

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3630), to provide incentives for the creation of jobs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate to the text with an amendment that is a substitute for the House bill and the Senate amendment. The Senate recedes from its amendment to the title. The committee of the conference met on February 16, 2012 (the House chairing) and resolved their differences. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE

House Bill

“Middle Class Tax Relief and Job Creation Act of 2011”

Senate Bill

“Temporary Payroll Tax Cut Continuation Act of 2011”

Conference Substitute

“Middle Class Tax Relief and Job Creation Act of 2012”

TITLE I – JOB CREATION INCENTIVES

SUBTITLE B – EPA REGULATORY RELIEF

H1102,1103,1104,1105/S—

Current law

Section 112 of the Clean Air Act (42 U.S.C. 7412) requires the Environmental Protection Agency (EPA) to promulgate Maximum Achievable Control Technology (MACT) standards for “major” sources of emissions of 187 hazardous air pollutants (HAPs) and Generally Available Control Technology (GACT) standards for smaller (“area”) sources of HAP emissions. Section 129 of the act (42 U.S.C. 7429) requires EPA to promulgate MACT standards for solid waste combustion units. Under the act, existing boilers would be required to comply with the applicable emission standards within 3 years of the effective date of promulgated regulations, with a possibility of a one-year extension for individual sources if necessary for the installation of controls. Existing solid waste incinerators would be required to meet the standards no later than 5 years after promulgation. On March 21, 2011, EPA finalized four related rules applicable to boilers and commercial and industrial solid waste incinerator (CISWI) units. Three rules established applicable MACT and GACT standards for boilers and MACT standards for CISWI units. The fourth rule (established under authority of the Resource Conservation and Recovery Act) clarified when materials used as fuel in a combustion unit would be defined as “solid waste” (a definition necessary to determine whether a combustion unit would be subject to the CISWI standards rather than the less stringent standards for boilers). EPA stayed the effective date of its major sources and CISWI emission standards pending reconsideration. EPA expects to complete the reconsideration by April 2012. On January 9, 2012, a district court vacated EPA’s stay of the major sources and CISWI rules.

House bill

Sections 1102-1105 apply to EPA’s four March 2011 rules. Each rule would be revoked and EPA required to promulgate new standards 15 months after the date of enactment (Section 1102). In establishing the relevant emission standards, the Administrator would be required to choose the “least burdensome” regulatory alternatives. Further, EPA would be required to establish standards that can be met under actual operating conditions consistently and concurrently with other standards (Section 1105). The compliance date for the air emission standards would be no earlier than 5 years after the date of the new regulation and could take feasibility, cost, and other factors into account in setting the compliance date (Section 1103). In promulgating new rules defining

materials that are solid waste when used as a fuel, EPA would be required to adopt the definition of terms promulgated by the agency in a December 2000 CISWI rule (Section 1104).

Senate bill

No provision.

Conference Substitute

No provision.

TITLE II – EXTENSION OF CERTAIN EXPIRING PROVISIONS AND RELATED MEASURES

SUBTITLE B – UNEMPLOYMENT COMPENSATION

PART 1 - REFORMS OF UNEMPLOYMENT COMPENSATION TO PROMOTE WORK AND JOB CREATION

H2121,2122,2123,2124,2125,2126,2127/S—

Current law

Federal unemployment law does not contain explicit job search requirements for the receipt of regular state unemployment compensation (UC). Through interpretation of the framework of the Federal unemployment laws contained within the Social Security Act (SSA) and in the Federal Unemployment Tax Act (FUTA), it is generally understood that workers must have lost their jobs through no fault of their own and must be able, available, and willing to work. Variations exist in state law requirements concerning ability and availability to work. All states have work search requirements in state law or regulation in order for an individual to receive regular UC benefits. Most state laws require evidence of ability to work through the filing of claims and registration for work at a public employment office. Availability for work is often translated to mean being ready, willing, and able to work. Meeting the requirement of registration for work at a public employment office may be considered as evidence of availability in some states. There are often particular requirements and/or exceptions for those workers on temporary layoff and for workers that find employment through union hiring halls. Section 202(c)(A)(ii) of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 97- 373), as amended, does explicitly require active job search. However, the method of determining active job search is left to the determination of the States.

Federal law does not require minimum educational standards as a condition of benefit receipt. Section 303(a)(10) of the SSA requires any claimant who has been referred to reemployment services pursuant to the profiling system under Section 303(j)(1)(B) to participate in such services or in similar services unless the state agency charged with the administration of the state law determines (1) such claimant has completed such services; or (2) there is justifiable cause for such claimant's failure to participate in such services. Section 303(j) requires the state use a system of profiling all new claimants for regular compensation. The profiling system must: (1) identify which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment; and (2) refer the identified claimants to reemployment services (including job search assistance services) that are available under any state or Federal law. Section 3304(a)(8) of the Internal Revenue Code (IRC) requires, as a condition for employers in a state to receive normal credit against the Federal tax, that a state's unemployment benefits laws provide that compensation shall not be denied to an individual for any week because he is in training with the approval of the state agency (or because of the application, to any such week in training, of state law provisions relating to availability for work, active search for work, or refusal to accept work). A recent Training and Employment Guidance Letter (TEGL) No. 21-08, among other items, strongly encouraged states to broaden their definition of approved training for UC beneficiaries during economic downturns.

Section 3304(a)(4) of the IRC and Section 303(a)(5) of the SSA set the withdrawal standards for States to use funds within the State account in the Unemployment Trust Fund (UTF). All funds withdrawn from the unemployment fund of the state shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration. Few exceptions exist; these include, for instance, withholding for tax purposes, for child support payments, to repay UI overpayments or covered unemployment compensation debt, and for benefits for the Self-Employment Assistance program and the Short-Time Compensation program. Section 303(a)(1) requires that the state UC program personnel be merit employees.

Section 3306(t) of the Federal Unemployment Tax Act (FUTA) defines the Self-Employment Assistance (SEA) program. Section 303(a)(5) of the Social Security Act permits the use of expenditures from the Unemployment Trust Fund (UTF) for SEA. The regular UC program generally requires unemployed workers to be actively seeking work and to be available for wage and salary jobs as a condition of eligibility for UC benefits. In states that have opted to create SEA programs under current law, SEA provides allowances in the same amount as regular UC benefits to individuals who (1) would otherwise be eligible for regular UC and (2) have been identified as likely to exhaust regular UC benefits. Under SEA a participating individual is not subject to worker search requirements so long as the individual is participating in entrepreneurial training or other activities.

Section 303(g)(1) of the Social Security Act and Section 3304(a)(4)(D) of the Internal Revenue Code (IRC) allow states but do not require states to offset UC payments by non-fraud overpayments. States may opt in state law to waive deductions if it would be contrary to equity and good conscience.

There are no specific federal laws or regulations related to uniform data elements for improved data matching in the Federal-state unemployment compensation program. Section 303(a)(6) of the SSA requires states to make reports of information and data as required by the U.S. Labor Secretary. But current Federal law contains no precise requirements regarding codes or identifiers attached to UC, Emergency Unemployment Compensation (EUC08), or Extended Benefit (EB) program data or any other data standards.

Federal law does not specifically authorize drug testing of applicants as a condition of UC benefit eligibility. No state currently requires drug tests as a condition of eligibility for unemployment benefits. There are states that do, however, have state law provisions related to disqualification for previously failed drug tests/use of illegal drugs during prior employment.

House bill

Section 2121 would add new federal law requirements for state UC eligibility related to being "able, available, and actively seeking work"—with the latter specifically defined under federal law, including at least (1) registering for employment services within 10 days after initial filing for UC benefits; (2) posting a resume, record, or other application for employment through a state agency database; and (3) applying for work under state requirements [effective for weeks beginning after end of first state legislative session after enactment]. No new funds would be provided for such activities. There would be no exceptions for those on temporary lay-off with expectation of recall, union members, or for those who are striking.

Section 2122 would add new federal law requirements for state UC eligibility: (1) UC claimants must meet minimum education requirements: either earn HS diploma, attain GED, or enroll/make satisfactory progress in classes leading to HS diploma or GED (states would be allowed to waive this educational requirement if state law deems it unduly burdensome); and (2) UC claimants referred to reemployment services must participate. Additionally, the proposal would add a new federal law provision to stipulate that UC may not be denied to an individual enrolled/making satisfactory progress in education or state-approved job training [effective for weeks beginning after end of first state legislative session after enactment].

Section 2123 would authorize under federal law up to 10 state UC demonstration projects a year (lasting up to 3 years). Demonstration projects would test and evaluate measures designed to expedite the reemployment of individuals who establish initial eligibility for regular UC or to improve the effectiveness of state reemployment efforts. States would provide a general description of the proposed demonstration project. The description would include: (1) a description of the proposed project, its authority under State law, and the period during which the project would be conducted; (2) the specifics of any waiver to Federal law and the reason for such waiver; (3) a description of the goals and expected outcomes of the project; (4) assurances and supporting analysis that the project would not result in a net increase cost to the state's Unemployment Trust Fund (UTF); (5) a description of the impact evaluation; and (6) assurances of reports required by the U.S. Labor Secretary. Section 2123 would allow the U.S. Labor Secretary to waive the withdrawal standard and/or merit employee requirements if requested by the state (state UTF funds would be allowed to be used for purposes other than paying unemployment benefits). Authority ends 5 years after date of enactment of the section. Administrative grants to the states for administration of the regular UC program may be used for an approved project.

Section 2124 would require the U.S. Department of Labor (U.S. DOL) to develop and maintain model language for states to use in enacting SEA programs for regular UC claimants (as authorized under current federal law); this model language would be developed through U.S. DOL consultation with employers, labor organizations, state UC agencies, and other relevant program experts; would require U.S. DOL to provide technical assistance and guidance to states in enacting, improving, and administering SEA programs; would require U.S. DOL to establish reporting requirements for state SEA programs, including reporting (1) on the number of jobs and businesses created by SEA programs and (2) the federal and state tax revenues collected from such businesses and their employees; and would require U.S. DOL to coordinate with the Small Business Administration to ensure adequate funding for the entrepreneurial training of SEA participants in states with SEA programs.

Section 2125 would require states to recover 100% of any erroneous overpayment by reducing up to 100% of the UC benefit in each week until the overpayment is fully recovered. The proposal would not allow states to waive such deduction if it would be contrary to equity and good conscience. Section 2125 also would create authority for states to recover Federal Additional Compensation (FAC) overpayments through deductions to regular unemployment compensation.

Section 2126 would require that the U.S. Labor Secretary designate standard data elements for any information required under title III or title IX of the SSA. This section

would require the standard data elements incorporate interoperable standards that have been developed and used by an international standards body (as established by the Office of Management and Budget (OMB) and the U.S. Labor Secretary); intergovernmental partnerships; and Federal entities with contracting and financial assistance authority. In addition, Section 106(a) of this proposal would require the U.S. Labor Secretary, in consultation with an OMB interagency working group and States, to designate standard data elements that, to the extent practicable: (1) Make use of a widely-accepted, non-proprietary, digital, searchable format (2) Are consistent with and use relevant accounting principles (3) Are able to be upgraded on a continual basis (4) Incorporate non-proprietary standards (such as the eXtensible Business Reporting Language).

Section 2127 would clarify federal law to allow (but would not require) drug testing of UC applicants.

Senate bill

No provision.

Conference Substitute

The conference agreement follows the House bill with regard to specifying new federal minimum standards for state unemployment compensation eligibility related to being "able, available, and actively seek work." (See also part 3 of this section with regard to job search requirements related to Federal unemployment benefits.)

The conference agreement follows the House bill with regard to State flexibility (i.e. new waiver authority), but with the following modifications:

- (1) Permits a total of no more than 10 States to receive waivers;
- (2) Specifies that waivers may only be used to operate programs providing subsidies for employer-provided training or for direct disbursements (such as wage subsidies) to employers who hire individuals receiving UC benefits, not to exceed the weekly benefit amount, to cover part of the cost of their wages, and provided that the overall wage is greater than the unemployment benefit the individual had been receiving;
- (3) Limits the operation of State waiver programs to no more than 3 years, and specifies that the waiver programs cannot be extended;
- (4) Requires the state to evaluate their waiver programs and
- (5) Requires States to provide assurances that any employment meets the State's suitable work requirement and requirements of section 3304(a)(5) of the Internal Revenue Code and that the waiver programs end by December 31, 2015.

The conference agreement follows the House bill and incorporates S. 1826 with regard to the Self-Employment Assistance Program, while also authorizing States to operate SEA programs to assist individuals eligible for benefits under the Emergency Unemployment Compensation (EUC) and Extended Benefit (EB) programs, and providing funds to assist States with the administration of such programs.

The conference agreement includes a new provision based on S.1333 authorizing work sharing programs and providing program and administrative funding for that purpose.

The conference agreement follows the House bill with regard to requiring States to offset current State benefits to recover prior overpayments of State, other States', or

Federal unemployment benefits. With regard to efforts to recover overpayments owed to other States and the Federal government, the conference agreement requires each State to apply hardship exceptions and related terms that follow State practice used to recover overpayments of its own State benefit funds.

The conference agreement follows the House bill with regard to the data standardization provisions.

The conference agreement follows the House bill with regard to drug testing provisions, with the modification that drug screening and testing is permitted in any State, but only in cases in which the individual applying for unemployment benefits either (1) was terminated from their prior employment because of unlawful drug use (2) is applying for work for which passing a drug test is a standard eligibility requirement.

PART 2 – PROVISIONS RELATING TO EXTENDED BENEFITS

H2142,2143,2144/S201,202

Current law

Under P.L. 110-252, as amended, the authorization of the EUC08 program expires the week ending on or before March 6, 2012. Individuals receiving benefits in any tier of EUC08 would be able to finish out that tier of benefits only (grandfathering for current tier only). No EUC08 benefits—regardless of tier—are payable for any week after August 15, 2012. The current structure of unemployment benefits available through the EUC08 program is: Tier I: up to 20 weeks of unemployment benefits (available in all states); Tier II: up to 14 weeks (available in all states); Tier III: up to 13 weeks (available in states with a total unemployment rate (TUR) of at least 6% or an insured unemployment rate (IUR) of at least 4%); Tier IV: up to 6 weeks (available in states with a TUR of at least 8.5% or an IUR of at least 6%). Section 4001(e) of P.L. 110-252, as amended allows states the option to pay EUC08 before EB.

Under permanent law (P.L. 97-373), EB benefits are financed 50% by the federal government (through federal unemployment taxes; i.e., FUTA) and states fund the other half (50%) of EB benefit costs through their state unemployment taxes (SUTA). ARRA (P.L. 111-5, as amended) temporarily changed the federal-state funding arrangement for the EB program. Currently, the FUTA finances 100% of sharable EB benefits through March 7, 2012. P.L. 111-312 made some temporary technical changes to certain triggers in the EB program, which allow states to temporarily use lookback calculations based on three years of unemployment rate data (rather than the permanent law lookback of two years of data) as part of their EB triggers if states would otherwise trigger off or not be on a period of EB benefits. This temporary option to use three-year EB trigger lookback expires the week ending on or before February 29, 2012.

P.L. 111-5, as amended, temporarily increased the duration of extended unemployment benefits for railroad workers. Railroad workers who previously were not eligible for extended unemployment benefits because they did not have 10 years of service may be eligible for benefits of up to 65 days within an extended period consisting of seven consecutive two-week registration periods. Railroad workers who previously were eligible for extended unemployment benefits of up to 65 days (because they had 10 years of service) may now be eligible for benefits of up to 130 days within an extended period consisting of 13 consecutive two-week registration periods. P.L. 111-312 extended the ARRA provisions by one year to June 30, 2011. Under P.L. 111-312, the special extended

unemployment benefit period could begin no later than December 31, 2011. P.L. 112-78 extended the temporary extended railroad unemployment benefit (authorized under ARRA (P.L. 111-5), as amended) for two months through February 29, 2012, to be financed with funds still available under P.L. 111-312.

House bill

Section 2142 would extend the authorization of Tiers I and III of EUC08 until the week ending on or before January 31, 2013. The duration and conditions for availability of Tier II would be altered. There would be no benefits payable after that date. (There would be no grandfathering of benefits.) Tier I would continue to offer up to 20 weeks in all states, Tier II would offer up to 13 weeks (rather than 14) and would be available in states with at least 6.0% TUR or an IUR of at least 4% (rather than in all states). Tiers III and IV would not be reauthorized. Note: Included in this subsection was an intent to require states to pay EUC08 before any EB entitlement. However, the version passed by the House would require states to pay EB before EUC08 and will need correction to reflect the intended ordering of benefits. (At the time of House passage, the authorization for all EUC08 tiers would have expired on the week ending on or before January 3, 2012 and no EUC08 benefit would have been payable for any week after June 9, 2012.)

Section 2143 would extend the 100% federal financing of EB through January 31, 2013, as well as the option for states to use three-year lookback in their EB triggers until the week ending on or before January 31, 2013. (At the time of House passage, the FUTA financed 100% of sharable EB benefits through January 4, 2012 and the three-year lookback would have expired on the week ending on or before December 31, 2011.)

Section 2144 would extend the temporary extended railroad unemployment benefit (authorized under ARRA (P.L. 111-5), as amended) for 13 months through January 31, 2013, to be financed with funds still available under P.L. 111-312. (At the time of House passage, the special extended unemployment benefit period could begin no later than December 31, 2011.)

Senate bill

Section 201 would extend the authorization for the EUC08 program (as structured under current law) until the week ending on or before March 6, 2012. No EUC08 benefits—regardless of tier—would be payable for any week after August 15, 2012. (At the time of Senate passage, the authorization for all EUC08 tiers would have expired on the week ending on or before January 3, 2012 and no EUC08 benefit would have been payable for any week after June 9, 2012.) This section would extend the 100% federal financing of EB through March 7, 2012. This section would also extend the option for states to use the three-year lookback in their EB triggers until the week ending on or before February 29, 2012. (At the time of Senate passage, the FUTA financed 100% of sharable EB benefits through January 4, 2012 and the three-year lookback would have expired on the week ending on or before December 31, 2011.)

Section 202 would extend the temporary extended railroad unemployment benefit (authorized under ARRA (P.L. 111-5), as amended) for two months through February 29, 2012, to be financed with funds still available under P.L. 111-312. (At the time of Senate passage, the special extended unemployment benefit period could begin no later than December 31, 2011.)

Conference Substitute

The conference agreement follows the House bill in continuing the operation of the Federal Emergency Unemployment Compensation (EUC) program beyond its current expiration at the end of February 2012, with the following modifications:

- (1) The authorization of the EUC program is extended through the end of December 2012;
- (2) The EUC program will not continue to provide benefits after December 2012 (i.e. there will be no “phase-out” of benefits beyond December 2012);
- (3) EUC benefits would continue to be payable in up to four tiers as under current law. However, as the table below reflects, in the case of tiers two through four, higher total unemployment rate (TUR) “triggers” will apply from June through December 2012, as follows:

EUC Tier	March through May 2012	June through August 2012	September through December 2012
1	20 weeks in all states	20 weeks in all states	14 weeks in all states
2	14 weeks in all states	14 weeks in 6% or higher states	14 weeks in 6% or higher states
3	13 weeks in 6% or higher states	13 weeks in 7% or higher states	9 weeks in 7% or higher states
4	6 weeks in 8.5% or higher states (16 weeks if not on EB)	6 weeks in 9% or higher states	10 weeks in 9% or higher states

- (4) Through May 2012 only, individuals who have not already received up to 20 weeks of EB program benefits due to the application of that program’s “3-year lookback” would be eligible to receive up to an additional 10 weeks of benefits under Tier 4 of the EUC program (that is, in addition to the six weeks otherwise available), provided they are in a State with an unemployment rate above 8.5%, and with the condition that no such individual could receive a total of more than 99 weeks of benefits from all sources (counting State, EUC and EB programs).
- (5) As the table above reflects, weeks of benefits payable in tiers 1, 3 and 4 in September through December 2012 would be adjusted, with tier 1 dropping from 20 to 14 weeks, tier 3 dropping from 13 to 9 weeks, and tier 4 rising from 6 to 10 weeks. In all, these changes will result in the maximum weeks of benefits payable under the EUC program falling from 53 weeks under current law (in the case of States with unemployment rates today at or above 8.5%) to a maximum of up to 47 weeks (in the case of States with an unemployment rate of 9% or higher) from September through December 2012. In each period, an individual’s eligibility for a tier of benefits will be determined according to the State’s unemployment rate in that period. For example, individuals exhausting tier 2 of benefits will be eligible to begin tier 3 of benefits in the spring only if their State has an unemployment rate of at least 6%, while those exhausting tier 2 in the summer and fall months can qualify

for tier 3 benefits only if they are in a State with an unemployment rate of at least 7%.

The conference agreement specifies that States are required to pay EUC benefits before any benefits under the EB program.

The conference agreement follows the House bill in terms of extending the current temporary 100% Federal financing of EB as well as the three-year lookback used to determine State eligibility for EB, with the modification that in each case the extension would apply through December 2012.

The conference agreement follows the House bill and Senate amendment with regard to the temporary extended railroad unemployment benefit program, with the modification that the extension would apply through December 2012.

PART 3 – IMPROVING REEMPLOYMENT STRATEGIES UNDER THE EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM

H2161,2162,2163,2164,2165/S—

Current law

Federal unemployment law does not contain explicit job search requirements for the receipt of EUC08 benefits. Federal unemployment law does not require states to have work search requirements in the regular UC program. However, all states have work search requirements in state law or regulation in order for an individual to receive regular UC benefits. Section 202(a)(3)(A)(ii) of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 97-373), as amended, explicitly requires active job search for receipt of Extended Benefits (EB). However, the method of determining active job search is left to the determination of the states.

Federal law does not require minimum educational standards or reemployment service participation as a condition of EUC08 benefit receipt.

P.L. 110-252, as amended, requires that all EUC08 benefits be paid directly to the unemployed who have exhausted entitlement to all regular UC benefits. There is no provision for demonstration projects.

Section 4005(c)(1) of P.L. 110-252, as amended allows states but does not require states to offset EUC08 payments by non-fraud overpayments. Any offset under current law may not be more than 50% of total EUC08 benefit.

Section 4001(g) of the Supplemental Appropriations Act of 2008 (P.L. 110-252), as amended, prevents states from decreasing the average weekly benefit amount of regular UC payments. That is, a state is not permitted to pay an average weekly UC benefit that is less than what would have been paid under state law prior to what was in effect on June 2, 2010. This “nonreduction rule” is a condition of the EUC08 Federal-State agreement of P.L. 110-252, as amended.

House bill

Section 2161 would require active work search for EUC08 entitlement where active work search must require at least the following: individuals to register with reemployment services within 30 days, individuals post a resume, record, or other application for employment on a database required by the state, and individuals apply for work in such a manner as required by the state.

Section 2162 would require EUC08 beneficiaries (1) to participate in reemployment services if referred and (2) to actively search for work, effective on or after 30 days of enactment for those individuals who enter a tier of EUC08. This section would require individuals to meet the minimum educational requirements (high school degree, GED, or enrolled in program) created earlier in Section 2122 of the proposal (amending Section 303(a)(10)(B) of the SSA). The participation requirement for reemployment services would be waived if individuals have already completed this requirement or if there is "justifiable cause" as specified by guidance to be issued by the U.S. DOL Secretary within 30 days. This section would authorize up to \$5 of an individual's EUC08 benefit each week to be diverted (at state option) to fund these reemployment services and activities.

Section 2163 would allow for up to 20% of all EUC08 recipients in each state to be diverted into demonstration projects. The demonstration projects would need to be designed to expedite reemployment. Allowable demonstration activities would include: subsidies for employer provided training; work sharing or Short-Time Compensation; enhanced employment strategies and services; SEA programs; services that enhance skills that would assist in obtaining reemployment; direct reimbursements to employers who hire individuals that were receiving EUC08; and other innovative activities not otherwise described. Authority for demonstration projects would end when EUC08 ceases to be payable. Demonstration projects would be required to provide appropriate reemployment services and assurances of no net increase in cost to the EUC08 program. This section would require states to provide information on demonstration projects for reporting and evaluation purposes.

Section 2164 would require states to offset an individual's EUC08 benefit if they received an unemployment benefit overpayment. States would be required to offset by at least 50% of the EUC08 benefit in any week.

Section 2165 would repeal the "nonreduction rule" in terms of the regular UC benefit amount. This would give states the option to decrease average weekly benefit amounts without invalidating their EUC08 Federal-state agreements.

Senate bill

No provision.

Conference Substitute

The conference agreement follows the House bill with regard to explicit job search requirements, with several modifications designed to closely align the work search requirements between the EUC and EB programs. In order to be eligible for benefits in any week, the state agency shall find that the individual is able to work, available to work, and making reasonable efforts to secure suitable work.

For purposes of this provision, the term "making reasonable efforts to secure suitable work" means, with respect to an individual, that such individual: (1) Is registered for employment services in such manner and to such extent as prescribed by the state agency; (2) Has engaged in an active search for employment that is appropriate in light of the individual's skills, capabilities and work history, and includes a number of employer contacts that is consistent with reasonable standards communicated to the individual by the state; (3) Has maintained a record of such work search, including employers contacted, method of contact and date contacted; and (4) When requested, has provided such work

search record to the state agency. The Secretary of Labor shall prescribe to each state a minimum number of claims for which work search records must be audited on a random basis in any given week.

The conference agreement follows the House bill with regard to the requirement that EUC recipients participate in reemployment services if referred and as well as actively search for work. The conference agreement follows the Senate amendment with regards to there being no minimum education requirements for individuals receiving EUC benefits.

The conference agreement follows the House bill with regard to the requirement that States provide reemployment services and reemployment and eligibility assessment activities to long-term unemployed individuals who begin receiving EUC benefits and throughout their time collecting EUC benefits. The conference agreement follows the Senate amendment with regard to no State authority to reduce EUC benefits to support the cost of such reemployment services and activities. In its place, the conference agreement provides new one-time funding to States to support the cost of such reemployment services and activities.

The conference agreement follows the Senate amendment with respect to no additional State flexibility to assist the long-term unemployed with improved reemployment services using EUC funds.

The conference agreement follows the House bill with regard to requiring States to offset current Federal benefits to recover prior overpayments of State, other States', or Federal unemployment benefits. With regard to efforts to recover such overpayments owed to other States and the Federal government, the conference agreement requires each State to apply hardship exceptions and related terms that follow State practice used to recover overpayments of its own State benefit funds.

The conference agreement modifies the House bill with regard to effect of the current "nonreduction rule," which generally blocks the payment of Federal EUC funds to States that have reduced State unemployment benefits. Several States, in order to address solvency have passed laws to reduce future State benefit amounts, and others may be considering doing the same. Thus, the continued application of the "nonreduction rule" (if not adjusted) would bar such States from receiving EUC funds otherwise provided under this legislation. For this reason, the conference agreement changes the effective date of the non-reduction rule to March 1, 2012 in order to allow for changes states have made (i.e. both those that have already enacted laws changing benefit amounts, as well as those with legislation pending that would do so)," This permits States to adjust benefits as they have planned, while remaining eligible for Federal EUC funds throughout CY 2012.

SUBTITLE D – TANF EXTENSION

H2302/S312

Current law

The Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78) provided program authorization and funding for most Temporary Assistance for Needy Families (TANF) grants through February 29, 2012. It provided authority and funding for state family assistance grants (the basic block grant), healthy marriage and responsible fatherhood grants, mandatory child care grants, tribal work program grants, matching grants for the territories, and research funds. Grants are funded at the same level as in FY2011, and paid on a pro-rated quarterly basis. No funding was provided for TANF supplemental grants. The TANF contingency fund was provided an FY2012 appropriation in legislation enacted in 2010, P.L. 111-242.

House bill

Section 2302 provides FY2012 appropriations for TANF state family assistance grants, healthy marriage and responsible fatherhood grants, mandatory child care grants, tribal TANF work programs, matching grants for the territories, and research funds. FY2012 grants are provided at the same level as were provided in FY2011.

Senate bill

Section 312 extends program authorization and funding for TANF through February 29, 2012. Grants are funded at the same level as in FY2011, and paid on a pro-rated quarterly basis. (Provision is the same as current law. It is identical to that subsequently enacted in P.L. 112-78.)

Conference Substitute

The conference agreement follows the House bill with technical corrections to ensure the provisions operate as intended. Section 2302(c)(1) is revised by changing the year to 2013 instead of 2012 to correct a drafting error. Section 2302(c)(2)(A) is revised by changing the year to 2012 instead of 2011 to correct a drafting error. Section 2302(i) is revised by striking “or section 403(b) of the Social Security Act” to reflect the intent that TANF contingency funds are not affected by this bill and that they continue as previously authorized and appropriated for FY 2012, and also to update the provision to add a reference the Temporary Payroll Tax Cut Continuation Act of 2011 which extended TANF through February 29, 2012.

H2303,2304,2305/S—

Current law

States are required to report case- and individual-level demographic, monthly financial and monthly work participation information to the Department of Health and Human Services (HHS) on a quarterly basis.

There are no relevant provisions in current law regarding Section 2304 of the House bill.

House bill

Section 2303 requires HHS to issue a rule designating standard data elements for any category of information required to be reported under TANF. The rule would be developed by HHS in consultation with an interagency workgroup established by the Office of Management and Budget (OMB) and with consideration of state and tribal perspectives. To the extent practicable, the standard data elements required by the rule would be non-proprietary and incorporate the interoperable standards developed and maintained by other recognized bodies. To the extent practicable, the data reporting standards required by the rule would incorporate a widely-accepted, nonproprietary, searchable, computer-readable format; be consistent with and implement applicable accounting principles; be capable of being continually upgraded as necessary; and incorporate existing nonproprietary standards, such as the “eXtensible Business Reporting Language.” The data standardization requirement would take effect on October 1, 2012.

Section 2304 requires states to maintain policies and practices to prohibit TANF assistance from being used in any transaction in liquor stores, casinos and gaming establishments, and strip clubs. States have up to 2 years after enactment to implement such policies and practices. States that fail to report actions they have taken are at risk of being penalized by up to a 5% reduction in their block grant.

Section 2305 makes technical corrections to the TANF statute.

Senate bill

No provision.

Conference Substitute

The conference agreement follows the House bill with the following technical modifications to Section 2303: Section 2303(a) is modified to clarify that the goal of the provision is to standardize the data exchange processes, not standardize data elements. Section 2303(b) is modified to require that the Department of Health and Human Services issue proposed rules for this section within 12 months of the enactment of this section, and that the agency finalize these regulations within 24 months of the enactment of this section.

The conference agreement follows the House bill with the following technical modifications to Section 2304: Section 2304(a)(12)(A) is modified to clarify that States are required to block access to TANF funds provided on electronic benefit transfer cards at ATMs and point-of-sale devices in specified locations. Section 2304(a)(12)(B) is modified by adding a definition of electronic benefit transfer transactions. Section 2304(b)(16)(A) is modified to clarify that each State must provide a report to the Secretary of Health and Human Services regarding their implementation of this provision.

TITLE III – FLOOD INSURANCE REFORM

REFORM OF PREMIUM RATE STRUCTURE

H3005(a),3005(b),3005(c),3005(d),3005(e)/S—

Current law

The Federal Emergency Management Agency (FEMA) is authorized to increase chargeable risk premium rates for flood insurance for any properties within any single risk classification 10% annually. 42 U.S.C. 4015 (e)

Full actuarial rates begin on the effective date of a revised Flood Hazard Boundary Map or Flood Insurance Rate Map for a community. § 61.11

FEMA is authorized to establish risk premium rates for flood insurance coverage. The agency is also authorized to offer “chargeable” (subsidized) premium rates for pre-FIRM buildings. Post-FIRM structures (i.e., buildings constructed on or after December 31, 1974) and the effective date of the FIRM, whichever is later, must pay the full actuarial risk premium rates. § 61.8

Pre-FIRM structures continue to receive subsidized premium rates after the lapsed policy provided the policyholder pays the appropriate premium to reinstate the policy.

FEMA is authorized to determine whether a community has made adequate progress on the construction of a flood protection system involving federal funds. Adequate progress means the community has provided FEMA with necessary information to determine that 100% of the cost has been authorized, 60% has been appropriated or 50% has been expended. § 61.12

House bill

Section 3005(a) would increase the annual cap on premium increases from 10% to 20%.

Section 3005(b) would clarify that newly mapped properties are phased-in to full actuarial, flood insurance rates at a consistent rate of 20% per year over 5 years and requires that newly mapped property owners pay 100% of actuarial rates at the end of the 5 year phase-in period. For areas eligible for the lower-cost Preferred Risk Policy (PRP) rates, the phase-in begins after the expiration of their PRP rates. For all properties, the phase-in of rates only applies to residential properties occupied by their owner or a bona fide tenant as a primary residence.

Section 3005(c) would require that, beginning one year after enactment, the premium rate subsidies (pre-FIRM discounts) for certain properties in the following categories be phased-out, with annual rate increases limited by a 20 percent annual cap. This would apply to commercial properties, second and vacation homes (i.e., residential properties not occupied by an individual as a primary residence), homes sold to new owners, homes damaged or improved (substantial flood damage exceeding 50 percent or substantial improvement exceeding 30 percent of the fair market value of the property), and properties with multiple flood claims (i.e., statutorily defined severe repetitive loss properties.)

Section 3005(d) would remove the eligibility of property owners who allow their policies to lapse by choice to receive discounted rates on those properties.

Section 3005(e) would update the standards by which FEMA evaluates a community's eligibility for special flood insurance rates by considering state and local funding, in addition to federal funding, of flood control projects.

Senate bill

No provision.

Conference Substitute

No provision.

MANDATORY PURCHASE REQUIREMENTS

H3003(b)(3),3003(c),3004(a),3007(e),3014,3017,3018/S—

Current law

There are no relevant provisions in current law regarding Section 3003(b)(3) of the House bill.

FEMA is authorized to enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under this Write-Your-Own company arrangement, such companies may offer flood insurance coverage under the program to eligible applicants. § 62.23

The NFIP requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide, or flood-related erosion hazard area that is located within any community participating in the NFIP. § 59.2 The mandatory purchase of insurance is required in areas identified as being within designated Zones A, A1-30, AE, A99, AO, AH, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, V1-30, VE, V, VO, M, and E. §64.3

When FEMA has provided a notice of final flood elevations for one or more special flood hazard areas (SFHA) on the community's FIRM, the community shall require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the community's FIRM have the lowest flood (including basement) elevation to or above the base flood level, unless the community is granted an exception by FEMA for the allowance of basements. § 60.3(a) Structures in SFHAs that receive any form of federal or federally-related financial assistance are required to purchase flood insurance. § 59.2(a)

FEMA is required to provide notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM that is available for public viewing by homeowners in SFHAs. §60.3(e) Structures located in these zones are classified as SFHA and are, therefore, required to purchase flood insurance. § 59.2(a)

The NFIP was established to provide flood insurance protection to property owners in flood-prone areas. However, flood insurance is only available in communities that participate in the NFIP. §59.2 To qualify for flood insurance availability a community must apply for the entire area within its jurisdiction and shall submit copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the NFIP. §59.22

There are no relevant provisions in current law regarding Section 3018 of the House bill.

House bill

Section 3003(b)(3) would require lenders or servicing companies to terminate policies purchased on behalf of the homeowner to satisfy the mandatory purchase requirement within 30 days of being notified that the homeowner has purchased another policy. Lenders would be required to refund any premium payments and fees made by the homeowner for the time when both policies were in effect. Moreover, the declaration page in the insurance policy would be considered sufficient to demonstrate having met the mandatory insurance purchase requirements.

Section 3003(c) would require lenders to accept flood insurance from a private company if the policy fulfills all federal requirements for flood insurance.

Section 3004(a) would authorize the Administrator of FEMA to delay mandatory purchase requirement for owners of properties in newly designated special flood hazard areas. The delay would not be longer in duration than 12 months with the possibility of two 12 month extensions at the discretion of FEMA. Eligible areas defined as an area that meets the following three requirements: (1) area with no history of special flood hazards; (2) area with a flood protection system under improvement; or (3) area has filed an appeal of the designation of the area as having special flood hazards. Upon a request submitted from a local government authority, FEMA could suspend the mandatory purchase for a possible fourth and fifth year for certain communities that are making more than adequate progress in their construction of their flood protection systems.

Section 3007(e) would clarify that mandatory purchase requirement would not apply to a property located in an area designated as having a special flood hazard if the owner of such property submits to FEMA an elevation certificate showing that the lowest level of the primary residence is at an elevation that is at least three feet higher than the elevation of the 100-year flood plain. FEMA would be required to accept as conclusive each elevation certificate unless the Administrator conducts a subsequent elevation survey and determines that the lowest level of the primary residence in question is not at an elevation that is at least three feet higher than the elevation of the 100-year flood plain. This section would require FEMA to expedite any requests made by an owner of a property showing that the property is not located within the area having special flood hazards. FEMA would be prohibited from charging a fee for reviewing the flood hazard data with respect to the expedited request and requiring the owner to provide any additional elevation data.

Section 3014 would require the Administrator of FEMA, in consultation with affected communities, to notify annually residents in areas having special flood hazards that they reside in such an area, the geographic boundaries of such areas, the requirements to purchase flood insurance coverage and the estimated cost of flood insurance coverage.

Section 3017 would amend the Real Estate Settlement Procedures Act of 1974 (RESPA) to require mortgage lenders to include specific information about the availability of flood insurance in each good-faith estimate.

Section 3018 would amend RESPA to explicitly state that the escrowing of flood insurance payments is required for many types of loans.

Senate bill

No provision.

Conference Substitute

No provision.

REFORM OF COVERAGE TERMS

H3004(a),3004(b),3004(d),3004(e),3015,3016,3021/S—

Current law

There are no relevant provisions in current law regarding Section 3004(a) of the House bill.

The maximum amount of coverage for a single family residential structure is \$250,000 and \$100,000 for personal contents. The limit for nonresidential building structures is \$500,000 and \$500,000 for contents. § 61.6

Insurance coverage under the NFIP is available only for property structures and personal contents. §61.3

Payment of full policyholder premium must be made at the time of application or renewal. §61.5

There are no relevant provisions in current law regarding Section 3015 of the House bill.

FEMA is authorized to enter into arrangements with individual private insurers to offer flood coverage to policyholders. §62.23

The Standard Flood Insurance Policy issued under the NFIP excludes coverage for hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located. Appendix A(1) to Part 62

House bill

Section 3004(a) would set the minimum deductible levels at \$1,000 for properties with full-risk rates and \$2,000 for properties with discounted rates. The section would also establish that maximum coverage limits be indexed for inflation, starting in 2012.

Section 3004(b) would authorize insurance coverage under policies issued by the NFIP to be adjusted for inflation since September 30, 1994. This section would clarify that insured or applicants for residential insurance coverage under the NFIP would receive up to an “aggregate liability” of \$250,000 per claim rather than a “total amount” of \$250,000. Nonresidential property owners would be insured for a total of \$500,000 aggregate liability for structure and \$500,000 aggregate liability for content. These amounts would be adjusted or indexed for inflation using the percentage change over the period beginning on September 30, 1994 through the date of enactment of the law.

Section 3004(d) would authorize the Administrator of FEMA to offer optional coverage for additional living expenses, up to a maximum of \$5,000, as well as to offer optional coverage for the interruption of business operations up to a maximum of \$20,000, provided that FEMA: (1) charges full-risk rates for such coverage; (2) makes a finding that a competitive private market for such coverage does not exist; and (3) certifies that the NFIP has the capacity to offer such coverage without the need to borrow additional funds from the U.S. Treasury.

Section 3004(e) would authorize the Administrator of FEMA to offer policyholders the option of paying their premiums for one-year policies in installments, and authorizes FEMA to impose higher rates or surcharges, or to deny future access to NFIP coverage, if

property owners attempt to limit their coverage to coincide only with the annual storm season by neglecting to pay their premiums on schedule.

Section 3015 would require the Administrator of FEMA to notify tenants of a property located in areas having special flood hazard, that flood insurance coverage is available under the NFIP for contents of the unit or structure leased by the tenant, the maximum amount of such coverage for contents, and how to obtain information regarding how to obtain such coverage.

Section 3016 would require the Administrator of FEMA to notify the holders of direct policies managed by FEMA that they could purchase flood insurance directly from an insurance company licensed by FEMA to administer NFIP policies. The coverage provided or the premiums charged to holders of flood insurance policies that are administered by an insurance company are no different from those directly managed by FEMA.

Section 3021 would require under the NFIP that the presence of an enclosed swimming pool located at ground level or in the space below the lowest flood of a building after November 30, and before June 1 of any year, would have no effect on the terms of coverage or the ability to receive coverage for such building if the pool is enclosed with non-supporting breakaway walls.

Senate bill

No provision.

Conference Substitute

No provision.

FINANCIAL AND BORROWING AUTHORITY

H3011,3025,3033/S—

Current law

FEMA is authorized to carry out a program to provide financial assistance to states and communities, using amounts made available from the National Flood Mitigation Fund for planning and carrying out activities designed to reduce the risk of flood damage to structures. Such assistance shall be made available to states and communities in the form of grants to carry out mitigation activities. 44 U.S.C. 4104c(a)

FEMA is authorized to issue notes or other obligations to the Secretary of the Treasury, without the approval of the President, to finance the flood insurance program. All funds borrowed under this authority shall be deposited in the National Flood Insurance Fund. 42 U.S.C. § 4016(a)

FEMA is authorized to borrow from the U.S. Treasury. Borrowed funds must be repaid with interest. 42 U.S.C. § 4017 (a)(3)

House bill

Section 3011 would streamline and reauthorize the Flood Mitigation Assistance Program, the Repetitive Flood Claims Program and the Severe Repetitive Loss Program in order to improve their effectiveness and efficiency. Financial assistance would be made available to states and communities in the form of grants for carrying out mitigation activities, especially with respect to severe repetitive loss structures, repetitive loss structures, and to property owners in the form of direct grants. This section would expand

eligibility for mitigation assistance grants from mitigating flood risk to mitigating multiple hazards. Amounts provided could be used only for mitigation activities that are consistent with mitigation plans approved by FEMA. FEMA Administrator could approve only mitigation activities that are determined to be technically feasible, cost-effective, and result in savings to the NFIF. This section would expand eligibility to include mitigation activities for the elevation, relocation, and flood-proofing of utilities (including equipment that serve structures). The FEMA Administrator is required to consider demolition and rebuilding of properties as eligible activities under the mitigation grant programs. This section establishes a matching requirement for severe repetitive loss structures of up to 100% of all eligible costs and up to 90% for repetitive loss structures. Other mitigation activities would be in an amount up to 75% of all eligible costs. Failure to award a grant within 5 years of receiving a grant application would be considered to be a denial of the application and any funding amounts allocated for such grant applications would remain in the National Flood Mitigation fund. This section authorizes \$40 million in grants to States and communities for mitigation activities, \$40 million in grants to States and communities for mitigation activities for severe repetitive loss structures, and \$10 million in grants to property owners for mitigation activities for repetitive loss structures. This section would eliminate the Grants Program for Repetitive Insurance Claims Properties. (Sec. 3011(b))

Section 3025 would establish a reserve fund requirement to meet the expected future obligations of the National Flood Insurance Program. This section contains phase-in requirements similar to H.R. 3121. For example, this section requires the Fund to maintain a balance equal to 1% of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year, or a higher percentage as the Administrator determines to be appropriate. FEMA has the discretion to set the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary to maintain the reserve ratio, subject to any provisions relating to chargeable premium rates and annual increases of such rates.

Section 3033 would require FEMA to submit a report to Congress not later than 6 months after enactment of this Act setting forth a plan for repayment within 10 years on the amounts borrowed from the U.S. Treasury under the NFIP.

Senate bill

No provision.

Conference Substitute

No provision.

POLICY CLAIMS AND WRITE-YOUR-OWN INSURERS

H3004,3022,3023,3028,3032/S—

Current law

The “Exclusions” section “V” of the Standard Flood Insurance Policy stipulates that “We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date: (1) the policy term begins; or (2) coverage is added at your request. Appendix A(1) to Part 61. Coverage for a new contract for flood insurance coverage shall become effective upon the expiration of the 30-day period beginning on the date that all obligations for such coverage are satisfactorily completed. § 61.11; 42 U.S.C. 4013(c)

There are no relevant provisions in current law regarding Section 3022 of the House bill.

There are no relevant provisions in current law regarding Section 3023 of the House bill.

There are no relevant provisions in current law regarding Section 3028 of the House bill.

House bill

Sections 3004 and 3032 would clarify the effective date of insurance policies covering properties affected by floods in progress. Property experiencing a flood during the 30-day waiting period following the purchase of insurance would be covered for damage to the property that occurs after the 30-day period has expired, but only if the property has not suffered damage or loss as a result of such flood before the expiration of such 30-day period. These sections would require FEMA to review the processes and procedures for determining that a flood event has commenced or is in progress for purposes of flood insurance coverage and report to Congress within 6 months.

Section 3022 would require FEMA to grant policy holders the right to request engineering reports and other documents relied on by the Administrator and/or participating WYO companies in determining whether the damage was caused by flood or any other peril (e.g., wind). FEMA would also be required to provide the information to the insured within 30 days of the request for information.

Section 3023 would authorize FEMA to refuse to accept future transfers of policies to the NFIP Direct program.

Section 3028 would require FEMA to submit a report to Congress describing procedures and policies for limiting the number of flood insurance policies that are directly managed by the Agency to not more than 10% of the total number of flood insurance policies in force. After submitting the report to Congress, the Administrator would have 12 months to reduce the number of policies directly managed by the Agency, or by the Agency's direct servicing contractor that is not an insurer, to not more than 10% of the total number of flood insurance policies in force.

Senate bill

No provision.

Conference Substitute

No provision.

FLOOD RISK ASSESSMENT AND MAPPING

H3006,3007,3008,3013,3014,3018,3020,3024,3026,3030/S—

Current law

There are no relevant provisions in current law regarding Section 3006 of the House bill.

FEMA is authorized to identify and publish information with respect to all areas within the United States having special flood, mudslide, and flood-related erosion hazards.

§ 65.1

FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards that are consistent with the level of protection sought through the comprehensive floodplain management regulations. §65.10

There are no relevant provisions in current law regarding Section 3013 of the House bill.

FEMA publishes in the Federal Registry a notice of the proposed flood elevation determination sent to the Chief Executive Officer of the community. The agency also publishes a copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination. §67.3

A Standard Flood Insurance policyholder whose property has become the subject of a Letter of Map Amendment may cancel the policy within the current policy year and receive a premium refund. §70.8 The policy could be canceled provided (1) the policyholder was required to purchase flood insurance; and (2) the property was located in a SFHA as represented on an effective FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy. §62.5

FEMA publishes a notice of the community's proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO. §67.4

FEMA publishes a notice of the community's proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO. §67.4 Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made who believes his property rights to be adversely affected by the proposed base flood determination may file a written appeal of such determination with the CEO within 90 days of the second newspaper publication of the FEMA proposed determination. §67.5

There are no relevant provisions in current law regarding Section 3026 of the House bill.

The NFIP participating community must provide written assurance that they have complied with the appropriate minimum floodplain management regulation. §60.3

House bill

Section 3006 would establish the Technical Mapping Advisory Council (Council) to develop and recommend new mapping standards for FIRMs. The Council would include representatives from FEMA, the U.S. Geological Survey (USGS), the U.S. Army Corps of Engineers (USACE), other federal agencies, state and local governments, as well as experts from private stakeholder groups. This section would require that there is adequate number of representatives from the states with coastlines or the Gulf of Mexico and other states containing areas at high-risk for floods or special flood hazard areas. The Council would submit the new mapping standards for 100-year flood insurance rate maps to FEMA and the Congress within 12 months of enactment and would continue to review those standards for four additional years, at which time the Council would be terminated. This section would place a moratorium on the issuance of any updated flood insurance rate maps from the date of enactment until the Council submits to FEMA and Congress the

proposed new mapping standards. This section would allow for the revision, update and change of rate maps only pursuant to a letter of map change.

Section 3007 would direct FEMA to establish new standards for FIRMs beginning six months after the Technical Mapping Advisory Council issues its initial set of recommendations. The new standards would delineate all areas located within the 100-year flood plain and areas subject to gradual and other risk levels, as well as ensure the standards reflect the level of protection levees confer. The standard must also differentiate between a property that is located in a flood zone and a structure located on such property that is not at the same risk level for flooding as such property due to the elevation of the structure and provide that such rate maps are developed on a watershed basis. This section would require FEMA to submit a report to Congress specifying which Council recommendations were not implemented and explaining the reasons such recommendations were not adopted. FEMA would have 10 years to update all FIRMs in accordance with the new standards subject to the availability of appropriated funds. This section would eliminate requirements to more broadly map areas considered to be residual risk.

Section 3008 would prohibit the Administrator of FEMA from issuing flood insurance maps, or make effective updated flood insurance maps, that omit or disregard the actual protection afforded by an existing levee, floodwall, pump or other flood protection feature, regardless of the accreditation status of such feature.

Section 3013 would require the Administrator of FEMA, upon any revision or update of any floodplain area or flood-risk zone and the issuance of a preliminary flood map, to notify in writing the Senators of each state affected and each Member of Congress for each congressional district affected by the flood map revision or update.

Section 3014 would require the Administrator of FEMA to establish projected flood elevations and to notify the chief executive officer of each community affected by the proposed elevation a notice of the elevations, including a copy of the maps for the elevations and a statement explaining the process to appeal for changes in such elevations.

Section 3018 would require the Administrator of FEMA to reimburse owners of any property, or a community in which such property is located, for the reasonable costs involved in obtaining a Letter of Map Amendment (LOMA) and Letter of Map Revision (LOMR) if the change was due to a bona fide error on the part of FEMA. The Administrator would be authorized to determine a reasonable amount of costs to be reimbursed except that such costs would not include legal or attorney fees. The reasonable cost would consider the actual costs to the owner of utilizing the services of an engineer, surveyor or similar services. This section would require FEMA to issue regulation pertaining to the reimbursements.

Section 3020 would require FEMA to provide to a property owner newly included in a revised or updated proposed flood map a copy of the proposed FIRM and information regarding the appeals process at the time the proposed map is issued.

Section 3024 would require FEMA to notify a prominent local television and radio station of projected and proposed changes to flood maps for communities. This section would authorize FEMA to grant an additional 90 days for property owners or a community to appeal proposed flood maps, beyond the original 90 day appeal period, so long as community leaders certify they believe there are property owners unaware of the proposed flood maps and appeal period, and community leaders would use the additional

90 day appeal period to educate property owners on the proposed flood maps and appeal process.

Section 3026 would authorize the use of Community Development Block Grants to supplement state and local funding for local building code enforcement departments and flood program outreach.

Under Section 3030, the Administrator of FEMA would be required to conduct a study regarding the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of FEMA's floodplain management criteria and submit a report to the House Committee on Financial Services and Senate Banking, Housing, and Urban Affairs Committee. The study would assess the regulatory, financial, and economic impacts of such building code requirement on homeowners, states and local communities, local land use policies, and FEMA.

Senate bill

No provision.

Conference Substitute

No provision.

STUDIES AND REPORTS FOR CONGRESS

H3009(a),3009(b),3009(c),3009(d),3010,3025,3029,3031/S—

Current law

There are no relevant provisions in current law regarding Section 3009(a) of the House bill.

FEMA is authorized to encourage insurance companies and other insurers to form, associate, or otherwise join together in a pool to provide the flood insurance coverage authorized under the NFIP. 44 U.S.C. § 4051 (a)

FEMA is authorized to take such action as may be necessary in order to make available reinsurance for losses which are in excess of losses assumed by private industry flood insurance pools. 42 U.S.C. § 4055(a)

There are no relevant provisions in current law regarding Section 3009(d) of the House bill.

There are no relevant provisions in current law regarding Section 3010 of the House bill.

There are no relevant provisions in current law regarding Section 3025 of the House bill.

There are no relevant provisions in current law regarding Section 3029 of the House bill.

There are no relevant provisions in current law regarding Section 3031 of the House bill.

House bill

Section 3009(a) would require the Administrator of FEMA and the Comptroller General of the United States to conduct separate studies to assess a broad range of options, methods, and strategies for privatizing the NFIP. FEMA and GAO would submit reports (within 18 months of the date of the enactment of this Act) to the House Committee on

Financial Services and the Senate Banking, Housing, and Urban Affairs Committee that make recommendations for the best manner to accomplish privatization of the NFIP.

Section 3009(b) would authorize the Administrator of FEMA to carry out private risk-management initiatives to determine the capacity of private insurers, reinsurers, and financial markets to assist communities, on a voluntary basis only, in managing the full range of financial risk associated with flooding. The Administrator would assess the capacity of the private reinsurance, capital, and financial markets by seeking proposals to assume a portion of the program's insurance risk and submit to Congress a report describing the response to such request for proposals and the results of such assessment. The Administrator would be required to develop a protocol to provide for the release of data sufficient to conduct the assessment of the insurance capacity of the private sector.

Under Section 3009(c), the Administrator of FEMA would be authorized to secure reinsurance coverage from private market insurance, reinsurance, and capital market sources in an amount sufficient to maintain the ability of the program to pay claims and that minimizes the likelihood of having to borrow from the U.S. Treasury.

Under Section 3009(d), the Administrator would be required to conduct an assessment of the claims-paying ability of the NFIP, including the program's utilization of private sector reinsurance and reinsurance equivalents, with and without reliance on borrowing authority.

Section 3010 would require the Administrator of FEMA to submit an annual report to the Congress on the financial status of the NFIP, including current and projected levels of claims, premium receipts, expenses, and borrowing under the program.

Under Section 3025, the Administrator of FEMA would be required to conduct a study regarding the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of FEMA's floodplain management criteria and submit a report to the House Committee on Financial Services and Senate Banking, Housing, and Urban Affairs Committee. The study would assess the regulatory, financial, and economic impacts of such building code requirements on homeowners, states and local communities, local land use policies, and FEMA.

Section 3029 would require the Administrator of FEMA and the Comptroller General of the United States to conduct separate studies to assess options, methods, and strategies for offering voluntary community-based flood insurance under the NFIP. The studies would consider and analyze how the policy options would affect communities having varying economic bases, geographic locations, flood hazard characteristics or classification, and flood management approaches. The report and recommendations would be submitted within 18 months after the enactment of this Act to the House Committee on Financial Services and the Senate Banking, Housing, and Urban Affairs Committee.

Section 3031 would require the National Academy of Sciences (NAS) to conduct a study of methods for understanding graduated risk behind levees and the associated land development, insurance, and risk communication dimensions. The NAS would submit a report with recommendations within 12 months of the date of enactment of this Act to the House Committee on Financial Services and Senate Banking, Housing, and Urban Affairs Committee.

Senate bill

No provision.

Conference Substitute
No provision.

MISCELLANEOUS PROVISIONS

H3035/S—
Current law

There are no relevant provisions in current law regarding Section 3035 of the House bill.

House bill

Section 3035 would allow state and local governments to use the Army Corps of Engineers to evaluate locally operated levee systems which were either built or designed by the Corps, and which are being reaccredited as part of a NFIP remapping. All costs associated with evaluations would continue to be covered by the state or local government requesting the evaluation.

Senate bill

No provision.

Conference Substitute
No provision.

TITLE IV – JUMPSTARTING OPPORTUNITY WITH BROADBAND SPECTRUM ACT OF 2011

SUBTITLE A – SPECTRUM AUCTION AUTHORITY

H4005,4101,4102,4103,4104,4105,4106,4107/S—

Current law

There are no relevant provisions in current law regarding Section 4005 of the House bill.

Current law provides for auction of electro-magnetic spectrum assigned for federal use but does not establish deadlines for specified frequencies. Current law provides for a Spectrum Relocation Fund. It requires that spectrum license proceeds be paid to the General Fund except in the case of auctions of federal spectrum being reallocated for commercial use in which case unexpended proceeds are held for 8 years before being deposited in the Treasury.

Current law requires that 24 MHz of spectrum licenses in 700 MHz band be assigned for use by public safety agencies. FCC regulations have designated 12 MHz for use by narrowband radios carrying primarily voice communications and 2 MHz as guard bands to mitigate radio interference. Licenses are administered by state and local authorities. Current law requires that auction proceeds be deposited in the General Fund.

The FCC has broad regulatory powers that might permit it to reallocate TV broadcasting spectrum. Current law requires that auction proceeds be deposited in the General Fund.

There are no relevant provisions in current law regarding Section 4104 of the House bill.

The law requires the FCC to set rules regarding participation in spectrum licenses auctions and for spectrum use (service rules).

Authority of FCC to use competitive bidding systems to assign licenses for the use of designated portions of electro-magnetic spectrum expires September 30, 2012.

There are no relevant provisions in current law regarding Section 4107 of the House bill.

House bill

Under Section 4005, payments of funds to and access to spectrum license auctions would be prohibited for any person who is barred by a federal agency for reasons of national security.

Section 4101 would set requirements for commercial auctions of electro-magnetic spectrum currently assigned for federal use as described by the bill. With exceptions, process of preparing auctions would begin within three years of enactment. Spectrum license auction proceeds would be distributed to the Spectrum Relocation Fund, which would receive an amount equal to 110% of projected federal agency relocation costs, with the balance deposited with the Public Safety Trust Fund.

Section 4102 would require that these spectrum licenses be released for commercial auction within five years of a decision by a federally appointed Administrator. The decision would be triggered by a declaration by the Administrator that technology was available that would allow the migration of voice communications from the 700 MHz narrowband networks to the 700 MHz broadband network, thereby freeing up the narrowband

spectrum for auction to the commercial sector. Would allocate \$1 billion of auction proceeds to a new grant program for states to acquire radio equipment.

Section 4103 would provide the FCC with the authority to establish incentive auctions for television broadcasters, within specified limits. It would create a TV Broadcaster Relocation Fund as a means for broadcasters to receive up to \$3 billion of auction revenue to cover relocation costs and for other purposes. Proceeds above that amount would go to the Public Safety Trust Fund through FY2021, after which funds are to be deposited in the General Fund.

Section 4104 would establish procedures for the FCC to follow in reallocating television broadcasting spectrum licenses for commercial auction.

Section 4105 would set limitations on FCC auction and service rules for future auctions. Would prohibit auction rules that placed new conditions on prospective bidders (spectrum caps). Would prohibit service rules that restrict licensee's ability to manage network traffic (net neutrality) or that would require providing network access on a wholesale basis.

Section 4106 would extend the FCC's auction authority through FY 2021.

Section 4107 would lay the groundwork to expand commercial use of unlicensed spectrum within the federally managed 5GHz band of wireless spectrum by requiring the FCC to commence a proceeding as described in the bill.

Senate bill

No provision.

SUBTITLE B – ADVANCED PUBLIC SAFETY COMMUNICATIONS

PART 1 – NATIONAL IMPLEMENTATION

H4201,4202,4203,4204,4205/S—

Current law

The FCC is empowered to manage public safety use and assign access to spectrum. FCC has assigned a single, nationwide license for 10 MHz of public safety broadband spectrum, which it regulates. The law requires that the D Block be auctioned for commercial purposes, with proceeds deposited in the General Fund.

The Office of Emergency Communications (OEC) within the Department of Homeland Security, as required by law, has prepared a National Emergency Communications Plan. The law also requires the OEC to work with other federal agencies in developing appropriate standards for interoperability, among other requirements. The FCC has used its regulatory authority to create requirements for the use of public safety spectrum at 700 MHz, including interoperability and standard-setting.

Law has required that each state, in order to receive federal funding for certain grants for public safety, must establish a State Communications Interoperability Plan (SCIP) and designate plan administrators at the state or local level. OEC is charged with assisting and overseeing these plans. Each state has submitted a SCIP to the OEC. Law also required the creation of Regional Emergency Communications Centers to facilitate regional planning for interoperability at the regional level.

There are no relevant provisions in current law regarding Section 4204 of the House bill.

House bill

Section 4201 would assign a total of 20 MHz of 700 MHz spectrum designated for public safety use to an Administrator, competitively chosen by the NTIA. The Administrator would manage the distribution of spectrum capacity to individual states and enforce requirements established in the bill. Specifically, provisions would reallocate 10 MHz (the D Block) from commercial use to public safety use.

Section 4202 would establish requirements for the FCC to create a Public Safety Communications Planning Board. The Board would prepare, and submit to the FCC for approval, a National Public Safety Communications Plan. The Plan would include requirements for interoperability and standards, among other provisions.

Section 4203 would require the NTIA to request proposals for the administration of the Plan. Would establish the duties of the Administrator in working with State Public Safety Broadband Offices to build interoperable networks within each state.

Section 4204 would provide borrowing authority of up to \$40 million for the creation and initial operation of the Administrator's office, to be repaid from auction revenue received by the Public Safety Trust Fund.

Section 4205 would require the OEC to submit to Congress a study that would: review the importance of amateur radio in responding to disasters; make recommendations for how to enhance the use of amateur radio federally; and to identify impediments to amateur radio such as private land use restrictions on antennas.

Senate bill

No provision.

PART 2 – STATE IMPLEMENTATION

H4221,4222,4223,4224,4225/S—

Current law

FCC has promulgated regulations and requirements for public safety broadband access.

There are no relevant provisions in current law regarding Section 4222 of the House bill.

There are no relevant provisions in current law regarding Section 4223 of the House bill.

There are no relevant provisions in current law regarding Section 4224 of the House bill.

State and local governments have right to apply zoning law procedures for requests to modify existing cell towers.

House bill

Section 4221 would require each state seeking to establish a public safety broadband network, using 700 MHz public safety broadband spectrum, to create a Public Safety Broadband Office. Each office would prepare proposals for building networks based on the requirements established through the National Public Safety Communications Plan, including for requests for proposal. The Administrator would work with each state office in preparing and carrying out the plans. In general, states would be required to sign a

contract with a commercial mobile provider to build the network to specifications as provided in the bill and in accordance with requirements established by the Public Safety Communications Planning Board and by the Administrator.

Section 4222 would establish a matching grant program to assist state Public Safety Broadband Offices.

Section 4223 would create a State Implementation Fund for the State Implementation Grant Program. The fund would receive up to \$100 million in auction revenue as specified in the bill. Funds remaining at the end of 2021 would be deposited in the General Fund.

Section 4224 would provide grants to states for payments under contracts entered into with the approval of the Administrator.

Section 4225 would require approval of requests for modification of cell towers. This section would provide for federal agencies to grant easements for the placement of antennas on federal property. This section would require the General Services Administration (GSA) to provide a common request form for easements and rights-of-way and to establish fees for this service, based on direct cost recovery. This section would require the GSA to develop one or more contracts for antenna placement and other specifications.

Senate bill

No provision.

PART 3 – PUBLIC SAFETY TRUST FUND

H4241/S—

Current law

There are no relevant provisions in current law regarding Section 4241 of the House bill.

House bill

Section 4241 would create a fund to receive, hold and disburse all auction proceeds as provided in the bill except for \$3 billion to be directed to the TV Broadcaster Relocation Fund. Designated uses are: State and Local Implementation, \$100 million; Public Safety Administrator, \$40 million; Public Safety Broadband Network Deployment, \$4.96 billion plus 10% of any remaining amounts deposited in the fund up to \$1.5 billion; Deficit Reduction, \$20.4 billion from fund and balances upon expiration in FY 2021, plus at least 90% of any additional auction revenue.

Senate bill

No provision.

PART 4 – NEXT GENERATION 9-1-1 ADVANCEMENT ACT

H4265,4266,4267,4268,4269,4270,4271/S—

Current law

Similar provisions were in effect through statutes that expired at the end of FY2009. Provisions included requirements for a grant program and for planning for the eventual transition to Next Generation 9-1-1.

There are no relevant provisions in current law regarding Section 4266 of the House bill.

Law Requires FCC to study 9-1-1 fee collection and use and issue a report annually. Law extends similar protection for existing 9-1-1 services.

There are no relevant provisions in current law regarding Section 4269 of the House bill.

There are no relevant provisions in current law regarding Section 4270 of the House bill.

House bill

Section 4265 would establish a federal 9-1-1 Coordination Office to advance planning for next-generation 9-1-1 systems and to fund a grant program with an authorization of \$250 million. This section would direct the Assistant Secretary (NTIA) and the Administrator of the National Highway Traffic Safety Administration (NHTSA) to establish a 9-1-1 Implementation Coordination Office to reestablish and extend matching grants, through October 1, 2021, to eligible state or local governments or tribal organizations for the implementation, operation, and migration of various 9-1-1, E9-1-1 (wireless telephone location), Next Generation 9-1-1 (voice, text, video), and IP-enabled emergency services and public safety personnel training. This section would provide immunity and liability protection, to the extent consistent with specified provisions of the Wireless Communications and Public Safety Act of 1999, to various users and providers of Next Generation 9-1-1 and related services, including for the release of subscriber information.

Section 4266 would require GAO to prepare a report on 9-1-1 capabilities of multi-line telephone systems in federal facilities, and would require the FCC to seek comment on the feasibility of improving 9-1-1 identification for calls placed through multi-line telephone systems.

Section 4267 requires GAO to study how states assess fees on 9-1-1 services and how those fees are used.

Section 4268 would provide immunity and liability protection, to the extent consistent with specified provisions of the Wireless Communications and Public Safety Act of 1999, to various users and providers of Next Generation 9-1-1 and related services, including for the release of subscriber information.

Section 4269 would direct the FCC to: (1) initiate a proceeding to create a specialized Do-Not-Call registry for public safety answering points, and (2) establish penalties and fines for autodialing (robocalls) and related violations.

Section 4270 requires an analysis of costs and assessments and analyses of technical uses.

Section 4271 would require the FCC to assess the legal and regulatory environment for development of NG9-1-1 and barriers to that development, including state regulatory roadblocks.

Senate bill

No provision.

SUBTITLE C – FEDERAL SPECTRUM RELOCATIONS

H4301,4302,4303/S—

Current law

Law provides conditions of use and relinquishment of spectrum, and related actions, by federal agencies. Federal agencies that are relocating to new spectrum allocations in order to accommodate commercial users for other uses may be reimbursed for certain costs of relocation from the Spectrum Relocation Fund, established for that purpose.

Spectrum Relocation Fund created by the Commercial Spectrum Enhancement Act of 2004 (P.L. 108-494, Title II).

There are no relevant provisions in current law regarding Section 4303 of the House bill.

House bill

Section 4301 would include shared use as an eligible action and expenditures for planning would be newly included among those costs eligible for reimbursement from the Spectrum Relocation Fund. This section would establish a Technical Panel to review a transition plan that the NTIA would be required to prepare in accordance with provisions in the bill. This section would require that the NTIA give priority to options that would reallocate spectrum for exclusive, nonfederal uses assigned through auction.

Section 4302 would address uses of the Fund, as described in Sec. 4301, and would establish requirements regarding transfers of funds in advance of auctions and reversion of unused funds.

Section 4303 would establish provisions under which non-disclosure of information regarding federal spectrum use would be determined.

Senate bill

No provision.

SUBTITLE D – TELECOMMUNICATIONS DEVELOPMENT FUND

H4401,4402/S—

Current law

The Telecommunications Development Fund (TDF) was created to provide funding for new ventures in telecommunications. One source of funds comes from the requirement that interest from certain escrow accounts overseen by the FCC be transferred to the TDF.

The law that created TDF requires board members to consult with the FCC and the Treasury before finalizing decisions.

House bill

Section 4401 would require that interest accrued in specified accounts be deposited in the General Fund.

Section 4402 eliminates the role of federal agencies in oversight of board activities.

Senate bill

No provision.

Conference Substitute

Title VI - Public Safety Communications and Electromagnetic Spectrum Auctions. The public safety and spectrum provisions of this legislation advance wireless broadband service by clearing spectrum for commercial auction, promoting billions of dollars in private investment, and creating tens of thousands of jobs. These provisions also deliver on one of the last outstanding recommendations of the 9/11 Commission by creating a nationwide interoperable broadband communications network for first responders and generating billions of dollars of Federal revenue.

TITLE V – OFFSETS

SUBTITLE A – GUARANTEE FEES

H5001/S401,402

Current law

Similar provisions were enacted in Title IV of P.L. 112-78.

House bill

Section 5001 increases guarantee fees to reflect risk of loss and cost of capital as if enterprises were fully private regulated institutions. This section requires a minimum increase of 10 basis points (0.10%) greater than average 2011 guarantee fees. To the extent that amounts are received from fee increases imposed under this section that are necessary to comply with the minimum increase required by this subsection, such amounts shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. Such fees shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise. This section provides for a two-year phase-in at discretion of Director of FHFA. This section requires all lenders to be charged a uniform guarantee fee. This section requires an annual FHFA Report to Congress to include information on up-front and annual guarantee fee increases, and changes in riskiness of new mortgages. This section applies to mortgages closed after the date of enactment. This section expires October 1, 2021.

Senate bill

Sections 401 and 402 increase guarantee fees to reflect risk of loss and cost of capital as if enterprises were fully private regulated institutions. This section requires a minimum increase of 10 basis points (0.10%) greater than average 2011 guarantee fees. Amounts received from fee increases imposed under this section shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. The fees charged pursuant to this section shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise. This section provides for a two-year phase-in at discretion of Director of FHFA. This section requires all lenders to be charged a uniform guarantee fee. This section requires an annual FHFA Report to Congress to include information on up-front and annual guarantee fee increases, and changes in riskiness of new mortgages. This section applies to mortgages closed after the date of enactment. This section expires October 1, 2021. This section increases guarantee fees on FHA-insured mortgages by 10 basis points (0.10%) with phase-in over two years.

Conference Substitute

No provision.

TITLE VI – MISCELLANEOUS PROVISIONS

H6002,6003(a),6003(b),6004/S511,512

Current law

Section 263 of the Trade Adjustment Assistance Extension Act of 2011 (P.L. 112-40) requires any fees for processing merchandise entered between October 1 and November 12, 2012, to be paid no later than September 25, 2012, in an amount equivalent to the amount of such fees paid with respect to merchandise entered between October 1 and November 12, 2011. The section requires the Secretary of the Treasury to refund with interest any overpayment of such fees. The section prohibits any assessment of interest for any underpayments based on the amount of fees paid for merchandise entered between October 1 and November 12, 2012.

Section 601(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (26 U.S.C. 1401 note) specifies the calendar year in which the payroll tax holiday period applies. There is no Senate point of order against the consideration of legislation that would amend this section of the law.

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011 (BCA), establishes enforceable statutory limits on discretionary spending for each fiscal year covering FY2012-FY2021. Section 251(b)(2)(A)(i) of the BBEDCA provides for these limits to be adjusted to accommodate discretionary spending designated as emergency requirements in statute (i.e., effectively exempting such spending from the limits). Section 314 of the Congressional Budget Act of 1974, as amended by the BCA, allows the chairs of the budget committees in each chamber to make similar adjustments for purposes of congressional enforcement of these and other spending limits during the consideration of spending legislation. The existing Senate point of order against an emergency designation (Section 403 of S.Con.Res. 13, 111th Congress, the FY2010 budget resolution) does not apply to an emergency designation pursuant to the BBEDCA; therefore, there is no current Senate point of order against such a designation.

Under the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111-139), the five-year and 10-year budgetary effects of direct spending and revenue legislation enacted during a session are placed on respective scorecards. At the end of a session of Congress, if either scorecard shows an increase in the deficit, a sequestration of non-exempt budgetary resources is required to eliminate such deficit. Under the law, off-budget effects and discretionary spending effects are not counted.

House bill

Section 6002 repeals a requirement that importers pre-pay certain fees authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985.

Section 6003(a) creates a Senate point of order against the consideration of any measure that “extends the dates referenced in section 601(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.” Provides that a two-thirds affirmative vote would be required to waive the point of order.

Section 6003(b) amends the Budget Act to create a point of order against an emergency designation pursuant to the BBEDCA included in any measure. The new point of order is similar to the existing Senate emergency designation point of order: (1) if point of order is made, emergency designation is stricken from the measure; and (2) a three-

fifths affirmative vote is required to waive the point of order and to sustain an appeal of the ruling of the chair.

Section 6004 provides that the budgetary effects of H.R. 3630 are not placed on either PAYGO scorecard, as long as the legislation does not increase the deficit over the FY2013-FY2021 period. Also provides that off-budget effects, changes to the statutory discretionary spending limits, and changes in net income to the National Flood Insurance Program are to be counted in determining the budgetary effects of the legislation.

Senate bill

The Senate bill does not contain a provision regarding the repeal of a requirement relating to time for remitting certain merchandise processing fees.

Section 511 amends the Budget Act to create a point of order against an emergency designation pursuant to the BBEDCA included in any measure. The new point of order is similar to the existing Senate emergency designation point of order: (1) if point of order is made, emergency designation is stricken from the measure; and (2) a three-fifths affirmative vote is required to waive the point of order and to sustain an appeal of the ruling of the chair.

Section 512 provides that the budgetary effects of H.R. 3630 are not placed on either PAYGO scorecard. Senate provision makes no modifications to the conventional budget scoring of the legislation.

Conference Substitute

Section 7002. Repeal of Requirement Relating to Time for Remitting Certain Merchandise Processing Fees: Repeals a requirement that importers pre-pay certain fees authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985. The provision is identical to that contained in Section 6002 of the House bill.

Section 7003. Points of Order in the Senate: Includes two Senate points of order related to (1) protecting the Social Security Trust Fund and (2) emergency spending. The provision is identical to that contained in Section 6003 of the House bill.

Section 7004. PAYGO Scorecard Estimates: Provides that the budgetary effects of the bill shall not be entered on the statutory PAYGO scorecards provided that the bill is deficit neutral over 10 years. The provision is identical to that contained in Section 6004 of the House bill.

FEDERAL CIVILIAN EMPLOYEES PROVISIONS

Current Law

Pay Freeze: The Continuing Resolution of December of 2010 included a two-year freeze on all across-the-board, annual pay adjustments for federal civilian employees, January 1, 2011 through December 31, 2012.

Federal Employee Pensions: Most federal civilian employees are participants in the Federal Employees Retirement System (FERS), under which they make a contribution toward a defined benefit pension equal to 0.8 percent of basic pay. Their employing agency covers the remainder of the pension cost. At normal retirement age, an employee is entitled to a pension equal to 1 percent (or 1.1 percent for those retiring at age 62 with 20 years of service) of the average of the employee's highest three years' compensation times the employee's years of service. Certain FERS participants retiring prior to age 62 are entitled to the FERS annuity supplement. This benefit is paid in addition to their defined benefit annuity, and equals the Social Security benefit they would receive for their FERS civilian service from the Social Security Administration if eligible to receive Social Security on their date of retirement. Most employees who first entered federal government service before 1987 are covered by the Civil Service Retirement System (CSRS), under which they contribute 7 percent of their pay toward their defined benefit pension. CSRS employees are not covered by Social Security, so, unlike FERS employees, they are not subject to the 6.2 percent Social Security contribution. Under both FERS and CSRS, employee contributions and benefits for special occupational groups and Members of Congress are higher. Separate but comparable retirement systems exist for Foreign Service and CIA employees.

House Bill

Pay Freeze: The House bill would extend the current freeze on across-the-board statutory pay adjustments for federal civilian employees and Members of Congress through December 31, 2013.

Federal Employee Pensions: The House bill would increase the employee contribution for both CSRS and FERS employees by 0.5 percentage points each year for three years, beginning in 2013. Corresponding changes would be made to the Foreign Service, CIA, and TVA retirement systems. The House bill would establish new retirement rules for federal employees hired after December 31, 2012, with less than 5 years of service. Their contribution to FERS would increase by 3.2 percentage points. The FERS pension formula salary base for new employees would change to the highest-five years' average salary instead of highest three years. The FERS pension formula multiplier for most new employees would be reduced to 0.7 percent per year of service, instead of 1 percent (or 1.1 percent for those retiring at age 62 with 20 or more years of service). Employees in special occupational groups are subject to a proportional adjustment to the multiplier (0.3 percentage points lower than current law). Finally, the House bill would eliminate the FERS Annuity Supplement for individuals not subject to mandatory retirement, beginning January 1, 2013. Individuals subject to mandatory retirement include certain categories of employees such as law enforcement, fire fighters, air traffic controllers, and nuclear materials couriers.

Senate Bill

No Provision.

Conference Substitute

Pay Freeze: No provision.

Federal Employee Pension: The Conference Agreement would increase by 2.3 percent the employee pension contribution for federal employees entering service after December 31, 2012, who have less than 5 years of creditable civilian service.

Corresponding increases in employee contributions would be made for individuals entering the CIA and Foreign Service pension systems. Members of Congress and congressional employees entering service after December 31, 2012 who have less than 5 years of creditable civilian service would be subject to the same contribution rate and annuity calculation as other federal employees.

MEDICARE AND OTHER HEALTH PROVISIONS

Extension of MMA Section 508 Reclassifications

Current Law

Under Medicare's Inpatient Prospective Payment System (PPS), payments are adjusted by a wage index that is intended to reflect the cost of labor in the area where the services are furnished compared to a national average. Hospitals in areas with higher wage costs have higher wage indices and therefore receive higher PPS payments; hospitals in lower wage areas have lower wage indices and receive lower payments.

Recognizing that the indices are not always accurate, Congress in 1989 established a process whereby hospitals could apply to "reclassify" to a nearby area, and receive the higher wage index of that area. While a significant number of hospitals (nearly 40%) have a reclassified wage index, other hospitals have not been able to meet the established criteria.

Section 508 of the Medicare Modernization Act of 2003 (MMA) directed the Centers for Medicare and Medicaid Services (CMS) to develop new criteria that would allow additional hospitals to qualify for a one-time, three-year reclassification.

According to CMS, there were 89 hospitals receiving Section 508 reclassification payments in FY 2011.

House Bill

No provision.

Senate Bill

Section 302 extended the Section 508 reclassification payments for two months (October and November 2011).

Conference Substitute

Section 3001 extends Section 508 reclassification payments through March 31, 2012.

Extension of Outpatient Hold Harmless Payments

Current Law

In 2000, Medicare implemented a PPS for hospital outpatient services; prior to this time hospitals received cost-based payments. For certain hospitals, primarily those located in rural areas, the outpatient PPS payments were lower than the payments they had received under the prior cost-based system. The Balanced Budget Refinement Act of 1999 (BBRA) mandated that rural hospitals with fewer than 100 beds receive 100% of the difference between OPPS payments and what these hospitals would have received under the cost-based system (thus the name "hold harmless" payments). Over time, Congress has lowered the payment percentage (it currently is 85%) and has expanded the policy to sole community hospitals (SCHs), hospitals that are further than 35 miles from another hospital.

House Bill

No provision.

Senate Bill

Section 308 extended the hold harmless payment to all eligible hospitals for two months (January and February 2012).

Conference Substitute

Section 3002 extends the outpatient hold harmless payments through December 31, 2012, except for SCHs with more than 100 beds. The provision requires a study by the Department of Health and Human Services (HHS) by July 1, 2012, on which types of hospitals should continue to receive hold harmless payments in order to maintain adequate beneficiary access to outpatient services.

Physician Payment Update

Current Law

The Sustainable Growth Rate (SGR) formula system was established by the Balanced Budget Act of 1997 (BBA) as the mechanism to determine the update to Medicare physician payments beginning in 1999. The formula allows spending to grow at the rate of the economy, adjusted for other factors such as the number of beneficiaries in Medicare fee-for-service. The tally of actual and target expenditures is cumulative in that it is maintained on an on-going basis since the formula's inception. The update adjustment that results from the SGR system is made through the conversion factor. If spending exceeds the target, the adjustment to the conversion factor is negative (physicians payments get reduced). If spending is below the target, the adjustment is positive (physician payments are increased). Physician spending has routinely exceeded the target such that the SGR formula has specified negative updates since 2002. Congress has intervened 13 times to avert the cuts since 2003. The SGR currently calls for a 27.4 percent across-the-board rate cut for physicians to take effect on March 1, 2012.

House Bill

Section 2201 replaced the 27.4 percent cut with a 1 percent rate increase in 2012 and another 1 percent increase in 2013. This section also required reports from the: Medicare Payment Advisory Commission (MedPAC) on aligning private sector initiatives to reward quality, efficiency, and practice improvements with Medicare performance-based initiatives; Government Accountability Office (GAO) on examining private sector initiatives that base or adjust physician payments for quality, efficiency, or care delivery improvement; and Secretary of HHS on options for bundling payments for common physician services. It also required the committees of jurisdiction to provide information to Congress to assist in the development of a long-term replacement to the current Medicare physician payment system.

Senate Bill

Section 301 froze physician payment rates at their 2011 level for two months (January and February 2012).

Conference Substitute

Section 3003 freezes physician payment rates at their current levels until December 31, 2012, averting a 27.4 percent reduction. The provision also requires reports from the Secretary of HHS, due January 1, 2013, that examines bundled or episode-based payments to cover physicians' services for one or more prevalent chronic conditions or major procedures. It also requires a GAO report, due January 1, 2013, that examines private sector initiatives that base or adjust physician payment rates for quality, efficiency, and care delivery improvement, such as adherence to evidence-based guidelines.

Work Geographic Adjustment

Current Law

Medicare payment for each physician service is made up of three components: 1) physician work (the time, skill and intensity for a physician to provide a service), 2) practice expense (associated overhead costs), and 3) physician liability insurance. Each of these components is adjusted based on the relative costs associated with the geographic area in which the physician practices. Medicare makes these adjustments, known as Geographic Practice Cost Indices (GPCIs), in each of its designated 89 geographic areas. The national average work adjustment is set at a value of 1.0. Thus, geographic areas with an adjustment value greater than 1.0 receive higher work payments than the areas with an adjustment below that threshold. Current law maintains a work adjustment floor—set at the national average value of 1.0—that increases work payments to physicians in the areas that have a value below the national average. This floor increases payments in 54 of 89 geographic areas. The MMA established this policy starting in 2004 and Congress subsequently extended it five times.

House Bill

Section 2204 extended the work GPCI floor through December 31, 2012 and required that MedPAC submit a report by June 1, 2012 that assesses whether any work geographic adjustment is needed, if so, at what level it should be applied, and the impact of the floor on beneficiary access to care.

Senate Bill

Section 303 extended the 1.0 GPCI floor for two months (January and February 2012).

Conference Substitute

Section 3004 extends the 1.0 work GPCI floor through December 31, 2012. It also requires MedPAC to report by June 15, 2013, assessing whether any work geographic adjustment is needed and, if so, at what level it should be applied, and the impact of the floor on beneficiary access to care.

Payment for Outpatient Therapy Services

Current Law

The BBA imposed two annual per beneficiary payment limits for all outpatient therapy services delivered by non-hospital providers. For 2012, the annual limit on the allowed amount for outpatient physical therapy (PT) and speech-language pathology (SLP) combined is \$1,880. There is a separate \$1,880 limit for occupational therapy (OT). Enforcement of the caps has been blocked by legislation every year since 2000, with the exception of three months in 2003. The Deficit Reduction Act of 2006 (DRA) required the HHS Secretary to implement an exceptions process in 2006 for cases in which the provision of additional therapy services above the cap was determined to be medically necessary. Congress has extended this exceptions process several times.

House Bill

Section 2203 extended the exceptions process through December 31, 2013, and made specific refinements to the exceptions process to ensure that medical necessity is documented and appropriately reviewed. Specifically, the HHS Secretary was required to ensure, through claims processing edits, that appropriate modifiers are on the claims indicating that the responsible providers have documented medical necessity for services paid above the therapy cap threshold. In addition, all Medicare claims for therapy services were required to include the national provider identifier (NPI) for the physician or practitioner (not the therapist rendering services) who periodically reviews the therapy plan of care. The spending cap was permanently expanded to include spending for therapy services provided in hospital outpatient departments. Starting on July 1, 2012, when a beneficiary's annual spending for therapy services furnished in calendar year 2012 reaches \$3,700 in PT and SLP, or \$3,700 in OT, any additional services would be subject to a manual medical review process.

By January 1, 2013, the Secretary was required to collect detailed data on therapy patient conditions and outcomes that could assist in reforming the current therapy payment system. In addition, MedPAC was required to submit a report to the committees of jurisdiction, making recommendations on how to reform the payment system so that the benefit is better designed to reflect individual acuity, condition, and therapy needs of the patient. GAO was required to submit a study to the committees of jurisdiction, examining CMS implementation of the manual review process.

Senate Bill

Section 304 extended the exceptions process for Medicare outpatient therapy caps for two months (January and February 2012).

Conference Substitute

Section 3005 extends the therapy caps exceptions process through December 31, 2012. Starting with services provided on or after October 1, 2012, the Secretary is required to ensure that appropriate modifiers and NPIs are on the Medicare claims and implement a manual medical review process for beneficiaries whose annual spending for therapy services furnished in calendar year 2012 reaches \$3,700 in PT and SLP, or \$3,700 in OT. The spending caps are temporarily expanded (through December 31, 2012) to include spending for therapy services provided in hospital outpatient departments. The conference agreement also requires the Secretary to collect detailed data to assist in refining the therapy payment system and also requires reports from GAO and MedPAC.

Payment for Technical Component of Certain Physician Pathology Services

Current Law

Medicare pays for the preparation of pathology lab samples (the “technical component”) as well as the physician interpretation and diagnosis associated with those samples (“professional component”). Prior to 1999, independent labs that performed the technical component (TC) of pathology lab services for hospitals could bill Medicare directly for the TC payment. In 1999, CMS implemented a new rule that prohibited independent laboratories from billing for these services, with the rationale that Medicare payment was already included in the bundled payment to the hospital. Hospitals that had in-house labs were unaffected. Hospitals that had been utilizing independent labs as of July 22, 1999, however, were “grandfathered” in the Benefits Improvement and Protection Act (BIPA) of 2000, allowing them to continue billing Medicare directly.

House Bill

No provision.

Senate Bill

Section 305 extended the TC grandfather policy for two months (January and February 2012).

Conference Substitute

Section 3006 extends the TC grandfather policy until June 30, 2012.

Ambulance Add-On Payments

Current Law

In 2002, a fee schedule was established for ground and air ambulance services; it was fully implemented in 2006. Currently, all ground ambulance services receive some type of add-on: 2 percent for urban ground ambulance trips, 3 percent for rural ground ambulance trips, and 22.6 percent for ground ambulance trips that originate in “super rural” areas (those in the lowest quartile in terms of population density).

Under the air ambulance fee schedule, rural providers receive a 50% add-on. In 2006, the Office of Management and Budget (OMB) changed the designation of a number of areas from rural to urban, based on updated Census data, which would have ended the rural add-on for air ambulances originating in the affected areas. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) allowed these affected areas to continue to be considered rural so that air ambulances could continue to receive the rural add-on.

House Bill

Section 2202 extended the payment add-ons for ground ambulance services until December 31, 2012. Additionally, the House bill required GAO to update their 2007 report detailing current ambulance costs. The House bill also required MedPAC to submit a

report on the appropriateness of the ambulance fee schedule and whether there is a need to reform the ambulance fee schedule.

Senate Bill

Section 306 extended the add-ons for ground ambulance services and continued the rural designation for certain air ambulance services for two months (January and February 2012).

Conference Substitute

Section 3007 extends payment add-ons for ground ambulance services and continued the rural designation for certain air ambulance services until December 31, 2012. This provision requires GAO to update its 2007 report by October 1, 2012, to reflect current costs for ambulance providers and requires MedPAC to submit a report by June 15, 2013, on the appropriateness of the ambulance add-on payments and whether there is a need to reform the ambulance fee schedule.

Qualifying Individual Program

Current Law

The Qualifying Individual (QI) program is a Medicare savings program for certain low-income Medicare beneficiaries, who are fully eligible for Medicare and receive Medicaid assistance with their Medicare Part B premiums. Unlike full benefit dually-eligible beneficiaries who are fully eligible for both Medicare and Medicaid (known as qualified Medicare beneficiaries (QMBs), or those with incomes below 100 percent of poverty) and specified low-income Medicare beneficiaries (SLMBs, or those with incomes between 100 and 120 percent of poverty), QI is a block grant to states that must be reauthorized each year. Enrollment in QI is limited by federal appropriations, and applications are approved on a first-come, first-served basis. QI beneficiaries must have incomes between 120 and 135 percent of poverty (\$13,404 to \$15,079 for an individual in 2012).

House Bill

Section 2211 extended the QI program through December 31, 2012.

Senate Bill

Section 310 extended the QI program for two months (January and February 2012).

Conference Substitute

Section 3101 extended the QI program through December 31, 2012.

Transitional Medical Assistance

Current Law

Congress expanded the Transitional Medical Assistance (TMA) program in 1988 as part of welfare-to-work programs, requiring states to provide TMA to families who lose Medicaid eligibility for work-related reasons for at least six, and up to twelve, months.

During the first six months of TMA, states must provide the same benefits the family was receiving or pay for costs of similar employer-based coverage. The second six months of TMA is available for families who continue to have a dependent child at home, meet reporting requirements, and have average gross monthly earnings below 185% of poverty.

Congress created an additional work-related TMA option in the American Recovery and Reinvestment Act of 2009 (ARRA). Under the ARRA option, states may choose to provide work-related TMA for a full twelve-month period rather than two six-month periods. These changes were informed by GAO work that found the reporting requirements to be a substantial paperwork barrier that caused significant numbers of eligible families to lose coverage to which they were entitled. Thirteen states have taken up the ARRA option: Alaska, Colorado, Connecticut, Florida, Idaho, Maryland, Montana, New Mexico, New York, Ohio, Oregon, South Dakota, and Wisconsin.

House Bill

Section 2212 extended TMA, through December 31, 2012. In addition, this provision contained new income reporting requirements for any month of TMA coverage and limited TMA to only those individuals with incomes below 185 percent of poverty.

Senate Bill

Section 311 extended TMA for two months (January and February 2012).

Conference Substitute

Section 3102 provides for an extension of TMA through December 31, 2012.

Modification to Requirements for Qualifying for Exception to Medicare Prohibition on Certain Physician Referrals for Hospitals

Current Law

Physicians are generally prohibited from referring Medicare patients to a health care facility in which they, or an immediate family member, have a financial stake. However, physician-owned hospitals have operated under an exception to anti-trust laws, known as the “whole hospital exception.”

The Affordable Care Act (ACA) amended the “whole hospital exception” by requiring that all hospitals with physician-ownership have a Medicare provider number by December 31, 2010. Any hospital without a Medicare provider number is not permitted to bill Medicare for services provided to beneficiaries under the “whole hospital exception.” Grandfathered physician-owned hospitals, those with Medicare provider numbers by December 31, 2010, may continue to operate. However, they may not alter the proportion of physician-ownership in the hospital. Under current law, a grandfathered hospital may apply to expand the number of operating rooms, procedure rooms and/or beds if it meets five criteria.

House Bill

Section 2213 allowed physician-owned hospitals that were under construction but without a Medicare provider number on December 31, 2010, to open and operate under

the “whole hospital exception.” The provision would also allow a grandfathered hospital the ability to utilize the existing expansion process if it certifies that it does not discriminate against beneficiaries in federal health care programs.

Senate Bill

No provision.

Conference Substitute

No provision.

Extending Minimum Payment for Bone Mass Measurement

Current Law

Dual energy X-ray absorptiometry (DXA) machines are used to measure bone mass to identify individuals who may have or be at risk of having osteoporosis. For those individuals who are eligible, Medicare will pay for a bone density study once every two years, or more frequently if the procedure is determined to be medically necessary. The DRA capped reimbursement of the technical component for x-ray and imaging services as the lesser rate of the hospital outpatient rate or the physician fee schedule. Additionally, CMS implemented a new methodology for determining resource-based practice expense payments for all services contributed to the reduction in the technical component reimbursement. The ACA set DXA payments at 70 percent of the 2006 reimbursement rates for these services in 2010 and 2011.

House Bill

No provision.

Senate Bill

Section 309 extended the 70 percent of the 2006 payment rate for two months (January and February 2012).

Conference Substitute

No provision.

Extension of Physician Fee Schedule Mental Health Add-on Payment

Current Law

Medicare pays for mental health services under the physician fee schedule. MIPPA increased the fee schedule amount for certain mental health service by 5 percent beginning on July 1, 2008. Subsequent legislation extended this add-on.

House Bill

No provision.

Senate Bill

Section 307 extended the 5 percent payment add-on for two months (January and February 2012).

Conference Substitute

No provision.

Reduction of Bad Debt Treated as an Allowable Cost

Current Law

Medicare reimburses providers for beneficiaries' unpaid coinsurance and deductible amounts after reasonable collection efforts. Medicare currently reimburses 70 percent of beneficiary bad debts in acute care hospitals. Medicare reimburses skilled nursing facilities 100 percent of the allowable bad debt costs for Medicare beneficiaries who are eligible for Medicaid (dual eligibles) and 70 percent of the allowable costs for all other beneficiaries. Medicare reimburses 100 percent of allowable bad debt in critical access hospitals, rural health clinics, federally qualified health clinics, community mental health clinics, health maintenance organizations reimbursed on a cost basis, competitive medical plans, and health care prepayment plans. Medicare also reimburses end stage renal disease facilities 100 percent of allowable bad debt claims, with such payments capped at the facilities' unrecovered costs.

House Bill

Section 2224 gradually reduced the bad debt reimbursement, beginning in 2013 and over a period of three years, for all providers to 55 percent.

Senate Bill

No provision.

Conference Substitute

Section 3201 will reduce bad debt reimbursement for all providers to 65 percent. Providers paid at 100 percent would have a three-year transition of 88 percent in 2013, 76 percent in 2014, and 65 percent in 2015. Providers paid at 70 percent would be reduced to 65 percent in 2013.

Rebase Medicare Clinical Laboratory Payment Rates

Current Law

Medicare pays for clinical laboratory services under carrier-specific fee schedules subject to national payment limits. Most lab services receive payment at the national limit amount.

House Bill

No provision.

Senate Bill

No provision.

Conference Substitute

Section 3202 resets clinical lab base payment rates by 2 percent in 2013.

Rebasing State DSH Allotments for Fiscal Year 2021

Current Law

Medicaid Disproportionate Share Hospital (DSH) payments provide additional funding to hospitals that serve a disproportionate number of low-income patients. States receive an annual DSH allotment to cover the costs of DSH hospitals that provide care to low-income, uninsured patients. This annual allotment is calculated by law and includes requirements to ensure that the DSH payments to individual hospitals are not higher than actual uncompensated care costs. Each state's federal allotment is capped based on either the prior year's allotment plus inflation or twelve percent of the state's total Medicaid benefits payments for the year. Once a state receives its federal allotment, the state has discretion to distribute the funding to hospitals, as long as the state's methodology is based on the Medicaid inpatient utilization rate (exceeding one standard deviation above the mean for all hospitals in the state) or a low-income utilization rate exceeding 25 percent.

The ACA reduced DSH payments between 2014 and 2020, based on a formula that the Secretary of HHS will develop through future regulation.

House Bill

Section 2225 would rebase the DSH allotments for FY2021 and determine future allotments from the rebased level using current law methodology.

Senate Bill

No provision.

Conference Substitute

Section 3203 extends the ACA Medicaid DSH payment reductions in 2021.

Technical Correction to the Disaster Recovery FMAP Provision

Current Law

The ACA included a provision known as the 'disaster-recovery FMAP' designed to help states adjust to drastic changes in FMAP) following a statewide disaster. Once triggered, the policy would provide assistance for as many as seven years following the disaster, as long as the state continued to experience an FMAP drop of more than three percentage points.

During the first year, a state would receive an FMAP increase equal to 50 percent of the difference between the regular FMAP and the artificially lower FMAP. In the second and succeeding years, the FMAP increase would be 25 percent of the difference between the regular FMAP and the adjusted FMAP from the previous year. However, there is an error in the statute for the second and succeeding years. Instead of creating a glide path downward, so that the affected state could adjust to its new, lower FMAP, the 25 percent bump is added to the higher, adjusted FMAP of the previous year rather than the lower,

base FMAP. This results in increasing FMAPs for each year of the disaster-recovery period, compounding over time. It also makes it easier for the state to continue to qualify each year because it is easier for there to be a three percentage point difference between the artificially high FMAP and the base FMAP.

House Bill

No provision.

Senate Bill

No provision.

Conference Substitute

Section 3204 would address the error by instituting a lower FMAP in the second and subsequent years.

Prevention and Public Health Fund

Current Law

The ACA established a Prevention and Public Health Trust Fund to help shift the focus of the health care system to prevention rather than treatment. The fund provides increasing mandatory direct spending from \$500 million in 2010 to \$2 billion in 2015 and each year thereafter.

House Bill

Section 2222 reduced trust fund dollars beginning in FY2013, saving \$8 billion.

Senate Bill

No provision.

Conference Substitute

Section 3205 reduces trust fund dollars beginning in FY2013, saving \$5 billion.

Parity in Medicare Payments for Hospital Outpatient Department Evaluation and Management Services

Current Law

When a physician treats a beneficiary in a hospital outpatient department, the physician's services are reimbursed under Medicare's physician fee schedule and the hospital receives a facility payment from Medicare under the outpatient prospective payment system (OPPS). Because of the facility payment, the total payment generally exceeds payments for the same services provided in a physician office.

House Bill

Section 2223 would reduce hospital facility fee payments for evaluation and management services provided in a hospital outpatient department so that payment for the service in aggregate would not exceed the amount under the Medicare physician fee

schedule beginning in 2012. These lower payments would not be considered in the review of different components of Medicare's OPPS to ensure that annual adjustments are budget neutral.

Senate Bill

No provision.

Conference Substitute

No provision.

Increase in Medicare Part B and Part D Premiums for High-Income Beneficiaries

Current Law

The MMA of 2003 established that high-income beneficiaries enrolled in Part B would pay a higher premium. The ACA expanded this provision to the Part D program. Currently, high-income beneficiaries are required to pay a greater share of the Medicare Part B and Part D premiums (35 percent, 50 percent, 65 percent, or 80 percent) depending on their income. For 2012, the income thresholds for those premium shares are \$85,000, \$107,000, \$160,000, and \$214,000, respectively for single filers. For married couples, the corresponding income thresholds are twice those values. Because of a provision in the ACA, the income thresholds for both Medicare Part B and Part D are frozen through 2019.

House Bill

Sections 5601 and 5602 would increase the applicable premium percentage higher income beneficiaries would pay by 15 percent such that the levels would become 40.25 percent, 57.5 percent, 74.75 percent, and 90 percent in 2017. This provision would also reduce the income thresholds in 2017, to \$80,000, \$100,000, \$150,000 and \$200,000 for single filers (and twice those values for married couples) and extend the freeze of the income thresholds beyond 2019, until 25 percent of all beneficiaries are paying higher income premiums.

Senate Bill

No provision.

Conference Substitute

No provision.

TAX PROVISIONS

A. Extension of Payroll Tax Reduction (sec. 2001 of the House bill, sec. 101 of the Senate amendment, and sec. 1001 of the conference agreement)

Present Law

Federal Insurance Contributions Act (“FICA”) tax

The FICA tax applies to employers based on the amount of covered wages paid to an employee during the year.¹ Generally, covered wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.² Certain exceptions from covered wages are also provided. The tax imposed is composed of two parts: (1) the old age, survivors, and disability insurance (“OASDI”) tax equal to 6.2 percent of covered wages up to the taxable wage base (\$106,800 for 2011 and \$110,100 for 2012); and (2) the Medicare hospital insurance (“HI”) tax amount equal to 1.45 percent of covered wages.

In addition to the tax on employers, each employee is generally subject to FICA taxes equal to the amount of tax imposed on the employer (the “employee portion”).³ The employee portion of FICA taxes generally must be withheld and remitted to the Federal government by the employer.

Self-Employment Contributions Act (“SECA”) tax

As a parallel to FICA taxes, the SECA tax applies to the self-employment income of self-employed individuals.⁴ The rate of the OASDI portion of SECA taxes is generally 12.4 percent, which is equal to the combined employee and employer OASDI FICA tax rates, and applies to self-employment income up to the FICA taxable wage base. Similarly, the rate of the HI portion of SECA tax is 2.9 percent, the same as the combined employer and employee HI rates under the FICA tax, and there is no cap on the amount of self-employment income to which the rate applies.⁵

An individual may deduct, in determining net earnings from self-employment under the SECA tax, the amount of the net earnings from self-employment (determined without regard to this deduction) for the taxable year multiplied by one half of the combined OASDI and HI rates.⁶

¹ Sec. 3111.

² Sec. 3121(a).

³ Sec. 3101. For taxable years beginning after 2012, an additional HI tax applies to certain employees.

⁴ Sec. 1401.

⁵ For taxable years beginning after 2012, an additional HI tax applies to certain self-employed individuals.

⁶ Sec. 1402(a)(12).

Additionally, a deduction, for purposes of computing the income tax of an individual, is allowed for one-half of the amount of the SECA tax imposed on the individual's self-employment income for the taxable year.⁷

Railroad retirement tax

Instead of FICA taxes, railroad employers and employees are subject, under the Railroad Retirement Tax Act (“RRTA”), to taxes equivalent to the OASDI and HI taxes under FICA.⁸ The employee portion of RRTA taxes generally must be withheld and remitted to the Federal government by the employer.

Temporary reduced OASDI rates

Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010,⁹ for 2011, the OASDI rate for the employee portion of the FICA tax, and the equivalent employee portion of the RRTA tax, is reduced by two percentage points to 4.2 percent. Similarly, for taxable years beginning in 2011, the OASDI rate for a self-employed individual is reduced by two percentage points to 10.4 percent.

Special rules coordinate the SECA tax rate reduction with a self-employed individual’s deduction in determining net earnings from self-employment under the SECA tax and the income tax deduction for one-half of the SECA tax. The rate reduction is not taken into account in determining the SECA tax deduction allowed for determining the amount of the net earnings from self-employment for the taxable year. The income tax deduction allowed for the SECA tax for taxable years beginning in 2011 is 59.6 percent of the OASDI portion of the SECA tax imposed for the taxable year plus one-half of the HI portion of the SECA tax imposed for the taxable year.¹⁰

The Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974¹¹ receive transfers from the General Fund of the United States Treasury equal to any reduction in payroll taxes attributable to the rate reduction for 2011. The amounts are transferred from the General Fund at such times and in such a manner as to replicate to the

⁷ Sec. 164(f).

⁸ Secs. 3201(a) and 3211(a).

⁹ Pub. L. No. 111-312.

¹⁰ This percentage replaces the rate of one half (50 percent) otherwise allowed for this portion of the deduction. The percentage is necessary to allow the self-employed individual to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate remains at 6.2 percent, while the employee portion falls to 4.2 percent. Thus, the employer share of total OASDI taxes is 6.2 divided by 10.4, or 59.6 percent of the OASDI portion of SECA taxes.

¹¹ 45 U.S.C. 231n-1(a).

extent possible the transfers which would have occurred to the Trust Funds or Benefit Account had the provision not been enacted.

For purposes of applying any provision of Federal law other than the provisions of the Internal Revenue Code of 1986, the employee rate of OASDI tax is determined without regard to the reduced rate for 2011.

Under the Temporary Payroll Tax Cut Continuation Act of 2011,¹² the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent employee portion of the RRTA tax, is extended to apply to covered wages paid in the first two months of 2012. A recapture applies for any benefit a taxpayer may have received from the reduction in the OASDI tax rate, and the equivalent employee portion of the RRTA tax, for remuneration received during the first two months of 2012 in excess of \$18,350.¹³ The recapture is accomplished by a tax equal to two percent of the amount of wages (and railroad compensation) received during the first two months of 2012 that exceed \$18,350. The Secretary of the Treasury (or the Secretary's delegate) is to prescribe regulations or other guidance that is necessary and appropriate to carry out this provision.

In addition, for taxable years beginning in 2012, the OASDI rate for a self-employed individual is reduced to 10.4 percent, for self-employment income of up to \$18,350 (reduced by wages subject to the lower OASDI rate for 2012). Related rules for 2011 concerning coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax also apply for 2012, except that the income tax deduction allowed for the OASDI portion of SECA tax imposed for taxable years beginning in 2012 is computed at the rate of 59.6 percent¹⁴ of the OASDI portion of the SECA tax imposed on self-employment income of up to \$18,350. For self-employment income in excess of this amount, the deduction is equal to half of the OASDI portion of the SECA tax.

Rules related to the OASDI rate reduction for 2011 concerning (1) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (2) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

¹² Pub. L. No. 112-78, enacted after passage of H.R. 3630 by the House of Representatives and the Senate.

¹³ \$18,350 is 1/6 of the 2012 taxable wage base of \$110,100.

¹⁴ This percentage used with respect to the first \$18,350 of self-employment income is necessary to continue to allow the self-employed taxpayer to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate remains at 6.2 percent, while the employee portion falls to a 4.2 percent rate for the first \$18,350 of self-employment income. Thus, the employer share of total OASDI taxes is 6.2 divided by 10.4, or 59.6 percent of the OASDI portion of SECA taxes, for the first \$18,350 of self-employment income.

House Bill¹⁵

Under the House bill, the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, is extended to apply for 2012. Similarly, a reduced OASDI tax rate of 10.4 percent under the SECA tax, is extended to apply for taxable years beginning in 2012.

Related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

Effective date.— The provision applies to remuneration received, and taxable years beginning, after December 31, 2011.

Senate Amendment¹⁶

Under the Senate amendment, the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent employee portion of the RRTA tax, applies to covered wages paid up to \$18,350 in the first two months of 2012.¹⁷

In addition, for taxable years beginning in 2012, the Senate amendment provides that the OASDI rate for a self-employed individual is reduced to 10.4 percent, for self-employment income of up to \$18,350 (reduced by wages subject to the lower OASDI rate for 2012). Related rules for 2011 concerning coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax also apply for 2012, except that the income tax deduction allowed for the OASDI portion of SECA tax imposed for taxable years beginning in 2012 is computed at the rate of 59.6 percent¹⁸ of the OASDI portion of the SECA tax imposed on self-employment income of up to \$18,350. For self-employment income in excess of this amount, the deduction is equal to half of the OASDI portion of the SECA tax.

The Senate amendment also contains rules related to the OASDI rate reduction for 2011 concerning (1) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (2) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

¹⁵ The House bill passed prior to the enactment of the “Temporary Payroll Tax Cut Continuation Act of 2011”, Pub. L. No. 112-78, described above.

¹⁶ The Senate amendment passed prior to the enactment of the “Temporary Payroll Tax Cut Continuation Act of 2011”, Pub. L. No. 112-78, described above.

¹⁷ \$18,350 is 1/6 of the 2012 taxable wage base of \$110,100.

¹⁸ See footnote 14.

Effective date.— The provision applies to remuneration received, and taxable years beginning, after December 31, 2011.

Conference Agreement

The conference agreement follows the House bill, providing for a reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, through 2012. Similarly, a reduced OASDI tax rate of 10.4 percent under the SECA tax applies for taxable years beginning in 2012.

As in the House bill and Senate amendment, related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

The conference agreement repeals the present-law recapture provision applicable to a taxpayer who receives the reduced OASDI rate with respect to more than \$18,350 of wages (or railroad compensation) received during the first two months of 2012, and removes the \$18,350 limitation on self-employment income subject to the lower rate for taxable years beginning in 2012.

Effective date.— The provision applies to remuneration received, and taxable years beginning, after December 31, 2011.

**B. Repeal of Certain Shifts in the Timing of Corporate Estimated Tax Payments
(sec. 6001 of the House bill and sec. 7001 of the conference agreement)**

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.¹⁹ For a corporate whose taxable year is a calendar year, these estimated payments must be made by April 15, June 15, September 15, and December 15. In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year):

- (i) payments due in July, August or September, 2012, are increased to 100.5 percent of the payment otherwise due;²⁰
- (ii) payments due in July, August, or September, 2014, are increased to 174.25 percent of the payment otherwise due;²¹
- (iii) payments due in July, August or September, 2015, are increased to 163.75 percent of the payment otherwise due;²²
- (iv) payments due in July, August, or September 2016 are increased to 103.5 percent of the payment otherwise due; and²³
- (v) payments due in July, August or September, 2019, are increased to 106.50 percent of the payment otherwise due.²⁴

¹⁹ Sec. 6655.

²⁰ United States-Korea Free Trade Agreement Implementation Act, Pub. L. No. 112-41, sec 505, and United States-Panama Trade Promotion Agreement Implementation Act of 2011, Pub. L. No. 112-43, sec 502.

²¹ Haiti Economic Lift Program of 2010, Pub. L. No. 111-171, sec. 12(a); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, sec. 1410; Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, sec. 561 (1); Act to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes, Pub. L. No. 111-124, sec. 4; Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, sec. 18; Joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes, Pub. L. No. 111-42, sec. 202(b)(1).

²² Omnibus Trade Act of 2010, Pub. L. No. 111-344, sec. 10002; Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2131; Firearms Excise Tax Improvements Act of 2010, Pub. L. No. 111-237, sec. 4(a); United States Manufacturing Enhancement Act of 2010, Pub. L. No. 111-227, sec. 4002; Joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes, No. 111-210, sec. 3; Haiti Economic Lift Program of 2010, Pub. L. No. 111-171, sec. 12(b); Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, sec. 561(2).

²³ United States-Korea Free Trade Agreement Implementation Act, Pub. L. No. 112-41, sec 505; United States-Columbia Trade Promotion Agreement Implementation Act, Pub. L. No. 112-42, sec 603; and United States-Panama Trade Promotion Agreement Implementation Act, Pub. L. No. 112-43, sec 502.

²⁴ Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, sec. 561(3).

House Bill

The House bill reduces the applicable percentage for 2012 (100.5 percent), 2014 (174.25 percent), 2015 (163.75 percent), 2016 (103.5 percent), and 2019 (106.5 percent) to 100 percent. Thus corporations will make estimated tax payments in 2012, 2014, 2015, 2016, and 2019 as if the prior legislation had never been enacted or amended.

Effective date.—The provision is effective on the date of enactment.

Senate Provision

No provision.

Conference Agreement

The conference agreement follows the House bill, providing reductions in the applicable percentages for 2012 (100.5 percent), 2014 (174.25 percent), 2015 (163.75 percent), 2016 (103.5 percent), and 2019 (106.5 percent) to 100 percent. Thus corporations will be required to make estimated tax payments in 2012, 2014, 2015, 2016, and 2019 as if the prior legislation had never been enacted or amended.

**C. Extension of 100 Percent Bonus Depreciation
(sec. 1201(a) of the House bill and secs. 168(k)(5) and 460(c)(6) of the Code)**

Present Law

An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property placed in service between January 1, 2008 and September 8, 2010 or between January 1, 2012 and January 1, 2013 (January 1, 2014 for certain longer-lived and transportation property).²⁵ An additional first-year depreciation deduction is allowed equal to 100 percent of the adjusted basis of qualified property if it meets the requirements for the additional first-year depreciation and also meets the following requirements. First, the taxpayer must acquire the property after September 8, 2010 and before January 1, 2012. Second, the taxpayer must place the property in service after September 8, 2010 and before January 1, 2012 (before January 1, 2013 in the case of certain longer-lived and transportation property). Third, the original use of the property must commence with the taxpayer after September 8, 2010.²⁶

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed for purposes of computing earnings and profits. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2009, a taxpayer purchased new depreciable property and placed it in service.²⁷ The property's cost is \$1,000, and it is five-year property subject to the half-year convention. The amount of additional first-year depreciation allowed is \$500. The remaining \$500 of the cost of the property is depreciable under the rules applicable to five-year property. Thus, 20 percent, or \$100, is also allowed as a depreciation deduction in 2009. The total depreciation deduction with respect to the property for 2009 is \$600. The remaining \$400 adjusted basis of the property generally is recovered through otherwise applicable depreciation rules.

Property qualifying for the additional first-year depreciation deduction must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less; (2) water utility property (as defined in section 168(e)(5)); (3) computer software other than computer software covered by section 197;

²⁵ Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item must be capitalized under section 263 or section 263A.

²⁶ See Rev. Proc. 2011-26, 2011-16 I.R.B. 664 (Apr. 18, 2011) for guidance regarding additional first-year depreciation.

²⁷ Assume that the cost of the property is not eligible for expensing under section 179.

or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).²⁸ Second, the original use²⁹ of the property must commence with the taxpayer after December 31, 2007.³⁰ Third, the taxpayer must acquire the property within the applicable time period (as described below). Finally, the property must be placed in service before January 1, 2013. An extension of the placed-in-service date of one year (i.e., January 1, 2014) is provided for certain property with a recovery period of 10 years or longer and certain transportation property.³¹ Transportation property generally is defined as tangible personal property used in the trade or business of transporting persons or property.³²

To qualify, property must be acquired (1) after December 31, 2007, and before January 1, 2013, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after December 31, 2007, and before January 1, 2013.³³ With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2013. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed-in-service date, a special rule limits the amount of costs eligible for the additional first-year depreciation. With respect to such property, only the portion

²⁸ The additional first-year depreciation deduction is not available for any property that is required to be depreciated under the alternative depreciation system of MACRS. The additional first-year depreciation deduction is also not available for qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c)(2).

²⁹ The term “original use” means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

³⁰ A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback. If property is originally placed in service by a lessor, such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

³¹ Property qualifying for the extended placed-in-service date must have an estimated production period exceeding one year and a cost exceeding \$1 million.

³² Certain aircraft which is not transportation property, other than for agricultural or firefighting uses, also qualifies for the extended placed-in-service-date, if at the time of the contract for purchase, the purchaser made a nonrefundable deposit of the lesser of 10 percent of the cost or \$100,000, and which has an estimated production period exceeding four months and a cost exceeding \$200,000.

³³ Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to January 1, 2008.

of the basis that is properly attributable to the costs incurred before January 1, 2013 (“progress expenditures”) is eligible for the additional first-year depreciation deduction.³⁴

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner. For example, if a taxpayer sells to a related party property that was under construction prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional first-year depreciation deduction if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional first-year depreciation deduction.

The limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by \$8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction). The \$8,000 increase is not indexed for inflation.

Percentage-of-completion method

In general, in the case of a long-term contract, the taxable income from the contract is determined under the percentage-of-completion method. Solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property with a MACRS recovery period of seven years or less is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted for property placed in service after December 31, 2009 and before January 1, 2011 (January 1, 2012, for certain longer-lived and transportation property). Bonus depreciation is taken into account in determining taxable income under the percentage-of-completion method for property placed in service after December 31, 2010.

House Bill

The House bill increases the additional first-year depreciation deduction from 50 percent to 100 percent of the adjusted basis of qualified property placed in service before after December 31, 2011, and before January 1, 2013, (January 1, 2014, for certain longer-lived and transportation property).

The provision provides that solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property with a MACRS recovery period of seven years or less which is placed in service after December 31, 2011, and before January 1, 2013 (January 1, 2014, for certain longer-lived and transportation property) is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted.

³⁴ For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to section 46(d)(3) as in effect prior to the Tax Reform Act of 1986, Pub. L. No. 99-514, apply.

Effective date.—The provision applies to property placed in service after December 31, 2011.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision from the House bill.

**D. Expansion of Election to Accelerate AMT Credits in Lieu of Bonus Depreciation
(sec. 1201(b) of the House bill and sec. 168(k)(4) of the Code)**

Present Law

A corporation may elect to claim additional alternative minimum tax (“AMT”) credits in lieu of claiming additional first year depreciation (“bonus depreciation”) on eligible qualified property³⁵ placed in service after December 31, 2010, and before January 1, 2013 (January 1, 2014, in the case of certain longer-lived property and transportation property).³⁶ A corporation making the election (i) forgoes bonus depreciation for eligible qualified property, (ii) uses the straight-line method of depreciation for eligible qualified property, and (iii) increases the limitation on the allowance of AMT credit by the bonus depreciation amount.³⁷ The increase in the allowable AMT credit by reason of the election is treated as refundable.

The bonus depreciation amount is 20 percent of the difference between (i) the aggregate amount of depreciation for all eligible qualified property placed in service by the corporation that would be allowed if bonus depreciation applied using the most accelerated depreciation method (determined without regard to this provision), and shortest life allowable for each property, and (ii) the amount of depreciation that would be allowed if bonus depreciation did not apply using the same method and life for each property.

The bonus depreciation amount for any taxable year is limited to the lesser of (i) \$30 million, or (ii) six percent of the AMT credit for the year attributable to the adjusted net minimum tax for taxable years beginning before January 1, 2006 (determined by treating credits as allowed on a first-in, first-out basis), reduced by the sum of certain bonus depreciation amounts for prior taxable years.

In the case of an electing corporation that is a partner in a partnership, the corporation’s distributive share of partnership items is determined without regard to bonus depreciation and by using the straight-line method of depreciation. No partnership property is taken into account in determining a corporation’s bonus depreciation amount.

Generally an election under this provision for a taxable year applies to subsequent taxable years.

All corporations treated as a single employer under section 52(a) are treated as one taxpayer for purposes of the provision and are treated as having made an election under this provision if any of the corporations so elects.

³⁵ The term “eligible qualified property” means property eligible for bonus depreciation, with minor effective date differences.

³⁶ Sec. 168(k)(4).

³⁷ Sec. 53(c) otherwise limits the allowable AMT credit for a taxable year to the excess of the regular tax liability (reduced by certain credits) over the tentative minimum tax for the taxable year.

House Bill

The House bill revises the provision allowing a corporation to elect to claim additional AMT credits in lieu of bonus depreciation.³⁸ The House bill provision follows the substance of present law with the following changes:

Under the House bill, the bonus depreciation amount for any taxable year is limited to the lesser of (i) the AMT credit for the year attributable to the adjusted net minimum tax for taxable years ending before January 1, 2012 (determined by treating credits as allowed on a first-in, first-out basis), or (ii) 50 percent of the AMT credit for the first taxable year ending after December 31, 2011.

In the case of a partnership in which more than 50 percent of the capital and profits interests are owned (directly or indirectly) by one corporation (or by corporations treated as one taxpayer for purposes of this provision), the bonus depreciation amount is computed by treating each partner as having an amount equal to that partner's allocable share of the eligible property for the taxable year (as determined under regulations prescribed by the Secretary).

A corporation may make a separate election for each taxable year.

Effective date.—The provision applies to taxable years ending after December 31, 2011.

For a taxable year which begins before January 1, 2012, and ends after December 31, 2011, the bonus depreciation amount is the sum of the amounts computed separately for each portion of the taxable year by treating each portion as a separate taxable year taking into account property placed in service by the corporation during that portion of the taxable year.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision from the House bill.

³⁸ The House bill rewrites section 168(k)(4) in order to delete a substantial amount of “deadwood” from the language of present law.

**E. Adjustments to Maximum Thresholds for Recapturing Overpayments Resulting
From Certain Federally-subsidized Health Insurance
(sec. 2221 of the House bill and sec. 36B of the Code)**

Present Law

Premium assistance credit

For taxable years ending after December 31, 2013, section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an American Health Benefit Exchange.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved who do not receive health insurance through an employer or a spouse’s employer.³⁹ Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer’s family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded by section 911 (the exclusion from gross income for citizens or residents living abroad), (2) any tax-exempt interest received or accrued during the tax year, and (3) an amount equal to the portion of the taxpayer’s social security benefits (as defined in section 86(d)) that is excluded from income under section 86 (that is, the amount of the taxpayer’s Social Security benefits that are excluded from gross income).⁴⁰ To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding scale basis for individuals and families with household incomes between 100 and 400 percent of FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of FPL for the family size involved to 9.5 percent of income for those at 400 percent of FPL for the family size involved. After 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year. After 2018, if the aggregate amount of premium assistance credits and

³⁹ Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of FPL.

⁴⁰ The definition of modified adjusted gross income used in section 36B is incorporated by reference for purposes of determining eligibility to participate in certain other healthcare-related programs, such as reduced cost-sharing (section 1402 of PPACA), Medicaid for the nonelderly (section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) as modified by section 2002(a) of PPACA) and the Children’s Health Insurance Program (section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) as modified by section 2101(d) of PPACA).

cost-sharing reductions⁴¹ exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating family size, individuals who are in the country illegally are not included.

Table 1.—The Premium Assistance Credit Phase-Out

<i>Household income (expressed as a percent of FPL)</i>	<i>Initial premium (percentage)</i>	<i>Final premium (percentage)</i>
100% up to 133%	2.0	2.0
133% up to 150%	3.0	4.0
150% up to 200%	4.0	6.3
200% up to 250%	6.3	8.05
250% up to 300%	8.05	9.5
300% up to 400%	9.5	9.5

Minimum essential coverage and employer offer of health insurance coverage

Generally, if an employee is offered minimum essential coverage⁴² in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through an exchange.

If an employee is offered unaffordable coverage by his or her employer or the plan’s share of total allowed cost of provided benefits is less than 60 percent of such costs, the employee can be eligible for the premium assistance credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a premium assistance credit through an American Health Benefit Exchange. Unaffordable coverage, as defined by Federal

⁴¹ As described in section 1402 of PPACA.

⁴² As defined in section 5000A(f).

law, is coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee’s household income, based on self-only coverage.⁴³

Reconciliation

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the overpayment must be reflected on the taxpayer’s income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount (the “applicable dollar amount”) as shown in Table 2 below (one-half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).⁴⁴

Table 2.—Reconciliation

<i>Household income (expressed as a percent of FPL)</i>	<i>Applicable dollar amount</i>
Less than 100%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer’s tax return for the year.

House Bill

The House bill changes the applicable dollar amount, as shown in Table 3 below (one-half of the applicable dollar amount shown in Table 3 for unmarried individuals who are not surviving spouses or filing as heads of households).

⁴³ The 9.5 percent amount is indexed for calendar years beginning after 2014 to reflect the excess of premium growth over income growth.

⁴⁴ Section 36B(f)(2), as amended by section 208 of the Medicare and Medicaid Extenders Act of 2010, Pub. L. No. 111-309 and section 4 of the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9.

Table 3.–Adjusted Reconciliation

<i>Household income (expressed as a percent of FPL)</i>	<i>Applicable dollar amount</i>
Less than 100%	\$600
At least 100% but less than 150%	\$800
At least 150% but less than 200%	\$1,000
At least 200% but less than 250%	\$1,500
At least 250% but less than 300%	\$2,200
At least 300% but less than 350%	\$2,500
At least 350% but less than 400%	\$3,200

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision from the House bill.

**F. Information for Administration of Social Security Provisions
Related to Noncovered Employment
(sec. 5101 of the House bill and secs. 6047 and 6103(l) of the Code)**

Present Law

The administrator of an employer-sponsored retirement plan, including a plan maintained by a State or local government, is required to comply with reporting requirements prescribed by the IRS.⁴⁵ In the case of a distribution to a participant or beneficiary, the amount of the distribution and other required information must be reported to the IRS and the participant or beneficiary on the Form 1099-R.

Tax returns and return information (including information returns) received by the IRS are subject to confidentiality protections and cannot be disclosed, including to another Federal agency, unless specifically authorized.⁴⁶ Disclosure of certain returns and return information to the Social Security Administration for specific purposes is so authorized.⁴⁷

House Bill

The House bill amends the reporting requirements applicable to employer-sponsored retirement plans of State and local governments to require the identification of any distribution based in whole or in part on earnings for service in the employ of the State or local government, to the extent such information is known or should be known.⁴⁸ The House bill authorizes disclosure of this information by the IRS to the Social Security Administration for purposes of its administration of the Social Security Act.

Effective date.—The provision applies to distributions and disclosures made after December 31, 2012.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision from the House bill.

⁴⁵ Sec.6047(d).

⁴⁶ Sec. 6103.

⁴⁷ Sec. 6103(h)(5), (l)(1), (l)(5).

⁴⁸ For this purpose, State includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

**G. Social Security Number Required to Claim the Refundable Portion
of the Child Tax Credit
(sec. 5201 of the House bill and sec. 24 of the Code)**

Present Law

An individual may claim a tax credit for each qualifying child under the age of 17. The maximum amount of the credit per child is \$1,000 through 2012 and \$500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child. If the child tax credit exceeds the taxpayer's tax liability, the taxpayer may be eligible for a refundable credit.

No credit is allowed to any taxpayer with respect to any qualifying child unless the taxpayer includes the name and the taxpayer identification number of the qualifying child on the return of tax for the taxable year. For individual filers, a taxpayer identification number may be either a Social Security number ("SSN"), an IRS individual taxpayer identification number ("ITIN"), or an IRS adoption taxpayer identification number ("ATIN").

House Bill

The House bill adds a requirement that the refundable portion of the child tax credit is allowable only if the tax return includes the taxpayer's SSN (or in the case of a joint return, the SSN of either spouse).

Effective date.—The provision applies to taxable years beginning after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision from the House bill.

**H. Excise Tax on Unemployment Compensation Benefits of High-Income Individuals
(sec. 5301 of the House bill and new sec. 5895 of the Code)**

Present Law

Gross income includes any unemployment compensation benefits received under the laws of the United States or any State, and is taxed at the applicable individual income tax rate.⁴⁹

House Bill

The House bill imposes an excise tax equal to 100 percent on unemployment compensation benefits received by individuals with adjusted gross income above certain thresholds. The adjusted gross income threshold is \$750,000 (\$1,500,000 for married individuals filing joint returns). The excise tax is phased-in ratably over a \$250,000 range (\$500,000 for married individuals filing joint returns). Therefore unemployment compensation benefits are taxed at a 100 percent rate for individuals with \$1,000,000 or more of adjusted gross income (\$2,000,000 or more of adjusted gross income for married individuals filing joint returns).

The excise tax is not deductible in computing the taxpayer's taxable income.

Effective date.—The provision applies to taxable years beginning after December 31, 2011.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision from the House bill.

⁴⁹ Sec. 85.

TAX COMPLEXITY ANALYSES

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service (“IRS”) and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and the Treasury Department regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

1. Extension of the payroll tax reduction (sec. 1001 of the conference agreement)

Summary description of provision

The conference agreement provides for a reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, through 2012. Similarly, the reduced OASDI tax rate of 10.4 percent under the SECA tax, is extended to apply for taxable years of self-employed individuals that begin in 2012.

Related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

The conference agreement repeals the present-law recapture provision applicable to a taxpayer who receives the reduced OASDI rate with respect to more than \$18,350 of wages received during the first two months of 2012.

The bill is effective after the date of enactment.

Number of affected taxpayers

It is estimated that the provision will affect more than 10 percent of individual taxpayers and small businesses.

Discussion

It is not anticipated that taxpayers and small businesses will need to keep additional records due to this provision. Extensive additional regulatory guidance will not be necessary to effectively implement the provision. It is not anticipated that the provision will result in an increase in disputes between small businesses and the IRS.

The provision likely will not increase the tax preparation costs for most individuals and small businesses. Affected individuals and small businesses will not be required to perform additional and complex calculations to comply with the provision.

It is anticipated that the Secretary of the Treasury will have to make appropriate revisions to several types of tax forms and instructions.



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 15, 2012

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
Washington, D.C. 20515

Dear Mr. Barthold:

I am responding to your letter dated February 14, 2012, in which you requested a complexity analysis related to the extension of the payroll tax holiday enacted under section 101 of the Temporary Payroll Tax Cut Continuation Act of 2011.

Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department for inclusion in the complexity analysis in the Conference Report on H.R. 3630.

Our comments are based on the description of the provision provided in your letter. The analysis does not include administrative cost estimates for the changes that would be required. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provision. The analysis does not cover any other provisions of the bill.

Sincerely,

A handwritten signature in blue ink that reads "Douglas H. Shulman".

Douglas H. Shulman

Enclosure

COMPLEXITY ANALYSIS OF CONFERENCE AGREEMENT ON H.R. 3630

Extension of the Payroll Tax Holiday

The conference agreement provides for a reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, through 2012. Similarly, the reduced OASDI tax rate of 10.4 percent under the SECA tax is extended for taxable years of self-employed individuals that begin in 2012.

The agreement provides related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code that also apply for 2012.

The conference agreement repeals the present-law recapture provision applicable to a taxpayer who receives the reduced OASDI rate with respect to more than \$18,350 of wages received during the first two months of 2012.

IRS and Treasury Comments:

- This provision is an extension of current law (except for the repeal of the recapture of excess benefit) and should not add significant burden to taxpayers and the public in general.
- IRS has taken measures to prepare in case the Temporary Payroll Tax Cut is not extended, including revising forms and instructions and programming systems. If this provision is enacted, the IRS will have to adjust its forms and systems to reflect the extension. Computer software providers and large employers may also have programmed their systems for current law and would need to make similar adjustments.
- No new guidance would be required.
- IRS will have to make small modifications to certain notices to, and publications for, employers.
- There will be minimal impact on IRS training and the Internal Revenue Manual.

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, no provision in this conference report or joint explanatory statement includes a congressional earmark, limited tax benefit, or limited tariff benefit.