

PROVIDING FOR FURTHER CONSIDERATION OF THE BILL (H.R. 1) MAKING SUPPLEMENTAL APPROPRIATIONS FOR JOB PRESERVATION AND CREATION, INFRASTRUCTURE INVESTMENT, ENERGY EFFICIENCY AND SCIENCE, ASSISTANCE TO THE UNEMPLOYED, AND STATE AND LOCAL FISCAL STABILIZATION, FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2009, AND FOR OTHER PURPOSES

JANUARY 27, 2009.—Referred to the House Calendar and ordered to be printed

Ms. SLAUGHTER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 92]

The Committee on Rules, having had under consideration House Resolution 92, by a record vote of 9 to 2, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for further consideration of H.R. 1, the “American Recovery and Reinvestment Act of 2009,” under a structured rule. The resolution provides an additional one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations.

The resolution provides that the amendment printed in part A of this report shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for purpose of further amendment and shall be considered as read. The resolution waives all points of order against provisions of the bill, as amended. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The resolution provides that no further amendment shall be in order except those printed in part B of this report. Each further amendment may be offered only in the order printed, may be offered only by a Member designated, shall be considered as read, shall be debatable for the time specified equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment or demand for division of the question. The resolution waives all points of order against such further amendments

except those arising under clause 9 of rule XXI. The resolution provides one motion to recommit with or without instructions.

The resolution provides that the chair of the Committee on Appropriations shall insert in the Congressional Record not later than February 4, 2009, such materials as he may deem explanatory of appropriations measures for fiscal year 2009. Finally, the resolution provides that the chair of the Committee on Ways and Means may file a supplemental report to accompany H.R. 598.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against provisions in the bill, the Committee is not aware of any waivers. The waiver of all points of order is prophylactic.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 10

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Dreier.

Summary of motion: To report an open rule.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 11

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Dreier.

Summary of motion: To make in order en bloc and provide appropriate waivers for amendments to be separately debatable: (1) an amendment by Rep. Tiahrt, (KS), #64, which would strike the authority, and associated funding, in the bill that provides for new or significantly-expanded programs, including afterschool feeding programs for at-risk children, broadband provisions, innovative technology loan guarantee programs, small business provisions, and summer job programs. It would also suspend certain employment and income taxes, would repeal the final \$350 billion of TARP funds, and would terminate TARP purchase authority upon enactment; (2) an amendment by Rep. Simpson (ID), #67, which would prohibit any provision in the bill that provides new or increased direct spending from taking effect until Congress enacts a bill to provide the corresponding offsets; and (3) an amendment by Rep. Frelinghuysen (NJ), and Rep. Latham (IA), #66, which would take funds legislatively withheld from obligation until not earlier than fiscal year 2010 and make them available for Army Corps of Engineers construction projects (\$24.2 billion) and Department of Transportation highway infrastructure investment (\$34 billion) and capital improvement projects (\$2 billion).

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 12

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Dreier.

Summary of motion: To make in order en bloc and provide appropriate waivers for amendments to be separately debatable: (1) an amendment by Rep. Barton (TX), #127, which would eliminate the requirement that, in order to receive energy efficiency funds, governors notify the Secretary of Energy that they would seek to change state utility ratemaking policy to ensure the utility's fixed costs are covered independent of sales; and (2) an amendment by Rep. Deal (GA), #151, which would require, starting in FY2010, States to cover at least 90 percent of eligible individuals at or below 100 percent of the Federal poverty level before increasing eligibility to other individuals.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 13

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hastings (FL), and Rep. Diaz-Balart, Lincoln (FL), #169, which would allow the Secretary to grant a waiver of maintenance of effort requirements for the Department of Education's State Fiscal Stabilization Fund to States facing economic hardship due to natural disasters or a precipitous decline in the financial resource of the State.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 14

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order en bloc and provide appropriate waivers for amendments to be separately debatable: (1) an amendment by Rep. Buyer (IN), #44, which would provide that \$10 million in grant funding is appropriated for entities that provide job skill training for homeless women veterans and homeless veterans with children; (2) an amendment by Rep. Buyer (IN), #45, which would increase the amount of subsistence allowance to \$1,200 for veterans undergoing vocational and rehabilitation train-

ing; (3) an amendment by Rep. Buyer (IN), #46, which would appropriate \$20 million for veterans' workforce investment programs under section 168 of the Workforce Investment Act; (4) an amendment by Rep. Buyer (IN), #47, which would appropriate \$1 billion to guarantee small business loans for veterans; and (5) an amendment by Rep. McCotter (MI), #90, which would require any new infrastructure project created by funding provided in H.R. 1 to be named after a member of the United States Armed Forces who was killed in combat or an emergency response provider who was killed in the line of duty.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaugther—Nay.

Rules Committee record vote No. 15

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Heller (NV), #2, which would strike section 1301 (regarding waiver of requirement to repay first-time homebuyer credit), would extend homebuyer credit to end of 2009, and expand the credit to cover all purchases of primary residences.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaugther—Nay.

Rules Committee record vote No. 16

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Brown, Corinne (FL), and Rep. Mica (FL), #118, which would negate the need for local matching funds for airport improvement projects.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Foxx—Yea; Slaugther—Nay.

Rules Committee record vote No. 17

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Dr. Foxx.

Summary of motion: To make in order en bloc and provide appropriate waivers for amendments to be separately debatable; (1) an amendment by Rep. Blunt (MO), and Rep. Rogers, Mike (MI), #34, which would amend provisions in the bill regulating the receipt of payment for making health care communications to ensure nothing

in the bill will prevent a pharmacist from collecting and sharing information with their patients to reduce errors and improve their safety and stipulates that any money received for these activities is reasonable and cost based; (2) an amendment by Rep. Stearns (FL), #145, which would allow unemployed workers who are eligible for COBRA to receive premium assistance from the federal government, require the federal government to pay 65 percent of the worker's COBRA premium, and would prohibit anyone who made over \$1 million in 2008 from receiving COBRA premium assistance under this new COBRA premium assistance program; and (3) an amendment by Rep. Murphy, Tim (PA), #92, which would require that Health Information Technology purchased with funds made available by this Act be engineered and manufactured in the United States.

Results: Defeated 2–9.

Vote by Members: McGovern—nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea Slaughter—Nay.

Rules Committee record vote No. 18

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Dr. Foxx.

Summary of motion: To make in order en bloc and provide appropriate waivers for amendments to be separately debatable: (1) an amendment by Rep. Flake (AZ), #128, which would indicate that Members shall not influence discretionary funding by agencies or state and local officials on behalf of campaign contributors; (2) an amendment by Rep. Flake (AZ), #129, which would prohibit funds from being used for any duck pond, museum, skate park, equestrian center, dog park, ski hill, historic home, ice rink, splash playground, or speaker system; and (3) an amendment by Rep. Flake (AZ), #130, which would strike funding in the bill for the National Foundation on the Arts and the Humanities and the National Endowment for the Arts.

Results: Defeated 2–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 19

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Dr. Foxx.

Summary of motion: To make in order and provide appropriate waivers for an amendment in the nature of a substitute by Rep. Garrett (NJ), #18, which would repeal the Alternative Minimum Tax on individuals, reduce individual income taxes, reduce taxes on capital assets, make rescissions in non-defense discretionary spending, and includes other provisions relating to business, individuals and higher education.

Results: Defeated 2–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 20

Date: January 27, 2009.

Measure: H.R. 1.

Motion by: Mr. McGovern.

Summary of Motion: To report the rule.

Results: Adopted 9–2.

Vote by Members: McGovern—Yea; Hastings—Yea; Matsui—Yea; Cardoza—Yea; Arcuri—Yea; Perlmutter—Yea; Pingree—Yea; Polis—Yea; Dreier—Nay; Foxx—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENT IN PART A TO BE CONSIDERED AS ADOPTED

The amendment (1) requires that not later than 45 days after the date of enactment, funds provided to any State or agency thereof, the Governor of the State, or the State legislature by means of a statement submitted by its leadership, shall certify that the State will request and use funds provided by this Act. Funding to the State will be for public and private entities within the State either by formula or at the State's discretion; (2) waives the local matching requirements and the salary caps for the COPS hiring program in fiscal years 2009 and 2010; (3) designates \$15 million for the Historic Preservation Fund within the National Park Service for the renovation and preservation of buildings on Historically Black Colleges and Universities campuses and waives the institutional match for projects under this provision; (4) strikes funding for the National Mall Revitalization Fund; and (5) strikes section 5004 regarding family planning.

SUMMARY OF AMENDMENT IN PART B TO BE MADE IN ORDER

1. Oberstar (MN): Would amend the aviation, highway, rail, and transit priority consideration and “use-it-or-lose-it” provisions to require that 50 percent of the funds be obligated within 90 days. (10 minutes)

2. Markey (MA): Would require that the Secretary require, as a condition of receiving funding under Title XIII of the Energy Independence and Security Act of 2007, that the demonstration projects utilize Internet-based or other open protocols and standards if available and appropriate, and would require that grants recipients utilize Internet-based or other open protocols and standards. (10 minutes)

3. Shuster (PA): Would clarify that federal funds received by States under the bill for highway maintenance shall not be used to replace existing funds in place for transportation projects. (10 minutes)

4. Nadler (NY)/DeFazio (OR)/Lipinski (IL)/McMahon (NY)/Ellison (MN): Would increase transit capital funding by \$3 billion. (10 minutes)

5. Neugebauer (TX): Would strike the appropriations provisions from the bill. (10 minutes)

6. Waters (CA): Would provide that job training funds may be used for broadband deployment and related activities provided in the bill. (10 minutes)

7. Flake (AZ): Would strike funding for Amtrak. (10 minutes)

8. Kissell (NC): Would expand the Berry Amendment Extension Act to include DHS to require the government to purchase uni-

forms for more than one hundred thousand uniformed employees from U.S. textile and apparel manufacturers. (10 minutes)

9. Platts (PA)/Van Hollen (MD): Would insert the text of the Whistleblower Protection Enhancement Act (H.R. 985 in the 110th Congress) regarding protections for federal employees who report waste, fraud, and abuse. (10 minutes)

10. Teague (NM): Would require that the Recovery.gov website contain links and other information on how to access job information created at or by entities receiving funding under the bill; including links to local employment agencies, state, local, and other public agencies receiving recovery funds, and private firms contracted to perform work funded by the bill. (10 minutes)

11. Camp (MI)/Cantor (VA): Amendment in the Nature of a Substitute. Would strike everything after enacting clause and adds income tax rate deductions for bottom two income tax brackets, alternative minimum tax relief, small business deduction, bonus depreciation, small business expensing, expanded carryback of net operating losses, improved home buyer credit, unemployment benefit tax exemption, health insurance premium deduction, repeal of 3 percent withholding requirement for government contractors, extension of unemployment benefits, and a Sense of Congress against tax increases to offset outlays. (60 minutes)

PART A—TEXT OF AMENDMENT TO BE CONSIDERED AS ADOPTED

Page 15, after line 7, insert the following:

SEC. 1115. ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS.

(a) CERTIFICATION BY GOVERNOR.—Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that the State will request and use funds provided by this Act.

(b) ACCEPTANCE BY STATE LEGISLATURE.—If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) DISTRIBUTION.—After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

Page 53, after line 15, insert the following:

GENERAL PROVISIONS, THIS SUBTITLE

SEC. 3201. WAIVER OF MATCHING REQUIREMENT AND SALARY LIMIT UNDER COPS PROGRAM.

Sections 1701(g) and 1704(c) of the Omnibus Crime Control and Safe Street Act of 1968 (42 U.S.C. 3796dd(g) and 3796dd-3(c)) shall not apply with respect to funds appropriated in this or any other Act making appropriations for fiscal year 2009 or 2010 for Community Oriented Policing Services authorized under part Q of such Act of 1968.

Page 111, after line 7, insert the following:

SEC. 7005. WAIVER OF MATCHING REQUIREMENT UNDER SAFER PROGRAM.

Subparagraph (E) of section 34(a)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a(a)(1)(E)) shall not apply with respect to funds appropriated in this or any other Act making appropriations for fiscal year 2009 or 2010 for grants under such section 34.

Page 113, line 1, after “System” insert the following:
: *Provided further*, That \$15,000,000 of these funds shall be transferred to the “Historic Preservation Fund” for historic preservation projects at historically black colleges and universities as authorized by the Historic Preservation Fund Act of 1996 and the Omnibus Parks and Public Lands Act of 1996, except that any matching requirements otherwise required for such projects are waived

Page 113, strike lines 5 through 14.

Page 603, beginning on line 18, strike section 5004 (and redesignate the subsequent sections, and conform the table of contents in section 5000, accordingly).

Page 615, line 6, strike “and section 5004”.

Page 615, line 9, strike “(ff)” and insert “(ee)”.

Page 620, line 1, strike “5005(b)” and insert “5004(b)”.

PART B—TEXT OF AMENDMENTS TO BE MADE IN ORDER UNDER THE
RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE OBERSTAR OF MINNESOTA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 207, line 21, strike “120 days” and insert “90 days”.

Page 209, line 7, strike “120 days” and insert “90 days”.

Page 210, line 9, strike “180 days” and insert “90 days”.

Page 210, lines 20 and 21, strike “150 days” and insert “75 days”.

Page 211, line 25, strike “180 days” and insert “90 days”.

Page 214, line 2, strike “180 days” and insert “90 days”.

Page 215, line 7, strike “180 days” and insert “90 days”.

Page 216, line 8, strike “120 days” and insert “90 days”.

Page 216, line 13, strike “120 days” and insert “90 days”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARKEY OF MASSACHUSETTS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 637, lines 10 through 15, amend subparagraph (F) to read as follows:

“(F) OPEN PROTOCOLS AND STANDARDS.—The Secretary shall require as a condition of receiving funding under this subsection that demonstration projects utilize Internet-based or other open protocols and standards if available and appropriate.”

Page 638, lines 12 through 14, amend paragraph (2) to read as follows:

“(2) require as a condition of receiving a grant under this section that grant recipients utilize Internet-based or other open protocols and standards if available and appropriate;

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SHUSTER OF PENNSYLVANIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 230, beginning on line 22, strike “the date of enactment of this Act” and insert “October 1, 2008”.

In section 12001 of division A of the bill—

(1) redesignate subsections (b) and (c) as subsections (c) and (d), respectively, and

(2) insert after subsection (a) the following:

(b) FAILURE TO MAINTAIN EFFORT.—If a Governor is unable to certify that Federal funds will not supplant non-Federal funds pursuant to subsection (a), then the Federal funds apportioned to that State under this Act that will supplant non-Federal funds will be recaptured by the appropriate Federal agency and redistributed to States or agencies that can spend the Federal funds without supplanting non-Federal funds.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NADLER OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 213, line 4, after the first dollar amount, insert “(increased by \$1,500,000,000)”.

Page 213, line 4, after the second dollar amount, insert “(increased by \$1,350,000,000)”.

Page 213, line 10, after the first dollar amount, insert “(increased by \$150,000,000)”.

Page 216, line 2, after the dollar amount, insert “(increased by \$1,500,000,000)”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NEUGEBAUER OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike division A (and redesignate remaining provisions accordingly).

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATERS OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 125, line 6, insert “(including projects funded under section 6002 of division B of this Act)” after “sectors”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FLAKE OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 212, strike lines 9 through 24.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KISSELL OF NORTH CAROLINA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 111, after line 7 insert the following new section:

SEC. 7005. PROCUREMENT FOR DEPARTMENT OF HOMELAND SECURITY.

(a) **REQUIREMENT.**—Except as provided in subsections (c) through (e), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) **COVERED ITEMS.**—An item referred to in subsection (a) is any of the following, if the item is directly related to the national security interests of the United States:

(1) An article or item of—

(A) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(B) tents, tarpaulins, or covers;

(C) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(D) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(c) **AVAILABILITY EXCEPTION.**—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed.

(d) **EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.**—Subsection (a) does not apply to the following:

(1) Procurements by vessels in foreign waters.

(2) Emergency procurements.

(e) **EXCEPTION FOR SMALL PURCHASES.**—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code.

(f) **APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.**—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(g) **GEOGRAPHIC COVERAGE.**—In this section, the term “United States” includes the possessions of the United States.

(h) **NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.**—In the case of any contract for the procurement of an item described in subsection (b)(1), if the Secretary of Homeland Security applies an exception set forth in subsection (c) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOps.gov (or any successor site).

(i) TRAINING DURING FISCAL YEAR 2008.—

(1) IN GENERAL.—The Secretary of Homeland Security shall ensure that each member of the acquisition workforce in the Department of Homeland Security who participates personally and substantially in the acquisition of textiles on a regular basis receives training during fiscal year 2009 on the requirements of this section and the regulations implementing this section.

(2) INCLUSION OF INFORMATION IN NEW TRAINING PROGRAMS.—The Secretary shall ensure that any training program for the acquisition work force developed or implemented after the date of the enactment of this Act includes comprehensive information on the requirements described in paragraph (1).

(j) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—

(1) IN GENERAL.—No provision of this section shall apply to the extent the Secretary of Homeland Security, in consultation with the United States Trade Representative, determines that it is inconsistent with United States obligations under an international agreement.

(2) REPORT.—The Secretary of Homeland Security shall submit a report each year to Congress containing, with respect to the year covered by the report—

(A) a list of each provision of this section that did not apply during that year pursuant to a determination by the Secretary under paragraph (1); and

(B) a list of each contract awarded by the Department of Homeland Security during that year without regard to a provision in this section because that provision was made inapplicable pursuant to such a determination.

(k) EFFECTIVE DATE.—This section applies with respect to contracts entered into by the Department of Homeland Security after the date of the enactment of this Act.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PLATTS OF PENNSYLVANIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 35, after line 5, insert the following:

**PART 4—FURTHER ACCOUNTABILITY AND
TRANSPARENCY PROVISIONS**

SEC. 1261. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This part may be cited as the “Whistleblower Protection Enhancement Act of 2009”.

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

PART 4—FURTHER ACCOUNTABILITY AND TRANSPARENCY PROVISIONS

- Sec. 1261. Short title; table of contents.
- Sec. 1262. Clarification of disclosures covered.
- Sec. 1263. Definitional amendments.
- Sec. 1264. Rebuttable presumption.
- Sec. 1265. Nondisclosure policies, forms, and agreements.
- Sec. 1266. Exclusion of agencies by the President.
- Sec. 1267. Disciplinary action.

- Sec. 1268. Government Accountability Office study on revocation of security clearances.
- Sec. 1269. Alternative recourse.
- Sec. 1270. National security whistleblower rights.
- Sec. 1271. Enhancement of contractor employee whistleblower protections.
- Sec. 1272. Prohibited personnel practices affecting the Transportation Security Administration.
- Sec. 1273. Clarification of whistleblower rights relating to scientific and other research.
- Sec. 1274. Effective date.

SEC. 1262. CLARIFICATION OF DISCLOSURES COVERED.

(a) IN GENERAL.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation”; and

(2) in subparagraph (B)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, of information that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation (other than a violation of this section)”.

(b) PROHIBITED PERSONNEL PRACTICES UNDER SECTION 2302(b)(9).—Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214 and in subsections (a) and (e)(1) of section 1221 by inserting “or 2302(b)(9)(B)–(D)” after “section 2302(b)(8)” each place it appears.

SEC. 1263. DEFINITIONAL AMENDMENTS.

(a) DISCLOSURE.—Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking “and” at the end;

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

(3) by adding at the end the following:

“(D) ‘disclosure’ means a formal or informal communication, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

“(i) any violation of any law, rule, or regulation; or

“(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”.

(b) CLEAR AND CONVINCING EVIDENCE.—Sections 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States Code, are amended by add-

ing at the end the following: “For purposes of the preceding sentence, ‘clear and convincing evidence’ means evidence indicating that the matter to be proved is highly probable or reasonably certain.”.

SEC. 1264. REBUTTABLE PRESUMPTION.

Section 2302(b) of title 5, United States Code, is amended by adding at the end the following: “For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to or readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.”.

SEC. 1265. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.

(a) **PERSONNEL ACTION.**—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

- (1) in clause (x), by striking “and” at the end;
- (2) by redesignating clause (xi) as clause (xii); and
- (3) by inserting after clause (x) the following:

“(xi) the implementation or enforcement of any non-disclosure policy, form, or agreement; and”.

(b) **PROHIBITED PERSONNEL PRACTICE.**—Section 2302(b) of title 5, United States Code, is amended—

- (1) in paragraph (11), by striking “or” at the end;
- (2) by redesignating paragraph (12) as paragraph (14); and
- (3) by inserting after paragraph (11) the following:

“(12) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: ‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosures to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 and following) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive

order and such statutory provisions are incorporated into this agreement and are controlling;’

“(13) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary factfinding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; or”.

SEC. 1266. EXCLUSION OF AGENCIES BY THE PRESIDENT.

Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

“(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Security Agency; or

“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or”.

SEC. 1267. DISCIPLINARY ACTION.

Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

“(3)(A) A final order of the Board may impose—

“(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

“(ii) an assessment of a civil penalty not to exceed \$1,000; or

“(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

“(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under such paragraph (8) or (9) (as the case may be) was the primary motivating factor, unless that employee demonstrates, by a preponderance of the evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.”.

SEC. 1268. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON REVOCATION OF SECURITY CLEARANCES.

(a) **REQUIREMENT.**—The Comptroller General shall conduct a study of security clearance revocations, taking effect after 1996, with respect to personnel that filed claims under chapter 12 of title 5, United States Code, in connection therewith. The study shall consist of an examination of the number of such clearances revoked, the number restored, and the relationship, if any, between the resolution of claims filed under such chapter and the restoration of such clearances.

(b) **REPORT.**—Not later than 270 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Gov-

ernmental Affairs of the Senate a report on the results of the study required by subsection (a).

SEC. 1269. ALTERNATIVE RECOURSE.

(a) **IN GENERAL.**—Section 1221 of title 5, United States Code, is amended by adding at the end the following:

“(k)(1) If, in the case of an employee, former employee, or applicant for employment who seeks corrective action (or on behalf of whom corrective action is sought) from the Merit Systems Protection Board based on an alleged prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D), no final order or decision is issued by the Board within 180 days after the date on which a request for such corrective action has been duly submitted (or, in the event that a final order or decision is issued by the Board, whether within that 180-day period or thereafter, then, within 90 days after such final order or decision is issued, and so long as such employee, former employee, or applicant has not filed a petition for judicial review of such order or decision under subsection (h))—

“(A) such employee, former employee, or applicant may, after providing written notice to the Board, bring an action at law or equity for de novo review in the appropriate United States district court, which shall have jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury; and

“(B) in any such action, the court—

“(i) shall apply the standards set forth in subsection (e); and

“(ii) may award any relief which the court considers appropriate, including any relief described in subsection (g). An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.

“(2) For purposes of this subsection, the term ‘appropriate United States district court’, as used with respect to an alleged prohibited personnel practice, means the United States district court for the district in which the prohibited personnel practice is alleged to have been committed, the judicial district in which the employment records relevant to such practice are maintained and administered, or the judicial district in which resides the employee, former employee, or applicant for employment allegedly affected by such practice.

“(3) This subsection applies with respect to any appeal, petition, or other request for corrective action duly submitted to the Board, whether pursuant to section 1214(b)(2), the preceding provisions of this section, section 7513(d), or any otherwise applicable provisions of law, rule, or regulation.”.

(b) **REVIEW OF MSPB DECISIONS.**—Section 7703(b) of such title 5 is amended—

(1) in the first sentence of paragraph (1), by striking “the United States Court of Appeals for the Federal Circuit” and inserting “the appropriate United States court of appeals”; and

(2) by adding at the end the following:

“(3) For purposes of the first sentence of paragraph (1), the term ‘appropriate United States court of appeals’ means the United States Court of Appeals for the Federal Circuit, except that in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D) (other than a case that, disregarding this paragraph, would otherwise be subject to paragraph (2)), such term means the United States Court of Appeals for the Federal Circuit and any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court for purposes of such prohibited personnel practice.”.

(c) COMPENSATORY DAMAGES.—Section 1221(g)(1)(A)(ii) of such title 5 is amended by striking all after “travel expenses,” and inserting “any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney’s fees, interest, reasonable expert witness fees, and costs).”.

(d) CONFORMING AMENDMENTS.—

(1) Section 1221(h) of such title 5 is amended by adding at the end the following:

“(3) Judicial review under this subsection shall not be available with respect to any decision or order as to which the employee, former employee, or applicant has filed a petition for judicial review under subsection (k).”.

(2) Section 7703(c) of such title 5 is amended by striking “court.” and inserting “court, and in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D) brought under any provision of law, rule, or regulation described in section 1221(k)(3), the employee or applicant shall have the right to de novo review in accordance with section 1221(k).”.

SEC. 1270. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

(a) IN GENERAL.—Chapter 23 of title 5, United States Code, is amended by inserting after section 2303 the following:

“§ 2303a. National security whistleblower rights

“(a) PROHIBITION OF REPRISALS.—

“(1) IN GENERAL.—In addition to any rights provided in section 2303 of this title, title VII of Public Law 105–272, or any other provision of law, an employee or former employee in a covered agency may not be discharged, demoted, or otherwise discriminated against (including by denying, suspending, or revoking a security clearance, or by otherwise restricting access to classified or sensitive information) as a reprisal for making a disclosure described in paragraph (2).

“(2) DISCLOSURES DESCRIBED.—A disclosure described in this paragraph is any disclosure of covered information which is made—

“(A) by an employee or former employee in a covered agency (without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or former employee, including a disclosure made in the course of an employee’s duties); and

“(B) to an authorized Member of Congress, an authorized official of an Executive agency, or the Inspector General of

the covered agency in which such employee or former employee is or was employed.

“(b) INVESTIGATION OF COMPLAINTS.—An employee or former employee in a covered agency who believes that such employee or former employee has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General and the head of the covered agency. The Inspector General shall investigate the complaint and, unless the Inspector General determines that the complaint is frivolous, submit a report of the findings of the investigation within 120 days to the employee or former employee (as the case may be) and to the head of the covered agency.

“(c) REMEDY.—

“(1) Within 180 days of the filing of the complaint, the head of the covered agency shall, taking into consideration the report of the Inspector General under subsection (b) (if any), determine whether the employee or former employee has been subjected to a reprisal prohibited by subsection (a), and shall either issue an order denying relief or shall implement corrective action to return the employee or former employee, as nearly as possible, to the position he would have held had the reprisal not occurred, including voiding any directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, as well as providing back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney’s fees, interest, reasonable expert witness fees, and costs). If the head of the covered agency issues an order denying relief, he shall issue a report to the employee or former employee detailing the reasons for the denial.

“(2)(A) If the head of the covered agency, in the process of implementing corrective action under paragraph (1), voids a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, the head of the covered agency may re-initiate procedures to issue a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information only if those re-initiated procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

“(B) In any case in which the head of a covered agency re-initiates procedures under subparagraph (A), the head of the covered agency shall issue an unclassified report to its Inspector General and to authorized Members of Congress (with a classified annex, if necessary), detailing the circumstances of the agency’s re-initiated procedures and describing the manner in which those procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal. The head of the covered agency shall also provide periodic updates to the Inspector General and authorized Members of Congress detailing any significant actions taken as a result of those procedures, and shall respond

promptly to inquiries from authorized Members of Congress regarding the status of those procedures.

“(3) If the head of the covered agency has not made a determination under paragraph (1) within 180 days of the filing of the complaint (or he has issued an order denying relief, in whole or in part, whether within that 180-day period or thereafter, then, within 90 days after such order is issued), the employee or former employee may bring an action at law or equity for de novo review to seek any corrective action described in paragraph (1) in the appropriate United States district court (as defined by section 1221(k)(2)), which shall have jurisdiction over such action without regard to the amount in controversy. An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.

“(4) An employee or former employee adversely affected or aggrieved by an order issued under paragraph (1), or who seeks review of any corrective action determined under paragraph (1), may obtain judicial review of such order or determination in the United States Court of Appeals for the Federal Circuit or any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court. No petition seeking such review may be filed more than 60 days after issuance of the order or the determination to implement corrective action by the head of the agency. Review shall conform to chapter 7.

“(5)(A) If, in any action for damages or relief under paragraph (3) or (4), an Executive agency moves to withhold information from discovery based on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the ‘state secrets privilege’, and if the assertion of such privilege prevents the employee or former employee from establishing an element in support of the employee’s or former employee’s claim, the court shall resolve the disputed issue of fact or law in favor of the employee or former employee, provided that an Inspector General investigation under subsection (b) has resulted in substantial confirmation of that element, or those elements, of the employee’s or former employee’s claim.

“(B) In any case in which an Executive agency asserts the privilege commonly referred to as the ‘state secrets privilege’, whether or not an Inspector General has conducted an investigation under subsection (b), the head of that agency shall, at the same time it asserts the privilege, issue a report to authorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the employee or former employee, setting forth the date on which the classified

information at issue will be declassified, and providing all relevant information about the underlying substantive matter.

“(d) APPLICABILITY TO NON-COVERED AGENCIES.—An employee or former employee in an Executive agency (or element or unit thereof) that is not a covered agency shall, for purposes of any disclosure of covered information (as described in subsection (a)(2)) which consists in whole or in part of classified or sensitive information, be entitled to the same protections, rights, and remedies under this section as if that Executive agency (or element or unit thereof) were a covered agency.

“(e) CONSTRUCTION.—Nothing in this section may be construed—

“(1) to authorize the discharge of, demotion of, or discrimination against an employee or former employee for a disclosure other than a disclosure protected by subsection (a) or (d) of this section or to modify or derogate from a right or remedy otherwise available to an employee or former employee; or

“(2) to preempt, modify, limit, or derogate any rights or remedies available to an employee or former employee under any other provision of law, rule, or regulation (including the Lloyd-La Follette Act).

No court or administrative agency may require the exhaustion of any right or remedy under this section as a condition for pursuing any other right or remedy otherwise available to an employee or former employee under any other provision of law, rule, or regulation (as referred to in paragraph (2)).

“(f) DEFINITIONS.—For purposes of this section—

“(1) the term ‘covered information’, as used with respect to an employee or former employee, means any information (including classified or sensitive information) which the employee or former employee reasonably believes evidences—

“(A) any violation of any law, rule, or regulation; or

“(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

“(2) the term ‘covered agency’ means—

“(A) the Federal Bureau of Investigation, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and the National Reconnaissance Office; and

“(B) any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii)(II) to have as its principal function the conduct of foreign intelligence or counterintelligence activities;

“(3) the term ‘authorized Member of Congress’ means—

“(A) with respect to covered information about sources and methods of the Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program (as defined in section 3(6) of the National Security Act of 1947), a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, or any other committees of the House of Representatives or Senate to which this type of information is customarily provided;

“(B) with respect to special access programs specified in section 119 of title 10, an appropriate member of the Congressional defense committees (as defined in such section); and

“(C) with respect to other covered information, a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, or any other committees of the House of Representatives or the Senate that have oversight over the program which the covered information concerns; and

“(4) the term ‘authorized official of an Executive agency’ shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall, with respect to any employee or former employee in an agency, include the head, the general counsel, and the ombudsman of such agency.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 23 of title 5, United States Code, is amended by inserting after the item relating to section 2303 the following:

“2303a. National security whistleblower rights.”

SEC. 1271. ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLE-BLOWER PROTECTIONS.

(a) CIVILIAN AGENCY CONTRACTS.—Section 315(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 265(c)) is amended—

(1) in paragraph (1), by striking “If the head” and all that follows through “actions:” and inserting the following: “Not later than 180 days after submission of a complaint under subsection (b), the head of the executive agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:”; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

“(3) If the head of an executive agency has not issued an order within 180 days after the submission of a complaint under subsection (b) and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.”

(b) ARMED SERVICES CONTRACTS.—Section 2409(c) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “If the head” and all that follows through “actions:” and inserting the following: “Not later than 180 days after submission of a complaint under subsection (b), the head of the agency concerned shall determine

whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:”; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

“(3) If the head of an agency has not issued an order within 180 days after the submission of a complaint under subsection (b) and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.”.

SEC. 1272. PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.

(a) IN GENERAL.—Chapter 23 of title 5, United States Code, is amended—

(1) by redesignating sections 2304 and 2305 as sections 2305 and 2306, respectively; and

(2) by inserting after section 2303a (as inserted by section 1270) the following:

“§ 2304. Prohibited personnel practices affecting the Transportation Security Administration

“(a) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by—

“(1) the provisions of section 2302(b)(1), (8), and (9);

“(2) any provision of law implementing section 2302(b)(1), (8), or (9) by providing any right or remedy available to an employee or applicant for employment in the civil service; and

“(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).

“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any rights, apart from those described in subsection (a), to which an individual described in subsection (a) might otherwise be entitled under law.

“(c) EFFECTIVE DATE.—This section shall take effect as of the date of the enactment of this section.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 23 of title 5, United States Code, is amended by striking the items relating to sections 2304 and 2305, respectively, and by inserting the following:

“2304. Prohibited personnel practices affecting the Transportation Security Administration.

“2305. Responsibility of the Government Accountability Office.

“2306. Coordination with certain other provisions of law.”.

SEC. 1273. CLARIFICATION OF WHISTLEBLOWER RIGHTS RELATING TO SCIENTIFIC AND OTHER RESEARCH.

(a) IN GENERAL.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(f) As used in section 2302(b)(8), the term ‘abuse of authority’ includes—

“(1) any action that compromises the validity or accuracy of federally funded research or analysis;

“(2) the dissemination of false or misleading scientific, medical, or technical information;

“(3) any action that restricts or prevents an employee or any person performing federally funded research or analysis from publishing in peer-reviewed journals or other scientific publications or making oral presentations at professional society meetings or other meetings of their peers; and

“(4) any action that discriminates for or against any employee or applicant for employment on the basis of religion, as defined by section 1273(b) of the Whistleblower Protection Enhancement Act of 2009.”.

(b) DEFINITION.—As used in section 2302(f)(3) of title 5, United States Code (as amended by subsection (a)), the term “on the basis of religion” means—

(1) prohibiting personal religious expression by Federal employees to the greatest extent possible, consistent with requirements of law and interests in workplace efficiency;

(2) requiring religious participation or non-participation as a condition of employment, or permitting religious harassment;

(3) failing to accommodate employees’ exercise of their religion;

(4) failing to treat all employees with the same respect and consideration, regardless of their religion (or lack thereof);

(5) restricting personal religious expression by employees in the Federal workplace except where the employee’s interest in the expression is outweighed by the government’s interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion;

(6) regulating employees’ personal religious expression on the basis of its content or viewpoint, or suppressing employees’ private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics;

(7) failing to exercise their authority in an evenhanded and restrained manner, and with regard for the fact that Americans are used to expressions of disagreement on controversial subjects, including religious ones;

(8) failing to permit an employee to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint-neutral standards and restrictions;

(9) failing to permit an employee to engage in religious expression with fellow employees, to the same extent that they

may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions;

(10) failing to permit an employee to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion;

(11) inhibiting an employee from urging a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors, except that the employee must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome;

(12) failing to prohibit expression that is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker;

(13) preventing an employee from—

(A) wearing personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry; or

(B) displaying religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in her personal capacity, and not that of the government itself;

(14) prohibiting an employee from using their private time to discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities;

(15) discriminating against an employee on the basis of their religion, religious beliefs, or views concerning their religion by promoting, refusing to promote, hiring, refusing to hire, or otherwise favoring or disfavoring, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion, or by explicitly or implicitly, insisting that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment or insisting that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (such as restrictions on political activities prohibited by the Hatch Act);

(16) prohibiting a supervisor's religious expression where it is not coercive and is understood to be his or her personal view, in the same way and to the same extent as other constitutionally valued speech;

(17) permitting a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by su-

supervisors or fellow workers, as determined by its frequency or repetitiveness, and severity;

(18) failing to accommodate an employee's exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations, based on real rather than speculative or hypothetical cost and without disfavoring other, nonreligious accommodations; and

(19) in those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, failing to grant the employee an exemption from that rule, absent a compelling interest in denying the exemption and where there is no less restrictive means of furthering that interest.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

SEC. 1274. EFFECTIVE DATE.

This part shall take effect 30 days after the date of the enactment of this Act, except as provided in the amendment made by section 1272(a)(2).

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TEAQUE OF NEW MEXICO, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of section 1226 (page 25, after line 21), insert the following:

(8) The website shall provide, by location, links to and information on how to access job opportunities created at or by entities receiving funding under this Act, including, if possible, links to or information about local employment agencies; state, local and other public agencies receiving funding; and private firms contracted to perform work funded by this Act

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAMP OF MICHIGAN, OR HIS DESIGNEE, DEBATABLE FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Economic Recovery Act of 2009”.

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

Sec. 1. Short title, etc.

TITLE I—TAX PROVISIONS

Sec. 100. References.

Subtitle A—Reduction in Individual Tax Rates For 2009 and 2010

Sec. 101. 10 percent rate bracket for individuals reduced to 5 percent for 2009 and 2010.

Sec. 102. 15 percent rate bracket for individuals reduced to 10 percent for 2009 and 2010.

Subtitle B—Alternative Minimum Tax Relief For Individuals

- Sec. 111. Extension of alternative minimum tax relief for nonrefundable personal credits.
- Sec. 112. Increase in alternative minimum tax exemption amounts for 2009 and 2010.

Subtitle C—First-Time Homebuyer Credit

- Sec. 121. Extension and modification of first-time homebuyer credit.

Subtitle D—Tax Incentives For Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

- Sec. 131. Special allowance for certain property acquired during 2009.
- Sec. 132. Temporary increase in limitations on expensing of certain depreciable business assets.

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

- Sec. 136. 5-year carryback of operating losses.
- Sec. 137. Exception for TARP recipients.

PART 3—DEDUCTION FOR QUALIFIED SMALL BUSINESS INCOME

- Sec. 141. Deduction for qualified small business income.

PART 4—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

- Sec. 146. Repeal of withholding tax on government contractors.

Subtitle E—Deduction For Qualified Health Insurance Costs of Individuals

- Sec. 151. Above-the-line deduction for qualified health insurance costs of individuals.

Subtitle F—Temporary Exclusion of Unemployment Compensation From Gross Income

- Sec. 161. Temporary exclusion of unemployment compensation from gross income.

Subtitle G—No Impact on Social Security Trust Funds

- Sec. 171. No impact on social security trust funds.

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS

- Sec. 200. Short title.
- Sec. 201. Extension of emergency unemployment compensation program.
- Sec. 202. Additional eligibility requirements for emergency unemployment compensation.
- Sec. 203. Special transfers.

TITLE III—NO TAX INCREASES TO PAY FOR SPENDING

- Sec. 301. No Tax Increases to Pay for Spending.

TITLE I—TAX PROVISIONS

SEC. 100. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Reduction in Individual Tax Rates For 2009 and 2010

SEC. 101. 10 PERCENT RATE BRACKET FOR INDIVIDUALS REDUCED TO 5 PERCENT FOR 2009 AND 2010.

(a) IN GENERAL.—Clause (i) of section 1(i)(1)(A) is amended by inserting “(5 percent in the case of any taxable year beginning in 2009 or 2010)” after “10 percent”.

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

SEC. 102. 15 PERCENT RATE BRACKET FOR INDIVIDUALS REDUCED TO 10 PERCENT FOR 2009 AND 2010.

(a) **IN GENERAL.**—Subsection (i) of section 1 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) **REDUCTION IN 15 PERCENT RATE FOR 2009 AND 2010.**—In the case of any taxable year beginning in 2009 or 2010, ‘10 percent’ shall be substituted for ‘15 percent’ in the tables under subsections (a), (b), (c), (d), and (e). The preceding sentence shall be applied after application of paragraph (1).”.

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

Subtitle B—Alternative Minimum Tax Relief For Individuals

SEC. 111. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

(a) **IN GENERAL.**—Paragraph (2) of section 26(a) (relating to special rule for taxable years 2000 through 2008) is amended—

(1) by striking “or 2008” and inserting “2008, 2009, or 2010”, and

(2) by striking “2008” in the heading thereof and inserting “2010”.

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

SEC. 112. INCREASE IN ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNTS FOR 2009 AND 2010.

(a) **IN GENERAL.**—Paragraph (1) of section 55(d) (relating to exemption amount) is amended—

(1) by striking “(\$69,950 in the case of taxable years beginning in 2008)” in subparagraph (A) and inserting “(\$55,000 in the case of taxable years beginning in 2009 or 2010)”, and

(2) by striking “(\$46,200 in the case of taxable years beginning in 2008)” in subparagraph (B) and inserting “(\$38,750 in the case of taxable years beginning in 2009 or 2010)”.

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

Subtitle C—First-Time Homebuyer Credit

SEC. 121. EXTENSION AND MODIFICATION OF FIRST-TIME HOME-BUYER CREDIT.

(a) **EXTENSION OF CREDIT.**—Subsection (i) of section 36 (as redesignated by subsection (d)) is amended by striking “July 1, 2009” and inserting “January 1, 2010”.

(b) **REPEAL OF FIRST-TIME HOMEBUYER REQUIREMENT.**—

(1) **IN GENERAL.**—Subsection (a) of section 36 is amended by striking “an individual who is a first-time homebuyer of a principal residence” and inserting “an individual who purchases a principal residence”.

(2) **CONFORMING AMENDMENTS.**—

(A) Section 36(b)(1)(A) is amended by inserting “with respect to any taxpayer for any taxable year” after “subsection (a)”.

(B) Section 36(c) is amended by striking paragraph (1) and by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(C) The heading of section 36 (and the item relating to such section in the table of sections for subpart C of part IV of subchapter A of chapter 1) are amended by striking “**first-time homebuyer**” and inserting “**homebuyer**”.

(c) REPEAL OF RECAPTURE RULES.—

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

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

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

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

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

(d) DOWNPAYMENT REQUIREMENT.—Section 36 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) DOWNPAYMENT REQUIREMENT.—No credit shall be allowed under subsection (a) to any taxpayer with respect to the purchase of any residence unless such taxpayer makes a downpayment of not less 5 percent of the purchase price of such residence. For purposes of the preceding sentence, an amount shall not be treated as a downpayment if such amount is repayable by the taxpayer to any other person.”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to residences purchased after December 31, 2008.

(2) DOWNPAYMENT REQUIREMENT.—The amendment made by subsection (d) shall apply to residences purchased after the date of the enactment of this Act.

Subtitle D—Tax Incentives For Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

SEC. 131. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

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

(1) by striking “January 1, 2010” and inserting “January 1, 2011”, and

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

“(ii) ‘April 1, 2008’ shall be substituted for ‘January 1, 2008’ in subparagraph (A)(iii)(I) thereof,

“(iii) ‘January 1, 2009’ shall be substituted for ‘January 1, 2010’ each place it appears,

“(iv) ‘January 1, 2010’ shall be substituted for ‘January 1, 2011’ in subparagraph (A)(iv) thereof, and”.

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

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

(c) EFFECTIVE DATES.—

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

(2) TECHNICAL AMENDMENT.—Section 168(k)(4)(D)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(3)(C), shall apply to taxable years ending after March 31, 2008.

SEC. 132. TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

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

(1) by striking “2008” and inserting “2008, or 2009”, and

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

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

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

SEC. 136. 5-YEAR CARRYBACK OF OPERATING LOSSES.

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

“(H) CARRYBACK FOR 2008 AND 2009 NET OPERATING LOSSES.—

“(i) IN GENERAL.—In the case of an applicable 2008 or 2009 net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

“(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for ‘2’,

“(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (II) for ‘2’, and

“(III) subparagraph (F) shall not apply.

“(ii) APPLICABLE 2008 OR 2009 NET OPERATING LOSS.—For purposes of this subparagraph, the term ‘applicable 2008 or 2009 net operating loss’ means—

“(I) the taxpayer’s net operating loss for any taxable year ending in 2008 or 2009, or

“(II) if the taxpayer elects to have this subclause apply in lieu of subclause (I), the taxpayer’s net operating loss for any taxable year beginning in 2008 or 2009.

“(iii) ELECTION.—Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer’s return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable.

“(iv) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have clause (ii)(II) apply, section 56(d)(1)(A)(ii) shall be applied by substituting ‘ending during 2001 or 2002 or beginning during 2008 or 2009’ for ‘ending during 2001, 2002, 2008, or 2009’.”

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

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

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

“(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

“(A) IN GENERAL.—In the case of an applicable 2008 or 2009 loss from operations with respect to which the taxpayer has elected the application of this paragraph, paragraph (1)(A) shall be applied, at the election of the taxpayer, by substituting ‘5’ or ‘4’ for ‘3’.

“(B) APPLICABLE 2008 OR 2009 LOSS FROM OPERATIONS.—For purposes of this paragraph, the term ‘applicable 2008 or 2009 loss from operations’ means—

“(i) the taxpayer’s loss from operations for any taxable year ending in 2008 or 2009, or

“(ii) if the taxpayer elects to have this clause apply in lieu of clause (i), the taxpayer’s loss from operations for any taxable year beginning in 2008 or 2009.

“(C) ELECTION.—Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer’s return for the tax-

able year of the loss from operations. Any such election, once made, shall be irrevocable.

“(D) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have subparagraph (B)(ii) apply, section 56(d)(1)(A)(ii) shall be applied by substituting ‘ending during 2001 or 2002 or beginning during 2008 or 2009’ for ‘ending during 2001, 2002, 2008, or 2009’.”

(d) CONFORMING AMENDMENT.—Section 172 is amended by striking subsection (k).

(e) EFFECTIVE DATE.—

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

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

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

(4) TRANSITIONAL RULE.—In the case of a net operating loss (or, in the case of a life insurance company, a loss from operations) for a taxable year ending before the date of the enactment of this Act—

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

(B) any election made under section 172(b)(1)(H) or 810(b)(4) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

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

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

SEC. 137. EXCEPTION FOR TARP RECIPIENTS.

The amendments made by this part shall not apply to—

(1) any taxpayer if—

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

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

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

(3) any taxpayer which at any time in 2008 or 2009 is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986, determined without re-

gard to subsection (b) thereof) as a taxpayer described in paragraph (1) or (2).

PART 3—DEDUCTION FOR QUALIFIED SMALL BUSINESS INCOME

SEC. 141. DEDUCTION FOR QUALIFIED SMALL BUSINESS INCOME.

(a) **IN GENERAL.**—Paragraph (1) of section 199(a) is amended to read as follows:

“(1) **IN GENERAL.**—There shall be allowed as a deduction an amount equal to the sum of—

“(A) 9 percent of the lesser of—

“(i) the qualified production activities income of the taxpayer for the taxable year, or

“(ii) taxable income (determined without regard to this section) for the taxable year, and

“(B) in the case of a qualified small business for a taxable year beginning in 2009 or 2010, 20 percent of the lesser of—

“(i) the qualified small business income of the taxpayer for the taxable year, or

“(ii) taxable income (determined without regard to this section) for the taxable year.”.

(b) **QUALIFIED SMALL BUSINESS; QUALIFIED SMALL BUSINESS INCOME.**—Section 199 is amended by adding at the end the following new subsection:

“(e) **QUALIFIED SMALL BUSINESS; QUALIFIED SMALL BUSINESS INCOME.**—

“(1) **QUALIFIED SMALL BUSINESS.**—

“(A) **IN GENERAL.**—For purposes of this section, the term ‘qualified small business’ means any taxpayer for any taxable year if the annual average number of employees employed by such taxpayer during such taxable year was 500 or fewer.

“(B) **AGGREGATION RULE.**—For purposes of subparagraph (A), any person treated as a single employer under subsection (a) or (b) of section 52 (applied without regard to section 1563(b)) or subsection (m) or (o) of section 414 shall be treated as 1 taxpayer for purposes of this subsection.

“(C) **SPECIAL RULE.**—If a taxpayer is treated as a qualified small business for any taxable year, the taxpayer shall not fail to be treated as a qualified small business for any subsequent taxable year solely because the number of employees employed by such taxpayer during such subsequent taxable year exceeds 500. The preceding sentence shall cease to apply to such taxpayer in the first taxable year in which there is an ownership change (as defined by section 382(g) in respect of a corporation, or by applying principles analogous to such ownership change in the case of a taxpayer that is a partnership) with respect to the stock (or partnership interests) of the taxpayer.

“(2) **QUALIFIED SMALL BUSINESS INCOME.**—

“(A) **IN GENERAL.**—For purposes of this section, the term ‘qualified small business income’ means the excess of—

“(i) the income of the qualified small business which—

“(I) is attributable to the actual conduct of a trade or business,

“(II) is income from sources within the United States (within the meaning of section 861), and

“(III) is not passive income (as defined in section 904(d)(2)(B)), over

“(ii) the sum of—

“(I) the cost of goods sold that are allocable to such income, and

“(II) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such income.

“(B) EXCEPTIONS.—The following shall not be treated as income of a qualified small business for purposes of subparagraph (A):

“(i) Any income which is attributable to any property described in section 1400N(p)(3).

“(ii) Any income which is attributable to the ownership or management of any professional sports team.

“(iii) Any income which is attributable to a trade or business described in subparagraph (B) of section 1202(e)(3).

“(iv) Any income which is attributable to any property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

“(C) ALLOCATION RULES, ETC.—Rules similar to the rules of paragraphs (2), (3), (4)(D), and (7) of subsection (c) shall apply for purposes of this paragraph.

“(3) SPECIAL RULES.—Except as otherwise provided by the Secretary, rules similar to the rules of subsection (d) shall apply for purposes of this subsection.”

(c) CONFORMING AMENDMENT.—Section 199(a)(2) is amended by striking “paragraph (1)” and inserting “paragraph (1)(A)”.

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

PART 4—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

SEC. 146. REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS.

Section 3402 is amended by striking subsection (t).

Subtitle E—Deduction For Qualified Health Insurance Costs of Individuals

SEC. 151. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED HEALTH INSURANCE COSTS OF INDIVIDUALS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

“SEC. 224. COSTS OF QUALIFIED HEALTH INSURANCE.

“(a) **IN GENERAL.**—In the case of an individual, there shall be allowed as a deduction an amount equal to the amount paid during the taxable year for coverage for the taxpayer, his spouse, and dependents under qualified health insurance.

“(b) **QUALIFIED HEALTH INSURANCE.**—For purposes of this section, the term ‘qualified health insurance’ means insurance which constitutes medical care; except that such term shall not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

“(c) **SPECIAL RULES.**—

“(1) **COORDINATION WITH MEDICAL DEDUCTION, ETC.**—Any amount paid by a taxpayer for insurance to which subsection (a) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 162(l) or 213(a). Any amount taken into account in determining the credit allowed under section 35 shall not be taken into account for purposes of this section.

“(2) **DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX PURPOSES.**—The deduction allowable by reason of this section shall not be taken into account in determining an individual’s net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.”.

(b) **DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.**—Subsection (a) of section 62 of such Code is amended by inserting before the last sentence the following new paragraph:

“(22) **COSTS OF QUALIFIED HEALTH INSURANCE.**—The deduction allowed by section 224.”.

(c) **CLERICAL AMENDMENT.**—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by redesignating the item relating to section 224 as an item relating to section 225 and inserting before such item the following new item: “Sec. 224. Costs of qualified health insurance.”.

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

Subtitle F—Temporary Exclusion of Unemployment Compensation From Gross Income

SEC. 161. TEMPORARY EXCLUSION OF UNEMPLOYMENT COMPENSATION FROM GROSS INCOME.

(a) **IN GENERAL.**—Section 85 is amended by adding at the end the following new subsection:

“(c) **EXCLUSION OF AMOUNTS RECEIVED IN 2008 AND 2009.**—Subsection (a) shall not apply to any unemployment compensation received in 2008 or 2009.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to amounts received after December 31, 2007.

Subtitle G—No Impact on Social Security Trust Funds

SEC. 171. NO IMPACT ON SOCIAL SECURITY TRUST FUNDS.

(a) **ESTIMATE BY SECRETARY OF THE TREASURY.**—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 or 1817 of the Social Security Act (42 U.S.C. 401, 1395i).

(b) **TRANSFER OF FUNDS.**—If, under subsection (a), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 or 1817 of the Social Security Act (42 U.S.C. 401, 1395i), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS

SEC. 200. SHORT TITLE.

This title may be cited as the “Assistance for Unemployed Workers Act”.

SEC. 201. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) **IN GENERAL.**—Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by section 4 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 122 Stat. 5015), is amended—

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

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

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

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

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

“(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of the amendments made by section 201(a) of the Assistance for Unemployed Workers Act; and

“(2) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1).

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

SEC. 202. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR EMERGENCY UNEMPLOYMENT COMPENSATION.

Section 4001 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended by adding at the end the following:

“Additional Eligibility Requirements

“(g)(1) IN GENERAL.—A State shall require as a condition of eligibility for emergency unemployment compensation under this Act for any week—

“(A) in the case of any individual described in paragraph (2), that such individual—

“(i) have a secondary school diploma or its recognized equivalent; or

“(ii) be making satisfactory progress in a program that leads to a secondary school diploma or its recognized equivalent; and

“(B) in the case of any individual described in paragraph (3), that such individual participate in reemployment services or in similar services (or, if such services were ongoing as of when such individual most recently exhausted regular compensation before seeking emergency unemployment compensation, that such individual continue to participate in such services), unless the State agency charged with the administration of the State law determines that—

“(i) such individual has completed such services as of a date subsequent to the commencement of emergency unemployment compensation; or

“(ii) there is justifiable cause for such individual’s failure to participate in such services.

“(2) INDIVIDUALS TO WHOM PARAGRAPH (1)(A) APPLIES.—The requirements of paragraph (1)(A) shall apply in the case of any individual who was under age 30 at the time of filing an initial claim for the regular compensation that such individual most recently exhausted before seeking emergency unemployment compensation.

“(3) INDIVIDUALS TO WHOM PARAGRAPH (1)(B) APPLIES.—The requirements of paragraph (1)(B) shall apply in the case of any individual who, as of the time of filing an initial claim for the regular compensation that such individual most recently exhausted before seeking emergency unemployment compensation, was identified under the State profiling system (described in section 303(j) of the Social Security Act) as being a claimant who—

“(A) was likely to exhaust regular compensation; and

“(B) would need job search assistance services to make a successful transition to new employment.

“(4) EFFECTIVE DATE.—This subsection shall apply in the case of any individual filing an initial application for emergency unemployment compensation after the end of the 3-month period beginning on the date of the enactment of this subsection.”.

SEC. 203. SPECIAL TRANSFERS.

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

“Special Transfer in Fiscal Year 2009 for Benefits

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

“(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying \$7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

“(3) Any amount transferred to the account of a State as a result of the enactment of this subsection may be used by the State agency of such State only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

“Special Transfer in Fiscal Year 2009 for Administration

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

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

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

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

“(B) staff-assisted reemployment services for unemployment compensation claimants.”

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

TITLE III—NO TAX INCREASES TO PAY FOR SPENDING

SEC. 301. NO TAX INCREASES TO PAY FOR SPENDING.

(a) FINDINGS.—The Congress finds that—

(1) according to the economic forecast released by the non-partisan Congressional Budget Office on January 7, 2009, unemployment in the United States is expected to be above the level estimated for calendar year 2008 until the year 2015, and

(2) raising taxes on families and employers during times of high unemployment delays economic recovery and the creation of new jobs.

(b) DECLARATION OF POLICY.—It is the policy of the United States that—

(1) outlays from the Treasury of the United States that occur as a result of any provision of this Act shall not be offset through the enactment of new legislation that results in increases in revenues to the Treasury of the United States, but, if such outlays are offset, such offsets shall be through the enactment of legislation that results in a reduction in other outlays, and

(2) the effective rate of tax imposed on individuals or businesses shall not be increased, whether by operation of a provision of existing law or the enactment of new legislation, during any year in which unemployment is projected to exceed the level of unemployment for calendar year 2008.

