beginning in 2010—

6           “(i) this section and section 39 shall  
7 be applied separately with respect to such  
8 credits, and

9           “(ii) in applying paragraph (1) to  
10 such credits—

11           “(I) the tentative minimum tax  
12 shall be treated as being zero, and

13           “(II) the limitation under para-  
14 graph (1) (as modified by subclause  
15 (I)) shall be reduced by the credit al-  
16 lowed under subsection (a) for the  
17 taxable year (other than the eligible  
18 small business credits).

19           “(B) ELIGIBLE SMALL BUSINESS CRED-  
20 ITS.—For purposes of this subsection, the term  
21 ‘eligible small business credits’ means the sum  
22 of the credits listed in subsection (b) which are  
23 determined for the taxable year with respect to  
24 an eligible small business. Such credits shall not



1 be taken into account under paragraph (2), (3),  
2 or (4).

3 “(C) ELIGIBLE SMALL BUSINESS.—For  
4 purposes of this subsection, the term ‘eligible  
5 small business’ means, with respect to any tax-  
6 able year—

7 “(i) a corporation the stock of which  
8 is not publicly traded,

9 “(ii) a partnership, or

10 “(iii) a sole proprietorship,

11 if the average annual gross receipts of such cor-  
12 poration, partnership, or sole proprietorship for  
13 the 3-taxable-year period preceding such taxable  
14 year does not exceed \$50,000,000. For pur-  
15 poses of applying the test under the preceding  
16 sentence, rules similar to the rules of para-  
17 graphs (2) and (3) of section 448(c) shall  
18 apply.

19 “(D) TREATMENT OF PARTNERS AND S  
20 CORPORATION SHAREHOLDERS.—Credits deter-  
21 mined with respect to a partnership or S cor-  
22 poration shall not be treated as eligible small  
23 business credits by any partner or shareholder  
24 unless such partner or shareholder meets the  
25 gross receipts test under subparagraph (C) for

1           the taxable year in which such credits are treat-  
2           ed as current year business credits.”.

3           (b) TECHNICAL AMENDMENT.—Section 55(e)(5) of  
4 the Internal Revenue Code of 1986 is amended by striking  
5 “38(c)(3)(B)” and inserting “38(c)(6)(B)”.

6           (c) CONFORMING AMENDMENTS.—

7           (1) Subclause (II) of section 38(c)(2)(A)(ii) of  
8 the Internal Revenue Code of 1986 is amended by  
9 inserting “the eligible small business credits,” after  
10 “the New York Liberty Zone business employee  
11 credit.”.

12           (2) Subclause (II) of section 38(c)(3)(A)(ii) of  
13 such Code is amended by inserting “, the eligible  
14 small business credits,” after “the New York Liberty  
15 Zone business employee credit”.

16           (3) Subclause (II) of section 38(c)(4)(A)(ii) of  
17 such Code is amended by inserting “the eligible  
18 small business credits and” before “the specified  
19 credits”.

20           (d) EFFECTIVE DATE.—The amendments made by  
21 subsection (a) shall apply to credits determined in taxable  
22 years beginning after December 31, 2009, and to  
23 carrybacks of such credits.

1 **SEC. 2014. TEMPORARY REDUCTION IN RECOGNITION PE-**  
2 **RIOD FOR BUILT-IN GAINS TAX.**

3 (a) **IN GENERAL.**—Subparagraph (B) of section  
4 1374(d)(7) of the Internal Revenue Code of 1986 is  
5 amended to read as follows:

6 “(B) **SPECIAL RULES FOR 2009, 2010, AND**  
7 **2011.**—No tax shall be imposed on the net rec-  
8 ognized built-in gain of an S corporation—

9 “(i) in the case of any taxable year  
10 beginning in 2009 or 2010, if the 7th tax-  
11 able year in the recognition period pre-  
12 ceded such taxable year, or

13 “(ii) in the case of any taxable year  
14 beginning in 2011, if the 5th year in the  
15 recognition period preceded such taxable  
16 year.

17 The preceding sentence shall be applied sepa-  
18 rately with respect to any asset to which para-  
19 graph (8) applies.”.

20 (b) **EFFECTIVE DATE.**—The amendment made by  
21 this section shall apply to taxable years beginning after  
22 December 31, 2010.

1           **PART II—ENCOURAGING INVESTMENT**

2           **SEC. 2021. INCREASED EXPENSING LIMITATIONS FOR 2010**

3                           **AND 2011; CERTAIN REAL PROPERTY TREAT-**

4                           **ED AS SECTION 179 PROPERTY.**

5           (a) INCREASED LIMITATIONS.—Subsection (b) of sec-  
6           tion 179 of the Internal Revenue Code of 1986 is amend-  
7           ed—

8                           (1) by striking “shall not exceed” and all that  
9                           follows in paragraph (1) and inserting “shall not ex-  
10                          ceed—

11                                   “(A) \$250,000 in the case of taxable years  
12                                   beginning after 2007 and before 2010,

13                                   “(B) \$500,000 in the case of taxable years  
14                                   beginning in 2010 or 2011, and

15                                   “(C) \$25,000 in the case of taxable years  
16                                   beginning after 2011.”, and

17                           (2) by striking “exceeds” and all that follows in  
18                           paragraph (2) and inserting “exceeds—

19                                   “(A) \$800,000 in the case of taxable years  
20                                   beginning after 2007 and before 2010,

21                                   “(B) \$2,000,000 in the case of taxable  
22                                   years beginning in 2010 or 2011, and

23                                   “(C) \$200,000 in the case of taxable years  
24                                   beginning after 2011.”.

1           (b) INCLUSION OF CERTAIN REAL PROPERTY.—Sec-  
2 tion 179 of the Internal Revenue Code of 1986 is amended  
3 by adding at the end the following new subsection:

4           “(f) SPECIAL RULES FOR QUALIFIED REAL PROP-  
5 ERTY.—

6           “(1) IN GENERAL.—If a taxpayer elects the ap-  
7 plication of this subsection for any taxable year be-  
8 ginning in 2010 or 2011, the term ‘section 179  
9 property’ shall include any qualified real property  
10 which is—

11                   “(A) of a character subject to an allowance  
12 for depreciation,

13                   “(B) acquired by purchase for use in the  
14 active conduct of a trade or business, and

15                   “(C) not described in the last sentence of  
16 subsection (d)(1).

17           “(2) QUALIFIED REAL PROPERTY.—For pur-  
18 poses of this subsection, the term ‘qualified real  
19 property’ means—

20                   “(A) qualified leasehold improvement prop-  
21 erty described in section 168(e)(6),

22                   “(B) qualified restaurant property de-  
23 scribed in section 168(e)(7) (without regard to  
24 the dates specified in subparagraph (A)(i)  
25 thereof), and

1           “(C) qualified retail improvement property  
2           described in section 168(e)(8) (without regard  
3           to subparagraph (E) thereof).

4           “(3) LIMITATION.—For purposes of applying  
5           the limitation under subsection (b)(1)(B), not more  
6           than \$250,000 of the aggregate cost which is taken  
7           into account under subsection (a) for any taxable  
8           year may be attributable to qualified real property.

9           “(4) CARRYOVER LIMITATION.—

10           “(A) IN GENERAL.—Notwithstanding sub-  
11           section (b)(3)(B), no amount attributable to  
12           qualified real property may be carried over to a  
13           taxable year beginning after 2011.

14           “(B) TREATMENT OF DISALLOWED  
15           AMOUNTS.—Except as provided in subpara-  
16           graph (C), to the extent that any amount is not  
17           allowed to be carried over to a taxable year be-  
18           ginning after 2011 by reason of subparagraph  
19           (A), this title shall be applied as if no election  
20           under this section had been made with respect  
21           to such amount.

22           “(C) AMOUNTS CARRIED OVER FROM  
23           2010.—If subparagraph (B) applies to any  
24           amount (or portion of an amount) which is car-  
25           ried over from a taxable year other than the

1 taxpayer's last taxable year beginning in 2011,  
2 such amount (or portion of an amount) shall be  
3 treated for purposes of this title as attributable  
4 to property placed in service on the first day of  
5 the taxpayer's last taxable year beginning in  
6 2011.

7 “(D) ALLOCATION OF AMOUNTS.—For  
8 purposes of applying this paragraph and sub-  
9 section (b)(3)(B) to any taxable year, the  
10 amount which is disallowed under subsection  
11 (b) (3) (A) for such taxable year which is attrib-  
12 uted to qualified real property shall be the  
13 amount which bears the same ratio to the total  
14 amount so disallowed as—

15 “(i) the aggregate amount attrib-  
16 utable to qualified real property placed in  
17 service during such taxable year, increased  
18 by the portion of any amount carried over  
19 to such taxable year from a prior taxable  
20 year which is attributable to such property,  
21 bears to

22 “(ii) the total amount of section 179  
23 property placed in service during such tax-  
24 able year, increased by the aggregate

1 amount carried over to such taxable year  
2 from any prior taxable year.

3 For purposes of the preceding sentence, only  
4 section 179 property with respect to which an  
5 election was made under subsection (c)(1) (de-  
6 termined without regard to subparagraph (B)  
7 of this paragraph) shall be taken into ac-  
8 count.”.

9 (c) REVOCABILITY OF ELECTION.—Paragraph (2) of  
10 section 179(c) of the Internal Revenue Code of 1986 is  
11 amended by striking “2011” and inserting “2012”.

12 (d) COMPUTER SOFTWARE TREATED AS 179 PROP-  
13 erty.—Clause (ii) of section 179(d)(1)(A) is amended by  
14 striking “2011” and inserting “2012”.

15 (e) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-  
17 graph (2), the amendments made by this section  
18 shall apply to property placed in service after De-  
19 cember 31, 2009, in taxable years beginning after  
20 such date.

21 (2) EXTENSIONS.—The amendments made by  
22 subsections (c) and (d) shall apply to taxable years  
23 beginning after December 31, 2010.



1 **SEC. 2022. ADDITIONAL FIRST-YEAR DEPRECIATION FOR 50**  
2 **PERCENT OF THE BASIS OF CERTAIN QUALI-**  
3 **FIED PROPERTY.**

4 (a) **IN GENERAL.**—Paragraph (2) of section 168(k)  
5 of the Internal Revenue Code of 1986 is amended—

6 (1) by striking “January 1, 2011” in subpara-  
7 graph (A)(iv) and inserting “January 1, 2012”, and

8 (2) by striking “January 1, 2010” each place  
9 it appears and inserting “January 1, 2011”.

10 (b) **CONFORMING AMENDMENTS.**—

11 (1) The heading for subsection (k) of section  
12 168 of the Internal Revenue Code of 1986 is amend-  
13 ed by striking “JANUARY 1, 2010” and inserting  
14 “JANUARY 1, 2011”.

15 (2) The heading for clause (ii) of section  
16 168(k)(2)(B) of such Code is amended by striking  
17 “PRE-JANUARY 1, 2010” and inserting “PRE-JANU-  
18 ARY 1, 2011”.

19 (3) Subparagraph (D) of section 168(k)(4) of  
20 such Code is amended by striking “and” at the end  
21 of clause (ii), by striking the period at the end of  
22 clause (iii) and inserting a comma, and by adding at  
23 the end the following new clauses:

24 “(iv) ‘January 1, 2011’ shall be sub-  
25 stituted for ‘January 1, 2012’ in subpara-  
26 graph (A) (iv) thereof, and

1                   “(v) ‘January 1, 2010’ shall be sub-  
2                   stituted for ‘January 1, 2011’ each place it  
3                   appears in subparagraph (A) thereof.”.

4                   (4) Subparagraph (B) of section 168(l)(5) of  
5                   such Code is amended by striking “January 1,  
6                   2010” and inserting “January 1, 2011”.

7                   (5) Subparagraph (C) of section 168(n)(2) of  
8                   such Code is amended by striking “January 1,  
9                   2010” and inserting “January 1, 2011”.

10                  (6) Subparagraph (D) of section 1400L(b)(2)  
11                  of such Code is amended by striking “January 1,  
12                  2010” and inserting “January 1, 2011”.

13                  (7) Subparagraph (B) of section 1400N(d)(3)  
14                  of such Code is amended by striking “January 1,  
15                  2010” and inserting “January 1, 2011”.

16                  (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to property placed in service after  
18 December 31, 2009, in taxable years ending after such  
19 date.

20 **SEC. 2023. SPECIAL RULE FOR LONG-TERM CONTRACT AC-**  
21 **COUNTING.**

22                  (a) IN GENERAL.—Section 460(c) of the Internal  
23 Revenue Code of 1986 is amended by adding at the end  
24 the following new paragraph:

1           “(6) SPECIAL RULE FOR ALLOCATION OF  
2 BONUS DEPRECIATION WITH RESPECT TO CERTAIN  
3 PROPERTY.—

4           “(A) IN GENERAL.—Solely for purposes of  
5 determining the percentage of completion under  
6 subsection (b)(1)(A), the cost of qualified prop-  
7 erty shall be taken into account as a cost allo-  
8 cated to the contract as if subsection (k) of sec-  
9 tion 168 had not been enacted.

10           “(B) QUALIFIED PROPERTY.—For pur-  
11 poses of this paragraph, the term ‘qualified  
12 property’ means property described in section  
13 168(k)(2) which—

14           “(i) has a recovery period of 7 years  
15 or less, and

16           “(ii) is placed in service after Decem-  
17 ber 31, 2009, and before January 1, 2011  
18 (January 1, 2012, in the case of property  
19 described in section 168(k)(2)(B)).”.

20           (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to property placed in service after  
22 December 31, 2009.

1 **PART III—PROMOTING ENTREPRENEURSHIP**

2 **SEC. 2031. INCREASE IN AMOUNT ALLOWED AS DEDUCTION**  
3 **FOR START-UP EXPENDITURES IN 2010.**

4 (a) **START-UP EXPENDITURES.**—Subsection (b) of  
5 section 195 of the Internal Revenue Code of 1986 is  
6 amended by adding at the end the following new para-  
7 graph:

8 “(3) **SPECIAL RULE FOR TAXABLE YEARS BE-**  
9 **GINNING IN 2010.**—In the case of a taxable year be-  
10 ginning in 2010, paragraph (1)(A)(ii) shall be ap-  
11 plied—

12 “(A) by substituting ‘\$10,000’ for  
13 ‘\$5,000’, and

14 “(B) by substituting ‘\$60,000’ for  
15 ‘\$50,000’.”.

16 (b) **EFFECTIVE DATE.**—The amendment made by  
17 this section shall apply to amounts paid or incurred in tax-  
18 able years beginning after December 31, 2009.

19 **SEC. 2032. AUTHORIZATION OF APPROPRIATIONS FOR THE**  
20 **UNITED STATES TRADE REPRESENTATIVE TO**  
21 **DEVELOP MARKET ACCESS OPPORTUNITIES**  
22 **FOR UNITED STATES SMALL- AND MEDIUM-**  
23 **SIZED BUSINESSES AND TO ENFORCE TRADE**  
24 **AGREEMENTS.**

25 (a) **IN GENERAL.**—There are authorized to be appro-  
26 priated to the Office of the United States Trade Rep-

1 representative \$5,230,000, to remain available until ex-  
2 pended, for—

3           (1) analyzing and developing opportunities for  
4           businesses in the United States to access the mar-  
5           kets of foreign countries; and

6           (2) enforcing trade agreements to which the  
7           United States is a party.

8           (b) REQUIREMENTS.—In obligating and expending  
9           the funds authorized to be appropriated under subsection  
10 (a), the United States Trade Representative shall—

11           (1) give preference to those initiatives that the  
12           United States Trade Representative determines will  
13           create or sustain the greatest number of jobs in the  
14           United States or result in the greatest benefit to the  
15           economy of the United States; and

16           (2) consider the needs of small- and medium-  
17           sized businesses in the United States with respect  
18           to—

19                   (A) accessing the markets of foreign coun-  
20                   tries; and

21                   (B) the enforcement of trade agreements  
22                   to which the United States is a party.

1           **PART IV—PROMOTING SMALL BUSINESS**

2                           **FAIRNESS**

3       **SEC. 2041. LIMITATION ON PENALTY FOR FAILURE TO DIS-**  
4                           **CLOSE REPORTABLE TRANSACTIONS BASED**  
5                           **ON RESULTING TAX BENEFITS.**

6           (a) **IN GENERAL.**—Subsection (b) of section 6707A  
7 of the Internal Revenue Code of 1986 is amended to read  
8 as follows:

9           “(b) **AMOUNT OF PENALTY.**—

10                   “(1) **IN GENERAL.**—Except as otherwise pro-  
11                   vided in this subsection, the amount of the penalty  
12                   under subsection (a) with respect to any reportable  
13                   transaction shall be 75 percent of the decrease in  
14                   tax shown on the return as a result of such trans-  
15                   action (or which would have resulted from such  
16                   transaction if such transaction were respected for  
17                   Federal tax purposes).

18                   “(2) **MAXIMUM PENALTY.**—The amount of the  
19                   penalty under subsection (a) with respect to any re-  
20                   portable transaction shall not exceed—

21                           “(A) in the case of a listed transaction,  
22                           \$200,000 (\$100,000 in the case of a natural  
23                           person), or

24                           “(B) in the case of any other reportable  
25                           transaction, \$50,000 (\$10,000 in the case of a  
26                           natural person).

1           “(3) MINIMUM PENALTY.—The amount of the  
2           penalty under subsection (a) with respect to any  
3           transaction shall not be less than \$10,000 (\$5,000  
4           in the case of a natural person).”.

5           (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to penalties assessed after Decem-  
7 ber 31, 2006.

8 **SEC. 2042. DEDUCTION FOR HEALTH INSURANCE COSTS IN**  
9                                   **COMPUTING SELF-EMPLOYMENT TAXES IN**  
10                                   **2010.**

11           (a) IN GENERAL.—Paragraph (4) of section 162(l)  
12 of the Internal Revenue Code of 1986 is amended by in-  
13 serting “for taxable years beginning before January 1,  
14 2010, or after December 31, 2010” before the period.

15           (b) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to taxable years beginning after  
17 December 31, 2009.

18 **SEC. 2043. REMOVAL OF CELLULAR TELEPHONES AND**  
19                                   **SIMILAR TELECOMMUNICATIONS EQUIP-**  
20                                   **MENT FROM LISTED PROPERTY.**

21           (a) IN GENERAL.—Subparagraph (A) of section  
22 280F(d)(4) of the Internal Revenue Code of 1986 (defin-  
23 ing listed property) is amended by adding “‘and’” at the  
24 end of clause (iv), by striking clause (v), and by redesignig-  
25 nating clause (vi) as clause (v).

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2009.

## 4 **Subtitle B—Revenue Provisions**

### 5 **PART I—REDUCING THE TAX GAP**

#### 6 **SEC. 2101. INFORMATION REPORTING FOR RENTAL PROP-** 7 **ERTY EXPENSE PAYMENTS.**

8 (a) IN GENERAL.—Section 6041 of the Internal Rev-  
9 enue Code of 1986, as amended by section 9006 of the  
10 Patient Protection and Affordable Care Act, is amended  
11 by redesignating subsections (h) and (i) as subsections (i)  
12 and (j), respectively, and by inserting after subsection (g)  
13 the following new subsection:

14 “(h) TREATMENT OF RENTAL PROPERTY EXPENSE  
15 PAYMENTS.—

16 “(1) IN GENERAL.—Solely for purposes of sub-  
17 section (a) and except as provided in paragraph (2),  
18 a person receiving rental income from real estate  
19 shall be considered to be engaged in a trade or busi-  
20 ness of renting property.

21 “(2) EXCEPTIONS.—Paragraph (1) shall not  
22 apply to—

23 “(A) any individual, including any indi-  
24 vidual who is an active member of the uni-  
25 formed services or an employee of the intel-



1           ligence community (as defined in section  
2           121(d) (9) (C) (iv)), if substantially all rental in-  
3           come is derived from renting the principal resi-  
4           dence (within the meaning of section 121) of  
5           such individual on a temporary basis,

6                   “(B) any individual who receives rental in-  
7           come of not more than the minimal amount, as  
8           determined under regulations prescribed by the  
9           Secretary, and

10                   “(C) any other individual for whom the re-  
11           quirements of this section would cause hard-  
12           ship, as determined under regulations pre-  
13           scribed by the Secretary.”.

14           (b) EFFECTIVE DATE.—The amendments made by  
15           subsection (a) shall apply to payments made after Decem-  
16           ber 31, 2010.

17           **SEC. 2102. INCREASE IN INFORMATION RETURN PEN-**  
18                   **ALTIES.**

19           (a) FAILURE TO FILE CORRECT INFORMATION RE-  
20           TURNS.—

21                   (1) IN GENERAL.—Subsections (a)(1),  
22           (b)(1)(A), and (b)(2)(A) of section 6721 of the In-  
23           ternal Revenue Code of 1986 are each amended by  
24           striking “\$50” and inserting “\$100”.

1           (2) AGGREGATE ANNUAL LIMITATION.—Sub-  
2 sections (a)(1), (d)(1)(A), and (e)(3)(A) of section  
3 6721 of such Code are each amended by striking  
4 “\$250,000” and inserting “\$1,500,000”.

5           (b) REDUCTION WHERE CORRECTION WITHIN 30  
6 DAYS.—

7           (1) IN GENERAL.—Subparagraph (A) of section  
8 6721 (b)(1) of the Internal Revenue Code of 1986 is  
9 amended by striking “\$15” and inserting “\$30”.

10           (2) AGGREGATE ANNUAL LIMITATION.—Sub-  
11 sections (b)(1)(B) and (d)(1)(B) of section 6721 of  
12 such Code are each amended by striking “\$75,000”  
13 and inserting “\$250,000”.

14           (c) REDUCTION WHERE CORRECTION ON OR BEFORE  
15 AUGUST 1.—

16           (1) IN GENERAL.—Subparagraph (A) of section  
17 6721 (b)(2) of the Internal Revenue Code of 1986 is  
18 amended by striking “\$30” and inserting “\$60”.

19           (2) AGGREGATE ANNUAL LIMITATION.—Sub-  
20 sections (b)(2)(B) and (d)(1)(C) of section 6721 of  
21 such Code are each amended by striking “\$150,000”  
22 and inserting “\$500,000”.

23           (d) AGGREGATE ANNUAL LIMITATIONS FOR PER-  
24 SONS WITH GROSS RECEIPTS OF NOT MORE THAN  
25 \$5,000,000.—

1           (1) IN GENERAL.—Paragraph (1) of section  
2           6721 (d) of the Internal Revenue Code of 1986 is  
3           amended—

4                   (A) by striking “\$100,000” in subpara-  
5                   graph (A) and inserting “\$500,000”,

6                   (B) by striking “\$25,000” in subpara-  
7                   graph (B) and inserting “\$75,000”, and

8                   (C) by striking “\$50,000” in subparagraph  
9                   (C) and inserting “\$200,000”.

10           (2) TECHNICAL AMENDMENT.—Paragraph (1)  
11           of section 6721 (d) of such Code is amended by strik-  
12           ing “such taxable year” and inserting “such cal-  
13           endar year”.

14           (e) PENALTY IN CASE OF INTENTIONAL DIS-  
15           REGARD.—Paragraph (2) of section 6721(e) of the Inter-  
16           nal Revenue Code of 1986 is amended by striking “\$100”  
17           and inserting “\$250”.

18           (f) ADJUSTMENT FOR INFLATION.—Section 6721 of  
19           the Internal Revenue Code of 1986 is amended by adding  
20           at the end the following new subsection:

21                   “(f) ADJUSTMENT FOR INFLATION.—

22                           “(1) IN GENERAL.—For each fifth calendar  
23                           year beginning after 2012, each of the dollar  
24                           amounts under subsections (a), (b), (d) (other than  
25                           paragraph (2)(A) thereof), and (e) shall be increased

1 by such dollar amount multiplied by the cost-of-liv-  
2 ing adjustment determined under section 1(f)(3) de-  
3 termined by substituting ‘calendar year 2011’ for  
4 ‘calendar year 1992’ in subparagraph (B) thereof.

5 “(2) ROUNDING.—If any amount adjusted  
6 under paragraph (1)—

7 “(A) is not less than \$75,000 and is not  
8 a multiple of \$500, such amount shall be  
9 rounded to the next lowest multiple of \$500,  
10 and

11 “(B) is not described in subparagraph (A)  
12 and is not a multiple of \$10, such amount shall  
13 be rounded to the next lowest multiple of \$10.”.

14 (g) FAILURE TO FURNISH CORRECT PAYEE STATE-  
15 MENTS.—Section 6722 of the Internal Revenue Code of  
16 1986 is amended to read as follows:

17 **“SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATE-  
18 MENTS.**

19 **“(a) IMPOSITION OF PENALTY.—**

20 **“(1) GENERAL RULE.—**In the case of each fail-  
21 ure described in paragraph (2) by any person with  
22 respect to a payee statement, such person shall pay  
23 a penalty of \$100 for each statement with respect to  
24 which such a failure occurs, but the total amount

1 imposed on such person for all such failures during  
2 any calendar year shall not exceed \$1,500,000.

3 “(2) FAILURES SUBJECT TO PENALTY.—For  
4 purposes of paragraph (1), the failures described in  
5 this paragraph are—

6 “(A) any failure to furnish a payee state-  
7 ment on or before the date prescribed therefor  
8 to the person to whom such statement is re-  
9 quired to be furnished, and

10 “(B) any failure to include all of the infor-  
11 mation required to be shown on a payee state-  
12 ment or the inclusion of incorrect information.

13 “(b) REDUCTION WHERE CORRECTION IN SPECIFIED  
14 PERIOD.—

15 “(1) CORRECTION WITHIN 30 DAYS.—If any  
16 failure described in subsection (a)(2) is corrected on  
17 or before the day 30 days after the required filing  
18 date—

19 “(A) the penalty imposed by subsection (a)  
20 shall be \$30 in lieu of \$100, and

21 “(B) the total amount imposed on the per-  
22 son for all such failures during any calendar  
23 year which are so corrected shall not exceed  
24 \$250,000.

1           “(2) FAILURES CORRECTED ON OR BEFORE AU-  
2           GUST 1.—If any failure described in subsection  
3           (a)(2) is corrected after the 30th day referred to in  
4           paragraph (1) but on or before August 1 of the cal-  
5           endar year in which the required filing date occurs—

6                   “(A) the penalty imposed by subsection (a)  
7                   shall be \$60 in lieu of \$100, and

8                   “(B) the total amount imposed on the per-  
9                   son for all such failures during the calendar  
10                  year which are so corrected shall not exceed  
11                  \$500,000.

12           “(c) EXCEPTION FOR DE MINIMIS FAILURES.—

13                   “(1) IN GENERAL.—If—

14                           “(A) a payee statement is furnished to the  
15                           person to whom such statement is required to  
16                           be furnished,

17                           “(B) there is a failure described in sub-  
18                           section (a)(2)(B) (determined after the applica-  
19                           tion of section 6724(a)) with respect to such  
20                           statement, and

21                           “(C) such failure is corrected on or before  
22                           August 1 of the calendar year in which the re-  
23                           quired filing date occurs,

1 for purposes of this section, such statement shall be  
2 treated as having been furnished with all of the cor-  
3 rect required information.

4 “(2) LIMITATION.—The number of payee state-  
5 ments to which paragraph (1) applies for any cal-  
6 endar year shall not exceed the greater of—

7 “(A) 10, or

8 “(B) one-half of 1 percent of the total  
9 number of payee statements required to be filed  
10 by the person during the calendar year.

11 “(d) LOWER LIMITATIONS FOR PERSONS WITH  
12 GROSS RECEIPTS OF NOT MORE THAN \$5,000,000.—

13 “(1) IN GENERAL.—If any person meets the  
14 gross receipts test of paragraph (2) with respect to  
15 any calendar year, with respect to failures during  
16 such calendar year—

17 “(A) subsection (a)(1) shall be applied by  
18 substituting ‘\$500,000’ for ‘\$1,500,000’,

19 “(B) subsection (b) (1) (B) shall be applied  
20 by substituting ‘\$75,000’ for ‘\$250,000’, and

21 “(C) subsection (b)(2)(B) shall be applied  
22 by substituting ‘\$200,000’ for ‘\$500,000’.

23 “(2) GROSS RECEIPTS TEST.—A person meets  
24 the gross receipts test of this paragraph if such per-

1 son meets the gross receipts test of section  
2 6721(d)(2).

3 “(e) PENALTY IN CASE OF INTENTIONAL DIS-  
4 REGARD.—If 1 or more failures to which subsection (a)  
5 applies are due to intentional disregard of the requirement  
6 to furnish a payee statement (or the correct information  
7 reporting requirement), then, with respect to each such  
8 failure—

9 “(1) subsections (b), (c), and (d) shall not  
10 apply,

11 “(2) the penalty imposed under subsection  
12 (a)(1) shall be \$250, or, if greater—

13 “(A) in the case of a payee statement  
14 other than a statement required under section  
15 6045(b), 6041A(e) (in respect of a return re-  
16 quired under section 6041A(b)), 6050H(d),  
17 6050J(e), 6050K(b), or 6050L(c), 10 percent  
18 of the aggregate amount of the items required  
19 to be reported correctly, or

20 “(B) in the case of a payee statement re-  
21 quired under section 6045(b), 6050K(b), or  
22 6050L(c), 5 percent of the aggregate amount of  
23 the items required to be reported correctly, and

24 “(3) in the case of any penalty determined  
25 under paragraph (2)—



1                   “(A) the \$1,500,000 limitation under sub-  
2                   section (a) shall not apply, and

3                   “(B) such penalty shall not be taken into  
4                   account in applying such limitation to penalties  
5                   not determined under paragraph (2).

6                   “(f) ADJUSTMENT FOR INFLATION.—

7                   “(1) IN GENERAL.—For each fifth calendar  
8                   year beginning after 2012, each of the dollar  
9                   amounts under subsections (a), (b), (d)(1), and (e)  
10                  shall be increased by such dollar amount multiplied  
11                  by the cost-of-living adjustment determined under  
12                  section 1(f) (3) determined by substituting ‘calendar  
13                  year 2011’ for ‘calendar year 1992’ in subparagraph  
14                  (B) thereof.

15                  “(2) ROUNDING.—If any amount adjusted  
16                  under paragraph (1)—

17                         “(A) is not less than \$75,000 and is not  
18                         a multiple of \$500, such amount shall be  
19                         rounded to the next lowest multiple of \$500,  
20                         and

21                         “(B) is not described in subparagraph (A)  
22                         and is not a multiple of \$10, such amount shall  
23                         be rounded to the next lowest multiple of \$10.”.

1           (h) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply with respect to information returns  
3 required to be filed on or after January 1, 2011.

4 **SEC. 2103. REPORT ON TAX SHELTER PENALTIES AND CER-**  
5 **TAIN OTHER ENFORCEMENT ACTIONS.**

6           (a) IN GENERAL.—The Commissioner of Internal  
7 Revenue, in consultation with the Secretary of the Treas-  
8 ury, shall submit to the Committee on Ways and Means  
9 of the House of Representatives and the Committee on  
10 Finance of the Senate an annual report on the penalties  
11 assessed by the Internal Revenue Service during the pre-  
12 ceding year under each of the following provisions of the  
13 Internal Revenue Code of 1986:

14           (1) Section 6662A (relating to accuracy-related  
15 penalty on understatements with respect to report-  
16 able transactions).

17           (2) Section 6700(a) (relating to promoting abu-  
18 sive tax shelters).

19           (3) Section 6707 (relating to failure to furnish  
20 information regarding reportable transactions).

21           (4) Section 6707A (relating to failure to include  
22 reportable transaction information with return).

23           (5) Section 6708 (relating to failure to main-  
24 tain lists of advisees with respect to reportable  
25 transactions).

1 (b) ADDITIONAL INFORMATION.—The report re-  
2 quired under subsection (a) shall also include information  
3 on the following with respect to each year:

4 (1) Any action taken under section 30(b) of  
5 title 31, United States Code, with respect to any re-  
6 reportable transaction (as defined in section 6707A(c)  
7 of the Internal Revenue Code of 1986).

8 (2) Any extension of the time for assessment of  
9 tax enforced, or assessment of any amount under  
10 such an extension, under paragraph (10) of section  
11 6501 (c) of the Internal Revenue Code of 1986.

12 (c) DATE OF REPORT.—The first report required  
13 under subsection (a) shall be submitted not later than De-  
14 cember 31, 2010.

15 **SEC. 2104. APPLICATION OF CONTINUOUS LEVY TO TAX LI-**  
16 **ABILITIES OF CERTAIN FEDERAL CONTRAC-**  
17 **TORS.**

18 (a) IN GENERAL.—Subsection (f) of section 6330 of  
19 the Internal Revenue Code of 1986 is amended by striking  
20 “or” at the end of paragraph (2), by inserting “or” at  
21 the end of paragraph (3), and by inserting after paragraph  
22 (3) the following new paragraph:

23 “(4) the Secretary has served a Federal con-  
24 tractor levy.”

1 (b) FEDERAL CONTRACTOR LEVY.—Subsection (h)  
2 of section 6330 of the Internal Revenue Code of 1986 is  
3 amended—

4 (1) by striking all that precedes “any levy in  
5 connection with the collection” and inserting the fol-  
6 lowing:

7 “(h) DEFINITIONS RELATED TO EXCEPTIONS.—For  
8 purposes of subsection (f)—

9 “(1) DISQUALIFIED EMPLOYMENT TAX LEVY.—  
10 A disqualified employment tax levy is”; and

11 (2) by adding at the end the following new  
12 paragraph:

13 “(2) FEDERAL CONTRACTOR LEVY.—A Federal  
14 contractor levy is any levy if the person whose prop-  
15 erty is subject to the levy (or any predecessor there-  
16 of) is a Federal contractor.”.

17 (c) CONFORMING AMENDMENT.—The heading of  
18 subsection (f) of section 6330 of the Internal Revenue  
19 Code of 1986 is amended by striking “JEOPARDY AND  
20 STATE REFUND COLLECTION” and inserting “EXCEP-  
21 TIONS”.

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

1                   **PART II—PROMOTING RETIREMENT**

2                                   **PREPARATION**

3       **SEC. 2111. PARTICIPANTS IN GOVERNMENT SECTION 457**  
4                                   **PLANS ALLOWED TO TREAT ELECTIVE DE-**  
5                                   **FERRALS AS ROTH CONTRIBUTIONS.**

6           (a) **IN GENERAL.**—Section 402A(e)(1) of the Inter-  
7       nal Revenue Code of 1986 is amended by striking “and”  
8       at the end of subparagraph (A), by striking the period  
9       at the end of subparagraph (B) and inserting “, and”,  
10       and by adding at the end the following:

11                               “(C) an eligible deferred compensation  
12                               plan (as defined in section 457(b)) of an eligible  
13                               employer described in section 457(e)(1)(A).”.

14       (b) **ELECTIVE DEFERRALS.**—Section 402A(e)(2) of  
15       the Internal Revenue Code of 1986 is amended to read  
16       as follows:

17                               “(2) **ELECTIVE DEFERRAL.**—The term ‘elective  
18       deferral’ means—

19                               “(A) any elective deferral described in sub-  
20                               paragraph (A) or (C) of section 402(g)(3), and

21                               “(B) any elective deferral of compensation  
22                               by an individual under an eligible deferred com-  
23                               pensation plan (as defined in section 457(b)) of  
24                               an eligible employer described in section  
25                               457(e)(1)(A).”.

1           (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2010.

4 **SEC. 2112. ROLLOVERS FROM ELECTIVE DEFERRAL PLANS**  
5 **TO DESIGNATED ROTH ACCOUNTS.**

6           (a) IN GENERAL.—Section 402A(c) of the Internal  
7 Revenue Code of 1986 is amended by adding at the end  
8 the following new paragraph:

9                   “(4) TAXABLE ROLLOVERS TO DESIGNATED  
10 ROTH ACCOUNTS.—

11                           “(A) IN GENERAL.—Notwithstanding sec-  
12 tions 402(c), 403(b)(8), and 457(e)(16), in the  
13 case of any distribution to which this paragraph  
14 applies—

15                                   “(i) there shall be included in gross  
16 income any amount which would be includ-  
17 ible were it not part of a qualified rollover  
18 contribution,

19   “(ii) section 72(t) shall not apply, and

20   “(iii) unless the taxpayer elects not to  
21 have this clause apply, any amount re-  
22 quired to be included in gross income for  
23 any taxable year beginning in 2010 by rea-  
24 son of this paragraph shall be so included  
25 ratably over the 2-taxable-year period be-

1                   ginning with the first taxable year begin-  
2                   ning in 2011.

3    Any election under clause (iii) for any distribu-  
4                   tions during a taxable year may not be changed  
5                   after the due date for such taxable year.

6           “(B) DISTRIBUTIONS TO WHICH PARA-  
7                   GRAPH APPLIES.—In the case of an applicable  
8                   retirement plan which includes a qualified Roth  
9                   contribution program, this paragraph shall  
10                  apply to a distribution from such plan other  
11                  than from a designated Roth account which is  
12                  contributed in a qualified rollover contribution  
13                  (within the meaning of section 408A(e)) to the  
14                  designated Roth account maintained under such  
15                  plan for the benefit of the individual to whom  
16                  the distribution is made.

17                  “(C) COORDINATION WITH LIMIT.—Any  
18                  distribution to which this paragraph applies  
19                  shall not be taken into account for purposes of  
20                  paragraph (1).

21                  “(D) OTHER RULES.—The rules of sub-  
22                  paragraphs (D), (E), and (F) of section  
23                  408A(d)(3) (as in effect for taxable years begin-  
24                  ning after 2009) shall apply for purposes of  
25                  this paragraph.”.

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

4 **SEC. 2113. SPECIAL RULES FOR ANNUITIES RECEIVED**  
5 **FROM ONLY A PORTION OF A CONTRACT.**

6           (a) IN GENERAL.—Subsection (a) of section 72 of the  
7 Internal Revenue Code of 1986 is amended to read as fol-  
8 lows:

9           “(a) GENERAL RULES FOR ANNUITIES.—

10                   “(1) INCOME INCLUSION.—Except as otherwise  
11 provided in this chapter, gross income includes any  
12 amount received as an annuity (whether for a period  
13 certain or during one or more lives) under an annu-  
14 ity, endowment, or life insurance contract.

15                   “(2) PARTIAL ANNUITIZATION.—If any amount  
16 is received as an annuity for a period of 10 years  
17 or more or during one or more lives under any por-  
18 tion of an annuity, endowment, or life insurance con-  
19 tract—

20                           “(A) such portion shall be treated as a  
21 separate contract for purposes of this section,

22                           “(B) for purposes of applying subsections  
23 (b), (c), and (e), the investment in the contract  
24 shall be allocated pro rata between each portion  
25 of the contract from which amounts are re-



1           ceived as an annuity and the portion of the con-  
2           tract from which amounts are not received as  
3           an annuity, and

4                   “(C) a separate annuity starting date  
5           under subsection (c)(4) shall be determined  
6           with respect to each portion of the contract  
7           from which amounts are received as an annu-  
8           ity.”.

9           (b) EFFECTIVE DATE.—The amendment made by  
10          this section shall apply to amounts received in taxable  
11          years beginning after December 31, 2010.

## 12 **PART III—CLOSING UNINTENDED LOOPHOLES**

### 13 **SEC. 2121. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC** 14                   **BIOFUEL PRODUCER CREDIT.**

15          (a) IN GENERAL.—Clause (iii) of section 40(b)(6)(E)  
16          of the Internal Revenue Code of 1986, as added by the  
17          Health Care and Education Reconciliation Act of 2010,  
18          is amended—

19               (1) by striking “or” at the end of subclause (I),

20               (2) by striking the period at the end of sub-  
21          clause (II) and inserting “, or”,

22               (3) by adding at the end the following new sub-  
23          clause:

24                               “(III) such fuel has an acid num-  
25                               ber greater than 25.”, and

1           (4) by striking “UNPROCESSED” in the heading  
2           and inserting “CERTAIN”.

3           (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to fuels sold or used on or after  
5 January 1, 2010.

6 **SEC. 2122. SOURCE RULES FOR INCOME ON GUARANTEES.**

7           (a) AMOUNTS SOURCED WITHIN THE UNITED  
8 STATES.—Subsection (a) of section 861 of the Internal  
9 Revenue Code of 1986 is amended by adding at the end  
10 the following new paragraph:

11           “(9) GUARANTEES.—Amounts received, directly  
12           or indirectly, from—

13                   “(A) a noncorporate resident or domestic  
14                   corporation for the provision of a guarantee of  
15                   any indebtedness of such resident or corpora-  
16                   tion, or

17                   “(B) any foreign person for the provision  
18                   of a guarantee of any indebtedness of such per-  
19                   son, if such amount is connected with income  
20                   which is effectively connected (or treated as ef-  
21                   fectively connected) with the conduct of a trade  
22                   or business in the United States.”.

23           (b) AMOUNTS SOURCED WITHOUT THE UNITED  
24 STATES.—Subsection (a) of section 862 of the Internal  
25 Revenue Code of 1986 is amended by striking “and” at

1 the end of paragraph (7), by striking the period at the  
2 end of paragraph (8) and inserting “; and”, and by adding  
3 at the end the following new paragraph:

4           “(9) amounts received, directly or indirectly,  
5           from a foreign person for the provision of a guar-  
6           antee of indebtedness of such person other than  
7           amounts which are derived from sources within the  
8           United States as provided in section 861(a)(9).”.

9           (c) CONFORMING AMENDMENT.—Clause (ii) of sec-  
10 tion 864(c) (4) (B) of the Internal Revenue Code of 1986  
11 is amended by striking “dividends or interest” and insert-  
12 ing “dividends, interest, or amounts received for the provi-  
13 sion of guarantees of indebtedness”.

14           (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to guarantees issued after the date  
16 of the enactment of this Act.

17 **PART IV—TIME FOR PAYMENT OF CORPORATE**  
18 **ESTIMATED TAXES**

19 **SEC. 2131. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
20 **TAXES.**

21           The percentage under paragraph (2) of section 561  
22 of the Hiring Incentives to Restore Employment Act in  
23 effect on the date of the enactment of this Act is increased  
24 by 36 percentage points.

1                   **TITLE III—STATE SMALL**  
2 **BUSINESS CREDIT INITIATIVE**

3 **SEC. 3001. SHORT TITLE.**

4           This title may be cited as the “State Small Business  
5 Credit Initiative Act of 2010”.

6 **SEC. 3002. DEFINITIONS.**

7           In this title, the following definitions shall apply:

8                   (1) **APPROPRIATE COMMITTEES OF CON-**  
9 **GRESS.**—The term “appropriate committees of Con-  
10 gress” means—

11                   (A) the Committee on Small Business and  
12 Entrepreneurship, the Committee on Agri-  
13 culture, Nutrition, and Forestry, the Committee  
14 on Banking, Housing, and Urban Affairs, the  
15 Committee on Finance, the Committee on the  
16 Budget, and the Committee on Appropriations  
17 of the Senate; and

18                   (B) the Committee on Small Business, the  
19 Committee on Agriculture, the Committee on  
20 Financial Services, the Committee on Ways and  
21 Means, the Committee on the Budget, and the  
22 Committee on Appropriations of the House of  
23 Representatives.

1           (2) APPROPRIATE FEDERAL BANKING AGEN-  
2           CY.—The term “appropriate Federal banking agen-  
3           cy”—

4                   (A) has the same meaning as in section  
5           3(q) of the Federal Deposit Insurance Act (12  
6           U.S.C. 1813(q)); and

7                   (B) includes the National Credit Union  
8           Administration Board in the case of any credit  
9           union the deposits of which are insured in ac-  
10          cordance with the Federal Credit Union Act.

11          (3) ENROLLED LOAN.—The term “enrolled  
12          loan” means a loan made by a financial institution  
13          lender that is enrolled by a participating State in an  
14          approved State capital access program in accordance  
15          with this title.

16          (4) FEDERAL CONTRIBUTION.—The term “Fed-  
17          eral contribution” means the portion of the contribu-  
18          tion made by a participating State to, or for the ac-  
19          count of, an approved State program that is made  
20          with Federal funds allocated to the State by the Sec-  
21          retary under section 3003.

22          (5) FINANCIAL INSTITUTION.—The term “fi-  
23          nancial institution” means any insured depository  
24          institution, insured credit union, or community de-  
25          velopment financial institution, as those terms are

1 each defined in section 103 of the Riegle Community  
2 Development and Regulatory Improvement Act of  
3 1994 (12 U.S.C. 4702)

4 (6) PARTICIPATING STATE.—The term “partici-  
5 pating State” means any State that has been ap-  
6 proved for participation in the Program under sec-  
7 tion 3004.

8 (7) PROGRAM.—The term “Program” means  
9 the State Small Business Credit Initiative estab-  
10 lished under this title.

11 (8) QUALIFYING LOAN OR SWAP FUNDING FA-  
12 CILITY.—The term “qualifying loan or swap funding  
13 facility” means a contractual arrangement between a  
14 participating State and a private financial entity  
15 under which—

16 (A) the participating State delivers funds  
17 to the entity as collateral;

18 (B) the entity provides funding from the  
19 arrangement back to the participating State;  
20 and

21 (C) the full amount of resulting funding  
22 from the arrangement, less any fees and other  
23 costs of the arrangement, is contributed to, or  
24 for the account of, an approved State program.

1           (9) RESERVE FUND.—The term “reserve fund”  
2 means a fund, established by a participating State,  
3 dedicated to a particular financial institution lender,  
4 for the purposes of—

5           (A) depositing all required premium  
6 charges paid by the financial institution lender  
7 and by each borrower receiving a loan under an  
8 approved State program from that financial in-  
9 stitution lender;

10           (B) depositing contributions made by the  
11 participating State, including State contribu-  
12 tions made with Federal contributions; and

13           (C) covering losses on enrolled loans by  
14 disbursing accumulated funds.

15           (10) STATE.—The term “State” means—

16           (A) a State of the United States;

17           (B) the District of Columbia, the Common-  
18 wealth of Puerto Rico, the Commonwealth of  
19 Northern Mariana Islands, Guam, American  
20 Samoa, and the United States Virgin Islands;

21           (C) when designated by a State of the  
22 United States, a political subdivision of that  
23 State that the Secretary determines has the ca-  
24 pacity to participate in the Program; and

1 (D) under the circumstances described in  
2 section 3004(d), a municipality of a State of  
3 the United States to which the Secretary has  
4 given a special permission under section  
5 3004(d).

6 (11) STATE CAPITAL ACCESS PROGRAM.—The  
7 term “State capital access program” means a pro-  
8 gram of a State that—

9 (A) uses public resources to promote pri-  
10 vate access to credit; and

11 (B) meets the eligibility criteria in section  
12 3005(c).

13 (12) STATE OTHER CREDIT SUPPORT PRO-  
14 GRAM.—The term “State other credit support pro-  
15 gram”—

16 (A) means a program of a State that—

17 (i) uses public resources to promote  
18 private access to credit;

19 (ii) is not a State capital access pro-  
20 gram; and

21 (iii) meets the eligibility criteria in  
22 section 3006(c); and

23 (B) includes, collateral support programs,  
24 loan participation programs, State-run venture



1 capital fund programs, and credit guarantee  
2 programs.

3 (13) STATE PROGRAM.—The term “State pro-  
4 gram” means a State capital access program or a  
5 State other credit support program.

6 (14) SECRETARY.—The term “Secretary”  
7 means the Secretary of the Treasury.

8 **SEC. 3003. FEDERAL FUNDS ALLOCATED TO STATES.**

9 (a) PROGRAM ESTABLISHED; PURPOSE.—There is  
10 established the State Small Business Credit Initiative, to  
11 be administered by the Secretary. Under the Program, the  
12 Secretary shall allocate Federal funds to participating  
13 States and make the allocated funds available to the par-  
14 ticipating States as provided in this section for the uses  
15 described in this section.

16 (b) ALLOCATION FORMULA.—

17 (1) IN GENERAL.—Not later than 30 days after  
18 the date of enactment of this Act, the Secretary  
19 shall allocate Federal funds to participating States  
20 so that each State is eligible to receive an amount  
21 equal to the average of the respective amounts that  
22 the State—

23 (A) would receive under the 2009 alloca-  
24 tion, as determined under paragraph (2); and

1 (B) would receive under the 2010 alloca-  
2 tion, as determined under paragraph (3).

3 (2) 2009 ALLOCATION FORMULA.—

4 (A) IN GENERAL.—The Secretary shall de-  
5 termine the 2009 allocation by allocating Fed-  
6 eral funds among the States in the proportion  
7 that each such State’s 2008 State employment  
8 decline bears to the aggregate of the 2008  
9 State employment declines for all States.

10 (B) MINIMUM ALLOCATION.—The Sec-  
11 retary shall adjust the allocations under sub-  
12 paragraph (A) for each State to the extent nec-  
13 essary to ensure that no State receives less than  
14 0.9 percent of the Federal funds.

15 (C) 2008 STATE EMPLOYMENT DECLINE  
16 DEFINED.—In this paragraph and with respect  
17 to a State, the term “2008 State employment  
18 decline” means the excess (if any) of—

19 (i) the number of individuals em-  
20 ployed in such State determined for De-  
21 cember 2007; over

22 (ii) the number of individuals em-  
23 ployed in such State determined for De-  
24 cember 2008.

25 (3) 2010 ALLOCATION FORMULA.—

1           (A) IN GENERAL.—The Secretary shall de-  
2           termine the 2010 allocation by allocating Fed-  
3           eral funds among the States in the proportion  
4           that each such State’s 2009 unemployment  
5           number bears to the aggregate of the 2009 un-  
6           employment numbers for all of the States.

7           (B) MINIMUM ALLOCATION.—The Sec-  
8           retary shall adjust the allocations under sub-  
9           paragraph (A) for each State to the extent nec-  
10          essary to ensure that no State receives less than  
11          0.9 percent of the Federal funds.

12          (C) 2009 UNEMPLOYMENT NUMBER DE-  
13          FINED.—In this paragraph and with respect to  
14          a State, the term “2009 unemployment num-  
15          ber” means the number of individuals within  
16          such State who were determined to be unem-  
17          ployed by the Bureau of Labor Statistics for  
18          December 2009.

19          (c) AVAILABILITY OF ALLOCATED AMOUNT.—The  
20          amount allocated by the Secretary to each participating  
21          State under subsection (b) shall be made available to the  
22          State as follows:

23                 (1) ALLOCATED AMOUNT GENERALLY TO BE  
24          AVAILABLE TO STATE IN ONE-THIRDS.—

25                 (A) IN GENERAL.—The Secretary shall—

1 (i) apportion the participating State's  
2 allocated amount into thirds;

3 (ii) transfer to the participating State  
4 the first  $\frac{1}{3}$  when the Secretary approves  
5 the State for participation under section  
6 3004; and

7 (iii) transfer to the participating State  
8 each successive  $\frac{1}{3}$  when the State has cer-  
9 tified to the Secretary that it has ex-  
10 pended, transferred, or obligated 80 per-  
11 cent of the last transferred  $\frac{1}{3}$  for Federal  
12 contributions to, or for the account of,  
13 State programs.

14 (B) AUTHORITY TO WITHHOLD PENDING  
15 AUDIT.—The Secretary may withhold the trans-  
16 fer of any successive  $\frac{1}{3}$  pending results of a fi-  
17 nancial audit.

18 (C) INSPECTOR GENERAL AUDITS.—

19 (i) IN GENERAL.—The Inspector Gen-  
20 eral of the Department of the Treasury  
21 shall carry out an audit of the partici-  
22 pating State's use of allocated Federal  
23 funds transferred to the State.

24 (ii) RECOUPMENT OF MISUSED  
25 TRANSFERRED FUNDS REQUIRED.—The al-

1                   location agreement between the Secretary  
2                   and the participating State shall provide  
3           that the Secretary shall recoup any allo-  
4           cated Federal funds transferred to the par-  
5           ticipating State if the results of the an  
6           audit include a finding that there was an  
7           intentional or reckless misuse of trans-  
8           ferred funds by the State.

9                   (iii) PENALTY FOR MISSTATEMENT.—  
10           Any participating State that is found to  
11           have intentionally misstated any report  
12           issued to the Secretary under the Program  
13           shall be ineligible to receive any additional  
14           funds under the Program. Funds that had  
15           been allocated or that would otherwise  
16           have been allocated to such participating  
17           State shall be paid into the general fund of  
18           the Treasury for reduction of the public  
19           debt.

20                   (iv) MUNICIPALITIES.—In this sub-  
21           paragraph, the term “participating State”  
22           shall include a municipality given special  
23           permission to participate in the Program,  
24           under section 3004(d).

1           (D) EXCEPTION.—The Secretary may, in  
2           the Secretary’s discretion, transfer the full  
3           amount of the participating State’s allocated  
4           amount to the State in a single transfer if the  
5           participating State applies to the Secretary for  
6           approval to use the full amount of the allocation  
7           as collateral for a qualifying loan or swap fund-  
8           ing facility.

9           (2) TRANSFERRED AMOUNTS.—Each amount  
10          transferred to a participating State under this sec-  
11          tion shall remain available to the State until used by  
12          the State as permitted under paragraph (3).

13          (3) USE OF TRANSFERRED FUNDS.—Each par-  
14          ticipating State may use funds transferred to it  
15          under this section only—

16                (A) for making Federal contributions to, or  
17                for the account of, an approved State program;

18                (B) as collateral for a qualifying loan or  
19                swap funding facility;

20                (C) in the case of the first  $\frac{1}{3}$  transferred,  
21                for paying administrative costs incurred by the  
22                State in implementing an approved State pro-  
23                gram in an amount not to exceed 5 percent of  
24                that first  $\frac{1}{3}$ ; or

1                   (D) in the case of each successive  $\frac{1}{3}$  trans-  
2                   ferred, for paying administrative costs incurred  
3                   by the State in implementing an approved State  
4                   program in an amount not to exceed 3 percent  
5                   of that successive  $\frac{1}{3}$ .

6                   (4) TERMINATION OF AVAILABILITY OF  
7                   AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF  
8                   PARTICIPATION.—Any portion of a participating  
9                   State’s allocated amount that has not been trans-  
10                  ferred to the State under this section by the end of  
11                  the 2-year period beginning on the date that the  
12                  Secretary approves the State for participation may  
13                  be deemed by the Secretary to be no longer allocated  
14                  to the State and no longer available to the State and  
15                  shall be returned to the General Fund of the Treas-  
16                  ury.

17                  (5) TRANSFERRED AMOUNTS NOT ASSIST-  
18                  ANCE.—The amounts transferred to a participating  
19                  State under this section shall not be considered as-  
20                  sistance for purposes of subtitle V of title 31, United  
21                  States Code.

22                  (6) DEFINITIONS.—In this section—

23                         (A) the term “allocated amount” means  
24                         the total amount of Federal funds allocated by

1           the Secretary under subsection (b) to the par-  
2           ticipating State; and

3                   (B) the term “ $\frac{1}{3}$ ” means—

4                           (i) in the case of the first  $\frac{1}{3}$  and sec-  
5                           ond  $\frac{1}{3}$ , an amount equal to 33 percent of  
6                           a participating State’s allocated amount;  
7                           and

8                           (ii) in the case of the last  $\frac{1}{3}$ , an  
9                           amount equal to 34 percent of a partici-  
10                          pating State’s allocated amount.

11 **SEC. 3004. APPROVING STATES FOR PARTICIPATION.**

12           (a) APPLICATION.—Any State may apply to the Sec-  
13           retary for approval to be a participating State under the  
14           Program and to be eligible for an allocation of Federal  
15           funds under the Program.

16           (b) GENERAL APPROVAL CRITERIA.—The Secretary  
17           shall approve a State to be a participating State, if—

18                   (1) a specific department, agency, or political  
19                   subdivision of the State has been designated to im-  
20                   plement a State program and participate in the Pro-  
21                   gram;

22                   (2) all legal actions necessary to enable such  
23                   designated department, agency, or political subdivi-  
24                   sion to implement a State program and participate  
25                   in the Program have been accomplished;



1           (3) the State has filed an application with the  
2           Secretary for approval of a State capital access pro-  
3           gram under section 3005 or approval as a State  
4           other credit support program under section 3006, in  
5           each case within the time period provided in the re-  
6           spective section; and

7           (4) the State and the Secretary have executed  
8           an allocation agreement that—

9                   (A) conforms to the requirements of this  
10                  title;

11                  (B) ensures that the State program com-  
12                  plies with such national standards as are estab-  
13                  lished by the Secretary under section  
14                  3009(a)(2);

15                  (C) sets forth internal control, compliance,  
16                  and reporting requirements as established by  
17                  the Secretary, and such other terms and condi-  
18                  tions necessary to carry out the purposes of this  
19                  title, including an agreement by the State to  
20                  allow the Secretary to audit State programs;

21                  (D) requires that the State program be  
22                  fully positioned, within 90 days of the State's  
23                  execution of the allocation agreement with the  
24                  Secretary, to act on providing the kind of credit

1 support that the State program was established  
2 to provide; and

3 (E) includes an agreement by the State to  
4 deliver to the Secretary, and update annually, a  
5 schedule describing how the State intends to  
6 apportion among its State programs the Fed-  
7 eral funds allocated to the State.

8 (c) CONTRACTUAL ARRANGEMENTS FOR IMPLEMEN-  
9 TATION OF STATE PROGRAMS.—A State may be approved  
10 to be a participating State, and be eligible for an allocation  
11 of Federal funds under the Program, if the State has con-  
12 tractual arrangements for the implementation and admin-  
13 istration of its State program with—

14 (1) an existing, approved State program admin-  
15 istered by another State; or

16 (2) an authorized agent of, or entity supervised  
17 by, the State, including for-profit and not-for-profit  
18 entities.

19 (d) SPECIAL PERMISSION.—

20 (1) CIRCUMSTANCES WHEN A MUNICIPALITY  
21 MAY APPLY DIRECTLY.—If a State does not, within  
22 60 days after the date of enactment of this Act, file  
23 with the Secretary a notice of its intent to apply for  
24 approval by the Secretary of a State program or  
25 within 9 months after the date of enactment of this

1 Act, file with the Secretary a complete application  
2 for approval of a State program, the Secretary may  
3 grant to municipalities of that State a special per-  
4 mission that will allow them to apply directly to the  
5 Secretary without the State for approval to be par-  
6 ticipating municipalities.

7 (2) TIMING REQUIREMENTS APPLICABLE TO  
8 MUNICIPALITIES APPLYING DIRECTLY.—To qualify  
9 for the special permission, a municipality of a State  
10 shall be required, within 12 months after the date  
11 of enactment of this Act, to file with the Secretary  
12 a complete application for approval by the Secretary  
13 of a State program.

14 (3) NOTICES OF INTENT AND APPLICATIONS  
15 FROM MORE THAN 1 MUNICIPALITY.—A municipality  
16 of a State may combine with 1 or more other mu-  
17 nicipalities of that State to file a joint notice of in-  
18 tent to file and a joint application.

19 (4) APPROVAL CRITERIA.—The general ap-  
20 proval criteria in paragraphs (2) and (4) shall apply.

21 (5) ALLOCATION TO MUNICIPALITIES.—

22 (A) IF MORE THAN 3.—If more than 3 mu-  
23 nicipalities, or combination of municipalities as  
24 provided in paragraph (3), of a State apply for  
25 approval by the Secretary to be participating

1 municipalities under this subsection, and the  
2 applications meet the approval criteria in para-  
3 graph (4), the Secretary shall allocate Federal  
4 funds to the 3 municipalities with the largest  
5 populations.

6 (B) IF 3 OR FEWER.—If 3 or fewer mu-  
7 nicipalities, or combination of municipalities as  
8 provided in paragraph (3), of a State apply for  
9 approval by the Secretary to be participating  
10 municipalities under this subsection, and the  
11 applications meet the approval criteria in para-  
12 graph (4), the Secretary shall allocate Federal  
13 funds to each applicant municipality or com-  
14 bination of municipalities.

15 (6) APPORTIONMENT OF ALLOCATED AMOUNT  
16 AMONG PARTICIPATING MUNICIPALITIES.—If the  
17 Secretary approves municipalities to be participating  
18 municipalities under this subsection, the Secretary  
19 shall apportion the full amount of the Federal funds  
20 that are allocated to that State to municipalities  
21 that are approved under this subsection in amounts  
22 proportionate to the population of those municipali-  
23 ties, based on the most recent available decennial  
24 census.

1 (7) APPROVING STATE PROGRAMS FOR MUNICI-  
2 PALITIES.—If the Secretary approves municipalities  
3 to be participating municipalities under this sub-  
4 section, the Secretary shall take into account the ad-  
5 ditional considerations in section 3006(d) in making  
6 the determination under section 3005 or 3006 that  
7 the State program or programs to be implemented  
8 by the participating municipalities, including a State  
9 capital access program, is eligible for Federal con-  
10 tributions to, or for the account of, the State pro-  
11 gram.

12 **SEC. 3005. APPROVING STATE CAPITAL ACCESS PROGRAMS.**

13 (a) APPLICATION.—A participating State that estab-  
14 lishes a new, or has an existing, State capital access pro-  
15 gram that meets the eligibility criteria in subsection (c)  
16 may apply to Secretary to have the State capital access  
17 program approved as eligible for Federal contributions to  
18 the reserve fund.

19 (b) APPROVAL.—The Secretary shall approve such  
20 State capital access program as eligible for Federal con-  
21 tributions to the reserve fund if—

22 (1) within 60 days after the date of enactment  
23 of this Act, the State has filed with the Secretary a  
24 notice of intent to apply for approval by the Sec-  
25 retary of a State capital access program;

1           (2) within 9 months after the date of enactment  
2 of this Act, the State has filed with the Secretary a  
3 complete application for approval by the Secretary of  
4 a capital access program;

5           (3) the State satisfies the requirements of sub-  
6 sections (a) and (b) of section 3004; and

7           (4) the State capital access program meets the  
8 eligibility criteria in subsection (c).

9           (c) ELIGIBILITY CRITERIA FOR STATE CAPITAL AC-  
10 CESS PROGRAMS.—For a State capital access program to  
11 be approved under this section, that program shall be re-  
12 quired to be a program of the State that—

13           (1) provides portfolio insurance for business  
14 loans based on a separate loan-loss reserve fund for  
15 each financial institution;

16           (2) requires insurance premiums to be paid by  
17 the financial institution lenders and by the business  
18 borrowers to the reserve fund to have their loans en-  
19 rolled in the reserve fund;

20           (3) provides for contributions to be made by the  
21 State to the reserve fund in amounts at least equal  
22 to the sum of the amount of the insurance premium  
23 charges paid by the borrower and the financial insti-  
24 tution to the reserve fund for any newly enrolled  
25 loan; and

1           (4) provides its portfolio insurance solely for  
2           loans that meet both the following requirements:

3                   (A) The borrower has 500 employees or  
4                   less at the time that the loan is enrolled in the  
5                   Program.

6                   (B) The loan amount does not exceed  
7                   \$5,000,000.

8           (d) FEDERAL CONTRIBUTIONS TO APPROVED STATE  
9 CAPITAL ACCESS PROGRAMS.—A State capital access pro-  
10 gram approved under this section will be eligible for receiv-  
11 ing Federal contributions to the reserve fund in an  
12 amount equal to the sum of the amount of the insurance  
13 premium charges paid by the borrowers and by the finan-  
14 cial institution to the reserve fund for loans that meet the  
15 requirements in subsection (c)(4). A participating State  
16 may use the Federal contribution to make its contribution  
17 to the reserve fund of an approved State capital access  
18 program.

19           (e) MINIMUM PROGRAM REQUIREMENTS FOR STATE  
20 CAPITAL ACCESS PROGRAMS.—The Secretary shall, by  
21 regulation or other guidance, prescribe Program require-  
22 ments that meet the following minimum requirements:

23                   (1) EXPERIENCE AND CAPACITY.—The partici-  
24                   pating State shall determine for each financial insti-  
25                   tution that participates in the State capital access

1 program, after consultation with the appropriate  
2 Federal banking agency or, in the case of a financial  
3 institution that is a nondepository community devel-  
4 opment financial institution, the Community Devel-  
5 opment Financial Institution Fund, that the finan-  
6 cial institution has sufficient commercial lending ex-  
7 perience and financial and managerial capacity to  
8 participate in the approved State capital access pro-  
9 gram. The determination by the State shall not be  
10 reviewable by the Secretary.

11 (2) INVESTMENT AUTHORITY.—Subject to ap-  
12 plicable State law, the participating State may in-  
13 vest, or cause to be invested, funds held in a reserve  
14 fund by establishing a deposit account at the finan-  
15 cial institution lender in the name of the partici-  
16 pating State. In the event that funds in the reserve  
17 fund are not deposited in such an account, such  
18 funds shall be invested in a form that the partici-  
19 pating State determines is safe and liquid.

20 (3) LOAN TERMS AND CONDITIONS TO BE DE-  
21 TERMINED BY AGREEMENT.—A loan to be filed for  
22 enrollment in an approved State capital access pro-  
23 gram may be made with such interest rate, fees, and  
24 other terms and conditions, and the loan may be en-  
25 rolled in the approved State capital access program



1       and claims may be filed and paid, as agreed upon  
2       by the financial institution lender and the borrower,  
3       consistent with applicable law.

4           (4) LENDER CAPITAL AT-RISK.—A loan to be  
5       filed for enrollment in the State capital access pro-  
6       gram shall require the financial institution lender to  
7       have a meaningful amount of its own capital re-  
8       sources at risk in the loan.

9           (5) PREMIUM CHARGES MINIMUM AND MAX-  
10       IMUM AMOUNTS.—The insurance premium charges  
11       payable to the reserve fund by the borrower and the  
12       financial institution lender shall be prescribed by the  
13       financial institution lender, within minimum and  
14       maximum limits that require that the sum of the in-  
15       surance premium charges paid in connection with a  
16       loan by the borrower and the financial institution  
17       lender may not be less than 2 percent nor more than  
18       7 percent of the amount of the loan enrolled in the  
19       approved State capital access program.

20           (6) STATE CONTRIBUTIONS.—In enrolling a  
21       loan in an approved State capital access program,  
22       the participating State may make a contribution to  
23       the reserve fund to supplement Federal contribu-  
24       tions made under this Program.

25           (7) LOAN PURPOSE.—

1                   (A) PARTICULAR LOAN PURPOSE REQUIRE-  
2                   MENTS AND PROHIBITIONS.—In connection  
3                   with the filing of a loan for enrollment in an  
4                   approved State capital access program, the fi-  
5                   nancial institution lender—

6                   (i) shall obtain an assurance from  
7                   each borrower that—

8                   (I) the proceeds of the loan will  
9                   be used for a business purpose;

10                  (II) the loan will not be used to  
11                  finance such business activities as the  
12                  Secretary, by regulation, may pro-  
13                  scribe as prohibited loan purposes for  
14                  enrollment in an approved State cap-  
15                  ital access program; and

16                  (III) the borrower is not—

17                  (aa) an executive officer, di-  
18                  rector, or principal shareholder of  
19                  the financial institution lender;

20                  (bb) a member of the imme-  
21                  diate family of an executive offi-  
22                  cer, director, or principal share-  
23                  holder of the financial institution  
24                  lender; or

1 (cc) a related interest of any  
2 such executive officer, director,  
3 principal shareholder, or member  
4 of the immediate family;

5 (ii) shall provide assurances to the  
6 participating State that the loan has not  
7 been made in order to place under the pro-  
8 tection of the approved State capital access  
9 program prior debt that is not covered  
10 under the approved State capital access  
11 program and that is or was owed by the  
12 borrower to the financial institution lender  
13 or to an affiliate of the financial institution  
14 lender;

15 (iii) shall not allow the enrollment of  
16 a loan to a borrower that is a refinancing  
17 of a loan previously made to that borrower  
18 by the financial institution lender or an af-  
19 filiate of the financial institution lender;  
20 and

21 (iv) may include additional restric-  
22 tions on the eligibility of loans or bor-  
23 rowers that are not inconsistent with the  
24 provisions and purposes of this title, in-  
25 cluding compliance with all applicable Fed-

1           eral and State laws, regulations, ordi-  
2           nances, and Executive orders.

3           (B) DEFINITIONS.—In this paragraph, the  
4           terms “executive officer”, “director”, “principal  
5           shareholder”, “immediate family”, and “related  
6           interest” refer to the same relationship to a fi-  
7           nancial institution lender as the relationship de-  
8           scribed in part 215 of title 12 of the Code of  
9           Federal Regulations, or any successor to such  
10          part.

11          (8) CAPITAL ACCESS FOR SMALL BUSINESSES  
12          IN UNDERSERVED COMMUNITIES.—At the time that  
13          a State applies to the Secretary to have the State  
14          capital access program approved as eligible for Fed-  
15          eral contributions, the State shall deliver to the Sec-  
16          retary a report stating how the State plans to use  
17          the Federal contributions to the reserve fund to pro-  
18          vide access to capital for small businesses in low-  
19          and moderate-income, minority, and other under-  
20          served communities, including women- and minority-  
21          owned small businesses.

1 **SEC. 3006. APPROVING COLLATERAL SUPPORT AND OTHER**  
2 **INNOVATIVE CREDIT ACCESS AND GUAR-**  
3 **ANTEE INITIATIVES FOR SMALL BUSINESSES**  
4 **AND MANUFACTURERS.**

5 (a) APPLICATION.—A participating State that estab-  
6 lishes a new, or has an existing, credit support program  
7 that meets the eligibility criteria in subsection (c) may  
8 apply to the Secretary to have the State other credit sup-  
9 port program approved as eligible for Federal contribu-  
10 tions to, or for the account of, the State program.

11 (b) APPROVAL.—The Secretary shall approve such  
12 State other credit support program as eligible for Federal  
13 contributions to, or for the account of, the program if—

14 (1) the Secretary determines that the State sat-  
15 isfies the requirements of paragraphs (1) through  
16 (3) of section 3005(b);

17 (2) the Secretary determines that the State  
18 other credit support program meets the eligibility  
19 criteria in subsection (c);

20 (3) the Secretary determines the State other  
21 credit support program to be eligible based on the  
22 additional considerations in subsection (d); and

23 (4) within 9 months after the date of enactment  
24 of this Act, the State has filed with Treasury a com-  
25 plete application for Treasury approval.

1           (c) ELIGIBILITY CRITERIA FOR STATE OTHER CRED-  
2 IT SUPPORT PROGRAMS.—For a State other credit sup-  
3 port program to be approved under this section, that pro-  
4 gram shall be required to be a program of the State that—

5           (1) can demonstrate that, at a minimum, \$1 of  
6 public investment by the State program will cause  
7 and result in \$1 of new private credit;

8           (2) can demonstrate a reasonable expectation  
9 that, when considered with all other State programs  
10 of the State, such State programs together have the  
11 ability to use amounts of new Federal contributions  
12 to, or for the account of, all such programs in the  
13 State to cause and result in amounts of new small  
14 business lending at least 10 times the new Federal  
15 contribution amount;

16           (3) for those State other credit support pro-  
17 grams that provide their credit support through 1 or  
18 more financial institution lenders, requires the finan-  
19 cial institution lenders to have a meaningful amount  
20 of their own capital resources at risk in their small  
21 business lending; and

22           (4) uses Federal funds allocated under this title  
23 to extend credit support that—

24           (A) targets an average borrower size of  
25 500 employees or less;

1 (B) does not extend credit support to bor-  
2 rowers that have more than 750 employees;

3 (C) targets support towards loans with an  
4 average principal amount of \$5,000,000 or less;  
5 and

6 (D) does not extend credit support to loans  
7 that exceed a principal amount of \$20,000,000.

8 (d) ADDITIONAL CONSIDERATIONS.—In making a de-  
9 termination that a State other credit support program is  
10 eligible for Federal contributions to, or for the account  
11 of, the State program, the Secretary shall take into ac-  
12 count the following additional considerations:

13 (1) The anticipated benefits to the State, its  
14 businesses, and its residents to be derived from the  
15 Federal contributions to, or for the account of, the  
16 approved State other credit support program, includ-  
17 ing the extent to which resulting small business  
18 lending will expand economic opportunities.

19 (2) The operational capacity, skills, and experi-  
20 ence of the management team of the State other  
21 credit support program.

22 (3) The capacity of the State other credit sup-  
23 port program to manage increases in the volume of  
24 its small business lending.

1           (4) The internal accounting and administrative  
2           controls systems of the State other credit support  
3           program, and the extent to which they can provide  
4           reasonable assurance that funds of the State pro-  
5           gram are safeguarded against waste, loss, unauthor-  
6           ized use, or misappropriation.

7           (5) The soundness of the program design and  
8           implementation plan of the State other credit sup-  
9           port program.

10          (e) FEDERAL CONTRIBUTIONS TO APPROVED STATE  
11 OTHER CREDIT SUPPORT PROGRAMS.—A State other  
12 credit support program approved under this section will  
13 be eligible for receiving Federal contributions to, or for  
14 the account of, the State program in an amount consistent  
15 with the schedule describing the apportionment of allo-  
16 cated Federal funds among State programs delivered by  
17 the State to the Secretary under the allocation agreement.

18          (f) MINIMUM PROGRAM REQUIREMENTS FOR STATE  
19 OTHER CREDIT SUPPORT PROGRAMS.—

20           (1) FUND TO PRESCRIBE.—The Secretary shall,  
21           by regulation or other guidance, prescribe Program  
22           requirements for approved State other credit support  
23           programs.

24           (2) CONSIDERATIONS FOR FUND.—In pre-  
25           scribing minimum Program requirements for ap-



1       proved State other credit support programs, the Sec-  
2       retary shall take into consideration, to the extent the  
3       Secretary determines applicable and appropriate, the  
4       minimum Program requirements for approved State  
5       capital access programs in section 3005(e).

6 **SEC. 3007. REPORTS.**

7       (a) QUARTERLY USE-OF-FUNDS REPORT.—

8           (1) IN GENERAL.—Not later than 30 days after  
9       the beginning of each calendar quarter, beginning  
10       after the first full calendar quarter to occur after  
11       the date the Secretary approves a State for partici-  
12       pation, the participating State shall submit to the  
13       Secretary a report on the use of Federal funding by  
14       the participating State during the previous calendar  
15       quarter.

16           (2) REPORT CONTENTS.—Each report under  
17       this subsection shall—

18           (A) indicate the total amount of Federal  
19       funding used by the participating State; and

20           (B) include a certification by the partici-  
21       pating State that—

22           (i) the information provided in accord-  
23       ance with subparagraph (A) is accurate;

24           (ii) funds continue to be available and  
25       legally committed to contributions by the

1 State to, or for the account of, approved  
2 State programs, less any amount that has  
3 been contributed by the State to, or for the  
4 account of, approved State programs sub-  
5 sequent to the State being approved for  
6 participation in the Program; and

7 (iii) the participating State is imple-  
8 menting its approved State program or  
9 programs in accordance with this title and  
10 regulations issued under section 3010.

11 (b) ANNUAL REPORT.—Not later than March 31 of  
12 each year, beginning March 31, 2011, each participating  
13 State shall submit to the Secretary an annual report that  
14 shall include the following information:

15 (1) The number of borrowers that received new  
16 loans originated under the approved State program  
17 or programs after the State program was approved  
18 as eligible for Federal contributions.

19 (2) The total amount of such new loans.

20 (3) Breakdowns by industry type, loan size, an-  
21 nual sales, and number of employees of the bor-  
22 rowers that received such new loans.

23 (4) The zip code of each borrower that received  
24 such a new loan.

1           (5) Such other data as the Secretary, in the  
2           Secretary's sole discretion, may require to carry out  
3           the purposes of the Program.

4           (c) FORM.—The reports and data filed under sub-  
5           sections (a) and (b) shall be in such form as the Secretary,  
6           in the Secretary's sole discretion, may require.

7           (d) TERMINATION OF REPORTING REQUIRE-  
8           MENTS.—The requirement to submit reports under sub-  
9           sections (a) and (b) shall terminate for a participating  
10          State with the submission of the completed reports due  
11          on the first March 31 to occur after 5 complete 12-month  
12          periods after the State is approved by the Secretary to  
13          be a participating State.

14 **SEC. 3008. REMEDIES FOR STATE PROGRAM TERMINATION**  
15                                   **OR FAILURES.**

16          (a) REMEDIES.—

17           (1) IN GENERAL.—If any of the events listed in  
18          paragraph (2) occur, the Secretary, in the Sec-  
19          retary's discretion, may—

20                   (A) reduce the amount of Federal funds al-  
21                   located to the State under the Program; or

22                   (B) terminate any further transfers of allo-  
23                   cated amounts that have not yet been trans-  
24                   ferred to the State.

1           (2) CAUSAL EVENTS.—The events referred to in  
2 paragraph (1) are—

3           (A) termination by a participating State of  
4 its participation in the Program;

5           (B) failure on the part of a participating  
6 State to submit complete reports under section  
7 3007 on a timely basis; or

8           (C) noncompliance by the State with the  
9 terms of the allocation agreement between the  
10 Secretary and the State.

11       (b) DEALLOCATED AMOUNTS TO BE REALLO-  
12 CATED.—If, after 13 months, any portion of the amount  
13 of Federal funds allocated to a participating State is  
14 deemed by the Secretary to be no longer allocated to the  
15 State after actions taken by the Secretary under sub-  
16 section (a)(1), the Secretary shall reallocate that portion  
17 among the participating States, excluding the State whose  
18 allocated funds were deemed to be no longer allocated, as  
19 provided in section 3003(b).

20 **SEC. 3009. IMPLEMENTATION AND ADMINISTRATION.**

21       (a) GENERAL AUTHORITIES AND DUTIES.—The Sec-  
22 retary shall—

23           (1) consult with the Administrator of the Small  
24 Business Administration and the appropriate Fed-

1 eral banking agencies on the administration of the  
2 Program;

3 (2) establish minimum national standards for  
4 approved State programs;

5 (3) provide technical assistance to States for  
6 starting State programs and generally disseminate  
7 best practices;

8 (4) manage, administer, and perform necessary  
9 program integrity functions for the Program; and

10 (5) ensure adequate oversight of the approved  
11 State programs, including oversight of the cash  
12 flows, performance, and compliance of each approved  
13 State program.

14 (b) APPROPRIATIONS.—There is hereby appropriated  
15 to the Secretary, out of funds in the Treasury not other-  
16 wise appropriated, \$1,500,000,000 to carry out the Pro-  
17 gram, including to pay reasonable costs of administering  
18 the Program.

19 (c) TERMINATION OF SECRETARY'S PROGRAM AD-  
20 MINISTRATION FUNCTIONS.—The authorities and duties  
21 of the Secretary to implement and administer the Program  
22 shall terminate at the end of the 7-year period beginning  
23 on the date of enactment of this Act.

24 (d) EXPEDITED CONTRACTING.—During the 1-year  
25 period beginning on the date of enactment of this Act, the

1 Secretary may enter into contracts without regard to any  
2 other provision of law regarding public contracts, for pur-  
3 poses of carrying out this title.

4 **SEC. 3010. REGULATIONS.**

5 The Secretary, in consultation with the Administrator  
6 of the Small Business Administration, shall issue such  
7 regulations and other guidance as the Secretary deter-  
8 mines necessary or appropriate to implement this title in-  
9 cluding to define terms, to establish compliance and re-  
10 porting requirements, and such other terms and conditions  
11 necessary to carry out the purposes of this title.

12 **SEC. 3011. OVERSIGHT AND AUDITS.**

13 (a) **INSPECTOR GENERAL OVERSIGHT.**—The Inspec-  
14 tor General of the Department of the Treasury shall con-  
15 duct, supervise, and coordinate audits and investigations  
16 of the use of funds made available under the Program.

17 (b) **GAO AUDIT.**—The Comptroller General of the  
18 United States shall perform an annual audit of the Pro-  
19 gram and issue a report to the appropriate committees  
20 of Congress containing the results of such audit.

21 (c) **REQUIRED CERTIFICATION.**—

22 (1) **FINANCIAL INSTITUTIONS CERTIFI-**  
23 **CATION.**—With respect to funds received by a par-  
24 ticipating State under the Program, any financial in-  
25 stitution that receives a loan, a loan guarantee, or

1 other financial assistance using such funds after the  
2 date of the enactment of this Act shall certify that  
3 such institution is in compliance with the require-  
4 ments of section 103.121 of title 31, Code of Fed-  
5 eral Regulations, a regulation that, at a minimum,  
6 requires financial institutions, as that term is de-  
7 fined in section 5312 (a)(2) and (c)(1)(A) of title  
8 31, United States Code, to implement reasonable  
9 procedures to verify the identity of any person seek-  
10 ing to open an account, to the extent reasonable and  
11 practicable, maintain records of the information  
12 used to verify the person's identity, and determine  
13 whether the person appears on any lists of known or  
14 suspected terrorists or terrorist organizations pro-  
15 vided to the financial institution by any government  
16 agency.

17 (2) SEX OFFENSE CERTIFICATION.—With re-  
18 spect to funds received by a participating State  
19 under the Program, any private entity that receives  
20 a loan, a loan guarantee, or other financial assist-  
21 ance using such funds after the date of the enact-  
22 ment of this Act shall certify to the participating  
23 State that the principals of such entity have not  
24 been convicted of a sex offense against a minor (as  
25 such terms are defined in section 111 of the Sex Of-

1 fender Registration and Notification Act (42 U.S.C.  
2 16911)).

3 (d) PROHIBITION ON PORNOGRAPHY.—None of the  
4 funds made available under this title may be used to pay  
5 the salary of any individual engaged in activities related  
6 to the Program who has been officially disciplined for vio-  
7 lations of subpart G of the Standards of Ethical Conduct  
8 for Employees of the Executive Branch for viewing,  
9 downloading, or exchanging pornography, including child  
10 pornography, on a Federal Government computer or while  
11 performing official Federal Government duties.

12 **TITLE IV—ADDITIONAL SMALL**  
13 **BUSINESS PROVISIONS**

14 **Subtitle A—Small Business**

15 **Lending Fund**

16 **SEC. 4101. PURPOSE.**

17 The purpose of this subtitle is to address the ongoing  
18 effects of the financial crisis on small businesses by pro-  
19 viding temporary authority to the Secretary of the Treas-  
20 ury to make capital investments in eligible institutions in  
21 order to increase the availability of credit for small busi-  
22 nesses.

23 **SEC. 4102. DEFINITIONS.**

24 For purposes of this subtitle:



1           (1) APPROPRIATE COMMITTEES OF CON-  
2           GRESS.—The term “appropriate committees of Con-  
3           gress” means—

4                   (A) the Committee on Small Business and  
5                   Entrepreneurship, the Committee on Agri-  
6                   culture, Nutrition, and Forestry, the Committee  
7                   on Banking, Housing, and Urban Affairs, the  
8                   Committee on Finance, the Committee on the  
9                   Budget, and the Committee on Appropriations  
10                  of the Senate; and

11                   (B) the Committee on Small Business, the  
12                   Committee on Agriculture, the Committee on  
13                   Financial Services, the Committee on Ways and  
14                   Means, the Committee on the Budget, and the  
15                   Committee on Appropriations of the House of  
16                   Representatives.

17           (2) APPROPRIATE FEDERAL BANKING AGEN-  
18           CY.—The term “appropriate Federal banking agen-  
19           cy” has the meaning given such term under section  
20           3(q) of the Federal Deposit Insurance Act (12  
21           U.S.C. 1813(q)).

22           (3) BANK HOLDING COMPANY.—The term  
23           “bank holding company” has the meaning given  
24           such term under section 2(a) (1) of the Bank Hold-

1 ing Company Act of 1956 (12 U.S.C.  
2 1841(2)(a)(1)).

3 (4) CALL REPORT.—The term “call report”  
4 means—

5 (A) reports of Condition and Income sub-  
6 mitted to the Office of the Comptroller of the  
7 Currency, the Board of Governors of the Fed-  
8 eral Reserve System, and the Federal Deposit  
9 Insurance Corporation;

10 (B) the Office of Thrift Supervision Thrift  
11 Financial Report;

12 (C) any report that is designated by the  
13 Office of the Comptroller of the Currency, the  
14 Board of Governors of the Federal Reserve Sys-  
15 tem, the Federal Deposit Insurance Corpora-  
16 tion, or the Office of Thrift Supervision, as ap-  
17 plicable, as a successor to any report referred to  
18 in subparagraph (A) or (B);

19 (D) reports of Condition and Income as  
20 designated through guidance developed by the  
21 Secretary, in consultation with the Director of  
22 the Community Development Financial Institu-  
23 tions Fund; and

24 (E) with respect to an eligible institution  
25 for which no report exists that is described

1           under subparagraph (A), (B), (C), or (D), such  
2           other report or set of information as the Sec-  
3           retary, in consultation with the Administrator  
4           of the Small Business Administration, may pre-  
5           scribe.

6           (5) CDCI.—The term “CDCI” means the Com-  
7           munity Development Capital Initiative created by  
8           the Secretary under the Troubled Asset Relief Pro-  
9           gram established by the Emergency Economic Sta-  
10          bilization Act of 2008.

11          (6) CDCI INVESTMENT.—The term “CDCI in-  
12          vestment” means, with respect to any eligible insti-  
13          tution, the principal amount of any investment made  
14          by the Secretary in such eligible institution under  
15          the CDCI that has not been repaid.

16          (7) CDFI; COMMUNITY DEVELOPMENT FINAN-  
17          CIAL INSTITUTION.—The terms “CDFI” and “com-  
18          munity development financial institution” have the  
19          meaning given the term “community development fi-  
20          nancial institution” under the Riegle Community  
21          Development and Regulatory Improvement Act of  
22          1994.

23          (8) CDLF; COMMUNITY DEVELOPMENT LOAN  
24          FUND.—The terms “CDLF” and “community devel-  
25          opment loan fund” mean any entity that—

1                   (A) is certified by the Department of the  
2           Treasury as a community development financial  
3           institution loan fund;

4                   (B) is exempt from taxation under the In-  
5           ternal Revenue Code of 1986; and

6                   (C) had assets less than or equal to  
7           \$10,000,000,000 as of the end of the fourth  
8           quarter of calendar year 2009.

9           (9) CPP.—The term “CPP” means the Capital  
10          Purchase Program created by the Secretary under  
11          the Troubled Asset Relief Program established by  
12          the Emergency Economic Stabilization Act of 2008.

13          (10) CPP INVESTMENT.—The term “CPP in-  
14          vestment” means, with respect to any eligible insti-  
15          tution, the principal amount of any investment made  
16          by the Secretary in such eligible institution under  
17          the CPP that has not been repaid.

18          (11) ELIGIBLE INSTITUTION.—The term “eligi-  
19          ble institution” means—

20                   (A) any insured depository institution,  
21          which—

22                           (i) is not controlled by a bank holding  
23                   company or savings and loan holding com-  
24                   pany that is also an eligible institution;

1                   (ii) has total assets of equal to or less  
2                   than \$10,000,000,000, as reported in the  
3                   call report of the insured depository insti-  
4                   tution as of the end of the fourth quarter  
5                   of calendar year 2009; and

6                   (iii) is not directly or indirectly con-  
7                   trolled by any company or other entity that  
8                   has total consolidated assets of more than  
9                   \$10,000,000,000, as so reported;

10                  (B) any bank holding company which has  
11                  total consolidated assets of equal to or less than  
12                  \$10,000,000,000, as reported in the call report  
13                  of the bank holding company as of the end of  
14                  the fourth quarter of calendar year 2009;

15                  (C) any savings and loan holding company  
16                  which has total consolidated assets of equal to  
17                  or less than \$10,000,000,000, as reported in  
18                  the call report of the savings and loan holding  
19                  company as of the end of the fourth quarter of  
20                  calendar year 2009; and

21                  (D) any community development financial  
22                  institution loan fund which has total assets of  
23                  equal to or less than \$10,000,000,000, as re-  
24                  ported in audited financial statements for the  
25                  fiscal year of the community development finan-

1           cial institution loan fund that ends in calendar  
2           year 2009.

3           (12) FUND.—The term “Fund” means the  
4           Small Business Lending Fund established under sec-  
5           tion 4103(a)(1).

6           (13) INSURED DEPOSITORY INSTITUTION.—The  
7           term “insured depository institution” has the mean-  
8           ing given such term under section 3(c) (2) of the  
9           Federal Deposit Insurance Act (12 U.S.C.  
10          1813(c)(2)).

11          (14) MINORITY-OWNED AND WOMEN-OWNED  
12          BUSINESS.—The terms “minority-owned business”  
13          and “women-owned business” shall have the mean-  
14          ing given the terms “minority-owned business” and  
15          “women’s business”, respectively, under section  
16          21A(r)(4) of the Federal Home Loan Bank Act (12  
17          U.S.C. 1441A(r)(4)).

18          (15) PROGRAM.—The term “Program” means  
19          the Small Business Lending Fund Program author-  
20          ized under section 41 03 (a) (2).

21          (16) SAVINGS AND LOAN HOLDING COMPANY.—  
22          The term “savings and loan holding company” has  
23          the meaning given such term under section  
24          10(a)(1)(D) of the Home Owners’ Loan Act (12  
25          U.S.C. 1467a(a)(1)(D)).

1           (17) SECRETARY.—The term “Secretary”  
2 means the Secretary of the Treasury.

3           (18) SMALL BUSINESS LENDING.—

4           (A) IN GENERAL.—The term “small busi-  
5 ness lending” means lending, as defined by and  
6 reported in an eligible institutions’ quarterly  
7 call report, where each loan comprising such  
8 lending is one of the following types:

9                   (i) Commercial and industrial loans.

10                   (ii) Owner-occupied nonfarm, nonresi-  
11 dential real estate loans.

12                   (iii) Loans to finance agricultural pro-  
13 duction and other loans to farmers.

14                   (iv) Loans secured by farmland.

15           (B) EXCLUSION.—No loan that has an  
16 original amount greater than \$10,000,000 or  
17 that goes to a business with more than  
18 \$50,000,000 in revenues shall be included in  
19 the measure.

20           (C) TREATMENT OF HOLDING COMPA-  
21 NIES.—In the case of eligible institutions that  
22 are bank holding companies or savings and loan  
23 holding companies having one or more insured  
24 depository institution subsidiaries, small busi-  
25 ness lending shall be measured based on the

1 combined small business lending reported in the  
2 call report of the insured depository institution  
3 subsidiaries.

4 (19) VETERAN-OWNED BUSINESS.—

5 (A) The term “veteran-owned business”  
6 means a business—

7 (i) more than 50 percent of the own-  
8 ership or control of which is held by 1 or  
9 more veterans;

10 (ii) more than 50 percent of the net  
11 profit or loss of which accrues to 1 or more  
12 veterans; and

13 (iii) a significant percentage of senior  
14 management positions of which are held by  
15 veterans.

16 (B) For purposes of this paragraph, the  
17 term “veteran” has the meaning given such  
18 term in section 101(2) of title 38, United  
19 States Code.

20 **SEC. 4103. SMALL BUSINESS LENDING FUND.**

21 (a) **FUND AND PROGRAM.**—

22 (1) **FUND ESTABLISHED.**—There is established  
23 in the Treasury of the United States a fund to be  
24 known as the “Small Business Lending Fund”,  
25 which shall be administered by the Secretary.



1           (2) PROGRAMS AUTHORIZED.—The Secretary is  
2           authorized to establish the Small Business Lending  
3           Fund Program for using the Fund consistent with  
4           this subtitle.

5           (b) USE OF FUND.—

6           (1) IN GENERAL.—Subject to paragraph (2),  
7           the Fund shall be available to the Secretary, without  
8           further appropriation or fiscal year limitation, for  
9           the costs of purchases (including commitments to  
10          purchase), and modifications of such purchases, of  
11          preferred stock and other financial instruments from  
12          eligible institutions on such terms and conditions as  
13          are determined by the Secretary in accordance with  
14          this subtitle. For purposes of this paragraph and  
15          with respect to an eligible institution, the term  
16          “other financial instruments” shall include only debt  
17          instruments for which such eligible institution is  
18          fully liable or equity equivalent capital of the eligible  
19          institution. Such debt instruments may be subordi-  
20          nated to the claims of other creditors of the eligible  
21          institution.

22          (2) MAXIMUM PURCHASE LIMIT.—The aggre-  
23          gate amount of purchases (and commitments to pur-  
24          chase) made pursuant to paragraph (1) may not ex-  
25          ceed \$30,000,000,000.

1           (3) PROCEEDS USED TO PAY DOWN PUBLIC  
2 DEBT.—All funds received by the Secretary in con-  
3 nection with purchases made pursuant to paragraph  
4 (1), including interest payments, dividend payments,  
5 and proceeds from the sale of any financial instru-  
6 ment, shall be paid into the general fund of the  
7 Treasury for reduction of the public debt.

8           (4) LIMITATION ON PURCHASES FROM  
9 CDLFS.—

10           (A) IN GENERAL.—Not more than 1 per-  
11 cent of the maximum purchase limit of the Pro-  
12 gram, pursuant to paragraph (2), may be used  
13 to make purchases from community develop-  
14 ment loan funds.

15           (B) ELIGIBILITY STANDARDS.—The Sec-  
16 retary, in consultation with the Community De-  
17 velopment Financial Institutions Fund, shall  
18 develop eligibility criteria to determine the fi-  
19 nancial ability of a CDLF to participate in the  
20 Program and repay the investment. Such cri-  
21 teria shall include the following:

22           (i) Ratio of net assets to total assets  
23 is at least 20 percent.

24           (ii) Ratio of loan loss reserves to loans  
25 and leases 90 days or more delinquent (in-

1 cluding loans sold with full recourse) is at  
2 least 30 percent.

3 (iii) Positive net income measured on  
4 a 3-year rolling average.

5 (iv) Operating liquidity ratio of at  
6 least 1.0 for the 4 most recent quarters  
7 and for one or both of the two preceding  
8 years.

9 (v) Ratio of loans and leases 90 days  
10 or more delinquent (including loans sold  
11 with full recourse) to total equity plus loan  
12 loss reserves is less than 40 percent.

13 (C) REQUIREMENT TO SUBMIT AUDITED  
14 FINANCIAL STATEMENTS.—CDLFs partici-  
15 pating in the Program shall submit audited fi-  
16 nancial statements to the Secretary, have a  
17 clean audit opinion, and have at least 3 years  
18 of operating experience.

19 (c) CREDITS TO THE FUND.—There shall be credited  
20 to the Fund amounts made available pursuant to section  
21 4108, to the extent provided by appropriations Acts.

22 (d) TERMS.—

23 (1) APPLICATION.—

24 (A) INSTITUTIONS WITH ASSETS OF  
25 \$1,000,000,000 OR LESS.—Eligible institutions

1           having total assets equal to or less than  
2           \$1,000,000,000, as reported in a call report as  
3           of the end of the fourth quarter of calendar  
4           year 2009, may apply to receive a capital in-  
5           vestment from the Fund in an amount not ex-  
6           ceeding 5 percent of risk-weighted assets, as re-  
7           ported in the call report immediately preceding  
8           the date of application, less the amount of any  
9           CDCI investment and any CPP investment.

10           (B) INSTITUTIONS WITH ASSETS OF MORE  
11           THAN \$1,000,000,000 AND LESS THAN OR EQUAL  
12           TO \$10,000,000,000.—Eligible institutions having  
13           total assets of more than \$1,000,000,000 but  
14           less than \$10,000,000,000, as of the end of the  
15           fourth quarter of calendar year 2009, may  
16           apply to receive a capital investment from the  
17           Fund in an amount not exceeding 3 percent of  
18           risk-weighted assets, as reported in the call re-  
19           port immediately preceding the date of applica-  
20           tion, less the amount of any CDCI investment  
21           and any CPP investment.

22           (C) TREATMENT OF HOLDING COMPA-  
23           NIES.—In the case of an eligible institution that  
24           is a bank holding company or a savings and  
25           loan holding company having one or more in-

1           sured depository institution subsidiaries, total  
2           assets shall be measured based on the combined  
3           total assets reported in the call report of the in-  
4           sured depository institution subsidiaries as of  
5           the end of the fourth quarter of calendar year  
6   2009 and risk-weighted assets shall be meas-  
7           ured based on the combined risk-weighted as-  
8           sets of the insured depository institution sub-  
9   sidiaries as reported in the call report imme-  
10          diately preceding the date of application.

11                   (D) TREATMENT OF APPLICANTS THAT  
12           ARE INSTITUTIONS CONTROLLED BY HOLDING  
13           COMPANIES.—If an eligible institution that ap-  
14           plies to receive a capital investment under the  
15           Program is under the control of a bank holding  
16           company or a savings and loan holding com-  
17           pany, then the Secretary may use the Fund to  
18           purchase preferred stock or other financial in-  
19           struments from the top-tier bank holding com-  
20           pany or savings and loan holding company of  
21           such eligible institution, as applicable. For pur-  
22           poses of this subparagraph, the term “control”  
23           with respect to a bank holding company shall  
24           have the same meaning as in section 2(a)(2) of  
25           the Bank Holding Company Act of 1956 (12

1 U.S.C. 1841(2)(a)(2)). For purposes of this  
2 subparagraph, the term “control” with respect  
3 to a savings and loan holding company shall  
4 have the same meaning as in 10(a)(2) of the  
5 Home Owners’ Loan Act (12 U.S.C.  
6 1467a(a)(2)).

7 (E) REQUIREMENT TO PROVIDE A SMALL  
8 BUSINESS LENDING PLAN.—At the time that an  
9 applicant submits an application to the Sec-  
10 retary for a capital investment under the Pro-  
11 gram, the applicant shall deliver to the appro-  
12 priate Federal banking agency, and, for appli-  
13 cants that are State-chartered banks, to the ap-  
14 propriate State banking regulator, a small busi-  
15 ness lending plan describing how the applicant’s  
16 business strategy and operating goals will allow  
17 it to address the needs of small businesses in  
18 the areas it serves, as well as a plan to provide  
19 linguistically and culturally appropriate out-  
20 reach, where appropriate. In the case of eligible  
21 institutions that are community development  
22 loan funds, this plan shall be submitted to the  
23 Secretary. This plan shall be confidential super-  
24 visory information.

1                   (F) TREATMENT OF APPLICANTS THAT  
2                   ARE COMMUNITY DEVELOPMENT LOAN  
3 FUNDS.—Eligible institutions that are commu-  
4 nity development loan funds may apply to re-  
5 ceive a capital investment from the Fund in an  
6 amount not exceeding 5 percent of total assets,  
7 as reported in the audited financial statements  
8 for the fiscal year of the eligible institution that  
9 ends in calendar year 2009.

10               (2) CONSULTATION WITH REGULATORS.—For  
11 each eligible institution that applies to receive a cap-  
12 ital investment under the Program, the Secretary  
13 shall—

14                   (A) consult with the appropriate Federal  
15 banking agency or, in the case of an eligible in-  
16 stitution that is a nondepository community de-  
17 velopment financial institution, the Community  
18 Development Financial Institution Fund, for  
19 the eligible institution, to determine whether  
20 the eligible institution may receive such capital  
21 investment;

22                   (B) in the case of an eligible institution  
23 that is a State-chartered bank, consider any  
24 views received from the State banking regulator  
25 of the State of the eligible institution regarding

1           the financial condition of the eligible institution;  
2           and

3                   (C) in the case of a community develop-  
4           ment financial institution loan fund, consult  
5           with the Community Development Financial In-  
6           stitution Fund.

7           (3) CONSIDERATION OF MATCHED PRIVATE IN-  
8           VESTMENTS.—

9                   (A) IN GENERAL.—For an eligible institu-  
10          tion that applies to receive a capital investment  
11          under the Program, if the entity to be consulted  
12          under paragraph (2) would not otherwise rec-  
13          ommend the eligible institution to receive the  
14          capital investment, the Secretary, in consulta-  
15          tion with the entity to be so consulted, may  
16          consider whether the entity to be consulted  
17          would recommend the eligible institution to re-  
18          ceive a capital investment based on the financial  
19          condition of the institution if the conditions in  
20          subparagraph (B) are satisfied.

21                   (B) CONDITIONS.—The conditions referred  
22          to in subparagraph (A) are as follows:

23                           (i) CAPITAL SOURCES.—The eligible  
24          institution shall receive capital both under



1 the Program and from private, nongovern-  
2 ment investors.

3 (ii) AMOUNT OF CAPITAL.—The  
4 amount of capital to be received under the  
5 Program shall not exceed 3 percent of risk-  
6 weighted assets, as reported in the call re-  
7 port immediately preceding the date of ap-  
8 plication, less the amount of any CDCI in-  
9 vestment and any CPP investment.

10 (iii) TERMS.—The amount of capital  
11 to be received from private, nongovernment  
12 investors shall be—

13 (I) equal to or greater than 100  
14 percent of the capital to be received  
15 under the Program; and

16 (II) subordinate to the capital in-  
17 vestment made by the Secretary under  
18 the Program.

19 (4) INELIGIBILITY OF INSTITUTIONS ON FDIC  
20 PROBLEM BANK LIST.—

21 (A) IN GENERAL.—An eligible institution  
22 may not receive any capital investment under  
23 the Program, if—

24 (i) such institution is on the FDIC  
25 problem bank list; or

1                   (ii) such institution has been removed  
2                   from the FDIC problem bank list for less  
3                   than 90 days.

4                   (B) CONSTRUCTION.—Nothing in subpara-  
5                   graph (A) shall be construed as limiting the dis-  
6                   cretion of the Secretary to deny the application  
7                   of an eligible institution that is not on the  
8                   FDIC problem bank list.

9                   (C) FDIC PROBLEM BANK LIST DE-  
10                  FINED.—For purposes of this paragraph, the  
11                  term “FDIC problem bank list” means the list  
12                  of depository institutions having a current rat-  
13                  ing of 4 or 5 under the Uniform Financial In-  
14                  stitutions Rating System, or such other list des-  
15                  ignated by the Federal Deposit Insurance Cor-  
16                  poration.

17                  (5) INCENTIVES TO LEND.—

18                  (A) REQUIREMENTS ON PREFERRED  
19                  STOCK AND OTHER FINANCIAL INSTRU-  
20                  MENTS.—Any preferred stock or other financial  
21                  instrument issued to Treasury by an eligible in-  
22                  stitution receiving a capital investment under  
23                  the Program shall provide that—

1 (i) the rate at which dividends or in-  
2 terest are payable shall be 5 percent per  
3 annum initially;

4 (ii) within the first 2 years after the  
5 date of the capital investment under the  
6 Program, the rate may be adjusted based  
7 on the amount of an eligible institution's  
8 small business lending. Changes in the  
9 amount of small business lending shall be  
10 measured against the average amount of  
11 small business lending reported by the eli-  
12 gible institution in its call reports for the  
13 4 full quarters immediately preceding the  
14 date of enactment of this Act, minus ad-  
15 justments from each quarterly balance in  
16 respect of—

17 (I) net loan charge offs with re-  
18 spect to small business lending; and

19 (II) gains realized by the eligible  
20 institution resulting from mergers, ac-  
21 quisitions or purchases of loans after  
22 origination and syndication; which ad-  
23 justments shall be determined in ac-  
24 cordance with guidance promulgated  
25 by the Secretary; and

1 (iii) during any calendar quarter dur-  
2 ing the initial 2-year period referred to in  
3 clause (ii), an institution's rate shall be ad-  
4 justed to reflect the following schedule,  
5 based on that institution's change in the  
6 amount of small business lending relative  
7 to the baseline—

8 (I) if the amount of small busi-  
9 ness lending has increased by less  
10 than 2.5 percent, the dividend or in-  
11 terest rate shall be 5 percent;

12 (II) if the amount of small busi-  
13 ness lending has increased by 2.5 per-  
14 cent or greater, but by less than 5.0  
15 percent, the dividend or interest rate  
16 shall be 4 percent;

17 (III) if the amount of small busi-  
18 ness lending has increased by 5.0 per-  
19 cent or greater, but by less than 7.5  
20 percent, the dividend or interest rate  
21 shall be 3 percent;

22 (IV) if the amount of small busi-  
23 ness lending has increased by 7.5 per-  
24 cent or greater, and but by less than

1                   10.0 percent, the dividend or interest  
2                   rate shall be 2 percent; or

3                   (V) if the amount of small busi-  
4                   ness lending has increased by 10 per-  
5                   cent or greater, the dividend or inter-  
6                   est rate shall be 1 percent.

7                   (B) BASIS OF INITIAL RATE.—The initial  
8                   dividend or interest rate shall be based on call  
9                   report data published in the quarter imme-  
10                  diately preceding the date of the capital invest-  
11                  ment under the Program.

12                  (C) TIMING OF RATE ADJUSTMENTS.—Any  
13                  rate adjustment shall occur in the calendar  
14                  quarter following the publication of call report  
15                  data, such that the rate based on call report  
16                  data from any one calendar quarter, which is  
17                  published in the first following calendar quar-  
18                  ter, shall be adjusted in that first following cal-  
19                  endar quarter and payable in the second fol-  
20                  lowing quarter.

21                  (D) RATE FOLLOWING INITIAL 2-YEAR PE-  
22                  RIOD.—Generally, the rate based on call report  
23                  data from the eighth calendar quarter after the  
24                  date of the capital investment under the Pro-  
25                  gram shall be payable until the expiration of

1           the 4<sup>1</sup>/<sub>2</sub>-year period that begins on the date of  
2           the investment. In the case where the amount  
3           of small business lending has remained the  
4           same or decreased relative to the institution's  
5           baseline in the eighth quarter after the date of  
6           the capital investment under the Program, the  
7           rate shall be 7 percent until the expiration of  
8           the 4<sup>1</sup>/<sub>2</sub>-year period that begins on the date of  
9           the investment.

10                   (E) RATE FOLLOWING INITIAL 4<sup>1</sup>/<sub>2</sub> -YEAR  
11           PERIOD.—The dividend or interest rate paid on  
12   any preferred stock or other financial instru-  
13           ment issued by an eligible institution that re-  
14           ceives a capital investment under the Program  
15           shall increase to 9 percent at the end of the  
16           4<sup>1</sup>/<sub>2</sub>-year period that begins on the date of the  
17           capital investment under the Program.

18                   (F) LIMITATION ON RATE REDUCTIONS  
19           WITH RESPECT TO CERTAIN AMOUNT.—The re-  
20           duction in the dividend or interest rate payable  
21           to Treasury by any eligible institution shall be  
22           limited such that the rate reduction shall not  
23           apply to a dollar amount of the investment  
24   made by Treasury that is greater than the dol-  
25           lar amount increase in the amount of small

1 business lending realized under this program.  
2 The Secretary may issue guidelines that will  
3 apply to new capital investments limiting the  
4 amount of capital available to eligible institu-  
5 tions consistent with this limitation.

6 (G) RATE ADJUSTMENTS FOR S CORPORA-  
7 TION.—Before making a capital investment in  
8 an eligible institution that is an S corporation  
9 or a corporation organized on a mutual basis,  
10 the Secretary may adjust the dividend or inter-  
11 est rate on the financial instrument to be issued  
12 to the Secretary, from the dividend or interest  
13 rate that would apply under subparagraphs (A)  
14 through (F), to take into account any differen-  
15 tial tax treatment of securities issued by such  
16 eligible institution. For purpose of this subpara-  
17 graph, the term “S corporation” has the same  
18 meaning as in section 1361(a) of the Internal  
19 Revenue Code of 1986.

20 (H) REPAYMENT DEADLINE.—The capital  
21 investment received by an eligible institution  
22 under the Program shall be evidenced by pre-  
23 ferred stock or other financial instrument  
24 that—

1 (i) includes, as a term and condition,  
2 that the capital investment will—

3 (I) be repaid not later than the  
4 end of the 10-year period beginning  
5 on the date of the capital investment  
6 under the Program; or

7 (II) at the end of such 10-year  
8 period, be subject to such additional  
9 terms as the Secretary shall prescribe,  
10 which shall include a requirement that  
11 the stock or instrument shall carry  
12 the highest dividend or interest rate  
13 payable; and

14 (ii) provides that the term and condi-  
15 tion described under clause (i) shall not  
16 apply if the application of that term and  
17 condition would adversely affect the capital  
18 treatment of the stock or financial instru-  
19 ment under current or successor applicable  
20 capital provisions compared to a capital in-  
21 strument with identical terms other than  
22 the term and condition described under  
23 clause (i).

24 (I) REQUIREMENTS ON FINANCIAL IN-  
25 STRUMENTS ISSUED BY A COMMUNITY DEVEL-



1           OPMENT FINANCIAL INSTITUTION LOAN  
2           FUND.—Any equity equivalent capital issued to  
3           the Treasury by a community development loan  
4           fund receiving a capital investment under the  
5           Program shall provide that the rate at which in-  
6           terest is payable shall be 2 percent per annum  
7           for 8 years. After 8 years, the rate at which in-  
8           terest is payable shall be 9 percent.

9           (6) ADDITIONAL INCENTIVES TO REPAY.—The  
10          Secretary may, by regulation or guidance issued  
11          under section 4104(9), establish repayment incen-  
12          tives in addition to the incentive in paragraph (5)(E)  
13          that will apply to new capital investments in a man-  
14          ner that the Secretary determines to be consistent  
15          with the purposes of this subtitle.

16          (7) CAPITAL PURCHASE PROGRAM REFI-  
17          NANCE.—

18                 (A) IN GENERAL.—The Secretary shall, in  
19                 a manner that the Secretary determines to be  
20                 consistent with the purposes of this subtitle,  
21                 issue regulations and other guidance to permit  
22                 eligible institutions to refinance securities  
23                 issued to Treasury under the CDCI and the  
24                 CPP for securities to be issued under the Pro-

1                   (B) PROHIBITION ON PARTICIPATION BY  
2                   NON-PAYING CPP PARTICIPANTS.—Subpara-  
3                   graph (A) shall not apply to any eligible institu-  
4                   tion that has missed more than one dividend  
5                   payment due under the CPP. For purposes of  
6                   this subparagraph, a CPP dividend payment  
7                   that is submitted within 60 days of the due  
8                   date of such payment shall not be considered a  
9                   missed dividend payment.

10                  (8) OUTREACH TO MINORITIES, WOMEN, AND  
11                  VETERANS.—The Secretary shall require eligible in-  
12                  stitutions receiving capital investments under the  
13                  Program to provide linguistically and culturally ap-  
14                  propriate outreach and advertising in the applicant  
15                  pool describing the availability and application proc-  
16                  ess of receiving loans from the eligible institution  
17                  that are made possible by the Program through the  
18                  use of print, radio, television or electronic media out-  
19                  lets which target organizations, trade associations,  
20                  and individuals that—

21                         (A) represent or work within or are mem-  
22                         bers of minority communities;

23                         (B) represent or work with or are women;

24                         and

25                         (C) represent or work with or are veterans.

1           (9) ADDITIONAL TERMS.—The Secretary may,  
2           by regulation or guidance issued under section  
3           4104(9), make modifications that will apply to new  
4           capital investments in order to manage risks associ-  
5           ated with the administration of the Fund in a man-  
6           ner consistent with the purposes of this subtitle.

7           (10) MINIMUM UNDERWRITING STANDARDS.—  
8           The appropriate Federal banking agency for an eli-  
9           gible institution that receives funds under the Pro-  
10          gram shall within 60 days issue guidance regarding  
11          prudent underwriting standards that must be used  
12          for loans made by the eligible institution using such  
13          funds.

14 **SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.**

15          The Secretary may take such actions as the Secretary  
16          deems necessary to carry out the authorities in this sub-  
17          title, including, without limitation, the following:

18               (1) The Secretary may use the services of any  
19               agency or instrumentality of the United States or  
20               component thereof on a reimbursable basis, and any  
21               such agency or instrumentality or component thereof  
22               is authorized to provide services as requested by the  
23               Secretary using all authorities vested in or delegated  
24               to that agency, instrumentality, or component.

1           (2) The Secretary may enter into contracts, in-  
2           cluding contracts for services authorized by section  
3           3109 of title 5, United States Code.

4           (3) The Secretary may designate any bank, sav-  
5           ings association, trust company, security broker or  
6           dealer, asset manager, or investment adviser as a fi-  
7           nancial agent of the Federal Government and such  
8           institution shall perform all such reasonable duties  
9           related to this subtitle as financial agent of the Fed-  
10          eral Government as may be required. The Secretary  
11          shall have authority to amend existing agreements  
12          with financial agents, entered into during the 2-year  
13          period before the date of enactment of this Act, to  
14          perform reasonable duties related to this subtitle.

15          (4) The Secretary may exercise any rights re-  
16          ceived in connection with any preferred stock or  
17          other financial instruments or assets purchased or  
18          acquired pursuant to the authorities granted under  
19          this subtitle.

20          (5) Subject to section 4103(b)(3), the Secretary  
21          may manage any assets purchased under this sub-  
22          title, including revenues and portfolio risks there-  
23          from.

24          (6) The Secretary may sell, dispose of, transfer,  
25          exchange or enter into securities loans, repurchase

1 transactions, or other financial transactions in re-  
2 gard to, any preferred stock or other financial in-  
3 strument or asset purchased or acquired under this  
4 subtitle, upon terms and conditions and at a price  
5 determined by the Secretary.

6 (7) The Secretary may manage or prohibit con-  
7 flicts of interest that may arise in connection with  
8 the administration and execution of the authorities  
9 provided under this subtitle.

10 (8) The Secretary may establish and use vehi-  
11 cles, subject to supervision by the Secretary, to pur-  
12 chase, hold, and sell preferred stock or other finan-  
13 cial instruments and issue obligations.

14 (9) The Secretary may, in consultation with the  
15 Administrator of the Small Business Administration,  
16 issue such regulations and other guidance as may be  
17 necessary or appropriate to define terms or carry  
18 out the authorities or purposes of this subtitle.

19 **SEC. 4105. CONSIDERATIONS.**

20 In exercising the authorities granted in this subtitle,  
21 the Secretary shall take into consideration—

22 (1) increasing the availability of credit for small  
23 businesses;

24 (2) providing funding to minority-owned eligible  
25 institutions and other eligible institutions that serve

1 small businesses that are minority-, veteran-, and  
2 women-owned and that also serve low- and mod-  
3 erate-income, minority, and other underserved or  
4 rural communities;

5 (3) protecting and increasing American jobs;

6 (4) increasing the opportunity for small busi-  
7 ness development in areas with high unemployment  
8 rates that exceed the national average;

9 (5) ensuring that all eligible institutions may  
10 apply to participate in the program established  
11 under this subtitle, without discrimination based on  
12 geography;

13 (6) providing transparency with respect to use  
14 of funds provided under this subtitle;

15 (7) minimizing the cost to taxpayers of exer-  
16 cising the authorities;

17 (8) promoting and engaging in financial edu-  
18 cation to would-be borrowers; and

19 (9) providing funding to eligible institutions  
20 that serve small businesses directly affected by the  
21 discharge of oil arising from the explosion on and  
22 sinking of the mobile offshore drilling unit Deep-  
23 water Horizon and small businesses in communities  
24 that have suffered negative economic effects as a re-

1           sult of that discharge with particular consideration  
2           to States along the coast of the Gulf of Mexico.

3 **SEC. 4106. REPORTS.**

4       The Secretary shall provide to the appropriate com-  
5 mittees of Congress—

6           (1) within 7 days of the end of each month  
7           commencing with the first month in which trans-  
8           actions are made under the Program, a written re-  
9           port describing all of the transactions made during  
10          the reporting period pursuant to the authorities  
11          granted under this subtitle;

12          (2) after the end of March and the end of Sep-  
13          tember, commencing September 30, 2010, a written  
14          report on all projected costs and liabilities, all oper-  
15          ating expenses, including compensation for financial  
16          agents, and all transactions made by the Fund,  
17          which shall include participating institutions and  
18          amounts each institution has received under the Pro-  
19          gram; and

20          (3) within 7 days of the end of each calendar  
21          quarter commencing with the first calendar quarter  
22          in which transactions are made under the Program,  
23          a written report detailing how eligible institutions  
24          participating in the Program have used the funds  
25          such institutions received under the Program.

1 **SEC. 4107. OVERSIGHT AND AUDITS.**

2 (a) **INSPECTOR GENERAL OVERSIGHT.**—The Inspec-  
3 tor General of the Department of the Treasury shall con-  
4 duct, supervise, and coordinate audits and investigations  
5 of the Program through the Office of Small Business  
6 Lending Fund Program Oversight established under sub-  
7 section (b).

8 (b) **OFFICE OF SMALL BUSINESS LENDING FUND**  
9 **PROGRAM OVERSIGHT.**—

10 (1) **ESTABLISHMENT.**—There is hereby estab-  
11 lished within the Office of the Inspector General of  
12 the Department of the Treasury a new office to be  
13 named the “Office of Small Business Lending Fund  
14 Program Oversight” to provide oversight of the Pro-  
15 gram.

16 (2) **LEADERSHIP.**—The Inspector General shall  
17 appoint a Special Deputy Inspector General for  
18 SBLF Program Oversight to lead the Office, with  
19 commensurate staff, who shall report directly to the  
20 Inspector General and who shall be responsible for  
21 the performance of all auditing and investigative ac-  
22 tivities relating to the Program.

23 (3) **REPORTING.**—

24 (A) **IN GENERAL.**—The Inspector General  
25 shall issue a report no less than two times a  
26 year to the Congress and the Secretary devoted



1 to the oversight provided by the Office, includ-  
2 ing any recommendations for improvements to  
3 the Program.

4 (B) RECOMMENDATIONS.—With respect to  
5 any deficiencies identified in a report under  
6 subparagraph (A), the Secretary shall either—

7 (i) take actions to address such defi-  
8 ciencies; or

9 (ii) certify to the appropriate commit-  
10 tees of Congress that no action is nec-  
11 essary or appropriate.

12 (4) COORDINATION.—The Inspector General, in  
13 maximizing the effectiveness of the Office, shall  
14 work with other Offices of Inspector General, as ap-  
15 propriate, to minimize duplication of effort and en-  
16 sure comprehensive oversight of the Program.

17 (5) TERMINATION.—The Office shall terminate  
18 at the end of the 6-month period beginning on the  
19 date on which all capital investments are repaid  
20 under the Program or the date on which the Sec-  
21 retary determines that any remaining capital invest-  
22 ments will not be repaid.

23 (6) DEFINITIONS.—For purposes of this sub-  
24 section:

25 gram.

1                   (A) OFFICE.—The term “Office” means  
2                   the Office of Small Business Lending Fund  
3                   Program Oversight established under paragraph  
4                   (1).

5                   (B) INSPECTOR GENERAL.—The term “In-  
6                   spector General” means the Inspector General  
7                   of the Department of the Treasury.

8                   (c) GAO AUDIT.—The Comptroller General of the  
9                   United States shall perform an annual audit of the Pro-  
10                  gram and issue a report to the appropriate committees  
11                  of Congress containing the results of such audit.

12                  (d) REQUIRED CERTIFICATIONS.—

13                  (1) ELIGIBLE INSTITUTION CERTIFICATION.—  
14                  Each eligible institution that participates in the Pro-  
15                  gram must certify that such institution is in compli-  
16                  ance with the requirements of section 103.121 of  
17                  title 31, Code of Federal Regulations, a regulation  
18                  that, at a minimum, requires financial institutions,  
19                  as that term is defined in 31 U.S.C. 5312(a)(2) and  
20                  (c)(1)(A), to implement reasonable procedures to  
21                  verify the identity of any person seeking to open an  
22                  account, to the extent reasonable and practicable,  
23                  maintain records of the information used to verify  
24                  the person’s identity, and determine whether the  
25                  person appears on any lists of known or suspected

1 terrorists or terrorist organizations provided to the  
2 financial institution by any government agency.

3 (2) LOAN RECIPIENTS.—With respect to funds  
4 received by an eligible institution under the Pro-  
5 gram, any business receiving a loan from the eligible  
6 institution using such funds after the date of the en-  
7 actment of this Act shall certify to such eligible in-  
8 stitution that the principals of such business have  
9 not been convicted of a sex offense against a minor  
10 (as such terms are defined in section 111 of the Sex  
11 Offender Registration and Notification Act (42  
12 U.S.C. 16911)).

13 (e) PROHIBITION ON PORNOGRAPHY.—None of the  
14 funds made available under this subtitle may be used to  
15 pay the salary of any individual engaged in activities re-  
16 lated to the Program who has been officially disciplined  
17 for violations of subpart G of the Standards of Ethical  
18 Conduct for Employees of the Executive Branch for view-  
19 ing, downloading, or exchanging pornography, including  
20 child pornography, on a Federal Government computer or  
21 while performing official Federal Government duties.

22 **SEC. 4108. CREDIT REFORM; FUNDING.**

23 (a) CREDIT REFORM.—The cost of purchases of pre-  
24 ferred stock and other financial instruments made as cap-  
25 ital investments under this subtitle shall be determined as

1 provided under the Federal Credit Reform Act of 1990  
2 (2 U.S.C. 661 et seq.).

3 (b) FUNDS MADE AVAILABLE.—There are hereby ap-  
4 propriated, out of funds in the Treasury not otherwise ap-  
5 propriated, such sums as may be necessary to pay the  
6 costs of \$30,000,000,000 of capital investments in eligible  
7 institutions, including the costs of modifying such invest-  
8 ments, and reasonable costs of administering the program  
9 of making, holding, managing, and selling the capital in-  
10 vestments.

11 **SEC. 4109. TERMINATION AND CONTINUATION OF AU-**  
12 **THORITIES.**

13 (a) TERMINATION OF INVESTMENT AUTHORITY.—  
14 The authority to make capital investments in eligible insti-  
15 tutions, including commitments to purchase preferred  
16 stock or other instruments, provided under this subtitle  
17 shall terminate 1 year after the date of enactment of this  
18 Act.

19 (b) CONTINUATION OF OTHER AUTHORITIES.—The  
20 authorities of the Secretary under section 4104 shall not  
21 be limited by the termination date in subsection (a).

22 **SEC. 4110. PRESERVATION OF AUTHORITY.**

23 Nothing in this subtitle may be construed to limit the  
24 authority of the Secretary under any other provision of  
25 law.

1 **SEC. 4111. ASSURANCES.**

2 (a) **SMALL BUSINESS LENDING FUND SEPARATE**  
3 **FROM TARP.**—The Small Business Lending Fund Pro-  
4 gram is established as separate and distinct from the  
5 Troubled Asset Relief Program established by the Emer-  
6 gency Economic Stabilization Act of 2008. An institution  
7 shall not, by virtue of a capital investment under the Small  
8 Business Lending Fund Program, be considered a recipi-  
9 ent of the Troubled Asset Relief Program.

10 (b) **CHANGE IN LAW.**—If, after a capital investment  
11 has been made in an eligible institution under the Pro-  
12 gram, there is a change in law that modifies the terms  
13 of the investment or program in a materially adverse re-  
14 spect for the eligible institution, the eligible institution  
15 may, after consultation with the appropriate Federal  
16 banking agency for the eligible institution, repay the in-  
17 vestment without impediment.

18 **SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-**  
19 **OWNED, VETERAN-OWNED, AND MINORITY-**  
20 **OWNED BUSINESSES.**

21 (a) **STUDY.**—The Secretary shall conduct a study of  
22 the impact of the Program on women-owned businesses,  
23 veteran-owned businesses, and minority-owned businesses.

24 (b) **REPORT.**—Not later than one year after the date  
25 of enactment of this Act, the Secretary shall submit to  
26 Congress a report on the results of the study conducted

1 pursuant to subsection (a). To the extent possible, the  
2 Secretary shall disaggregate the results of such study by  
3 ethnic group and gender.

4 (c) INFORMATION PROVIDED TO THE SECRETARY.—  
5 Eligible institutions that participate in the Program shall  
6 provide the Secretary with such information as the Sec-  
7 retary may require to carry out the study required by this  
8 section.

9 **SEC. 4113. SENSE OF CONGRESS.**

10 It is the sense of Congress that the Federal Deposit  
11 Insurance Corporation and other bank regulators are  
12 sending mixed messages to banks regarding regulatory  
13 capital requirements and lending standards, which is a  
14 contributing cause of decreased small business lending and  
15 increased regulatory uncertainty at community banks.

16 **Subtitle B—Other Provisions**

17 **PART I—SMALL BUSINESS EXPORT PROMOTION**

18 **INITIATIVES**

19 **SEC. 4221. SHORT TITLE.**

20 This part may be cited as the “Export Promotion Act  
21 of 2010”.

1 **SEC. 4222. GLOBAL BUSINESS DEVELOPMENT AND PRO-**  
2 **MOTION ACTIVITIES OF THE DEPARTMENT**  
3 **OF COMMERCE.**

4 (a) INCREASE IN EMPLOYEES WITH RESPONSIBILITY  
5 FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION  
6 ACTIVITIES.—

7 (1) IN GENERAL.—During the 24-month period  
8 beginning on the date of the enactment of this Act,  
9 the Secretary of Commerce shall increase the num-  
10 ber of full-time departmental employees whose pri-  
11 mary responsibilities involve promoting or facili-  
12 tating participation by United States businesses in  
13 the global marketplace and facilitating the entry  
14 into, or expansion of, such participation by United  
15 States businesses. In carrying out this subsection,  
16 the Secretary shall ensure that—

17 (A) the cohort of such employees is in-  
18 creased by not less than 80 persons; and

19 (B) a substantial portion of the increased  
20 cohort is stationed outside the United States.

21 (2) ENHANCED FOCUS ON UNITED STATES  
22 SMALL- AND MEDIUM-SIZED BUSINESSES.—In car-  
23 rying out this subsection, the Secretary shall take  
24 such action as may be necessary to ensure that the  
25 activities of the Department of Commerce relating to  
26 promoting and facilitating participation by United

1 States businesses in the global marketplace include  
2 promoting and facilitating such participation by  
3 small and medium-sized businesses in the United  
4 States.

5 (3) AUTHORIZATION OF APPROPRIATIONS.—  
6 There are authorized to be appropriated to the Sec-  
7 retary for each of the fiscal years 2011 and 2012  
8 such sums as may be necessary to carry out this sec-  
9 tion.

10 (b) ADDITIONAL FUNDING FOR GLOBAL BUSINESS  
11 DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DE-  
12 PARTMENT OF COMMERCE.—

13 (1) IN GENERAL.—There are authorized to be  
14 appropriated to the Secretary of Commerce for the  
15 period beginning on the date of the enactment of  
16 this Act and ending 18 months thereafter,  
17 \$30,000,000 to promote or facilitate participation by  
18 United States businesses in the global marketplace  
19 and facilitating the entry into, or expansion of, such  
20 participation by United States businesses.

21 (2) REQUIREMENTS.—In obligating and ex-  
22 pending the funds authorized to be appropriated by  
23 paragraph (1), the Secretary of Commerce shall give  
24 preference to activities that—



1                   (A) assist small- and medium-sized busi-  
2                   nesses in the United States; and

3                   (B) the Secretary determines will create or  
4                   sustain the greatest number of jobs in the  
5                   United States and obtain the maximum return  
6                   on investment.

7 **SEC. 4223. ADDITIONAL FUNDING TO IMPROVE ACCESS TO**  
8                   **GLOBAL MARKETS FOR RURAL BUSINESSES.**

9           (a) **IN GENERAL.**—There are authorized to be appro-  
10           priated to the Secretary of Commerce \$5,000,000 for each  
11           of the fiscal years 2011 and 2012 for improving access  
12           to the global marketplace for goods and services provided  
13           by rural businesses in the United States.

14           (b) **REQUIREMENTS.**—In obligating and expending  
15           the funds authorized to be appropriated by subsection (a),  
16           the Secretary of Commerce shall give preference to activi-  
17           ties that—

18                   (1) assist small- and medium-sized businesses  
19                   in the United States; and

20                   (2) the Secretary determines will create or sus-  
21                   tain the greatest number of jobs in the United  
22                   States and obtain the maximum return on invest-  
23                   ment.

1 **SEC. 4224. ADDITIONAL FUNDING FOR THE EXPORTECH**  
2 **PROGRAM.**

3 (a) **IN GENERAL.**—There are authorized to be appro-  
4 priated to the Secretary of Commerce \$1 1,000,000 for the  
5 period beginning on the date of the enactment of this Act  
6 and ending 18 months thereafter, to expand ExporTech,  
7 a joint program of the Hollings Manufacturing Partner-  
8 ship Program and the Export Assistance Centers of the  
9 Department of Commerce.

10 (b) **REQUIREMENTS.**—In obligating and expending  
11 the funds authorized to be appropriated by subsection (a),  
12 the Secretary of Commerce shall give preference to activi-  
13 ties that—

14 (1) assist small- and medium-sized businesses  
15 in the United States; and

16 (2) the Secretary determines will create or sus-  
17 tain the greatest number of jobs in the United  
18 States and obtain the maximum return on invest-  
19 ment.

20 **SEC. 4225. ADDITIONAL FUNDING FOR THE MARKET DE-**  
21 **VELOPMENT COOPERATOR PROGRAM OF**  
22 **THE DEPARTMENT OF COMMERCE.**

23 (a) **IN GENERAL.**—There are authorized to be appro-  
24 priated to the Secretary of Commerce for the period begin-  
25 ning on the date of the enactment of this Act and ending  
26 18 months thereafter, \$15,000,000 for the Manufacturing

1 and Services unit of the International Trade Administra-  
2 tion—

3 (1) to establish public-private partnerships  
4 under the Market Development Cooperator Program  
5 of the International Trade Administration; and

6 (2) to underwrite a portion of the start-up costs  
7 for new projects carried out under that Program to  
8 strengthen the competitiveness and market share of  
9 United States industry, not to exceed, for each such  
10 project, the lesser of—

11 (A)  $\frac{1}{3}$  of the total start-up costs for the  
12 project; or

13 (B) \$500,000.

14 (b) REQUIREMENTS.—In obligating and expending  
15 the funds authorized to be appropriated by subsection (a),  
16 the Secretary of Commerce shall give preference to activi-  
17 ties that—

18 (1) assist small- and medium-sized businesses  
19 in the United States; and

20 (2) the Secretary determines will create or sus-  
21 tain the greatest number of jobs in the United  
22 States and obtain the maximum return on invest-  
23 ment.

1 **SEC. 4226. HOLLINGS MANUFACTURING PARTNERSHIP**  
2 **PROGRAM; TECHNOLOGY INNOVATION PRO-**  
3 **GRAM.**

4 (a) HOLLINGS MANUFACTURING PARTNERSHIP PRO-  
5 GRAM.—Section 25(f) of the National Institute of Stand-  
6 ards and Technology Act (15 U.S.C. 278k(f)) is amended  
7 by adding at the end the following:

8 “(7) GLOBAL MARKETPLACE PROJECTS.—In  
9 making awards under this subsection, the Director,  
10 in consultation with the Manufacturing Extension  
11 Partnership Advisory Board and the Secretary of  
12 Commerce, may—

13 “(A) take into consideration whether an  
14 application has significant potential for enhanc-  
15 ing the competitiveness of small and medium-  
16 sized United States manufacturers in the global  
17 marketplace; and

18 “(B) give a preference to applications for  
19 such projects to the extent the Director deems  
20 appropriate, taking into account the broader  
21 purposes of this subsection.”.

22 (b) TECHNOLOGY INNOVATION PROGRAM.—In  
23 awarding grants, cooperative agreements, or contracts  
24 under section 28 of the National Institute of Standards  
25 and Technology Act (15 U.S.C. 278n), in addition to the  
26 award criteria set forth in subsection (c) of that section,

23 ment.

1 the Director of the National Institute of Standards and  
2 Technology may take into consideration whether an appli-  
3 cation has significant potential for enhancing the competi-  
4 tiveness of small- and medium-sized businesses in the  
5 United States in the global marketplace. The Director  
6 shall consult with the Technology Innovation Program Ad-  
7 visory Board and the Secretary of Commerce in imple-  
8 menting this subsection.

9 **SEC. 4227. SENSE OF THE SENATE CONCERNING FEDERAL**  
10 **COLLABORATION WITH STATES ON EXPORT**  
11 **PROMOTION ISSUES.**

12 It is the sense of the Senate that the Secretary of  
13 Commerce should enhance Federal collaboration with the  
14 States on export promotion issues by—

15 (1) providing the necessary training to the staff  
16 at State international trade agencies to enable them  
17 to assist the United States and Foreign Commercial  
18 Service (established by section 2301 of the Export  
19 Enhancement Act of 1988 (15 U.S.C. 4721)) in pro-  
20 viding counseling and other export services to busi-  
21 nesses in their communities; and

22 (2) entering into agreements with State inter-  
23 national trade agencies for those agencies to deliver  
24 export promotion services in their local communities

1 in order to extend the outreach of United States and  
2 Foreign Commercial Service programs.

3 **SEC. 4228. REPORT ON TARIFF AND NONTARIFF BARRIERS.**

4 Not later than 90 days after the date of the enact-  
5 ment of this Act, the Secretary of Commerce, in consulta-  
6 tion with the United States Trade Representative and  
7 other appropriate entities, shall report to Congress on the  
8 tariff and nontariff barriers imposed by Colombia, the Re-  
9 public of Korea, and Panama with respect to exports of  
10 articles from the United States, including articles exported  
11 or produced by small- and medium-sized businesses in the  
12 United States.

13 **PART II—MEDICARE FRAUD**

14 **SEC. 4241. USE OF PREDICTIVE MODELING AND OTHER**  
15 **ANALYTICS TECHNOLOGIES TO IDENTIFY**  
16 **AND PREVENT WASTE, FRAUD, AND ABUSE IN**  
17 **THE MEDICARE FEE-FOR-SERVICE PROGRAM.**

18 (a) **USE IN THE MEDICARE FEE-FOR-SERVICE PRO-**  
19 **GRAM.**—The Secretary shall use predictive modeling and  
20 other analytics technologies (in this section referred to as  
21 “predictive analytics technologies”) to identify improper  
22 claims for reimbursement and to prevent the payment of  
23 such claims under the Medicare fee-for-service program.

1 (b) PREDICTIVE ANALYTICS TECHNOLOGIES RE-  
2 QUIREMENTS.—The predictive analytics technologies used  
3 by the Secretary shall—

4 (1) capture Medicare provider and Medicare  
5 beneficiary activities across the Medicare fee-for-  
6 service program to provide a comprehensive view  
7 across all providers, beneficiaries, and geographies  
8 within such program in order to—

9 (A) identify and analyze Medicare provider  
10 networks, provider billing patterns, and bene-  
11 ficiary utilization patterns; and

12 (B) identify and detect any such patterns  
13 and networks that represent a high risk of  
14 fraudulent activity;

15 (2) be integrated into the existing Medicare fee-  
16 for-service program claims flow with minimal effort  
17 and maximum efficiency;

18 (3) be able to—

19 (A) analyze large data sets for unusual or  
20 suspicious patterns or anomalies or contain  
21 other factors that are linked to the occurrence  
22 of waste, fraud, or abuse;

23 (B) undertake such analysis before pay-  
24 ment is made; and

1           (C) prioritize such identified transactions  
2           for additional review before payment is made in  
3           terms of the likelihood of potential waste, fraud,  
4           and abuse to more efficiently utilize investiga-  
5           tive resources;

6           (4) capture outcome information on adjudicated  
7           claims for reimbursement to allow for refinement  
8           and enhancement of the predictive analytics tech-  
9           nologies on the basis of such outcome information,  
10          including post-payment information about the even-  
11          tual status of a claim; and

12          (5) prevent the payment of claims for reim-  
13          bursement that have been identified as potentially  
14          wasteful, fraudulent, or abusive until such time as  
15          the claims have been verified as valid.

16          (c) IMPLEMENTATION REQUIREMENTS.—

17           (1) REQUEST FOR PROPOSALS.—Not later than  
18           January 1, 2011, the Secretary shall issue a request  
19           for proposals to carry out this section during the  
20           first year of implementation. To the extent the Sec-  
21           retary determines appropriate—

22           (A) the initial request for proposals may  
23           include subsequent implementation years; and



1 (B) the Secretary may issue additional re-  
2 quests for proposals with respect to subsequent  
3 implementation years.

4 (2) FIRST IMPLEMENTATION YEAR.—The initial  
5 request for proposals issued under paragraph (1)  
6 shall require the contractors selected to commence  
7 using predictive analytics technologies on July 1,  
8 2011, in the 10 States identified by the Secretary as  
9 having the highest risk of waste, fraud, or abuse in  
10 the Medicare fee-for-service program.

11 (3) SECOND IMPLEMENTATION YEAR.—Based  
12 on the results of the report and recommendation re-  
13 quired under subsection (e)(1)(B), the Secretary  
14 shall expand the use of predictive analytics tech-  
15 nologies on October 1, 2012, to apply to an addi-  
16 tional 10 States identified by the Secretary as hav-  
17 ing the highest risk of waste, fraud, or abuse in the  
18 Medicare fee-for-service program, after the States  
19 identified under paragraph (2).

20 (4) THIRD IMPLEMENTATION YEAR.—Based on  
21 the results of the report and recommendation re-  
22 quired under subsection (e)(2), the Secretary shall  
23 expand the use of predictive analytics technologies  
24 on January 1, 2014, to apply to the Medicare fee-  
25 for-service program in any State not identified under

1 paragraph (2) or (3) and the commonwealths and  
2 territories.

3 (5) FOURTH IMPLEMENTATION YEAR.—Based  
4 on the results of the report and recommendation re-  
5 quired under subsection (e)(3), the Secretary shall  
6 expand the use of predictive analytics technologies,  
7 beginning April 1, 2015, to apply to Medicaid and  
8 CHIP. To the extent the Secretary determines ap-  
9 propriate, such expansion may be made on a phased-  
10 in basis.

11 (6) OPTION FOR REFINEMENT AND EVALUA-  
12 TION.—If, with respect to the first, second, or third  
13 implementation year, the Inspector General of the  
14 Department of Health and Human Services certifies  
15 as part of the report required under subsection (e)  
16 for that year no or only nominal actual savings to  
17 the Medicare fee-for-service program, the Secretary  
18 may impose a moratorium, not to exceed 12 months,  
19 on the expansion of the use of predictive analytics  
20 technologies under this section for the succeeding  
21 year in order to refine the use of predictive analytics  
22 technologies to achieve more than nominal savings  
23 before further expansion. If a moratorium is im-  
24 posed in accordance with this paragraph, the imple-  
25 mentation dates applicable for the succeeding year

1 or years shall be adjusted to reflect the length of the  
2 moratorium period.

3 (d) CONTRACTOR SELECTION, QUALIFICATIONS, AND  
4 DATA ACCESS REQUIREMENTS.—

5 (1) SELECTION.—

6 (A) IN GENERAL.—The Secretary shall se-  
7 lect contractors to carry out this section using  
8 competitive procedures as provided for in the  
9 Federal Acquisition Regulation.

10 (B) NUMBER OF CONTRACTORS.—The Sec-  
11 retary shall select at least 2 contractors to  
12 carry out this section with respect to any year.

13 (2) QUALIFICATIONS.—

14 (A) IN GENERAL.—The Secretary shall  
15 enter into a contract under this section with an  
16 entity only if the entity—

17 (i) has leadership and staff who—

18 (I) have the appropriate clinical  
19 knowledge of, and experience with, the  
20 payment rules and regulations under  
21 the Medicare fee-for-service program;  
22 and

23 (II) have direct management ex-  
24 perience and proficiency utilizing pre-  
25 dictive analytics technologies nec-

1                    necessary to carry out the requirements  
2                    under subsection (b); or

3                    (ii) has a contract, or will enter into  
4                    a contract, with another entity that has  
5                    leadership and staff meeting the criteria  
6                    described in clause (i).

7                    (B) CONFLICT OF INTEREST.—The Sec-  
8                    retary may only enter into a contract under this  
9                    section with an entity to the extent that the en-  
10                    tity complies with such conflict of interest  
11                    standards as are generally applicable to Federal  
12                    acquisition and procurement.

13                    (3) DATA ACCESS.—The Secretary shall provide  
14                    entities with a contract under this section with ap-  
15                    propriate access to data necessary for the entity to  
16                    use predictive analytics technologies in accordance  
17                    with the contract.

18                    (e) REPORTING REQUIREMENTS.—

19                    (1) FIRST IMPLEMENTATION YEAR REPORT.—  
20                    Not later than 3 months after the completion of the  
21                    first implementation year under this section, the  
22                    Secretary shall submit to the appropriate committees  
23                    of Congress and make available to the public a re-  
24                    port that includes the following:

1 (A) A description of the implementation of  
2 the use of predictive analytics technologies dur-  
3 ing the year.

4 (B) A certification of the Inspector Gen-  
5 eral of the Department of Health and Human  
6 Services that—

7 (i) specifies the actual and projected  
8 savings to the Medicare fee-for-service pro-  
9 gram as a result of the use of predictive  
10 analytics technologies, including estimates  
11 of the amounts of such savings with re-  
12 spect to both improper payments recovered  
13 and improper payments avoided;

14 (ii) the actual and projected savings  
15 to the Medicare fee-for-service program as  
16 a result of such use of predictive analytics  
17 technologies relative to the return on in-  
18 vestment for the use of such technologies  
19 and in comparison to other strategies or  
20 technologies used to prevent and detect  
21 fraud, waste, and abuse in the Medicare  
22 fee-for-service program; and

23 (iii) includes recommendations regard-  
24 ing—

1 (I) whether the Secretary should  
2 continue to use predictive analytics  
3 technologies;

4 (II) whether the use of such tech-  
5 nologies should be expanded in ac-  
6 cordance with the requirements of  
7 subsection (c); and

8 (III) any modifications or refine-  
9 ments that should be made to increase  
10 the amount of actual or projected sav-  
11 ings or mitigate any adverse impact  
12 on Medicare beneficiaries or providers.

13 (C) An analysis of the extent to which the  
14 use of predictive analytics technologies success-  
15 fully prevented and detected waste, fraud, or  
16 abuse in the Medicare fee-for-service program.

17 (D) A review of whether the predictive  
18 analytics technologies affected access to, or the  
19 quality of, items and services furnished to Medi-  
20 care beneficiaries.

21 (E) A review of what effect, if any, the use  
22 of predictive analytics technologies had on  
23 Medicare providers.

24 (F) Any other items determined appro-  
25 priate by the Secretary.

1           (2) SECOND YEAR IMPLEMENTATION RE-  
2           PORT.—Not later than 3 months after the comple-  
3           tion of the second implementation year under this  
4           section, the Secretary shall submit to the appro-  
5           priate committees of Congress and make available to  
6           the public a report that includes, with respect to  
7           such year, the items required under paragraph (1)  
8           as well as any other additional items determined ap-  
9           propriate by the Secretary with respect to the report  
10          for such year.

11          (3) THIRD YEAR IMPLEMENTATION REPORT.—  
12          Not later than 3 months after the completion of the  
13          third implementation year under this section, the  
14          Secretary shall submit to the appropriate committees  
15          of Congress, and make available to the public, a re-  
16          port that includes with respect to such year, the  
17          items required under paragraph (1), as well as any  
18          other additional items determined appropriate by the  
19          Secretary with respect to the report for such year,  
20          and the following:

21                 (A) An analysis of the cost-effectiveness  
22                 and feasibility of expanding the use of pre-  
23                 dictive analytics technologies to Medicaid and  
24                 CHIP.

1           (B) An analysis of the effect, if any, the  
2           application of predictive analytics technologies  
3           to claims under Medicaid and CHIP would have  
4           on States and the commonwealths and terri-  
5           tories.

6           (C) Recommendations regarding the extent  
7           to which technical assistance may be necessary  
8           to expand the application of predictive analytics  
9           technologies to claims under Medicaid and  
10          CHIP, and the type of any such assistance.

11         (f) INDEPENDENT EVALUATION AND REPORT.—

12           (1) EVALUATION.—Upon completion of the first  
13           year in which predictive analytics technologies are  
14           used with respect to claims under Medicaid and  
15           CHIP, the Secretary shall, by grant, contract, or  
16           interagency agreement, conduct an independent eval-  
17           uation of the use of predictive analytics technologies  
18           under the Medicare fee-for-service program and  
19           Medicaid and CHIP. The evaluation shall include an  
20           analysis with respect to each such program of the  
21           items required for the third year implementation re-  
22           port under subsection (e)(3).

23           (2) REPORT.—Not later than 18 months after  
24           the evaluation required under paragraph (1) is initi-  
25           ated, the Secretary shall submit a report to Con-



1       gress on the evaluation that shall include the results  
2       of the evaluation, the Secretary's response to such  
3       results and, to the extent the Secretary determines  
4       appropriate, recommendations for legislation or ad-  
5       ministrative actions.

6       (g) WAIVER AUTHORITY.—The Secretary may waive  
7       such provisions of titles XI, XVIII, XIX, and XXI of the  
8       Social Security Act, including applicable prompt payment  
9       requirements under titles XVIII and XIX of such Act, as  
10      the Secretary determines to be appropriate to carry out  
11      this section.

12      (h) FUNDING.—

13           (1) APPROPRIATION.—Out of any funds in the  
14      Treasury not otherwise appropriated, there is appro-  
15      priated to the Secretary to carry out this section,  
16      \$100,000,000 for the period beginning January 1,  
17      2011, to remain available until expended.

18           (2) RESERVATIONS.—

19           (A) INDEPENDENT EVALUATION.—The  
20      Secretary shall reserve not more than 5 percent  
21      of the funds appropriated under paragraph (1)  
22      for purposes of conducting the independent  
23      evaluation required under subsection (f).

24           (B) APPLICATION TO MEDICAID AND  
25      CHIP.—The Secretary shall reserve such portion

23      ment.

1           of the funds appropriated under paragraph (1)  
2           as the Secretary determines appropriate for  
3           purposes of providing assistance to States for  
4           administrative expenses in the event of the ex-  
5           pansion of predictive analytics technologies to  
6           claims under Medicaid and CHIP.

7           (i) DEFINITIONS.—In this section:

8           (1) COMMONWEALTHS AND TERRITORIES.—The  
9           term “commonwealth and territories” includes the  
10          Commonwealth of Puerto Rico, the Virgin Islands,  
11          Guam, American Samoa, the Commonwealth of the  
12          Northern Mariana Islands, and any other territory  
13          or possession of the United States in which the  
14          Medicare fee-for-service program, Medicaid, or  
15          CHIP operates.

16          (2) CHIP.—The term “CHIP” means the Chil-  
17          dren’s Health Insurance Program established under  
18          title XXI of the Social Security Act (42 U.S.C.  
19          1397aa et seq.).

20          (3) MEDICAID.—The term “Medicaid” means  
21          the program to provide grants to States for medical  
22          assistance programs established under title XIX of  
23          the Social Security Act (42 U.S.C. 1396 et seq.).

1           (4) **MEDICARE BENEFICIARY.**—The term  
2           “Medicare beneficiary” means an individual enrolled  
3           in the Medicare fee-for-service program.

4           (5) **MEDICARE FEE-FOR-SERVICE PROGRAM.**—  
5           The term “Medicare fee-for-service program” means  
6           the original medicare fee-for-service program under  
7           parts A and B of title XVIII of the Social Security  
8           Act (42 U.S.C. 1395 et seq.).

9           (6) **MEDICARE PROVIDER.**—The term “Medi-  
10          care provider” means a provider of services (as de-  
11          fined in subsection (u) of section 1861 of the Social  
12          Security Act (42 U.S.C. 1395x)) and a supplier (as  
13          defined in subsection (d) of such section).

14          (7) **SECRETARY.**—The term “Secretary” means  
15          the Secretary of Health and Human Services, acting  
16          through the Administrator of the Centers for Medi-  
17          care & Medicaid Services.

18          (8) **STATE.**—The term “State” means each of  
19          the 50 States and the District of Columbia.

20                           **TITLE V—BUDGETARY**  
21                           **PROVISIONS**

22 **SEC. 5001. DETERMINATION OF BUDGETARY EFFECTS.**

23           The budgetary effects of this Act, for the purpose of  
24           complying with the Statutory Pay-As-You-Go-Act of 2010,  
25           shall be determined by reference to the latest statement

1 titled “Budgetary Effects of PAYGO Legislation” for this  
2 Act, submitted for printing in the Congressional Record  
3 by the Chairman of the Senate Budget Committee, pro-  
4 vided that such statement has been submitted prior to the  
5 vote on passage.

# Appendix B: Summary of the Small Business Jobs and Credit Act of 2010

## Summary of the Small Business Jobs Act

August 5, 2010

### Provisions to Provide Access to Capital

**100% Exclusion of Small Business Capital Gains.** Generally, non-corporate taxpayers may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. For stock acquired after February 17, 2009 and before January 1, 2011, the exclusion is increased to 75 percent. At the time of sale, however, 28% of the excluded gain will be treated as a tax preference item subject to the alternative minimum tax (AMT). Qualifying small business stock is from a C corporation whose gross assets do not exceed \$50 million (including the proceeds received from the issuance of the stock) and who meets a specific active business requirement. The amount of gain eligible for the exclusion is limited to the greater of ten times the taxpayer's basis in the stock or \$10 million of gain from stock in that corporation. This bill would temporarily increase further the amount of the exclusion to 100 percent of the gain from the sale of qualifying small business stock that is acquired after the date of enactment in 2010 and held for more than five years. Additionally, the bill eliminates the AMT preference item attributable for that sale. *This provision is estimated to cost \$518 million over ten years.*

**General Business Credit Carried Back Five Years.** Under current law, a business' unused general business credit may generally be carried back to offset taxes paid in the previous year, and the remaining amount may be carried forward for 20 years to offset future tax liabilities. This bill extends the one year carryback for general business credits to five years for certain small businesses. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years. *This provision is estimated to cost \$107 million over ten years.*

**General Business Credit Not Subject to AMT.** Under the Alternative Minimum Tax (AMT), taxpayers may generally only claim allowable general business credits against their regular tax liability, and only to the extent that their regular tax liability exceeds their AMT liability. A few credits may be used to offset AMT liability, such as the credit for small business employee health insurance expense. This bill allows certain small businesses to use all types of general business credits against their AMT. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with \$50 million or less in average annual gross receipts for the prior three years. *This provision is estimated to cost \$977 million over ten years.*

**S Corp Holding Period.** Generally, a C corporation converting to an S corporation must hold onto any appreciated assets for 10 years following its conversion or face a business-level tax imposed on the built-in gain at the highest corporate rate of 35 percent. This holding period is reduced where the 7<sup>th</sup> taxable year in the holding period preceded the taxable year beginning in 2009 or 2010. This bill temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years if the 5<sup>th</sup> taxable year in the holding period precedes the taxable year beginning in 2011. *This provision is estimated to cost \$70 million over ten years.*

**Increase Small Business Administration (SBA) Loan Limits.** This provision increases 7(a) loan limits from \$2 million to \$5 million, 504 loans from \$1.5 million to \$5.5 million, and microloans from \$35,000 to \$50,000. It also increases the government guarantee on 7(a) loan limits, while providing the elimination of borrower fees on 7(a) and 504 loans through December 31, 2010. It increases the 7(a) Express Loans from \$300,000 to \$1 million to increase working capital to small businesses. The package also includes Intermediary Lending Pilot program, which allows the SBA to make direct loans to eligible nonprofit lending intermediaries, in turn allowing them to make loans to new or growing small businesses. SBA has estimated that the loan increase would increase lending to small businesses by \$5 billion in the first year. *This provision is estimated to cost \$26 million over two years.*

**Extend Elimination of Small Business Administration (SBA) Loan Fees.** This provision extends the American Recovery and Reinvestment Act small business lending program that eliminates the fees normally charged for loans through the SBA 7(a) and 504 loan programs and increases the government guarantees on 7(a) loans from 75% to 90%. Since its creation, the program has supported over \$26 billion in small business lending, which has helped to create or retain over 650,000 jobs. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to cost \$505 million over ten years.*

**State Small Business Credit Initiative (SSBCI).** The bill provides \$1.5 billion in grants to States to support small business lending programs. States will apply for the funds to be used for approved programs that leverage private lenders to extend greater credit to small businesses and manufacturers. The program allows States to build upon successful models for state small business programs, including capital access, loan participation, collateral support, State-run venture capital, and credit guarantee programs. Funds are allocated to the States using formulas based on certain State employment and unemployment rate data. States have nine months to apply for the program. If the state does not apply, the largest municipalities of the states can apply. This provision was increased by \$600 million in the substitute amendment introduced on July 21, 2010. *This provision is estimated to cost \$1.5 billion over ten years.*

**Small Business Lending Fund.** The bill authorizes the creation of the Small Business Lending Fund to provide Treasury with the ability to purchase preferred stock and other debt instruments from eligible financial institutions with less than \$10 billion in total assets. Eligible institutions include insured depositories, bank and savings and loan holding companies, and certain community development loan funds. Eligible institutions with less than \$1 billion in total assets can apply to receive investments of up to five percent of their risk-weighted assets. Eligible institutions between \$1 billion and \$10 billion in total assets can receive investments of up to three percent of risk-weighted assets. Participating institutions will pay a five percent dividend rate on the preferred stock, but this rate can be reduced to as low as one percent if a bank demonstrates a 10 percent increase in small business lending relative to a baseline set using the four quarters prior to enactment. The dividend rate is increased to seven percent after two years, if the bank does not increase its small business lending. To encourage timely repayment, the rate increases to nine percent after four and a half years. Treasury's authority to make capital investments under the program is terminated one year after the date of enactment. This provision was added in the substitute amendment introduced on July 27, 2010. *This provision is estimated to raise \$1.1 billion over ten years.*

## **Provisions to Encourage Investment**

**Increase of Section 179 Expensing and Expansion to Certain Real Property.** Under current law, taxpayers may elect to write-off the costs of certain tangible personal property that is purchased for use in the active conduct of a trade or business in the year of acquisition in lieu of recovering these costs over time through depreciation. For the taxable year beginning in 2010, taxpayers may write-off up to \$250,000 of these capital expenditures subject to a phase-out once these capital expenditures exceed \$800,000. After 2010, the thresholds revert to \$25,000 and \$200,000, respectively. This bill would increase the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. Within those thresholds, this bill would allow taxpayers to expense up to \$250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. *This provision is estimated to cost \$2.2 billion over ten years.*

**Extension of Bonus Depreciation.** Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write-off 50 percent of the cost of depreciable property placed in service in those years. This bill extends the additional, first-year 50

percent depreciation for qualifying property purchased and placed in service in 2010. *This provision is estimated to cost \$5.5 billion over ten years.*

**Special Rule for Long-Term Contract Accounting.** This provision decouples bonus depreciation from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less in order to allow contractors that do not complete contracts within the same year in which they are entered into to benefit from bonus depreciation. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to have no cost over ten years.*

## **Provisions to Promote Entrepreneurship**

**Increased Deduction for Start-up Expenditures.** Under current law, taxpayers may deduct up to \$5,000 in trade or business start-up expenditures. The amount that a business may deduct is reduced by the amount by which start-up expenditures exceed \$50,000. Start-up expenditures are defined as expenses paid or incurred in connection with investigating or creating an active trade or business, which would be deductible if paid or incurred in connection with the operation of an existing trade or business. For the taxable year beginning in 2010, this bill would temporarily increase the amount of start-up expenditures that may be deducted to \$10,000 subject to a \$60,000 phase-out threshold. *This provision is estimated to cost \$230 million over ten years.*

**Small Business Export Promotion.** The Office of the United States Trade Representative (USTR) plays an important role in promoting U.S. exports, and recently increased its focus on small business export promotion in particular. USTR has done so in several respects, including the creation of the position of Assistant USTR for Small Business, Market Access, and Industrial Competitiveness within USTR. This official will help ensure that USTR's trade policy addresses the challenges facing smaller U.S. exporters and promotes global export opportunities for them. The bill authorizes funds for USTR's market access and trade enforcement activities targeted at helping small business increase market access and ensure a level playing field on which to sell their U.S. made goods. *This provision has no cost associated with it.*

**Export Promotion Act.** The substitute would assist U.S. small and mid-sized businesses that are looking to export their products but do not have the resources or know-how to find new international customers. First, it increases the activities and staffing of the Department of Commerce in carrying out its mission to promote U.S. exports. Second, it authorizes increased funding for export grants available to industry associations and non-profit institutions. Finally, the amendment requires that decisions to fund manufacturing and innovation grants include exporting potential as one of the application considerations. The Department of Commerce's International Trade Administration historically has shown that for every \$1 million dollars in appropriated funds, \$56.6 million in exports are seen in return. This legislation is projected to support over 40,000 jobs once the funds are appropriated. This provision was added in the substitute amendment introduced on July 27, 2010. *This change has no cost associated with it.*

**Enhanced Small Business Trade Opportunities.** This provision improves the SBA's trade and export finance programs and elevates the Office of International Trade within the SBA. It adds Export Finance Specialists to the SBA's trade counseling programs. It also establishes the State Export Promotion Grant Program (STEP), which would increase the number of small businesses that export. In addition, it improves coordination between federal and state agencies and SBA resource partners. This leverages more than \$1 billion in export capital for small businesses, which will create or save as many as 40,000 – 50,000 jobs in 2010. *This provision is estimated to cost \$58 million over two years.*

**Improved Small Business Contracting.** Removes the red tape and closes loopholes that too often put government work into the hands of multinational corporations instead of Main Street businesses. Increasing contracts to small businesses by just 2 percent can create more than 60,000 jobs. This legislation also provides for a periodic review of small business size standards to ensure that size indicators are consistent with inflation and industry growth of small businesses. It establishes accountability of large business prime contractors for prompt payment to small business subcontractors. *This provision is estimated to cost \$142 million over two years.*

**Relief for Community Partners.** This provision allows SBA to waive or reduce the non-federal share of its funding requirements for up to one year, through fiscal year 2012. It also gives relief to Women's Business Centers (WBCs) and microloan intermediaries, which provide assistance to underserved communities to start and grow small businesses. The SBA estimates that the microloan program will create or save more than 10,000 jobs in Fiscal Year 2011. This legislation also provides an additional \$50 million for the Small Business Development Centers to provide technical assistance to small business owners and entrepreneurs. *This provision is estimated to cost \$50 million for one year.*

### **Provisions to Promote Small Business Fairness**

**Modify Section 6707A Penalty.** The bill revises section 6707A of the Internal Revenue Code to make the penalty for failing to disclose a reportable transaction proportionate to the underlying tax savings. The penalty for failure to disclose reportable transactions to the IRS would be set at 75 percent of the tax benefit received. Reportable transactions are defined as investments in transactions that the IRS has identified as listed tax shelters or that have characteristics of tax shelters, including large losses or confidentiality agreements. The minimum penalty under this bill is \$10,000 for corporations and \$5,000 for individuals, and the maximum penalty is \$200,000 for corporations and \$100,000 for individuals. The bill also requires the IRS to provide an annual report to the Senate Finance Committee and to the House Ways and Means Committee giving an account of certain tax-shelter related penalties asserted during the year. *This provision is estimated to cost \$176 million over ten years.*

**Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax.** Under current law, business owners are not permitted to deduct the cost of health insurance for themselves and their family members for purposes of calculating self-employment tax. This provision would allow business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax. *This provision is estimated to cost \$1.9 billion over ten years.*

**Enhancements to Small Business Contracting Parity Programs.** This provision removes the priority one contracting program has over another, making clear that no single restricted competition program has priority over another. It places the small business contracting programs, HUBZone, 8(a), Service-Disabled Veterans and Women-Owned Businesses on a level playing field when competing for Federal contracts. *This provision has no cost associated with it.*

**Improvements to Disaster Recovery to Include Aquaculture.** Currently, the SBA excludes aquaculture businesses from receiving SBA Economic Injury Disaster Loans (EIDL). This section would allow SBA, provided it does not duplicate other Federal disaster programs for that disaster, to make economic injury disaster loans to these businesses. *This provision has no cost associated with it.*

**Require Federal Agencies to Expand Their Assessments of Economic Effects on Small Businesses.** This provision strengthens the Regulatory Flexibility Act by requiring agencies to respond to the SBA Chief Counsel of Advocacy's comments in the final rule. It also seeks more independence for the Office of Advocacy by mandating a separate line item in the SBA's annual budget. *This provision has no cost associated with it.*



**Remove Cellular Phones from “Listed Property.”** This provision would “delist” cell phones so their cost can be deducted or depreciated like other business property, without onerous recordkeeping requirements. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to cost \$410 million over ten years.*

## **Offsets – Reducing the Tax Gap**

**Require Information Reporting for Rental Property Expense Payments.** The bill requires persons receiving rental income from real property to file information returns to the IRS and to service providers reporting payments of \$600 or more during the year for rental property expenses. In general, there is an exception for individuals renting their principal residences, including active members of the military, from the reporting requirements. *This provision is estimated to raise \$2.5 billion over ten years.*

**Increase Penalties for Failure to File Information Returns.** The bill increases penalties for failure to timely file information returns to the IRS. The first-tier penalty is increased from \$15 to \$30, and the calendar year maximum is increased from \$75,000 to \$250,000. The second-tier penalty is increased from \$30 to \$60, and the calendar year maximum is increased from \$150,000 to \$500,000. The third-tier penalty is increased from \$50 to \$100, and the calendar year maximum is increased from \$250,000 to \$1.5 million. For small filers, the calendar year maximum is increased from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from \$100 to \$250. The penalty amounts are adjusted every five years for inflation. Penalties for failure to file information returns to payees are similarly increased. *This provision is estimated to raise \$421 million over ten years.*

**Application of Continuous Levy to Tax Liabilities of Certain Federal Contractors.** Generally, before the IRS can issue a levy for an unpaid Federal tax liability, it must give the taxpayer an opportunity for a collection due process (CDP) hearing. Prior to the Federal government making disbursements to Federal contractors, an automated check for a Federal tax liability occurs. When such a liability is identified, the IRS issues a CDP notice to the contractor but cannot levy on payments to the contractor until the CDP requirements are complete. The bill allows IRS to issue levies prior to a CDP hearing on Federal tax liabilities of Federal contractors. It also provides the taxpayer with an opportunity for a CDP hearing within a reasonable time after a levy is issued. *This provision is estimated to raise \$1.1 billion over ten years.*

## **Offsets – Promoting Retirement Preparation**

**Allow Participants in Governmental 457 Plans to Treat Elective Deferrals as Roth Contributions.** Beginning in 2011, the bill would allow retirement savings plans sponsored by state and local governments (governmental 457(b) plans) to include Roth accounts, which are currently available only in 401(k) and 403(b) plans and will be available in the federal Thrift Savings Plan in 2011. Contributions to Roth accounts are made on an after-tax basis, but distributions of both principal and earnings are generally tax-free. *This provision is estimated to raise \$506 million over ten years.*

**Allow Rollovers from Elective Deferral Plans to Roth Designated Accounts.** The bill would allow 401(k), 403(b), and governmental 457(b) plans to permit participants to roll their pre-tax account balances into a Roth account. The amount of the rollover would be includible in taxable income except to the extent it is the return of after-tax contributions. If the rollover is made in 2010, the participant can elect to pay the tax in 2011 and 2012. Plans would be able to allow these rollovers immediately upon enactment. *This provision is estimated to raise \$5.1 billion over ten years.*

**Permit Partial Annuitization of a Nonqualified Annuity Contract.** The substitute would allow holders of nonqualified annuities (that is, annuity contracts held outside of a tax-qualified retirement plan or IRA) to elect to receive a portion of the contract in the form of a stream of annuity contracts, leaving the remainder of the contract to accumulate income on a tax-deferred basis. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to raise \$956 million over ten years.*

## **Offsets – Closing Unintended Loopholes**

**Crude Tall Oil Ineligible for Cellulosic Biofuel Producer Credit.** In 2008, Congress enacted a \$1.01 per gallon tax credit for the production of biofuel from cellulosic feedstocks in order to encourage the development of new production capacity for biofuels that are not derived from food source materials. Some taxpayers are seeking to claim the cellulosic biofuel tax credit for processed fuels that are highly corrosive, such as crude tall oil (another waste by-product of the paper manufacturing process). The bill limits eligibility for the tax credit to fuels that are not highly corrosive (i.e., fuels that could be used in a car engine or in a home heating application). *This provision is estimated to raise \$1.8 billion over ten years.*

**Source Rules on Guarantees.** Under current law, the treatment of guarantee fees under the source rules is unclear. If guarantee fees are sourced like services, they are sourced according to the location in which the services were performed. If the guarantee fees are sourced like interest, they are sourced by reference to the country of residence of the payor. A recent court case determined that guarantee fees should be sourced like services. Sourcing guarantee fees in a manner similar to services would permit U.S. subsidiaries of foreign corporations to engage in earning stripping transactions by making deductible payments to foreign affiliates (thereby reducing their U.S. income tax liability) without the imposition of U.S. withholding tax on the payment. The substitute would provide that amounts received directly or indirectly for guarantees of indebtedness of the payor issued after the date of enactment will be sourced like interest and, as a result, if paid by U.S. taxpayers to foreign persons will generally be subject to withholding tax. No inference is intended with respect to the treatment of guarantees issued before the date of enactment. This provision was added in the substitute amendment introduced on July 21, 2010. *This provision is estimated to raise \$2 billion over ten years.*

## **Other Provisions**

**Use of Predictive Modeling and Other Analytics Technologies to Identify and Prevent Waste, Fraud and Abuse in the Medicare Fee-for Service Program.** The bill would require the Secretary to contract with private companies to conduct predictive modeling and other analytics technologies to identify and prevent payment of improper claims submitted under Parts A and B of Medicare. The Secretary would be required to identify the ten states that have the highest risk of waste, fraud and abuse in the Medicare program, and for one year, predictive modeling and other analytics technologies would be used to identify and stop fraudulent claims in these states. After this initial year, the Inspector General of the Department of HHS (HHS OIG) would report to Congress on the actual savings to the Medicare fee-for-service during the preceding year, projected future savings to the program as a result of the use of these technologies, and the return on investments as a result of the predictive analytics technologies. The Secretary would be required to report to Congress on the effect, if any, the technologies have on Medicare beneficiaries and providers. If the HHS OIG certifies more than nominal savings from the use of the technology, its use would be expanded to ten additional states for another year. After the second year of use, the Secretary and the HHS OIG, would conduct a second analysis and certification. If this analysis and certification are positive, the technologies would be expanded to the Medicare fee-for-service program in every state for an additional year. Finally, after that additional year, a third analysis would be conducted, and if positive, the Secretary would expand the use of the technologies to

Medicaid and the Children's Health Insurance Program (CHIP). If during any evaluation and certification, the HHS OIG does not certify savings, a moratorium would be imposed on the expansion of the technologies for one year. This provision was added in the substitute amendment introduced on July 27, 2010. *This change increases the cost of the bill by \$930 million over ten years.*



## Appendix C: Joint Committee on Taxation Reports

**TECHNICAL EXPLANATION OF THE TAX PROVISIONS  
IN SENATE AMENDMENT 4594 TO H.R. 5297,  
THE “SMALL BUSINESS JOBS ACT OF 2010,” SCHEDULED  
FOR CONSIDERATION BY THE SENATE ON SEPTEMBER 16, 2010**

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



September 16, 2010  
JCX-47-10

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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of the tax provisions contained in Senate Amendment 4594 to H.R. 5297, the “Small Business Jobs Act of 2010,” scheduled for consideration by the Senate on September 16, 2010. Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the “Small Business Jobs Act of 2010,” Scheduled for Consideration by the Senate on September 16, 2010*, (JCX-47-10), September 16, 2010. This document can also be found on our website at [www.jct.gov](http://www.jct.gov).



## I. SMALL BUSINESS RELIEF

### A. Providing Access to Capital

#### 1. Temporary exclusion of 100 percent of gain on certain small business stock (sec. 2011 of the bill and sec. 1202 of the Code)

##### Present Law

##### In general

Individuals generally may exclude 50 percent (60 percent for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years.<sup>2</sup> The amount of gain eligible for the exclusion by an individual with respect to any corporation is the greater of (1) ten times the taxpayer's basis in the stock or (2) \$10 million. To qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed \$50 million. The corporation also must meet certain active trade or business requirements.

The portion of the gain includible in taxable income is taxed at a maximum rate of 28 percent under the regular tax.<sup>3</sup> A percentage of the excluded gain is an alternative minimum tax preference;<sup>4</sup> the portion of the gain includible in alternative minimum taxable income is taxed at a maximum rate of 28 percent under the alternative minimum tax.

Gain from the sale of qualified small business stock generally is taxed at effective rates of 14 percent under the regular tax<sup>5</sup> and (i) 14.98 percent under the alternative minimum tax for dispositions before January 1, 2011; (ii) 19.88 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired before January 1, 2001; and (iii) 17.92 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired after December 31, 2000.<sup>6</sup>

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<sup>2</sup> Sec. 1202.

<sup>3</sup> Sec. 1(h).

<sup>4</sup> Sec. 57(a)(7). In the case of qualified small business stock, the percentage of gain excluded from gross income which is an alternative minimum tax preference is (i) seven percent in the case of stock disposed of in a taxable year beginning before 2011; (ii) 42 percent in the case of stock acquired before January 1, 2001, and disposed of in a taxable year beginning after 2010; and (iii) 28 percent in the case of stock acquired after December 31, 2000, and disposed of in a taxable year beginning after 2010.

<sup>5</sup> The 50 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.

<sup>6</sup> The amount of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. The amount so included is the sum of (i) 50 percent (the percentage included in taxable income) of the total gain and (ii) the applicable preference percentage of the one-half gain that is excluded from taxable income.

### **Temporary increase in exclusion**

The percentage exclusion for qualified small business stock acquired after February 17, 2009, and before January 1, 2011, is increased to 75 percent. As a result of the increased exclusion, gain from the sale of this qualified small business stock held at least five years is taxed at effective rates of seven percent under the regular tax<sup>7</sup> and 12.88 percent under the alternative minimum tax.<sup>8</sup>

### **Explanation of Provision**

Under the provision, the percentage exclusion for qualified small business stock acquired during 2010 is increased to 100 percent and the minimum tax preference does not apply. Thus, no regular tax or alternative minimum tax is imposed on the sale of this stock held at least five years.

### **Effective Date**

The provision is effective for stock issued after the date of enactment and before January 1, 2011.

## **2. Five-year carryback of general business credit of eligible small business (sec. 2012 of the bill and sec. 39 of the Code)**

### **Present Law**

The general business credit generally may not exceed the excess of the taxpayer's net income tax over the greater of the taxpayer's tentative minimum tax or 25 percent of so much of the taxpayer's net regular tax liability as exceeds \$25,000.<sup>9</sup> General business credits in excess of this limitation may be carried back one year and forward up to 20 years.<sup>10</sup>

### **Explanation of Provision**

The provision extends the carryback period for eligible small business credits from one to five years. Under the provision, eligible small business credits are defined as the sum of the general business credits determined for the taxable year with respect to an eligible small business. An eligible small business is, with respect to any taxable year, a corporation, the stock of which is not publicly traded, or a partnership which meets the gross receipts test of section

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<sup>7</sup> The 25 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.

<sup>8</sup> The 46 percent of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. Forty-six percent is the sum of 25 percent (the percentage of total gain included in taxable income) plus 21 percent (the percentage of total gain which is an alternative minimum tax preference).

<sup>9</sup> Sec. 38(c). The general business credit is the sum of the credits allowed under sec. 38(b).

<sup>10</sup> Sec. 39.

448(c), substituting \$50 million for \$5 million each place it appears.<sup>11</sup> In the case of a sole proprietorship, the gross receipts test is applied as if it were a corporation. Credits determined with respect to a partnership or S corporation are not treated as eligible small business credits by a partner or shareholder unless the partner or shareholder meets the gross receipts test for the taxable year in which the credits are treated as current year business credits.

### **Effective Date**

The provision is effective for credits determined in the taxpayer's first taxable year beginning after December 31, 2009.

### **3. General business credit of eligible small business not subject to alternative minimum tax (sec. 2013 of the bill and sec. 38 of the Code)**

#### **Present Law**

For any taxable year, the general business credit, which is the sum of the various business credits, generally may not exceed the excess of the taxpayer's net income tax over the greater of the taxpayer's tentative minimum tax or 25 percent of so much of the taxpayer's net regular tax liability as exceeds \$25,000. Any general business credit in excess of this limitation may be carried back one year and forward up to 20 years. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount. However, in applying the tax liability limitation to certain specified credits that are part of the general business credit, the tentative minimum tax is treated as being zero.<sup>12</sup> Thus, the specified credits may offset both regular and alternative minimum tax liability.

#### **Description of Proposal**

The provision provides that the tentative minimum tax is treated as being zero for eligible small business credits. Thus, an eligible small business credit may offset both regular and alternative minimum tax liability. Under the provision, eligible small business credits are defined as the sum of the general business credits determined for the taxable year with respect to an eligible small business. An eligible small business is, with respect to any taxable year, a corporation, the stock of which is not publicly traded, or a partnership, which meets the gross receipts test of section 448(c), substituting \$50 million for \$5 million each place it appears.<sup>13</sup> In the case of a sole proprietorship, the gross receipts test is applied as if it were a corporation.

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<sup>11</sup> For example, a calendar year corporation meets the \$50 million gross receipts test for the 2010 taxable year, if as of January 1, 2010, its average annual gross receipts for the 3-taxable-year period ending December 31, 2009, does not exceed \$50 million. The aggregation and special rules under sections 448(c)(2) and (3) apply in applying the test.

<sup>12</sup> See section 38(c)(4)(B) for a list of the specified credits.

<sup>13</sup> For example, a calendar year corporation meets the \$50 million gross receipts test for the 2010 taxable year, if as of January 1, 2010, if its average annual gross receipts for the 3-taxable-year period ending December 31, 2009, does not exceed \$50 million. The aggregation and special rules under sections 448(c)(2) and (3) apply for purposes of the test.

Credits determined with respect to a partnership or S corporation are not treated as eligible small business credits by a partner or shareholder unless the partner or shareholder meets the gross receipts test for the taxable year in which the credits are treated as current year business credits.

#### **Effective Date**

The proposal is effective for credits determined in a taxpayer's first taxable year beginning after December 31, 2009.

#### **4. Temporary reduction in recognition period for S corporation built-in gains tax (sec. 2014 of the bill and sec. 1374 of the Code)**

##### **Present Law**

A “small business corporation” (as defined in section 1361(b)) may elect to be treated as an S corporation. Unlike C corporations, S corporations generally pay no corporate-level tax. Instead, items of income and loss of an S corporation pass through to its shareholders. Each shareholder takes into account separately its share of these items on its individual income tax return.<sup>14</sup>

A corporate level tax, at the highest marginal rate applicable to corporations (currently 35 percent) is imposed on an S corporation's gain that arose prior to the conversion of the C corporation to an S corporation and is recognized by the S corporation during the recognition period, i.e., the 10-year period beginning with the first day of the first taxable year for which the S election is in effect.<sup>15</sup> For any taxable year beginning in 2009 and 2010, no tax is imposed on an S corporation under section 1374 if the seventh taxable year in the corporation's recognition period preceded such taxable year.<sup>16</sup> Thus, with respect to gain that arose prior to the conversion of a C corporation to an S corporation, for taxable years beginning in 2009 and 2010, no tax is imposed under section 1374 after the seventh taxable year the S corporation election is in effect.

The built-in gains tax also applies to gains with respect to net recognized built-in gain attributable to property received by an S corporation from a C corporation in a carryover basis transaction.<sup>17</sup> In the case of built-in gain attributable to an asset received by an S corporation from a C corporation in a carryover basis transaction, the recognition period rules are applied by

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<sup>14</sup> Sec. 1366.

<sup>15</sup> Sec. 1374(d)(7)(A). The 10-year period refers to ten calendar years from the first day of the first taxable year for which the corporation was an S corporation.

<sup>16</sup> Sec. 1374(d)(7)(B).

<sup>17</sup> Sec. 1374(d)(8). With respect to such assets, the recognition period runs from the day on which such assets were acquired (in lieu of the beginning of the first taxable year for which the corporation was an S corporation). Sec. 1374(d)(8)(B).

substituting the date such asset was acquired by the S corporation in lieu of the beginning of the first taxable year for which the corporation was an S corporation.<sup>18</sup>

Gains recognized in the recognition period are not built-in gains to the extent they are shown to have arisen while the S election was in effect or are offset by recognized built-in losses. The amount of the built-in gains tax is treated as a loss taken into account by the shareholders in computing their individual income tax.<sup>19</sup>

### **Explanation of Provision**

For taxable years beginning in 2011, the provision provides that for purposes of computing the built-in gains tax, the "recognition period" is the five-year period<sup>20</sup> beginning with the first day of the first taxable year for which the corporation was an S corporation.

### **Effective Date**

The provision is effective for taxable years beginning after December 31, 2010.

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<sup>18</sup> Shareholders continue to take into account all items of gain and loss under section 1366.

<sup>19</sup> Sec. 1366(f)(2).

<sup>20</sup> The 5-year period refers to 5 calendar years from the first day of the first taxable year for which the corporation was an S corporation.

## **B. Encouraging Investment**

### **1. Increase and expand expensing of certain depreciable business assets (sec. 2021 of the bill and sec. 179 of the Code)**

#### **Present Law**

A taxpayer that satisfies limitations on annual investment may elect under section 179 to deduct (or “expense”) the cost of qualifying property, rather than to recover such costs through depreciation deductions.<sup>21</sup> For taxable years beginning in 2010, the maximum amount that a taxpayer may expense is \$250,000 of the cost of qualifying property placed in service for the taxable year. The \$250,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$800,000.<sup>22</sup> In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2011 is treated as qualifying property.

For taxable years beginning in 2011 and thereafter, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to \$25,000 of the cost of qualifying property placed in service for the taxable year. The \$25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$200,000. The \$25,000 and \$200,000 amounts are not indexed. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software).

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.<sup>23</sup>

#### **Explanation of Provision**

The provision increases the maximum amount a taxpayer may expense under section 179 to \$500,000 and increases the phase-out threshold amount to \$2 million for taxable years

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<sup>21</sup> Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an enterprise zone (sec. 1397A), a renewal community (sec. 1400J), or the Gulf Opportunity Zone (sec. 1400N(e)).

<sup>22</sup> The temporary \$250,000 and \$800,000 amounts were enacted in the Economic Stimulus Act of 2008, Pub. L. No. 110-185, extended for taxable years beginning in 2009 by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and extended for taxable years beginning in 2010 by the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147.

<sup>23</sup> Sec. 179(c)(1).

beginning in 2010 and 2011. Thus, the provision provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2009 and before 2012, is \$500,000 of the cost of qualifying property placed in service for the taxable year. The \$500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$2 million.

The provision also temporarily expands the definition of property qualifying for section 179 to include certain real property—specifically, qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.<sup>24</sup> The maximum amount with respect to real property that may be expensed under the proposal is \$250,000.<sup>25</sup> In addition, section 179 deductions attributable to qualified real property that are disallowed under the trade or business income limitation may only be carried over to taxable years in which the definition of eligible section 179 property includes qualified real property. Thus under the provision, if a taxpayer's section 179 deduction for 2010 with respect to qualified real property is limited by the taxpayer's active trade or business income, such disallowed amount may be carried over to 2011 in the manner under present law. Any such amounts that are not used in 2011, plus any 2011 disallowed section 179 deductions attributable to qualified real property, are treated as property placed in service in 2011 for purposes of computing depreciation. The carryover amount from 2010 is considered placed in service on the first day of the 2011 taxable year.<sup>26</sup>

The provision also permits a taxpayer to elect to exclude real property from the definition of section 179 property.

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<sup>24</sup> For purposes of the provision, qualified leasehold improvement property has the meaning given such term under section 168(e)(6), qualified restaurant property has the meaning given such term under section 168(e)(7) (and includes a building described in section 168(e)(7)(A)(i) that is placed in service after December 31, 2009 and before January 1, 2012), and qualified retail improvement property has the meaning given such term under section 168(e)(8) (without regard to section 168(e)(8)(E)).

<sup>25</sup> For example, assume that during 2010, a company's only asset purchases are section 179-eligible equipment costing \$100,000 and qualifying leasehold improvements costing \$350,000. Assuming the company has no other asset purchases during 2010, and is not subject to the taxable income limitation, the maximum section 179 deduction the company can claim for 2010 is \$350,000 (\$100,000 with respect to the equipment and \$250,000 with respect to the qualifying leasehold improvements).

<sup>26</sup> For example, assume that during 2010, a company's only asset purchases are section 179-eligible equipment costing \$100,000 and qualifying leasehold improvements costing \$200,000. Assume the company has no other asset purchases during 2010, and has a taxable income limitation of \$150,000. The maximum section 179 deduction the company can claim for 2010 is \$150,000, which is allocated pro rata between the properties, such that the carryover to 2011 is allocated \$100,000 to the qualified leasehold improvements and \$50,000 to the equipment.

Assume further that in 2011, the company had no asset purchases and had taxable income of \$-0-. The \$100,000 carryover from 2010 attributable to qualified leasehold improvements is treated as placed in service as of the first day of the company's 2011 taxable year. The \$50,000 carryover allocated to equipment is carried over to 2012 under section 179(b)(3)(B).

## Effective Date

The provision is effective for taxable years beginning after December 31, 2009.

## **2. Extend the additional first-year depreciation allowance (sec. 2022 of the bill and sec. 168(k) of the Code)**

### Present Law

#### In general

An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property placed in service during 2008 and 2009 (2009 and 2010 for certain longer-lived and transportation property).<sup>27</sup> The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed for purposes of computing earnings and profits. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2009, a taxpayer purchased new depreciable property and places it in service.<sup>28</sup> The property's cost is \$1,000, and it is five-year property subject to the half-year convention. The amount of additional first-year depreciation allowed is \$500. The remaining \$500 of the cost of the property is depreciable under the rules applicable to five-year property. Thus, 20 percent, or \$100, is also allowed as a depreciation deduction in 2009. The total depreciation deduction with respect to the property for 2009 is \$600. The remaining \$400 adjusted basis of the property generally is recovered through otherwise applicable depreciation rules.

Property qualifying for the additional first-year depreciation deduction must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less; (2) water utility property (as defined in section 168(e)(5)); (3) computer software other than computer software covered by section 197; or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).<sup>29</sup> Second, the

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<sup>27</sup> Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item must be capitalized under section 263 or section 263A.

<sup>28</sup> Assume that the cost of the property is not eligible for expensing under section 179.

<sup>29</sup> The additional first-year depreciation deduction is not available for any property that is required to be depreciated under the alternative depreciation system of MACRS. The additional first-year depreciation deduction is



original use<sup>30</sup> of the property must commence with the taxpayer after December 31, 2007.<sup>31</sup> Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service after December 31, 2007, and before January 1, 2010. An extension of the placed in service date of one year (i.e., to January 1, 2011) is provided for certain property with a recovery period of ten years or longer and certain transportation property.<sup>32</sup> Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after December 31, 2007, and before January 1, 2010, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after December 31, 2007, and before January 1, 2010.<sup>33</sup> With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2010. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first-year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred

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also not available for qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c)(2).

<sup>30</sup> The term “original use” means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

<sup>31</sup> A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

<sup>32</sup> Property qualifying for the extended placed in service date must have an estimated production period exceeding one year and a cost exceeding \$1 million.

<sup>33</sup> Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to January 1, 2008.

before January 1, 2010 (“progress expenditures”) is eligible for the additional first-year depreciation.<sup>34</sup>

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner. For example, if a taxpayer sells to a related party property that was under construction prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional first-year depreciation deduction if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional first-year depreciation deduction.

The limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by \$8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction). The \$8,000 increase is not indexed for inflation.

### **Explanation of Provision**

The provision extends the additional first-year depreciation deduction for one year to apply to qualified property acquired and placed in service during 2010 (or placed in service during 2011 for certain long-lived property and transportation property).

### **Effective Date**

The provision applies to property placed in service in taxable years ending after December 31, 2009.

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<sup>34</sup> For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to section 46(d)(3) as in effect prior to the Tax Reform Act of 1986 apply.

### **3. Disregard bonus depreciation in computing percentage completion (sec. 2023 of the bill and new sec. 460(c)(6) of the Code)**

#### **Present Law**

##### **Percentage-of-completion method**

In general, in the case of a long-term contract, the taxable income from the contract is determined under the percentage-of-completion method.<sup>35</sup> Under such method, the percentage completion is determined by comparing costs allocated to the contract and incurred before the end of the taxable year with the estimated total contract costs. Costs allocated to the contract typically include all costs (including depreciation) that directly benefit or are incurred by reason of the taxpayer's long-term contract activities. The allocation of the costs to a contract is made in accordance with regulations.<sup>36</sup>

##### **Additional first-year depreciation deduction (“bonus depreciation”)**

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year generally is determined under MACRS. Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (tangible property other than residential rental property and nonresidential real property) range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.<sup>37</sup> In general, the recovery periods for real property are 39 years for non-residential real property and 27.5 years for residential rental property. The depreciation method for real property is the straight-line method.

An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property placed in service during 2008 and 2009 (2009 and 2010 for certain longer-lived and transportation property),<sup>38</sup> and for property placed in service in 2010 (2011 for certain longer-lived and transportation property) under section 2022 of the bill. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed for purposes of computing earnings and profits. The

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<sup>35</sup> Sec. 460(a).

<sup>36</sup> Treas. Reg. sec. 1.460-5.

<sup>37</sup> For certain property, including tangible property used predominantly outside of the United States, tax-exempt use property, tax-exempt bond-financed property, and certain other property, the MACRS “alternative depreciation system” of section 168(g) applies, generally increasing recovery periods and requiring straight-line depreciation.

<sup>38</sup> Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item must be capitalized under section 263 or section 263A.

basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation for any class of property for any taxable year.

Property qualifying for the additional first-year depreciation deduction must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).<sup>39</sup> Second, the original use<sup>40</sup> of the property must commence with the taxpayer after December 31, 2007.<sup>41</sup> Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service after December 31, 2007, and before January 1, 2011. An extension of the placed in service date of one year (i.e., to January 1, 2012) is provided for certain property with a recovery period of ten years or longer, and certain transportation property.<sup>42</sup> Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after December 31, 2008, and before January 1, 2011, but only if no binding written contract for the acquisition is in effect before January 1, 2010, or (2) pursuant to a binding written contract which was entered into after

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<sup>39</sup> The additional first-year depreciation deduction is not available for any property that is required to be depreciated under the alternative depreciation system of MACRS. The additional first-year depreciation deduction is also not available for qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c)(2).

<sup>40</sup> The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

<sup>41</sup> A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

<sup>42</sup> Property qualifying for the extended placed in service date must have an estimated production period exceeding one year and a cost exceeding \$1 million.

December 31, 2008, and before January 1, 2011.<sup>43</sup> With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2008, and before January 1, 2010. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first-year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2011 (“progress expenditures”) is eligible for the additional first-year depreciation.<sup>44</sup>

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner. In addition, the limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by \$8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction). The \$8,000 increase is not indexed for inflation.

### **Explanation of Provision**

The provision provides that solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted.<sup>45</sup> Qualified property is property otherwise eligible for bonus depreciation that has a MACRS recovery period of 7 years or less and that is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case of property described in section 168(k)(2)(B))<sup>46</sup>.

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<sup>43</sup> Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to January 1, 2008.

<sup>44</sup> For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to section 46(d)(3) as in effect prior to the Tax Reform Act of 1986 apply.

<sup>45</sup> For example, assume a calendar year taxpayer is required to use the percentage-of-completion method to account for a long-term contract during 2010. Assume further that during 2010 the taxpayer purchases and places into service equipment with a cost basis of \$500,000 and MACRS recovery period of 5-years. The taxpayer uses the equipment exclusively in performing its obligation under the contract. In computing the percentage of completion under section 460(b)(1)(A), the depreciation on the equipment (assuming a half-year convention) taken into account as a cost allocated to the contract for 2010 is \$100,000 [ $\$500,000/5*200%*.5$ ]. The amount of the depreciation deduction that may be claimed by the taxpayer in 2010 with respect to the equipment is \$300,000 [ $(\$500,000*50\%) + ((\$500,000-(500,000*50\%))/5*200%*.5)$ ].

<sup>46</sup> Sec. 168(k)(2)(B) generally applies to property having longer production periods.

**Effective Date**

The provision is effective for property placed in service after December 31, 2009.

## C. Promoting Entrepreneurship

### 1. Increase amount allowed as deduction for start-up expenditures (sec. 2031 of the bill and sec. 195 of the Code)

#### Present Law

##### Start-up expenditures

A taxpayer can elect to deduct up to \$5,000 of start-up expenditures in the taxable year in which the active trade or business begins.<sup>47</sup> However, the \$5,000 amount is reduced (but not below zero) by the amount by which the cumulative cost of start-up expenditures exceeds \$50,000.<sup>48</sup> Start-up expenditures that are not deductible in the year in which the active trade or business begins are, at the taxpayer's election, amortized over a 15-year period beginning with the month the active trade or business begins.<sup>49</sup> Start-up expenditures are amounts that would have been deductible as trade or business expenses, had they not been paid or incurred before business began, including amounts paid or incurred in connection with (1) investigating the creation or acquisition of an active trade or business, (2) creating an active trade or business, or (3) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business.<sup>50</sup>

Treasury regulations<sup>51</sup> provide that a taxpayer is deemed to have made an election under section 195(b) to amortize its start-up expenditures for the taxable year in which the active trade or business to which the expenditures relate begins. A taxpayer that chooses to forgo the deemed election must clearly elect to capitalize its start-up expenditures on its timely filed Federal income tax return for the taxable year the active trade or business commences. The election either to amortize or capitalize start-up expenditures is irrevocable and applies to all start-up expenditures related to the active trade or business.

#### Explanation of Provision

For taxable years beginning in 2010, the provision increases the amount of start-up expenditures a taxpayer can elect to deduct from \$5,000 to \$10,000 and increases the deduction phase-out threshold such that the \$10,000 is reduced (but not below zero) by the amount by which the cumulative cost of start-up expenditures exceeds \$60,000.

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<sup>47</sup> Sec. 195(b)(1)(A).

<sup>48</sup> *Ibid.*

<sup>49</sup> Sec. 195(b)(1)(B).

<sup>50</sup> Sec. 195(c).

<sup>51</sup> Temp. Treas. Reg. sec. 1.195-1T(b).

### **Effective Date**

The provision is effective for taxable years beginning after December 31, 2009.

## **2. Provision providing authorization of appropriations to the Office of the United States Trade Representative<sup>52</sup> (sec. 2032 of the bill)**

### **Present Law**

Current law authorizes funding for the Office of the United States Trade Representative (“USTR”) to carry out the agency’s functions; however, that authorization expired in 2004. The authorization currently exists through appropriations. USTR was appropriated \$47,826,000 for fiscal year 2010.

### **Explanation of Provision**

The provision authorizes additional appropriations in the amount of \$5,230,000 for USTR to (1) analyze and develop opportunities for U.S. businesses to access foreign markets; and (2) enforce trade agreements to which the United States is a party. In obligating and expending the funds, the United States Trade Representative shall (1) give preference to initiatives that will create or sustain the greatest number of U.S. jobs or result in the greatest benefit to the U.S. economy; and (2) consider the needs of U.S. small and medium-sized businesses.

### **Effective Date**

The effective date is the date of enactment of this legislation.

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<sup>52</sup> This section provided by the Office of the United States Trade Representative.



## D. Promoting Small Business Fairness

### 1. Limitation on penalty for failure to disclose certain information (sec. 2041 of the bill and sec. 6707A of the Code)

#### Present Law

The reporting requirements of sections 6011 through 6112 create interlocking disclosure obligations for both taxpayers and advisors. Each of these disclosure statutes has a parallel penalty provision that enforces it. Prior to enactment of the American Jobs Creation Act of 2004 ("AJCA"),<sup>53</sup> no penalty was imposed on taxpayers who failed to disclose participation in transactions subject to section 6011. For disclosures that were due after enactment of that legislation, a strict liability penalty under section 6707A applies to any failure to disclose a reportable transaction.

Regulations under section 6011 require a taxpayer to disclose with its tax return certain information with respect to each "reportable transaction" in which the taxpayer participates.<sup>54</sup> A reportable transaction is defined as one that the Secretary determines is required to be disclosed because it is determined to have a potential for tax avoidance or evasion.<sup>55</sup> There are five categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, certain loss transactions and transactions of interest.<sup>56</sup>

Transactions falling under the first and last categories of reportable transactions are transactions that are described in publications issued by the Treasury Department and identified as one of these types of transaction. A listed transaction is defined as a reportable transaction which is the same as, or substantially similar<sup>57</sup> to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of the reporting disclosure requirements.<sup>58</sup> A "transaction of interest" is one that is the same or substantially similar to a transaction identified by the Secretary as one about which the Secretary is concerned but does not yet have sufficient knowledge to determine that the transaction is abusive.<sup>59</sup>

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<sup>53</sup> Pub. L. No. 108-357.

<sup>54</sup> Treas. Reg. sec. 1.6011-4.

<sup>55</sup> Sec. 6707A(c)(1).

<sup>56</sup> Treas. Reg. sec. 1.6011-4(b)(2)-(6).

<sup>57</sup> The regulations clarify that the term "substantially similar" includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Further, the term must be broadly construed in favor of disclosure. Treas. Reg. sec. 1.6011-4(c)(4).

<sup>58</sup> Sec. 6707A(c)(2).

<sup>59</sup> Treas. Reg. sec. 1.6011-4(b)(6).

The other categories of reportable transactions are not specifically identified in published guidance, but are defined as classes of transactions sharing certain characteristics. In general, a transaction is considered to be offered to a taxpayer under conditions of confidentiality if an advisor who is paid a minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies (irrespective if such terms are legally binding).<sup>60</sup> A transaction involves contractual protection if (1) the taxpayer has the right to a full or partial refund of fees if the intended tax consequences from the transaction are not sustained, or (2) the fees are contingent on the intended tax consequences from the transaction being sustained.<sup>61</sup> A reportable loss transaction generally includes any transaction that results in a taxpayer claiming a loss (under section 165) of at least (1) \$10 million in any single year or \$20 million in any combination of years by a corporate taxpayer or a partnership with only corporate partners; (2) \$2 million in any single year or \$4 million in any combination of years by all other partnerships, S corporations, trusts, and individuals; or (3) \$50,000 in any single year for individuals or trusts if the loss arises with respect to foreign currency translation losses.<sup>62</sup> Treasury has announced its intention to add a sixth category of reportable transactions, patented transactions, but has not yet done so.<sup>63</sup>

Section 6707A imposes a penalty for failure to comply with the reporting requirements of 6011. A single reportable transaction may have to be reported by multiple taxpayers in connection with multiple tax returns. For example, a reportable transaction entered into by a partnership may have to be reported under section 6011 by both the partnership and its partners.<sup>64</sup> The amount of the penalty due for each taxpayer's failure to comply varies depending upon whether or not the transaction is a listed transaction and whether the relevant taxpayer is an individual. For listed transactions, the maximum penalty is \$100,000 for natural persons and \$200,000 for all other persons. For reportable transactions other than listed transactions, the maximum penalty is \$10,000 for natural persons and \$50,000 for all other persons.

A public entity that is required to pay a penalty for an undisclosed listed or reportable transaction must disclose the imposition of the penalty in reports to the Securities and Exchange Commission ("SEC") for such periods specified by the Secretary. Disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).<sup>65</sup> However, the taxpayer is only required to report the

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<sup>60</sup> Treas. Reg. sec. 1.6011-4(b)(3).

<sup>61</sup> Treas. Reg. sec. 1.6011-4(b)(4).

<sup>62</sup> Treas. Reg. sec. 1.6011-4(b)(5).

<sup>63</sup> Proposed Treas. Reg. sec. 1.6011-4(b)(7), published September 26, 2007 (REG-129916-07).

<sup>64</sup> See, e.g., Treas. Reg. sec. 1.6011-4(c)(3)(ii), Example 2.

<sup>65</sup> Sec. 6707A(e).

penalty one time. A public entity that is subject to a gross valuation misstatement penalty under section 6662(h) attributable to a non-disclosed listed transaction or non-disclosed reportable avoidance transaction may also be required to make disclosures in its SEC filings.<sup>66</sup>

For reportable transactions other than listed transactions, the Commissioner of the Internal Revenue ("Commissioner") or his delegate can rescind (or abate) the penalty only if rescinding the penalty would promote compliance with the tax laws and effective tax administration.<sup>67</sup> The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. Determinations by the Commissioner regarding rescission are not subject to judicial review.<sup>68</sup> The Internal Revenue Service ("IRS") also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission. The section 6707A penalty cannot be waived with respect to a listed transaction.

The section 6707A penalty is assessed in addition to any accuracy-related penalties. If the taxpayer does not adequately disclose a reportable transaction, the strengthened reasonable cause exception to the accuracy-related penalty is not available, and the taxpayer is subject to an increased penalty equal to 30 percent of the understatement.<sup>69</sup> However, a taxpayer will be treated as having adequately disclosed a transaction for this purpose if the Commissioner has separately rescinded the separate penalty under section 6707A for failure to disclose a reportable transaction.<sup>70</sup> The Commissioner is authorized to do this only if the failure does not relate to a listed transaction and only if rescinding the penalty would promote compliance and effective tax administration.<sup>71</sup>

### **Explanation of Provision**

The provision changes the general rule for determining the amount of the applicable penalty to achieve proportionality between the penalty and the tax savings that were the object of the transaction, retains the current penalty amounts as the maximum penalty that may be imposed, and establishes a minimum penalty.

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<sup>66</sup> Sec. 6707A(e)(2)(C); Rev. Proc. 2005-51, 2005-2 CB 296.

<sup>67</sup> In determining whether to rescind (or abate) the penalty for failing to disclose a reportable transaction on the grounds that doing so would promote compliance with the tax laws and effective tax administration, it is intended that the Commissioner take into account whether: (1) the person on whom the penalty is imposed has a history of complying with the tax laws; (2) the violation is due to an unintentional mistake of fact; and (3) imposing the penalty would be against equity and good conscience.

<sup>68</sup> This does not limit the ability of a taxpayer to challenge whether a penalty is appropriate (e.g., a taxpayer may litigate the issue of whether a transaction is a reportable transaction (and thus subject to the penalty if not disclosed) or not a reportable transaction (and thus not subject to the penalty)).

<sup>69</sup> Sec. 6662A(c).

<sup>70</sup> Sec. 6664(d).

<sup>71</sup> Sec. 6707A(d).

First, it provides a general rule that a participant in a reportable transaction who fails to disclose the reportable transaction as required under section 6011 is subject to a penalty equal to 75 percent of the reduction in tax reported on the participant's income tax return as a result of participation in the transaction, or that would result if the transaction were respected for federal tax purposes. Regardless of the amount determined under the general rule, the penalty for each such failure may not exceed certain maximum amounts. The maximum annual penalty that a taxpayer may incur for failing to disclose a particular reportable transaction other than a listed transaction is \$10,000 in the case of a natural person and \$50,000 for all other persons. The maximum annual penalty that a taxpayer may incur for failing to disclose a listed transaction is \$100,000 in the case of a natural person and \$200,000, for all other persons.

The provision also establishes a minimum penalty with respect to failure to disclose a reportable or listed transaction. That minimum penalty is \$5,000 for natural persons and \$10,000 for all other persons.

The following examples illustrate the operation of the maximum and minimum penalties with respect to a partnership or a corporation. First, assume that two individuals participate in a listed transaction through a partnership formed for that purpose. Both partners, as well as the partnership, are required to disclose the transaction. All fail to do so. The failure by the partnership to disclose its participation in a listed or otherwise reportable transaction is subject to the minimum penalty of \$10,000, because income tax liability is not incurred at the partnership level nor reported on a partnership return. The partners in such partnership who also failed to comply with the reporting requirements of section 6011 are each subject to a penalty based on the reduction in tax reported on their respective returns.

In the second example, assume that a corporation participates in a single listed transaction over the course of three taxable years. The decrease in tax shown on the corporate returns is \$1 million in the first year, \$100,000 in the second year, and \$10,000 in the third year. If the corporation fails to disclose the listed transaction in all three years, the corporation is subject to three separate penalties: a penalty of \$200,000 in the first year (as a result of the cap on penalties), a \$75,000 penalty in the second year (computed under the general rule) and a \$10,000 penalty in the third year (as a result of the minimum penalty) for total penalties of \$285,000.

### **Effective Date**

The provision applies to all penalties assessed under section 6707A after December 31, 2006.

## **2. Temporary deduction for health insurance costs in computing self-employment income (sec. 2042 of the bill and sec. 162(I) of the Code)**

### **Present Law**

#### **Deduction for health insurance premiums of self-employed individuals**

In calculating adjusted gross income for income tax purposes, self-employed individuals may deduct the cost of health insurance for themselves and their spouses, dependents, and any children who have not attained age 27 as of the end of the taxable year.<sup>72</sup> The deduction is not available for any month in which the self-employed individual is eligible to participate in an employer-subsidized health plan (maintained by the employer of the taxpayer or the taxpayer's spouse). Moreover, the deduction may not exceed the earned income (within the meaning of section 401(c)(2)) derived by the self-employed individual from the trade or business with respect to which the plan providing the health insurance coverage is established.<sup>73</sup> The deduction applies only to the cost of insurance (i.e., it does not apply to out-of-pocket expenses that are not reimbursed by insurance).

#### **Self-Employment Contributions Act tax**

The Self-Employment Contributions Act ("SECA") imposes taxes on the net earnings from self employment of self-employed individuals ("self-employment income"). The tax is composed of two parts: (1) the old age, survivors, and disability insurance ("OASDI") tax; and (2) the hospital insurance ("HI") tax. The rate of the OASDI portion of SECA taxes is equal to 12.4 percent of self-employment income and generally applies to self-employment income up to the Federal Insurance Contributions Act ("FICA") taxable wage base (\$106,800 in 2010). The rate of the HI portion is equal to 2.9 percent<sup>74</sup> of self-employment income and there is no cap on the amount of self-employment income to which the rate applies.<sup>75</sup> The deduction allowable for the cost of health insurance for the self-employed individual and the individual's spouse,

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<sup>72</sup> Sec. 162(l)(1). See Notice 2010-38 for a discussion of the deduction for children who have not attained age 27 as of the end of the taxable year.

<sup>73</sup> Sec. 162(l)(2).

<sup>74</sup> Sec. 1401. However, under section 9015 of the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), for remuneration and self-employment income received for taxable years beginning after December 31, 2012, the HI tax under SECA is increased by an additional tax of 0.9 percent on self-employment income received in excess of a threshold amount. However, unlike the general 1.45 percent HI tax on self-employment income, this additional tax is on the combined wages and self-employment income of the self-employed individual and spouse, in the case of a joint return. The threshold amount is \$250,000 in the case of a joint return or surviving spouse, \$125,000 in the case of a married individual filing a separate return, and \$200,000 in any other case.

<sup>75</sup> For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer's earnings (determined without regard to this deduction) and one-half of the sum of the rates for OASDI (12.4 percent) and HI (2.9 percent), i.e., 7.65 percent of net earnings. This deduction reflects the fact that the FICA rates apply to an employee's wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual's net earnings are economically equivalent to an employee's wages plus the employer share of FICA taxes.

dependents, and children who have not attained age 27 as of the end of the taxable year for income taxes is not taken in account in determining an individual's net earnings from self employment for purposes of SECA taxes.<sup>76</sup>

### **Explanation of Provision**

Under the provision, the deduction for income tax purposes allowed to self-employed individuals for the cost of health insurance for themselves, their spouses, dependents, and children who have not attained age 27 as of the end of the taxable year is taken into account, and thus also allowed, in calculating net earnings from self-employment for purposes of SECA taxes.

It is intended that earned income within the meaning of section 401(c)(2) be computed without regard to this deduction for the cost of health insurance.<sup>77</sup> Thus, earned income for purposes of the limitation applicable to the health insurance deduction is computed without regard to this deduction.

The provision only applies for the taxpayer's first taxable year beginning after December 31, 2009.

### **Effective Date**

The provision is effective taxable years beginning after December 31, 2009.

## **3. Remove cellular phones and similar telecommunications equipment from the definition of listed property (sec. 2043 of the bill and sec. 280F of the Code)**

### **Present Law**

#### **Employer deduction**

Property, including cellular telephones and similar telecommunications equipment (hereinafter collectively "cell phones"), used in carrying on a trade or business is subject to the general rules for deducting ordinary and necessary expenses under section 162. Under these rules, a taxpayer may properly claim depreciation deductions under the applicable cost recovery rules for only the portion of the cost of the property that is attributable to use in a trade or business.<sup>78</sup> Similarly, the business portion of monthly telecommunication service is generally deductible, subject to capitalization rules, as an ordinary and necessary expense of carrying on a trade or business.

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<sup>76</sup> Sec. 162(l)(4).

<sup>77</sup> A technical correction may be needed to achieve this result.

<sup>78</sup> Sec. 212 allows deductions for ordinary and necessary expenses paid or incurred for the production or collection of income.

In the case of certain listed property, special rules apply. Listed property generally is defined as (1) any passenger automobile; (2) any other property used as a means of transportation; (3) any property of a type generally used for purposes of entertainment, recreation, or amusement; (4) any computer or peripheral equipment; (5) any cellular telephone (or other similar telecommunications equipment);<sup>79</sup> and (6) any other property of a type specified in Treasury regulations.<sup>80</sup>

For listed property, no deduction is allowed unless the taxpayer adequately substantiates the expense and business usage of the property.<sup>81</sup> A taxpayer must substantiate the elements of each expenditure or use of listed property, including (1) the amount (e.g., cost) of each separate expenditure and the amount of business or investment use, based on the appropriate measure (e.g., mileage for automobiles), and the total use of the property for the taxable period, (2) the date of the expenditure or use, and (3) the business purposes for the expenditure or use.<sup>82</sup> The level of substantiation for business or investment use of listed property varies depending on the facts and circumstances. In general, the substantiation must contain sufficient information as to each element of every business or investment use.<sup>83</sup>

With respect to the business use of listed property made available by an employer for use by an employee, the employer must substantiate that all or a portion of the use of the listed property is by employees in the employer's trade or business.<sup>84</sup> If any employee used the listed property for personal use, the employer must substantiate that it included an appropriate amount in the employee's income.<sup>85</sup> An employer generally may rely on adequate records maintained and retained by the employee or on the employee's own statement if it is corroborated by other sufficient evidence, unless the employer knows or has reason to know that the statement, records, or other evidence are not accurate.<sup>86</sup>

### **Cost recovery**

A taxpayer is allowed to recover through annual depreciation deductions the cost of certain property used in a trade or business or for the production of income. The amount of the

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<sup>79</sup> Cellular telephones (or other similar telecommunications equipment) were added as listed property as part of the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, sec. 7643 (1989).

<sup>80</sup> Sec. 280F(d)(4)(A).

<sup>81</sup> Sec. 274(d)(4).

<sup>82</sup> Temp. Reg. sec. 1.274-5T(b)(6).

<sup>83</sup> Temp. Reg. sec. 1.274-5T(c)(2)(ii)(C).

<sup>84</sup> Temp. Reg. sec. 1.274-5T(e)(2)(i)(A).

<sup>85</sup> *Ibid.*

<sup>86</sup> Temp. Reg. sec. 1.274-5T(e)(2)(ii). In Notice 2009-46, 2009-23 I.R.B. 1068, the Service requested comments regarding several proposals to simplify the procedures for employers to substantiate an employee's business use of certain employer-provide telecommunications equipment (including cellular telephones).

depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system (“MACRS”). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the taxpayer’s depreciation deduction would be maximized.

In the case of certain listed property, special depreciation rules apply. First, if for the taxable year that the property is placed in service the use of the property for trade or business purposes does not exceed 50 percent of the total use of the property, then the depreciation deduction with respect to such property is determined under the alternative depreciation system.<sup>87</sup> The alternative depreciation system generally requires the use of the straight-line method and a recovery period equal to the class life of the property.<sup>88</sup> Second, if an individual owns or leases listed property that is used by the individual in connection with the performance of services as an employee, no depreciation deduction, expensing allowance, or deduction for lease payments is available with respect to such use unless the use of the property is for the convenience of the employer and required as a condition of employment.<sup>89</sup>

### **Explanation of Provision**

The provision removes cell phones from the definition of listed property. Thus, under the provision, the heightened substantiation requirements and special depreciation rules that apply to listed property do not apply to cell phones.<sup>90</sup>

### **Effective Date**

The provision is effective for taxable years ending after December 31, 2009.

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<sup>87</sup> Sec. 280F(b)(1). If for any taxable year after the year in which the property is placed in service the use of the property for trade or business purposes decreases to 50 percent or less of the total use of the property, then the amount of depreciation allowed in prior years in excess of the amount of depreciation that would have been allowed for such prior years under the alternative depreciation system is recaptured (i.e., included in gross income) for such taxable year.

<sup>88</sup> Sec. 168(g).

<sup>89</sup> Sec. 280F(d)(3).

<sup>90</sup> The provision does not affect Treasury's authority to determine the appropriate characterization of cell phones as a working condition fringe benefit under section 132(d) or that the personal use of such devices that are provided primarily for business purposes may constitute a de minimis fringe benefit, the value of which is so small as to make accounting for it administratively impracticable, under section 132(e).



## II. REVENUE PROVISIONS

### A. Reducing the Tax Gap

#### 1. Information reporting for rental property expense payments(sec. 2101 of the bill and sec. 6041 of the Code)

##### Present Law

A variety of information reporting requirements apply under present law.<sup>91</sup> The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments to any one payee aggregating \$600 or more in any taxable year in the course of that payor's trade or business.<sup>92</sup> Reportable payments include compensation for both goods and services, and may include gross proceeds. Certain enumerated types of payments that are subject to other specific reporting requirements are carved out of reporting under this general rule.<sup>93</sup>

One such regulatory exception carved out payments to corporations,<sup>94</sup> but was expressly overridden by the addition of new section 6041(h) by section 9006 of the Patient Protection and Affordable Health Care Act ("PPACA").<sup>95</sup> New section 6041(h) expanded information reporting requirements to include gross proceeds paid in consideration for property and to subject payments to corporations to all of the reporting requirements under section 6041. The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.<sup>96</sup> The regulations generally except from

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<sup>91</sup> Secs. 6031 through 6060.

<sup>92</sup> Sec. 6041(a). The information return is generally submitted electronically as a Form 1096 and Form 1099, although certain payments to beneficiaries or employees may require use of Forms W-3 and W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2).

<sup>93</sup> Sec. 6041(a) requires reporting "other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a) or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045[.]" The payments thus excepted include most interest, royalties, and dividends.

<sup>94</sup> Treas. Reg. sec. 1.6041-3(p).

<sup>95</sup> Pub. L. No. 111-148, sec. 9006 (effective for payments made after December 31, 2011).

<sup>96</sup> Sec. 6041(d). Specifically, the recipient of the payment is required to provide a Form W-9 to the payor, which enables the payee to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor. If a Form W-9 is not provided, the payor is required to "backup withhold" tax at a rate of 28 percent of the gross amount of the payment unless the payee has otherwise established that the income is exempt from backup withholding. The backup withholding tax may be credited by the payee against regular income tax liability, i.e., it is effectively an advance payment of tax, similar to the withholding of tax from wages. This combination of reporting and backup withholding is designed to ensure that U.S. persons pay an appropriate amount of tax with respect to investment income, either by providing the IRS with the information that it needs to audit payment of the tax or, in the absence of such information, requiring collection of the tax on payment.

reporting payments to exempt organizations, governmental entities, international organizations, or retirement plans.<sup>97</sup> Additionally, the requirement that businesses report certain payments is not applicable to persons engaged in a passive investment activity. Thus, a taxpayer whose rental real estate activity is a trade or business is subject to this reporting requirement, but a taxpayer whose rental real estate activity is not considered a trade or business is not subject to such requirement.

In addition, financial institutions are required to report to both taxpayers and the IRS the amount of interest taxpayers paid during the year on mortgages they held on their rental properties.<sup>98</sup>

A person that fails to comply with the information reporting requirements is subject to penalties, which may include a penalty for failure to file the information return,<sup>99</sup> for failure to furnish payee statements,<sup>100</sup> or for failure to comply with other various reporting requirements.<sup>101</sup>

### **Explanation of Provision**

Under the provision, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business. In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider. Exceptions to this reporting requirement are made for (i) members of the military or employees of the intelligence community (as defined in section 121(d)(9)) who rent their principal residence on a temporary basis, (ii) individuals who receive only minimal amounts of rental income, as determined by the Secretary in accordance with regulations, and (iii) individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations.

### **Effective Date**

The provision applies to payments made after December 31, 2010.

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<sup>97</sup> Treas. Reg. sec. 1.6041-3(p).

<sup>98</sup> Sec. 6050H. This information is provided on Form 1098.

<sup>99</sup> Sec. 6721. The penalty for the failure to file an information return generally is \$50 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$250,000. Additionally, special rules apply to reduce the per-failure and maximum penalty where the failure is corrected within a specified period.

<sup>100</sup> Sec. 6722. The penalty for failure to provide a correct payee statement is \$50 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$100,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement.

<sup>101</sup> Sec. 6723. The penalty for failure to timely comply with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 for a calendar year.

## **2. Increase in information return penalties (sec. 2102 of bill and secs. 6721 and 6722 of the Code)**

### **Present Law**

Present law imposes information reporting requirements on participants in certain transactions. Under section 6721, any person who is required to file a correct information return who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed. If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the amount of the penalty is \$15 per return (the “first-tier penalty”), with a maximum penalty of \$75,000 per calendar year. If a person files a correct information return after the date that is 30 days after the prescribed filing date but on or before August 1, the amount of the penalty is \$30 per return (the “second-tier penalty”), with a maximum penalty of \$150,000 per calendar year. If a correct information return is not filed on or before August 1 of any year, the amount of the penalty is \$50 per return (the “third-tier penalty”), with a maximum penalty of \$250,000 per calendar year. If a failure is due to intentional disregard of a filing requirement, the minimum penalty for each failure is \$100, with no calendar year limit.

Special lower maximum levels for this penalty apply to small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent three taxable years that do not exceed \$5 million. The maximum penalties for small businesses are: \$25,000 (instead of \$75,000) if the failures are corrected on or before 30 days after the prescribed filing date; \$50,000 (instead of \$150,000) if the failures are corrected on or before August 1; and \$100,000 (instead of \$250,000) if the failures are not corrected on or before August 1.

Section 6722 imposes penalties for failing to furnish correct payee statements to taxpayers. The penalty amount is \$50 for each failure to furnish a payee statement, up to a maximum of \$100,000. If the failure is due to intentional disregard, the amount of the penalty per failure is increased<sup>102</sup> and the cap on the penalty is not applicable. In addition, section 6723 imposes a penalty of \$50 for failing to comply with other information reporting requirements, up to a maximum of \$100,000.

### **Explanation of Provision**

The provision amends section 6721 to increase the first-tier penalty from \$15 to \$30, and increase the calendar year maximum from \$75,000 to \$250,000. The second-tier penalty is increased from \$30 to \$60, and the calendar year maximum is increased from \$150,000 to \$500,000. The third-tier penalty is increased from \$50 to \$100, and the calendar year maximum

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<sup>102</sup> Sec. 6722(c)(1) provides that the penalty per failure is the greater of \$100 or a fixed percentage of the aggregate items to be shown on the payee statements. The fixed amount is 10 percent for statements other than those required under sections 6045(b), 6041A(e), 6050H(d), 6050J(e), 6050K(b), or 6050L(c). The penalty is the greater of \$100 or five percent of the amount required to be shown on statements required under sections 6045(b), 6050K(b) or 6050L(c).

is increased from \$250,000 to \$1,500,000. For small business filers, the calendar year maximum is increased from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from \$100 to \$250.

The penalty for failure to furnish a payee statement is revised to provide tiers and caps similar to those applicable to the penalty for failure to file the information return. A first-tier penalty is \$30, subject to a maximum of \$250,000; a second-tier penalty is \$60 per statement, up to \$500,000, and the third-tier penalty is \$100, up to a maximum of \$1,500,000. The penalty is also amended to provide limitations on penalties for small businesses and increased penalties for intentional disregard that parallel the penalty for failure to furnish information returns.

Both the failure to file and failure to furnish penalties will be adjusted to account for inflation every five years with the first adjustment to take place after 2012, effective for each year thereafter.

#### **Effective Date**

The provision applies with respect to information returns required to be filed on or after January 1, 2011.

### **3. Annual reports on penalties and certain other enforcement actions (sec. 2103 of the bill)**

#### **Present Law**

Transactions that have the potential for tax avoidance are required to be disclosed by both the taxpayers who engage in the transaction and the various professionals who provide advice with respect to such transactions. Failure to comply with the reporting and disclosure requirements may result in assessment of penalties against both the taxpayer and material advisor and the use of special enforcement measures.

#### **Reporting obligations**

These disclosure requirements<sup>103</sup> create interlocking disclosure obligations for both taxpayers and advisors. A taxpayer is required to disclose with its tax return certain information with respect to each “reportable transaction,” as defined in regulations.<sup>104</sup> Each advisor who provides material advice with respect to any reportable transaction (including any listed transaction) is required to file an information return with the Secretary (in such form and manner as the Secretary may prescribe).<sup>105</sup> Finally, the advisor is required to maintain a list of those

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<sup>103</sup> Secs. 6011, 6111 and 6112.

<sup>104</sup> Treas. Reg. sec. 1.6011-4.

<sup>105</sup> Sec. 6111.

persons he has advised with respect to a reportable transaction and to provide the list to the IRS upon request.<sup>106</sup>

A reportable transaction is defined as one that the Secretary requires to be disclosed based on its potential for tax avoidance or evasion.<sup>107</sup> There are five categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, certain loss transactions and transactions of interest.<sup>108</sup>

### Penalties and other enforcement tools related to reportable transactions

Each of the disclosure statutes has a parallel penalty provision to aid enforcement. The taxpayer who participates in a reportable transaction and fails to disclose it is subject to a strict liability penalty.<sup>109</sup> The penalty is assessed in addition to any accuracy-related penalties. It may be rescinded with respect to reportable transactions other than listed transactions. Rescission is discretionary and conditioned upon a determination by the Commissioner that rescinding the penalty would promote compliance and effective tax administration.<sup>110</sup> The Code also imposes a penalty on any material advisor who fails to file an information return, or who files a false or incomplete information return, with respect to a reportable transaction (including a listed transaction). It may be rescinded, subject to limitations similar to those applicable to rescission of the penalty imposed on investors.<sup>111</sup> The IRS may also submit a written request that a

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<sup>106</sup> Sec. 6112.

<sup>107</sup> Sec. 6707A(c)(1) states that the term means "any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion." Sections 6111(b)(2) and 6112 both define "reportable transaction" by reference to the definition in section 6707A(c). The definition of "listed transaction" similarly depends upon identification of transactions by the Secretary as tax avoidance transactions for purposes of section 6011.

<sup>108</sup> Treas. Reg. sec. 1.6011-4(b)(2)-(6).

<sup>109</sup> Section 6707A imposes a penalty for failure to comply with the reporting requirements of section 6011. A single reportable transaction may have to be reported by multiple taxpayers in connection with multiple tax returns. For example, a reportable transaction entered into by a partnership may have to be reported under section 6011 by both the partnership and its partners.<sup>109</sup> The amount of the penalty due for each taxpayer's failure to comply varies depending upon whether or not the transaction is a listed transaction and whether the relevant taxpayer is an individual. For listed transactions, the maximum penalty is \$100,000 for natural persons and \$200,000 for all other persons. For reportable transactions other than listed transactions, the maximum penalty is \$10,000 for natural persons and \$50,000 for all other persons. A public entity that is required to pay a penalty for an undisclosed listed or reportable transaction must disclose the imposition of the penalty in reports to the SEC for such periods specified by the Secretary. Failure to comply with this reporting requirement may result in assessment of a second tier penalty.

<sup>110</sup> Sec. 6707A(d). In determining whether to rescind (or abate) the penalty for failing to disclose a reportable transaction on the grounds that doing so would promote compliance with the tax laws and effective tax administration, it is intended that the Commissioner take into account whether: (1) the person on whom the penalty is imposed has a history of complying with the tax laws; (2) the violation is due to an unintentional mistake of fact; and (3) imposing the penalty would be against equity and good conscience.

<sup>111</sup> Section 6707 provides a penalty in the amount of \$50,000. If the penalty is with respect to a listed transaction, the amount of the penalty is increased to the greater of (1) \$200,000, or (2) 50 percent of the gross

material advisor make available the list required to be maintained under section 6612(a). A failure to make the list available upon written request is subject to a penalty of \$10,000 per day for as long as the failure continues, unless the advisor can establish reasonable cause for the failure.<sup>112</sup>

In addition to the penalties that specifically address the failure to comply with the disclosure and reporting obligations, other special enforcement provisions are applicable to reportable transactions. An understatement arising from any listed transactions or from a reportable transaction for which a significant purpose is avoidance or evasion of Federal income tax will be subject to an accuracy-related penalty,<sup>113</sup> unless the taxpayer can establish that the failure was due to reasonable cause as determined under a standard that is more stringent than that applicable to other accuracy-related penalties.<sup>114</sup>

If the taxpayer does not adequately disclose a reportable transaction, the strengthened reasonable cause exception is not available and the taxpayer is subject to an increased penalty equal to 30 percent of the understatement.<sup>115</sup> However, a taxpayer will be treated as having adequately disclosed a transaction for this purpose if the Commissioner has separately rescinded the separate penalty under section 6707A for failure to disclose a reportable transaction.<sup>116</sup> Finally, a new exception to the statute of limitations provides that the period is suspended if a listed transaction is not properly disclosed.<sup>117</sup> If the transaction is disclosed either because the taxpayer files the proper disclosure form or a material advisor identifies the transaction to the IRS in a list maintained under section 6112, the period will remain open for at least one year from the earlier of date of the disclosure by the investor or the disclosure by the material advisor with respect to that transaction.

The Code authorizes civil actions to enjoin any person from specified conduct relating to tax shelters or reportable transactions.<sup>118</sup> The specified conduct includes failure to comply with respect to the requirements relating to the reporting of reportable transactions<sup>119</sup> and the keeping

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income of such person with respect to aid, assistance, or advice which is provided with respect to the transaction before the date the information return that includes the transaction is filed. Intentional disregard by a material advisor of the requirement to disclose a listed transaction increases the penalty to 75 percent of the gross income.

<sup>112</sup> Sec. 6708.

<sup>113</sup> Sec. 6662A.

<sup>114</sup> Sec. 6664(d).

<sup>115</sup> Sec. 6662A(c).

<sup>116</sup> Sec. 6664(d).

<sup>117</sup> Sec. 6501(c)(10).

<sup>118</sup> Sec. 7408.

<sup>119</sup> Sec. 6707.

of lists of investors by material advisors.<sup>120</sup> Thus, an injunction may be sought against a material advisor to enjoin the advisor from (1) failing to file an information return with respect to a reportable transaction, or (2) failing to maintain, or to timely furnish upon written request by the Secretary, a list of investors with respect to each reportable transaction. In addition, injunctions, monetary penalties and suspension or disbarment are authorized with respect to violations of any of the rules under Circular 230, which regulates the practice of representatives of persons before the Department of the Treasury.

#### Reports to Congress by the Secretary

The Secretary is required to maintain records and report on the administration of the penalties for failure to disclose a reportable transaction in two ways. First, each decision to rescind a penalty imposed under section 6707 or section 6707A must be memorialized in a record maintained in the Office of the Commissioner.<sup>121</sup> That record must include a description of the facts and circumstances of the violation, the reasons for the decision to rescind, and the amount rescinded. Second, the IRS is required to submit an annual report to Congress on the administration of the rescission authority under both sections 6707 and 6707A. The information with respect to the latter is to be in summary form, while the information on rescission of penalties imposed against material advisors is to be more detailed.<sup>122</sup> The report is not required to address administration of the other enforcement tools described above.

#### **Explanation of Provision**

The provision requires that the IRS, in consultation with the Secretary, submit an annual report on administration of certain penalty provisions of the Code to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. A summary of penalties assessed the preceding year is required. In addition, the Secretary must report actions taken against practitioners appearing before the Treasury or IRS with respect to a reportable transaction<sup>123</sup> and instances in which the IRS attempted to rely on the exception to the limitations period for assessment based on failure to disclose a listed transaction.<sup>124</sup> The

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<sup>120</sup> Sec. 6708.

<sup>121</sup> Section 6707(c) incorporates by reference the provisions of section 6707A(d), which details the extent of the Commissioner's authority to rescind the penalty.

<sup>122</sup> AJCA provides:

"The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate--

"(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

"(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor." P.L. No. 108-357, Title VIII, Subtitle B, Part I, § 811(d), 118 Stat. 1577, Oct. 22, 2004.

<sup>123</sup> 31 U.S.C. sec. 330(b) authorizes the Secretary to impose sanctions on those who appear before the Department, including monetary penalties and suspension or disbarment from practice before the Department.

<sup>124</sup> Sec. 6501(c)(10) provides that the limitations period with respect to tax attributable to a listed transaction shall not expire less than one year after the required disclosure of that transaction is furnished by the taxpayer or by the material advisor, whichever is earlier.

penalties that are subject to this reporting requirement are those assessed in the preceding year with respect to (1) a participant's failure to disclose a reportable transaction,<sup>125</sup> (2) reportable transaction understatements,<sup>126</sup> (3) promotion of abusive shelters,<sup>127</sup> (4) failure of a material advisor to furnish information on a reportable transaction,<sup>128</sup> and (5) material advisors' failure to maintain or produce a list of reportable transactions.<sup>129</sup>

#### **Effective Date**

The first annual report is required to be submitted not later than December 31, 2010.

#### **4. Application of continuous levy to employment tax liability of certain Federal contractors (sec. 2104 of the bill and sec. 6330 of the Code)**

#### **Present Law**

##### **In general**

Levy is the IRS's administrative authority to seize a taxpayer's property or rights to property to pay the taxpayer's tax liability.<sup>130</sup> Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,<sup>131</sup> and the IRS has provided both notice of intention to levy<sup>132</sup> and notice of the right to an administrative hearing (referred to as a collections due process notice or "CDP" notice)<sup>133</sup> at least thirty days before the levy is made. A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.<sup>134</sup>

The 30-day pre-levy notice requirements, the taxpayer's rights before, during, and following the CDP hearing, and the Federal payment levy program are discussed below.

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<sup>125</sup> Sec. 6707A.

<sup>126</sup> Sec. 6662A.

<sup>127</sup> Sec. 6700.

<sup>128</sup> Sec. 6707.

<sup>129</sup> Sec. 6708.

<sup>130</sup> Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

<sup>131</sup> Sec. 6331(a).

<sup>132</sup> Sec. 6331(d).

<sup>133</sup> Sec. 6330. The administrative hearing is referred to as the CDP hearing.

<sup>134</sup> Secs. 6321 and 6331(a).



## **Pre-levy notice requirements**

The notice of intent to levy and the CDP notice must include a brief statement describing the following: (1) the statutory provisions and procedures for levy; (2) the administrative appeals available to the taxpayer; (3) the alternatives available to avoid levy; and (4) the provisions and procedures regarding redemption of levied property.<sup>135</sup> In addition, the collection due process notice must include the following: (1) the amount of the unpaid tax; and (2) the right to request a hearing during the 30-day period before the IRS serves the levy.

Upon receipt of this information, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office.<sup>136</sup> Otherwise, the IRS will levy to collect the amount owed after expiration of 30 days from the notice.

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable in permitting the IRS to assess a tax without following the normal deficiency procedures.<sup>137</sup>

The CDP notice (and pre-levy CDP hearing) is not required if the Secretary finds that collection would be jeopardized by delay or the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund. In addition, a levy issued to collect Federal employment taxes is excepted from the CDP notice and the pre-levy CDP hearing requirement if the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served. The taxpayer, however, in each of these three cases, is provided an opportunity for a hearing within a reasonable period of time after the levy.<sup>138</sup>

## **CDP hearing**

At the CDP hearing, the taxpayer may present defenses to collection as well as arguments disputing the merits of the underlying tax debt if the taxpayer had no prior opportunity to present such arguments.<sup>139</sup> In addition, the taxpayer is required to be provided the opportunity to negotiate an alternative form of payment, such as an offer-in-compromise, under which the IRS would accept less than the full amount, or an installment agreement under which payments in satisfaction of the debt may be made over time rather than in one lump sum, or some

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<sup>135</sup> Secs. 6330(a)(3) and 6331(d)(4). In practice, the notice of intent to levy and the collections due process notice is provided together in one document, Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*. Chief Counsel Advice Memorandum 2009-041 (November 28, 2008).

<sup>136</sup> Sec. 6330(b).

<sup>137</sup> Secs. 6331(d)(3) and 6861.

<sup>138</sup> Sec. 6330(f).

<sup>139</sup> Sec. 6330(c).

combination of such measures.<sup>140</sup> If a taxpayer exercises any of these rights in response to the notice of intent to levy, the IRS may not proceed with its levy.

After the CDP hearing, a taxpayer also has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination.<sup>141</sup> During this time period, the IRS may not proceed with its levy.

### **Federal payment levy program**

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997<sup>142</sup> authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments,” such as government payments to Federal contractors that are delinquent on their tax obligations. The levy generally continues in effect until the liability is paid or the IRS releases the levy.<sup>143</sup>

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury’s Financial Management Service (“FMS”), such as certain Social Security benefit and Federal wage records. When the records match, the delinquent taxpayer is provided both notice of intention to levy and notice of the right to the CDP hearing 30 days before the levy is made. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy its Federal payments. Subsequent payments are continuously levied until the tax debt is paid or IRS releases the levy.

Upon receipt of this information, however, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office. Following the CDP hearing, a taxpayer has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination. During this time period, the IRS may not proceed with its levy.

### **Explanation of Provision**

The provision allows the IRS to issue levies prior to a CDP hearing with respect to Federal tax liabilities of Federal contractors identified under the Federal Payment Levy Program. When a levy is issued prior to a CDP hearing under this proposal, the taxpayer has an opportunity for a CDP hearing within a reasonable time after the levy.

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<sup>140</sup> Sec. 6330(c)(2).

<sup>141</sup> Sec. 6330(d).

<sup>142</sup> Pub. L. No. 105-34.

<sup>143</sup> Sec. 6331(h). With respect to Federal payments to vendors of goods or services (not defined), the continuous levy may be up to 100 percent of each payment. Sec. 6331(h)(3).

**Effective Date**

The provision applies to levies issued after the date of enactment.

## **B. Promoting Retirement Preparation**

### **1. Allow participants in government section 457 plans to treat elective deferrals as Roth contributions (sec. 2111 of the bill and sec. 402A of the Code)**

#### **Present Law**

Section 401(k) plans and section 403(b) plans are permitted to have qualified Roth contribution programs under which participants may elect to make non-excludable contributions to “designated Roth accounts” and, if certain conditions are met, to exclude from gross income distributions from these accounts.

A qualified Roth contribution program is a program under which a participant may elect to make designated Roth contributions in lieu of all or a portion of the elective deferrals that he or she otherwise would be eligible to make under the applicable retirement plan. To qualify as a qualified Roth contribution program a plan must: (1) establish a separate designated Roth account for the designated Roth contributions of each participant (and for the earnings allocable to these contributions); (2) maintain separate records for each account; and (3) refrain from allocating to the designated Roth account amounts from non-designated Roth accounts.

Generally, if an “applicable retirement plan” includes a qualified Roth contribution program then any contribution that a participant makes under the program is treated as an “elective deferral,” but is not excludable from gross income.<sup>144</sup> For purposes of the qualified Roth contribution program rules, the term “applicable retirement plan” means: (1) an employee trust described in section 401(a) which is tax-exempt under section 501(a);<sup>145</sup> and (2) a plan under which amounts are contributed by an individual’s employer for a section 403(b) annuity contract.<sup>146</sup> An “elective deferral” is any deferral described in: (1) section 402(g)(3)(A) (employer contributions to section 401(k) plans not includible in employee’s gross income); or (2) section 402(g)(3)(C) (employer contributions to purchase an annuity contract under a section 403(b) salary reduction agreement).

#### **Explanation of Provision**

The provision amends the definition of “applicable retirement plan” to include eligible deferred compensation plans (as defined under section 457(b)) maintained by a State, a political subdivision of a State, an agency or instrumentality of a State, or an agency or instrumentality of a political subdivision of a State (collectively, “governmental 457(b) plans”). The provision also amends the definition of “elective deferral” in section 402A to include amounts deferred under governmental 457(b) plan.

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<sup>144</sup> Sec. 402A(a)(1).

<sup>145</sup> That is, a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries.

<sup>146</sup> That is, an annuity purchased by a section 501(c)(3) organization or a public school.

## Effective Date

The provision is effective for taxable years beginning after December 31, 2010.

## **2. Allow rollovers from elective deferral plans to Roth designated accounts (sec. 2112 of the bill and sec. 402A of the Code)**

### Present law

#### Individual retirement arrangements

##### General rules

There are two basic types of individual retirement arrangements (“IRAs”) under present law: traditional IRAs,<sup>147</sup> to which both deductible and nondeductible contributions may be made,<sup>148</sup> and Roth IRAs, to which only nondeductible contributions may be made.<sup>149</sup> The principal difference between these two types of IRAs is the timing of income tax inclusion. For a traditional IRA, an eligible contributor may deduct the contributions made for the year, but distributions are includible in gross income. For a Roth IRA, all contributions are after-tax (no deduction is allowed) but, if certain requirements are satisfied, distributions are not includable in gross income.

An annual limit applies to contributions to IRAs. The contribution limit is coordinated so that the aggregate maximum amount that can be contributed to all of an individual’s IRAs (both traditional and Roth IRAs) for a taxable year is the lesser of a certain dollar amount (\$5,000 for 2010)<sup>150</sup> or the individual’s compensation. In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses is at least equal to the contributed amount.

An individual who has attained age 50 before the end of the taxable year may also make catch-up contributions to an IRA. For this purpose, the aggregate dollar limit is increased by \$1,000. Thus for example, if an individual over age 50 contributes \$6,000 to a Roth IRA for 2010 (\$5,000 plus \$1,000 catch-up), the individual will not be permitted to make any contributions to a traditional IRA for the year. In addition, deductible contributions to traditional IRAs and after tax contributions to Roth IRAs generally are subject to AGI limits. IRA contributions generally must be made in cash.

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<sup>147</sup> Sec. 408.

<sup>148</sup> Sec. 219.

<sup>149</sup> Sec. 408A.

<sup>150</sup> The dollar limit is indexed for inflation.

## Roth IRAs

Individuals with adjusted gross income below certain levels may make nondeductible contributions to a Roth IRA. The maximum annual contribution that can be made to a Roth IRA is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. The adjusted gross income phase-out ranges for 2010 are: (1) for single taxpayers, \$109,000 to \$124,000; (2) for married taxpayers filing joint returns, \$167,000 to \$177,000; and (3) for married taxpayers filing separate returns, \$0 to \$10,000. Contributions to a Roth IRA may be made even after the account owner has attained age 70-½.

Taxpayers generally may convert a traditional IRA into a Roth IRA.<sup>151</sup> A conversion may be accomplished by means of a rollover, trustee-to-trustee transfer, or account redesignation. Regardless of the means used to convert, any amount converted from a traditional IRA to a Roth IRA is treated as distributed from the traditional IRA and rolled over to the Roth IRA. The amount converted is includible in income as if a withdrawal had been made, except that the 10-percent early withdrawal tax does not apply.

Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, or subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the five-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) is made after attainment of age 59-½, on account of death or disability, or is made for first-time homebuyer expenses of up to \$10,000.

Distributions from a Roth IRA that are not qualified distributions are includible in income to the extent attributable to earnings. Under special ordering rules, after-tax contributions are recovered before income.<sup>152</sup> The amount includible in income is also subject to the 10-percent early withdrawal tax unless an exception applies. The same exceptions to the early withdrawal tax that apply to traditional IRAs apply to Roth IRAs.

## **Cash or deferred arrangements**

### Section 401(k) plans and section 403(b) plans

A qualified retirement plan<sup>153</sup> that is a profit-sharing plan may allow an employee to make an election between cash and an employer contribution to the plan pursuant to a qualified cash or deferred arrangement. A plan with this feature is generally referred to as a section 401(k)

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<sup>151</sup> For taxable years beginning before January 1, 2010, such a conversion is not permitted to be made by a taxpayer whose modified adjusted gross income for the year of the distribution exceeds \$100,000 (or who, if married, does not file jointly). For taxable years beginning before January 1, 2010, a rollover from an eligible employer plan not made from a designated Roth account is available only to a taxpayer whose modified adjusted gross income for the year of the distribution does not exceed \$100,000 (and who, if married, files jointly).

<sup>152</sup> Sec. 408A(d)(4).

<sup>153</sup> Qualified retirement plans include plans qualified under section 401(a) and section 403(a) annuity plans.

plan. A section 403(b) plan may allow a similar salary reduction agreement under which an employee may make an election between cash and an employer contribution to the plan.<sup>154</sup> Amounts contributed pursuant to these qualified cash or deferred arrangements and salary reduction agreements generally are referred to as elective contributions and generally are excludable from gross income. There is a dollar limit on the aggregate amount of elective contributions that an employee is permitted to be contribute to either of these plans for a taxable year which is \$16,500 for 2010. There is an additional catch up amount that employees over age 50 are allowed to contribute which is \$5,500 for 2010.

Elective contributions under a section 401(k) plan are subject to distribution restrictions under the plan. Such contributions generally may only be distributed after attainment of age 59-½, death of the employee, termination of the plan, or severance from employment with the employer maintaining the plan. These contributions are also permitted to be distributed on account of hardship. These limitations also apply to certain other contributions to the plan except that such distributions cannot be distributed on account of hardship. Similar distribution restrictions apply to salary reduction contributions under section 403(b) plans.

Amounts under a profit sharing plan that are not subject to these specific distribution restrictions are distributable only as permitted under the plan terms. In order to meet the definition of profit-sharing plan, the plan may allow distribution of an amount contributed to a profit sharing plan after a fixed number of years (but not less than two).<sup>155</sup>

#### Designated Roth accounts

A qualified retirement plan or a section 403(b) plan with a cash or deferred arrangement can include a Designated Roth program under which an employee is permitted to designate any elective contribution as a designated Roth contribution in lieu of making a pre-tax elective contribution. Although such a plan is permitted to offer only the opportunity to make pre-tax elective contributions, a plan that allows designated Roth contributions must offer a choice of both pre-tax elective contributions and designated Roth contributions.<sup>156</sup> The designated contributions are generally treated the same under the plan as pre-tax elective contributions (e.g. the nondiscrimination requirements and contribution limits) except a designated Roth contribution is not excluded from gross income.

All designated Roth contributions made under the plan must be maintained in a separate account (a designated Roth account). Any distribution from a designated Roth account (other than a qualified distribution) is taxable under section 402 by treating the designated Roth account as a separate contract for purpose of section 72. The distribution is included in the distributee's gross income to the extent allocable to income under the contract and excluded from gross

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<sup>154</sup> Section 403(b) plans may be maintained only by (1) tax-exempt charitable organizations, and (2) educational institutions of State or local governments (including public schools). Many of the rules that apply to section 403(b) plans are similar to the rules applicable to qualified retirement plans, including section 401(k) plans.

<sup>155</sup> Rev. Rul. 71-295, 1971, CB 184 and Treas. Reg. sec. 1.401(b)(1)(ii).

<sup>156</sup> Treas. Reg. sec.1.401(k)-1(f)(1)(i).

income to the extent allocable to investment in the contract (commonly referred to as basis), taking into account only the designated Roth contributions as basis. The special basis-first recovery rule for Roth IRAs does not apply to distributions from designated Roth accounts.

A qualified distribution from a designated Roth account is excludable from gross income. A qualified distribution is a distribution that is made after completion of a specified 5-year period and the satisfaction of one of three other requirements. The three other requirements are the same as the other requirements for a qualified distribution from a Roth account except that the first-time home buyer provision does not apply.

Eligible rollover distributions from designated Roth accounts may only be rolled over tax free to another designated Roth account or a Roth IRA.

### **Rollovers from eligible retirement plans**

An eligible rollover distribution from an eligible employer plan that is not from a designated Roth account may be rolled over to an eligible retirement plan that is not a Roth IRA or a designated Roth account. An eligible employer plan is a qualified retirement plan, a section 403(b) plan; and a “governmental section 457(b) plan.”<sup>157</sup> In such a case, the distribution generally is not currently includible in the distributee’s gross income. An eligible retirement plan means an individual retirement plan or an eligible employer plan. An eligible rollover distribution is any distribution from an eligible employer plan with certain exceptions. Distributions that are not eligible rollover distributions generally are certain periodic payments, any distribution to the extent the distribution is a minimum required distribution, and any distribution made on account of hardship of the employee.<sup>158</sup> Only an employee or a surviving spouse of an employee is allowed to rollover an eligible rollover distribution from an eligible employer plan to another eligible employer plan.<sup>159</sup>

Distributions from an eligible employer plan are also permitted to be rolled over into a Roth IRA, subject to the present law rules that apply to conversions from a traditional IRA into a Roth IRA.<sup>160</sup> Thus, a rollover from an eligible employer plan into a Roth IRA is includible in gross income (except to the extent it represents a return of after-tax contributions), and the 10-percent early distribution tax does not apply.<sup>161</sup> In the case of a distribution and rollover of

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<sup>157</sup> A governmental section 457(b) plan is an eligible section 457(b) plan maintained by a governmental employer described in section 457(e)(1)(A).

<sup>158</sup> Sec. 402(c)(4).

<sup>159</sup> Section 402(c)(10) allows nonspouse beneficiaries to make a direct rollover to an IRA but not another eligible employer plan.

<sup>160</sup> For taxable years beginning before January 1, 2010, a rollover from an eligible employer plan not made from a designated Roth account is available only to a taxpayer whose modified adjusted gross income for the year of the distribution does not exceed \$100,000 (and who, if married, files jointly).

<sup>161</sup> Prior to enactment of section 824 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA '06), an eligible rollover distribution from an eligible employer plan not made from a designated Roth account could be rolled over to a non-Roth IRA and then converted to a Roth IRA, but could not be rolled over to a



property, the amount of the distribution for purposes of determining the amount includable in gross income is generally the fair market value of the property on the date of the distribution.<sup>162</sup> The special rules relating to net unrealized appreciation and certain optional methods for calculating tax available to participants born on or before January 1, 1936 are not applicable.<sup>163</sup> A special recapture rule relating to the 10-percent additional tax on early distributions applies for distributions made from a Roth IRA within a specified five-year period after a rollover.<sup>164</sup>

### **Special rule for 2010 conversions or rollovers**

In the case of a rollover from a tax-qualified retirement plan (other than a designated Roth account) into a Roth IRA, unless the taxpayer elects to include the distribution in income in 2010, any amount otherwise required to be included in gross income for the 2010 taxable year is not included in that taxable year but is instead included in gross income in equal amounts for the 2011 and 2012 taxable years. The same rule applies to a conversion of a traditional IRA into a Roth IRA in 2010. However, in both cases, the special recapture rule relating to the 10-percent additional tax on early distributions applies for distributions made from a Roth IRA within a specified five-year period after a rollover.

### **Explanation of Provision**

Under the provision, if a section 401(k) plan, section 403(b) plan, or governmental section 457(b) plan<sup>165</sup> has a qualified designated Roth contribution program, a distribution to an employee (or a surviving spouse) from an account under the plan that is not a designated Roth account is permitted to be rolled over into a designated Roth account under the plan for the individual. However, a plan that does not otherwise have a designated Roth program is not permitted to establish designated Roth accounts solely to accept these rollover contributions. Thus, for example, a qualified employer plan that does not include a qualified cash or deferred arrangement with a designated Roth program cannot allow rollover contributions from accounts that are not designated Roth accounts to designated Roth accounts established solely for purposes of accepting these rollover contributions. Further, the distribution to be rolled over must be otherwise allowed under the plan. For example, an amount under a section 401(k) plan subject to distribution restrictions cannot be rolled over to a designated Roth account under this provision. However, if an employer decides to expand its distribution options beyond those currently allowed under its plan, such as by adding in-service distributions or distributions prior to normal retirement age, in order to allow employees to make the rollover contributions permitted under this provision, the plan may condition eligibility for such a new distribution

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Roth IRA without an intervening rollover to a non-Roth IRA followed by a conversion to a Roth IRA. See Notice 2008-30, 2008-12 I.R.B. 638.

<sup>162</sup> Treas. Reg. sec. 1.402(a)-1(a)(iii).

<sup>163</sup> Notice 2009-75, 2009-39 IRB 436.

<sup>164</sup> Sec. 408A(d)(3)(F), Treas. Reg. sec. 1.408A-6 A-5, and Notice 2008-30, Q&A-3.

<sup>165</sup> The bill includes a provision which adds governmental section 457(b) plans to the plans that are permitted to include a designated Roth program. See explanation of section 211 of the bill.

option on an employee's election to have the distribution directly rolled over to the designated Roth program within that plan.

In the case of a permitted rollover contribution to a designated Roth account under this provision, the individual must include the distribution in gross income (subject to basis recovery) in the same manner as if the distribution were rolled over into a Roth IRA. Thus the special rule for distributions from eligible retirement plans (other than from designated Roth accounts) that are contributed to a Roth IRA in 2010 applies for these rollover contributions to a designated Roth account. Under this special rule, the taxpayer is allowed to include the amount in income in equal parts in 2011 and 2012. The special recapture rule for the 10-percent early distribution tax also applies if distributions are made from the designated Roth account in the relevant five year period.

This rollover contribution may be accomplished at the election of the employee (or surviving spouse) through a direct rollover (operationally through a transfer of assets from the account that is not a designated Roth account to the designated Roth account). However, such a direct rollover is only permitted if the employee (or surviving spouse) is eligible for a distribution in that amount and in that form (if property is transferred) and the distribution is an eligible rollover distribution. If the direct rollover is accomplished by a transfer of property to the designated Roth account (rather than cash), the amount of the distribution is the fair market value of the property on the date of the transfer.

A plan that includes a designated Roth program is permitted but not required to allow employees (and surviving spouses) to make the rollover contribution described in this provision to a designated Roth account. If a plan allows these rollover contributions to a designated Roth account, the plan must be amended to reflect this plan feature. It is intended that the IRS will provide employers with a remedial amendment period that allows the employers to offer this option to employees (and surviving spouses) for distributions during 2010 and then have sufficient time to amend the plan to reflect this feature.<sup>166</sup>

#### **Effective Date**

The provision is effective for distributions made after the date of enactment.

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<sup>166</sup> See section 401(b), Treas. Reg. sec 1.401(b)-1, and Rev. Proc. 2007-44, 2007-2 CB 54, regarding remedial amendment periods for plan amendments.

### 3. Permit partial annuitization of a nonqualified annuity contract (sec. 2113 of the bill and sec. 72 of the Code)

#### Present Law

##### Treatment of annuity contracts

In general, earnings and gains on a deferred annuity contract are not subject to tax during the deferral period in the hands of the holder of the contract.<sup>167</sup> When payout commences under a deferred annuity contract, the tax treatment of amounts distributed depends on whether the amount is received as an annuity (generally, as periodic payments under contract terms) or not.<sup>168</sup>

For amounts received as an annuity by an individual, an exclusion ratio is provided for determining the taxable portion of each payment.<sup>169</sup> The portion of each payment that is attributable to recovery of the taxpayer's investment in the contract is not taxed. The taxable portion of each payment is ordinary income. The exclusion ratio is the ratio of the taxpayer's investment in the contract to the expected return under the contract, that is, the total of the payments expected to be received under the contract. The ratio is determined as of the taxpayer's annuity starting date. Once the taxpayer has recovered his or her investment in the contract, all further payments are included in income. If the taxpayer dies before the full investment in the contract is recovered, a deduction is allowed on the final return for the remaining investment in the contract. Section 72 uses the term "investment in the contract" in lieu of the more generally applicable term "basis."

Amounts not received as an annuity generally are included as ordinary income if received on or after the annuity starting date, and are included in income to the extent allocable to income on the contract if received before the annuity starting date (i.e., as income first).<sup>170</sup>

Specific rules for recovering the investment in the contract for amounts received as an annuity are provided for plans qualified under section 401(a), plans described in section 403(a),

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<sup>167</sup> If an annuity contract is held by a corporation or by any other person that is not a natural person, the income on the contract is treated as ordinary income accrued by the contract owner and is subject to current taxation. The contract is not treated as an annuity contract (sec. 72(u)).

<sup>168</sup> Sec. 72.

<sup>169</sup> Sec. 72(b).

<sup>170</sup> Sec. 72(e). By contrast to distributions under an annuity contract, distributions from a life insurance contract (other than a modified endowment contract) that are made prior to the death of the insured generally are includible in income, to the extent that the amounts distributed exceed the taxpayer's basis in the contract; such distributions generally are treated first as a tax-free recovery of basis, and then as income (sec. 72(e)). In the case of a modified endowment contract, however, in general, distributions are treated as income first, loans are treated as distributions (i.e., income rather than basis recovery first), and an additional 10 percent tax is imposed on the income portion of distributions made before age 59-1/2 and in certain other circumstances (secs. 72(e) and (v)). A modified endowment contract is a life insurance contract that does not meet a statutory "7-pay" test, i.e., generally is funded more rapidly than seven annual level premiums (sec. 7702A).

and section 403(b) tax-deferred annuities.<sup>171</sup> In addition, specific rules apply to amounts not received as an annuity under these plans and individual retirement plans.<sup>172</sup>

### **Tax-free exchanges of annuity contracts**

Present law provides for the exchange of certain insurance contracts without recognition of gain or loss.<sup>173</sup> No gain or loss is recognized on the exchange of: (1) a life insurance contract for another life insurance contract or for an endowment or annuity contract or for a qualified long-term care insurance contract; or (2) an endowment contract for another endowment contract (that provides for regular payments beginning no later than under the exchanged contract) or for an annuity contract or for a qualified long-term care insurance contract; (3) an annuity contract for an annuity contract or for a qualified long-term care insurance contract; or (4) a qualified long-term care insurance contract for a qualified long-term care insurance contract. The basis of the contract received in the exchange generally is the same as the basis of the contract exchanged.<sup>174</sup>

In interpreting section 1035, case law holds that an exchange of a portion of an annuity contract for another annuity contract qualifies as a tax-free exchange.<sup>175</sup> Treasury guidance provides rules for determining whether a direct transfer of a portion of the cash surrender value of an annuity contract for a second annuity contract qualifies as a section 1035 tax-free exchange. Under the Treasury guidance, either the annuity contract received, or the contract partially exchanged, in the tax-free exchange may be annuitized without jeopardizing the tax-free exchange (or amounts withdrawn from it or received in surrender of it) after the period ending 12 months from the receipt of the premium in the exchange.<sup>176</sup>

### **Explanation of Provision**

The provision permits a portion of an annuity, endowment, or life insurance contract to be annuitized while the balance is not annuitized, provided that the annuitization period is for 10 years or more, or is for the lives of one or more individuals.

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<sup>171</sup> Sec. 72(d).

<sup>172</sup> Sec. 72(e)(8).

<sup>173</sup> Sec. 1035.

<sup>174</sup> Sec. 1031(d).

<sup>175</sup> *Conway v. Comm'r*, 111 T.C. 350 (1998), *acq.*, 1999-2 C.B. xvi.

<sup>176</sup> Rev. Proc. 2008-24, 2008-13 I.R.B. 684. The Rev. Proc. further provides that a transfer does not, however, qualify as a tax-free exchange if the payment is a distribution that is part of a series of substantially equal periodic payments, or if the payment is a distribution under an immediate annuity. The Treasury guidance further provides that if a direct transfer of a portion of an annuity contract for a second annuity contract does not qualify as a tax-free exchange under section 1035, it is treated as a taxable distribution followed by a payment for the second contract.

The provision provides that if any amount is received as an annuity for a period of 10 years or more, or for the lives of one or more individuals, under any portion of an annuity, endowment, or life insurance contract, then that portion of the contract is treated as a separate contract for purposes of section 72.

The investment in the contract is allocated on a pro rata basis between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity. This allocation is made for purposes of applying the rules relating to the exclusion ratio, the determination of the investment in the contract, the expected return, the annuity starting date, and amounts not received as an annuity.<sup>177</sup> A separate annuity starting date is determined with respect to each portion of the contract from which amounts are received as an annuity.

The provision is not intended to change the present-law rules with respect either to amounts received as an annuity, or to amounts not received as an annuity, in the case of plans qualified under section 401(a), plans described in section 403(a), section 403(b) tax-deferred annuities, or individual retirement plans.

#### **Effective Date**

The provision is effective for amounts received in taxable years beginning after December 31, 2010.

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<sup>177</sup> Secs. 72(b), (c), and (e).

## C. Closing Unintended Loopholes

### 1. Make crude tall oil ineligible for the cellulosic biofuel producer credit (sec. 2121 of the bill and sec. 40 of the Code)

#### Present Law

The “cellulosic biofuel producer credit” is a nonrefundable income tax credit for each gallon of qualified cellulosic biofuel production of the producer for the taxable year. The amount of the credit is generally \$1.01 per gallon.<sup>178</sup>

“Qualified cellulosic biofuel production” is any cellulosic biofuel which is produced by the taxpayer and which is: (1) sold by the taxpayer to another person (a) for use by such other person in the production of a qualified cellulosic biofuel mixture in such person’s trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or (c) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (1)(a), (b), or (c).

“Cellulosic biofuel” means any liquid fuel that (1) is produced in the United States and used as fuel in the United States, (2) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and (3) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (“EPA”) under section 211 of the Clean Air Act. The cellulosic biofuel producer credit cannot be claimed unless the taxpayer is registered by the IRS as a producer of cellulosic biofuel.

Cellulosic biofuel does not include certain unprocessed fuel. Unprocessed fuels are fuels which (1) are more than four percent (determined by weight) water and sediment in any combination, or (2) have an ash content of more than one percent (determined by weight).<sup>179</sup> Cellulosic biofuel eligible for the section 40 credit is precluded from qualifying as biodiesel, renewable diesel, or alternative fuel for purposes of the applicable income tax credit, excise tax credit, or payment provisions relating to those fuels.<sup>180</sup>

Because it is a credit under section 40(a), the cellulosic biofuel producer credit is part of the general business credits in section 38. However, unlike other general business credits, the

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<sup>178</sup> In the case of cellulosic biofuel that is alcohol, the \$1.01 credit amount is reduced by the credit amount of the alcohol mixture credit, and for ethanol, the credit amount for small ethanol producers, as in effect at the time the cellulosic biofuel fuel is produced.

<sup>179</sup> Water content (including both free water and water in solution with dissolved solids) is determined by distillation, using for example ASTM method D95 or a similar method suitable to the specific fuel being tested. Sediment consists of solid particles that are dispersed in the liquid fuel and is determined by centrifuge or extraction using, for example, ASTM method D1796 or D473 or similar method that reports sediment content in weight percent. Ash is the residue remaining after combustion of the sample using a specified method, such as ASTM D3174 or a similar method suitable for the fuel being tested.

<sup>180</sup> See sections 40A(d)(1), 40A(f)(3), and 6426(h).

cellulosic biofuel producer credit can only be carried forward three taxable years after the termination of the credit. The credit is also allowable against the alternative minimum tax. Under section 87, the credit is included in gross income. The cellulosic biofuel producer credit terminates on December 31, 2012.

The kraft process for making paper produces a byproduct called black liquor, which has been used for decades by paper manufacturers as a fuel in the papermaking process. Black liquor is composed of water, lignin and the spent chemicals used to break down the wood. The amount of the biomass in black liquor varies. The portion of the black liquor that is not consumed as a fuel source for the paper mills is recycled back into the papermaking process. Black liquor has ash content (mineral and other inorganic matter) significantly above that of other fuels.

Crude tall oil is generated by reacting acid with black liquor soap. Crude tall oil is used in various applications, such as adhesives, resins and inks. It also can be burned and used as a fuel.

### **Explanation of Provision**

The provision modifies the cellulosic biofuel producer credit to exclude from the definition of cellulosic biofuel fuels with an acid number of greater than 25. The acid number is the amount of base required to neutralize the acid in the sample. The acid number is reported as weight of the base (typically potassium hydroxide) per weight of sample, or milligram (“mg”) potassium hydroxide per gram. The normal acid number for crude tall oil is between 100 and 175. As a comparison, ASTM D6751 for biodiesel specifies that the acid number be less than 0.5mg potassium hydroxide. ASTM D4806 for ethanol does not have acid value but instead limits “acidity” to 0.007 mg of acetic acid per liter, which is significantly below an acid number of 25.

### **Effective Date**

The provision is effective for fuels sold or used on or after January 1, 2010.

## **2. Source rules for income on guarantees (sec. 2122 of the bill and secs. 861, 862 and 864 of the Code)**

### **Present Law**

The United States taxes U.S. citizens and residents (including domestic corporations) on their worldwide income, whether derived in the United States or abroad. The United States generally taxes nonresident alien individuals and foreign corporations engaged in a trade or business in the United States on income that is effectively connected with the conduct of such trade or business (sometimes referred to as “effectively connected income”). The United States also taxes nonresident alien individuals and foreign corporations on certain U.S.-source income that is not effectively connected with the conduct of a U.S. trade or business.

Income of a nonresident alien individual or foreign corporation that is effectively connected with the conduct of a trade or business in the United States generally is subject to U.S.

tax in the same manner and at the same rates as income of a U.S. person. Deductions are allowed to the extent that they are connected with effectively connected income.<sup>181</sup> A foreign corporation also is subject to a flat 30-percent branch profits tax on its “dividend equivalent amount,” which is a measure of the effectively connected earnings and profits of the corporation that are removed in any year from the conduct of its U.S. trade or business.<sup>182</sup> In addition, a foreign corporation is subject to a flat 30-percent branch-level excess interest tax on the excess of the amount of interest that is deducted by the foreign corporation in computing its effectively connected income over the amount of interest that is paid by its U.S. trade or business.<sup>183</sup>

Subject to a number of exceptions, U.S.-source fixed or determinable, annual or periodical income (“FDAP”) of a nonresident alien individual or foreign corporation that is not effectively connected with the conduct of a U.S. trade or business is subject to U.S. tax at a rate of 30 percent of the gross amount paid.<sup>184</sup> Items of income within the scope of FDAP include, for example, interest, dividends, rents, royalties, salaries, and annuities. The tax generally is collected by means of withholding.<sup>185</sup>

Present law provides detailed rules for the determination of whether income is from U.S. sources or foreign sources. For example, the source of compensation for services is generally determined by the location in which the services were performed, regardless of the country of residence of the payor.<sup>186</sup> In contrast, the source of interest income is generally determined by reference to the country of residence of the obligor.<sup>187</sup> As a result, interest paid by a U.S. obligor typically is considered U.S.-source income, while interest paid by a foreign obligor is treated as foreign-source income. Rents and royalties paid for the use of property located in the United States are considered to be U.S.-source income.<sup>188</sup>

To the extent that the source of income is not specified in the statute, the Secretary may promulgate regulations that explain the appropriate treatment. Many items of income are not explicitly addressed by either the statute or the regulations. On several occasions, courts have

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<sup>181</sup> Secs. 864(c), 871(b), 873, 882(a) and 882(c).

<sup>182</sup> Sec. 884.

<sup>183</sup> Sec. 884(f).

<sup>184</sup> Secs. 871(a), 881(a).

<sup>185</sup> Secs. 1441 and 1442 provide for collection from nonresident aliens and foreign corporations, respectively.

<sup>186</sup> Under section 861(a)(3), compensation for personal services performed in the United States is U.S. source, unless the individual performing the services is a nonresident alien who is temporarily present in the United States, receives no more than \$3,000 of compensation and is performing the services for a foreign person not engaged in a U.S. trade or business. Conversely, section 862(a)(3) provides that compensation for labor or services performed outside the United States is foreign source.

<sup>187</sup> Secs. 861(a)(1), 862(a)(1).

<sup>188</sup> Sec. 861(a)(4).



determined the source of such items by applying the rule for the type of income to which the disputed income is most closely analogous, based on all facts and circumstances.<sup>189</sup> As a result, items as dissimilar as alimony and letters of credit commissions were sourced by analogy to interest.<sup>190</sup> The U.S. Tax Court, in *Container Corp. v. Commissioner*, recently rejected IRS arguments that fees paid by a domestic corporation to its foreign parent with respect to guarantees issued by the parent for the debts of the domestic corporation were analogous to interest. The Tax Court held that the payments were more closely analogous to compensation for services, and determined that the source of the fees should be determined by reference to the residence of the foreign parent-guarantor. As a result, the income was treated as income from foreign sources.<sup>191</sup>

### **Explanation of Provision**

This provision effects a legislative override of the opinion in *Container Corp. v. Commissioner*, *supra*, by amending the source rules of section 861 and 862 to address income from guarantees issued after the date of enactment. Under new section 861(a)(9), income from sources within the United States includes amounts received, whether directly or indirectly, from a noncorporate resident or a domestic corporation for the provision of a guarantee of indebtedness of such person. The scope of the provision includes payments that are made indirectly for the provision of a guarantee. For example, the provision would treat as income from U.S. sources a guarantee fee paid by a foreign bank to a foreign corporation for the foreign corporation's guarantee of indebtedness owed to the bank by the foreign corporation's domestic subsidiary, where the cost of the guarantee fee is passed on to the domestic subsidiary through, for example, additional interest charged on the indebtedness.

Such U.S.-source income also includes amounts received from a foreign person, whether directly or indirectly, for the provision of a guarantee of indebtedness of that foreign person if the payments received are connected with income of such person which is effectively connected with conduct of a U.S. trade or business. A conforming amendment to section 862 provides that amounts received from a foreign person, whether directly or indirectly, for the provision of a guarantee of that person's debt, are treated as foreign source income if they are not from sources within the United States as determined under new section 861(a)(9).

For purposes of this provision, the phrase “noncorporate residents” has the same meaning as for purposes of section 861(a)(1), except that foreign partnerships are not included. Payments received from a foreign partnership for the provision of a guarantee of indebtedness of that foreign partnership are U.S. source if the amounts received are connected with income which is effectively connected with the conduct of a U.S. trade or business. A conforming amendment to section 864 provides that amounts received, whether directly or indirectly, for the provision of a

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<sup>189</sup> *Hunt v. Commissioner*, 90 T.C. 1289 (1988).

<sup>190</sup> *Manning v. Commissioner*, 614 F.2d 815 (1st Cir. 1980); *Bank of America v. United States*, 230 Ct. Cl. 679, 680 F.2d 142 (1982), *aff'g in part, rev'g in part*, 47 AFTR 2d 81-652 (Ct. Cl. 1981).

<sup>191</sup> *Container Corp. v. Commissioner*, 134 T.C. No. 5 (February 17, 2010), *gov't notice of appeal filed* (5th Cir. June 1, 2010).

guarantee are deemed to be effectively connected with the conduct of a U.S. trade or business if derived in the active conduct of a banking, financing or similar business.

Although this provision overturns the opinion in *Container Corp. v. Commissioner*, *supra*, no inference is intended with respect to the source of income received for the provision of a guarantee issued before the date of enactment. The Secretary may provide rules for determining the source of other types of payments that are not within the scope of this provision.

#### **Effective Date**

The provision applies to guarantees issued after the date of enactment. No inference is intended with respect to the source of income received with respect to guarantees issued before the date of enactment.

**D. Time for Payment of Corporate Estimated Taxes  
(sec. 2131 of the bill and sec. 6655 of the Code)**

**Present Law**

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.<sup>192</sup> For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year):

- (i) payments due in July, August, or September, 2014, are increased to 174.25 percent of the payment otherwise due;<sup>193</sup>
- (ii) payments due in July, August or September, 2015, are increased to 122.25 percent of the payment otherwise due;<sup>194</sup> and
- (iii) payments due in July, August or September, 2019, are increased to 106.5 percent of the payment otherwise due.<sup>195</sup>

For each of the periods impacted, the next required payment is reduced accordingly.

**Explanation of Provision**

The provision increases the required payment of estimated tax otherwise due in July, August, or September, 2015, by 36 percentage points.

**Effective Date**

The provision is effective on the date of enactment of the bill.

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<sup>192</sup> Sec. 6655.

<sup>193</sup> Pub. L. No. 111-171; Pub L. No. 111-152; Pub. L. No. 111-147, Sec. 561, par. (1); Pub. L. No. 111-124, Sec. 4; Pub. L. No. 111-92, Sec. 18; Pub. L. No. 111-42, Sec. 202(b)(1).

<sup>194</sup> Pub. L. No. 111-171; Pub. L. No. 111-147, Sec. 561, par. (2).

<sup>195</sup> Pub. L. No. 111-147, Sec. 561, par. (3).



## APPENDIX D:

### *White House Fact Sheets and Statements on the Small Business Jobs and Credit Act of 2010*

#### **THE SMALL BUSINESS JOBS ACT: ENCOURAGING INVESTMENT**

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Small businesses are the backbone of America's economy and the principle engine of job creation. In fact, over the past 15 years, small businesses have created two-thirds of all new jobs. However, small businesses have been hit hard by the recession – losing more than six million jobs since December 2007. Small businesses will be the key to our economic recovery and we need to do all we can to help them spur job growth. One of the biggest obstacles to small businesses expanding and hiring more workers is their limited ability to make capital investments. Over the course of the Great Recession, small business capital investment has fallen dramatically. Since 2005, the percentage of small businesses that made a capital outlay in the previous six months fell by nearly 30 percent. Capital investments are an integral part of getting the economy back on track. Small businesses need the opportunity to make these investments, so they can grow and expand. The following provisions in the Small Business Jobs Act will help small businesses to make capital investments.

- ***Increase of Section 179 Expensing and Expansion to Certain Real Property***

Section 179 is one of the most widely-used tax benefits available to small businesses and effectively decreases the cost of newly-purchased equipment, making it more economical for businesses to invest. Under current law, taxpayers may elect to write-off the costs of equipment for use in their trade or business in the year of acquisition in lieu of recovering these costs over time through depreciation. In 2010, taxpayers are allowed to write-off up to \$250,000 of these capital expenditures subject to a phase-out once these capital expenditures exceed \$800,000. After 2010, the thresholds revert to \$25,000 and \$200,000, respectively.

Instead, this legislation would increase the amount of capital investment a business could expense – to \$500,000 and \$2 million in 2010 and 2011. Expensing is an important tool for small businesses because it is the most accelerated type of depreciation. With expensing, a business can deduct the complete cost of an asset, such as equipment or software, in the same year the business buys the asset, instead of recovering these costs over a period of years, as they do through traditional forms of depreciation. The ability to deduct the cost of assets in the same year provides an immediate benefit for these businesses and the economy – increasing the businesses cash flow and putting money back into the larger economy with their purchases. The legislation also expands the types of purchases that would qualify

for special expensing to include some types of real property, such as leasehold, retail and restaurant improvements.

- ***Extension of Bonus Depreciation***

Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write-off 50 percent of the cost of depreciable property placed in service in those years. The legislation would extend bonus depreciation through the end of this year – allowing business to immediately write-off 50 percent of the cost of depreciable property purchased and placed in service in 2010.

Bonus depreciation quickly sparks investment by making property more affordable, increasing cash flow and giving small businesses savings they can use to reinvest in the business and hire new employees. Bonus depreciation also helps the business that sells the equipment by providing a market for manufacturers and suppliers so they can retain and hire employees as their businesses rebound. The more purchases the businesses make, the more other businesses are helped. This double-benefit makes bonus depreciation a cost-effective way to strengthen business investment.

## THE SMALL BUSINESS JOBS ACT: HELPING AMERICANS GET BACK TO WORK

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Small businesses are the backbone of America's economy and the principle engine of job creation. In fact, over the past 15 years, small businesses have created two-thirds of all new jobs. However, small businesses have been hit hard by the recession – losing more than six million jobs since December, 2007. The Small Business Jobs Act helps create the right economic conditions for small businesses to create as many as 500,000 new jobs. At a time when the credit crunch has starved America's 27 million small businesses from accessing the capital they need to expand and hire, the fully-paid for Small Business Jobs Act will provide small businesses access to capital, robust incentives for investment, and support for innovation and entrepreneurship. When we help small businesses, we help to get Americans back to work.

The Small Business Jobs Act:

- Gives small businesses **\$12 billion in tax cuts**
- Helps small businesses create **500,000 new jobs**
- Incentivizes and **increases small business lending**
- **Helps small business owners access private capital** to finance an expansion and hire new workers
- **Rewards entrepreneurs** for investing in new small businesses
- **Helps Main Street** businesses compete with large corporations

### HELPS SMALL BUSINESSES ACCESS CAPITAL

- Incentivizes investors by giving 100% exclusion from capital gains taxes on small business investments.
- Creates a targeted \$30 billion Small Business Lending Fund to provide small community banks with capital to increase small business lending.
- Gives \$1.5 billion in grants to support \$15 billion in new small business lending through already successful state programs.
- Reduces the tax burden for small businesses by allowing them to carry back general business tax credits to offset their tax burdens from the previous five years. Small businesses will also be able to count the general business credits against the Alternative Minimum Tax (AMT), freeing up capital for expansion and job growth.
- Increases Small Business Administration (SBA) loan limits and improves access and lowers costs for small business to access SBA loans.

### INCREASES SMALL BUSINESSES' ABILITY TO MAKE INVESTMENTS

- Increases Section 179 expensing – permitting up to \$500,000 in capital investments that businesses can expense.
- Extends Bonus Depreciation – allowing taxpayers to immediately write off 50 percent of the cost of new equipment.

## **PROMOTES ENTREPRENEURSHIP**

- Increases to \$10,000 the tax deduction for start-up expenditures – doubling the current levels.
- Creates new tools to help small businesses export goods, which will leverage more than \$1 billion in exports.
- Establishes a new State Export Promotion Grant Program (STEP), which would increase the number of small businesses that export goods to other countries.

## **PROMOTES FAIRNESS IN COMPETITION**

- Improves tax fairness by preventing small businesses from incurring large tax penalties aimed at large corporations and wealthy individuals investing in tax shelters.
- Improves small business contracting by clarifying that no single contracting program receives priority over another program when competing for federal contracts.
- Allows self-employed individuals to deduct health insurance costs for purposes of paying the self-employment tax.

A detailed summary of provisions included in the Small Business Jobs Act can be found on the Finance Committee website at: <http://finance.senate.gov/legislation/details/?id=da799068-5056-a032-5229-92cebbd2b7a0>.



## THE SMALL BUSINESS JOBS ACT: HELPING AMERICANS GET BACK TO WORK

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American entrepreneurs are a key driver of our job creation efforts. The Small Business Jobs Act fosters one of our nation's greatest economic resources - the creativity and ambition of American entrepreneurs - by creating the right conditions for entrepreneurs to start and invest in small businesses and create jobs. Nearly all net job creation in the United States from 1980 to 2005 occurred in firms that were less than five years old.<sup>1</sup> In fact, without these start-ups, net job creation would have been negative almost every year for the past three decades. We must do all we can to ensure American entrepreneurs have the resources, financing and opportunities they need to create jobs and realize their dreams. The Small Business Jobs Act will help entrepreneurs get the capital they need by increasing the incentives for investors to purchase and hold equity in start-ups. The following provisions in the Small Business Jobs Act will help promote entrepreneurship.

- ***Increased Deduction for Start-up Expenditures***

The legislation rewards entrepreneurship by doubling the amount of start-up expenses an entrepreneur can immediately deduct this year from \$5,000 to \$10,000. This provision frees up capital to use in other aspects of the entrepreneur's business.

- ***Small Business Export Promotion***

The Office of the United States Trade Representative (USTR) plays an important role in promoting U.S. exports, and recently increased its focus on small business export promotion in particular. USTR has enhanced small business exports in several respects, including the creation of the position of Assistant USTR for Small Business, Market Access, and Industrial Competitiveness within USTR. This official will help ensure that USTR's trade policy addresses the challenges facing smaller U.S. exporters and promotes global export opportunities for them.

The legislation devotes more than \$5 million to the U.S. Trade Representative to expand opportunities for U.S. small businesses in foreign markets. This funding will help American goods and services to reach new customers around the world and would create jobs here at home. This provision also helps USTR to enforce our trade agreements to ensure that American start-ups can compete on a level playing field.

- ***Enhanced Small Business Trade Opportunities***

The legislation improves the Small Business Administration's (SBA) trade and export finance programs and establishes the State Export Promotion Grant Program (STEP), which would increase the number of small businesses that export goods to other countries. This provision will leverage more than \$1 billion in export capital for small businesses, which will create or save as many as 40,000 to 50,000 jobs in 2010 alone.

- ***Improved Small Business Contracting***

The legislation removes the red tape and closes loopholes that too often put government work into the hands of multinational corporations instead of Main Street businesses. Increasing contracts to small businesses by just two percent will create more than 60,000 jobs. The legislation also provides for a periodic review of small business size standards to ensure that size indicators are consistent with inflation and industry growth of small businesses. It requires accountability from large business prime contractors for prompt payment to small business subcontractors - making sure small businesses get the funds for their services quickly so they can have the stability they need to create jobs.

- ***Relief for Community Partners***

The legislation allows SBA to waive or reduce the non-federal share of its funding requirements for up to one year, through fiscal year 2012 – making it cheaper and easier for entrepreneurs to get small business loans. The legislation also gives relief to Women’s Business Centers and microloan intermediaries, which provide assistance to underserved communities to start and grow small businesses. The SBA estimates that this microloan program will create or save more than 10,000 jobs in Fiscal Year 2011.

## THE WHITE HOUSE BLOG: PRESIDENT OBAMA SIGNS SMALL BUSINESS JOBS ACT – LEARN WHAT’S IN IT

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*Posted by Jesse Lee on September 27, 2010 at 02:37 PM EDT*

“I’m thrilled to be here on what is an exciting day,” said the President as he prepared to sign the Small Business Jobs Act this afternoon. With small business owners who will receive tax breaks and better access to credit in the audience, the President explained to everybody why he has fought so long for it:

Now this is important because small businesses produce most of the new jobs in this country. They are the anchors of our Main Streets. They are part of the promise of America – the idea that if you’ve got a dream and you’re willing to work hard, you can succeed. That’s what leads a worker to leave a job to become her own boss. That’s what propels a basement inventor to sell a new product – or an amateur chef to open a restaurant. It’s this promise that has drawn millions to our shores and made our economy the envy of the world.

The bill includes a series of small business proposals that the President put forth earlier this year, and small businesses will start benefiting from the bill on day one. Among the many important provisions in the bill, twelve of the top benefits to small businesses are:

- **Extension of Successful SBA Recovery Loan Provisions —Immediately Supporting Loans to Over 1,400 Small Businesses:** With funds provided in the bill, SBA will *begin funding new Recovery loans within a few days of the President’s signature, starting with the more than 1,400 businesses – with loans totaling more than \$730 million – that are waiting in the Recovery Loan Queue. In total, the extension of these provisions provides the capacity to support \$14 billion in loans to small businesses.* The SBA Recovery loan provisions have already supported \$30 billion in lending to over 70,000 small businesses.
- **A More Than Doubling of the Maximum Loan Size for The Largest SBA Programs:** The bill also increases the maximum loan size for SBA loan programs, which in the coming weeks will allow more small businesses to access more credit to allow them to expand and create new jobs. The bill will permanently raise the maximum size for SBA’s two largest loan programs, increasing the maximum 7(a) and 504 loans from \$2 million to \$5 million, and the maximum 504 manufacturing related loan from \$4 million to \$5.5 million. In addition, it will temporarily increase the maximum loan size for *SBA Express loans from \$350,000 to \$1 million*, providing greater access to working capital loans that small businesses use to purchase new inventory and take on their next order – allowing them to create new jobs.
- **A New \$30 Billion Small Business Lending Fund:** The bill would establish a new \$30 billion *Small Business Lending Fund* which – by providing capital to small banks with incentives to increase small business lending – could support several multiples of that amount in new credit.
- **An Initiative to Strengthen Innovative State Small Business Programs – Supporting Over \$15 Billion in Lending:** The *bill* will support at least \$15 billion in small business lending through a new State Small Business Credit Initiative, strengthening state small business programs that leverage private-sector lenders to extend additional credit – many of which have been forced to cut back due to budget cuts.
- **Eight New Small Business Tax Cuts – Effective Today, Providing Immediate Incentives to Invest:** The President had already signed into law eight small business tax cuts, and on Monday, he is signing into law *another eight new tax cuts that go into effect immediately.*

- **Zero Taxes on Capital Gains from Key Small Business Investments:** Under the Recovery Act, 75 percent of capital gains on key small business investments this year were excluded from taxes. The Small Business Jobs Act temporarily puts in place for the rest of 2010 a provision called for by the President – elimination of all capital gains taxes on these investments if held for five years. ***Over one million small businesses are eligible to receive investments this year that, if held for five years or longer, could be completely excluded from any capital gains taxation.***
- **Extension and Expansion of Small Businesses’ Ability to Immediately Expense Capital Investments:** The bill increases for 2010 and 2011 the amount of investments that businesses would be eligible to immediately write off to \$500,000, while raising the level of investments at which the write-off phases out to \$2 million. Prior to the passage of the bill, the expensing limit would have been \$250,000 this year, and only \$25,000 next year. ***This provision means that 4.5 million small businesses and individuals will be able to make new business investments today and know that they will earn a larger break on their taxes for this year.***
- **Extension of 50% Bonus Depreciation:** The bill extends – as the President proposed in his budget – a Recovery Act provision for 50 percent “bonus depreciation” through 2010, providing ***2 million businesses, large and small, with the ability to make new investments today and know they can receive a tax cut for this year*** by accelerating the rate at which they deduct capital expenditures.
- **A New Deduction of Health Insurance Costs for Self-Employed:** The bill allows ***2 million self-employed to know that on their taxes for this year, they can get a deduction for the cost of health insurance*** for themselves and their family members in calculating their self-employment taxes. This provision is estimated to provide over \$1.9 billion in tax cuts for these entrepreneurs.
- **Tax Relief and Simplification for Cell Phone Deductions:** The bill changes rules so that the use of cell phones can be deducted without burdensome extra documentation – making it easier ***for virtually every small business in America to receive deductions that they are entitled to, beginning on their taxes for this year.***
- **An Increase in the Deduction for Entrepreneurs’ Start-Up Expenses:** The bill ***temporarily increases the amount of start-up expenditures entrepreneurs can deduct from their taxes for this year*** from \$5,000 to \$10,000 (with a phase-out threshold of \$60,000 in expenditures), offering an immediate incentive for someone with a new business idea to invest in starting up a new small business today.
- **A Five-Year Carryback Of General Business Credits:** The bill would allow certain small businesses to “carry back” their general business credits to offset five years of taxes – ***providing them with a break on their taxes for this year*** – while also allowing these credits to offset the Alternative Minimum Tax, reducing taxes for these small businesses.
- **Limitations on Penalties for Errors in Tax Reporting That Disproportionately Affect Small Business:** The bill would change, ***beginning this year,*** the penalty for failing to report certain tax transactions from a fixed dollar amount – which was criticized for imposing a disproportionately large penalty on small businesses in certain circumstances – to a percentage of the tax benefits from the transaction.